CHAPTER 18: STAYING LEGAL ON THE WEB

"There is only one basic human right, the right to do as you please unless it causes others harm. With it comes the only basic human duty, the duty to take the consequences."

– P. J. O'Rourke

There are few topics in everyday life so fraught with misunderstanding as intellectual property rights, libel, obscenity, and privacy issues. Because information is intellectual property, it makes sense that teachers and students have an understanding of the legal issues involved. In this chapter, we focus on posting Web pages, but the basic idea can be applied in many situations.

COPYRIGHT REGISTRATION

Ideas cannot be copyrighted; it is the physical expression of those ideas—"original works of authorship"—that are copyrighted. Copyright law was intended to disseminate ideas and information by protecting certain rights of the copyright owner.

The act of creating an original work in fixed form creates the copyright. The law specifies eight categories of materials that can be copyrighted, ranging from literary works, to musical compositions, to graphics and sound recordings.[1] These categories are broadly construed by the courts. Even computer programs have been found to be literary works for the purposes of copyright law.

COPYRIGHT NOTICE

Copyright registration is highly recommended, but it is not necessary to protect one's copyright. When registered, you may use the registration notice, which appears in the form:

© 2002 *Name*

or:

Copyright 2002 *Name*

where *Name* is the name of the copyright owner. The ubiquitous (c) has no legal standing.

Registration provides prima facie evidence of original ownership, but, under the Berne Convention the absence of a copyright notice does not mean that a work is not protected by copyright.

COPYRIGHT OWNERSHIP

The creator owns the copyright, unless the creation of the work was done in the scope of one's employment or was contracted by another. The owner of a copyright does not own the material object on which the work is embodied. Thus, if someone sends you a poem, you may sell that piece of paper to another, but you may not publish it.

Strictly speaking, if you send someone e-mail, that message is copyrighted, and, although the recipient can report what you wrote, he or she cannot publish that message. Technically, this means that forwarding someone's e-mail without their permission is *verboten*. From a practical viewpoint, though, courts do not deal with trifles, so don't expect to win the Copyright lottery if someone forwards or publishes your e-mail.

LENGTH OF COPYRIGHT

The length of a copyright is fixed by Congress. When a copyright expires, the work falls into the public domain, making it available to anyone to publish. Congress has extended the length of the copyright at least eleven times since 1960. Prior to 1978, a copyright existed for 28 years, subject to a 28-year extension. By 1998, the limit was 50 years beyond the life of the author or 75 years after publication, for works-for-hire.

The *Copyright Term Extension Act of 1998* extended a copyright to 70 years beyond the life of the author or, for a work-for-hire, to the shorter of 95 years from publication or 120 years from creation. The Act was known as the "Mickey Mouse Extension Act," because of vigorous lobbying by the Walt Disney Company, which sought to protect the copyright on its most visible corporate symbol

that, otherwise, would have passed into the public domain in 2003.

PERSONAL USE

A great deal of case law and copyright statutes firmly establishes your right to copy material that you lawfully own for your personal use. For example, the 1992 *Audio Home Recording Act (AHRA)* specifically allows you to make noncommercial copies of musical or video recordings that you own. In return, the law gives record companies a royalty on each blank CD, cassette, or mini-disk sold.

The bottom line: if you copy a CD to a tape for your personal use, print out a picture or a poem that you find on the Internet and hang it on your wall in your room, there is no problem.

This rule, like most intellectual property rights, has its gray areas, as well. The *Copyright Act of 1978* specifically allows you to make copies of software you own for archival or personal uses. Still, you may face liability if you downloaded something from the Web that you knew, or had reason to believe, was stolen, such as commercial software. However you rationalize it, software piracy is wrong. It is also illegal. Criminal penalties range up to $100,000.[2]

FAIR USE DOCTRINE

Copyright is not unlimited. The Fair Use Doctrine allows others to publish *brief excerpts* of copyrighted material under stringent guidelines. Factors determining fair use include:

- the purpose of the use (e.g., is it for educational purposes as opposed to commercial purposes);
- the nature of the work;
- the amount used with respect to the size of the entire work; and,
- the effect of the use upon the market value of the copyrighted work.

Fair Use was meant to promote the use of copyrighted material in news reporting, commentary, parody, education, research, and critical purposes. For instance, it would be difficult for a literary critic to critique the dialogue of a play if he or she cannot actually quote the object of the criticism.

There are no hard rules for determining what is allowed and what is not. A common limit—300 words—may be inappropriate for a small work, but three lines of a poem or a song lyric may be too much. When in doubt, seek written permission from the copyright owner.

