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Session 557: CX Topic

Analysis: A Focus on the  
Negative

CAP  
CON  
2024



Rosters



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presentations and handouts  
are available on the website.

*Session 557: CX Topic Analysis: A  
Focus on the Negative*

CAP  
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Handouts & More

# INTELLECTUAL PROPERTY: NEGATIVE RESPONSES

Resolved: The United States federal government should significantly strengthen its protection of domestic intellectual property rights in copyrights, patents, and/or trademarks.

A look at negative responses, provided by  
Rich Edwards, Baylor University

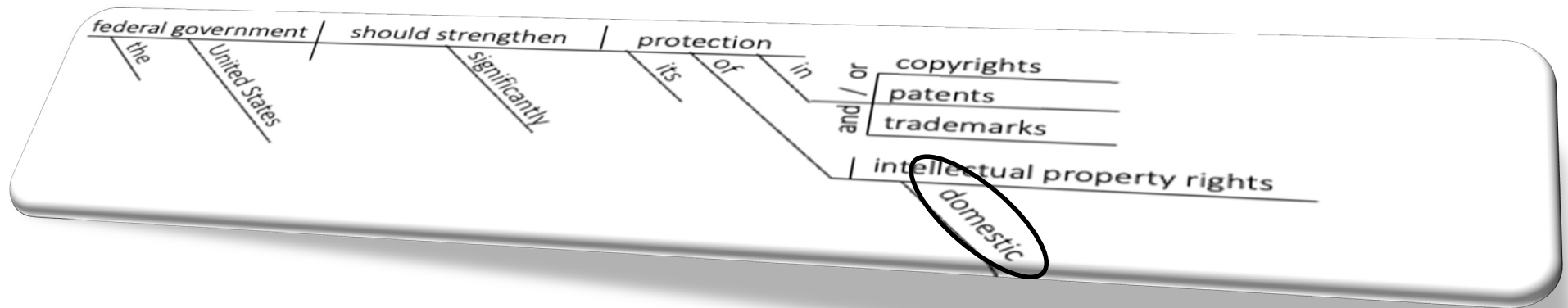
# NEGATIVE TOOLBOX

- ❖ Topicality
- ❖ Disadvantages
- ❖ Case
- ❖ Counterplans
- ❖ Kritiks



A brief look at Topicality, Disadvantages, and Case Arguments will be provided here; Counterplans will be briefly discussed in another slide series. Kritiks will not be discussed here unless directly related to a case.

# “DOMESTIC” MEANS NOT INVOLVING OTHER COUNTRIES

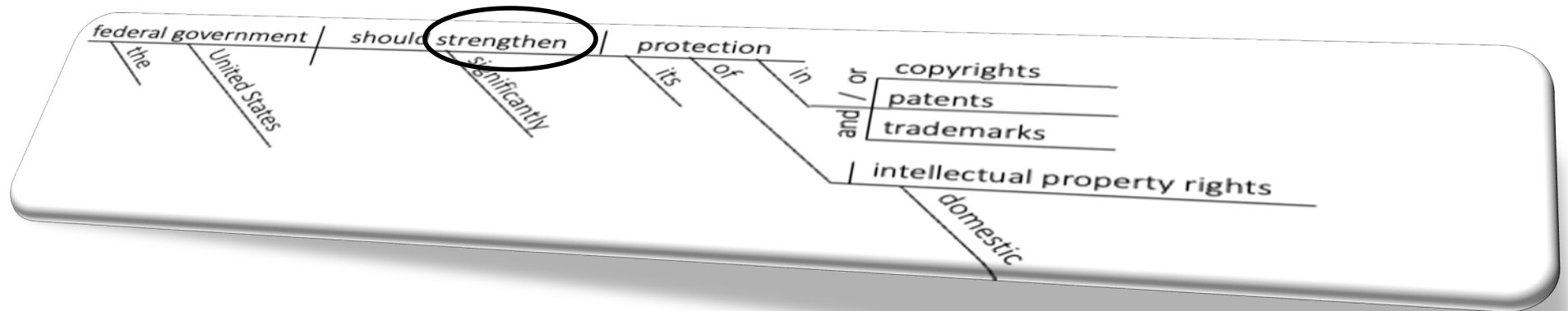


The intellectual property issues allowed in the resolution do not involve other countries.

*Longman Dictionary Of Contemporary English*, 2005, p. 463.

Domestic: Relating to or happening in one particular country and not involving any other countries.

