

Zoom-in Zoom-out of Copyright

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Copyright law provides exclusive rights in fixed creative works. This article explores the meaning of “works.” More specifically, the article explores when the law should perceive a copyrighted good as a large comprehensive whole, an approach we call “zoom-out,” and when should it perceive a copyrighted good as a combination of many small works, an approach we call “zoom-in”. When we zoom out, a music album can be perceived as one large work. When we zoom in, the album is a collection of works: the songs. When we zoom in even further, each song consists of several works: the performance, the music, and the lyrics. The choice of zoom has significant doctrinal consequences.

The need to set the correct level of zoom cuts across several doctrines in copyright law. Copyright caselaw, for example, determines tests for joint authorship that look at the contribution of each alleged author to the work, but that level of contribution is different depending on whether courts zoom in or zoom out on the work. Or, to take another example, the Copyright Act sets statutory damages “with respect to any one work,” but does not state whether courts should zoom-in or zoom-out, in determining how many works were copied. Work made for hire in a compilation can be commissioned, but determining if a work is a compilation depends on whether the court zooms-in or zooms-out. The question of the proper level of zoom affects a host of other doctrinal issues, such as ownership of copyright, length of protection, registration of individual works within compilations, fair use, and termination rights.

We are not the first to recognize the fragmentation of copyrighted works. The potential transaction costs raised by copyrighted “microworks” has been discussed in the literature on remix culture and collaborative work, and elsewhere. In this article, however, we aim to identify how courts have chosen the proper level of zoom. We ask whether there is any consistency treatment across doctrines, and whether there should be.