SILICON VALLEY LAW GROUP®

A LAW CORPORATION

News You Can Use
From Jay Landrum

Last month, a federal jury ruled a Minnesota woman must pay $1.92 million for copyright infringement related to the unauthorized downloading of music. Even though the industry has typically offered to settle cases for about $5,000, she decided to fight it...and in hindsight, made a really bad choice!

A new case in Boston is going to trial now against a college student. His attorney is using the defense that he is just "a kid who did what kids do." Stay tuned for those results in a future email.

So, what's allowed in the world of copyright? Read on, as myths are prevalent in this area of law.....

5 Myths about Copyright

In talking with clients, friends, and even some attorneys, I've found that a number of myths exist about copyright law. Maybe these myths are based on outdated law, or maybe they were just made up by copyright infringers trying to rationalize their conduct -- either way, these myths are widely held, and generally wrong. So, let's clear up a few of them.....

Myth #1: If I don't make any money from it, it's not copyright infringement.
While not making any money may decrease the amount of monetary damages awarded to the rightful copyright owner, it won't eliminate them. Damage has still been done by your infringement. Imagine that you copied your favorite Springsteen CD for all your friends. While you might have meant well (and made your friends happy), the result is that none of your friends need to buy the authentic CD any more...so Bruce and his E-Street Band just lost out on all of those sales. Bruce is unhappy, and you have a problem.
Truth #1: Infringement is the act of copying it, not the selling of it.

Myth #2: If I copy 20% or less, it's not copyright infringement.
This is the "*it's not stealing if I only steal a little bit*" defense. Unfortunately, there's no clear cut rule about exactly how much of the prior work you can use before it becomes

About Jay Landrum

Jay Landrum is a member of Silicon Valley Law Group's Corporate & Securities and Intellectual Property Groups. As former General Counsel for a NYSE company and as a former CEO of a health products company, he has extensive experience representing companies in all stages of operation, including organizational matters, licensing, strategic relationship agreements, fund-raising, and merger transactions.

jay@svlg.com
ph: 408-573-5700

infringement. Whether it's 5%, 10%, 5 notes, 1 sentence, or making it in a different size, the real test is if a "reasonable person" would find your work to be "substantially similar" to the original. Since "reasonable person" and "substantially similar" tests are decided based on the unique facts of the case, relying on the "*I only used a little bit*" defense requires some real unbiased evaluation first.

Truth #2: There's no standard measurement for how much is "safe" to use vs. how much equals infringement - it all depends on the facts.

Myth #3: If there's no copyright notice, there's no copyright protection.

Even if the creator leaves off the © line, the creator still has a copyright on her original content from the time of creation -- automatically. As the creator, are you required to put the copyright notice on your work? No. Is it a good idea to do it anyway? Yes. At the very least, placing the copyright line may prevent your copyrighted material from being stolen by someone else who is relying on this myth! (Finally, for maximum protection and ability to collect damages, you should also file your developed work with the Copyright Office).

Truth #3: No copyright notice is required (but you should put it on anyway).

Myth #4: If I give credit to the copyright owner, it's not copyright infringement.

Sorry - just identifying who you stole it from doesn't make it right. Controlling the use of the original work is exactly what the owner has a right to do. What kind of law would it be if you could get around it simply by referencing the original creator? If you need to use part of someone else's work, get permission.

Truth #4: Giving credit is nice, but it's not enough.

Myth #5: If I hire someone to create an original work, I own the copyright.

Maybe. In cases of your employees...yes. But it's not necessarily true if you hired an independent contractor for same exact project. This question is a very tricky one. Back to "The Boss," let's assume Springsteen hired an artist to paint his portrait. Who owns it? Without a contract otherwise, Bruce owns the actual painting, but the painter owns the copyright. Can the painter do anything with the image he wants (such as make posters)? Maybe, maybe not....Bruce has rights to his likeness and image, but then again, the painter can slap someone else's face in there and he may be good to go once again. One more note for those of you familiar with the independent contractor "work for hire" concept...it only works in some cases, so without other language transferring ownership, it still may not be enough, even if you specify that the work is "work for hire."

Truth #5: He who pays for the creation and he who owns the copyright are not necessarily the same person.

Copyright law has a number of twists and turns. Be informed and be careful. Infringement can be a very expensive lesson to learn -- the woman in Minnesota I mentioned earlier will confirm that!

Silicon Valley Law Group has built its practice on one simple but compelling idea -- answers at the speed of business. We serve emerging and established companies in the areas of high stakes litigation, corporate and securities, employment, environmental, financial services, intellectual property, licensing, real estate and land use, and tax planning.