

The Continuation of the Geographic Boundaries of Empire in the New Digital Order

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Current battles over the nature and scope of protection afforded creative and innovative activities in the “new digital order” have strong resonances with historic battles over the territorial boundaries of that formed the basis for the 19th Century Empires whose views of land and power continue to dominate intellectual property debates today. The geographic boundaries of Empire established in the 19th Century placed priority on the value of western centered views of creativity, placed the raw materials (creativity) of the Third World at the service of western centered creativity, marked the boundaries of intellectual property protection to serve the perceived needs of such western centered creativity with geographic boundaries that had little relevance in the colonized third world, and imposed a “civilizing” regime that insisted that progress (creativity) would be best served by such a territorial regime. Despite the evolving needs of the digital order, the processes of Empire, including its emphasis on territoriality as a rights modality, and its determination that its civilizing message is good for all comers, remains a powerful, and inhibitory force in the development of a rational, socially just and forward looking intellectual property regime. One of the most critical and under-examined aspects of these processes is the adverse impact of territorial imperatives on current efforts to protect indigenous innovation, including mistaken reliance on geographically delimited indicators to protect indigenous crafts and territorially delimited trademarks in a digital marketplace. Unless we uncover the mistaken reliance on old notions of land and power contained in the Empire based systems of the 19th and 20th Centuries, we will continue to replicate the same mistakes as we craft new regimes for trademarks and geographic indicators for the new digital order. Like the Empire builders of old, we will continue to impose our vision of the civilizing concepts in intellectual property use and protection, based on outmoded traditions derived from old notions of territory and power whose relevance has long since past.