

Property as Platform:  
Coordinating Standards for Technological Innovation

By

Henry Smith

ABSTRACT

This paper examines the coordination of inputs to the development and use of technology as a problem in the theory of property. Recent misunderstanding of property, in terms of both the substance of its rights and the implications of its remedies, have presented property as an obstacle to – rather than as a platform for – rapidly evolving technology. This paper will first present a framework for property that captures its role in organizations, intellectual property, as well as property law itself. An information-cost theory of property stresses modularity, standardization, and hybrid systems of private and common rights, which allow for separation of functions and specialization. Modularity and separation in property allows for specialization but also give rise to the potential for strategic behavior. Each specialist may only maximize locally, which can lead to social losses. To counteract this strategic behavior, a combination of boundary placement and interface rules can be used, as is commonly seen in common property systems and their variants. The paper then applies this framework to Standard Setting Organizations (SSOs) and shows that separation of the standardization function is yet another type of property separation and specialization. As with other dimensions of separation, strategic behavior becomes possible. But contrary to some widespread views, the tools of property do not simply cause the problem of opportunistic hold up in SSOs; property also provides some solutions, in this case through doctrines of equity that are aimed at counteracting opportunism in general.