

COPYRIGHT AND COPY-RELIANT TECHNOLOGIES

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Abstract

This article studies the rise of copy-reliant technologies – technologies such as Internet search engines and plagiarism detection software that, although they do not read, understand or enjoy copyrighted works, necessarily copy them in large quantities. This article provides a unifying theoretical framework for the legal analysis of topics that tend to be viewed discretely. Search engines, plagiarism detection software, reverse engineering and Google’s nascent library cataloging effort, are each part of a broader phenomenon brought about by digitization, that of copy-reliant technologies. These technologies raise two novel, yet central, questions of copyright law. First, whether a non-expressive use that nonetheless requires copying the entirety of a copyright work should be found to infringe the exclusive rights of the copyright owner. Second, whether the transaction costs associated with copy-reliant technologies justify switching copyright’s default rule that no copying may take place without permission to one in which copyright owners must affirmatively opt-out of specific uses of their works.

Keywords: Internet, Copyright, Non-expressive use, Opt-out, Fair use, Transaction costs.

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