study and appreciate the advance and, thus, increase society's opportunity for the next leap in the field from whatever sector in society it may come. That is, mere technical disclosure with patents hidden away in a dusty office does not adequately serve social justice interests in inclusion and empowerment. Broader dissemination of the information in accessible form is needed. George Washington Carver studied the achievements of those that came before him as well as the scientific and agricultural challenges of his day and, though he came from a marginalized group, he advanced American agricultural science for American society as a whole. The Carvers of today need access to information to be fully empowered and included.

Similarly, the availability of affordable drugs also illustrates social justice aspects of inclusion and empowerment. If drug patents lead only to wealth for inventors and new drugs for the wealthy, the social justice principle of inclusion is violated. Empowerment and inclusion have broader implications as well: if drugs and other patents benefit only the patent holders and the wealthy few, the democratic constitutional purpose of advancing society in general—of advancing the general welfare—is frustrated. Such a path can cause average people to lose faith and respect for the patent system, leading to a demand for myopic curtailments inimical to long-term interests in promoting investment in innovation.

Attaining social justice in the achievement of intellectual property social utility need not be restricted to the interpretation and application of federal intellectual property law. For example, similar opportunities are frequently present in the application of the right of publicity, especially in the Digital Information Age. The right of publicity assures individuals...
the right to determine the instances under which others may utilize or exploit their personas and also the right to participate in the commercial benefits that might be derived from such uses. The right not only serves to protect individual privacy and personal dignity but also further provides incentive to individuals to invest effort and resources in the development and stylization of personal attributes and innovations and to pursue activities and accomplishments of public and popular interest, with the possibility of celebrity, public renown, and attendant commercial reward.

Analytically revisited, these social utility objectives can also be understood to encompass such pertinent remedial social justice goals as the eradication of negative racial and gender stereotypes and depictions, culturally offensive representations, and socially inequitable commercial exploitation, where individually recognizable personas are involved. Uses which result in depictions or representations which are not negative per se but which may be culturally offensive or sacrilegious might also be analytically accessible through right of publicity doctrine.

From an even broader policy perspective, the problem of inequitable commercial exploitation, particularly with respect to members of marginalized groups which have fewer entrepreneurial/access to wealth opportunities, presents an especially inviting target. Resourceful ingenuity and creativity exercised under challenging conditions often spur the development, refinement, and stylization of personal attributes and individual innovations, which sometimes engender enormous popular culture interest and concomitant commercial potential. However, institutionalized barriers to information, financial capital, and legal support often preclude commercial exploitation by marginalized innovators, while facilitating exploitation by majority enterprises and concerns. By invoking publicity rights to address such issues, socially equitable and progressive policies can be pursued and achieved through strategic invocation and application of right of publicity law and doctrine.103

lege of publishing his picture . . . . This right might be called a 'right of publicity.' . . . [M]any prominent persons (especially actors and ball-players), far from having their feelings bruised through public exposure of their likenesses, would feel sorely deprived if they no longer received money for authorizing advertisements, popularizing their countenances, displayed in newspapers, magazines, busses, trains and subways.")]; id. at 297 (quoting Melville B. Nimmer, The Right of Publicity, 19 LAW & CONTEMP. PROBS. 203, 203-04 (1954) (“Well known personalities . . . do not seek the ‘solitude and privacy’ which Brandeis and Warren sought to protect. . . . However, although the well known personality does not wish to hide his light under a bushel of privacy, neither does he wish to have his name, photograph, and likeness reproduced and publicized without his consent or without remuneration to him.”)); id. (quoting Memphis Dev. Found. v. Factors Etc., Inc., 616 F.2d 956, 957 (6th Cir. 1980) (“[T]he famous have an exclusive legal right during life to control and profit from the commercial use of their name and personality.”)).

