

**SOCIAL NETWORK NORMS AND INTELLECTUAL PROPERTY:
A PROPOSAL FOR THE PUBLIC USE BAR**

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Abstract

How to draw the line between public and private is a foundational, first-principles question of privacy law, but the answer has implications for intellectual property, as well. Both patent law—through the “public use” bar—and trade secret law—through limited disclosures of confidential information—confront the question of whether legal protection should extend to information previously disclosed to a small group of people. This project, which follows previous scholarship on privacy-as-trust, is one in a series of papers on the effects of defining the boundary between public and non-public information through the lens of social science and, in particular, social network theory and interpersonal concepts of trust among individuals. Patent law’s public use bar, relying on a standard of loss of control for determining when a pre-patenting use or disclosure defeats patentability, appears to privilege the confidentiality and control norms of industry while minimizing and ignoring the very different norms and manifestation of confidentiality common to lone entrepreneurs. In so doing, the public use bar has unintended negative effects, including discouraging experimentation and discriminating against inventors without the financial backing of corporate employers. This project proposes a new way of talking about, thinking through, and determining when previous disclosures bar subsequent patentability. In short, I argue that patent and trade secret disclosures in contexts of interpersonal trust retain their legal protection despite any ostensible loss of control or lack of formal confidentiality agreements. This proposal respects social network differences and will advance the goals of patent law and increase access to the innovation economy for all persons.