

Digital Copyright

By John B. McHugh

Is Copyright Obsolete?

Yes, according to Rob Landley in his *Motley Fool* piece, "Intellectual Property is an Oxymoron" (fool.com). "Copyright as it now stands has outlived its original purpose, and it is no longer beneficial to society as a whole. New business models must emerge, are already emerging, to replace the old." One reads this sort of naïve drivel in all the e-business media.

Nicholas Negroponte of MIT states unequivocally in his book, *Being Digital* (1996, Vintage), "Copyright law is totally out-of-date. It is a Gutenberg artifact. Since it is a reactive process, it will probably have to break down completely before it is corrected." The trend among "techies" is that all content should be free because the Internet has changed everything.

Copyright is one little detail that gets in the way of all content being free as espoused by the techies and much of the brand spanking dot.com community that have emerged over the last few years. Think about it for a moment: Wouldn't you like free product to sell if you were a new business as most of these dot.coms are?

Are Publishers an Endangered Species?

Here's what publishing expert/copyright scholar Landley says: "Publishers have become useless middlemen rendered obsolete by digital technology. The laws of supply and demand are driving their profit margins to zero and their efforts to fight back highlight how few people need them?" Really? Are you and your publishing organization "useless middlemen?"

A consistent anti-copyright bias pervades most of the e-business media, which of course favors the techies and dot.coms in the question of copyright. My hunch is that this bias is self-serving given the fact that many dot.coms want *free access* to content. Rest easy, as copyright law (and

trademark law) as we know it will be around for a long time.

Can Copyright Law Keep Up?

Copyright law will gradually change and evolve to meet the need of all stakeholders. Paul Goldstein in his fine book, *Copyright's Highway: The Law and Lore of Copyright from Gutenberg to the Celestial Jukebox* (Hill & Wang, 1994) states: "As the pace of technological change quickens, Congress seems less and less able to adjust copyright laws to the changes. In the two centuries since it passed the first American copyright act it has been playing catch-up with new technologies — first photographs, then phonograph records, motion pictures, radio, broadcast television, and cable television — usually about 20 years behind the new technologies."

There are new laws to address changes in technology, for example, we now have the Digital Millennium Copyright Act (DMCA). The DMCA, according to a February 22, 2000 *New York Times* article, "makes it illegal to crack encryption technologies, the digital wrappers that protect intellectual property on the Internet and formats like DVD. It also outlaws the manufacture and sale of devices used to crack those defenses." Despite challenges to the protection for encryption technology, the bottom line is that copyright is the bedrock of protection for intellectual property produced by publishers and always will be. You can count on that.

Will Publishers be "Napsterized?"

Napster is the music file sharing service that allowed individuals to share, without permission or compensation to copyright owners, copyrighted music. "Napsterized" is synonymous with being "ripped off." Courts have held that Napster is guilty of copyright infringement on grounds of contributory or vicarious liability,

or both. I suspect we will see the same pattern in the print publishing world.

Sanford G. Thatcher, Director of Penn State University Press, said it best in the *PSP Bulletin* (Spring, 2001), "It should be clear now why I find it so threatening to legitimate publishing. Napster is nothing other than a parasite, surviving by attaching itself to another body and feeding off of its lifeblood (intellectual property) while contributing nothing of its own to sustaining that body's existence."

How Can Your Organization Protect Itself?

What should you do to avoid being ripped off by a Napster-type parasite? Use the services of a Digital Rights Management (DRM) firm. DRM will allow users to access your content from a secure server and ensure that you are paid when customers use your company's content. The DRM firm will follow your permission fees and policies.

According to an informative article in the June 26, 2000 *Industry Standard*, "Permission policies are client-side software tools that let site producers tweak the status of all kinds of files, including HTML pages, to be read-only, able to freely copy, or any status in between." Some DRM firms you may want to check out include:

- Savantech (savantech.com)
- Copyright Clearance Center (copyright.com)
- DigitalOwl (digitalowl.com)

John McHugh is the author of the **McHugh Publishing Management Series**—48 practical publications on all aspects of publications management. A 30-year veteran of the publishing business, McHugh provides management consulting services, custom in-house training seminars, and is fully qualified to serve your organization as an interim publishing executive. You can reach him at 414-351-3056, e-mail j.b.mchugh@att.net or (johnbmchugh.com).



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