

## *Copyright Law and Interpretive Engagement*

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This Article argues that copyright law needs to acknowledge and theorize, its own interpretive choice regime. In many areas of law, interpretive choices shape judicial application of substantive legal doctrines to particular facts. Constitutional interpretation, statutory interpretation, contracts, wills, and even patent law, contain evolved interpretive regimes. There, healthy debate exists over what methods judges should use for their interpretive work. Yet even though judges face potentially outcome-determinative choices among competing sources of interpretive authority when they adjudicate copyrightable works, their interpretive choice has been almost entirely overlooked by scholars and judges alike. Copyright cases routinely require judges to make complex interpretive choices about semiotically complex works. Viewed at the most abstract level, these choices concern where to locate interpretive authority when adjudicating artistic works: in the text itself; in the author's intentions about the text; in the critic or expert's reading of it, or testimony about it; in the audience's reception of it; or in judicial intuition. These choices among what are effectively competing methods demand what this Article calls "interpretive engagement" of judges. Judges must, and do, choose interpretive methods. Interpretive engagement can determine resolution of an issue as a matter of law or fact; admissibility - or even necessity - of extrinsic evidence; and resolution of a doctrinal question such as copyrightability or fair use. Consequently, interpretive engagement often matters to outcomes: works of art may escape destruction if found non-infringing (*Cariou v. Prince*); movies may get made, or languish as legal disputes get ironed out (*Effie v. Murphy*; *Sheldon v. Metro-Goldwyn Pictures*); novels may get banned, or declared a fair use (*Salinger v. Colting*; *Suntrust v. Houghton-Mifflin*); fan works may be threatened (*RDR v. Warner Bros*). The Article concludes with a call for greater methodological transparency, and it proposes a rule-based, less flexible approach to copyright adjudication, to constrain judicial discretion and produce greater consistency and fairness.

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