

Against Progress: IP and Fundamental Values in the Internet Age, Chapter 4, "Harms"

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I propose to present the fourth chapter of my book-in-progress. (*Against Progress: Intellectual Property and Fundamental Values in the Internet Age*.) Each chapter describes fundamental values emerging in IP discourse and contemporary culture. Drawing on cases and qualitative empirical data (over 80 face-to-face interviews with creators/innovators), chapters investigate fundamental values in terms of 21st c. technologies and IP disputes. Chapter Four pivots from positive values of the previous chapters (equality, privacy, and distributive justice) to describe harms and abuses among creative/innovative communities. For example, this chapter describes how problems of "infringement" become experienced as harms akin to discrimination and oppression that immobilizes rather than facilitates good work. It asks about the appropriate redress when harms are described as personal rather than arms-length property claims. And it canvases the characterization of grievances from common thoughtlessness, to moral failures, such as selfishness or greed, to outlier malevolence. This reorients thinking about IP from a competitive property injury in which winner-takes-all to personal affronts related to bodies, relationships, and livelihoods. Finally, this chapter proposes that many of these harms can be understood less as individual harms but as injuries to critical institutions, communities, and systems that are the foundation of personal thriving and professional livelihoods. Building from the political-economic theory of "precarity" that developed at the turn of the century with new wage-labor movements critiquing the gig economy and globalization, this chapter concludes with an analysis of IP discourse exemplifying some of the more urgent debates about human welfare and democratic institutional responsiveness in the 21st century. In other words, harm is not personal but systematic, and what is precarious is not individual welfare but social and economic systems on which individual welfare depends. One upshot for IP, in particular, is to experiment with new rights and remedies, such as attribution, credit and compulsory licensing. Another is that infringement liability and litigation to redress harms are outmoded; instead everyday creators and innovators appear to demand a restructuring of contours of exclusivity and 21st century public domain.