

# Santa Clara University

## Search Engines & Transaction Costs

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# The Problem

- Search engines use third party IPRs without permission...
- ...but often let rights owners opt-out
- Concerns
  - 3rd party republishers
  - After opt-out, search engines still may infringe
  - Rights owners bear the burden...
  - ...in largely unprecedented manner

# Coase Theorem (Pure Case)

- Coase Theorem: if bargaining costs =0, parties will bargain to a single economically efficient outcome—regardless of initial entitlement allocation
  - Regulatory choice between opt-in and opt-out is irrelevant
  - But distributional effects

# Coase Theorem & Bargaining Costs

- If bargaining costs  $>0$ , initial allocation may be determinative
  - Ex #1: the Long Tail
  - Ex #2: Orphan works
  - Ex #3: Takedown notices
- Option #1: Allocate entitlement to minimize bargaining costs
- Option #2: Allocate entitlement to maximize social welfare

# Search Engine Exceptionalism

- **Pros:**
  - Search engines rarely compete with rights owners
  - Positive spillovers of keyword searching
  - Multitudinousness of rights owners
- **Con: can't define search engines**