

Copyright's Technological Interdependencies

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Historically, one of the primary reasons for establishing copyright was to provide parties an independent means by which to create. That is, so long as creators were beholden to private and public patrons for their livelihoods — which traditionally had been the case — creative output would be negatively constrained. Copyright purportedly frees creative parties from these dependencies by granting creators exclusive rights in their works and thereby providing creators an independent means by which to economically exploit their works. Thus, patronage and copyright have typically been viewed as at odds. While some recognize certain merits of patronage, even in those accounts copyright and patronage are viewed as two different ways of encouraging creative output, rather than as complementary modes. But I argue that conceiving of copyright as an independent, sufficient means by which to facilitate creative activity is both inaccurate and harmful. It is inaccurate because creative parties depend on a variety of intermediaries in order to produce creative works. It is harmful because it tends to polarize debates on how to improve the overall creative system. I argue that society's broader creative system is increasingly technological in nature, and that copyright is therefore increasingly interdependent with what I call "Technological Patronage," or technological support that many parties provide to the general public. I thus argue that, in contrast to the founding and still lingering conceptualization of copyright as an independent means by which to facilitate creative activity, certain forms of Technological Patronage are increasingly important in helping copyright satisfy its constitutional prerogative of promoting the "Progress of Science and useful Arts." But Technological Patronage also comes with its warts, and I discuss how Technological Patrons can in some cases hinder the purposes of copyright. I argue that the solution to such problems often lies in antitrust law rather than expanding copyright.

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