

## 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. And despite common beliefs, citing the source of the item you “borrowed” is not sufficient to protect you from infringement.

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 downloaded) constitutes another incident. To add to this, 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. 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 (Ch. 2, USC §107) and Educational use (Ch. 3, 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. 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.

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