## 1

#### Interpretation: The affirmative debater must only defend that EU reduce intellectual property protections for medicines. To clarify- the aff must only defend reducing IPP.

#### Violation: they defend trade secrets

#### Trade secrets do not grant exclusive rights against third parties and aren’t legally defined as IP

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The protection of trade secrets can be considered as a prerequisite for the continuous growth and success of European companies as well as the general (technological) advancement and competitiveness of the European economy.7 Trade secrets can basically be described as secret information that is of value for its owner because of its secrecy. Trade secrets must be differentiated from other (registered) intellectual property rights, such as patents, designs or trademarks. They are not publicly registered and do not grant the trade secret owner an exclusive right against third parties. Most legal systems rank trade secret protection as part of unfair-competition law rather than intellectual property law.8 However, trade secrets are nevertheless related to intellectual property rights. In particular, they could be considered as a preliminary step or by-product to the intellectual property rights creation. Further, trade secrets could also be maintained as permanent alternative to (registered) intellectual property rights. They do not involve costs for the application or subsequent prolongations with the competent authorities and do not impose risks of disclosure during such proceedings.9 Especially small- and medium-sized enterprises and start-ups in the research and engineering business often rely on the confidentiality of sensitive information as basis of their existence.1

#### Trade secrets don’t grant exclusive rights towards third parties

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As trade secrets are generally not granting an exclusion right towards third parties (such as intellectual property rights), the interest of a trade secret owner to maintain the secrecy of information must typically be pursued by way of contractual arrangements.42 Common practice established two main contractual bases to reach this objective. On the one hand, the employer and the employee regularly enter into confidentiality or non-disclosure agreements (NDAs), which apply during the term of the employment and remain in force after its termination. On the other hand, employers and employees could also conclude noncompetition agreements, which prevent the former employee from working in the same industry or same position after the employment agreement has been terminated.

#### Standards:

#### [1] precision – the counter-interp justifies them arbitrarily doing away with random words in the resolution which decks negative ground and preparation because the aff is no longer bounded by the resolution. Independent voter for jurisdiction – the judge doesn’t have the jurisdiction to vote aff if there wasn’t a legitimate aff.

#### [2] Limits and ground – their model allows affs to defend anything from trademarks to date exclusivities to compulsory licensing—that explodes neg prep because they can defend any non-topical protection- limits key to reciprocal engagement since they create a caselist for neg prep

#### Fairness – debate is a competitive activity that requires fairness for objective evaluation. Outweighs because it’s the only intrinsic part of debate – all other rules can be debated over but rely on some conception of fairness to be justified.

#### Drop the debater –deter future abuse and set better norms for debate.

#### Competing interps – [a] reasonability is arbitrary and encourages judge intervention [b] creates a race to the top for the best norm

#### No RVIs – a] illogical, you don’t win for proving that you meet the burden of being fair b] RVIs incentivize baiting theory and prepping it out which leads to maximally abusive practices

## 2

#### Permissibility and presumption negate – a. the resolution indicates the affirmative has to prove an obligation, and permissibility would deny the existence of an obligation b. Statements are more often false than true because any part can be false so negate because the aff is probably false

#### The aff burden is to prove that the resolutional statement is logical, and the reciprocal neg burden is to prove that the resolutional statement is illogical.

#### Prefer:

#### 1. Text – Oxford Dictionary defines ought as “used to indicate something that is probable.” Ow because debates about philosophy are irresolvable so we should focus on empirics – moral uncertainty also proves this

[https://en.oxforddictionaries.com/definition/ought //](https://en.oxforddictionaries.com/definition/ought%20//)Massa

#### Ought is “used to express logical consequence” as defined by Merriam-Webster

(<http://www.merriam-webster.com/dictionary/ought>) //Massa

#### 2. Debatability – a) my interp means debates focus on empirics about squo trends rather than irresolvable abstract principles that’ve been argued for years b) Moral oughts cannot guide action.

