Many legal academics believe that the intellectual property regime under its constitutional mandate is charged to promote both innovation and dissemination. These scholars are concerned about dissemination failures. They argue that copyright law has inhibited the use of dissemination technologies. They also point to the changes in a range of patent doctrines resulting in the strengthening of the patentee at the expense of competitors. Yet, in this article, I show that copyright law is not concerned with the dissemination of technologies but with the dissemination of knowledge. At the same time, patent law uses competition as a proxy for dissemination, focusing solely on the effects of the actions of the patentee and his competitors on dissemination.

This Article suggests that the legal regime fails to encourage dissemination because its legal framework ignores the user. My concern is not with the user as an innovator but the user as an adopter of new technologies. I argue that the user in his everyday decisions to adopt or not to adopt a technology plays an important role in determining whether a new technology will be disseminated. I propose that legal actions targeted directly at the user are particularly effective in accomplishing the dissemination goal. However, they should be limited to two instances in which the market cannot be effective. The first instance is where market failure occurs because a technology is dependent on network effects and the accumulation of a critical mass of users. The second instance is when time is of the essence and there is a critical need to disseminate a technology quickly.