

Ned Snow

The Meaning of Science in the Copyright Clause

Abstract:

At the Framing of the Constitution, “science” meant a system of knowledge that comprises distinct branches of study. This meaning is present in the Copyright Clause, which premises Congress’s copyright power on promoting the progress of science. Courts, Congress, and the public once treated science as a discriminatory term on the scope of copyright. Immediately after the Constitution’s ratification, they treated science as requiring copyrightable works to have a purpose either that was instructive in nature or that served a branch of study. By the late twentieth century, courts were treating science as precluding only works whose purpose was obviously inconsistent with its original meaning. Then a few decades ago, courts read science as lacking any discriminatory meaning at all. They anachronistically interpreted science as general knowledge of anything, so that any sort of expression would be copyrightable. Hence, the modern interpretation of science is very different from the meaning that it purports to portray—that which existed at the Framing. Departure from the original meaning occurred subtly, unintentionally, and without thought or deliberation. Yet it did occur. This Article examines that history and proposes a restoration of the original meaning of science.