103. See, e.g., Mtima, supra note 102, at 299 (quoting J. Thomas McCarthy, The Human Persona as Commercial Property: The Right of Publicity, 19 COLUM.-VLA J.L. & ARTS 129, 141 (1995) (“Equity favors that plaintiffs benefit from the commercial exploitation of their personas. ‘[T]he right of publicity is not restricted to superstar, nationally known athletes and entertainers. It applies to everyone. For example, it applies to the long distance runner who won an Olympic medal twenty years ago, is now selling insurance in
Digital information technology provides many new ways in which to utilize and commercially exploit an individual's image, likeness, and personal attributes; thus, novel questions can arise not only regarding the extent to which individuals have the right to control and/or profit from such uses but also as to how these new technological uses might be reconciled with a variety of pertinent social justice and social utility issues. A social justice-cognizant assessment of the social utility goals which underlie the right of publicity, however, can provide a socially propitious (and strategically effective) methodology for resolving contemporary right of publicity disputes and balancing the constituent interests therein. The recognition of a functional interdependence between right of publicity social utility and right of publicity social justice offers a doctrinal basis for equitable social policies, progressive business models and even efficacious litigation strategies appropriate to the digital information age, and thereby enhances the benefits to be obtained through the pertinent new technological uses of the intellectual property rights involved.104 Thus, one key to effective IP enforcement is having laws of appropriate scope with appropriate exceptions and limitations that comport as much as practicable with people's expectations and conduct as well as with current and developing technology and changing business models.105 For society as a whole to commit to a system of intellectual property protection and rewards, people must perceive that system as a set of laws that serve some broader societal purpose—laws which serve their collective interest.106 Consequently, even where the legislature affirmatively undertakes to harmonize the relevant IP constituent interests, a socially productive balance rights holder/user/societal stakeholder interests will be impossible to attain unless courts embrace and lawyers work to implement the overall social balancing scheme.107

Iowa and whose name and accomplishments are printed today on a box of breakfast cereal to help sell the cereal. Who is more entitled to that commercial value? The former Olympian or the breakfast cereal conglomerate? . . . Look at the recent cases involving well-known celebrities. How would you decide which party is most deserving and whether the award of damages distributed wealth “upwards”? Would you pick Samsung Electronics, a Korean electronics firm with $10 billion in annual sales as more deserving than letter turner Vanna White? Would you pick Frito-Lay, with $4.4 billion a year in sales and which is owned by Pepsi Cola, with $25 billion of sales a year, as more deserving of the marketing value of Tom Waits' voice than Tom Waits himself? I would not.”)

104. Thus, in digital and other contemporary rights of publicity disputes, courts would first consider whether there are any societal social utility or social justice interests that would be advanced by allowing an unauthorized use. In the absence of such interests or where such interests are limited or minimal, the court would proceed to weigh the relevant equities in deciding whether the unauthorized use should be allowed. Indeed, such a weighing of the equities is consistent with the Supreme Court's holding in eBay Inc. v. MercExchange, L.L.C., that the mere presence of intellectual property rights does not mandate injunctive relief. 547 U.S. 388, 393–94 (2006). Consequently a weighing of the social justice equities in many cases will not preclude an unauthorized use of an individual's persona but, rather, merely only assure her a portion of the revenues generated by the unauthorized use.


106. Id.

107. Id.
By focusing upon the interdependence of intellectual property social utility and social justice, however, an institute can develop policies and strategies that promote symbiotic social justice/social utility mechanisms, such as encouraging broader stakeholder inclusion in the cause of intellectual property development and exploitation.\textsuperscript{108} Such inclusion fosters empowerment in the area of intellectual property and will result in concomitant socioeconomic advance not only of those newly included and empowered but of society in general as well.\textsuperscript{109} The application of intellectual property social justice/social utility interdependence theories provides a more palatable solution to the IP commoditization/social utility conundrum than one focused merely on maximizing exploitive rights of rights holders.\textsuperscript{110} This approach taps directly into the inherently democratic and decentralized features of digital information and other technological advances and emphasizes symbiotic mechanisms to promote both social utility and social justice.\textsuperscript{111}

