



Principles for a Balanced Copyright Policy

According to the Constitution, copyrights exist to serve an end: the promotion of progress and learning. Copyright policies at home and abroad should reflect this larger goal, ensuring that the remarkable breadth and power of our copyright laws are harnessed for all citizens and constituencies. The United States' copyright agenda should:

- **Protect Innovation:** The powers granted to authors must be balanced with the rights of users and other innovators, whether innovation takes the form of new creative works, or new ways to access existing works. Encouraging technological innovation and preserving consumers' rights thus go hand in hand.
- **Preserve Our Technological Strength:** Ensuring that our information economy can generate real benefits in these trying times also requires policies that preserve open competition and prevent particular interests from exercising a technological veto over new systems.
- **Promote American Values Abroad:** As we seek to protect the interests of domestic industries, we must also ensure that international instruments promote American values. Raising global standards in the areas of free speech and free enterprise are critical to maintaining the progress and development of new ideas around the world. The United States' copyright agenda should therefore protect innovation, preserve our technological strength, and promote American values abroad.

Protecting Innovation

Fair Use: The doctrine of fair use has served to protect free speech, when used to critique or criticize the copyrighted works of others. The doctrine's flexibility has not only preserved political and civic discourse, but also allowed entire new industries to flourish. New technologies enabled by fair use have allowed new avenues for consuming media, as well as new ways of using information: the copying and transfer of information necessary to operate computers and the Internet would not be possible otherwise. Fair use and other exceptions and limitations to copyright allow information to flow across networks that necessarily rely on the creation of new copies, without placing roadblocks at each step in its path. **The United States should support efforts to ensure fair use can still be exercised under new technological systems and is not constrained by cramped interpretations of the law.**

Statutory Damages: When a single act may result in damages ranging between \$200 and \$150,000 per work infringed, legitimate activities both large and small are chilled. Whether an individual uploads a parody of a pop hit, a museum displays an exhibit of orphaned works, or a large company provides offsite data storage for its customers, each can be held hostage to potential damages awards that are orders of magnitude larger than any actual harm caused to a copyright holder. Threats of these astronomical damages can affect the landscape before any dispute even goes to trial, forcing settlements that prevent new innovations from seeing the light of day. **The United States should reexamine and reform its current system of statutory damages, taking into account the current state of technology and consumer uses, as well as specific circumstances that might call for mitigating damages.**

Preserving Technological Strength

Technology Mandates: New methods for transmitting and for protecting digital information are created nearly every day. While the US has legitimate interests in hindering the distribution of some information, it should resist the urge to require any individual or industry to place particular restrictions on new technology. Mandated technological restrictions shackle the marketplace of ideas not only by hindering the lawful transfers of information that make up the majority of uses, they also skew the marketplace of technological solutions, regulating a particular solution over competitors before the marketplace can evaluate its desirability or effectiveness. Restrictions on information such as mandatory filtering of copyrighted materials, broadcast flags, or the regulation of device outputs turn the marketplace of ideas into a command and control economy. **The United States should oppose any requirements that information and communications technologies filter speech or restrict outputs.**

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Secondary and Intermediary Liability: The growth and strength of the Internet is built upon its ability to directly connect individuals to each other. This naturally means that online service providers, social networks, and other intermediaries will be conveying the speech and works of others. Although existing laws protect intermediaries from assuming all the liabilities incurred by individual speakers on their systems, there has been a concerted effort to erode those necessary protections, either explicitly or through the expansion of secondary liability doctrines. The administration should resist this trend. Should intermediaries find themselves held responsible for the actions of others, their activities would be so restricted as to hobble the flow of information and the vigor of the networks. ***The United States should ensure that secondary liability is applied to bad actors, and that intermediaries are not required to police the speech of all those who happen to use their networks.***

Tech and Media Literacy and Education: Making sure our children are literate in media and technology means allowing them to not only to access, but also to create and modify the information they receive. Laws and technologies should not conspire to keep them locked only into pre-approved pathways for consuming media, or prevent their access to information and media through their schools and libraries. ***The United States should allow students, researchers, libraries, and educational institutions to take full advantage of copyright limitations and exceptions, regardless of the technologies used, and should combat additional restrictions specifically targeted at these institutions.***

Promoting American Values Abroad

Exporting Fair Use: The balance struck by fair use between free speech and rewarding creators should be actively promoted in other jurisdictions. When nearly all speech is fixed in some tangible medium, fair use provides a bulwark against copyright being abused to squelch dissent and open discussion of issues. The US has previously sought to export certain penalties and standards for liability, often without the accompanying rights and protections we enjoy domestically. ***The United States should promote the adoption of fair use in other jurisdictions, and support the adoption of minimum international standards for limitations and exceptions to copyright.***

Ensuring Due Process: Intermediaries such as online service providers become convenient targets for overt or covert censorship, as well as initiatives to protect narrow commercial interests at the expense of users' ability to connect with the outside world. Programs such as the three-strikes proposal in France and elsewhere would enforce mere allegations of infringement with isolation from the online world. Such actions, recognized as disproportionate by the European Commission, should be opposed, and countered with alternative methods of recompense for artists whose works have actually been infringed. ***The United States should encourage its trading partners to recognize the importance of unfettered and unfiltered networks and principles of free and fair trade, and require actions against intermediaries and users be proportional and subject to due process.***

Maintaining Boundaries on IP Rights: The Internet and other forms of digital communication can be perceived as a threat to established media incumbents, often including nationalized entities, and thus can be targeted for anticompetitive restrictions and regulations. Abroad as well as at home, the United States should ensure that people can legally share content without being subjected to new IP barriers such as a broadcasting right. Emerging networks should not be constrained into a poor imitation of existing media merely to fit existing business models. ***The United States should oppose efforts to create new property rights in the transfer of information that would hinder the free flow of information.***