

*Blocking Copyrights Revisited*  
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A goal of copyright law is to encourage creativity by granting authors a set of exclusive rights. When dealing with works that are derived from pre-existing copyrighted works, however, this simple aim becomes less straight-forward, as the law must balance the incentive to prepare the initial work with the incentive for improvements and continued progress, which can be inhibited by others' exclusive rights. Indeed, giving individuals exclusive rights under copyright law—a necessary by-product of the Constitutional aim to advance creative endeavors for the benefit of the public—presents a contradiction in intellectual property law, especially when applied to improvements of pre-existing works. A blocking copyrights doctrine, suggested by other scholars and paralleling the established blocking patents doctrine, would help to relieve this uneasy result in the law, but such an approach has not generally been accepted by the courts for copyrighted works. Nevertheless, many copyright decisions are in accord with basic tenets underlying blocking copyrights, particularly in the context of assessing damages. This article suggests that courts continue in that direction and effectively implement a blocking copyrights regime, using the relief granted as a vehicle to allow for a more nuanced, principled approach to infringement by an unauthorized derivative work. This article suggests criteria for when courts should incorporate into their determinations of remedies features of the law more favorable to improvers, thereby effectuating important aspects of blocking copyrights, even if the doctrine is not adopted as a whole.