

An Information Theory of Copyright Law

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The dominant American theory of copyright law is utilitarian, in offering the incentive of limited copyright protection to creators to generate material that is valuable to society. Less settled is the question of the sorts of works that copyright law seeks to encourage: Does copyright law just want ever more copyrightable creations? Does it want to encourage only some that are artistically worthy? This article seeks to answer important aspects of these questions through the lens of information theory, a branch of applied mathematics that quantifies information and suggests optimal ways to transmit it. Using these concepts, this article proposes that copyright law seeks to preserve certain forms of information, sometimes in redundant ways and at other times in quite sparse ways. In undertaking this analysis, this article explores many of the central doctrines of copyright law, including the idea-expression distinction, originality, independent creation, substantial similarity, the right to prepare derivative works, fair use, deposit rules, and the first-sale doctrine. This article also considers whether we want distinct creators communicating these valuable types of information or whether it is optimal to unify particular communications of information in a single creator.