V. IP SOCIAL JUSTICE AND SOCIO-ECONOMIC EMPOWERMENT

An institute premised on a social justice perspective for the study of intellectual property also provides ecumenical benefits, which transcend the intellectual property field. New possibilities for participation in the creative/inventive process also present new opportunities for IP entrepreneurship and concomitant stakeholder interests in the IP regime, not only as users, licensees, and secondary beneficiaries but also as creators and drivers of the system and of the concomitant social advance and economic empowerment.\textsuperscript{112}

One aspect of empowerment is economic empowerment and one path toward economic empowerment is entrepreneurship—a path which has long been trod for social uplift and advancement of marginalized groups.\textsuperscript{113} "Digital entrepreneurship" denotes the application of tradi-
tional entrepreneurial tenets and principles to the cause of economic empowerment through exploiting intellectual property in the digital context. Digital entrepreneurship thus affirmatively seizes upon the intellectual property law as an instrument for social change and economic advancement.

While many people may appreciate the entrepreneurial significance of small businesses, few consider the development of and exploitation of intellectual property as a means of socioeconomic advancement. While many artists may consider their talent as an avenue to fame and fortune, they are unlikely to appreciate the value of intellectual property ownership. By equipping artists and inventors with a working knowledge of intellectual property law, and just as importantly (if not more so), of the institutional means of exploiting intellectual property, the marginalized creator of intellectual property-related products and works is empowered to negotiate her way through the exploitation morass more effectively.

In addition to advancing [generic] social justice, Digital Entrepreneurship principles also encourage ardent respect for the copyright exclusive rights scheme and related property interests and incentives. This is so because fundamental entrepreneurial precepts favor the recognition of today's "copyright entrepreneurs" as tomorrow's "copyright vested gentrify," who will undoubtedly seek out and embrace the compensatory boons attendant to copyright ownership.

Too strong a copyright regime can prohibit or at least inhibit the creation of works that justly deserve to be exploited by the author of the often derivative work. But, at the same time, if copyright rights are limited too much, social justice principles of inclusion and empowerment can be harmed by exposing digital copyright authors, remixers, and entre-

114. See Mtima, supra note 19, at 136–41.
115. Rogers, supra note 113, at 95–96 ("Black businesses, excluding insurance companies and banks, fell into four main categories by 1930: (1) amusement and recreational enterprises; (2) real estate businesses; (3) retail trade enterprises; and (4) businesses providing personal services. The largest number of successful black enterprises were those providing personal services, 'restaurants, beauty parlors, barber shops and funeral parlors.' . . . An overwhelming number of emerging black businesses which engage in providing some sort of personal service continue to be solely owned by the founder or his successor. In 1987, for example, sole proprietors owned 94.4% of all black firms. These figures are consistent with 1982 and 1977 statistics, which indicate that 95% and 94.3% of black-owned businesses were sole proprietorships in those years.").
116. Mtima, supra note 19, at 142–43.
118. Mtima, supra note 19, at 142.
119. Id. at 145.
120. Id. at 101.
121. See Jamar, supra note 43, at 847.
preneurs to unjust exploitation by others of their works. With respect to African-Americans and other marginalized authors and artists, improper balancing of interests could merely renew the historical cycle of unjust exploitation. Digital entrepreneurship strategies must take care to align social empowerment and author incentive as mutually reinforcing as opposed to mutually exclusive, and thereby serve the interests of all stakeholders in the digital copyright community.

Consequently, a comprehensive weakening of copyright property rights may not be in the long term interests of the budding generation of digital entrepreneurs. Traditional entrepreneurial tenets contemplate long term as well as immediate socio-economic advance through the development, ownership, and commercial exploitation of individual resources. In the context of Digital Entrepreneurship, this necessarily entails preservation of the copyright entrepreneur's traditional exclusive rights.

The preservation of rights-holder property interests need not and probably should not be in exactly the same form as they are now or as they have been for the predigital world. Arguably, characterizing a two-second sampling of another's musical performance as an unlawful infringement in the Digital Age removes too much raw material from which to build the next works. Building blocks of works, such as letters, words, colors, shapes, columns and beams, individual dance steps, notes, chords, and rhythms have never been copyrightable. Analogous building blocks in the Digital Age should not be either.

IP social justice strategies can thus align social empowerment and author–inventor incentive as mutually reinforcing interests, as opposed to mutually exclusive objectives, and advance the interests of all constituents in the global IP community. Digital information technology and other new applications for the use and dissemination of intellectual property can therefore be exploited to their fullest to achieve the social utility objectives of the IP law and to fulfill the ultimate social justice promise of the IP regime.

122. See Robert P. Merges, Copyright, Creativity, Catalogs: Locke Remixed :-), 40 U.C. DAVIS L. REV. 1259, 1262 (2007) ("I think remix culture has great potential. But I disagree about its implications for copyright. I do not think remix culture ought to force deep, fundamental, and permanent change in the structure of copyright law. First, I do not think such change is necessary; high enforcement costs and market competition will neutralize much of the potential for copyright law to bog down remix culture. Second, it would not be fair to the people who create original mass market content for remixers to 'redistribute' too much of the money creators earn from their work.").

123. See Mtima, supra note 19, at 146–47.

124. Id.

125. Id. at 145.

126. See id. at 146.

127. Id. at 145–46.

128. See id. at 147–51.


130. See Jon R. Cavicchi & Stanley P. Kowalski, IP in Developing Nations: Use the Kitchen Door, NAT'L L.J., Dec. 10, 2007, at 23 ("IP in the public interest is increasingly a global concern. IP capacity fosters invention and drives innovation, raising standards of living and promoting sustainable economic development. The result is an engine, wherein
promise for the democratization of access to information and knowledge and inclusive participation in the creative and inventive process, engaging more people both as authors and inventors and as passive users of intellectual property.\textsuperscript{131}

A wisely structured intellectual property regime not only protects IP but also allows, protects, and encourages appropriate sorts of transformative uses, which in turn create new opportunities for previously marginalized groups to express themselves creatively and otherwise to profit from participation in the IP system. An appropriately grounded law school intellectual property institute advances these goals.

VI. LAW SCHOOL IP INSTITUTES: FOUNDATIONAL PRINCIPLES OF IP SOCIAL UTILITY/SOCIAL JUSTICE

Considering the role of social utility and social justice in law school curriculum and its foundational role in the development, pedagogy, and practice of intellectual property law, its function in law school institutes becomes concrete. Many law schools today embrace these tenets in the establishment of their IP institutes.

For example, Duke University School of Law has an IP program,\textsuperscript{132} within which it has created two centers, one focused on the public domain\textsuperscript{133} and the other on ethics and policy issues concerning genetics.\textsuperscript{134} Each center has its own mission and focus and the overall IP program has the following statement of its purpose and perspective:

The second defining quality of Duke's approach to intellectual property is that it goes beyond the merely technical or technocratic. In an information society, intellectual property law presents fundamental questions of politics and policy; what is the correct balance between the public domain and intellectual property, or between intellectual property rights and free speech? Gene patents, Napster-like peer-to-peer file sharing, fair use and parody, the role of private investment in scientific research and innovation—such issues present complex questions of morality, economic effect, constitutionality and competitiveness. Both in class, and through a variety of scholarly, practical and law reform activities, Duke Law School's Intellectual Property Program explores these policy questions, engaging in public service and helping to prepare its graduates to shape the ground rules of the information society, whether as lawyers, entrepreneurs,
policy-makers or citizens.135

American University's law school, the Washington College of Law, has the Program on Information Justice and Intellectual Property (PIJIP).136 PIJIP describes its mission as including "[h]elping to describe and promote the public interest in information law and policy through research, publications, public events, advocacy, and the provision of legal services."137

The International Technology Transfer Institute (ITTI) at University of New Hampshire School of Law, Franklin Pierce Center for Intellectual Property follows similar precepts.138 The ITTI is dedicated to promoting commercialization of science, technology, and innovation in developing economies such as Zimbabwe, Colombia, Vietnam, and emerging high-technology nations across the globe such as Argentina, India, and China.139 ITTI implements this mission by building capacity in intellectual property management, technology transfer, and information access in research institutions (e.g., university, government, international).140 Such capabilities are essential for moving research from basic innovation to commercialized products having broad societal benefit, such as vaccines, medicines, and agricultural technologies.141

The critical link between basic research and commercial application of innovation are technology transfer offices (TTOs).142 To actually contemplate and then implement programs to build and/or strengthen technology transfer requires focused and strategic capacity building, including political and governmental support, education of staff, integration of technology transfer mechanisms into the institutional structure(s), establishment of international professional networks, and access to advanced information resources (patent, legal, and scientific databases) that are increasingly vital in the knowledge-based economies of the 21st century. Long-term nurturing of technology transfer will require integrated and sophisticated programs that will likely continue for years with many opportunities for education, networking, scholarship, and professional de-

135. Program in Intellectual Property, supra note 132.
140. International Technology Transfer Institute, supra note 138.
141. Id.
development. ITTI is working in this area to strategically implement international development programs that have sustainable and significant impact.

George Washington University Law School has a very large and comprehensive program in the intellectual property area. Part of that program is the Dean Dinwoodey Center for Intellectual Property Studies, which describes its functions as including sponsoring "research and activities on a broad range of intellectual property issues" that focus "on both international and domestic issues."

The Center for Law & Innovation at the University of Maine School of Law oversees the Maine Patent Program, which offers independent inventors and entrepreneurs information and advice on patent law. Inventors disclose their inventions to the Program, where students in the law school's Intellectual Property Clinic conduct a prior art search and work with a patent attorney to prepare a patentability opinion. In some cases, the students and attorneys prepare and file provisional patents on behalf of the inventors. The Program and IP Clinic also work with individuals and start-up companies seeking assistance with trademark or copyright protection. Through public seminars and one-on-one counseling, the students and clinical faculty help educate members of the public on intellectual property law, providing them not just an opportunity to learn but an opportunity to prosper.

VII. THE INSTITUTE FOR INTELLECTUAL PROPERTY AND SOCIAL JUSTICE AT THE HOWARD UNIVERSITY SCHOOL OF LAW: PLACING IP SOCIAL JUSTICE AT THE PEDAGOGICAL FOREFRONT

As is disclosed in its name, social justice is the driving social utility principle of the IIPSJ program at the Howard University School of Law. Since its founding in 2002, IIPSJ has addressed the social justice implications of intellectual property law and practice both domestically and globally. IIPSJ's work ranges broadly and includes scholarly ex-

147. See id.
148. See id.
149. See id.
151. Id.
amination of intellectual property law from the social justice perspective;\textsuperscript{152} advocacy for social-justice aware interpretation, application, and revision of intellectual property law; efforts to increase the diversity of the those who practice IP law; and programs to empower historically and currently disadvantaged and under-included groups to exploit IP effectively. IIPSJ has sponsored scholarship,\textsuperscript{153} conducted conferences, and engaged attorneys and policy makers at all levels—private, corporate, public, and judiciary—in discussions concerning the social justice implications of intellectual property.\textsuperscript{154}

The social justice approach to intellectual property issues not only assures faithfulness to the constitutional mandate but also helps to produce practitioners and scholars capable of implementing the constitutional directive of reinventing the law to apply it effectively to new challenges.\textsuperscript{155} In short, IIPSJ, through its social justice perspective, seeks nothing less than to produce legal social engineers to structure and employ a democratic rule of law in the intellectual property area toward the greater societal good.

Within the broad set of concepts captured by the phrase “social justice,” IIPSJ focuses on inclusion and empowerment, particularly the inclusion of groups historically and currently excluded from full participation in the fruits of the intellectual property regime.\textsuperscript{156} All of IIPSJ’s activities to date and those in various stages of planning and implementation for the future are intimately tied to advancing social justice.

IIPSJ’s programs advance inclusion and empowerment by providing exposure for minority IP practitioners and scholars and drawing attention to the need for and opportunities to advance diversity in the field of IP law practice.\textsuperscript{157} A major vehicle for IIPSJ’s work has been planning and hosting an annual conference around the theme of social justice and intellectual property.\textsuperscript{158} This conference includes speakers and attendees from academia, private practice, governmental policy making positions, the judiciary, and in-house counsel from technology-driven corporations.\textsuperscript{159} Perhaps its most significant contribution, however, is the intertwining of social justice perspectives with cutting-edge developments in the law, and the program’s resulting eligibility for continuing legal education accreditation, making it professionally pragmatic for practicing attor-
Without the social justice focus, however, the conference would be just another IP update and networking conference, or an academic seminar on hot doctrinal issues in the field of IP. Those sorts of conferences are valuable in their own right but do not typically address issues of diversity, inclusion, and empowerment and do not critically examine the IP doctrine from a social justice perspective.

IIPSJ also advocates for social justice through scholarly publications, testimony at legislative and judicial hearings, and commentary on governmental initiatives. The social justice perspective has informed scholarly work by the IIPSJ principals, ranging from a relatively abstract discussion of the implications of the landmark civil rights decision in *Brown v. Board of Education* for intellectual property and a foundational piece articulating the social justice mandate in the Constitution's Intellectual Property Clause to very concrete evaluations of particular parts of the IP regime, including digitizing text and a discussion of the Google Books project settlement agreement and the derivative work right in the social networking context.

IIPSJ's advocacy further extends beyond practitioner education and the academic environment (including both professional mentoring and scholarship) to taking positions on IP-related matters of significant public importance. For example, at the Google Books Project Settlement Hearing, being the first to give testimony during the proceeding, IIPSJ utilized the opportunity to set the tone for the hearing with the twenty-five other speakers having to acknowledge the social justice aspects of the settlement in their own remarks, including those speakers opposing the settlement:

In drafting the Copyright Clause, our Constitution's Framers penned a broad directive of social utility, one amenable not only to legislative and judicial interpretation and application, but also to private initiative and adaptation to the changing realities of an evolving national culture. The proliferation of personal computers and computer software programs, and the concomitant rise of the Internet created a socio-intellectual barrier dividing those who have had access to the brave new world from those who have not. The Google Book Project and the proposed Settlement Agreement have redirected attention in contemporary copyright protection to the necessary balance between the social utility and social justice ends of copyright and the protection of copyright property rights as a means to serve those ends. The Google Book Project as effectuated by the Settlement Agreement positively affects social justice by equalizing

160. Id.
161. *About IIPSJ*, supra note 150.
162. See Jamar, supra note 4, at 629–57.
163. See Mtima, supra note 19, at 119 n.52.
164. See generally Mtima & Jamar, supra note 43; Jamar, supra note 43.
165. See generally Jamar, supra note 43.
IIPSJ has also advocated that United States government enforcement of IP rights take into account not only the rights of IP rights holders but also of others, especially the under-included and marginalized. In its submission to the IP Enforcement Coordinator, IIPSJ advocated for three core principles:

1. IP enforcement policies should preserve author/inventor incentive mechanisms without stunting widespread and socially beneficial use and exploitation of intellectual property.
2. Intellectual property protection is to be an engine of cultural and economic development, not a brake upon them.
3. A progressive, effective enforcement policy must anticipate future needs and opportunities.

IIPSJ continues to take formal positions on IP policy issues, perennially emphasizing the social justice aspects of inclusion and empowerment. These initiatives have not been without impact, as various other scholars, practitioners, and policymakers have also begun to highlight the need for a social justice emphasis in the interpretation and application of the intellectual property law.

Most recently, Under Secretary of Commerce and USPTO Director David J. Kappos delivered remarks at the IIPSJ Seventh Annual Intellectual Property and Diversity CLE Conference in March of 2010, where he discussed the importance of balance and of considering the needs of the marginalized and underserved from an intellectual property and social justice perspective. Recognizing the need for a new global vision of intellectual property social justice, the Under Secretary centered his remarks around the need to address indigenous cultural groups and innovation, a topic typically regarded as outside the intellectual property regime:

I am going to speak about an Intellectual Property related topic that does not get a lot of attention here in the US, but should: traditional knowledge. I'll also touch on some topics that do, deservedly get considerable attention: competition and copyright law.

Let's start by considering why anyone should care about IP—outside of IP circles. Why is IP coming into contact with social jus-

practice issues? As we move into the second decade of the 21st Century, it has become increasingly clear that innovation is a principal driver of our economy and an engine of social advancement. It is also the only sustainable source of competitive advantage for world economies. And since intellectual property is the vehicle that facilitates the delivery of innovation to market, it follows that inventors who use IP effectively will flourish. It also follows that IP plays a crucial role in advancing social justice. And, the distance between idea and marketplace is shrinking. Said another way, innovation is moving more quickly from creation to manufacture. This trend is irreversible. The result is that IP is the vessel that captures value as an idea moves to marketplace.

Take the critical balance we’re working to strike in the area of traditional knowledge, traditional cultural expression, folklore, and genetic resources (TKGR). In today’s knowledge-based economies, many are looking toward traditional knowledge and traditional cultural expressions as a source of revenue. At the same time, with the emergence of modern bio-tech, genetic resources have assumed a greater economic potential and scientific value to a wide range of stakeholders.

We, as an IP community, are wrestling with the challenge of ensuring against misappropriation and misuse of traditional knowledge and traditional cultural expressions/folklore. At the same time, we must pursue sound IP policy, to wit: maximum dissemination of knowledge encourages creativity, helps to preserve, develop and maintain knowledge, and creates value throughout society. In addition, we need to consider the social costs and benefits of recognizing a new right to exclude others from using certain information or resources.

As we move toward solutions for TKGR issues, we must endeavor to strike the proper social balance that ensures life-saving medicines reach the hands that need them, while ensuring the people and culture responsible for their discovery are not exploited. So, it is clear that Intellectual Property and the need for IP protection is expanding. As this happens, IP will continue to bump up against new and different areas of the law.171

Moreover, Under Secretary Kappos did not limit his emphasis upon socially productive interpretation and application of the intellectual property law to innovation currently beyond traditional intellectual property protection. In addition to acknowledging the need to bring TKGR within the IP regime, he also noted the social utility impact that said regimes can have upon competition and innovation:

Patents and competition share the overall purpose of promoting innovation. In order to achieve their complimentary goals, they must be carefully calibrated. For purposes of promoting innovation based on competition, the existing patent regime can be a double-edged sword. On the positive side, high-quality patents provide an

171. Id. at 1–4.
incentive to invent and to disclose inventive results. Conversely, the prospect of large numbers of issued or pending patents with ambiguous boundaries reading on a new product can pose barriers to innovation.172

Thus, social utility remains the fulcrum of a properly balanced system of intellectual property protection.

Perhaps most apt to the issue of contemporary IP social utility, however, is the Under Secretary's application of a social justice perspective to the novel challenges of the digital information age:

Of course, any Internet 3.0 strategy requires that attention be paid to several areas. It requires developing technology that prevents illegal content from flowing on the Internet. It requires the aggressive prosecution and punishment of egregious, professional infringers.

It also requires looking at IP protection as a balance that makes appropriate exceptions and exemptions where called for. Improving copyright exceptions and establishing and enforcing strong intellectual property rights are complementary rather than contradictory tasks. Improving exceptions and limitations for blind, visually impaired, and print-disabled persons is a question of both legal and moral urgency for the international IP community as it is here in the States.

