Contracting over information is notoriously difficult. Nearly fifty years ago, Kenneth Arrow articulated a “fundamental paradox” that arises when two parties try to exchange information. In order to complete such a transaction, the buyer of information must be able to place a value on the information and determine how much she is willing to pay. But once the seller discloses the information, the buyer is in possession of the subject of the trade and no longer has any reason to pay for it. The conventional legal solution to the paradox is a grant of intellectual property rights. If information is subject to a patent or a copyright, then it can be disclosed without fear of expropriation.

This account of information exchange forms the basis for an increasingly popular argument in favor of broad and strong intellectual property rights: If the disclosure paradox interferes with entrepreneurs’ ability to contract for capital or other resources, and intellectual property solves the disclosure paradox, then the scope of intellectual property should expand to encompass whatever information will be socially valuable to exchange.

There can be little doubt that commercialization is of critical importance to innovation and economic growth. Facilitating linkages between creators or inventors and potential sources of development, improvement, and capital – that is, overcoming the disclosure paradox – is increasingly being recognized as an important policy lever for promoting innovation. This article explores the paradox and its potential solutions in detail, a necessary first step toward determining when policy interventions to facilitate information exchange for commercialization may be necessary and the form that any such interventions should take.

More specifically, this article demonstrates that the conventional account of the disclosure paradox and its legal solution rests on assumptions that are neither theoretically nor empirically justified. It is based on a stylized model of information that does not reflect the reality of the economic good that parties seek to exchange. And it largely ignores the possibility that alternative mechanisms for facilitating information exchange exist and may present a different social welfare calculus than intellectual property. Drawing on the literatures in management, information science, and law – as well as a series of pilot field interviews with entrepreneurs, investors, and transactional lawyers – I develop a framework for evaluating the range of potential solutions to the disclosure paradox. I conclude that proponents of a commercialization theory of intellectual property that is focused on the costs of information exchange consistently under-appreciate the range of potential strategies by which parties may enable commercially significant exchange and the ways in which those strategies interact within complex business, cultural, and legal environments.