Can DNA Be Speech?

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DNA is generally regarded as the basic building block of life itself. In the most fundamental sense, DNA is nothing more than a chemical compound, albeit a very complex and peculiar one. DNA is an information-carrying molecule. The specific sequence of base pairs contained in a DNA molecule carries with it genetic information, and encodes for the creation of particular proteins. When taken as a whole, the DNA contained in a single human cell is a complete blueprint and instruction manual for the creation of that human being. In this article we discuss myriad current and developing ways in which people are utilizing DNA to store or convey information of all kinds. For example, researchers have encoded the contents of a whole book in DNA, demonstrating the potential of DNA as a way of storing and transmitting information. In a different vein, some artists have begun to create living organisms with altered DNA as works of art. Hence, DNA is a medium for the communication of ideas. Because of the ability of DNA to store and convey information, its regulation must necessarily raise concerns associated with the First Amendment's prohibition against the abridgment of freedom of speech; particularly in terms of the limitations on the sharing of information that intellectual property monopolies impose on society. Given our contemporary sensibilities regarding the centrality of our genetic material in matters of self-definition, an analysis of the interaction between intellectual property and speech is necessary in this context. New and developing technologies, and the contemporary and future social practices they will engender, necessitate the renewal of an approach towards First Amendment coverage and intellectual property law that takes into account the purposes and values incarnated in both the Free Speech and the Patent and Copyright Clauses of the Constitution. This article proposes and applies a framework for analysis in the context of contemporary social practices that involve the manipulation of DNA, as a case study from which we can hopefully gain valuable insights regarding First Amendment and intellectual property doctrine in general.

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