

Justifications for Copyright Limitations & Exceptions

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Modern copyright laws grant authors a broad set of rights to control exploitations of their works. Typically tempering the reach of these broad rights are a series of limitations and exceptions (L&Es) adopted by legislatures or sometimes by courts through common law adjudication. L&E provisions in national copyright laws often seem a hodgepodge of special purpose provisions whose policy justifications are sometimes difficult to discern. This essay discusses several policy justifications for L&Es and considers the relative utilities of specific and open-ended L&Es. Its principal focus will be on U.S. law, although it will feature examples of L&Es embodied in other national copyright laws and authorized by international treaties. Part II traces the historical development of L&Es in U.S. copyright law. For the first hundred years of the nation's existence, there were no L&Es in U.S. copyright law, in part because rights were fewer in number and narrower in scope than they became over time. In the late 19th and early 20th centuries, courts invented the exhaustion of rights and fair use doctrines as limits on copyright's scope. These doctrines were codified in the Copyright Act of 1976 ("1976 Act"), although they have continued to evolve in the nearly four decades after their enactment. Less visible, although quite important, are the dozens of other L&Es codified in the 1976 Act. Part III offers eight principled justifications for the existence of these L&Es. One set promotes ongoing authorship. A second recognizes both authorial and broader public interests in news dissemination, freedom of expression, and access to information. A third protects privacy, personal autonomy, and ownership interests of consumers. A fourth aims to fulfill certain cultural and social policy goals. A fifth enables public institutions, such as courts and legislatures, to function more effectively. A sixth fosters competition and ongoing innovation. A seventh exempts incidental uses that lack economic significance. An eighth addresses market failure problems. This Part also discusses some politically expedient exceptions. Part III considers justifications for adopting a flexible and open-ended rule such as the U.S. fair use doctrine. Open-ended rules such as fair use enable copyright law to remain flexible and adaptable over time. Especially in an era of rapid technological change, flexible exceptions such as fair use have some advantages over specific L&Es. The chapter concludes that the optimal policy for L&Es may well be to have specific exceptions for categories of justified uses that are relatively stable over time and for which predictability is more important than flexibility and to have an open-ended exception such as fair use to allow the law to adapt to new uses not contemplated by the legislature.

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