# “STRENGTHEN” REFERS TO THAT WHICH ALREADY EXISTS

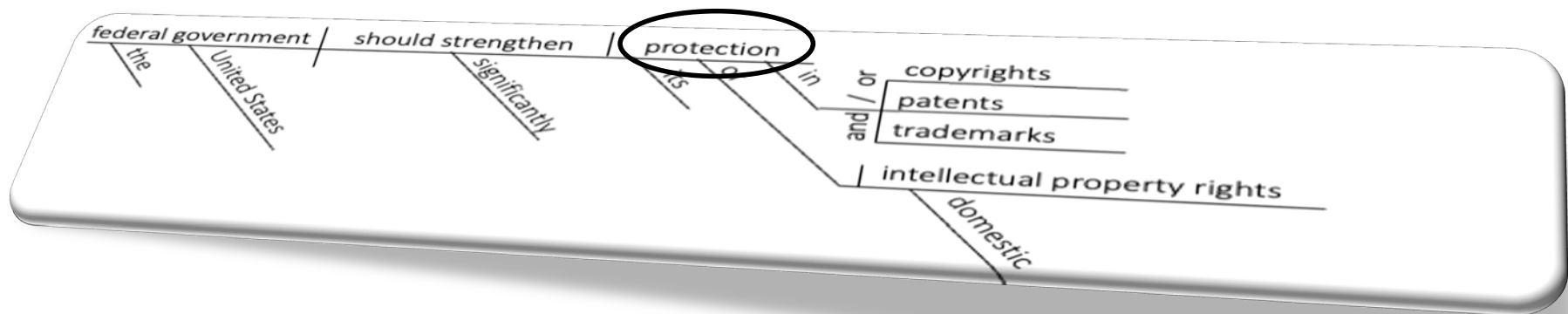


Strengthen means to “make stronger,” not to make new. Plans that promote the creation of new patents are not topical.

Allen Walker Reed, (Ed.), *New International Webster’s Comprehensive Dictionary of the English Language*, 2004, p. 1013.

Protection: To shield or defend from attack, harm, or injury; guard, defend.

# “PROTECTION” DOES NOT MEAN TO ABOLISH

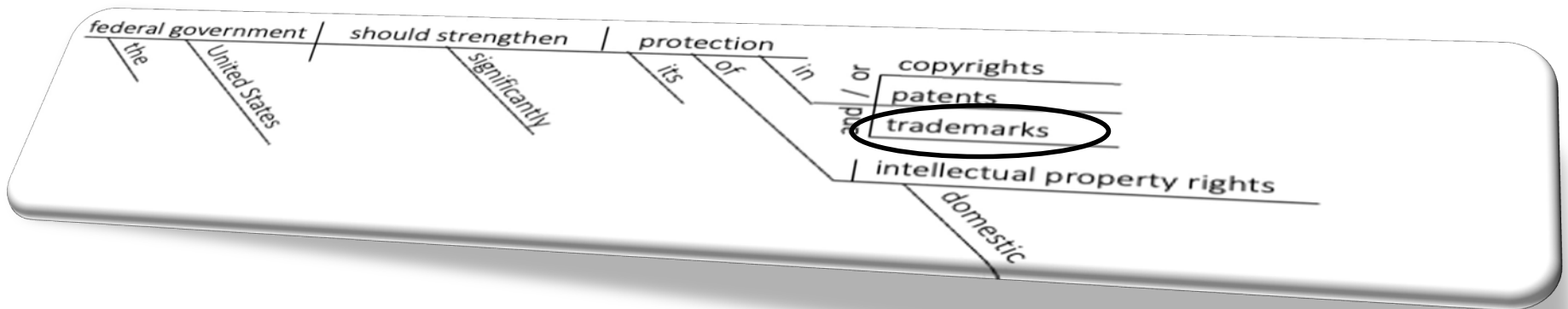


Affirmative cases dealing with patent trolls or trademark trolls are really about making it easier to cancel or abolish patents or trademarks, not the protection of those patents that have been filed.

*Collins English Dictionary*, 2006, p. 1302.

Protect: To defend from trouble, harm, attack, etc. (Anderson et al., 2006, p. 1302)

