

INTRODUCTION:
COMMON GROUND: HOW INTELLECTUAL PROPERTY
UNITES CREATORS AND INNOVATORS

Adam Mossoff and Mark Schultz

The creative industries and innovation industries have much in common, but too often this is overlooked. Both industries engage in brilliant intellectual work to bring new products and services into the world, both take great risks to commercialize this work, and both depend on intellectual property—copyrights (for the creative industries) and patents (for the innovation industries). Unfortunately, most accounts of these two industries emphasize their differences and frequently portray them in conflict.

This conference explores the common ground shared by these two dynamic industries, focusing on the similar values secured by their patents and copyrights and thus their common policy goals and commercial developments.

It should be unsurprising that these two industries share much in common. The work of inventors and artists is much the same. We see hints of this in their respective aspirations. Engineers, for example, often talk of seeking “elegant” or “beautiful” solutions to the technological problems they face.¹ Artists also strive to innovate technically in how they create their works, as demonstrated with much panache in the recent documentary *Tim’s Vermeer*.² Many creators apply their prodigious talents to both art and invention.

One may think of Steve Jobs today as exemplifying this truth, but history is replete with examples. Leonardo da Vinci also comes to mind, the quintessential Renaissance Man. In the nineteenth century, Samuel F.B. Morse invented the telegraph, but he was also a successful artist who developed the telegraph while working as a well-known professor of art at New York University.³

* Senior Scholar & Director of Academic Programs, Center for the Protection of Intellectual Property; Professor of Law, George Mason University School of Law.

** Senior Scholar & Director of Academic Programs, Center for the Protection of Intellectual Property, George Mason University School of Law; Associate Professor, Southern Illinois University School of Law.

¹ See, e.g., THIS EXPLAINS EVERYTHING: DEEP, BEAUTIFUL, AND ELEGANT THEORIES OF HOW THE WORLD WORKS (John Brockman ed., 2013).

² TIM’S VERMEER (Sony Pictures Classics 2013).

³ Adam Mossoff, O’Reilly v. Morse 25 (George Mason Law & Econ. Ctr. Research Paper No. 14-22, 2014), available at <http://ssrn.com/abstract=2448363>.

In modern America, Walt Disney has defined much of our culture not just with his artistic creations, but also with his innovative technological creations in movies, theme parks, and products. More recently, filmmakers George Lucas and James Cameron have cast large shadows in popular culture, but their contributions to filmmaking technology may prove even more enduring and pervasive.⁴

These and many other examples are unsurprising when one considers that art and technology both result from the same source: productive intellectual labor.

As the work of artists and inventors is at heart the same, so is the moral and economic case for securing property rights to them. Artists and inventors deserve to own the fruits of their productive labors. In protecting these labors, intellectual property rights secure to them their liberty and their careers. These rights thus fuel the vast economic activity that drives the innovation economy—bringing to market the products and services that ensure full and flourishing lives for them and for the rest of us as well.

Too often, though, the creative and innovation industries are portrayed as being at odds. One popular narrative today—in both scholarly and popular accounts—is that technology disrupts the creative industries, forcing copyright owners to adapt. This is a myopic account of their relationship that ultimately creates a false picture. In truth, creativity and innovation—secured by copyrights and patents—constantly spur each other to greater heights.

The true story of creativity and innovation is more properly viewed as a virtuous circle.

Recording and broadcast technology, for instance, gave musicians and other performers their first worldwide audiences, whose demand for evermore entertainment and information spurred further improvement and expansion of technology. The invention of the electric guitar, spurred by a series of patented improvements, enabled blues and rock ‘n’ roll, which in turn pushed further developments in music and recording technology.⁵

The Internet certainly created much disruption, but it also has been a fountainhead of creativity. To take just one example, streaming of original, creative content enables television viewers to enjoy storytelling as never

⁴ See Eric Eisenberg, *How Avatar Happened: Lightcycles and Giant Lizards on the Path to Innovation*, CINEMABLEND (Dec. 15, 2009, 11:30 PM), <http://www.cinemablend.com/new/How-Avatar-Happened-Lightcycles-And-Giant-Lizards-On-The-Path-To-Innovation-16162.html>. Similarly, the artists and movie studios who created the 2014 blockbuster *Interstellar* prompted scientists to discover new truths about the universe, which knowledge will certainly one day become central to further technological innovation in space travel and other human activities. See Zing Tsjeng, *Sci-fi Film Interstellar Leads to New Scientific Discovery*, DAZED (Oct. 24, 2014), <http://www.dazeddigital.com/artsandculture/article/22292/1/sci-fi-film-interstellar-leads-to-new-scientific-discovery>.

⁵ See, e.g., ELECTRIFIED, AMPLIFIED, DEIFIED: THE ELECTRIC GUITAR, ITS MAKERS, AND ITS PLAYERS (Smithsonian 1996); *The Invention of the Electric Guitar*, LEMELSON CENTER (Apr. 18, 2014), <http://invention.si.edu/invention-electric-guitar>.

before, bringing about what some are now calling a Second Golden Age of Television.⁶

Our technological devices, such as smartphones and iPads, would not be so well loved and so ubiquitous without the games, music, and video content they deliver to hundreds of millions of people the world over.

The common ground and shared aspirations of creators and innovators is clear, but rarely appreciated in the din of today's policy debates.

Thus, our Annual Conference this year considers afresh the common goals, challenges, and needs of the creative and innovation industries. Many distinguished speakers with extensive knowledge and experience in both fields will address how intellectual property rights represent the bedrock of this common ground. We hope that you will enjoy what promises to be enlightening discussion.

⁶ See, e.g., Lee Cowan, *Welcome to TV's Second "Golden Age,"* CBS NEWS (Oct. 1, 2013, 1:44 PM), <http://www.cbsnews.com/news/welcome-to-tvs-second-golden-age/>.