

# Can Prices Be Property?

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*Disclaimer: The views expressed in this presentation are of the presenter only and do not necessarily reflect the views of the CFTC or its staff.*

# Outline

- A brief historical review of intellectual property disputes involving prices.
- A brief review of the scholarship related to the subject.
- A review of some policy issues posed by intellectual property disputes over prices.

# Disputes Over the Ownership of Prices Are Not New:

- Medieval fairs.
- 19<sup>th</sup> century stock exchanges.
- 19<sup>th</sup> century futures exchanges.
- Consolidated tape and the NMS. (1970s)
- Government bond market. (1990s).
- Municipal bond market. (1990s)
- Settlement prices for CME back-month Eurodollar contracts. (1994).

# The 19<sup>th</sup> Century CBOT and the Establishment of Property Rights to Price Quotations

- The CBOT faced new trading technology: the telegraph, i.e., “The Victorian Internet,” that made price quotations more valuable.
- The telegraph facilitated off-exchange traders who used exchange-generated price quotations without contributing to the price discovery process at the exchange.
- Courts ordered the CBOT to furnish quotes to all, on the same basis, or none.

# The 19<sup>th</sup> Century CBOT and the Establishment of Property Rights to Price Quotations

- The “Baker Blackout.” The telegraph operators were tossed out and the windows of the exchange hall were soaped to prevent transmission of price quotes to outsiders via hand signals. This period of (literally) opaque markets lasted for 20 months.

# The 19<sup>th</sup> Century CBOT and the Establishment of Property Rights to Price Quotations

- In 1905 the U.S. Supreme Court held in *Christie* that the CBOT could protect their price quotations from unauthorized use.

*"The [CBOT's] collection of quotations is entitled to the protection of law. It stands like a trade secret."*

DEPARTMENT  
OF  
MARKET REPORTS.

E. P. WHITFORD.  
MANAGER.

BOARD OF TRADE.

Chicago, Feb 21, 1888.

G. G. Parker Esq.

Chairman Com. on Mkt Repts.

Sir:

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~~At the Committee of the Board~~

Very respectfully

E. P. Whitford. mgc.

# Review of Scholarship on Intellectual Property Issues Related to Prices

- ◆ The role of property rights in facilitating market transactions has been studied by both economists and legal scholars:
  - Ronald Coase, *The Firm, The Market, and the Law* (1988); "The Institutional Structure of Production," *American Economic Review*, 1992.
  - Yorem Barzel, *Economic Analysis of Property Rights*, (1989).
  - Armen Alchian, Harold Demsetz, Douglas North, Richard Posner and many others.



# Review of Scholarship on Intellectual Property Issues Related to Prices

- ◆ There is a small body of literature related specifically to property rights and prices:
  - Mulherin, Netter, and Overdahl.
  - Brown-Hruska and Ellig.
  - Webb.
  - Price transparency literature (e.g., Mulherin).
  - Economics of information literature (e.g., Stigler).
  - Evolution of the law literature (e.g., Epstein).

# Review of Scholarship on Intellectual Property Issues Related to Prices

- ◆ Prices do not spontaneously appear. High-quality prices are the result of a production process that involves considerable investment and expense.
- ◆ Exchanges are firms that produce prices. Exchanges exist because they provide an efficient means to economize on the transaction costs associated with trading.

# The Ability of Exchanges to Establish and Enforce Property Rights to Real-Time Prices and Quotes...

- ◆ Solved the externality problem associated with price production faced by exchanges, permitting exchanges to perform their cost-reducing role in the trading process.
- ◆ Helped improve the quality of prices discovered at the exchange.

# Review of Scholarship on Intellectual Property Issues Related to Prices

- ◆ Technical innovation can compromise existing contractual relationships by introducing new opportunities unforeseen at the time the contracts were written.
- ◆ Innovation in trading technology can make prices more valuable and worth fighting over, e.g., the telegraph, the telephone, the ticker, the internet, electronic trading platforms, the rise of dealer (swap) markets.

# Policy Issues Posed by Intellectual Property Disputes Related to Prices

- ◆ Property restrictions vs. monopoly restrictions.
- ◆ Market transparency issues.
- ◆ Do exchange-generated prices fit the definition of a public good?
- ◆ Efficiency vs. wealth transfers.

# Property Restrictions vs. Monopoly Restrictions.

- ◆ Property rights can exclude and restrict. So can monopolistic restrictions. How do we tell the difference?

# Market Transparency Issues

- ◆ Will the invisible hand produce transparent markets? That is, do sufficient incentives exist for organized exchanges to produce transparent markets? At what price?
- ◆ Mandated transparency. SEC-style vs. CFTC-style transparency requirements.
- ◆ Publication of market data vs. control of use.
- ◆ Information producers vs. information consumers.
- ◆ Mandated price transparency can raise the cost of trading in a transparent market existing side-by-side with an opaque market.

# Are Prices a Public Good?

- ◆ *Nonrivalrous consumption criterion.* Is the marginal cost of an additional person using a price, once it is produced, zero?
  - Probably.
- ◆ *Nonexcludability criterion.* Can prices be withheld from one party only by withholding them from all?
  - No. History shows that exchanges have the ability to restrict the use of prices.
- ◆ Is contracting for the use of prices prohibitively expensive?
  - No. There is a thriving market for price information through data vendors and other private contracts.
  - Fuzzy property rights can raise the cost of private contracting.



# Efficiency vs. Wealth Transfers

- ◆ In considering policies that affect the strength or certainty of property rights over price information, policy makers need to distinguish between efficiency effects (effects that on average make everyone better off) and wealth transfer effects (effects that benefit one group at the expense of another).