

IP and the Question of Who Creates

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Many scholars have observed a substantial connection between the specifics of intellectual property doctrines, on one hand, and the sorts of inventions, works, and marks that people create, on the other. It is well established that Intellectual property law inherently favors the creation of inventions and works with predictably high market value, by providing creators exclusive access to those markets. I suggest, however, that intellectual property law influences not only what sorts of things get made, but also who makes those things. This project draws on social science, critical theory, and studies of intellectual property's "negative spaces" to explore how intellectual property law and rhetoric may influence who creates, and how different sorts of creators (as distinct from their creations) are discursively valued by intellectual property law. While (as a general matter) law carries enormous potential to protect the less-privileged, legal systems often tend to favor large-scale players over individuals and small-scale players, rich over poor, majority over minority. The same can be said for intellectual property laws' systems of mediating spaces between communities' disparate norms surrounding innovation, creation, copying, and attribution.