Copyright, The Legal Issues of

COPYRIGHT, THE LEGAL ISSUES OF

Copyright is the legal mechanism by which authors are given control over the reproduction of their intellectual creations. Most legal issues that arise in current copyright disputes fall into three broad categories: subject matter (is something protected by copyright?); ownership (who owns the rights?); and infringement (do certain activities violate the rights of the copyright owner?).

These three issues, though legally distinct, have had connections throughout the history of copyright. The scope of subject matter covered by copyright and the type of activities that constitute infringement have both expanded over time. Originally, copyright protected only books, whereas today its coverage includes newspapers, music, movies, plays, paintings, choreographed dances, architecture, boat hull designs, and semiconductor chips. In addition, the original conception of copyright was as a trade privilege consisting of a single right, the “right” to make a “copy”; and that too has expanded, with the law now providing copyright owners not only the right to copy, but also the right to make what the law refers to as “derivative” works (about which more later), and the right to display and/or perform one's works publicly. Much of this expansion occurred because important economic interests demanded it. But, the expansion has also been intertwined with ownership issues and, in particular, with an ideological change from viewing copyright as a publisher’s right to viewing it as an author’s right.

Like many aspects of American law, American copyright law derives from English law. Anglo-American copyright law is conventionally treated as having begun with the 1710 Statute of Anne, but the notion of copyright as a means of controlling the reproduction of texts dates back to regulations of the book trade in the early sixteenth century. With its roots primarily in what was known as the “stationer’s copyright,” the pre-eighteenth century copyright belonged to printers and publishers, not authors. The stationer’s copyright was a right recognized among members of the Stationers’ Company, a trade group consisting of bookbinders, publishers, and printers. As a legal matter, the stationer’s copyright was simply an internal regulation within the publishing industry, but it invariably amounted to an exclusive right to print a book because, under the licensing regime in effect at the time, the right to use a printing press was restricted primarily to members of the Stationers’ Company.

The 1710 Statute of Anne was similarly designed primarily as a means of regulating the book trade. Though the Statute of Anne did for the first time establish a broadly available government-granted copyright, the principal changes from the stationer’s copyright were designed primarily to loosen the Stationers’ monopolies in the book industry rather than to grant rights to authors.

By the end of the eighteenth century, however, copyright was increasingly conceived of as an author’s right. This ideological assumption about initial copyright ownership was taken up by the drafters of the first state copyright statutes during the Confederation period and then by the framers of the United States Constitution in 1787. The Constitution empowers Congress to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors ... the exclusive Right to their ... Writings.” Publishers were not even mentioned, and the constitutional language incorporated the now-common utilitarian rationale that exclusive rights will induce authors to create works for the promotion of the public good.

Still, the author-centered approach had virtually no impact on the breadth of legal rights until well into the nineteenth century. The first federal copyright law, passed in 1790, provided only the exclusive right to “print[, reprint[, publish[,] [and vend[,]” rights which were all provided by the Statute of Anne and the stationer’s copyright before it. It was only during the nineteenth century that copyright developed into protection for the intellectual “work” rather than simply the text of a book.

Key to this expansion was what the law today calls the right to make “derivative works.” One important figure in this transformation was Harriet Beecher Stowe: Stowe lost a seminal 1853 case based on an unauthorized German translation of her bestseller Uncle Tom’s Cabin. Around the same time, numerous theatres produced plays based on the book, all without Stowe’s permission or compensation. In 1870, Congress responded to these inequities by granting literary authors new rights, including a right of translation and a “right to dramatize.” These changes would not have made sense under the seventeenth- and eighteenth-century conception of copyright as a book publisher’s privilege to print a text, but once the focus shifted to an author’s right in her intellectual “work,” denying a novelist the right to compensation for a translation or dramatization of her book seemed unjust.

