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DEFINING PROPERTY

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As a child I read a book of stories about a famous judge in eighteenth century Japan called Ooka Tadasuke. One of the cases he decided was brought by the owner of a food shop. A poor student who could afford only rice was eating his rice while enjoying the delicious cooking smells coming from the food shop. The owner wanted the student to pay for the smells he was enjoying.

The student was stealing his smells!

This story often comes to mind when I hear the RIAA and MPAA accusing people of stealing music and movies.

It sounds ridiculous to us to treat smells as property. But I can imagine scenarios in which one could charge for smells. Imagine we were living on a moon base where we had to buy air by the liter. I could imagine air suppliers adding scents at an extra charge.

The reason it seems ridiculous to us to treat smells as property is that it wouldn't work to. It would work on a moon base, though.

What counts as property depends on what works to treat as property. And that not only can change, but has changed. Humans may always (for some definition of human and always) have treated small items carried on one's person as property. But hunter gatherers didn't treat land, for example, as property in the way we do. [\[1\]](#)

The reason so many people think of property as having a single unchanging definition is that its definition changes very slowly. [\[2\]](#) But we are in the midst of such a change now. The record labels and movie studios used to distribute what they made like air shipped through tubes on a moon base. But with the arrival of networks, it's as if we've moved to a planet with a breathable atmosphere. Data moves like smells now. And through a combination of wishful thinking and short-term greed, the labels and studios have put themselves in the position of the food shop owner, accusing us all of stealing their smells.

(The reason I say short-term greed is that the underlying problem with the labels and studios is that the people who run them are driven by bonuses rather than equity. If they were driven by equity they'd be looking for ways to take advantage of technological change instead of fighting it. But building new things takes too long. Their bonuses depend on this year's revenues, and the best way to increase those is to extract more money from stuff they do already.)

So what does this mean? Should people not be able to charge for content? There's not a single yes or no answer to that question. People should be able to charge for content when it works to charge for content.

But by "works" I mean something more subtle than "when they can get away with it." I mean when people can charge for content without warping society in order to do it. After all, the companies selling smells on the moon base could continue to sell them on the Earth, if they lobbied successfully for laws requiring us all to continue to breathe through tubes down here too, even though we no longer needed to.

The crazy legal measures that the labels and studios have been taking have a lot of that flavor. Newspapers and magazines are just as screwed, but they are at least declining gracefully. The RIAA and MPAA would make us breathe through tubes if they could.

Ultimately it comes down to common sense. When you're abusing the legal system by trying to use mass lawsuits against randomly chosen people as a form of exemplary punishment, or lobbying for laws that would break the Internet if they passed, that's ipso facto evidence you're using a definition of property that doesn't work.

This is where it's helpful to have working democracies and multiple sovereign countries. If the world had a single, autocratic government, the labels and studios could buy laws making the definition of property be whatever they wanted. But fortunately there are still some countries that are not copyright colonies of the US, and even in the US, [politicians](#) still seem to be afraid of actual voters, in sufficient numbers. [3]

The people running the US may not like it when voters or other countries refuse to bend to their will, but ultimately it's in all our interest that there's not a single point of attack for people trying to warp the law to serve their own purposes. Private property is an extremely useful idea — arguably one of our greatest inventions. So far, each new definition of it has brought us increasing material wealth. [4] It seems reasonable to suppose the newest one will too. It would be a disaster if we all had to keep running an obsolete version just because a few powerful people were too lazy to upgrade.

Notes

[1] If you want to learn more about hunter gatherers I strongly recommend Elizabeth Marshall Thomas's [The Harmless People](#) and [The Old Way](#).

[2] Change in the definition of property is driven mostly by technological progress, however, and since technological progress is accelerating, so presumably will the rate of change in the definition of property. Which means it's all the more important for societies to be able to respond gracefully to such changes, because they will come at an ever increasing rate.

[3] As far as I know, the term "copyright colony" was first used by [Myles Peterson](#).

[4] The state of technology isn't simply a function of the definition of property. They each constrain the other. But that being so, you can't mess with the definition of property without affecting (and probably harming) the state of technology. The history of the USSR offers a vivid illustration of that.

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■ [Japanese Translation](#)
