

Executive Summary: *The Future of Ownership*

The "Future of Ownership" symposium, held at the Melbourne Connect innovation precinct, explored the evolving nature of property, intellectual rights, and data sovereignty in a rapidly digitizing world. This briefing synthesizes cross-disciplinary perspectives from legal experts, anthropologists, sociologists, and technology consultants to outline the shifting boundaries of what can be owned, how ownership is enforced, and the ethical challenges posed by emerging technologies.

Critical Takeaways:

- **The Inadequacy of Traditional Frameworks:** Current legal concepts, such as "free, prior and informed consent," are increasingly viewed as insufficient for governing intergenerational Indigenous knowledge and massive digital data scraping.
- **The Legal Paradox of the Body:** Under common law, neither information nor the human body can be "owned" in a traditional sense, though property rights can be established through the "work and skill" exception.
- **Digital Devaluation and Digitization of Value:** Technology has simultaneously devalued traditional creative outputs (e.g., recorded music) while creating a new "generational divide" where digital assets and identity represent primary value for younger populations.
- **The AI Disruption:** Generative AI challenges the foundations of Intellectual Property (IP) law. Debates center on whether AI output should be eligible for copyright and whether "scraping" data constitutes a justified use for the sake of innovation or a violation of creator rights.
- **The Death of Privacy:** Privacy is increasingly sacrificed for convenience. Experts suggest that as data leaks become ubiquitous, the focus may shift from protecting privacy to technical verification of identity and origin.

Foundational Concepts and Historical Evolution

Ownership is not a static concept but an elastic social relationship that evolves alongside morality, politics, and technology.

Historical and Economic Origins

- **Philosophical Roots:** 17th-century philosopher John Locke posited that creating something new grants ownership, though this logic does not extend to the land itself.
- **Market Necessity:** Ownership is essential for market function, creating a distinction between consumable goods and productive assets.
- **Tragedy of the Commons:** Historically, private property rights emerged to solve the over-exploitation of shared resources. However, as populations grow, privatization is often presented as the only viable solution to ensure investment in assets.
- **Simplification of Rights:** While modern ownership seems complex, historical property rights (circa 1150) were more idiosyncratic and varied by village. Modern systems have largely simplified these rights into standardized bundles.

The Dynamics of Change

Ownership structures change not just for economic efficiency but for moral and political reasons.

Examples include:

- **Abolition of Slavery:** The end of human ownership was driven by shifts in morality rather than unprofitability.
- **Land Reform:** Redistribution of land, such as homesteading in the U.S., was a political process rather than an economic one.

Indigenous Perspectives and Data Sovereignty

A central theme of the discussion was the tension between Western individualistic ownership and Indigenous collective, intergenerational stewardship.

Indigenous Data Sovereignty (IDS)

Indigenous data often focuses on the "5 Ds": Difference, Deprivation, Disparity, Disadvantage, and Dysfunction. IDS advocates seek to shift control back to communities to ensure data reflects the Indigenous life world.

- **Definition:** IDS encompasses population data, archives, genetics, environment, geospatial fields, and AI.
- **Intergenerational Responsibility:** Indigenous knowledge is viewed through dual accountabilities—protecting knowledge from ancestors and preserving it for descendants.

Critiques of "Free, Prior and Informed Consent" (FPIC)

Maggie Walter argued that FPIC is a hollow "gold standard" for Indigenous peoples:

- **Individualistic Bias:** FPIC assumes an individual can give away what belongs to a collective.
- **Temporal Failure:** Living members cannot give consent for ancestors or unborn descendants.
- **The "Body Snatchers" Parallel:** There is a growing concern that technologies are "hoovering up" traditional medicines, genetics, and biomes at a rate that mirrors historical colonial appropriation of physical remains.

The Intersection of Law, Technology, and Intellectual Property

Intellectual Property (IP) law is characterized as the "oldest area of statute law," yet it faces unprecedented challenges from digital borderlessness.

The Role of IP Law

- **Incentivizing Innovation:** IP law is framed as essential for addressing existential threats like climate change and pandemics by encouraging creative and innovative ideas.
- **Statutory Roots:** Australian and common law IP is derived from centuries-old statutes: the Statute of Monopolies (1623) for patents and the Statute of Anne (1710) for copyright.

Technology as Self-Enforcement

Digital technology has enhanced the ability of rights owners to enforce their claims without state intervention through:

- **Digital Locks:** Precluding unauthorized copying (e.g., encryption).
- **Geographical Controls:** Limiting content use based on location.

The Changing Economics of Creation

Using music as a case study, Merida Sussex highlighted how technology shifts ownership value:

- **Disruption:** The industry lost two-thirds of its value during the Napster era, but stabilized when convenience (streaming) outweighed piracy.
- **Experiential Shift:** Successful creators now monetize "experiences" (touring) rather than digital or physical copies, as the latter are harder to protect.

The Human Body and Health Data: A Legal Paradox

A significant revelation in the briefing is that, under law, bodies and information are technically "ownerless."

Category	Legal Status	Source/Precedent
Information	Cannot be property; belongs to anyone who hears/sees it.	Boardman v Phipps
Human Bodies	Not subject to property rights (Haynes case).	1614 Common Law
Biomaterials	Can become property via "work and skill" exception.	Australian Case Law

Issues in Health Technology

- **The "Work and Skill" Exception:** If a company applies skill to a saliva sample or DNA, they may gain property rights to the resulting data, often leaving the donor with no financial stake.
- **AI Scribes:** Emerging use of AI to record medical consultations raises questions about "dynamic consent" and whether de-identified sensitive data can truly be separated from the individual.
- **Benefit Sharing:** While "benefit sharing" is a standard in research, it is often researchers, rather than the communities or individuals, who define what constitutes a "benefit."

Digital Transformation and Generative AI

The advent of AI represents a "runaway train" that threatens traditional notions of authorship and value.

The AI Ownership Debate

- **Non-Human Authorship:** Professor Andrew Christie argued that AI output should not be granted copyright because AI is not a legal person and does not require financial incentives to create.
- **Scraping vs. Generating:** A distinction is drawn between the "micro-value" of data scraped for training and the "macro-value" of the resulting AI output.
- **The "Might is Right" Reality:** Sophisticated technology often outpaces blunt regulatory tools. The "SaaSocalypse" suggests that proprietary software moats are being replaced by AI's ability to replicate complex programs rapidly.

Digital Value and Incentives

- **Generational Shift:** Younger generations view digital assets and online identity as their primary form of value.
- **Economic Incentives:** The massive profitability of lean digital asset businesses (e.g., Tether making \$10 billion with 150 employees) provides a powerful incentive for the continued digitization of value, often at the expense of traditional regulatory oversight.

The Future of Privacy and Regulation

The document concludes with a sober assessment of the state of privacy and the feasibility of regulation.

- **The Death of Privacy:** Convenience consistently trumps privacy for the majority of users. Data leaks have become so common that the traditional "papering over" of information is no longer effective.
- **The Borderless Challenge:** Regulators struggle to manage technology that moves at the "speed of the internet" across national borders, rendering traditional jurisdictional lines irrelevant.
- **Accountability:** While there is a consensus that AI should be accountable to governments, there is skepticism regarding whether decision-makers (often older and less tech-literate) can effectively regulate for a status quo that no longer exists.
- **Skeptical Optimism:** Despite the risks, some experts remain "skeptical optimists," noting that AI offers benefits such as preserving small Indigenous languages and reducing administrative burdens in healthcare.