**Gray,** Grey, JW. "The Is/Ought Gap: How Do We Get "Ought" from "Is?"" *Ethical Realism*. N.p., 19 July 2011. Web. 28 Oct. 2015. //Massa

**The is/ought gap is a problem in moral philosophy where what is the case and what ought to be the case seem quite different, and it presents itself as the following question** to David Hume: **How do we *know* what morally ought to be the case from what is the case?** Hume posed the question in A Treatise of Human Nature Book III Part I Section I: In **every system of morality**, which I have hitherto met with, I have always remark’d that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs, when of a sudden I am surpriz’d to find, that instead of the usual copulations of propositions, is and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change **is imperceptible**; but is, however, of the last consequence. **For as this ought**, or ought not, **expresses some new relation** or affirmation, ‘tis necessary that it shou’d be observ’d and explain’d; and at the same time that a reason shou’d be given, **for what seems altogether inconceivable**, how this new relation can be a deduction from others, which are entirely different from it. It is here that Hume points out that **philosophers argue about** various **nonmoral facts, then somehow conclude what ought to be the case** (or what people ought to do) **based on** those facts (about **what is the case**). **For example, we might find out that arsenic is poisonous and conclude that we ought not consume it. But we need to know how nonmoral facts can lead to moral conclusions. These two things seem unrelated. The is/ought gap [isn’t]** doesn’t seem like **a problem for nonmoral oughts**—what we ought to do to accomplish our goals, fulfill our desires, or maintain our commitments. For example, we could say, “If you want to be healthy, you ought not consume arsenic.” However, it might be morally wrong to consume arsenic. If it is, we have some more explaining to do.

#### Vote Neg:

#### [1] Inherency – either a) the aff is non-inherent and you vote neg on presumption or b) it is and it isn’t logically going to happen

#### [2] Intellectual is defined as “possessing or showing intellect or mental compacity” (Dictionary.com) but property cant possess intellect so the resolutions incoherent

#### [3] In order to say I want to fix x problem, you must say that you want x problem to exist, since it requires the problem exist to solve, which makes any moral attempt inherently immoral.

#### [4] member means “a body part or organ” (Marriam Webster) but a nation cannot have bodily organs so the resolutions incoherent

These negate under comparative world bc they prove that ur world is incoherent

## 3

#### Interpretation: affirmative debaters must delineate their enforcement mechanism by which they reduce in the 1AC.

#### There is no normal means since terms are negotiated contextually among member states.

WTO "Whose WTO is it anyway?" <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm> //Elmer

**When WTO rules impose disciplines** on countries’ policies, that is the outcome of negotiations among WTO members. The rules are **enforced** **by** the **members themselves** under agreed procedures that they negotiated, including the possibility of trade sanctions. But those sanctions are imposed by member countries, and authorized by the membership as a whole. This is quite different from other agencies whose bureaucracies can, for example, influence a country’s policy by threatening to withhold credit.

#### Negate:

#### 1] Shiftiness- they can redefine what measure of reduction the 1ac defends in the 1ar which decks strategy and allows them to wriggle out of negative positions which strips the neg of specific politics DAs, process CPs, innovation DAs and case answers. They will always win on specificity weighing.

#### CX can’t resolve this and is bad because A] Judges don’t flow B] Skews 6 min of prep C] They can lie and no way to check D] Encourages debaters to be shady

#### 2] Real World- policy makers will always specify what the object of change is. That outweighs since debate has no value without portable application. It also means zero solvency since the WTO, absent spec, can circumvent aff’s policy since they can say they didn’t know how to enforce it.

#### This spec shell isn’t regressive- it literally determines how the affirmative implements and who it affects which is the bare minimum

## Case

### UV

### Reject Spikes

#### [1] Vote them down – inclusion is a tangible out-of-round impact distinct from the procedural aspects of debate –key to minority participation – at worst I get new responses or u reject all spikes

Thompson 15 Terrence Lonam April 21, 2015 “Miscellaneous Thoughts from the Disorganized Mind of Marshall Thompson” http://nsdupdate.com/2015/04/21/miscellaneous-thoughts-from-the-disorganized-mind-of-marshall-thompson/