# “TRADEMARKS” HAVE NOTHING TO DO WITH DEEPFAKES



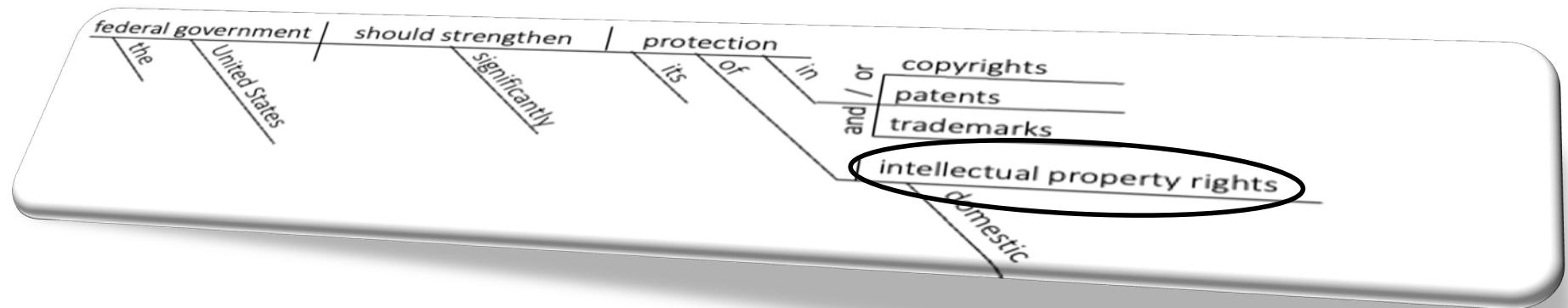
The only element of intellectual property involved in deepfakes is the right of publicity – meaning the right to control one’s own likeness or image. The right of publicity is not one of the three elements of the resolution.

Mark Lee, (Attorney), ARTIFICIAL INTELLIGENCE AND THE RIGHT OF PUBLICITY, Sept. 19, 2023. Retrieved May 4, 2024 from <https://www.rimonlaw.com/artificial-intelligence-and-the-right-of-publicity-the-undiscovered-country/>

What is the right of publicity? Arguably, the most intuitive of intellectual property rights. If copyright and patent law protect what you create, and trademark law protects what you symbolize, the right of publicity protects who you are. It prohibits the unauthorized commercial exploitation of one’s name and likeness, and sometimes, voice or other indicia of one’s identity.



# THE “INTELLECTUAL PROPERTY” CATEGORY OF “TRADE SECRETS” IS NOT IN THE RESOLUTION



The current IP issue with China involves “trade secrets” which is distinct from copyrights, patents, and trademarks.

Jessica Brum, (Attorney), *Georgetown Journal Of International Law*, Spr. 2019, p. 711. Intellectual property generally refers to a set of rights that protects commercially valuable human ideas. It includes copyright, patent rights, trademark, and trade secrets.

Charles Duan, (Prof. Law, American University Washington College of Law), *BELMONT LAW REVIEW*, Fall 2023, p. 99. Among other things, the territorial nature of patents explains why current concerns about IP theft in China are largely unrelated to U.S. patent law.

# WHAT ARE THE ELEMENTS OF A DISADVANTAGE?



**Uniqueness:** Explain (with evidence) why the disadvantage is not happening in the present system.

**Link:** Explain (with evidence and/or by citing claims made in the Affirmative case) why the adoption of the plan will cause the disadvantage.

**Impact:** Establish (with evidence) why the disadvantage would cause great harm.

# DISADVANTAGE: END OF DAYS

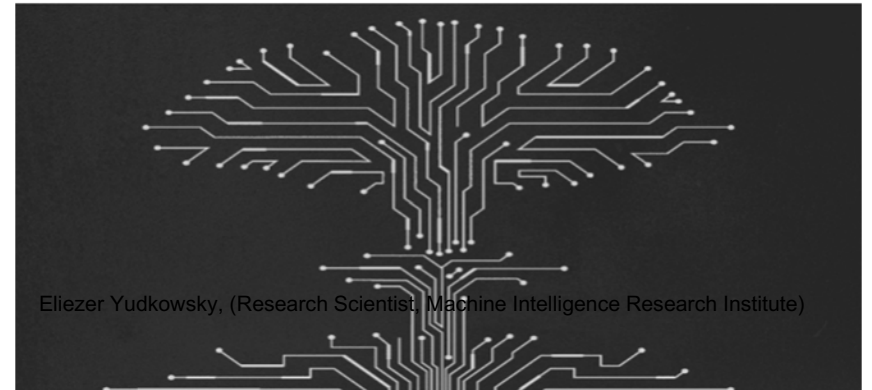
**Uniqueness:** The affirmative case indicates that AI development is being slowed now because of current patent limitations.

**Link:** The plan promises to accelerate technological innovation in AI and related areas.

**Impact:** Acceleration of AI development will bring us quickly to the Singularity – the point at which AI develops consciousness and will end human civilization.

