

Intellectual Property is Not True Property

Editor's Pick. Written by David S. D'Amato.

In a world where the “new economy” — the Information Age’s digital one — has rendered traditional capital goods such as heavy machinery significantly less important, issues surrounding intellectual property are arguably more urgent than ever before. The course that the political class has chosen in its analyses of intellectual property law has already had sweeping implications. As law professor Mark A. Lemley wrote back in 2003, “Instead of concluding that cyberspace is outside of the physical world, courts are increasingly using the *cyberspace as place* metaphor to justify application of traditional laws governing real property to this new medium” (emphasis added). We are thus left with the question of whether this analogy between ideas in the digital world (as well as more generally) and property in the physical world is apt; certainly it is convenient, but we must ask whether it actually clarifies the issues at play or obscures them, creating a false equivalency that leads to social and economic harm.

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