First, I think that evaluating who is the better debater via who dropped spikes excludes lots of specific individuals, especially those with learning disabilities. I have both moderate dyslexia and extreme dysgraphia. Despite debating for four years with a lot of success I was never able to deal with spikes. I could not ‘mind-sweep’ because my flow was not clear enough to find the arguments I needed, and I was simply too slow a reader to be able to reread through the relevant parts of a case during prep-time. I was very lucky, my junior year (which was the first year I really competed on the national circuit) spikes were remarkably uncommon. Looking back it was in many ways the low-point for spike. They started to be used some my senior year but not anything like the extent they are used today. I am entirely confident, however, in saying that if spikes had had anywhere near the same prevalence when I started doing ‘circuit’ debate as they do now, I—with the specific ways that dyslexia/dysgraphia has affected me—would never have bothered to try to debate national circuit LD (I don’t intend to imply this is the same for anyone who has dyslexia or dysgraphia, the particular ways that learning disabilities manifest is often difficult to track). Now, the mere fact that I would have been prevented from succeeding in the activity and possibly from being able to enjoyably compete is not an argument. I never would have been able to succeed at calligraphy, but I would hardly claim we should therefore not make the calligraphy club about handwriting. Instead, what I am suggesting is that the values that debate cares about and should be assessing are not questions of handwriting or notation. We expect notation instrumentally to avoid intervention, but it is not one of the ends of debate in itself. Thus, if there is a viable principle upon which we can decrease this strategic dimension of spikes but maintain non-intervention I think we should do so. I was ‘good’ at philosophy, ‘good’ at argument generation, ‘good’ at research, ‘good’ at casing, ‘great’ at framework comparison etc. It seems to me that as long as I can flow well enough to easily follow a non-tricky aff it was proper that my learning disabilities not be an obstacle to my success. (One other thing to note, while I was a ‘framework debater’ who could never have been good at spikes because of my learning disability I have never met a ‘tricky debater’ who could not have succeeded in debate without tricks simply in virtue of their intelligence and technical proficiency; that is perhaps another reason to favor my account.)

[2] they’re not complete arguments until the 1ar

[3] clash – they just extend one conceded argument and explode it which destroys any clash

### Give neg an rvi on 1ac spikes

#### if I win an offensive reason to reject one of your spikes it triggers an RVI.

#### [1] Disincentivizes you to read a bunch of blippy underdeveloped spikes in the 1AC as well as a short 1ar shell solely as a time suck scewing my strategy.

#### [2] Infinite abuse: absent an RVI, the aff can read game over arguments like evaluate the theory debate after the 1ar putting the NC in a doublebind: either I answer them and waste time or concede them and auto lose.

#### [3] Under competing interps we should create the best norms for debate. RVIS encourage debaters to actually test issues, including the spikes you are trying to defend as good norms.

No 1ar theory

[1] 7- 6 time skew

[2] no 3nr to respond to the 2ar so every arg goes uncontested which means 1ar theory is a no risk issue for u and causes judge intervention which is worst violation of fairness

[3] 1ac theory checks and its contextual

#### Reasonability on 1AR shells – 1AR theory is super aff-biased because the 2AR gets to line-by-line every 2NR standard with new answers that never get responded to– reasonability checks 2AR sandbagging by preventing super abusive 1NCs while still giving the 2N a chance.

### FW

#### [1] The appeal to util makes debate unsafe, since the logic of “the end justifies the means” can justify *any* reprehensible action.

**Anderson 04** Anderson, Kerby. [National Director of Probe Ministries International] “Utilitarianism: The Greatest Good for the Greatest Number.” *Probe*, 2004**. RP**

One problem with utilitarianism is that its leads to an ‘end justifies the means’ mentality. If any worthwhile end can justify the means to attain it, a true ethical foundation is lost. But we all know that the end does not justify the means. If that were so,then Hitler could justify the Holocaust because the end was to purify the human race. Stalin could justify his slaughter of millions because he was trying to achieve a communist utopia. The end never justifies the means. The means must justify themselves. A particular act cannot be judged as good simply because it may lead to a good consequence. The means must be judged by some objective and consistent standard of morality. Second, utilitarianism cannot protect the rights of minorities if the goal is the greatest good for the greatest number. Americans in the eighteenth century could justify slavery on the basis that it provided a good consequence for a majority of Americans. Certainly the majority benefited from cheap slave labor even though the lives of black slaves were much worse. A third problem with utilitarianism is predicting the consequences. If morality is based on results, then we would have to have omniscience in order to accurately predict the consequence of any action. But at best we can only guess at the future, and often these educated guesses are wrong. A fourth problem with utilitarianism is that consequences themselves must be judged. When results occur, we must still ask whether they are good or bad results. [Further][,] [u]tilitarianism provides no objective and consistent foundation to judge results because results are the mechanism used to judge the action itself. Inviolability is intrinsically valuable.

