

Data is Property

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Data is property. Accepting this claim requires taking a functional and broad view of what “things” are and what “property” is, what it means to “possess” property, and how to “exclude” others from it. Indeed, there are already various things we recognize, with different natures, which require different property doctrines.

To possess data is to have control over a copy of information. Just as the legal system protects possessors of land, widgets, and accounts, it also protects possessors of data from dispossession, interference, and unauthorized use of the information with respect to their copies. This is the logic of personal, real, and intangible property, and it is very different from the logic of intellectual property, which protects the information itself (not just copies) against unauthorized use.

Similarly, “transactions in data” are like transactions in widgets and works and accounts. There is a definable thing that is central to the transaction — the data — and like the widget, the written work, and the bank account, we can describe what the thing is we are talking about, and use that description to understand how transactions in the thing can work. This functional account of data’s “thinginess” further reveals the utility in adopting a property framework to think about data.