

# *Contents, Viewpoints, and Intellectual Property*

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The Supreme Court has held that content discrimination is presumptively subject to strict scrutiny under the First Amendment, and viewpoint discrimination is even more strongly disfavored. Under straightforward ideas about what counts as “content” and what counts as a “viewpoint,” however, these rules seem inconsistent with broad swaths of how intellectual property laws are, and should be, treated under the First Amendment. This work attempts to conceptualize “contents” and “viewpoints” in ways that are more consistent with the theoretical underpinnings of why we scrutinize laws under the First Amendment, and it explores what those concepts then tell us about the relationship between intellectual property laws and the First Amendment.