**Vote them down – this abhorrent discourse promotes terrible ideologies in the debate space:**

#### [1] Reversibility: once oppressive rhetoric is used it cannot be taken back

#### [2] Norm setting: we are part of a larger debate community with extensive norms – letting bad discourse be rampant kills the community

#### [3] Competition: debate is an educational competition with no place for offensive rhetoric – that kills access to the lasting benefit debate provides

### ADV

#### No solvency:

#### 1] You can’t just “waive trade secrets” — you don’t know they exist cuz they aren’t formal and don’t require any authorization — obviously companies will just keep their products a secret.

#### 2] Even if you prove you can, the 1AR has to defend the totality—once trade secrets are released, they can’t be taken away which means the turns outweigh on longevity to the affirmative.

#### 3] Not clear why patents wouldn’t solve high prices – patents should be able to solve which the aff doesn’t remove so the squo solves

#### 4] Only waiving trade secrets doesn’t solve the advantage because patents make having company secrets worthless since you can’t do anything with them.

#### Low prices cause AMR.

Babu and Suma 6 Babu, Varsha, and C. Suma. "Antibiotic pricing: when cheaper may not be better." Clinical infectious diseases 43.8 (2006): 1085-1086. (Government Primary Health Center)//Elmer

To The Editor—Antibiotics in India have always been cheaper in absolute terms thanks to weak patent laws that have been in effect until recently. Because a direct translation of drug prices from US dollars to Indian rupees (INR) would have rendered most new antibiotics inaccessible to the vast majority of Indians, such patent violations were subtly encouraged. Even despite this, we were caught unaware when pharmaceutical representatives approached our primary care center in rural India, claiming that a 5-day course of levofloxacin would henceforth cost the patient ∼INR 20 (<$0.50). Reluctant to accept such a statement at face value, we consulted the CIMS Updated Prescriber's Handbook [1], a popular index of pharmaceutical drugs available in India. Here, we discovered that a 5-day course of oral levofloxacin (500 mg once daily) cost anywhere from INR 19.5 to INR 475 ($0.50–$10.50), with most companies pricing their brand at <$1 for a full course. The same course in the United States would cost >$100. Intrigued, we did some more research and came up with the following results. The cheapest 5-day courses of first-line antibiotics, such as oral amoxicillin (500 mg thrice daily) or oral erythromycin (500 mg 4 times daily), cost INR 45 ($1) and INR 90 ($2), respectively. On the other hand, the cost of a 3-day course of oral azithromycin (500 mg daily) was one-half that of a course of erythromycin. Despite the obvious price advantage to the patients, we find this trend troubling. **Lower prices** often **lead to wider prescription of a given drug**, especially in resource-limited settings. **If** second-line **antibiotics**—such as levofloxacin and azithromycin—**are made available at lower prices** than first-line antibiotics, **there is a high probability of their overuse and subsequent development of resistance**. In the face of **very low costs of medication**, patients are unlikely to complain of escalating medical expenses. The issue assumes more gravity when one considers the fact that levofloxacin is an important second-line drug for the treatment of tuberculosis [2]. Its widespread use in the community **is likely to lead to emergence of resistance** **among** **mycobacteria** **and** delayed diagnosis of **tuberculosis** [3]—an occurrence that India, with its large population of tuberculosis-affected patients, cannot afford. We believe we have encountered a situation where **low prices of antibiotics are likely to cause more harm than good**. In the post World Trade Organization treaty scenario, governments in resource-limited countries should use their privileges of essential drug control to ensure that the costs of first-line antibiotics remain lower than those of second-line drugs. Such a government-instituted ladder in antibiotic pricing is essential to prevent the misuse of antibiotics in the community and to ensure that antibiotic resistance is kept at low levels.

