

Identifying Information

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Paper Information

Title:	Tam and the Constitutionality of Copyright's Preferences
Abstract:	<p>In Tam, the Supreme Court applied the First Amendment to invalidate preferences in the amount of intellectual property rights granted based on the content of an individual's speech. This paper will investigate the consequences of Tam for various preferences found in copyright. These preferences vary the strength of a copyright holder's rights depending on the type of work the copyright holder has chosen to create. Because differentiating protection based upon whether a work is musical, dramatic, literary, or religious in nature is a form of content based discrimination, Tam raises the possibility that these preferences must be subjected to something stronger than rational basis scrutiny, which had hitherto been the presumptive test. At least some of these preferences would fail elevated scrutiny, and presumably all would fail strict scrutiny. This raises the possibility that Tam will lead to the constitutional invalidation of portions of the copyright statute.</p>