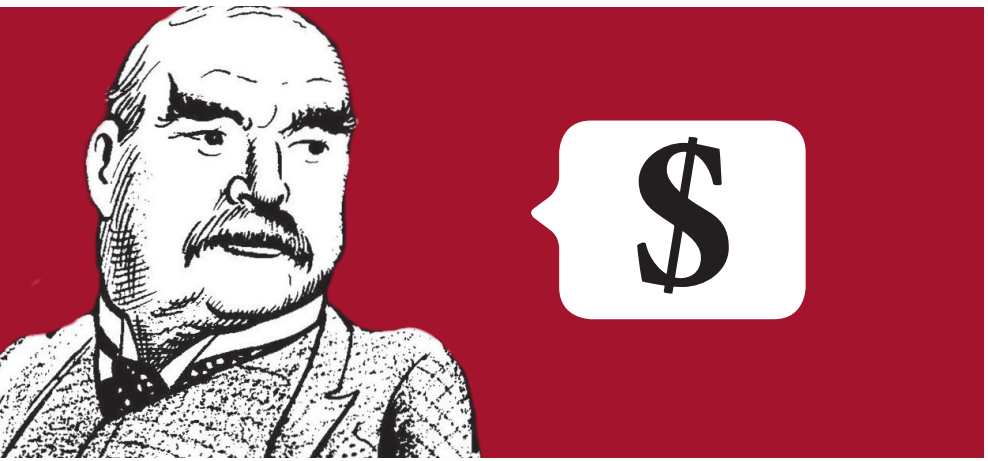

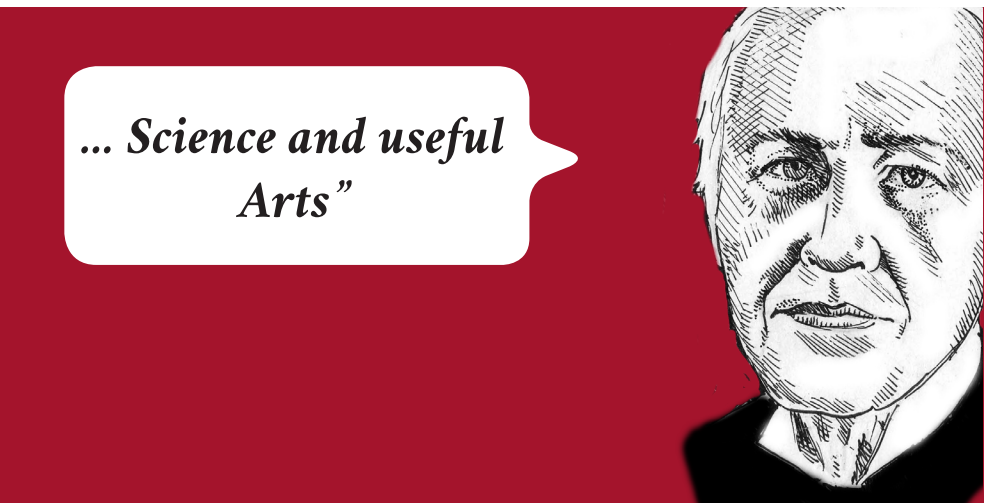

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Should the Law Care Why Intellectual Property Rights Have Been Asserted?

Jeanne Fromer
Professor of Law
New York University School of Law

Commentator:
Richard Phillips, ExxonMobil Chemical Company

Monday, March 2, 2015

The Coronado Club

919 Milam Street
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Professor Jeanne Fromer teaches in the areas of intellectual property and contracts. She specializes in intellectual property and information law, with particular emphasis on unified theories of copyright and patent law.

Before coming to NYU, Professor Fromer served as a law clerk to Justice David H. Souter of the U.S. Supreme Court and to Judge Robert D. Sack of the U.S. Court of Appeals for the Second Circuit. She also worked at Hale and Dorr LLP (now WilmerHale) in the area of intellectual property. In addition, she was an Alexander Fellow with the New York University School of Law and a Resident Fellow with Yale Law School's Information Society Project. Fromer has served as a visiting professor at Harvard Law School and taught at Fordham Law School.

Professor Fromer received her J.D., *magna cum laude*, from Harvard Law School, serving as Articles and Commentaries Editor of the Harvard Law Review and as Editor of the Harvard Journal of Law and Technology. She earned her B.A., *summa cum laude*, in Computer Science from Barnard College, Columbia University. She also received an S.M. in Electrical Engineering and Computer Science from the Massachusetts Institute of Technology for research work in artificial intelligence and computational linguistics and worked at AT&T (Bell) Laboratories in those same areas.

Representative publications include: *An Information Theory of Copyright Law*, 64 Emory L.J. 71 (2014); *The Audience in Intellectual Property Infringement*, 112 Mich. L. Rev. 1251 (2014) (with Mark Lemley); *Expressive Incentives in Intellectual Property*, 98 Va. L. Rev. 1745 (2012); *Patentography*, 85 NYU L. Rev. 1444 (2010); and *A Psychology of Intellectual Property*, 104 Nw. U. L. Rev. 1441 (2010).

Should the Law Care Why Intellectual Property Rights Have Been Asserted?

The American legal system has standard justification stories for our intellectual property systems. Copyright law exists to stimulate the creation and dissemination of creative and artistic works valued by society. Patent law does the same for scientific and technological inventions. These laws offer to creators time-limited exclusive rights to foster these valuable creations without imposing too much cost on society's use of these creations. The intellectual property laws do so by affording rightsholders an opportunity to vindicate certain interests in their covered works—that are directly related to these laws' purpose—vis-à-vis third parties. More and more, however, there are reports of copyright, patent, and other intellectual property owners asserting their rights against others for reasons seemingly unrelated to the justifications of the intellectual property rights themselves. For example, there are copyright infringement suits that appear to be brought to protect against grey markets, to vindicate privacy interests, or even to protest American immigration policy. And there are patent infringement suits brought by some nonpracticing entities that appear to be motivated only by extracting settlements, not by the aim of creating or disseminating innovation. Should the law care when rightsholders' intentions do not fit the justifications for the legal system? Drawing from the case law, I will set out how these intentions sometimes can influence case outcomes. Moreover, I will assess whether misuse, remedies, or other doctrines ought to come into play to size up and restrict rightsholders with ill-fitting intentions.

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