Similarly, the fair use doctrine, which is today celebrated as one of the principal safeguards against unbridled copyright protection, initially developed as a means to expand, rather than contract, copyright. When copyright meant only a publisher’s right to print a specific text, fair use was unnecessary. It was clear that everything except an exact printing of the copyrighted book was permitted. But once it became the intellectual work that the law protected, questions arose as to the legality of creating an abridgement of a work. It was in this context that courts in the middle of the nineteenth century developed fair use to determine when an abridgement of a particular work constituted copyright infringement.

During the twentieth century, Congress changed copyright law numerous times, including two major revisions, in 1909 and 1976. As copyright law became important to an increasing number of industries, these changes incorporated compromises among various interest groups affected by the law, from satellite television providers to semiconductor producers, from public libraries to the construction industry, from vessel hull manufacturers to ballet companies. What began as a book trade privilege has grown to become the means of legal protection for vast segments of our economy, covering virtually anything that can be characterized as an intellectual work.
Further Reading


ANUJ C. DESAI

**COSMOPOLITAN**

*Cosmopolitan* of the twenty-first century has no resemblance to its namesake founded in the late nineteenth century. Dramatic transformations in format and style succeeded at various points in the magazine’s history, enabling *Cosmopolitan* to create a new or substantially different readership when its circulation or advertising mired in a period of long decline. The original *Cosmopolitan* was a monthly literary magazine from March 1886 to early 1889. It published serial fiction, short stories of adventure and romance, poems, and translations of European writers. The magazine achieved a small circulation of twenty thousand to twenty-five thousand copies, not enough to return a profit for the three different publishers that owned *Cosmopolitan* during its first years, which included missing two editions in the summer of 1888.

John Brisben Walker, a wealthy real estate magnate from Denver who previously had worked for newspapers in the Midwest, bought *Cosmopolitan* in 1889 when its publisher was about to kill the title. Walker retained the literary format, but added nonfiction articles, primarily travelogues and summaries of current events. Most important, Walker spent lavishly on quality woodcut illustrations and the newly feasible photographs made possible by the half-tone engraving process.

Walker gradually reduced fiction and poetry to add more nonfiction articles to *Cosmopolitan* on important political and social issues. He was fascinated by transportation, too, and *Cosmopolitan* treated readers to the latest developments in railroads, automobiles, subway systems, and aviation. Walker promoted higher education for women, resolution of racial problems, and a belief that modern technology would create a better world. *Cosmopolitan* editions containing articles, illustrations, and photographs of the Columbian Exposition in Chicago in 1893 and St. Louis World’s Fair in 1904 testify to the publisher’s fascination with themes of progress.

*Cosmopolitan* soared in circulation, distributing 350,000 copies a month during the late 1890s when it briefly was the largest quality general magazine in the nation. Walker, however, had a desire to become an automobile magnate, and he sold *Cosmopolitan* to William Randolph Hearst in 1905 to obtain the money necessary for his venture into manufacturing cars, which later bankrupted him.

Hearst quickly transformed *Cosmopolitan* to a magazine version of his sensationalist newspapers. A series of articles in 1906, “The Treason of the Senate,” was a late entry into what became known as muckraking journalism, a label specifically derived from the angry reaction by President Theodore Roosevelt to the *Cosmopolitan* series that exposed bribery and corruption by senators whose actions were favorable to cartels and other rather risqué themes for the era. The serials supplied complete novels over many months, a method to retain subscribers and to keep single-copy purchasers buying the magazine month after month. Journalistic articles eventually appeared infrequently, while nonfiction essays on political and social issues replaced them. Circulation reached one million copies a month by 1915. Artful cover illustrations throughout the 1910s into the 1920s depicted sophisticated young women, fashionably dressed and affluent.

*Cosmopolitan* combined with *Hearst’s International* magazine in 1925 for efficiency, because both magazines delivered similar material to readers. This resulted in a rather cumbersome cover masthead for the dual titles; by the 1930s, *Cosmopolitan* was in larger type than *Hearst’s International*, which was dropped from the cover in 1952.

Stories by Fannie Hurst, Somerset Maugham, Sinclair Lewis, and P.G. Wodehouse were commissioned for a middle-class readership. Near the end of the 1920s, editors also