

ONCE AND FUTURE COPYRIGHT

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ABSTRACT

Copyright is like a well-meaning but ultimately bothersome friend, eager to help but nearly impossible to get rid of. It attaches indiscriminately to the simplest acts of expression, without regard for whether the author needs or wants its protection. This automatic propertization made sense in the print era, when mass distribution of information was an expensive process rarely undertaken by those with no plans to profit from their creativity. It makes little sense today. The following article shows that copyright's overly solicitous nature is the source of several seemingly unrelated and intractable problems—e.g., closed code, copyright as censorship, technological hegemony—that have resulted from trying to fit the digital peg of computer technology into the analog hole of copyright law. The common solution to these problems involves a purposefully retrograde approach that cures their twenty-first-century ills using nineteenth-century tools: copyright's antiquated formalities. Resurrecting publication, notice, registration, and deposit as threshold requirements for copyright protection prevents authors and publishers from achieving technologically what they do not merit legally, while at the same time ensuring that copyright does not apply in contexts where it is neither necessary nor useful.

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