

Matthias Lehmann, The Notion of Property in German Law - Abstract

“Virtual property” is a misleading expression, since property is a legal concept and therefore always “virtual”. In reality, what is meant is rights with regard to incorporeal objects, such as graphics, characters, avatars or other phenomena of computer worlds. The recognition of such rights runs into serious obstacles in those legal systems that adopt a restricted notion of property.

One prominent example is German law. Since the 19th Century and the writings of Savigny, Germans are used to identify “things” with corporeal objects. Since things are considered to be the only possible object of property rights, this definition has repercussions to all sorts of legal questions. For instance, what is called the law of property in other legal systems is the “law of things” (*Sachenrecht*) in Germany. This law totally ignores patrimonial rights in incorporeal objects. Another example is the fact that the Civil Code of Germany (the *BGB*) is loath to recognize intellectual property rights. Of course, by all sorts of legal “tricks”, the implications of this restricted notion of property have been mitigated. But the general attitude remains hostile to exclusionary rights in intangible objects.

Behind the peculiarity of the German legal system lies Savigny’s conceptualization of property as a relationship between a person and a thing. He disregarded that law is a tool to regulate inter-human relations only, and that even property rights are not addressed to things, but to living persons. Once that this is understood, it becomes clear that the notion of property is totally independent from the nature of the object that it concerns. Thus, there is no reason why property in virtual items should not be recognized.