

Balanced Copyright Preserves the Right to Innovate

(American Library Association; Association of Research Libraries; Computer & Communications Industry Association; Consumer Electronics Association; Home Recording Rights Coalition; EDUCAUSE; NetCoalition; Public Knowledge)

Innovation is the key to lifting America out of this recession. While copyright promotes creativity, many of the specific measures adopted or recently proposed to protect copyright in the digital age actually impede innovative technologies and services.

The Supreme Court in *Sony v. Universal* (1984) recognized that copyright law must achieve a “difficult balance between the interests of authors... in the control and exploitation of their writings... and society’s competing interest in the free flow of ideas, information, and commerce....” In *MGM v. Grokster* (2005), the Court stated that “[t]he more artistic protection is favored, the more technological innovation may be discouraged; the administration of copyright law is an exercise in managing the trade-off.” Administration policy must, in an open and transparent manner, safeguard the copyright balance and protect the right to innovate in order to ensure the vitality of the information-driven economy.

Encourage Innovation by Promoting Fair Use at Home and Abroad.

- The fair use doctrine (17 U.S.C. § 107) provides critical protection for manufacturers of information technology products and providers of Internet services from copyright infringement liability. Industries depending on fair use and related rights added an estimated \$2.2 trillion in value to U.S. GDP in 2006.
- Fair use also safeguards constitutional free speech principles and promotes education and research – essential elements for the advancement of technology.
- *The USG must protect fair use in domestic legislation and policy and ensure that it is incorporated into international agreements. It should not advocate the adoption of imbalanced copyright laws abroad, which inhibit the overseas activities of U.S. technology companies and international education and research.*

Secondary Liability Rules Should Not Inhibit Innovation.

- Current secondary liability law adequately protects the rights of copyright owners. Any further expansion would impose undue burdens on intermediaries and innovation. Copyright law should not threaten the existence of Internet social-networking services, search engines, or user-generated content platforms.
- *The USG should oppose efforts at home and abroad to expand the scope of secondary liability for third party activity, including any attempt to weaken the safe harbors of the Digital Millennium Copyright Act.*

Oppose Technology Mandates.

- Attempts to freeze technology have harmed innovation while not diminishing infringement. Technology providers cannot be the guarantors of copyright-holders’ rights. *The USG should oppose any technology mandates, such as filtering, broadcast flag, or “analog hole” legislation.*

Reform Copyright Statutory Damages to Promote Investment in Technology.

- Unlike patent law, copyright law permits extraordinarily large statutory damages for infringement, detached from any obligation to prove actual harm. Statutory damages deter investment in technology and the development of new services.
- *The USG should reform copyright statutory damages so that litigation penalties bear some relationship to actual injury. Until then, the USG should oppose the incorporation of statutory damages in international agreements.*