

# MASS MEDIA AND SOCIETY

## Copyright Law



Copyright is an area of media law that restricts your freedoms. Copyright does NOT mean, as a lawyer friend of mine insists, that you have the right to copy something. In fact, it means you do NOT have the right to copy the creative and intellectual property of others: art, music, movies, printed material, computer software, etc. Copyright law is not really intended to restrict your rights --though that is the end result-- but rather to protect materials you and others create.

Probably the biggest story these days that relates to copyright is swapping music files on the Internet. The argument is that file sharing allows people to violate the copyright protections of musical artists.

In February 2004 National Public Radio presented an interesting report on this and played a cute song about copying music that does a good job pointing out the problem. If interested, look it up and listen to the report at <http://www.npr.org/templates/story/story.php?storyId=1647732>.

Computer software makes it possible for people to share digitized music with each other, depriving the artists of any royalties from sales. Of course, some people could take that argument all the way to outlawing public libraries, which allow people to share books and other copyrighted material rather than force each to buy his or her own copy of the book. Copyright laws allow for fair use of materials and long have allowed public libraries. But is a computer-connected community the same as a public library?

Let's take a look at what copyright law is.

There are three types of laws that deal with protection of creative efforts:

- Patents
- Trademarks
- Copyright

They are different, though, and have different goals. This is reflected by how much protection, and how long, is given

### Patents

Patents are designed to be protection to inventions of products and new procedures in doing things. In exchange for putting the product or service out in public where everyone can see it and potentially duplicate it the inventor is given 17 years of protection. This allows the inventor to sell

the product or license the procedure and recoup research and development costs and make a profit. Complete plans or descriptions for the products must be made public during those 17 years, which means someone could improve on your product. But unless the improvement can stand on its own, without your product or process, no one else can profit on it without your permission.

Strong examples of patentable products would be pharmaceuticals. Take aspirin for instance. When first invented and patented only the developing company could make and sell it. But today any pharmaceutical company can make its own version.

Patent protection is not easy to get. You must apply to the federal government for it and prove that your product is unique. My brothers, for instance, have a pool cleaning business. They invented a product that holds the chlorine tablets that they use to scrub algae off the side of pools. Actually, they got the idea from another similar product, but made significant improvements to it. After six or seven years of trying --and racking up lawyers' fees, they still have not received a patent on it . . . not because they copied the original idea from a competitor, but because the description of the device too closely resembles a surgical tool already patented. My brothers had never before heard of the surgical tool and have yet to see one.

In the meantime, they are allowed to sell the product while their request for a patent is pending only because the product does not directly compete with the surgical tool. Some day they may lose their last appeal for the patent and get a royalty bill from the surgical tool patent holder. By then they will have evolved their product into something else. And, in the meantime, the patent holder has not served them with notice to cease and desist or be prepared to pay the royalty.

## **Trademarks**

Trademark law protects the use of a product name, logo, slogan, etc. For instance, we all know that the Energizer bunny keeps going, going and going, just like Energizer batteries. Pep Boys auto parts are represented by Manny, Moe and Jack. And Microsoft is a computer software company.

No one else had better promote their product as one that keeps going, going and going . . . and this does not apply only to battery companies.

"Manny, Moe and Jack" cannot represent any other products without the permission of Pep Boys, even if the owners of an ice cream company happen to be named Manny, Moe and Jack.

And use Microsoft for the name of your new pillow company and you can expect a visit from Bill Gates' lawyers.

The last example gives us a good distinction from the three protective laws: Use the name and you violate trademark. Use a string of computer code that is highly unique and non-intuitive and you might violate patent. Illegally duplicate Microsoft's software and the lawyers will be discussing copyright.

Trademark protection can be given for a region, a state or nationally, depending on your product or service. If you are a local gas station, for instance, and no national petroleum company currently uses the same name or slogan you do, then you might be able to prevent other businesses locally from using your name or slogan. But if one of the products is distributed nationally, you'll have to fight for your right to use the name or slogan at all. You'll likely have to prove that people will not

confuse your product, name, or slogan with others.

Trademark protection is initially granted for five years. But if a trademark holder continues to use the trademark and actively protects its use, the protection can last virtually forever. But protecting your trademark can be difficult. Xerox is a company that makes photocopy machines. But many people use the word Xerox as a synonym for photocopy. Xerox spends a lot of money trying to get the message out that the two are not synonymous.

## **Copyright**

Copyright protects intellectual and artistic creations, like a poem, a new song, a painting or photograph, a movie or a book. Anything you can depict in words or pictures that can be put in a fixed representation can be copyrighted.

Copyright protection remains yours for the rest of your life, plus 70 years. So your heirs can benefit. During this time if someone duplicate your work you MIGHT be able to demand royalties from anything they make from the duplication. For instance, duplicate this lecture and sell it to others and I can demand royalties. Another teacher cannot come along and teach a class and use my lectures without permission, because that teacher will profit from my work.

A great misconception exists on what it takes to copyright your work. According to international copyright laws, of which the United States agrees to, all one has to do to protect copyright is to put it into a fixed representation. You may have heard something like the fact you have to mail a copy to yourself. While this might give you added protection, it is not required.

If I were a street performer I could not copyright a performance. But if I took a video of the performance, I could copyright the video, which is a fixed representation. If you are taking notes of this lecture, your notes have copyright protection. A painting, a model or a recording would also be fixed representations.