#### Secondary patents are key to innovation that solves AMR.

Salmieri 18 [Gregory; 2018; “*INTELLECTUAL PROPERTY AND THE FREEDOM NEEDED TO SOLVE THE CRISIS OF RESISTANT INFECTIONS*,” <http://georgemasonlawreview.org/wp-content/uploads/2019/04/26-1_7-Salmieri.pdf>] Justin

II. THE RIGHT TO THE VALUE CREATED BY RESPONSIBLE STEWARDSHIP Consider how the two-fold problem of growing resistance to our current antimicrobial drugs and the dearth of new antimicrobials under development looks once the specifics are omitted. Forget for a moment that the subject is drugs and microbes—or even inventions as opposed to other sorts of property—and just focus on the structure of the predicament.35 There is a resource of immense value that is being used myopically in a way that destroys existing stocks of the resource, and little is being done to find or develop new stocks of it. This is a pattern one expects to see with unowned resources, but not with owned ones. It is the classic “tragedy of the commons.” When a patch of grazing land is owned in common by everyone—which is just to say it is unowned—everyone has an incentive to make what use of it he can, leading to its overuse and destroying its value. By contrast, an owner can use land judiciously in ways that preserve its value or even to invest in improving the land. This is possible because the owner has exclusive control of the land in the present and therefore can control its uses, and because the owner expects to reap the benefit of the land’s future value. If deeds to land expired after twenty years, with the land reverting to the commons, land owners would have no financial incentives to preserve or enhance the land’s value past the twenty-year window. In this scenario, they could not afford to forgo shortterm gains that came at the expense of the land’s later value. Nor could they afford to invest in long-term improvement projects, such as clearing new land for grazing. This is the predicament with antimicrobial drugs. The profligate use of such drugs in the present destroys their value in a future in which they are unowned. This suggests the simple solution of extending the patent terms for antimicrobial drugs. So long as the drug remains under patent, the patent holder has both an interest in preserving its usefulness and the ability to control its use so as to preserve its value. How long should the patent term be extended? The five years of extra market exclusivity offered by the GAIN Act is calculated with a view to incentivizing companies to invest in developing new drugs. The aim of the present proposal is different. It is to enable the creators of drugs to profitably exercise their rights over the drugs in a manner that preserves the drugs’ effectiveness over time—ideally into the indefinite future. This requires extending the term of exclusivity not just a few years or decades, but as far into the future as there is reason to hope that the drugs’ effectiveness can be maintained. There are various ways in which this suggestion could be further developed; perhaps the most promising is simply to allow patents on antimicrobial drugs to be renewed indefinitely, so long as the drugs’ continued effectiveness can be demonstrated. (How exactly continued effectiveness should be demonstrated is a matter of detail, but likely by showing resistance to be below a certain threshold—perhaps 20 percent—in clinical isolates of interest.36) This would allow for a potentially infinite patent term. “Perpetual patents” have occasionally been proposed, 37 but the lack of a fixed term may do violence to the notion of a patent, so it may be better to conceive of this as a proposal for a new type of IP right that combines features of patents and trademarks. Conceptualizing the relevant right in this way highlights its basis. Like a patent, the right would pertain to an invention and would confer market exclusivity; like a trademark, however, it would be renewable in perpetuity on the grounds that the continued value of the property depends on the owner taking continuous action to maintain it. In the case of the right under consideration, the relevant actions would be those of stewarding the drug in such a manner as to prolong its continued effectiveness in the face of resistance. This new sort of property right could, in principle, be applied to drugs that are already off patent or otherwise ineligible for patent protection. The Chatham House Working Group proposes granting “delinkage rewards” to “firms registering a new antibiotic without patent protection (such as new uses for old drugs),”38 and it may be that the sort of IP protection proposed here would be applicable in such cases as well. If so, the right would be justified by the discovery of the new use for the drug and by the fact that intelligent management of this use is required for it to retain its value. A more difficult case is granting such rights to already known antibiotics that have gone off patent and are now available as generics. Removing these drugs from the commons would make it possible for an owner to profit by stewarding them responsibly. The difficulty here is determining who would own them. Professor Kades considers the possibility of granting a new patent to the original patent holder, but suggests “auctioning the patent rights [to such drugs] to the highest bidder.”39 Both are plausible solutions. Another option, in light of the issue of cross-resistance (which will be discussed in Part III) would be to apportion the IP rights to the relevant drugs among the owners of other drugs with similar mechanisms of action. Instituting the sort of property right described here (whether or not it is extended to drugs that are currently unpatentable and/or in the public domain) would create an environment in which pharmaceutical companies and other private entities can compete to develop new policies and business models that maximize the total value derived from antimicrobial drugs over time. An important advantage of this proposal is that it does not require policymakers (or authors of law