INTERNET WATERMARK

Search engines make it so easy to find snippets of copyrighted text that you are simply inviting a cease-and-desist letter if you pilfer content. Although the consequences of stealing multimedia content are often far greater, frankly, such material is harder to find.

To protect multimedia, several firms are developing "digital watermarks." Conceptually, a watermark is an invisible code embedded in audio, video, multimedia, and graphic content. As the content is copied, the so-called watermark is copied as well. The watermark is linked to the content in such a way that any attempt to remove it would degrade the quality of the material. No standard for e-watermarks has been widely accepted.

OTHER MEDIA

As one international copyright expert said, "The development of the global information superhighway depends on film companies, directors, authors, and performers being willing to put their work into the system. They need sufficient protection and sufficient rights to get a sufficient return, and some guarantees that there aren't great leaks in the pipe."[3]

A coalition of composers, film directors, authors, publishers and licensing organizations has proposed that Congress hold on-line service providers accountable if their users violate copyrights on the material they find in cyberspace. Civil damages alone, they argue, are too easily written off by large corporations as merely a cost of doing business.

Service providers counter that liability should be limited to instances when the provider knew of the infringement and intentionally contributed to it. They contend that they cannot know what all their subscribers are doing and should not, therefore, be held liable for those actions. So far, courts have generally sided with the on-line services, but the issue is unresolved.

PARA-SITES

In February 1997, CNN, the *Washington Post,* and *The Wall Street Journal* sued Roman Godzich for copyright and trademark infringement. TotalNews.com accessed and displayed content from those sites within frames on its home page. As a result, visitors to the TotalNews.com site could see a story from *The Washington Post,* for example, among frames containing advertising sold by TotalNews.

Framing content of others within your Web page without their written permission is an invitation to litigation, regardless of your site's content or intent.

WHO LINKS TO WHOM

Unlike framing, regular hyperlinks to other sites are fine. Several search engines allow you to discover who has linked to your site. Here are a couple of them.

HOTBOT

Step 1: Open your browser to http: //hotbot.lycos.com

Step 2: Enter your URL in the Search box.

Step 3: Expand the "Look for" drop-down list and select "links to this URL," as shown in Figure 353.

Figure 353

Step 4: Click SEARCH.

ALTAVISTA

Step 1: Open your browser to http: //www.altavista.com/

Step 2: Click the Advanced Search link.

Step 3: In the Boolean Query box, shown in Figure 355, type:

link:*x.com*

where *x.com* is the URL in question.

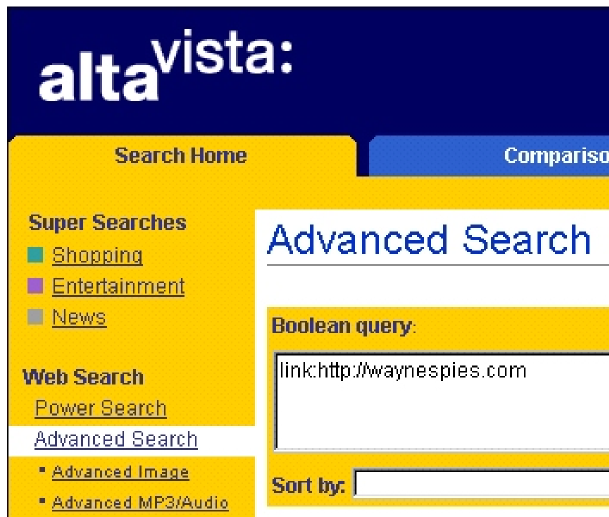

Figure 355

Step 4: Click Search.

CITING INTERNET SOURCES

When you publish the works of others, in whole or in part, whether that work is copyrighted or in the public domain, you must properly cite the work from which it came. Failure to cite a source may is plagiarism. Traditional citations refer to the author, the publication, the publisher, the date of publication, and the page number of the work cited. A citation must be:

- complete,
- accurate, and,
- verifiable.

With electronic documents, though, these standards are elusive. A Web document is not permanent. One day it can be "published" for millions to read; the next day, gone. Authors are rarely given by-lines, and pages are almost never numbered.

