IP and Antitrust Seminar – Law 432
Wednesdays, 6:05 pm – 8:05 pm
Antonin Scalia Law School, George Mason University, Spring 2021

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Office Hours. Wed. 1 - 3 pm & by appointment.

Welcome. The goal of the course is to intersect the world of intellectual property and antitrust. While there might initially appear to be some tension between the two areas, there is a great deal of harmony when properly formulated. Students are expected to come to class prepared and ready to discuss the assigned readings.

Learning Outcome: By the end of the course, students will be able to comprehend, apply, and analyze the economic and legal concepts developed over the semester, which involve both IP and antitrust doctrines. Students will be able to perform detailed legal analyses harmonizing IP and antitrust law.

Text. Landes and Posner, The Economic Structure of Intellectual Property Law. All other readings will be made available on TWEN.

Course Requirements and Grading.

Written Assignments. There will be two written assignments. Each assignment is worth 15 percent of your overall grade—for a total of 30 percent. All assignments must be submitted in PDF via TWEN before the due date & time. Late submissions will receive zero credit.

• Assignment One: Mon., Feb. 22 → Due: Fri., Mar. 5 @ 11:59 pm
• Assignment Two: Mon., Apr. 5 → Due: Fri., Apr. 16 @ 11:59 pm

Term Paper. The term paper must use economic analysis to analyze an antitrust issue that intersects with intellectual property concepts. It is worth 70 percent of your overall grade. The paper should be 20-30 pages in length. The due date for the preliminary topic and outline is Friday, March 26, 2020. The final paper due date is Friday, April 30, 2021. All assignments must be submitted in PDF via TWEN before midnight on the due date. Late submissions will receive zero credit.
Class Participation. Your grade is subject to a discretionary class participation adjustment of 1/3rd of a grade in either direction. The course adheres to the attendance policy as outlined in AR 4-1.

Grading. This course follows the grading policies outlined in Academic Regulations (AR) 4-5.7, which may be found at ACADEMIC REGULATIONS, https://www.law.gmu.edu/academics/regulations.

Honor Code. Students are expected to adhere to the Scalia Law HONOR CODE, which may be found at https://www.law.gmu.edu/academics/honor_code.

Tentative Syllabus. We may deviate from the tentative syllabus for reasons including current events, scheduling, new cases, et cetera. Please make sure you are signed up to receive updates via TWEN.

Intellectual Property. I own all course content that is created (e.g., slides), regardless of format (electronic, print, audio, video). You are forbidden to distribute them to anyone other than your classmates in this course. Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera.
Class Schedule

1  Economics of Information (Jan. 27)

Required:

More Resources:

2  Economic Theory of Property and Intellectual Property (Feb. 3)

Required:
- Landes and Posner, Ch. 1, *The Economic Theory of Property*
- ProCD v. Zeidenberg, 86 F.3d 1447 (7th Cir 1996)

More Resources:

3  Antitrust and Licensing Intellectual Property (Feb. 10)

Required:
- Landes and Posner, Ch. 14, *Antitrust and Intellectual Property*

Brulotte v. Thys, 379 U.S. 29 (1964)

Scheiber v. Dolby Labs, 293 F.3d 1014 (7th Cir. 2002)


More Resources:


4 **Standard Essential Patents (SEPs) & FTC v. Qualcomm (Feb. 17)**

**Required:**


- FTC v. Qualcomm
  - FTC v. Qualcomm: (i) FTC complaint and (ii) Qualcomm’s motion to dismiss.
  - FTC v. Qualcomm, 969 F.3d 974 (9th Cir. 2020)

- Research in Motion v. Motorola, 644 F.Supp. 2d 788 (N.D. Tex. 2008)

**More Resources:**


5 Tying/Bundling & Price Discrimination (Feb. 24)

Required:
- Queen City Pizza v. Domino’s Pizza, 124 F.3d 430 (1997)

6 Multi-Sided Platforms, Open v. Closed Sys., & Video Games (Mar. 3)

Required:
- Datel Holdings v. Microsoft, 712 F. Supp. 2d 974 (N.D. Cal. 2010)

More Resources:

7 Coordinating Ecosystems (Mar. 10)

Required:
NFL v. Ninth Inning

- In Re NFL Sunday Ticket, 933 F.3d 1136 (9th Cir. 2019)

More Resources:


8 Sharing Economy & Algorithmic Collusion (Mar. 17)

Required:

- Meyer v. Uber Technologies, 868 F.3d 66 (2nd Cir. 2017)
- United States v. David Topkins (2015), Complaint

More Resources:


9 Counterfactuals: Nascent & Potential Competition (Mar. 24)

Required:

- Colleen Cunningham et al., Killer Acquisitions, J. POL. ECON. (forthcoming).
- U.S. v. Visa & Plaid Inc. (2020)
More Resources:
- Senate Testimony of Patricia Nakache on Nascent-Potential Competition

10 "Predatory" Innovation: Is this a thing? (Mar. 31)

Required:
- U.S. v. Microsoft, 253 F.3d 34 (D.C. Cir. 2001)
- California Computer Products v. IBM, 613 F.2d 727 (1979)
- Allied Orthopedic v. Tyco Healthcare, 592 F.3d 991 (9th Cir. 2010)

11 The Economics of Trade Secret Law (Apr. 7)

Required:
- Landes and Posner, Ch. 13, *The Economics of Trade Secrecy Law*
- E.I. duPont deNemours v. Christopher, 431 F.2d 1012 (5th Cir. 1970)

More Resources:

12 Privacy (Apr. 14)

Required:
- Fraley v. Facebook, 830 F.Supp.2d 785 (N.D.Cal 2011)
White v. Samsung Electronics, 971 F.2d 1395 (9th Cir. 1992), 989 F.2d 1512 (9th Cir. 1993)

More Resources:

13 Misuse, Inequitable Conduct, and Piracy (Apr. 21)

Required: