

The Evolving IP Marketplace: FTC Hearings – May 4, 2009

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Two main themes

- **Asset definition**
- **Asset legitimacy**

Asset definition

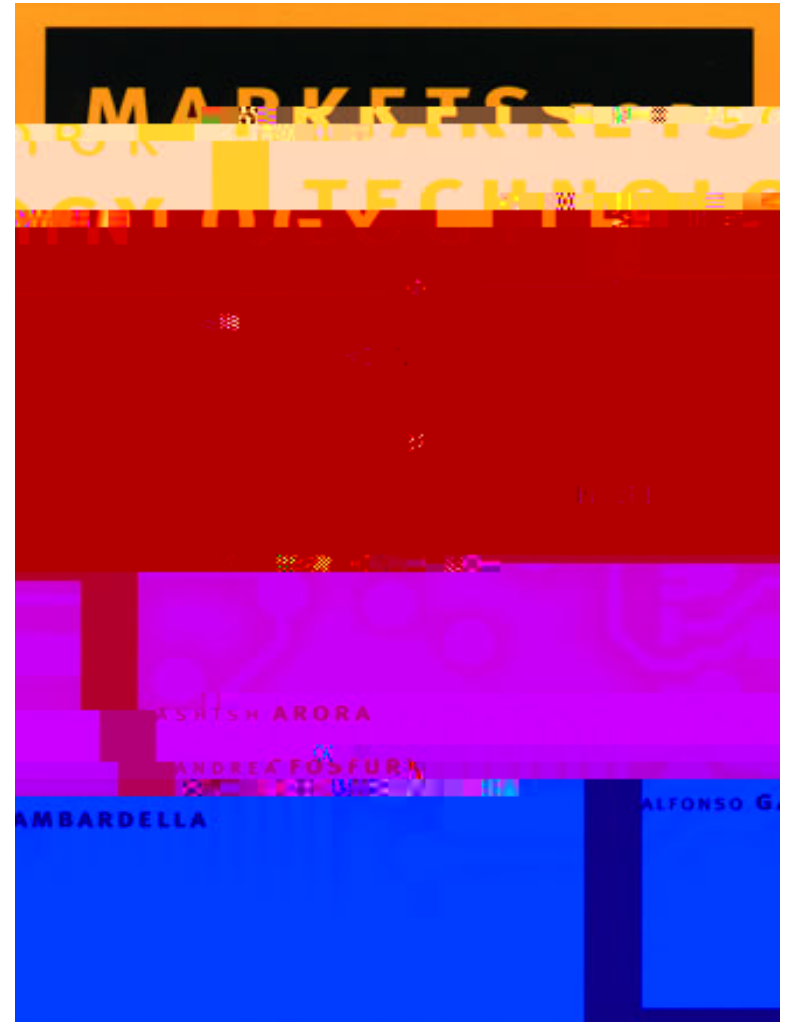
- **In a market, what assets are traded?
How is their value established?**

“The market for patents”

- There is a complex relationship between (1) tangible assets, (2) information, and (3) IP rights
- Markets for these three things interact in important ways

New Research on IP and “Markets for Technology”

Ashish Arora, et al.,
“Markets for
Technology” (MIT
Press 2002)



Valuation

- Rankings, ratings, and common denominators
 - “Moody’s ratings”
 - Square footage in real estate

Transparency

- Should the prices of patent transactions be made public?
 - Benefits: comparability
 - Costs: would this affect settlement of infringement suits?

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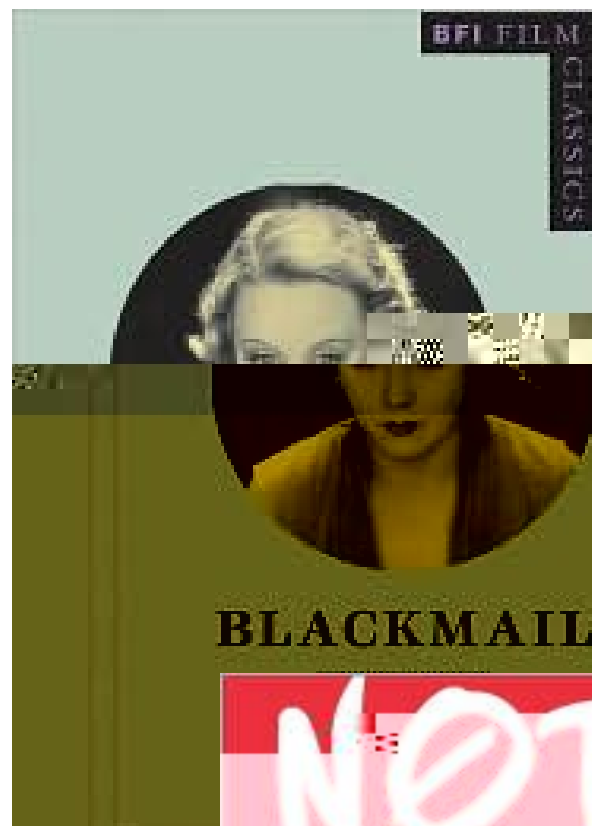
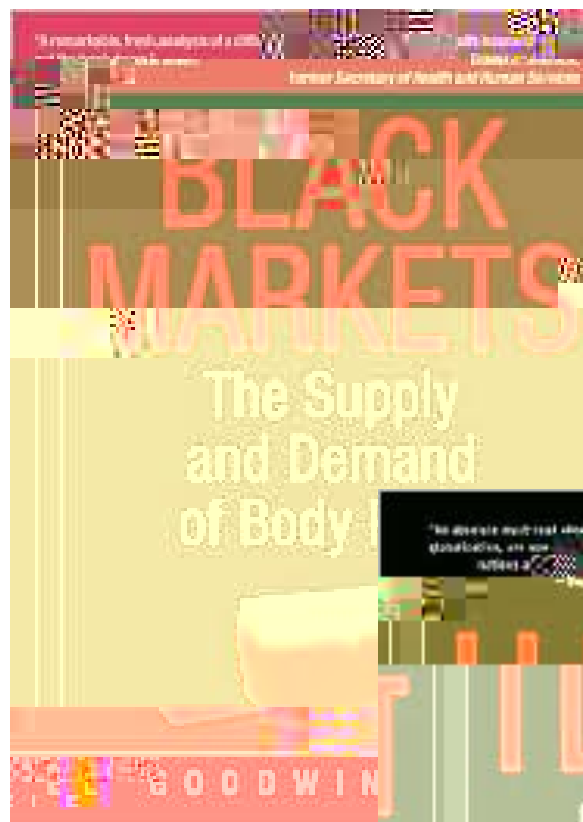
Now for something completely scary

...



Society determines which transactions are legitimate, and which are not

- *The existence of a market does not, by itself, confer legitimacy*



“The market for patents”

- There is a complex relationship between (1) tangible assets, (2) information, and (3) IP rights
 - Market for patents should serve to facilitate production of information and/or tangible assets; should “promote the progress of” industry

- Must show that an active market in patents promotes technological innovation
 - Patents in service of innovative information/products

How can this be shown?

- “Follow the money” – are startups seeing any money from these patents?
- Spinoffs: are portfolios being licensed in to help found new companies?

Long term studies

- Does the “market for patents” provide an “exit option” for startups and declining firms?
 - Do financiers include this “salvage value” in financing decisions?
- Does the IP market really lead to income for small and independent inventors?