# Loyola NC

### 1

#### Interp: The aff must provide a delineated definition of intellectual property in the AC doc.

#### Intellectual property is a vague, uncertain term.

Arinas 10 [Ismael Arinas, English for Professional and Academic Communication, “How Vague Can Your Patent Be? Vagueness Strategies in U.S. Patents,” 2010, [http://oa.upm.es/22372/1/INVE\_MEM\_2012\_152221.pdf]/](http://oa.upm.es/22372/1/INVE_MEM_2012_152221.pdf%5d/) lm

Patent claims define the protection scope of the intellectual property sought by the patent applicant or patentee. Broad claims are valuable as they can describe more expansive rights to the invention. Therefore, if these claims are too broad a potential infringer will more easily argue against them. But if the claims are too narrow the scope of protection of the intellectual property is greatly reduced. Patent claims have to be, on the one hand, determinate and precise enough and, on the other hand, as inclusive as possible. Therefore patent applicants must find a balance in the broadness of the scope defined by their claims. This balance can be achieved by the choice of words with a convenient degree of semantic indeterminacy, by the choice of modifiers or other strategies. In fact, vagueness in patent claims is a desirable characteristic for such documents. A quantitative and qualitative analysis of a corpus of 350 U.S. patents provides a promising starting point to understand the linguistic instruments used to achieve the balance between property claim scope and precision of property description. To conclude, some issues relating vagueness and pragmatics are suggested as a line of further research.

#### They violate – their doc and speech didn’t have any definition, cx checks

#### Now negate –

#### 1] Semantics first – they outweigh because they’re the only stable starting point for the round.

Nebel 18 [Jake Nebel is an assistant professor at University of Southern California, School of Philosophy. “The Meaning of the Resolution by Jake Nebel” Victory Briefs September/October 2018 LD Brief. Citing: “Reporters and Correspondents”, https://www.bls.gov/oes/current/oes273022.htm ]

Unlike direct appeals to desirable consequences, the actual meaning of the resolution provides a more salient—and therefore more predictable—focal point upon which debaters could more reliably expect each otherto converge given a good-faith effort. Even if it would be better, in some sense, if everyone took the resolution to mean something other than what it actually means, the probability of everyone identifying anything like the same proposition as the one that would be best to debate is so small as to be easily outweighed by the value of coordinating on a shared proposition at all; this coordination can only happen if debaters at least try to debate the resolution under its most accurate interpretation. Even if some disagreements would remain, there would at least be an impartial basis for resolving them. That is why debate would be better if debaters tried to debate the proposition actually expressed by the resolution, rather than whichever nearby proposition they think would be better to debate.

#### 2] Shiftiness – aff can dodge neg links by utilizing this vagueness and frame the NC out of the debate.

#### 3] Neg ground – I need the aff to define IP to have stable link ground for disads.

#### 4] Topic ed – the definition of IP is absolutely integral to this topic, they need to have it.

#### 5] Clash – if we don’t have a clear definition of IP going in then we’re just two ships passing in the night.

#### The voters are

#### 1] Fairness b/c a) it’ an intrinsic good b) it control the internal link to education c) debate is a game, if it’s unfair no-one will want to play.

#### 2] Education b/c a) portability, it’s useful for the real world b) constitutive purpose, this is an educational activity.

#### And it’s drop-the-debater, k2 deterring further abuse, and I can’t engage with the debate if they’re untopical.

#### No RVI on T, you don’t win for being topical.

#### Competing interpretations, a) reasonability is bad it requires judge intervention and b) arguing about the norms is the only way to get to the best norms possible.

#### T before theory a] I only get 2 months to set norms they get 4 years b] any NC abuse was a necessary check against AC abuse

#### Aff can’t give a definition in the 1ar – A] strat skew, moots 7 minutes of the NC, B] Shiftiness, it lets the 1ar change definitions in the round unpredictably, C] time skew, that puts aff a minute ahead on the new definition.

### 2

#### Ethics starts with self-actualization, described as the capacity to abstract from one’s particular conditions through embodying personality in the world and recognition from others. Thus, the standard is consistency with mutual recognition.

