

# *Concentration Drivers in the Commercialization of Intellectual Property*

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One of the most striking and undertheorized aspects of intellectual property rights is the concentrated nature of the industries that commercialize them. Patent-intensive industries like biopharmaceuticals and copyright-intensive fields like movie production and distribution tend to be dominated by a relatively small number of large players, and they experience significant merger and acquisition activity. Various schools of thought—from the theory of the firm to theories focused on intellectual property—offer insights into industry structure, but none can fully explain the high degree of concentration observed in these fields. This Article seeks to fill that gap by providing a more holistic account of the forces shaping innovative industries. In so doing, it draws on empirical profiles of six industries that commercialize intellectual property: biopharmaceuticals; agricultural biotechnology, seeds, and agrochemicals; software; film production and distribution; music recording; and book publishing. Augmenting prevailing theories, it argues that barriers to entry, efficiencies of size, strategic objectives to improve competitive position, and revenue pressures all function as “concentration drivers” that overwhelm the few “fragmentation drivers” pushing in the opposite direction. Ultimately, these forces can produce significant concentration in industries that commercialize intellectual property. This Article explores significant normative concerns with concentrated innovative industries and concludes with a holistic set of prescriptions to mitigate their excesses.