Copyright laws are supposed to spur innovation by protecting creators' intellectual property rights. But with 400 years of legal wrangling, and the complexities of our new technology, the law has become muddled. In some cases, it is being used to protect powerful corporations and maintain monopolies, rather than promoting free expression and protecting artists' livelihoods.

The Field of Knowledge is the Common Property of Mankind

But that's not the way history has played out, Thomas Jefferson.

---

1800s
- IP expands to cover prints, paintings, photos, dramas, sculptures, and musical compositions.

1790
- The US Constitution provides for IP rights "to promote the progress of science and the useful arts."

1900s
- IP expands to cover films, software, architecture, choreography, and sound recordings.

1976
- Copyright Act codifies "fair use," establishing four factors to consider when judging whether copyright has been violated.
- New IP terms: creator's life + 50 yrs.

1989
- Copyright notices of ©, date, and owner's name are no longer required to establish protection—it's just presumed.

1998
- Copyright Term Extension Act, dubbed "Mickey Mouse Protection Act," extends IP protections an extra 20 years.
- The Digital Millennium Copyright Act criminalizes circumventing digital rights management.

2000
- RIAA claims Napster cost the recording industry $300 million in sales. Napster is found guilty of infringing on RIAA's rights.

---

Not protected by IP:
- Food
- Fashion
- Home design
- Cars
- Jokes
EXCEPT! Fair use allows for some usage and derivative works within hazy parameters — you do not need permission from rights holders for:

- Commentary & criticism
- Reporting & research
- Teaching & scholarship
- Archiving
- Promoting access

Or so long as the new work passes a vague battery of questions:

**Does the new work enrich the creative field?**

**Well, yeah?**

**Is it fact, or fiction?**

**Um, fiction.**

**Does it use a significant unchanged part of the original?**

**I don't, I know.**

**Will it affect the value of or market for the original?**

**Probably not?**

**This is too hard.**

**I'm just gonna download a movie.**

Even the government admits:

**The distinction between fair use and infringement may be unclear and not easily defined.**

And there is no clear protection for creators whose works might be considered derivative even if they seem to be transformative.

**Putting a hundred small fragments into a song meant that you had a hundred different people to answer to.**

**It's easier to sample a groove than it is to create a whole new collage that whole collage element is out the window.**

Chuck D.  Hank Shocklee
PUBLIC ENEMY
In 2002, the Martha Graham Dance Company won a lawsuit against Graham's heir Ron Protas, who had sought to prevent the company from performing Graham's dances, which he claimed to own. The court found that since Graham was employed by the company while creating the dances, the company actually owned them instead.

In 2008, "Obey" creator Shepard Fairey made a simplified graphic of presidential candidate Barack Obama based on an Associated Press photograph. The graphic was embraced by the Obama campaign and popped up on merchandise across the country.

In 2010, artist Jeff Koons demanded that the small San Francisco gallery Park Life stop selling resin balloon dog bookends, which Koons claimed infringed on his copyright to his renowned balloon dog statues. Park Life noted that there is a documented history of balloon dogs dating back to 1958.

"When I got the letter, I briefly stopped selling them because I thought we were in trouble—But then I thought, who does he think he is? I'm not going to let this guy intimidate me."

Park Life owner Jamie Alexander
Of course, intellectual property rights don't work like they did 400 years ago. Now nearly everything is elevated from the world of tangibles to the world of ideas, and creators have a host of new technologies that make using pieces of other works easier than ever before.

**HERE IN THE DIGITAL AGE, WE COPY LIKE WE BREATHE, SO THE STAKES FOR GETTING THE RULES RIGHT HAVE NEVER BEEN HIGHER**

Cory Doctorow

And new players—not creators, or users, but intermediaries—stand to control and profit from intellectual property rights.

**WE'RE ON THE PATH OF CREATING MONOPOLY BUSINESS PRACTICES OUT OF COPYRIGHT LAW**

Robin Gross

**IF WE ACHIEVE THE RECOGNITION THAT NEW CREATORS AND CREATIVE USERS OF COPYRIGHTED MATERIAL HAVE IMPORTANT RIGHTS... THAT COPYRIGHT CAN BOTH HONOR CREATORS AND HONOR THE COLLABORATIVE SPIRIT OF CREATIVITY, WE WILL HAVE ACHIEVED A MAJOR MILESTONE**

Patricia Aufderheide

**WHAT IS AT STAKE IS THE LONG-TERM HEALTH OF OUR CULTURE. IF THE COPYRIGHT SYSTEM FAILS, HUGE INDUSTRIES COULD CRUMBLE. IF IT GETS TOO STRONG, IT COULD STRANGLE FUTURE CREATIVITY AND RESEARCH**

Siva Vaidhyanathan

So in whose best interest does copyright operate?

**THE COPYRIGHT SYSTEM IS BURDENING CREATIVITY IN A WAY THAT HAS NEVER BEEN SEEN BEFORE**

Lawrence Lessig

And does it truly encourage innovation, or hinder it?

**IF YOU MAKE STUFF, IT IS NOT YOURS TO COMMAND ITS DESTINY IN THE WORLD — GOD HELP YOU, YOU SHOULD BE GRATEFUL IF IT HAS ONE. IT'S FANTASTIC IF ANYONE CARES.**

Jonathan Lethem
The newest area of copyright contention is in digital rights management — the locks on digital files that are meant to prevent piracy, but also can stop users from copying IP-protected work even for legally protected personal and fair use.

It gives some companies a monopoly on creators' IP at the creators' expense.

No way — it gives creators extra IP protections.

Consider this but a humble introduction — the first step to creating a better system, and a vibrant culture, is through information.

There are some organizations working to change things advocating for the rights of artists and users and giving creators new options to license their own work.

**Creative Commons** (creativecommons.org) allows for creators to license their work differently, with options aimed at promoting a richer public domain.

**Public Knowledge** (publicknowledge.org) lobbies for all kinds of user rights in the emerging digital culture.

**The Future of Music Coalition** (futureofmusic.org) works to maintain a diverse musical culture and provides a forum for creators to discuss the real effects of policy on art.

**The Electronic Frontier Foundation** (eff.org) is dedicated to defending consumer rights, free speech, innovation and personal privacy in the digital age.

**Susie Cagle** has created works of graphic journalism for *American Prospect, Truthout, The Rumpus* and others. ([susiecagle.com](http://susiecagle.com))

Special thanks to *Yolanda Hippontebel* at the Media Democracy Fund for her collaborative work on this project. ([mediademocracyfund.org](http://mediademocracyfund.org))