

Copyright Publication on the Internet

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Copyright publication doctrine retains significant practical importance, not just to determine whether works are in the public domain, but for many other purposes as well. This Article reviews and updates the research set forth in an extensive empirical study I conducted to better understand copyright publication. The first of two articles, *Copyright Publication: An Empirical Study*, reviews over a century of copyright publication decisions decided between 1849 and 2009. It explains how the meaning of copyright publication affects a variety of different copyright issues including the citizenship of the author, the duration of the copyright term, the availability of statutory damages, infringement and fair use. The second piece, *Copyright at the Museum: Using the Publication Doctrine to Free Art and History*, zeroes in on how copyright publication determines whether original art, documents, photographs and other cultural treasures are in the public domain. Both studies provide clarity on how courts analyze the publication doctrine and how practitioners should apply it to determine whether works have entered the public domain.

This Article focuses on the doctrine's significance in deciding issues in addition to whether a work is protected by copyright or in the public domain. Practical decisions about copyright publication must be decided by everyone trying to optimize creative rights. Every time authors, musicians, artists, software engineers and corporations apply to register a copyright, they must specify if and when each work was published. Pinpointing the moment of copyright publication is necessary to determine the availability of statutory damages and attorney's fees. Consequently, the date of publication significantly impacts the economic value of every copyrighted work. Questions also arise as to the continued viability of limited publication as a helpful doctrine in these contexts and with respect to fair use. Accordingly, I review prior findings on the salience of the limited publication doctrine and provide an update on its continued viability and the extent to which whether it is used in the context of the fair use defense.