

## *Measuring the Incentive Effects of Innovation Thresholds in Intellectual Property*

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IP law establishes legal rules aimed at bolstering innovation by providing incentives to creators. Whether it does so successfully, however, has rarely been studied. In this paper, I will report the results of experiments testing the differential effects of rules conditioning protection of creators' work on the creators achieving certain thresholds of creativity. The experiment is meant to model our copyright and patent laws, which set very different thresholds for the amount of creativity necessary to secure IP rights. Copyright law requires only a minimal spark of creativity to merit protection, while patent law, through its novelty and nonobviousness requirements, insists upon a showing of very significant creativity relative to copyright. Based on recent research in the social sciences, I suspect that these different creativity thresholds may generate different incentive effects on creators.

I have designed different creativity tasks – one based on a version of the old “Oregon Trail” computer game and one based on “Odyssey of the Mind” verbal problems – that enable us to measure the quality of creators' innovation when subjected to different rules regarding the minimum threshold of creativity sufficient for protection. The initial data suggest that the different IP regimes in fact have a significant impact on creators' behavior – creators perform better when subjected to a high (patent-style) threshold for success than for a low (copyright-style) threshold. The presentation will describe these data and discuss their implications for IP law and policy.