It shouldn't be surprising, then, to discover that not all professors and publications accept citations of material found on the Internet. Still, the three major style manuals in the U.S. have developed standards for citing Internet sources.[4]

CITING DOCUMENTS ON THE WEB

Here are some resources for citing Internet sources:

Citing Electronic Sources
http://www.csbsju.edu/library/internet/citing.html

Citing On-line Sources
http://www.linguistlist.org/citing.html

The Plague of Plagiarism
http://c.faculty.umkc.edu/cowande/plague.htm#self

Style Sheets for Citing Internet Sources
http://www.lib.berkeley.edu/TeachingLib/Guides/Internet/Style.html

Using MLA Format
http://owl.english.purdue.edu/handouts/research/r_mla.html

THE BOTTOM LINE

As a Web designer, the copyright law boils down to a few, easy guidelines. Consider everything you encounter on the Web owned by someone. While you may download material from the Web for your personal use, you may not publish it, or excerpts from it—and that includes publishing on your Web site or intranet—unless:

- the work is in the public domain;
- you have an educational or commentary site that can take advantage of the Fair Use Doctrine; or,
- you have written permission to use the material from the copyright owner and/or other licensing body.

In no case should you use anything without proper attribution.

DEFAMATION

As a publisher on the World Wide Web, copyright law is not your only legal concern. Of potentially far greater consequence is your understanding of libel laws.

Libel is the publication of defamatory material that you knew, or should have known, was false. Defamatory material is anything that harms the reputation of someone, exposing that person to public contempt, ridicule, or humiliation. True statements, of course, may damage one's reputation, but are not libelous. Also, statements need not be literally, word-for-word, accurate; minor inaccuracies of expression or of detail are immaterial.

A person does not have to prove that his or her reputation was harmed when it comes to some statements, known as defamation per se. Such statements are considered defamatory by their very nature, such as allegations that a person engages in criminal activity or sexual misconduct, that he or she is afflicted with a venereal disease, and so on.

Defamation has been narrowly applied to people who seek the lime light. In February 2000, a losing contestant on a television show sued KLLC-FM, a San Francisco radio station, for characterizing her as "a big skank . . . a local loser . . . a total chicken butt." A California appeals court was unable to determine if the disc jockeys had knowingly perpetrated a falsehood, reasoning that the terms in question were too vague to be capable of being proven. It characterized the comments as merely an expression of opinion, given that the woman had voluntarily subjected herself to potential ridicule and humiliation by appearing on the show, *Who Wants to Marry a Multimillionaire*.[5]

Still, defamation—per se or otherwise—remains one of the best devices known to modern man for transferring your assets to someone you do not like.

PRIVACY RIGHTS

You don't have to commit libel to have someone sue you for your site's content. Unless one is a public figure, a person has a reasonable expectation of privacy. You should not publish recognizable images or sounds of identifiable individuals without their permission, unless that person is a public figure.

Children have special privacy rights. The *Children's Online Privacy Protection Act of 1998 (COPPA)* requires commercial Web sites to obtain parental permission before collecting, using, or disclosing personal information from children under the age of 13. *COPPA* requires these sites to provide notice to parents about their policies and to obtain verifiable parental consent, regarding their collection, use and disclosure of children's personal information. To see if your site falls under this statute, check with the Federal Trade Commission.

OBSCENITY

So far, we have focused on issues that are resolved by lawsuits in civil courts. With obscenity, we cross the line to criminal matters. Exposing others may expose you to criminal prosecution in the United States or abroad. In the U. S., obscenity must meet three standards:

- whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest;
- whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and,
- whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Special federal laws apply to child pornography. The *Child Pornography Prevention Act of 1996,* prohibits the shipment, distribution, receipt, reproduction, sale, or possession of any visual depiction that appears to be of a minor engaging in sexually explicit conduct or the advertisement, promotion, presentation, description, or distribution of material in such a manner that conveys the impression that it depicts such conduct.[6, 7]

INTERNATIONAL

Knowing American law is not enough. As its name suggests, the ***World Wide*** Web is a global medium, subjecting publishers to national, provincial, and local regulations around the world. For example, the conservative German state of Bavaria has a long history of prosecuting foreign ISPs and sites for providing "youth-endangering material" prohibited in Germany, such as:

- material glorifying violence, including violent computer games;
- material promoting racial hatred;
- pornography;
- the display of swastikas and other Nazi memorabilia;
- neo-Nazi literature;
- Holocaust denial propaganda; and,
- material that glorifies drug use.

In 1995, Bavarian officials backed down in its attempt to force CompuServe to block "pornographic content," when women's groups protested that the guidelines would effectively eliminate discussions among victims of sexual abuse, AIDS patients, sex therapists, and those discussing sexual content in art, culture, or literature.