## Pausing AI Developments Isn't Enough. We Need to Shut it All Down

11 MINUTE READ



Eliezer Yudkowsky, (Research Scientist, Machine Intelligence Research Institute)

Many researchers steeped in these issues, including myself, expect that the most likely result of building a superhumanly smart AI, under anything remotely like the current circumstances, is that literally everyone on Earth will die. Not as in “maybe possibly some remote chance,” but as in “that is the obvious thing that would happen.”

<https://time.com/6266923/ai-eliezer-yudkowsky-open-letter-not-enough/>

# DISADVANTAGE: GENETIC MODIFICATION RUNAMUCK

**Uniqueness:** The affirmative case claims that current patent law holds back genetic research.

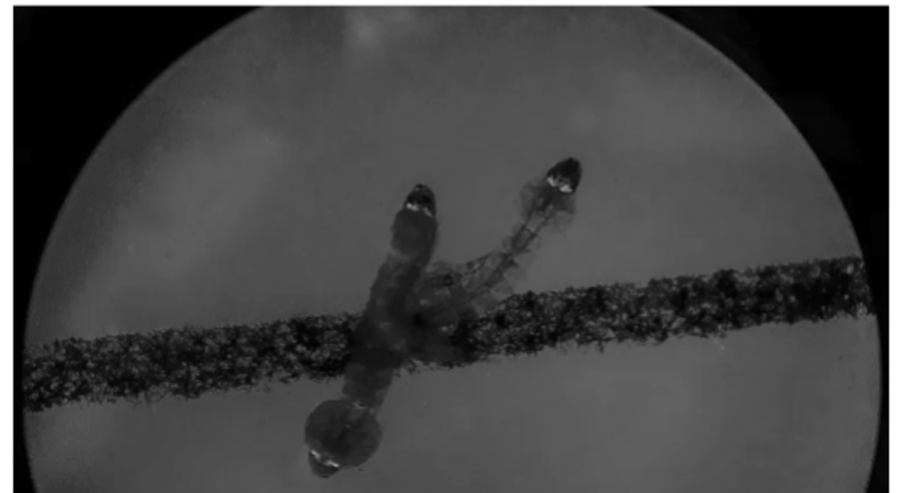
**Link:** The plan will unleash genetic research from current limitations, leading to advances, possibly including germline genetic modification.

**Impact:** Genetic research and modification will lead to genetic selection, euthanasia, and perhaps to a pandemic that cannot be contained.

## The Genetic Engineering Genie Is Out of the Bottle

The next pandemic could be bioengineered in someone's garage using cheap and widely available technology.

By Vivek Wadhwa, a columnist at Foreign Policy, entrepreneur, and author.



<https://foreignpolicy.com/2020/09/11/crispr-pandemic-gene-editing-virus/>

# DISADVANTAGE: GROWTH BAD

**Uniqueness:** The affirmative case establishes that technological innovation is currently lagging, hurting U.S. economic growth.

**Link:** The affirmative solvency argument claims that the plan will jump-start U.S. economic growth.

**Impact:** Increased economic growth will push the world past the brink for climate change, risking human extinction.

## Are Humans Facing Near-Term Extinction Due to Global Warming?

JOHN COVIELLO • OCT 15, 2022 10:59 PM EDT



*Will Earth overheat and threaten human survival?*  
wallpaperaccess.com

### A Pivotal Time

It is a stark question, but one that needs to be asked because global warming is kicking into high gear and it is quickly becoming the only question that really matters: Are humans facing near-term extinction due to global warming?

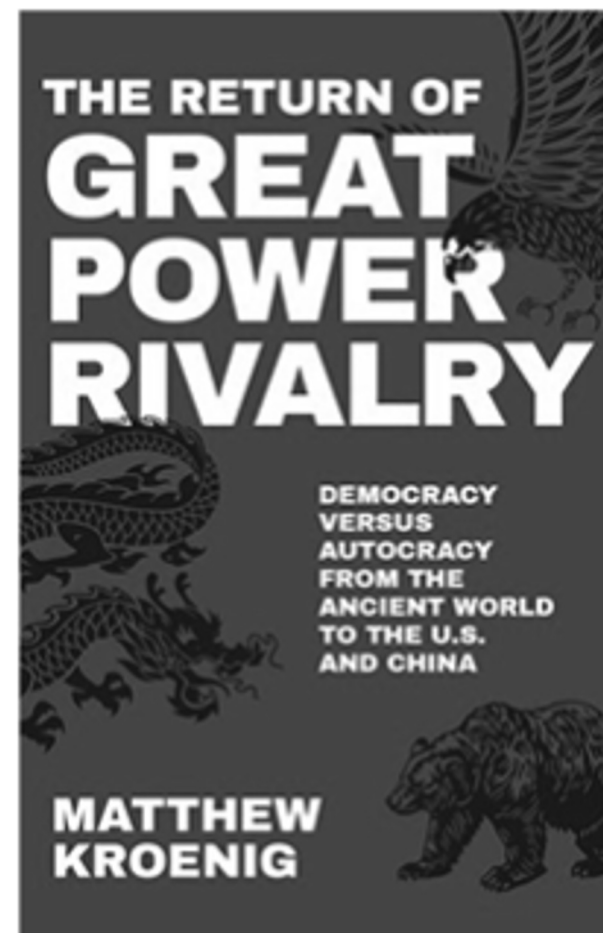
<https://soapboxie.com/social-issues/Are-Humans-Facing-Near-Term-Human-Extinction-Due-to-Global-Warming>

