



Copyright and Innovation

Copyright protection is meant to provide economic incentives for authors and artists to create and distribute new expressive works. Generally, copyright law, as codified in Title 17, grants authors certain protections relating to the reproduction, distribution, public performance, and display of certain types of artistic works. But copyrights, when misused or misapplied, can work to prevent socially productive activities, stifle innovation, and impede free speech.

Why Limits On Copyright Laws Are Important

The Supreme Court has stated fair use is an important concept that helps ensure copyright laws comport with the First Amendment. It allows users and second-comers to engage in activities such as criticism, political speech, research, parody, and even to create new artistic works. It also allows consumers to transfer a lawful copy of a movie from one device to another when a device breaks down or patch security vulnerabilities in software code.

Why Copyright Law Is Currently Broken

Draconian Statutory Damages

A single violation of a copyright can mean up to \$150,000 in statutory damages. This amount, often far exceeding any actual harm to the copyright holder, is used to threaten ruinous lawsuits against those who have engaged in completely legitimate and lawful activity. Together with the significant cost of litigation, many legitimate fair users are forced to accede to improper takedown demands.

Misuse and Abuse

The "safe harbor" provisions of the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 512, protect service providers who meet certain conditions from monetary damages for the online infringing activities of their users and other third parties. To receive these protections service providers must, among other things, implement "notice and takedown" procedures that give copyright holders a quick and easy way to disable access to allegedly infringing content.

The takedown procedures are often abused to take down speech that is not infringing, because service providers are incentivized to assume they are accurate and they result in a swift removal of material. The penalty for improperly invoking a takedown is insufficient to prevent abuse, leading to the suppression of lawful speech.

Limits on Rights to Repair and Freely Alienate Property

Section 1201 makes it unlawful to bypass technical protection measures (TPMs) that protect copyrighted goods. These laws were initially meant to discourage copyright "pirates" from unlawfully copying works. But as computers are now found in a wide variety of consumer goods, TPMs and section 1201 are used to prevent legitimate owners from engaging in myriad otherwise-lawful activities, such as repairing broken goods, patching security holes, and engaging in other fair uses such as those discussed above.