Wood 90 [Allen W. Wood, Ruth Norman Halls Professor of Philosophy, Indiana University, "Hegel's Ethical Thought" Cambridge University Press, 1990, [https://www.cambridge.org/core/books/hegels-ethical-thought/D409B1F04527F36C32227799D0B303E5]/](https://www.cambridge.org/core/books/hegels-ethical-thought/D409B1F04527F36C32227799D0B303E5%5d/) lm

If there is any hope for ethics as a branch of rational inquiry, it lies in showing how ethical conceptions and a theory of the human good can be grounded in human self -understanding.1 Ethics must be grounded in a knowledge of human beings that enables us to say that some modes of life are suited to our nature, whereas others are not. In that sense, ethical theories generally may be regarded as theories of human self-actualization. Plato grounds his ethics in psychology, and Aristotle identifies the human good with a life actualizing the human essence in accordance with its proper excellences. Even the ethical theories of modern times rest on some identifiable conception of human beings, Kantian theories conceiving human nature as finite rational will, and utilitarian theories identifying human beings with bundles of desires, preferences, or affective states.

Thus Kant identifies the will (the practical self) with practical reason (G 412/29). Concernful awareness of oneself is indispensable for a sense of one's identity, in two related senses: that which ties together all one's mental states as the states of a single person, and that which determines the content of one's self-interest and self-worth. Like Derek Parfit, Kant and his idealist followers regard the identity of a person as a rational construct. Contrary to Parfit, however, they think this enhances rather than diminishes the importance of individual selfhood. For it makes us our own work and our own task; our fundamental vocation is to make ourselves into what we are.2 Fichte's way of expressing this idea is to say that the self "posits itself" (W 98/99), and that the self is "not a being but a doing" (W 495/66). The self is the object of an awareness, but this awareness is not a detached contemplation. Fichte interprets self-awareness as an activity of reflection on another activity already given; this is practical activity or will (W 264/232-233, GNR 20/36). Self-awareness reflects on will, intuits its own identity with that will, and at the same time forms a concept of it (W 463-464/38-39). Thus selfawareness is always self-concern, involving issues of self-interest and selfworth. It is self-awareness, in fact, that turns given desires into concerns for self-interest and self-worth. To be a self is always simultaneously to be aware of something and to do something. It is to "posit" what one is by deciding or positing what one is to be. A self-conception involves simultaneously what one is and what one is striving to become. These Fichtean ideas are taken up into Hegel's theory of self-awareness, through the thesis that the will's "individuality" results from its own activity of self-determination, proceeding from "universality" through "particularity" (PR §§ 5-7). One can speak of a self at all only in relation to an actively willed system of practical concerns, but these concerns have a dimension that goes beyond my "particularity" - the traits, desires, and other qualities that distinguish me from other people. It is not merely a result of the philosopher's peculiar craving for generality that ethical theories focus on the human good rather than on the good of this or that individual.

In Hegel's ethical theory, the final good is not happiness but freedom. One consequence of this is the importance of the right of persons in Hegel's theory. Personal rights set limits to what may be done to a person in the name of interests, whether that person's own interests or the interests of others. If rights are there in order to override eudaemonistic considerations generally, then we might expect them to be ascribed to persons independently of those considerations. Hegel's theory meets this expectation, since "abstract" right is so called precisely because it abstracts from all considerations of well-being or happiness: In abstract right "it is not a matter of particular interests, my utility or my well-being" (PR § 37). Instead, it is a matter of securing the abstract freedom of a "person." As we saw in Chapter 2, § 2, Hegel holds that every human being has "formal freedom," the capacity to abstract from all particular determinations, desires, and interests. This capacity is what makes someone a person, "a self-consciousness of itself as a perfectly abstract I, in which all concrete limitedness and validity is negated and invalid" (PR § 35R). As persons, all human beings are equal (VPRig: 67-68). Even though the exercise of this capacity to abstract (as in negative freedom or arbitrariness) is not freedom in its most proper sense, Hegel holds just the same that it is essential to guarantee individuals in the modern state adequate room for the exercise of arbitrariness (Chapter 2, §§ 2, 5, and 11). This is the point of abstract right. "A person must give its freedom an external sphere in order to exist as Idea" (PR § 41). "Idea" for Hegel refers to a rational concept when it expresses or embodies itself in something real (WL6: 462-469/755-760; EL §§ 213-215; PR § 1); a spiritual being "exists as Idea" when it actualizes itself appropriately in the objective world. I "exist as Idea" when my personality, my capacity to make abstract choices, is given adequate scope to actualize itself, and in Hegel's view this happens when I have a sufficient "external sphere" subject to my arbitrary choice.

