

Intellectual Property Cannot Be Property

Editor's Pick. Written by Joseph Diedrich.

What is property?

More specifically, at its essential theoretical core, beyond the artifice of legal fiat, what is property?

Somewhat broadly, property is anything that satisfies each of the following requirements: property is scarce; property possesses objective (intersubjectively ascertainable) borders; and property has a determinable temporal genesis.

The theory of intellectual property (IP) posits that two distinct genera of proprietary resources exist—tangible and ideal—and that, while formally differentiable, they are fully compatible within a logically constructed theory of property. In essence, both tangible and ideal resources are property.

For the sake of argument, assume the truth and tenability of the IP theory—that ideal resources are, in fact, property. Assume that every idea, pattern, design, and conception meets all three of the aforementioned necessary requirements to be classified as such. Ultimately, assume that the theory of intellectual property is legitimate and fits harmoniously within a broader theory of property rights.

What, then, are the logical implications of such an assumption?

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