

Abandoning Copyright

Dave Fagundes and Aaron Perzanowski

Copyright law has long held that owners may voluntarily abandon their rights in a work, thereby causing those works to enter the public domain. No scholarship, though, has investigated this doctrine in detail, and case law on the topic remains fragmented. As a result, owners have little guidance about how to effectuate abandonment of their works, and the practice remains relatively rare. This Article seeks to bring copyright abandonment out of the shadows, showing that it is both a conceptually interesting topic as well as one with important normative implications. First, this Article explores the descriptive terrain of copyright abandonment, starting by comparing how abandonment of copyright fits (and does not fit) with property abandonment conceptually, and then outlining the social cost calculus that motivates an owner's counterintuitive choice to part with the rights to their work. Second, this Article examines the fractured doctrine of copyright abandonment, in which courts have struggled to apply a doctrinal framework borrowed from common-law chattel property to the very different context of copyright. Finally, this Article highlights the potential of abandonment to further copyright's constitutional aims by suggesting a series of reforms: administrative mechanisms to reduce confusion costs; and tax and insurance strategies to reduce error costs.