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Innovation Market Dynamics: A Private Industry Signaling Approach to Selecting Socially Optimal Intellectual Property Protection

The most fundamental question in intellectual property likely concerns how to identify the optimal level of intellectual property protection so as to maximize the social value of innovation. This question has been hotly debated for decades, and stands at the center of current vociferous debates over patent and copyright reform. Prior attempts to answer the question of how much intellectual property protection is optimal have generally involved either theoretical models of innovation or studies of changes in innovation due to changes in intellectual property protection across time, jurisdiction, or other variables. These approaches yield indeterminate results for at least a couple reasons: they either lack the real world fit necessary to provide robust conclusions or contain too many potentially confounding independent variables due to real world complexity.

This project tackles the how much question using a new private market strategy that does not suffer from the aforementioned defects. It is now well recognized that the interaction between innovation and intellectual property law vary across industry. Industries vary significantly in their manner and form of innovation, the relationship between such innovation and patent or copyright protection, and firm and market structure within the industry. All of these factors have significant effects on how an industry interacts with the intellectual property system, and therefore on which aspects of an intellectual property system the industry favors or wants to reform.

The fact that industries vary in their preferences for intellectual property regimes also means that the relationship between different industries' private value of a given level of intellectual property protection and the social value of that same level of protection will vary. Some industries will display a close correspondence between private industry value and social value, others less so. By identifying industry characteristics which tend to reduce the discrepancy between the preference profiles of private versus social value of intellectual property protection levels, and then identifying which industries possess such characteristics, it is possible to leverage private innovation market signals to reveal socially superior levels of intellectual property protection. Put simply, some industries and firms have characteristics that will tend to make them advocate, for self-interested reasons, for more socially favorable intellectual property regimes than others. This paper develops a framework to identify such characteristics and applies the framework to a wide variety of real world industries in order to uncover private market signals concerning optimal intellectual property protection.