



# Theory and Practice of Patent Valuation

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BERKELEY CENTER FOR  
LAW & TECHNOLOGY

# **Introduction: Adventures in Market-Making**

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## Two main themes

- **Asset definition**
- **Asset legitimacy**

# **Asset definition**

- **In a market, what assets are traded?  
How is their value established?**

# **“The market for patents”**

- **There is a complex relationship between (1) tangible assets, (2) information, and (3) IP rights**
- **Markets for these three things interact in important ways**

# New Research on IP and “Markets for Technology”

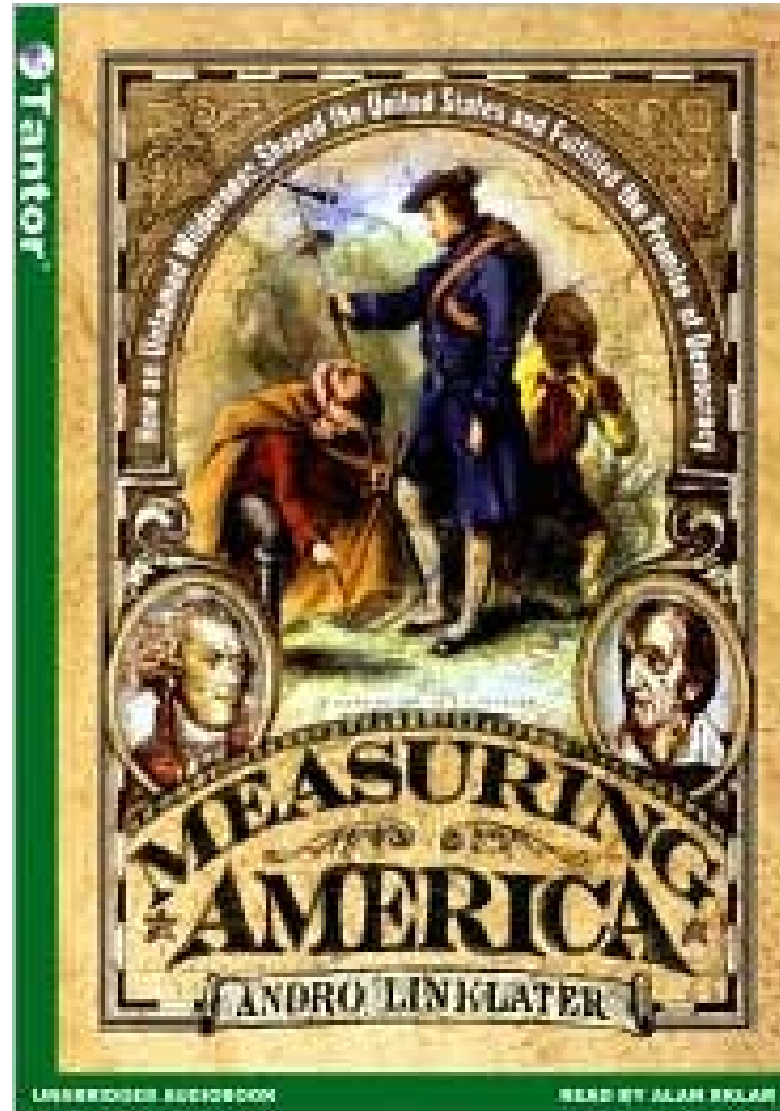
Ashish Arora, et al.,  
“Markets for  
Technology” (MIT  
Press 2002)



# **Asset definition: patents**

- **What is the proper unit of analysis?**
  - **Individual patent or portfolio?**
- **Will some standard “bundles” emerge?**

# Standard measures are essential to market-making





# Valuation

- **Rankings, ratings, and common denominators**
  - “Moody’s ratings”
  - Square footage in real estate

# Transparency

- **Should the prices of patent transactions be made public?**
  - **Benefits: comparability**
  - **Costs: would this affect settlement of infringement suits?**

