

The Stewardship of Intellectual Property

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Intellectual property laws are primarily justified on the grounds of spurring living individuals to authorship and inventorship. But, particularly in the case of copyright law, with its lengthy term of protection, works of authorship that are in fact produced will be tended to and exploited by others long after the creator's death but before they enter the public domain. This paper will explore several lines of inquiry that are raised by the prospect of downstream stewardship of IP: what is the right legal prism through which to understand the nature of later-in-time decision-making that occurs with respect to the exploitation of a work? For example, should stewards in some sense be conceived of as authors themselves by virtue of the control they exert over these works? Are they subject to any duties in how they exploit or fail to exploit the works? Does their status depend on whether they are exercising rights in an individual role (say, as a family member) or in a fiduciary capacity (say, as a trustee)? This paper will examine the nature of downstream control exerted in the context of copyright law, making applicable comparisons to the laws governing patents and rights of publicity, in an attempt to offer a coherent theory of the nature and legal consequences of post-mortem control of intellectual property.