To justify the claim that human beings have abstract rights, what Hegel must show us is why formally free agents ought to guarantee one another exclusive spheres of arbitrary activity. Hegel's argument on this point is developed in his Jena period lectures and shows up again in the Encyclopedia (1817, final version 1830) (EG §§ 430-436). Much of it is merely presupposed in the Philosophy of Right, since that work deals with objective spirit, whereas the argument in question belongs to the Encyclopedia y s discussion of subjective spirit. Hegel's argument is based on the concept of "recognition" (Anerkennung), or mutual awareness. The gist of Hegel's position is that I can have an adequate consciousness of myself only if I am recognized by others, and recognition can be adequate only if it is fully mutual. Much in Hegel's discussion of recognition is novel and provocative, but both the concept of recognition and its use as the basis of a theory of natural right are derived from Fichte's Foundations of Natural Right (GNR) (1796). It will enhance our understanding of Hegel's theory of recognition and the rights of persons if we are aware of the Fichtean theory he adopts and modifies.

For Hegel, the "object" of a desire is never merely a subjective mental state, such as pleasure or the absence of pain. Hegel interprets desire as a function of self-conscious, spiritual being - an embodied being situated in a world of external objects toward which its desires are directed. Further, Hegel interprets this desire in accordance with his theory of spirit as selfactualization through the overcoming of otherness. The fundamental desire that Hegel attributes to self-consciousness is a desire for self-worth or "selfcertainty." As spirit, the self engages in an activity of positing an object and then interpreting itself in terms of it. Self-certainty is gained only through something external, which is brought into harmony with the self, an objectivity whose independence is done away with or "negated." This negation of the object refers to my using it up or consuming it (as when I literally eat it up), but also includes my shaping or forming it. Even more broadly, it covers any sort of integration of it into my plans and projects. In the most abstract form, it occurs when I assert my dominion over the object in the social forms suitable to property ownership (PR §§ 54-70). The attempt to achieve self-certainty through the appropriation of things proves inadequate. Satisfaction taken in external objects merely leads to a new desire for a new object. This result only points to the fact that the desiring self-consciousness is always dependent on a new object, whereas its aim was rather to establish its own independence, and the nothingness of the object (EG § 428). What self-consciousness needs is an object that brings about this negation within itself without ceasing to be an object. But only a self-consciousness is able to endure the "contradiction" of negating itself or being its own other (PhG 11162). In other words, "self-consciousness reaches its satisfaction only in another self-consciousness" (PhG 1 175).

#### Prefer –

#### 1] Action theory – Every action can be broken down to infinite amounts of movements. Only the formation of a subject can unify the movements under a will.

#### 2] Performativity – debate requires mutual-recognition and self-actualization as the neg and aff recognize each other’s roles and personality is expressed in our cases.

#### 3] Subject formation is a side constraint as we can only have ethical obligations when we are ethical subjects that mutually recognize one another.

