

Copyright and Broadcast Law Issues

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The Congress shall have Power. . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

U.S. Constitution, Article I, Sec. 8

Congress shall make no law . . . abridging the freedom of speech, or of the press.

U.S. Constitution, Amendment 1

November 5, 2004

“Movie Industry Preparing Suits on File Sharing”

Friday 29 October 2004

“RIAA files 750 new file-trading lawsuits”

October 14, 2004

“Intellectual property theft is dangerous and harmful, and we must protect ourselves from the criminals of the new millennium who steal the ideas and hard work of others.”

Report of Justice Dep't Task Force on Intellectual Property

November 8, 2004

- What's Covered?
 - “Creative” Works
 - Expression, not facts
 - Must be “fixed in a tangible medium”
 - Arises automatically
- Who Owns It?
 - The “author”
 - The author’s employer
 - The party commissioning a “work made for hire”
 - The freelancer
 - Not the owner of the object itself



- The Exclusive Rights
 - Reproduction
 - Distribution
 - Public Performance
 - Public Display
 - Adaptation
- Licenses
 - Written, oral, or implied
 - Exclusive or not
 - Territorial limits
 - Media
 - Term
- Fair Use
 - First Amendment balance
 - No clear rules
 - Favored uses include news and criticism
- Avoiding Infringement
 - No “innocent infringers”
 - Direct and Contributory
 - Internet isn’t free
 - Sanctions favor owners
 - Civil and criminal
- Protecting Your Own Work
 - Copyright notice
 - Copyright registration



- Who creates the law?
 - Congress
 - Courts
 - Agencies
 - Copyright Office
 - USPTO
 - FCC
 - International bodies
- The influence of industry interest groups
 - Historically, legislative compromise has been preferred
 - User communities have not been effective
 - Technology is outpacing legislative change



1. Technology challenges existing law and custom.
2. Litigation tests application of old concepts to new uses.
3. New regulation or legislation makes changes to accommodate new uses.

- Cable TV
 - Community antenna
 - Public performance?
 - Compulsory license
- VCRs
 - Sony Betamax
 - Contributory infringement?
 - Fair Use
- Satellite TV
 - Two waves – dish size
 - Cable system?
 - New compulsory license
- Digital Audio Recorders
 - 1980s technology
 - Royalty on DATs
- Webcasting
 - Cable system?
 - Digital audio transmission compulsory license
- File Sharing
 - Sony Betamax?
 - Napster: no
 - Grokster: yes
 - RIAA: we'll get you either way
 - “INDUCE” Act

Is The Internet Really Different?

- The Internet is **GLOBAL**
 - Jurisdiction
 - Rights
- The Internet is **DIGITAL**
 - Perfect Copies
 - Speed
- The Internet is a **CULTURAL PHENOMENON**
 - Expectations
 - New paradigm



Copyright Issues for Print Journalists

- Plagiarism versus Infringement
 - Attribution doesn't cure infringement
- Copyright Fair Use
 - Nature of use, nature of work, amount, effect on market
 - Internet isn't free
 - Prepublication exclusivity
- Freelance journalists
 - Implied licenses
 - Tasini case and aftermath
- Publisher agreements
 - Differ depending on potential market

Copyright Issues for Broadcasters

- User and Owner
 - Public performance rights
- Fair Use issues
- Music licensing
 - Performance rights
 - Synch rights
- Live events
- Webcasting
- Compulsory licensing
 - Conditioned on FCC regulatory compliance