# DISADVANTAGE: INFLATION

**Uniqueness:** The Federal Reserve Board is now bringing inflation back under control, but reasons for concern remain.

**Link:** The economic stimulus provided by the affirmative plan will overwhelm efforts to control inflation, leading to a loss of U.S. economic leadership vis-a-vis China.

**Impact:** Loss of U.S. economic leadership leads to great power war: Kroenig, 2020, p. 6 – (see book at right): “Many fear that a power transition between Beijing and Washington would produce a similar catastrophic result. Continued American leadership, therefore, could forestall this transition and may be necessary for continued peace and stability among the major powers. “



\$17.31 Online

# DISADVANTAGE: U.S. HEGEMONY BAD

**Uniqueness:** The case claims that the U.S. is currently losing its leadership position on the world stage.

**Link:** The plan claims to restore and build U.S. soft power and leadership.

**Impact:** A U.S. return to world leadership and dominance results in unending wars.

## Why global hegemony was the worst thing to happen to America

*The case against America being the most powerful nation on the planet*



Illustrated | iStock, Wikimedia Commons

**RYAN COOPER**  
SEPTEMBER 14, 2020

[f](#) [t](#) [e](#)

Do we need another 672 million people in this country? That's the argument advanced in Matt Yglesias's new book *One Billion Americans*. By accepting a great many more immigrants, and increasing the birthrate with pro-family policy, we might roughly triple our population.

<https://theweek.com/articles/937094/why-global-hegemony-worst-thing-happen-america>

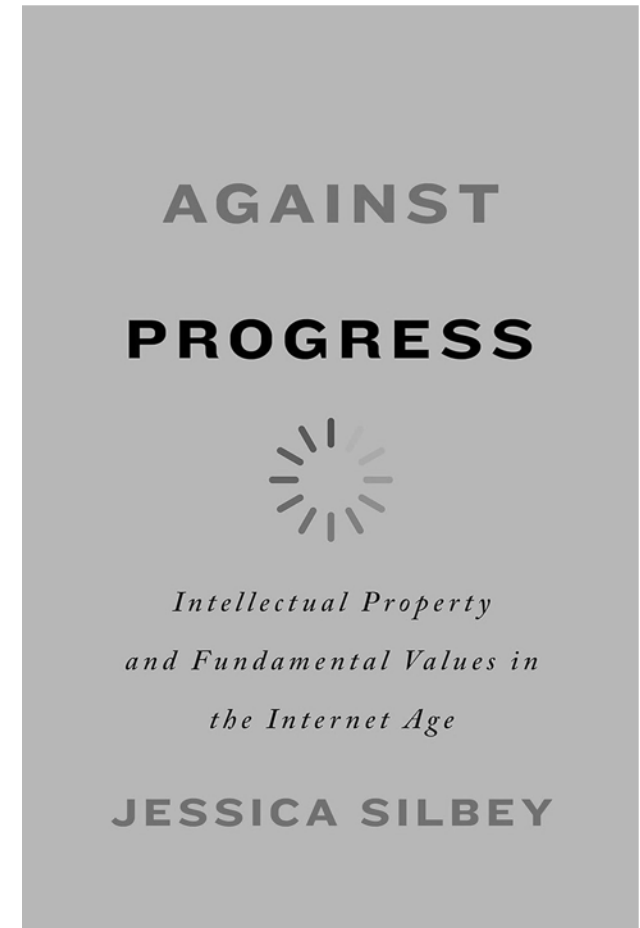
# PATENT ELIGIBILITY RESTORATION ACT

**Turn the Case:** Grant the case claim that AI or Genetic Research is stymied now, and that the case will accelerate it. Then argue this is bad, rather than good.

**Collaboration Is Best:** Patents actually undermine research; openness and collaboration is the superior approach. The Myriad decision has created an international norm of collaborative research in genetics.

