

ECONOMIC ANALYSIS OF INTELLECTUAL PROPERTY LAW
Prof. Dr. Ben Depoorter

CLASSES ARE HELD February 20- March 10

Syllabus

This course reviews the economics of intellectual property laws, including copyright, patent, trademark law, and trade secret. It reviews economic foundations, critically examines justifications for intellectual property protection and evaluates the optimal scope of intellectual property protection, including exceptions and enforcement.

1. Practical Information

Online office hours: afternoons only - let me know if you would like to set up a Zoom call: ben.depoorter@ugent.edu.

All practical questions with regard to the organization of the exam should be addressed to nancy.vannuffel@ugent.be.

2. Course materials (will be made available)

The readings will be posted on the course web site without charge. Articles cannot be copied or redistributed outside of this class.

3. Class Participation + Advanced Reading

Each class has a required reading and a few Suggested/Optional readings (see below, Part 5). The required readings are exam material. The Suggested/Optional readings provide additional background for the class discussion. Your class notes should suffice on those topics, but the additional readings can help you verify the accuracy of your notes or get additional information.

You are encouraged to read the assigned materials prior to each class but I will not expect you to. If you do, however, you will be better prepared to participate in the

discussion and to ask follow-up questions. Given the short timeline of the course, I will not call on students to explain the assigned readings for that day.

4. Exam

Your final grade will be determined primarily by your performance on the final examination, but students are able to increase the final grade for the course by participating in class discussion (for a maximum of 4 points out of 20). The examination is based on the assigned readings and the contents of the class lectures, including classroom discussions.

The exam will test your familiarity with the animating economic concepts and theories that inform intellectual property law. The primary focus of the final will be on the application of the theories to intellectual property laws and disputes. Questions on the final exam will emphasize the issues discussed in class.

For EMLE students, the exam is held at the end of March. Students in the Ugent master program can elect to take the exam at that time as well or during the regular Ugent exam period in June. All Ugent students should send advance notice to Nancy.Vannuffel@Ugent.be to indicate their preference.

Exam: March 22: Auditorium D

13- 14:30: Development Economics (optional)

15-16-30: Economics analysis of Intellectual Property

5. Class Meeting Times + Readings

1. Monday, February 13: 16-17:30: **Benefits and Costs of Intellectual Property Protection (Part 1)**

(Zoom: <https://us02web.zoom.us/j/89541259852>)

Required Reading: Landes & Posner, *Economics Structure of IPL*, pages 11- 24.

Suggested/Optional Readings (on the class site):

- Joel Waldfogel, *Bye Bye Miss American Pie*
- Joel Waldfogel, *Copyright and Technological Change in Music, Movies, and Books* (Depoorter, Menell & Schwartz, Handbook of the Economics of Intellectual Property).
- Jonathan Barnett, *Copyright without Creators*
- Kal Rustalia and Christopher Jon Sprigman, *When Are IP Rights Necessary? Evidence from Innovation in IP's Negative Space*, in Handbook

of Economics of IP (Depoorter, Menell & Schwartz, Handbook of the Economics of Intellectual Property).

- Ben Depoorter, *Intellectual Property Enforcement Costs*, (Depoorter, Menell & Schwartz, Handbook of the Economics of Intellectual Property).
 - Jay Kesan, *Political Economy of IP* (Depoorter, Menell & Schwartz, Handbook of the Economics of Intellectual Property).
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2. Monday, February 20: 16-17:30: **Benefits and Costs of Intellectual Property Protection (Part 2 Continued)** (Auditorium F)

3. Wednesday, February 22, 15:30-17:00: **Benefits and Costs of Intellectual Property Protection (Part 3) Continued** (Auditorium D)

4. Friday, February 24, 13:30-15:00: **The Economics of Copyright Law & Creativity** (Auditorium F)

Assigned Reading: Landes & Posner, *Economics Structure of IPL*, pages 37-60.

