

Property, Privileges and Access to Information

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INTRODUCTION & OBJECTIVES

The question of access to information depends on the strength of intellectual property rights. We have such difficulty defining the question of access to information in the copyright system because copyright jurisprudence has overlooked an important distinction in property law:

- rights in rem (property rights in a thing); and
- rights in personam (personal rights to use a thing)

The Article upon which this poster is based suggests that the rights provided by the Copyright Act are in personam in nature and do not include a right to exclude society from accessing information for progress. The goal of the Article is to demonstrate that ownership of literary and artistic works under the Copyright Act does not include a legal right to exclude use of information by society.

RIGHTS IN REM & RIGHTS IN PERSONAM



Rights In Rem

- In a thing
- right
- exclusion
- general
- standardized
- property



Rights in Personam

- Bundle of Rights
- privilege
- governance
- specific
- customizable
- contract

PROPERTY RIGHTS & INREM/IN PERSONAM DISTINCTION



Right to Exclude
Purpose: To Conserve / Preserve



Right to Use
Purpose: To Produce

COPYRIGHT & IN REM/IN PERSONAM DISTINCTION

Right to exclude from use of creative personality

Privilege to reproduce, distribute, perform, display

Privilege to use information is with society



Author / Creator of Work

In Personam

In Rem

INFORMATION AS A RESOURCE



Information

is like



Light

Is free as air for the common use in most situations (INS v. Associated Press, Justice Brandeis dissenting)

But costs of production in some situations are high. For example, light from a light house is costly to produce. Similarly, the cost of human & intellectual capital used to produce information may be high.

To encourage the production of a resource that cannot be depleted, certain rights are needed to ensure that its producer is paid for incurring the cost of providing the resource.

CONCLUSION

This Article concludes that because information is a resource that is needed for progress but costly to produce, incentives are needed to encourage production.

As a resource that is abundant, information need not be conserved and protected by exclusionary rules of the in rem type. Rather specific governance rules of the in personam type are needed to govern use of the resource.

The right to exclude applies only to protect or conserve the author's creative personality.

This is a work in progress. For article, or to send comments/suggestions, email ng@mc.edu