

Restorative Intellectual Property

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Restorative Justice is a well-accepted approach to remedying injustice and harm. Rather than focusing exclusively on punishment, it considers the nature of the harm and the subjective experiences and needs of those involved and affected, and incorporates direct communication between those who inflict harm and those who suffer it as a mechanism of formulating solutions for healing damage and preventing continued or repeated harm. As a legal concept, it has been particularly well-explored in the fields of torts, criminal law, and cultural justice. This project considers what intellectual property law can learn from restorative justice theory and practice, especially in light of the fact that both perpetrators and victims of intellectual property wrongs may be corporations rather than individuals. It asks questions common to restorative justice processes and applies them to intellectual property concepts: how do we determine what harm is caused by improper appropriation of intellectual property, and to whom? What are their needs? Who has a stake in the situation? And how can stakeholders contribute to efforts to address causes and remedy harms? By asking these questions, we can gain a deeper understanding of how intellectual property might best satisfy its Constitutional aim of promoting progress, and how its current implementation may miss that mark. This project is at the early (brainstorming) stages.