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“Ripping” Music

As I sit down to write this quarter’s column, one of the hot topics on blogs and Internet forums is a recent Washington Post article that chronicles the Recording Industry of America’s (RIAA) recent copyright infringement litigation endeavors. In the article, journalist Marc Fisher discussed an ongoing case against an Arizona man for “ripping” legally-purchased music CDs to his computer. Of course, ripping CDs to a computer for personal, non-commercial use has become a common practice in this age of digital media, and the RIAA’s claim, as described in Fisher’s article, understandably drew the ire of many technophiles.

A review of the court documents in that case reveals that while the RIAA did allege that the defendant ripped music to his hard drive, at the core of its copyright claim is the allegation that the defendant moved the ripped music to a “shared folder” on his computer. In essence, the Arizona case is no different than the numerous file sharing cases that the RIAA has brought in recent years against users of

various peer-to-peer file sharing services. The harm, says the RIAA, lies in the unlawful distribution of copyrighted works.

The RIAA later publicly clarified its position in an interview with National Public Radio, noting that it is generally not concerned with people making noncommercial, personal use copies of CDs, and that it has not brought a single infringement suit based solely on such copying. But the RIAA stopped short of agreeing that copying of music from lawfully-purchased CDs onto personal computers and personal media devices constitutes fair use, or is otherwise exempt from infringement liability. Despite copyright scholars’ repeated assertions that such use should be permitted, the U.S. recording industry is apparently not quite ready to accept that there are limits to the exclusive rights that copyright owners enjoy.

At the heart of the RIAA’s argument is the principle that the owner of a lawfully-purchased CD, while having the right to play the CD, does not have the right to manipulate the intellectual property contained on it. Critics of the recording industry’s position argue that copying a CD to a person’s own hard drive for personal use is a fair use of the intellectual property, and thus, does not constitute copyright infringement. Although the issue is likely to remain unresolved for the foreseeable future, the RIAA’s position offers a useful basis for a discussion about an often misunderstood principle of copyright law: the distinction between a copyrighted work and the physical object upon which that work is fixed.

What About Old Shows?

Before I delve into the legal analysis, consider this set of facts: a planetarium is upgrading to digital projection technology and hopes to sell its old shows to a planetarium where they will get some use. Most of the shows were produced by third-party production companies or other planetariums, though some of the materials were created in-house. Can the planetarium legally sell its old shows? Could a buying planetarium legally use them? Consider the question as you read; I will come

back to these facts later in the column.

Copyright protects “original works of authorship” that are fixed in a tangible medium of expression. The “tangible medium of expression” requirement serves as a prerequisite to protection, but is distinct from the work itself. A single “musical work,” for example, can take numerous tangible forms, such as printed sheet music, or a CD recording. But regardless of the various forms that a particular work may take, there still exists only one copyrighted work. One who purchases a copy of the sheet music or CD recording has the right to make reasonable use of the material, but has



no rights to the intellectual property embodied on the printed page or recorded CD. Simply put, ownership of the item confers no interest in the content embodied therein.

The distinction is important because of a limitation that exists in U.S. copyright law. The so-called “first sale doctrine” provides that a copyright owner’s exclusive rights extend only to the copyrighted work, and not to the physical media in which that work is embodied, or, put differently, the copyright owner has no right to control the physical media after the media is first sold. Without this provision, those who sell used books or CDs, for example, might be considered copyright infringers. The first sale doctrine is designed to ensure that copyright protection extends only to the product of a creative endeavor, and no further, for allowing the copyright owner to control the physical media on which his or her work is fixed does little to serve copyright’s underlying policy purpose: to incentivize the development of new creative works.

One way in which copyright owners have attempted to get around the limitations of the first sale doctrine is by characterizing the transfer of physical media as a licensing arrangement rather than a purchase. By doing so, a copyright owner can prevent the transfer of physical media by claiming that such a transaction would constitute a breach of the license agreement. Software publishers have been particularly aggressive at arguing this

General Counsel is intended to serve as a source of general information on legal issues of interest to the planetarium community. Planetarians seeking information on how the principles discussed in a General Counsel column apply to their own circumstances should seek the advice of their own attorneys.

position, though its veracity remains largely untested. Like the RIAA's views on CDs, only time will tell how the law will handle such issues.

Check the License

So, returning to the hypothetical scenario above: can the planetarium legally sell its old traditional shows to another planetarium? The answer, like most legal answers, is "it depends." To the extent that the selling planetarium created the show materials in-house, it likely owns the copyright, and selling those materials probably would not raise an issue. As for shows acquired from producers or other planetariums, under the first sale doctrine, it would appear as if the planetarium may freely sell the show materials: the slides, soundtrack tapes, related printed materials, and so forth.

But the buying planetarium probably could not do much with the shows, for the right of public performance vests in the copyright owner, and the initial performance license was likely granted to the planetarium that first purchased the show. Without that

license, which almost certainly isn't transferable, the buying planetarium would be unable to lawfully present the shows in its theater.

Additionally, the license might even extend beyond performance rights, purporting to control distribution of the physical media, much like software publisher attempt to do in their licenses, making the transfer of the show materials a breach of the license.

In short, whether the planetarium would be able to sell its shows requires an analysis of the relevant facts as considered against the legal principles I set out earlier. This is, of course, just a hypothetical, and you should always remain mindful that every situation varies based on the specific facts. As always, if you have questions relating to your own legal situation, you should seek the advice of a qualified, competent attorney licensed to practice in your jurisdiction.

A Note About Star Naming

Although I have studiously avoided dragging this column into the debate over star

naming services, I recently noticed that the U.S. Copyright Office has posted a statement on its web site regarding the practice and thought it was worth mentioning here. One of the often-used pitches for such star naming services is that the name and "owner" of the star is placed in a book which is then registered with the Library of Congress (the Copyright Office being a unit of the Library of Congress). While this claim is literally true, as a book is considered a literary work and is, thus, plainly copyrightable, copyright registration affords no protection to the names listed in the book. It appears that the Copyright Office agrees, noting on its site that "In names are not protected by copyright. Publishers of publications such as a star registry may register a claim to copyright in the text of the volume [or book] containing the names the registry has assigned to stars, and perhaps the compilation of data; but such a registration would not extend protection to any of the individual star names appearing therein" (alteration in original). To see it for yourself, visit www.copyright.gov. ☆

Replicas of Galileo's telescopes: The Most Precise to Date

Thoroughly researched, including measurements we made of the originals in Florence, Italy, these telescopes are beautiful works of art, hand crafted in every detail with no antiquing. They offer a time machine journey into the past to experience, like Galileo, the wondrous instruments that saw in the heavens what no one had seen before! They are excellent and accurate teaching tools.

The beautiful leather presentation instrument incorporates the original unusual wood-stave construction and a very faithful replication of the gold tooling applied with 20 custom dies and more than 400 individual stamps.

It speaks to Galileo's masterful marketing skills and passion for selling science!

Galileo's

Comparing our replica to the original in front of its cabinet in Florence Italy.

The development telescope was Galileo's laboratory instrument. It's rare for such an instrument to survive! It represents the ultra important working tool he would have used to experiment with optics and make discoveries. We offer accessories to experiment with field of view - also the micrometer he probably used to measure magnification.

We build to order:

1. the beautiful gilded leather presentation instrument
2. the development telescope and accessories
3. half models of each for demonstrating their internal construction.

Our replica of Galileo's Development Telescope

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