**U.S. Gene/AI Science leads the world:** We are now a full decade after the Mayo/Myriad/Alice decisions and the U.S. continues to lead the world in genetic/AI research.

**Trolls:** PERA will enable patent trolls.



\$27.87 Online



# CHINA TECHNOLOGY CONTROL ACT

**U.S. China Economic and Trade Agreement:** This 2020 agreement provides an optimal solution to the U.S.-China trade dispute over intellectual property. It has a strong enforcement mechanism.

**China IP Protection Strong Now:** China pays significant royalties to U.S. companies doing business in China; Chinese law now protects IP; China itself files patents and trademarks in the U.S.

**Trade Secrets are the major remaining problem:** This is the 4th division of IP: Not copyrights, patents, or trademarks.

ECONOMIC AND TRADE AGREEMENT BETWEEN THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE  
GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

PREAMBLE

The Government of the United States of America and the Government of the People's Republic of China (collectively the "Parties"),

RECOGNIZING the importance of their bilateral economic and trade relationship;

REALIZING that it is in the interests of both countries that trade grow and that there is adherence to international norms so as to promote market-based outcomes;

CONVINCED of the benefits of contributing to the harmonious development and expansion of world trade and providing a catalyst to broader international cooperation;

ACKNOWLEDGING the existing trade and investment concerns that have been identified by the Parties; and

RECOGNIZING the desirability of resolving existing and any future trade and investment concerns as constructively and expeditiously as possible,

HAVE AGREED as follows:

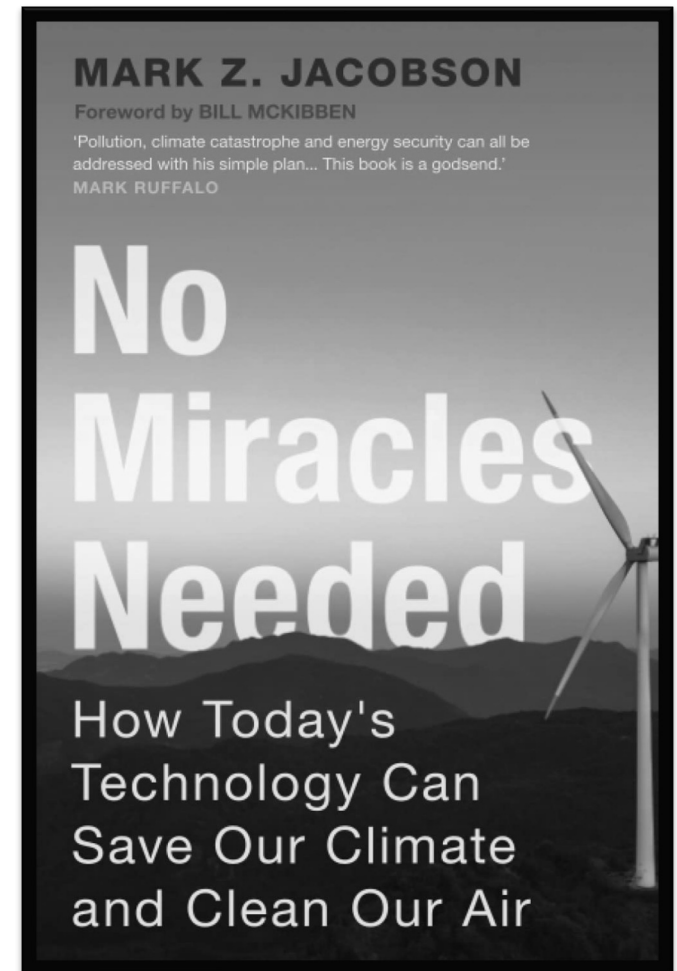
[https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic And Trade Agreement Between The United States And China Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic%20And%20Trade%20Agreement%20Between%20The%20United%20States%20And%20China%20Text.pdf)

# GREEN TECHNOLOGY PATENTS

**No Tech Miracles Needed:** We already have the renewable technologies to deal with climate change; the problem is not the lack of tech, but the lack of action.

**Inflation Reduction Act:** The federal government is now directing funding the green transition – hundreds of billions worth.

**Geoengineering/CO2 Removal Risks:** Geoengineering risks catastrophe; CO2 removal technologies actually sustain the continued use of fossil fuels.



