

24.1. Intellectual property

‘Something that doesn’t actually exist can still be useful.’

Ian Stewart

Synopsis: *Intellectual property is a kind of property that is exercised over dematerialised datasets (1); All that was said about property is applicable also on intellectual property; Crucially, however, intellectual property does not afford the owner the option to destroy the dataset (2); Intellectual property, same as property, is dependent on the state; similarly, it is natural to humans (3);*

1. *

Intellectual property is a kind of property⁷²² that is exercised over dematerialised⁷²³ datasets.

Although property in the analogue world has been exercised since the beginning of time,⁷²⁴ the concept of intellectual property was invented only relatively recently in human history, in the seventeenth century. It reproduced, to the greatest extent possible, what was already known of the traditional notion of property. Because it was created by humans, intellectual property was made to resemble what humans were already familiar with (a remark that, as can be seen, is also valid for the digital world⁷²⁵).

2.

All that has been said about property above⁷²⁶ is also applicable to intellectual property: it means control over a dataset (which is, however, dematerialised); it gives to a Being (human or organisation) the ability to allow or prohibit another’s processing operation over that specific (dematerialised)

722 See Chap. 24.

723 See Chap. 1.1, par. 10.

724 See Chap. 24, par. 3.

725 See Chap. 1, par. 11.

726 In Chap. 24.

dataset. Ultimately, intellectual property is an attribute of a specific dematerialised dataset that dictates whether and what type of processing on it is allowed, by which Being(s) and under which conditions.

Crucially, however, intellectual property does not afford the owner the option to destroy the dataset. Unlike traditional property, this being its distinctive characteristic,⁷²⁷ owners of intellectual (dematerialised) datasets cannot destroy them once they have been created, that is, once they have materialised and come into existence in the analogue or the digital world. Apparently, the replication of the traditional property system was unsuccessful—and this accounts for the dysfunctions of the intellectual property system.

3.

Notwithstanding the differences between the traditional notion of property and intellectual property, intellectual property, like property, is dependent on the state⁷²⁸ and is protected by the state in accordance with the political system and government decisions in place at any given time.

The question of whether intellectual property is natural to humans merits some explanation.⁷²⁹ Although the fact that intellectual property was invented late on in human history suggests the opposite, one must not forget that humans will process information in any way they can. Until the seventeenth century (with the Industrial Revolution leading to mass mechanical reproduction), humans processed dematerialised information in the only way they knew how, augmenting their information processing in accordance with their processing capabilities. When things changed, a new type of property was invented, one which was natural to them.⁷³⁰

As with property, however, intellectual property is not a platform right.⁷³¹

727 See Chap. 24, par. 1.

728 See Chap. 24, par. 6.

729 As with property, see Chap. 24, par. 3.

730 On the basis of the abstraction criterion set out in Chap. 5, par. 5.

731 See Chap. 24, par. 3.