

IP's Negative Space: Beyond the Utilitarian

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A growing body of scholarship addresses intellectual property's "negative spaces": areas in which creation and innovation thrive without significant formal protection from intellectual property law. Negative space scholars have, for the most part, taken a utilitarian approach, using case studies to examine the relationship between negative spaces and economic incentives for creation and innovation. For a full understanding of intellectual property's negative spaces, however, we must examine them not only as they relate to incentive and efficiency considerations, but also as they relate to alternative conceptions of intellectual property, such as those based on labor-desert, personhood, and social planning theories. This paper undertakes such an examination. The result suggests areas of misalignment between traditional intellectual property rights and remedies and the interests of many creators and innovators.