How should lawyers and policymakers fashion relationships among law, practice, and the things that mediate between and represent them? This paper takes up that broad question in the narrow context of copyright, but it looks forward to broader explorations in the context of patent, trademark, trade secret, and other IP domains.

As culture (practice) is tied to copyright (law), copyright is tied to works and copies (things). Perhaps more than at any time in recent memory, those relationships are ripe for reconsideration in both practical and conceptual forms. Can copyright move beyond the work, or beyond the copy, or both? If so, and looking here primarily to these foundational questions, what would and should such a new copyright look like, and how should it act?

My provisional answers are that the work, in some form, is a necessary part of the law and that the copy is not. Giving practical effect to that conceptual claim requires loosening some attachments that are deeply-rooted in copyright theory and policy: that the law should be aesthetically agnostic, that the law should draw distinctions between private and public dissemination and use of knowledge and information, and that the law should be grounded in welfarist rather than ethical concerns. I argue that as part of a new copyright bargain, the law should accept limited roles for aesthetics, for governing private uses, and for ethics. In return, the law should turn more explicitly toward enabling and protecting institutions and mechanisms that facilitate sharing, combining, and collaborating across relevant knowledge and information domains. The futures of copyright and culture have more to do with the dynamics of groups than with enforcement of rights in things.