

When Social Norms for Innovation Don't Maximize Social Welfare

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Stephanie Bair & Laura Pedraza-Fariña, [Anti-Innovation Norms](#), 112 *Nw. U. L. Rev.* 1069 (2018).

For more than a decade, intellectual property scholars have demonstrated how informal social norms can efficiently substitute for formal legal protections to promote creativity and innovation. Now come Stephanie Bair and Laura Pedraza-Fariña to show that social norms can have a less happy effect. In some instances, they argue, informal social norms may impede innovation. Their forthcoming article, *Anti-Innovation Norms*, explores a selection of these and what might be done about them.

According to the standard economic story, IP rights exist to solve a public goods problem. In the absence of IP rights, rampant copying would reduce the ability of creators to recoup their investments, and society would face underinvestment in new works and inventions. IP rights solve this problem by enabling creators to charge supramarginal prices for those works and inventions. Although IP rights are costly, they produce net benefits by encouraging creativity that we wouldn't otherwise have.

Yet a still-expanding list of studies has shown that in many industries, including fashion design, cooking, stand-up comedy, and tattooing, the lack of formal IP protection has not killed creativity. In these and other fields, robust social norms that promote creativity and attribution and that shun certain kinds of copying can replace formal legal protection more flexibly and at lower social cost. Norms can make free riding costly, and they support those engaged in creative work.

Professors Bair and Pedraza-Fariña do not gainsay the importance of social norms to limit the effects of free riding in many low-IP fields, but they suggest that scholars' focus on free riding has caused them to miss other, less salutary, social norms that affect innovation. In particular, Professors Bair and Pedraza-Fariña demonstrate the existence of a group of norms that undermine an especially valuable source of innovation—disciplinary boundary crossing. While many of the most important innovations in science, technology, and the arts come from the merging of insights from previously unrelated fields, creators can face substantial disincentives to engage in boundary-crossing work.

Professors Bair and Pedraza-Fariña have, themselves, not been dissuaded from crossing disciplinary boundaries to substantiate their account. They turn first to sociological studies of science and the arts in order to identify three anti-innovation norms: research priority norms, methodology norms, and evaluation norms. These norms tell people within a given field (1) to work on projects that the field deems valuable, (2) to apply methods deemed acceptable to those projects, and (3) to judge the value of contributions to the field on terms that the field prefers. Drawing on examples from physics, medicine, and contemporary visual art, the authors demonstrate how anti-innovation norms create field-specific professional and reputational costs that discourage creators from pursuing potentially more valuable opportunities at or beyond the borders of their fields.

Continuing their own boundary crossing, Professors Bair and Pedraza-Fariña next turn to social psychology to explain possible sources of anti-innovation norms. They focus on two aspects of individual decision-making, the status quo bias and the conformity bias, as the likely culprits. For a variety of reasons, people tend to be strongly attached to the ways things are now, and it can be surprisingly difficult to get people to switch away from their present status. In addition, people generally like to conform their behavior to those in their social groups. Conformity aids group membership and solidarity and the benefits they confer. The authors speculate that these two tendencies can make it harder for individual creators to break away from accepted paths and procedures and to risk forging their own

identities.

Having established the existence of anti-innovation norms, Professors Bair and Pedraza-Fariña return to their disciplinary home to consider whether law can do anything to solve the problems they've articulated. In large part, they are skeptical of IP law's ability to particularly encourage boundary-crossing innovation, because copyright and patent tend to reward innovations without reference to whether they combine diverse insights or not. They argue that IP's reliance on decentralized market signals, which is normally considered a feature, can also be a bug when those signals are filtered through a norm-inflected view of the technological or artistic environment. Although the authors suggest some tweaks to IP doctrine, their policy proposals focus instead on using grant funding and tax incentives to encourage and reward boundary-crossing creativity.

Professors Bair and Pedraza-Fariña have helpfully reminded IP scholars that social norms are not always a good thing for creativity. In addition to the norms against boundary crossing, other norms may discourage certain kinds of creators or certain kinds of creativity from emerging. As we develop a richer view of the sociology and psychology of innovation, we should pay attention to the costs of informal ordering as well as to its benefits.

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