In 1996, a dispute arose between two Scottish publishers. Jonathan Wills, publisher of the *Shetland News,* linked

headlines to *The Shetland Times* site. *The Times,* a 124-year-old weekly, sued in Scotland's highest civil court, alleging that this was an unauthorized use of its news service. The Scottish court issued an injunction blocking Wills from linking to *The Times's* site.

In December 1996, Georgia Institute of Technology was sued in France because Georgia Tech Lorraine's home page was written in English. A 1994 French law requires advertising and related broadcasting in France to be in French, regardless of whatever other languages are used—and French courts ruled that the law extends to the Internet.

The director of Georgia Tech Lorraine said, "The curriculum is the curriculum of an American university; the students are all Georgia Tech students."

The plaintiff, Marc Bonnaut, countered, "If there is a German café in Paris and only Germans come to it, the café still has to have a French-language menu." According to Bonnaut, whether a site "is in English, Chinese or Russian is no problem. The problem is that it is not also in French. We are not against English, we are for the French language. We are in France, after all."[8]

France is nothing if not consistent. The International League Against Racism and Anti-Semitism ("Licra") and the Union of French Jewish Students sued Yahoo! for displaying Nazi memorabilia on its auction sites. In *Licra v. Yahoo,* a French judge agreed, fining Yahoo! $13,000 per day. American courts, however, ruled that French sanctions against Yahoo! are unenforceable.

China, Vietnam, Iran, Iraq, and other nations, have stringent political and cultural censorship laws. Many nations ban telephony on the Internet. Europe enforces privacy laws that strictly ban collecting personal data from Web sites.

On one hand, in each of these cases, countries argue for the right of self-determination—the right of a society to delineate its own cultural, legal, and social boundaries through the rule of law—and for the right to hold those who use cyberspace to circumvent those laws and undermine their culture accountable. On the other hand, the myriad laws, tangled jurisdictions, and foreign legal systems all conspire to make compliance problematic.

A Word to the Wise

Whether it's intellectual property rights, libel, privacy, obscenity, child pornography, or international law, take these legal issues seriously. Never mind that many sites ignore these rules. The legal system is built on legal precedents, and it is slow to react to new concepts and situations for which no precedents exist. When it finally does, there is no guarantee that, as illustrated by French "broadcasting" rules or *The Shetland Times,* the courts will apply a precedent that makes any sense.

The best advice is to be aware of the laws, use common sense and decency, and obtain legal counsel if you skirt a gray area.

Legal Resources on the Web

About: Law
http://law.about.com/cs/cyberspacelaw/

Federal Trade Commission
http://www.ftc.gov/privacy/

FindLaw
http://www.findlaw.com/

The Software Publishers Association
http://www.spa.org/

Web Law FAQ
http://www.patents.com/weblaw.htm

Copyright Resources on the Web

Center for the Public Domain
http://www.centerforthepublicdomain.org/

Copyright Clearance Center, Inc.
http://www.copyright.com

Copyright Timeline
http://arl.cni.org/info/frn/copy/timeline.html

Copyright Website
http://www.benedict.com/

***Scientific American:* Who Owns Digital Works?**
http://www.sciam.com/0796issue/0796okerson.html

Trademark Resources on the Web

International Trademark Association
http://www.inta.org/

MarksOnline
http://www.marksonline.com/app/tmsearch

NameProtect.com
http://www.nameprotect.com/

Nissan Domain Name Dispute
http://www.ncchelp.org/

Trademark.com
http://www.trademark.com/

United States Patent and Trademark Office
http://www.uspto.gov/

NOTES

1. Public Law 94-553 or the 94th Congress revision of Title 17 of the U.S. code, known as the "General Revision of the Copyright Law."

2. The Software Publishers Association, an industry coalition to fight software piracy, has its own hoax virus: Supposedly, the SPA virus examines programs on your hard drive to verify that they are properly licensed. If it detects illegally copied software, it seizes the computer's modem, automatically dials 911, and reports you.

3. *Financial Times,* 2/14/96, p. 7.

4. The Modern Language Association's *MLA Handbook for Writers of Research Papers*, the *Publication Manual of the American Psychological Association*, and the *Chicago Manual of Style* are the three most widely used style manuals.

5. "Calif Appeals Court Says Insult Isn't Slander," *The Sacramento Bee,* 4/18/2002, http: //www.sacbee.com/state_wire/story/224364069c.html.

6. 18 U.S.C. 2252A, 2256(8)(B) (Supp. IV 1998)

7. 18 U.S.C. 2252A, 2256(8)(D) (Supp. IV 1998)

8. *Washington Post,* December 24, 1996, p. A1.