\$10.20 Online

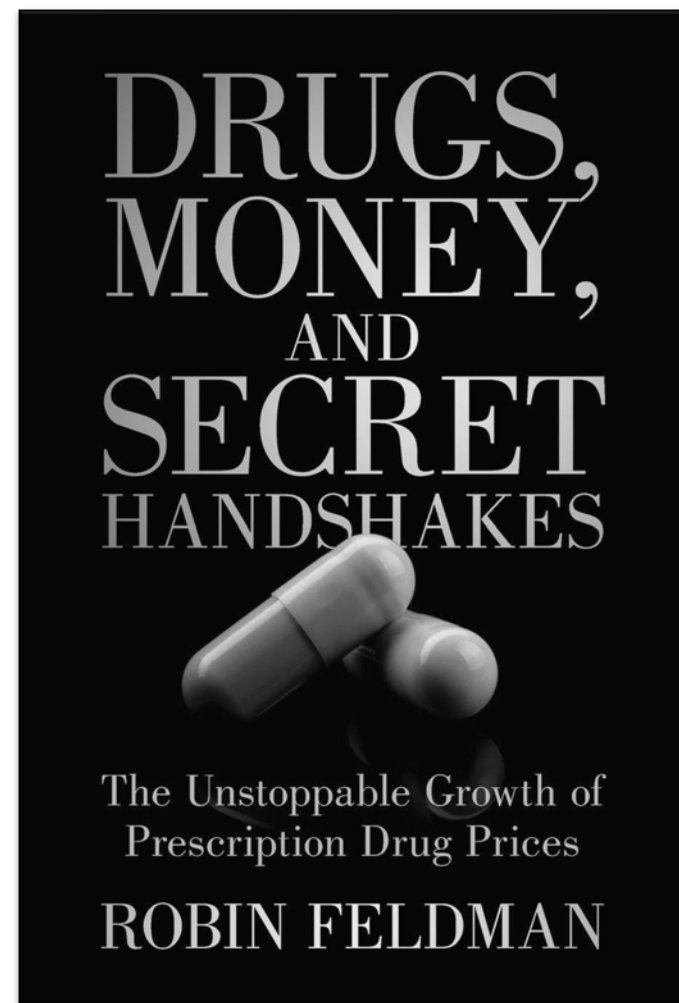
# “MARCH-IN RIGHTS” IN THE BAYH-DOLE ACT

## **Patents do not produce innovation:**

Pharmaceutical companies mainly use their huge profits to reward their stockholders; most research funding comes from the government.

**Prices/profits are too high:** Profits are too high and far out of line with other segments of the economy; some new drugs cost over \$100,000 per year.

**Patents block generics:** Generic medications are essential to treat diseases in developing countries.



\$18.60 Online

# STOPPING PATENT TROLLS

**The America Invents Act Properly Limits Patent Trolls:** The AIA created review mechanisms: Inter Partes Review and the Patent and Trademark Appeal Board.

**Exaggeration of the Problem:** There is little evidence that patent trolls represent a significant problem.

**Banning Cease and Desist Letters Wouldn't Solve:** This solution would push everyone to use the far more expensive court and patent review mechanisms.

## New Data Show There Is a Problem with the U.S. Patent System—But It's Not Patent Trolls



JULIE CARLSON

MAY 6, 2024, 07:15 AM 15

SHARE



“The report shows that injunction grants (excluding default judgments) have fallen from a peak of 80 in the period 2008 to 2012 to just 36 in the period 2018 to 2022. That is an average of just seven injunctions per year—less than half the average in the earlier period.”

“overall patent litigation is declining, injunction grants are low, and litigation by non-practicing entities (NPEs) is not pervasive.”

<https://ipwatchdog.com/2024/05/06/new-data-show-problem-us-patent-system-not-patent-trolls/id=176149/#>

# GENERATIVE AI COPYRIGHT DISCLOSURE ACT

**No Copyright Violations:** As several courts have now ruled, generative AI programs learn in the same way that human artists, musicians, and writers learn when they go to college – they learn from others. AI does not copy, but actually generates new material.

**Useful Tool:** Creatives report that they are discovering ways to become more efficient with the work that they do; it does mock-ups, it aids with brainstorming, it serves as an unpaid assistant.

**Disclosure is unworkable:** Copyrights do not have to be filed; impossible to notify billions of users.

## 13 Ways Writers Should Embrace Generative AI



13 Ways Writers Should Embrace Generative AI ADOBE STOCK

Generative AI is already being adopted in journalism to automate the creation of content, brainstorm ideas for features, create personalized news stories, and produce accompanying video content. As such, it's helping outlets like The Associated Press and News Corp process and present information in new, exciting ways.

But what about other forms of writing? How can writers (both professional and aspiring) harness generative AI tools like ChatGPT and Google Bard? In this article, we'll explore some of my favorite ways you can embrace this transformative new technology.