review articles) to know in advance which specific practices would have this auspicious effect. However, some obvious possibilities suggest themselves. Pharmaceutical companies could sell new antimicrobials at a price high enough to make it prohibitive to use them as anything other than treatments of last resort. In addition to extending the drugs’ useful lives, the high prices would compensate for the lower initial volume of sales, and the drugs could eventually be repriced for wider use as second- and then first-line treatments. This repricing would have to be paced both to the growth of the resistant bacterial population and to the development of new antimicrobial drugs to take their predecessors’ place as treatments of last resort. One can imagine many variations of this strategy with different price points and development cycles. Pharmaceutical companies could also extend the effective lifespan of their antimicrobials through contractual arrangements with healthcare providers, which restrict the latter’s use of the drugs to certain protocols or best practices. Imagine the new business practices whereby pharmaceutical companies might profit from drugs that are never or hardly ever used. Licensing plans like the one proposed by Commissioner Gottlieb might be employed in innovative ways.40 For example, healthcare providers or insurance companies might pay a monthly fee for the right to use these drugs should it ever become necessary to do so. Or the various parties might negotiate a system whereby a pharmaceutical company (or an entity that has licensed drugs from multiple companies) charges a fixed price for treatment in accordance with a proprietary antimicrobial protocol that makes use of several of their drugs, specifying which drugs can used under which conditions. The suggestions in the last paragraph all amount to ways in which revenues from the creation of a new drug might be “delinked” from sales volume. In principle, this delinkage could occur simply through market forces, without any additional policy interventions, but since governments and multinational organizations account for most of the spending in the healthcare sector in much of the world, their adopting policies favoring delinkage would likely stimulate the development of these sorts of business models under an IP regime of the sort suggested. Indeed, such delinkage–promoting policies would likely fare better under the proposed IP regime than under the current IP system because, as The Chatham House Working Group observes, “patent expiry” creates some difficulties for such policies. Obligations for responsible use can be carefully crafted and functional when monopoly rights are in place, but are likely to fail once generic antibiotics are introduced upon the termination of the period of exclusivity. Generic manufacturers ordinarily rely on volume-based rewards, and low prices and large volume of sales without appropriate measures to conserve the antibiotics may be an important driver of indiscriminate use and resistance. A sustainable system will require controls on market entry after termination of the patent, and regulation of the way the generic products are marketed and prescribed.41 It bears emphasizing at this point that the best stewardship policies for antimicrobial drugs remain to be discovered. The Chatham House Working Group report (quoted several times above) represents the cutting edge of research on this issue, and it offers precious few details about the new “delinked” business model it says “needs to be developed.” Successful business models are rarely if ever specified from on high by public policy makers. Securing a long-range IP right to antimicrobial drugs would create the conditions in which the healthcare industry as a whole could invest the resources required to discover the practices, protocols, and business models that maximize the value of these substances. In addition, the ability to capture this value as profit would create an incentive to develop new drugs as needed. IP rights, and patents in particular, are sometimes understood as bargains between creators and society. The proposal under consideration grants a lot more to the developers of any new antimicrobial drugs than they are granted under current law, but it asks a lot of these developers in return—for it requires them to become good stewards of their drugs by discovering and implementing the means necessary to preserve the drugs’ value over time, so that the maximum potential benefit from them is realized.42 This is work that needs to be done by someone, and the sort of IP regime proposed here would enable those people and firms most qualified to do this work to profit by doing it. This leads to a deeper point. Although IP rights are often understood as special privileges granted by government and justified on utilitarian grounds, the dominant strand in early American jurisprudence, taking its inspiration from John Locke, regards all property rights as securing to a creator the fruits of his productive work.43 Among the reasons why patents and copyrights are finite in duration, whereas rights to chattels or land can be passed on from generation to generation indefinitely, is that chattels and land generally need to be maintained in order to retain their economic value over time, whereas this is not true of the economic value of an artwork or a method.44 But the case under consideration reveals that the continued economic value of certain methods does depend on an ongoing process of intelligent management by which one uses the method sparingly. It is this very fact that (according to the argument of this Part) justifies extending the IP right to the drug indefinitely. This raises the question of whether there are structurally similar cases in other fields, where the continued commercial value of a potential invention depends on its judicious use. If so, it may be that there are other values being destroyed (or never created) because of tragedies of the commons that could be rectified by policies analogous to the one suggested here.