I began this morning by saying that IP is the currency of innovation. In contemplating the nexus between Intellectual Property and social justice, I'm struck by the opportunity IP, as currency, can provide: it can ensure that information reaches the hands of all Americans—and people throughout the world. But the responsibility is ours. Whether it's a young poet on U Street or an engineer in his garage in Oakland, CA, it is our responsibility to educate Americans on IP, and on the innovation future of our country.173

As the quotations from Under Secretary Kappos' speech make clear, social justice concepts provide an effective set of neutral principles from which to assess intellectual property law and the intellectual property regime, in order to balance the protection of rights of creators of intellectual property with those of society in general and of particular users, especially those who have historically not been included and empowered through intellectual property.174 That is the precise business of the IIPSJ.
The social justice perspective of inclusion and empowerment that drives IIPSJ’s work is critically important as a corrective to a more narrow focus on expansion and enforcement of the rights of IP rights owners. This social justice perspective is not pulled from thin air. It comes from the foundational laws of intellectual property in the United States itself. The Constitution authorizes Congress to make patent and copyright laws “to promote the progress of science and useful arts” for the benefit of everyone—not just a few. It is society’s benefit that matters; the limited rights granted to exploit the works created and inventions made are the means to the end. Under Secretary Kappos provides a poignant example of how these means can concretely advance social utility ends when fueled with a social justice impetus:

So let me conclude . . . with a short story. A true story. A few months ago I had the opportunity to award the 600,000th Design Patent. The award marks a significant milestone for both the USPTO and the inventor community. The design patent chosen for the ceremony represented a wonderful invention—the “go-be solar charger.” The charger is pretty cool—it is a briefcase-sized solar panel that produces energy which can be used to charge a wide range of electronic devices. But it wasn’t just the invention that stuck with me. It was the story of the person behind the machine. Mr. Robert Workmen may not have known it, but for a moment, he personified the future of IP: a balance of innovative thinking and IP protection with an emphasis on the moral imperative of helping others. Mr. Workmen had the idea for the “go-be solar charger” while doing aid work in the Democratic Republic of the Congo; where the constant power shortages frustrated his teams’ ability to be productive. Mr. Workmen’s idea—and the company Mr. Workmen has built around it—are now responsible for 900 jobs right here in the United States. Importantly, his invention provides a low cost solution to power shortages in Africa and around the world. His story—and stories like his—demonstrate the potential of IP in maximizing tech diffusion international development partnerships and encourage increased international technology transfer of proprietary health and agricultural biotechnologies. Equitable access to critical biotechnological innovations will improve basic health and nutrition, especially among the poor of developing countries, disproportionately represented by women and children . . . . Strengthened human and institutional IP capacity in developing countries will also drive domestic innovation, generating products and processes that address the specific needs of the country and region. The connection between IP innovation and technological progress is fundamental; IP management capability is interwoven into the innovation framework, providing incentives, protecting innovative endeavors, providing a shelter for development and fostering a platform for commercialization and market entry . . . . If ignored, the innovative assets of developing countries will remain disorganized, haphazardly managed and chronically underutilized, to the detriment of the public good.”; see also Christine Haight Farley, Protecting Folklore of Indigenous Peoples: Is Intellectual Property the Answer?, 30 CONN. L. REV. 1, 2–4 (1997).

175. U.S. CONST. art. I, § 8, cl. 8 (“Congress shall have power . . . [t]o promote the [p]rogress of [s]cience and useful [a]rts, by securing for limited [t]imes to authors . . . the exclusive [r]ight to their respective [w]ritings . . . .”).
and opportunity toward improving social justice.176

Properly understood, using a social justice perspective to examine intellectual property law is not only appropriate but demanded: it engenders an IP regime that induces the creation of innovative and expressive works not primarily toward the enrichment or benefit of a select few but for the betterment of society as a whole.