

Killing Copyright (In Order to Save It)

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Digital media and software have broken copyright law. Although it should not matter whether a consumer reads a book printed on paper or copied onto an e-reader, the application of copyright law to traditional and digital media usage have diverged dramatically because digital works are frequently copied in the course of their use. Copyright theorists have struggled with how to craft legal rules that would align rights in traditional and digital works, frequently proposing new exceptions for digital uses or interpretations of fair use. But there is a more elegant path forward, which has been too difficult to contemplate previously because the law that needs to be changed is synonymous with copyright itself.

The reproduction right — the copy right — should be eliminated.

Historically, the reproduction right functioned well to give copyright holders control over their work and as a reasonable tool for determining how much remuneration they were due. But now the reproduction right fails as a proxy for value in the digital realm by overcounting copies that have little relationship to the value created by authors.

This Article makes the case for eliminating the reproduction right entirely and for augmenting other exclusive authors' rights in order to preserve copyright holders' ability to monetize and control their works. Although superficially radical, the elegant results and conservation of authorial power render the suggestion worth genuine consideration.