



INDIANA UNIVERSITY BLOOMINGTON  
**OSTROM WORKSHOP**  
**COLLOQUIUM SERIES**

## **James Boyle and Jennifer Jenkins**

*Duke University School of Law*

Monday, February 8: 12:00 – 1:00 pm EST

Virtual via Zoom: [Click here for link to Zoom meeting](#)



## **Mark of the Devil: Universities and the Disappearing Trademark Commons**

The environmental world has paid attention to the tragedies, and comedies, of the physical commons, to the ways that formal law and informal culture combine to mitigate the dangers that commons status might otherwise suggest. Indeed, that focus was one of Lin Ostrom's many great contributions to the economic literature. But, as Professor Ostrom herself noted, there is an intellectual commons also. Facts, ideas, words, natural laws: all of these exist outside of the world of intellectual property: free for all to use and recombine. Even our speechways involve a line between the realm of the owned and of the free. Trademark law allows you to criticize a brand, to use its name in comparative advertising, or in a different context (Delta for airlines, but also faucets). Yet that commons is gradually disappearing and, strangely, universities are one of the entities leading the charge. In recent years, universities have been accused in news stories of becoming "trademark bullies," entities that use their trademarks to harass and intimidate beyond what the law can reasonably be interpreted to allow. This paper provides the first ever empirical analysis to see if these allegations are true.

[James Boyle](#) and [Jennifer Jenkins](#) both teach law at Duke Law School.

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*Due to the COVID-19 pandemic, all Ostrom workshop presentations will be virtual until further notice. Join instantly using the link above. For questions, contact Allison Sturgeon ([sturgeon@iu.edu](mailto:sturgeon@iu.edu))*