

The Dead Hand of Copyright

Molly Van Houweling

Professor of Law, Berkeley Center for Law & Technology
Berkeley, CA

This article considers copyright as intellectual "property." It focuses on how copyright compares to other types of property on the dimension of time—that is, how long do the exclusive rights associated with copyrights last compared with the exclusive rights associated with property rights in land and other tangible objects? Other scholars exploring this comparison have noted that tangible property rights are potentially infinite in duration, while copyright (like patent) is constitutionally required to be for "limited times." This characterization is ripe for refinement. While the duration of copyright is theoretically limited, for many works it is practically infinite. Conversely, while the duration of rights to land and other tangible objects is theoretically infinite, a variety of limiting doctrines operate to terminate these rights when they threaten to prevent beneficial use of valuable resources. Those doctrines offer models for grappling with the problems caused by copyrights that keep getting longer on the books, and even longer on the ground. They also help us to think about the legacies left by the authors who are at the heart of copyright law. Ironically, long and strong copyrights that produce dynasties for a few lucky copyright owners could destroy the intellectual legacies of the vast majority of authors.

Email: mvanhouweling@law.berkeley.edu

Van Houweling