

# ***Bypassing SCOTUS***

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The federal judiciary plays a crucial role in the development of copyright law. This legal framework needs to respond to fast-moving technological changes, but in the last few decades, Congress has shown little appetite for revising the Copyright Act. The result is a complex legal framework in need of constant updating, with federal courts being the primary institutions capable of fulfilling this task.

What role, then, does the Supreme Court play in the copyright ecosystem? This Article contends that the Court's influence is surprisingly modest. The Court hears fewer than one copyright case per year, yet its rulings can potentially dramatically alter the trajectory of copyright law. Indeed, even in its rare interventions, the Supreme Court might disrupt the delicate balance of the intricate balances underpinning the copyright ecosystem. Yet, remarkably, despite this inherent fragility, copyright law has demonstrated significant resilience, frequently adapting in ways that defy initial expectations and bypass the destabilizing potential of these decisions.

The Article examines six landmark 21st-century Supreme Court decisions that had the potential to reshape copyright law profoundly. Despite the extensive discussion these cases have provoked, including in hundreds of legal articles, few studies have explored their long-term impacts, a gap this article addresses. The Article shows how various stakeholders within the copyright ecosystem, alongside broader socio-economic and technological developments, have tempered the disruptive potential of these rulings. Lower courts, for example, have often narrowed the scope of Supreme Court opinions, confining their applicability to specific factual circumstances. Simultaneously, technological innovation and evolving business models have rendered some decisions quickly obsolete, while public pressure and grassroots movements have redirected copyright's trajectory in ways that diverge from the Court's guidance. Collectively, these dynamics have effectively bypassed the Supreme Court, curbing the broader influence of its rulings.

Ultimately, this Article demonstrates that the Supreme Court's role in shaping copyright law is inherently limited. While its decisions naturally carry some weight, they are frequently constrained by a convergence of other forces. Given the incremental nature of copyright litigation—dominated by federal courts in California and New York interpreting open-ended legal standards—the Supreme Court is unlikely to assume a more central role in the development of copyright law. This reality underscores both the adaptability of copyright law and the intricate interplay between judicial interventions and the broader ecosystem in which they operate.