#### IPR Strenthens Democracy [MARKED]

McKenna 6 Mark P McKenna 2006 https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1290&context=law\_faculty\_scholarship//SJJK

Even if intellectual property does not fit neatly into Rose's privatization scheme, there are at least a couple of ways in which IP rights impact democracy that can be directly evaluated. At risk of redundancy, granularity is important here. The democratic impact of copyright protection is quite different than that of patent protection. By lumping all of IP together, in my view Professor Rose misses the opportunity to evaluate the particular effects of specific rights. A. Copyright and Democratic Expression First, copyright scholars have long argued that copyright promotes 27 diversity of cultural expression, which is good for democracy. Copyright protects individuals in their expression and makes the success or failure of that expression a function of the market, rather than the whim of the sovereign. By contrast, pre-Statute of Anne regulatory systems were intimately related to censorship. 28 In medieval England, for both political and economic reasons, the Crown awarded to individual printers the exclusive right to print particular books.29 Later the Crown vested the Stationers Company with a monopoly over publishing and relied on it to censor political dissent.30 As Goldstein observed, the printers enjoyed and enforced a monopoly over publishing, but the printers were only allowed to publish books licensed by the Crown. Thus, the Crown could rely on the Stationers Company to carry out its political will. Under [the Licensing Act], the Crown determined what works could be published; under the printing patent, the Stationers suppressed trade not only in unauthorized copies of licensed works, but in unlicensed works as well. The Stationers got the economic rewards of monopoly; in return, the Crown got from the Stationers a ruthlessly efficient enforcer of the censorship.32 By recognizing copyright in authors and rejecting royal privileges in printing, the modem copyright system stripped the sovereign of an effective control over the content of publications, leaving to market forces the ultimate fate of a particular publication. This development, to be sure, was not an unqualified good. One potential advantage of government subsidization of intellectual production is that it allows for consideration of factors beyond potential economic success, and we might have good reason to think that certain forms of expression that are not economically valuable are nevertheless desirable. In those cases, the market might not properly reflect true societal demand, and those forms of expression will be under-produced.3 3 Governments in the United States and in Great Britain, among other countries, have recognized that risk, and for that reason copyright has never been the only way in which either country encourages cultural production. As Shubha Ghosh points out, governments also subsidize cultural infrastructure, "create cultural inputs that benefit private associations," and can "aid in establishing rules that facilitate private associations." 34 Governments also can provide direct grants to certain producers of cultural material, through entities like the National Endowment for the Arts.35 But if democracy is our concern, there are at least as many reasons to be concerned about other forms of government encouragement of cultural production as there are about leaving those decisions to the market. Grant and infrastructure funding are very likely to follow political winds, as we have seen with regard to funding of National Public Radio, the Public Broadcasting Service, and the National Endowment for the Arts.3 6 As these modem examples make clear, those who control the funding are likely to want to control the content of the creative output they fund.37 As Justice Scalia noted in a recent speech about government funding of the arts, it has long been the case that "he who pays the piper calls the tune." 38 The risk that governments which fund content will seek to call the creative tune is a lesson history teaches exceedingly well. In the final analysis, modern copyright law reflects a belief that we are better off relying on markets to provide the incentives for cultural production. 39 Though markets sometimes fail, the possibility of failure has to be measured against the political risks inherent in greater government involvement in production.40 The scope of copyright law will have a lot to say about how well it furthers the goal of democratization, of course, as we are reminded by criticisms of copyright's effect on culture.4' Overly broad protection threatens to stifle the very expressive freedom copyright protection promises. If, however, marketdriven copyright systems by and large succeed in creating environments in which diverse views flourish, then copyright, on balance, helps create democratic culture. And economic growth and stability clearly aid democratic development. As today's world events make clear, it is very difficult to build a stable political environment when citizens are excluded from the prosperity shared by the developed world. I do not mean here only that property and commerce distract people from other strife,46 although that certainly may be true, but rather that divergent economic conditions sometimes are themselves the source of discontent in developing areas.47 Rose herself provides evidence of this dynamic when she points to India's experience with privatization and notes that the Congress Party and its allies defeated the BJP, the chief sponsor of India's deregulation efforts, largely because of the dissatisfaction of rural citizens who felt they were left out of the good economic times. 48 If intellectual property aids technology transfer and helps create greater economic opportunity, it can help create the stability on which civil society depends. There is also a power-spreading argument to be made here, though a less direct one. According to the power-spreading thesis, private property promotes democracy because ownership of private property gives citizens a sense of security