

Chapter 2: Infringement

Infringement is the use of copyrighted material that violates any of the rights of the copyright owner, and without the permission of the copyright owner. While copyright infringement is against the law, the seriousness of any given offense may vary.

In this chapter students will learn:

- I. What constitutes copyright infringement?
- II. What are the potential consequences of copyright infringement?
- III. Who are the white hat and black hat infringers? Are they treated differently in court?
- IV. When no profit is made off an infringement, is it still illegal?

I. What constitutes copyright infringement?

First, let's get it over. Just like everyone owns a copyright or three, everyone has, as some time or another, committed copyright infringement. If the law is interpreted strictly, then posting a comic on your door, having a tattoo of a cartoon or distinctive movie character placed on your body, or using a long quote in a scholarly paper – all these activities are infringing, if no fee is paid to the copyright owner (Tehrani, 2007, p.537-550). YouTube provides access to thousands of “mash-ups” from popular TV shows and movies. While the creators often declare “No copyright intended,” simply saying so will not protect the creator from legal action. And despite common beliefs, citing the source of the item you “borrowed” is not sufficient to protect you from infringement.

Infringement is the legal term for a person using one of the copyright owner's rights without permission. It is said that the person has infringed on the other's copyright. (U.S. Copyright Office 1992) If you are found guilty of infringement, you will most likely be fined and not imprisoned. Fines are most often set by legal statute, using the guideline of “*not*

less than \$750 or more than \$30,000 as the court considers just" (US Government). The fine is calculated per incident of infringement. If a person is found guilty of scanning a book and making it available on the Internet, the initial scanning is one incident; posting it on the Internet is a second incident; and every time the online book is accessed (not even downloaded) constitutes more incidents. Then, each time it is downloaded constitutes even more incidents. For example, Todd puts a scan of a recent textbook online: that's 1 incident for scanning and 1 for making it available. Five hundred people access it (which makes 502 infringements) and 200 of them download the textbook (702 infringements). Using the fee range given above, we can guess that Todd will be fined \$1,000 per infringement. His fee will come to \$702,000. But that's not all: the loser in a court case is often required to pay the legal and attorney fees for the prevailing party.

In the few cases in which a person knowingly infringes another's material and uses it to earn a great deal of money, imprisonment may be considered in addition to fines.

Exceptions

Given that nearly everybody has infringed copyright at some point in their life, it is possible that some readers are becoming very concerned about their legal status. In most cases, you do not have to be. There are several exceptions to the copyright owner's rights. The most well-known are Fair use (17 USC §107) and Educational use (17 USC §110). Other infringements, such as posting a comic strip on your door are probably considered "*de minimus*" or simply too small to be prosecuted.

No profit?

Many people believe that if they use some content from another person but do not profit from it, then there is no infringement. This is not true. Copyright is concerned with the use (and re-use) of the material. Earning money is not an issue; the use occurs whether or not money was earned.

White hat/Black hat

This paragraph is based purely on rumor and hear-say, but it reveals a mindset that may prove relevant. In court, some infringers may be classified as “white hat” infringers (essentially unintentional and harmless) while others may be seen as “black hat” infringers – deliberate “pirates” of content who continually take lots of content and may profit from their infringements. A white hat infringer *is still guilty*, but they have a chance of receiving a smaller fine for their infringement.

Chapter 2 Bibliography

Tehrani, John. “Infringement Nation: Copyright Reform and the Law/Norm Gap” *Utah Law Review* 2007.”

17 USC. Copyright Office 2002.