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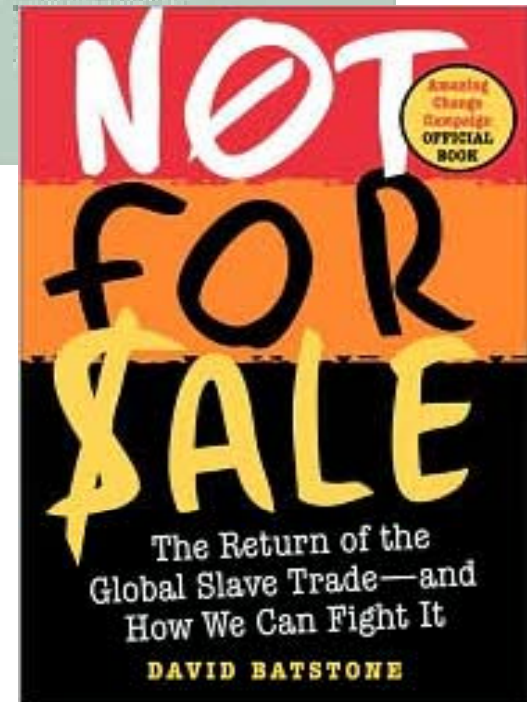
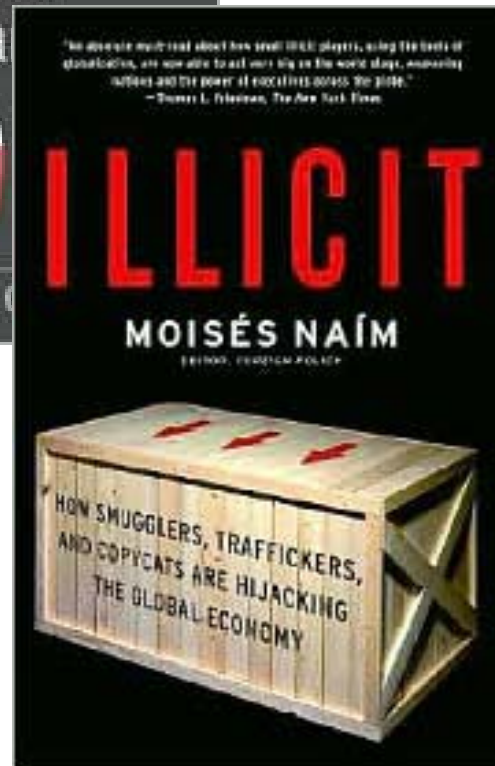
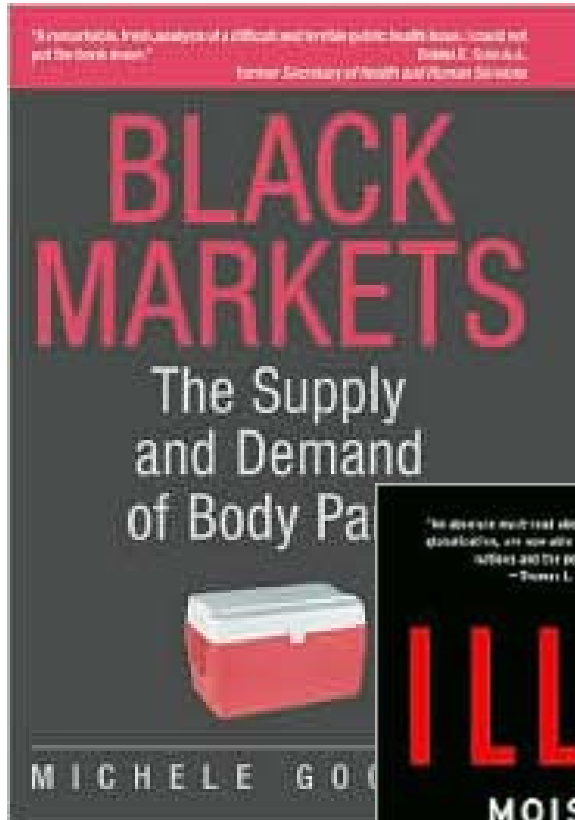
**Now for something completely scary**

...



**Society determines which  
transactions are legitimate, and  
which are not**

- *The existence of a market does not, by itself, confer legitimacy*



# Protection rackets: Russian “krysha”



# **“The market for patents”**

- **There is a complex relationship between (1) tangible assets, (2) information, and (3) IP rights**
  - **Market for patents should serve to facilitate production of information and/or tangible assets**



- **Must show that an active market in patents promotes technological innovation**
  - **Patents in service of innovative information/products**

# How can this be shown?

- **“Follow the money” – are startups seeing any money from these patents?**
- **Spinoffs: are portfolios being licensed in to help found new companies?**