#### Now negate –

#### 1] Intellectual property protections are justified for enabling self-actualization.

Moore and Hinma 18 [Moore, Adam and Ken Himma, "Intellectual Property", The Stanford Encyclopedia of Philosophy (Winter 2018 Edition), Edward N. Zalta (ed.), https://plato.stanford.edu/archives/win2018/entries/intellectual-property/]/ lm

Personality theorists such as Hegel maintain that individuals have moral claims to their own talents, feelings, character traits, and experiences. We are self-owners in this sense. Control over physical and intellectual objects is essential for self-actualization—by expanding our selves outward beyond our own minds and mixing these selves with tangible and intangible items, we both define ourselves and obtain control over our goals and projects. For Hegel, the external actualization of the human will requires property (Hegel 1821). Property rights are important in two ways according to this view. First, by controlling and manipulating objects, both tangible and intangible, our will takes form in the world and we obtain a measure of freedom. Individuals may use their physical and intellectual property rights, for example, to shield their private lives from public scrutiny and to facilitate life-long project pursuit. Second, in some cases our personality becomes fused with an object—thus moral claims to control feelings, character traits, and experiences may be expanded to intangible works (Humboldt 1792; Kohler 1969).

Even if we acknowledge the force of these objections, there does seem to be something intuitively appealing about personality-based theories of intellectual property rights. Suppose, for example, that Mr. Friday buys a painting at a garage sale—a long-lost Crusoe original. Friday takes the painting home and alters the painting with a marker, drawing horns and mustaches on the figures in the painting. The additions are so clever and fit so nicely into the painting that Friday hangs it in a window on a busy street. There are at least two ethical worries to consider in this case. First, the alterations by Friday may cause unjustified economic damage to Crusoe. Second, and independent of the economic considerations, Friday’s actions may damage Crusoe’s reputation. The integrity of the painting has been violated without the consent of the author, perhaps causing long-term damage to his reputation and community standing. If these claims are sensible, then it appears that we are acknowledging personality-based moral “strings” attaching to certain intellectual works. By producing intellectual works, authors and inventors put themselves on display, so-to-speak, and incur certain risks. Intellectual property rights afford authors and inventors a measure of control over this risk. To put the point a different way, it is the moral claims that attach to personality, reputation, and the physical embodiments of these individual goods that justify legal rules covering damage to reputation and certain sorts of economic losses.

Moreover, personality-based theories of intellectual property often appeal to other moral considerations. Hegel’s personality-based justification of intellectual property rights included an incentive-based component as well—he asserts that protecting the sciences promotes them, benefiting society (Hegel 1821). Perhaps the best way to protect these intuitively attractive personality-based claims to intangible works is to adopt a more comprehensive system designed to promote progress and social utility.

#### 2] IPP is necessary for achieving mutual recognition through materializing the personality of the inventor in the market.

Hughes 88 [Justin Hughes, Prior to joining Loyola in 2013, Professor Justin Hughes taught at Cardozo Law School where he served as director of Cardozo’s Intellectual Property Program, 2004 through 2008, and founded the law school’s Indie Film Clinic, the first of its kind, “The Philosophy of Intellectual Property,” 77 Georgetown L.J. 287, 330-350 (1988), [https://cyber.harvard.edu/IPCoop/88hugh2.html]/](https://cyber.harvard.edu/IPCoop/88hugh2.html%5d/) lm

Not only does Hegel's personality theory pose no inherent objection to this kind of alienation of intellectual property, it also provides affirmative justifications. Hegel focuses on one such justification -- concern for the economic well-being of the intellectual property creator. [n243](https://cyber.harvard.edu/IPCoop/88hugh2.html#n243)

At first blush, this economic rationale seems far removed from the concerns of personality theory, [n244](https://cyber.harvard.edu/IPCoop/88hugh2.html#n244) yet it can be recast into the framework of the personality theory. From the Hegelian perspective, payments from intellectual property users to the property creator are acts of recognition. These payments acknowledge the individual's claim over the property, and it is through such acknowledgement that an individual is recognized by others as a person. [n245](https://cyber.harvard.edu/IPCoop/88hugh2.html#n245) "Recognition" involves more than lip service. If I say "this forest is your property" and then proceed to flagrantly trespass, cut your timber, and hunt your deer, I have not recognized your property rights. Similarly, verbal recognition of an intellectual property claim is not equal to the recognition implicit in a payment. Purchasers of a copyrighted work or licensees of a patent form a circle of people recognizing the creator as a person.