And that illustrates the trickiness of copyright. Your notes are based on my copyrighted lecture. And everyone else in the class has a similar set of notes. But as long as you make your notes unique based on the information in the lecture, you have not violated my copyright. An exact or near exact duplication WOULD be a violation. But each person's version has protection. Two of you might conceivably come up with near duplicates of each other, but both have copyright protection as long as each can prove the notes were created independent of each other.

Remember, the key is to put it into a fixed representation. You could try sealing the representation in an envelope and mailing it to yourself. As long as the envelope remains sealed, the post office date stamp might prove you came up with the representation first should you ever need to prove you were first. For further protection, put the copyright notice on the representation and indicate the date. Then fill out copyright protection forms from the federal government and pay a \$25-\$50 fee and send it, along with two copies of the representation, to the Library of Congress and you might have the legal clout you need to REALLY protect your representation. But do the latter only if you've got something really valuable.

Society would bog down if everyone started suing everyone else for copyright violation, so Congress and international copyright bodies, allow for fair use of copyrighted materials.

For instance, if I buy computer software and make a backup copy to protect my original, I'm not violating copyright. If I make a duplicate and give it to a friend who really should have purchased his own copy, then I'm violating copyright.

Teachers and libraries are allowed to make limited copies for educational purposes. But there are limits.

You are allowed to quote material in a research paper, as long as you give appropriate credit, but you should not quote wholesale chapters of a book.

And file sharing is not the only area associated with music that you might run afoul with copyright law.

Radio stations make huge profits from playing copyrighted music over the air. True, the musician might profit from more people wanting to buy a copy of a CD based on hearing the music, but the artist should also benefit from the public performance of the broadcast. Tracking down all the copyright holders of songs would take too much work for the radio station, so entire businesses exist to help. They charge radio stations for a blanket license. For the one fee, the radio station may play all kinds of music. It is up to the licensing business to make sure the royalties are fairly distributed to the artists.

The two leading licensing businesses are the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI). ASCAP even has an online calculator to help you determine royalty rates.

One area you, as an individual, might run afoul with music copyright is in your business place. Play a CD for your personal benefit and you have no problem. But crank up the CD player so the whole store can hear it and you've got a public performance where you may be subject to paying royalties.

Ever been to a restaurant where they sing "Happy Birthday?" If the waiters sing the original "Happy Birthday" song they are creating a public performance using a copyrighted song. That's why most restaurants these days make up their own version of a birthday song.

## **1998 changes**

In 1998 Congress made some changes to the Copyright law that brought the United States further into compliance with international laws. Further discussions are taking place on how to apply copyright law to the Internet. In fact, law schools across the country report that today's students cannot sign up for Internet-related law classes fast enough.

The 1998 changes included:

- The protection was increased from life + 50 years to life +70 years for anything created after Jan. 1, 1978.
- Works for hire --those where you are specifically paid by, say a corporation that could be around forever, to create a work of art-- have a fixed protection of 95 years.
- Unpublished works are protected for 120 years maximum.

Further changes caused by the Fairness in Music Licensing Act reduced the liability of small businesses that play broadcast music for their customers. Live music, such as singing "Happy Birthday" are still covered, however, and large businesses cannot broadcast music throughout the building without paying a license fee.

## **Digital Millennium Copyright Act**

A few years ago Congress jumped in and tried to update Copyright laws to address Internet issues with the Digital Millennium Copyright Act. While many wailed that it was a flawed law, few paid attention until recently. One medium that has been particularly affected is radio.

Many radio stations saw an opportunity to expand their audience by simulcasting their radio programs on the Internet. Now, instead of just a local audience, the station could theoretically have an international audience. And you and I had all kinds of selections for radio.

But radio stations in 2001 learned that their blanket licenses to play copyrighted music on the air did not include their Internet broadcasts. Instead, they are now facing fees for a second blanket license that are based on a much larger potential audience. Just what those fees are, and what the basis for them will be, is still being negotiated. A decision was announced earlier this summer to charge 70 cents per "listener" --much more than Internet broadcasters say they can afford but much less than the music industry was insisting on. Worse, the rate is retroactive for two years. Some stations may face extremely large bills they weren't anticipating and many Internet radio stations will be pulling their own plugs, depriving all of us some music not available on many mainstream broadcast stations.

Not everyone is concerned. Cerritos College's own WPMD radio station is an example. The broadcast station is licensed as an information station and cannot use music as its primary content. This lessens its fees for a blanket license, but is unpopular with students who have dreams of being the next big deejay.

But the station also has an Internet broadcast where the students CAN present a music format . . . except for the DCMA. Management of the radio program, though, is unconcerned. There is a move to exclude non-profit organizations from the DMCA. But even if the station ends up with a bill for back fees somewhere down the road, the station can tell from its hits to the web site that its Internet audience is extremely small thusfar; it is not likely to be a very large bill.

## **Reading Assignment**

You should be reading the chapter on media law in your textbook to get more information about media law and the First Amendment.

## **Exercise**

Using examples other than those in the lecture, indicate examples of materials that might have a copyright, a patent and a trademark protection.

Note that when submitting the answer start the subject line with:

**J100x - YourLastName - Copyright**

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