

The principle which allows payment for nondamaging uses of property is, I submit, this one: protecting the system of property from eroding. Looking at the leading case in the area (RED DASH) we see precisely that: the user of the property is required to pay for his use, lest he be placed in a better position than a non-trespasser. Any other rule might encourage erosion of property systems.

Where property systems are NOT considered the preferable mode of resource allocation, by contrast, the presence of a nondamaging use should not spark a requirement of payment.[1]

At least one question is left open by all this: If the prop system ITSELF isn't economic in origin and purpose, but is MEANT as a means of capturing the "desert" of creation or possession, then that'd suggest that all uses of others' creations should be rewarded. It's only if I can suggest why prop should be conceived of more narrowly, and raise a "live" question about the applicability to property to intellectual products, does my mode of distinguishing Red Ash work. But I have suggested that Red Ash doesn't stand for the general principle, "pay for what you get."

-----

1. There may be other, independent reasons for requiring payment, such as the presence of "bad acts" (like the abuse of a fiduciary relationship) which need to be deterred. But the key there is a pattern of behavior which is in the long run harmful, a nonformal inquiry, not the mere use of what others have produced.