

2018

Book Review of *Owned: Property, Privacy, and the New Digital Serfdom*

Fred Dingley

William & Mary Law School, fwding@wm.edu

Repository Citation

Dingley, Fred, "Book Review of *Owned: Property, Privacy, and the New Digital Serfdom*" (2018). *Library Staff Publications*. 129.
<https://scholarship.law.wm.edu/libpubs/129>

Fairfield, Joshua A.T. *Owned: Property, Privacy, and the New Digital Serfdom*. New York: Cambridge University Press, 2017. 250p. \$112.

*Reviewed by Frederick W. Dingley**

¶9 Joshua A.T. Fairfield did not bury the lede with this book. The title alone, *Owned: Property, Privacy, and the New Digital Serfdom*, tells the reader that this is no dispassionate legal analysis. Fairfield contends that today's era of digital video and music, e-books, and the Internet of Things (IoT) is quickly becoming a time when a small group of companies dictates what everyone is allowed to do with the books, videos, music, and even everyday objects consumers own.

¶10 Fairfield passionately argues that intellectual property law has usurped a role more properly delegated to property law when it comes to governing digital property and smart devices. He says that giving property law its proper role in protecting those items will allow consumers to truly own them while still protecting creators' interests. Fairfield's book is a thoughtful, well-argued call to action that does an excellent job of explaining the basic principles of property law. It begins with the author's history of property law and how digital property ended up being governed by intellectual property law instead; it then explains the consequences of that recent development and why people should care. The final part of the book presents possible technological and legal solutions to the problem that will protect manufacturers' and content creators' rights while allowing consumers to truly exercise ownership over digital property and smart devices.

¶11 Fairfield describes how Anglo-American property law long ago moved away from a feudal system, in which everyone managed property subject to the ruler's will, toward a system in which a sale severed all ties to the previous owner. With digital property such as e-books and smart devices, however, we are returning to this feudal era as "owners" of this property can do with it only what a small group of manufacturers and content owners allow.

¶12 This regression to feudal property rules runs counter to what Fairfield believes is the most important purpose of property law: increasing people's abilities to do things. He argues that courts made a mistake in early decisions involving digital property by focusing on its intangibility and thus resorting to intellectual property law instead of property law to govern it. Copyright's severe financial penalties for infringement, combined with strict anticircumvention provisions in the Digital Millennium Copyright Act and companies' ability to require customers to agree to lengthy boilerplate contracts before using digital services, enable companies to exercise extensive control over digital property even after it has "sold" that property to a customer. "Owning" digital property, Fairfield argues, is nothing of the sort. Companies have extended postsale control over property to physical items as more and more devices become smart and include copyrightable software. Fair-

* © Frederick W. Dingley, 2018. Senior Reference Librarian, Wolf Law Library, William & Mary Law School, Williamsburg, Virginia.

field contends that by restoring property law to its proper role, consumers will truly own and control their digital items and smart devices. He says intangibility is no barrier because property law is really about information—information on who can use property and what they can do with it.

¶13 Where this book shines is in Fairfield's explanations of legal and technological subjects. He makes excellent use of examples throughout the book to illustrate points, such as comparing a car made of Lego bricks with a model car to illustrate modularity, or a factory with smart equipment installed to explain the tragedy of the anticommons. He does a good job of using current events to illustrate his point, such as farmers' right-to-repair fight with John Deere and a class-action trespass lawsuit against Pokémon GO's maker. Occasionally, his use of present-day examples backfires, such as citing the now-defunct Yik Yak as a "viral (and virulent)" technology (p.71). Fairfield's description of concepts such as rivalrousness and the conflict between contract and property law are clear, and the chapter on blockchain made this reviewer feel as though he truly understood for the first time how that technology works.

¶14 Fairfield's interesting proposal is well worth the (relatively short) read for anyone interested in the issue of who truly owns digital property, Internet-connected devices, and smart devices (a field encompassing more and more objects every day). It also serves as an excellent primer for people who would like to know about the basic issues and technology involved in this high-profile area of the law. Recommended for academic libraries and for libraries in courts, firms, and other organizations that deal with the intersection of digital property and the law.
