

Copyright's Knowledge Principle

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DATELINE: New York City, December 12, 2050. Visitors can now see how information used to be published and circulated to the public at large by viewing the exhibits at the New York Public Library Museum, which opened today. Public libraries disappeared after the Great Recession of 2008-2018, as the explosion in the use of e-readers like the now antiquated Kindle or Nook made sustaining buildings and staff financially untenable in the face of reduced demand. The project of digitizing all extant print materials was completed shortly afterwards. Unlike today's GoogleWorks-managed, cloud-based, licensing operation that rents time-limited access to digitized works for reading (formerly books), viewing (movies) or listening (music), the Museum harkens back to a time when there was free access to information by members of the public regardless of means, and when the public itself could own, share, and circulate information. This vision of the near future is well on its way to happening. Copyright jurisprudence has lost sight of what is best termed the "knowledge principle," which lies at the heart of the Constitutional justification for copyright. The Framers envisioned the objective of copyright as promoting the advancement of knowledge for a democratic society by increasing access to published works. The meaning of "advancement of knowledge" in the context of its critical importance to a thriving democratic society is examined in this Article through the lens of copyright's knowledge principle. In so doing, this Article reframes copyright theory and jurisprudence to focus on society's interest rather than producers' interests. The knowledge principle holds that access to existing knowledge is a necessary condition for the creation of new knowledge. Even more simply, knowledge must be acquired first before it can be advanced. For example, the scientist accesses the existing knowledge in her field, before she can carry out research to create new knowledge. The knowledge principle is the fundamental mechanism by which knowledge is created, produced and disseminated in society. A recalibration of modern copyright theory is called for to reflect the knowledge creation function consistent with the original justification of copyright in Anglo-American copyright: the advancement of knowledge and the encouragement of learning. Normatively, this article proposes a new right called a "fair access" right for public libraries to exercise on behalf of all citizens of a democratic society.

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