



Chapter III

Justifying Intellectual Property Protection: Why the Interests of Content Creators Usually Win Over Everyone Else's

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Abstract

I argue that the law should provide limited protection of intellectual property interests. To this end, I argue that whether the law ought to coercively restrict liberty depends on an assessment of all competing interests. Further, I argue that the interests of content creators in controlling the disposition of the content they create outweigh the interests of other persons in using that content in most, but not all, cases. I conclude that, in these cases, morality protects the interests of content creators, but not the interests of other persons and hence would justify limited legal protection of the content creators' interests.

Introduction

Whether or not intellectual property rights ought, as a matter of political morality, to be protected by the law surely depends on what kinds of interests the various parties have in intellectual content. Although theorists disagree on the limits of morally legitimate lawmaking authority, this much seems obvious: the coercive power of the law should be employed only to protect interests that rise to a certain level of moral importance; indeed, it would be wrong for the law to coercively restrict behaviors in which no one has any morally significant interests (i.e., interests that are important enough from the standpoint of morality that they receive some protection from moral principles) whatsoever.

In this essay, I argue that the interests that content creators have in the content they create (or discover) outweigh the interests of other persons in all cases not involving content that is necessary for human beings to survive, thrive or flourish in certain important ways. While this might not imply the existence of moral rights to intellectual property, it surely provides a strong reason for affording some stringent legal protection to the interests of content creators in the contents of their creations. And one eminently sensible way of protecting their interests is for the law to allow them limited control over the disposition of their creations.

Nevertheless, this should not be taken to imply any sort of endorsement of copyright law as it is currently formulated in the U.S. or in any other nation. For what it is worth, I think it quite reasonable to believe that various elements of these laws are morally problematic and hence should be rethought and reformulated. For example, though I cannot argue the point here, I think it fair to say that the existing length of copyright protection in the U.S. lacks an adequate justifying rationale. My point in this essay is not to offer a sympathetic analysis of any body of existing copyright law, but is rather to show that the interests of content creators deserve some reasonably stringent legal protection. How much protection, however, is not something I will address here.¹

Learning from Locke

The Lockean Approach to Justifying Property Rights in Material Objects

It is instructive to begin with a brief look at the classical Lockean argument for original acquisition of property (i.e., conversion of an object that no one owns into

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