

Conflating Copyright and Ethics

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August 19, 2026



Screenshots from “Copyright on Campus,” a video from the Copyright Clearance Center



Introduction

Part of being a responsible user of information is knowing how to draw on the works of others in a legal manner. Intellectual property refers to creations of the human mind that are protected by law from being used without permission from their creator or owner. Just as someone has rights over physical property that they own, such as a car or land, intellectual property is a legal expression of rights over certain ideas or information.

As a student, you use materials such as instructional videos, textbooks, websites, and published documents to complete assignments and explore new topics. Much of this information is protected by

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(30) The institution—

- (i) Has developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network, without unduly interfering with educational and research use of the network, that include—
 - (A) The use of one or more technology-based deterrents;
 - (B) Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material, including that described in [§ 668.43\(a\)\(10\)](#);
 - (C) Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and



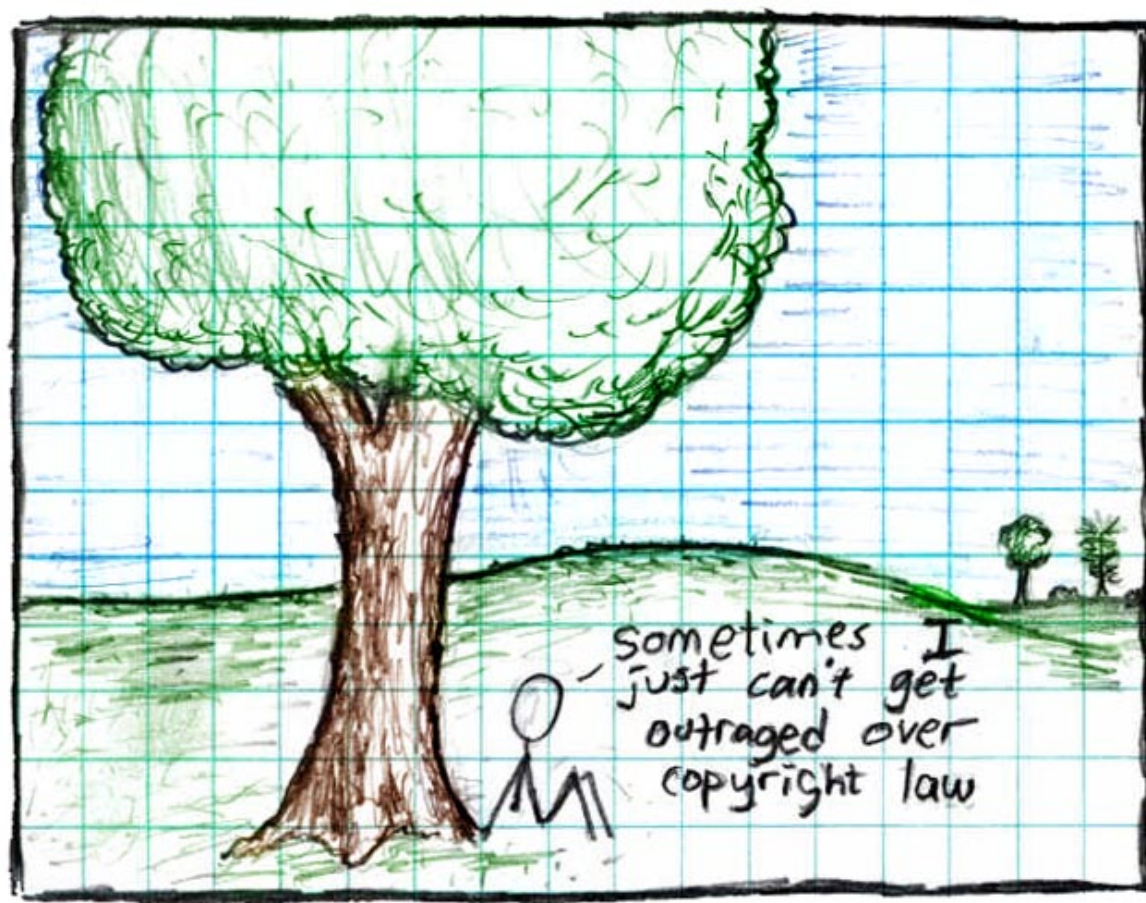
ethical responsibility responsible

IT'S ETHICAL

appropriate versus inappropriate

"You must do what you
think is right, of course."

-Obi-Wan Kenobi



Alt text: "After reading Slashdot and BoingBoing, sometimes I have to go outside."
"Copyright," by Randall Munroe, xkcd, <https://xkcd.com/14>, CC BY-NC 2.5

Copyright law is nuanced.

Conflating ethics with copyright law encourages people to regard all copyright wrongs as equivalent. That's not how the law works. In reality:

- Compulsory license regimes create a category of uses to which the copyright holder may not object, but for which they are due compensation.
- Criminal liability comes with special protections for defendants.
- Contracts are private agreements that courts enforce: “The law of the parties” but not “the law”

Copyright law is varied.

