

**In the Shadow of Innovation**  
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The intellectual property wars are on. Scholars, judges, legislators, corporations, creators and inventors disagree about the role of intellectual property rights. Yet, surprisingly everyone agrees about innovation – everyone loves innovation. Innovation appears everywhere: in legal scholarship, case law, legislative hearings, newspapers and blogs. Innovation is uniformly admired and aspired to – it is not questioned, often assumed to have historically held this central role.

The Article presents an empirical study of case law, which demonstrates that contrary to common belief, innovation has only recently attained its central role in our legal discourse. The celebration of innovation is, in fact, a relatively recent trend originating in the mid-1980s – at the advent of the intellectual property wars.

The Article critically examines the celebration of innovation, arguing that while innovation is promoted to advance progress and human welfare, its exclusive status frustrates the very same goal. While focusing on the beginning of the technological life cycle, the legal regime dedicates sparse attention and few resources to the cycle's subsequent stage: the diffusion process. The promotion of progress and human welfare is as dependent on the technology's diffusion – its social adoption process – as it is reliant on its innovation.

To support this argument, the Article discusses two recent diffusion failures, involving digital music and genetic testing. While legal discourse focuses on the effects of copyright enforcement on digital music innovation and the ramifications of gene patents for innovation in the field of genetics, it fails to invest its resources to resolve the social adoption problems of these very same technologies. The Article concludes by proposing ways toward resolving the diffusion failures of genetic testing and digital music technologies.