Furthermore, this generation of income complements the personality theory in as much as income facilitates further expression. When royalties from an invention allow the inventor to buy a grand piano he has always wanted, the transaction helps maximize personality. But this argument tends to be too broad. First, much income is used for basic necessities, leading to the vacuous position that life-sustenance is "personally maximizing" because it allows the personality to continue. Second, this approach could justify property rights for after-the-fact development of personality interests without requiring [\*350] such interests in the property at the time the property rights are granted.

The personality theory provides a better, more direct justification for the alienation of intellectual property, especially copies. The alienation of copies is perhaps the most rational way to gain exposure for one's ideas. This is a non-economic, and perhaps higher, form of the idea of recognition: [in] respect, honor, and admiration. Even for starving artists recognition of this sort may be far more valuable than economic rewards.

Two conditions appear essential, however, to this justification of alienation: first, the creator of the work must receive public identification, and, second, the work must receive protection against any changes unintended or unapproved by the creator.VARA Hegel's prohibition of "complete" alienation of intellectual property appears to result from his recognition of the necessity for these two conditions. While he would permit alienation of copies, and even the rights to further reproduction, [n246](https://cyber.harvard.edu/IPCoop/88hugh2.html#n246) he disapproves alienation of "those goods, or rather substantive characteristics, which constitute . . . private personality and the universal essence of . . . self-consciousness." [n247](https://cyber.harvard.edu/IPCoop/88hugh2.html#n247) Such alienation necessarily occurs if the recognition of the connection between a creator and his expression is destroyed or distorted. When the first condition is violated, this recognition is destroyed; when the second condition is violated, it is distorted.

### 3

#### Thus, the Counterplan – add a Health Impact Fund to incentivize Pharmaceuticals to voluntarily lower prices and increase access. This would add a complement to IPP rather than reducing it.

Pogge 10 [Thomas Pogge, Thomas Winfried Menko Pogge is a German philosopher and is the Director of the Global Justice Program and Leitner Professor of Philosophy and International Affairs at Yale University. Cambridge University Press, “Incentives for Global Health: Patent Law and Access to Essential Medicines. The Health Impact Fund: Better Pharmaceutical Innovations at Much Lower Prices,” 2010, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1431180]/ lm

The exclusion of the poor by the existing patent regime requires reform. Given the foregoing discussion, a straightforward and moderate reform would create a supplementary mechanism that, by addressing the needs of the poor, would remedy the injustice now imposed upon them. This reform proposal comprises six elements. First, just as the patent regime provides a general innovation incentive, so its complement encourages pharmaceutical innovation through an incentive that is specified in general terms: as a promise to reward any successful new medicine, in proportion to its success. This kind of mechanism has been described as a comprehensive AMC.14 Second, while the patent regime rewards medicines on the basis of the market demand each generates and then satisfies, thereby effectively excluding the poor, its complement gives equal standing to all by defining success simply in terms of human health. On this complementary track, the success of a medicine is assessed by the reduction in human morbidity and premature mortality it achieves – regardless of whether these harms are averted from rich or poor patients. Third, in order to help overcome the last-mile problem, the rewards available under the complementary mechanism should be tied not to what a medicine can do, but to what it actually achieves in the world. Fourth, when such a general mechanism provides large enough health impact rewards, it will attract sufficient innovation and sufficient efforts to ensure real access to new medicines worldwide. This avoids any need for compulsion. Innovators can be left free to choose between the two tracks, developing on the new track high-impact medicines needed also by many poor patients and on the conventional patent track low-impact medicines desired by the more affluent. Making the health-impact track optional is also crucial for the political success of the proposal. Fifth, in order to reinforce the incentive toward facilitating real access, health impact rewards should be conditional on the medicine being priced no higher than the lowest feasible cost of production and distribution.