- If we equate acting ethically with following U.S. law, we imply that other approaches are not ethical.
- Example: Copyright duration
 - Canada: Life of the author plus 50 years (until recently)
 - United States: Life of the author plus 70 years
 - Mexico: Life of the author plus 100 years
- CUSMA / USMCA / ACEUM / T-MEC required Canada to move to a life plus 70 regime.

Copyright law changes.

- Just as copyright law varies across borders, it has changed over time.
- U.S. Copyright Act of 1790
 - 14 year term, plus one renewal term
 - Rights: “printing, reprinting, publishing and vending”
 - Subject matter: “maps, charts, and books”
 - No statutory damages
 - No criminal liability

Copyright law is flawed.

- Flaws in the law can be small or inadvertent, but they can also be big. The law can be unjust and wrong.
- Example: U.S. copyright law's fixation requirement
 - "The copyright regime, although facially race-neutral, exists in the same society that produced a deep-seated legacy of separation and racial inequality." - K.J. Greene, "Copyright, Culture & Black Music: A Legacy of Unequal Protection," 21 *Hastings Comm./Ent. L.J.* 339, 1999.

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Copyright Law is Flawed.

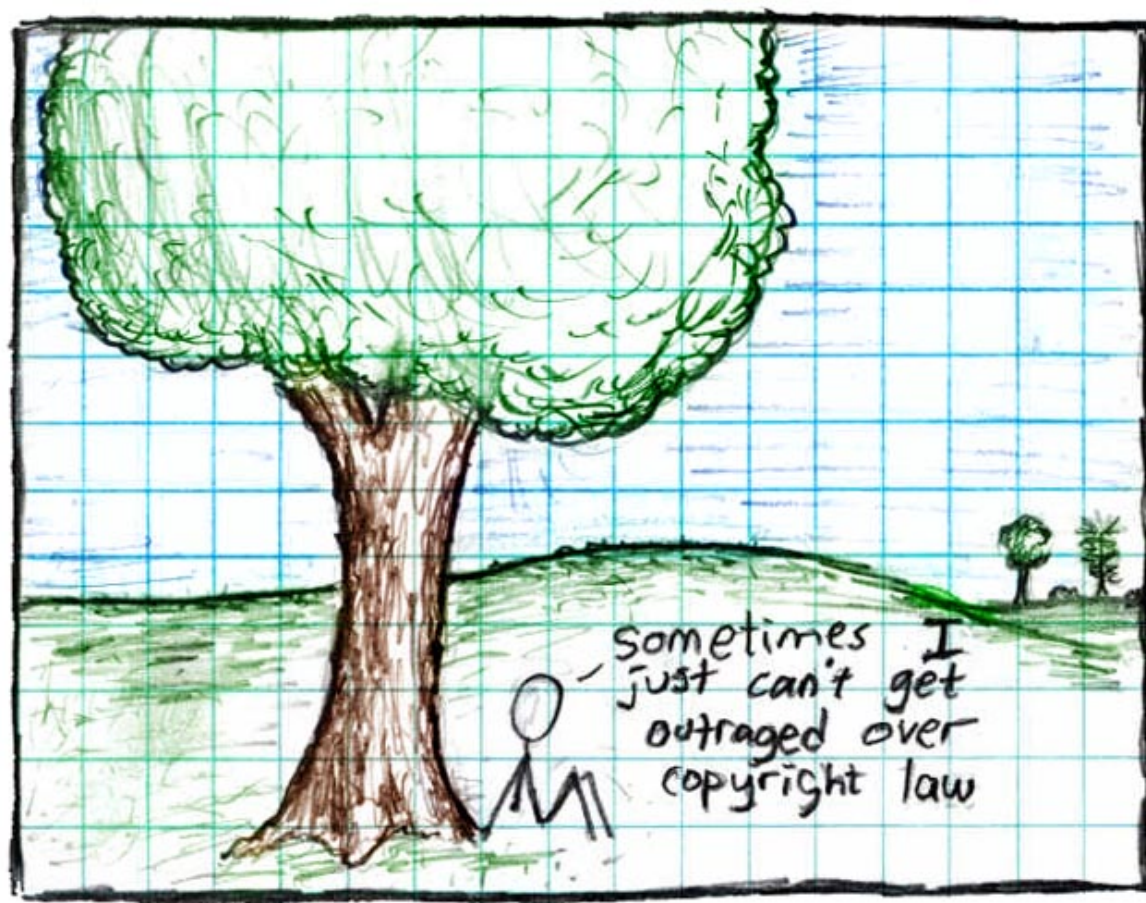
Consequentialism and Deontology

Can we stop talking about ethics?
(No.)

What are the costs of overpaying rightsholders?

Consider four approaches to copyright:

- Fairness/labor theory
- Personality theory
- Utilitarian/welfare theory
- Cultural/social planning theory



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