

COPYRIGHTED CRIMES: THE COPYRIGHTABILITY OF ILLEGAL WORKS

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ABSTRACT

Copyright law does not explicitly impose content-restrictions on the copyrightability of works. As long as a work is original and fixed in a tangible medium of expression, it is entitled to copyright protection and eligible for registration. Thus, child pornography, snuff films or any other original works of authorship that involve criminal activities are copyrightable. These works could also be highly profitable for their makers. Along with possible revenues, an author of an illegal work can possibly redeem losses caused by infringement even though society does not necessarily benefit, and might even be harmed, by that work. This scheme does no benefit society and should be resolved.

This Article examines the current and desired copyright protection of illegal works. I review elements of copyrightability while addressing content-restrictions in copyright, comparing them to other IP laws. After evaluating whether copyright law should impose content-restrictions on illegal works, and whether such impositions would be constitutional, I conclude that certain works that are linked to criminal activities and cause harm should not grant the felon profits. I, thus, propose a new doctrine of illegal copyright that de-incentives the creation of undesired works by eliminating profitability from copyrighted materials related to the crime and by reducing increased profitability from other works related to the felon, while compensating victims.