Sixth, health impact rewards should be funded by governments as a public good. In order to minimise burdens and deadweight losses due to taxes, the cost should be spread as widely as possible. This suggests that the complementary funding mechanism should be global (rather than national) in scope. The reasons that make the reform compelling in any one country or region make it compelling everywhere. Moreover, global scope avoids the problems associated with large price differentials. Global scope also brings huge efficiency gains by diluting the cost of the scheme without diluting its benefits: no matter how many beneficiaries we may add, the cost of achieving an innovation remains the same even while its aggregate benefit increases with the number of beneficiaries.15 Finally, an international agreement would also reinforce the commitment of individual countries to the scheme. Pharmaceutical innovation is therefore best encouraged by promising to reward any safe and effective new medicine in proportion to its global health impact. Such a promise constitutes an AMC that is fully comprehensive: by including not merely all diseases but also all patients.

The proposal is then for the creation of a new international agency that offers to reward any new medicine based on its health impact during its first decade or so.16 This Health Impact Fund („HIF‟) would provide ample rewards for the development of new high-impact medicines without excluding the poor from its use.

#### That solves the aff by including the poor and increasing access while it’s voluntary, and IPP remains unchanged.

Pogge 10 [Thomas Pogge, Thomas Winfried Menko Pogge is a German philosopher and is the Director of the Global Justice Program and Leitner Professor of Philosophy and International Affairs at Yale University. Cambridge University Press, “Incentives for Global Health: Patent Law and Access to Essential Medicines. The Health Impact Fund: Better Pharmaceutical Innovations at Much Lower Prices,” 2010, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1431180]/ lm

Let us recapitulate how the HIF would provide a full systemic solution to the seven problems described earlier: High Prices would not exist for HIF-registered medicines. Innovators would typically not even want a higher price as this would reduce their health impact rewards by impeding access to their product by most of the world‟s population. The HIF counts health benefits to the poorest of patients equally with health benefits to the richest. Diseases Concentrated among the Poor, insofar as they substantially aggravate the GBD, would no longer be neglected. In fact, the more destructive ones among them would come to present some of the most lucrative R&D opportunities for biotechnology and pharmaceutical companies. This would happen without undermining the profit opportunities such companies now enjoy by developing remedies for the ailments of the affluent. Bias toward Maintenance Drugs would be absent from HIF-encouraged R&D. The HIF assesses each registered medicine‟s health impact in terms of how its use reduces mortality and morbidity worldwide – without regard to whether it achieves this reduction through cure, symptom relief, or prevention. This would guide firms to deliberate about potential research projects in a way that is also optimal for global public health: namely in terms of the expected global health impact of the new medicine relative to the cost of developing it. The profitability of research projects would be aligned with their cost-effectiveness in terms of global public health. Wastefulness would be dramatically lower for HIF-registered products. There would be no deadweight losses from large mark-ups. There would be little costly litigation as generic competitors would lack incentives to compete and innovators would have no incentive to suppress generic products (because they enhance the innovator‟s health impact reward). Innovators might therefore often not even bother to obtain, police, and defend patents in many national jurisdictions. To register a medicine with the HIF, innovators need show only once that they have an effective and innovative product. Counterfeiting of HIF-registered products would be unattractive. With the genuine item widely available near or even below the marginal cost of production, there is little to be gained from producing and selling fakes. Excessive Marketing would also be much reduced for HIF-registered medicines. Because each innovator is rewarded for the health impact of its addition to the medical arsenal, incentives to develop me-too drugs to compete with an existing HIF-registered medicine would be weak. And innovators would have incentives to urge a HIF-registered drug upon doctors and patients only insofar as such marketing results in measurable therapeutic benefits for which the innovator would then be rewarded. The Last-Mile Problem would be mitigated because each HIF-registered innovator would have strong incentives to ensure that patients are fully instructed and properly provisioned so that they make optimal use (dosage, compliance, etc) of its medicines, which will then, through wide and effective deployment, have their optimal publichealth impact. Rather than ignore poor countries as unprofitable markets, pharmaceutical companies would, moreover, have incentives to work with one another and with national health ministries, international agencies and NGOs toward improving the health systems of these countries in order to enhance the impact of their HIFregistered medicines there.

### Underview

#### Presumption negates – infinite ways for something to be false but only one way for them to be true. Permissibility negates – if IPP isn’t bad then its morally neutral and permissible.