<https://www.forbes.com/sites/bernardmarr/2024/01/24/13-ways-writers-should-embrace-generative-ai/>

# AMERICAN MUSIC FAIRNESS ACT

**Terrestrial Radio Is Different From Streaming:** St Terrestrial radio is free; streaming services are not. Terrestrial radio is required to perform public services (emergency services, weather notifications, etc.), streaming services do not have these requirements.

**Fair Compensation:** The Playing music on AM/FM radio has historically served the financial needs of musical performers, offering exposure, concert announcements, etc.

## THERE'S NOTHING FAIR ABOUT THE AMERICAN MUSIC FAIRNESS ACT

June 24, 2021

This week, two members of Congress introduced the so-called "American Music Fairness Act" which would impose heavy royalty fees on local AM/FM radio stations to broadcast songs.

While supporters of this legislation say it would help artists, a huge amount of the money from a new performance tax would go directly to the big, foreign-owned record labels, and ironically, hurt artists' greatest promotional tool. Radio is still one of the best ways to introduce artists' music to their fans. A performance tax would upend a mutually beneficial relationship between radio and artists that has thrived for more than a century.

### Radio Delivers Unique Value

Radio's biggest differentiator is that it functions as a public service to local communities – that has never been more true than during the COVID-19 pandemic, when Americans turned to their local stations for critical information and a connection to the community. Radio stations deliver local news, traffic, weather reports and emergency broadcasts, as well as provide free airtime for local charities. This is in addition to being a free entertainment medium available to anyone, anywhere.

<https://www.freeradioalliance.org/blog/theres-nothing-fair-about-the-american-music-fairness-act/>

# SHOP SAFE ACT

**Losses Are Exaggerated:** No reason to presume consumers would spend the additional money to buy the real brand names, but the loss figures assume this.

**Large Penalties Under Existing Law:** The Trademark Enforcement Act, the Stop Counterfeiting in Manufactured Goods Act, and the Prioritizing Resources and Organization for Intellectual Property Act all criminalize counterfeit sales.

**Criminalizing Internet Providers Is a Bridge Too Far:** Section 230 of the Communication Decency Act creates the “Safe Harbor” provision; it should be maintained.

**ITIF** | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION  

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**SHOP SAFE Act Will Fail to Provide Any New or Meaningful Protections for Consumers, Says Center for Data Innovation**

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September 27, 2023

Provisions in the SHOP SAFE Act would make online shopping more of a hassle without even bolstering safety in e-commerce. American consumers opt to shop online due to the convenience, selection, savings, and safety. However, the SHOP SAFE Act would create additional barriers for sellers and platforms, ultimately reducing consumers’ options for online shopping, without providing any new or meaningful protections for consumers.

<https://itif.org/publications/2023/09/27/shop-safe-act-will-fail-to-provide-any-new-or-meaningful-protections-for-consumers-says-center-for-data-innovation/>

# TRADEMARK BULLIES

**Shaming Provides Protection Against Bullying:** Social media mechanisms give small companies a defense mechanism that costs them almost nothing.

**Razor's Edge:** Current trademark law contains a “laches” provision – meaning that any trademark infringement that is ignored over a period of time can now not be challenged. This forces trademark holders to aggressively defend their mark or risk losing it. The affirmative plan creates a razor's edge because now trademark holders can lose their mark if they aggressively defend it.

## THE FINE LINE BETWEEN TRADEMARK ENFORCEMENT AND TRADEMARK BULLYING

Chandler Trademark Lawyer



In 2011, trademark bullying was a hot button topic among the trademark legal community. The United States Patent and Trademark Office (USPTO) was tasked with examining litigation tactics in the context of trademark protection and enforcement. What the USPTO was really asked to explore is whether there was a disproportionate level of trademark bullying compared to other

<https://chandlertrademarklawyer.com/project/the-fine-line-between-trademark-enforcement-and-trademark-bullying/>



# CANNABIS TRADEMARKS

## **Cannabis Companies Are Themselves Notorious for Trademark Infringement:**

Major brands are GSC (Girl Scout Cookies), Fruity Pebbles, Gorilla Glue, Stoney Patch Kids, Keef Kat, Froot Loops, Lucky Charms, Nerds, Oreo-O's.

**Long-Standing Precedent:** In numerous other cases, the US has not allowed trademark filings for the sale of illegal products – this would set a bad precedent.

**Promotion of Sales:** Issuing a trademark would promote sales of products that are harmful.



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Resolved: The United States federal government should significantly strengthen its protection of domestic intellectual property rights in copyrights, patents, and/or trademarks.

A look at negative responses, provided by  
Rich Edwards, Baylor University