Suggested/Optional Reading: Wendy Gordon & Robert Bone, Encyclopedia of Law & Economics, *Copyright Law*

5. Wednesday, March 1, 13:30-15:00: **Economic Analysis of Copyright Doctrine** (Auditorium D)

Assigned Reading: Landes & Posner, *Economics Structure of IPL*, pages 85-123.

Suggested/Optional Reading:

- Hansmann & Santilli, *Authors' and Artists' Moral Rights: A Comparative Legal and Economic Analysis*
 - William Landes, *What Has the Visual Rights Act Accomplished?*
 - Bechtold & Engel, *The Price of Moral Rights*
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6. Friday, March 3, 13:30-15:00: **Economics of Trademark Law** (Auditorium F)

Assigned Reading: Landes & Posner, *Economics Structure of IPL*, pages 166-174;
Landes & Posner, *Economics Structure of IPL*, pages 187-209.

Suggested/Optional Reading:

- Barton Bebee, *Empirical Studies of Trademark Law* (Depoorter, Menell & Schwartz, Handbook of the Economics of Intellectual Property).
- Barton Bebee & Jeanne Fromer, *Are We Running out of Trademarks?*, Harvard Law Review

7. Wednesday, March 8, 13:30-15:00: **Economic Analysis of Patent Law** (Auditorium D)

Economic Analysis of Patents & Innovation

Assigned Reading:

Landes & Posner, *Economics Structure of IPL*, pages 295-326.
Landes & Posner, *Economics Structure of IPL*, pages 334-353 (The Patent Court).

Suggested/Optional Readings:

- Suzanne Scotchmer & Peter Menell, *Economic Models of Innovation: Stand-Alone and Cumulative Creativity*, (Depoorter, Menell & Schwartz, Handbook of the Economics of Intellectual Property).
- Michele Boldrin & David K. Levine, *The Case Against Patents*
- Heller & Eisenberg, *Can Patents Deter Innovation?*
- Richard Epstein & Bruce Kuhlik, *Is There a Biomedical Commons?*
- Meurer & Bessen, *Patent Failure*, pp 46-72.
- Jay Kesan, *Patent Trolls*, (Depoorter, Menell & Schwartz, Handbook of the Economics of Intellectual Property).

8. Friday, March 10, 13:30-15:00: **Economics of Trade Secrets** (Auditorium F)

Assigned Reading: Landes & Posner, *Economics Structure of IPL*, pages 354-371.

Suggested/Optional Readings:

- Jonas Anderson, *Secret Inventions*.

- Michael Risch, *Empirical Methods in Trade Secret Research*, Handbook of Economics of IP (Depoorter & Menell, forthcoming 2019).
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6. Learning Outcomes

6.1. Knowledge

Students will learn: (1) the economic foundations of various intellectual property rules; (2) the economic concepts that set the contours of intellectual property protection; (3) the economic interpretation of the main doctrines of intellectual property law; (4) the economic effects of intellectual property right on creativity and innovation.

6.2. Skills

Using economic tools, student will analyze issues in intellectual property law including:

1. use economic insights to identify trade-off relating to the scope of intellectual property protection;
2. assess proposals to change intellectual property protection;
3. explain, whenever possible with the aid of quantitative methods, how intellectual property protection does not always reach its publicly stated purposes and/or may even produce adverse effects;
4. identify potential conflicts between economic efficiency goals and other normative interests;
5. critically examine economic issues relating to the enforcement of intellectual property laws.

6.3. Competencies

1. to formulate judgments about complex problems in the field of intellectual property law;
2. to think critically about the optimal scope of intellectual property protection in relation to the functional goals of intellectual property law;

3. to design legal rules and solutions that improve economic efficiency;
4. make presentations and write scientific papers with an interdisciplinary approach to a legal and/or economic problem;
5. form a scientific, critical attitude to policy problems in the area of intellectual property; identifying the need for quantitative approaches.