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Copyright Shouldn't Be A Tool of Censorship



We're taking part in [Copyright Week](#), a series of actions and discussions supporting key principles that should guide copyright policy. Every day this week, various groups are taking on different elements of the law, and addressing what's at stake, and what we need to do to make sure that copyright promotes creativity and innovation.

Copyright was meant to be an “engine of free expression,” and with the right limits, it can be. But today’s copyright law stifles free speech far too often. Its broad reach, its excessive and unpredictable [penalties](#), and its flawed [enforcement mechanisms](#) make tempting tools for anyone seeking to make speech they don’t like disappear from the Internet.

Threats to free speech are on the rise. From potentially ruinous [libel suits](#) against bloggers, to the erosion of [net neutrality](#), to [intimidation](#) of [websites](#) by law enforcement, the promise of the open Internet as a medium where all can speak and be heard is at risk. In this environment, it's more important than ever that copyright not be twisted into a tool of censorship.

The Tale of the Thin-Skinned President

Imagine, if you can, a thin-skinned person who rises to become President of a nation. Despite his powerful position, this person simply hates being mocked. The President's opponents create memes and parodies to make fun of him. These memes often include unsympathetic photographs paired with critical text. Could this leader turn to copyright to censor his critics? The answer, alas, is yes.

President Rafael Correa of Ecuador has [spent millions of dollars](#) of public funds to censor online criticism. One of his favorite censorship tools is the Digital Millennium Copyright Act ([DMCA](#)) takedown notice, a creation of U.S. law that can be invoked around the world on social networks and other Internet platforms. These notices are often used to attack fair uses such as reporting and criticism. The Ecuadorian government has abused copyright law in attempts to censor [news reporting](#), [critical tweets](#), and [documentaries](#). Indeed, its use of copyright law as a censorship tool is so rampant that it has attracted the [attention of Human Rights Watch](#) and was the subject of a [report by the Committee to Protect Journalists](#).

EFF has long argued that, as [currently interpreted](#) by the courts, the DMCA provides insufficient protection for free speech. Since copyright law provides the quickest and easiest way to remove unwanted online content, it is a favorite tool of unscrupulous censors. On behalf of our client Stephanie Lenz, we are currently [asking the Supreme Court](#) to improve the protections for fair use within the DMCA.

From Copyright to “Terrorist Content” to Political Dissent

Mr. Correa's misuse of copyright law tools to suppress political speech is just one example of how a system set up to enforce rules about online speech can easily be co-opted, and why it's dangerous to build such systems in the first place. We've written [here](#) about the private "voluntary" copyright enforcement systems being built by major entertainment companies along with [Internet service providers](#), payment processors, [domain name registries](#), and others, with the [encouragement](#) of the U.S. government. Once built, these systems risk being used for more overt censorship.

The recent [agreement](#) by YouTube, Twitter, Microsoft, and Facebook to block ill-defined "terrorist content" based on a shared blacklist mirrors the copyright [system](#) set up by the Motion Picture Association of America with the domain name registries Donuts and Radix. Both systems create a quick and easy way to make speech disappear from the Internet based on the determinations of private companies without any clear standards or meaningful recourse. Both were created under pressure from governments, but without any accountability through political and legal processes. And both are subject to abuse. Just as critical commentary can be taken down through false or flimsy accusations of copyright infringement, it's easy to imagine speech that criticizes a government figure being labeled as "terrorist content," and blocked.

Carefully balanced and limited, copyright can reward artists and promote creativity. But today's copyright law, and the mechanisms created to enforce it, enables censorship that harms artists, voices of political dissent, and all who speak against the powerful.

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