

Identifying Information

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Paper Information

Title:	Abandoning Copyrights
Abstract:	<p>The ability to abandon one's property is central to the notion of free alienability. It seems perverse to require that people own things they do not want. Law thus offers doctrinal pathways that allow owners of most types of physical and intellectual property to disclaim their rights in it. Copyright, however, represents a puzzling exception. While there is a formal doctrinal test, borrowed from the common law of physical property, governing abandonment, it has become increasingly unclear and decreasingly coherent in the past four decades. This is all the more puzzling because, compared to other forms of property, abandonment of copyright is highly socially desirable because it injects works into the public domain for common use. This article explores the underappreciated problem of copyright abandonment both descriptively and normatively. Descriptively, it explores why copyright stands apart from other forms of property as uniquely lacking a practical means of abandonment. The decline of abandonment happened as an unintentional byproduct of the 1976 Act's departure from formalities. Normatively, it outlines the social costs of abandonment and makes the case for a unique doctrinal approach to copyright abandonment rather than one borrowed from physical property. While abandoning physical property is socially costly but individually beneficial, abandoning copyrights is individually costless but socially desirable. Law should thus take extra steps to encourage rather than complicate copyright abandonment. The article concludes by outlining the form those steps might take, including tax subsidies and incentives; "black swan" insurance; and administrative approaches.</p>