

Article

Property Rights and the Efficient Exploitation of Copyrighted Works: An Empirical Analysis of Public Domain and Copyrighted Fiction Bestsellers

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The primary rationale for copyright protection is grounded in the incentive-to-create theory,¹ which holds that Congress should grant authors the exclusive right to reproduce their works in order to ensure the public a steady supply of new books, music, movies, and the like.² Congress has, however, on

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1. See *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 450 (1984) ("The purpose of copyright is to create incentives for creative effort."); *Mazer v. Stein*, 347 U.S. 201, 219 (1954) ("The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in 'Science and useful Arts.'"); Brett M. Frischmann & Mark A. Lemley, *Spillovers*, 107 COLUM. L. REV. 257, 284 (2007) ("The rights granted by copyright law—specifically, the § 106 rights to reproduce, display, perform, distribute, and make derivative works—provide incentives to create . . ."); Sara Stadler, *Copyright as Trade Regulation*, 155 U. PA. L. REV. 899, 927 (2007) ("[C]opyright law exists *at least* for the purpose of punishing acts that might diminish incentives to create . . .").

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