

## **Interview with Professor Edward Samuels**

Author of *The Illustrated Story of Copyright* and Professor at New York Law School.

Reviewed by Robert S. McNamara

Q. What was your purpose in writing *The Illustrated Story of Copyright*?

A. My primary purpose was to write an explanation of copyright that would be accessible to a general audience. I wanted my seventy-year-old parents to be able to understand it, as well as my teenage children. There are popularizations of science, history, biography, and just about everything else, but no really successful and accessible explanations about the law. What better place to start than with copyright, which involves creative works—music, movies, television, books, art—that people are familiar with? The subject matter is one that people can understand.

At the same time, I've always wanted to publish an "anthology" of famous copyrighted works, or works involved in some of the famous cases, for use by copyright law professors. I imagine that we copyright professors all go around collecting reproductions of works involved in some of the famous cases, to use as props in our classes. I thought it would be nice to pull some of these together.

Q. What is your major thesis?

A. The current spin on copyright is that the new technologies, particularly the Internet, somehow "change everything," and that copyright is obsolete or ill-equipped to handle the difficult issues raised by the new technologies. But the Internet is hardly the first new technology, and, if anything, the story of copyright in the twentieth century is the story of how it responded to the new technologies—sound recording, radio, television, tape recording, photocopying, the digitization of all forms of creative works using computers, as well as the Internet. The Internet isn't quite as threatening if you view it in the historical perspective of these other technologies.

Indeed, there has been more activity on the copyright front in the last thirty years than in the prior history of copyright. In the field of music copyright, we've had major amendments in 1971 (adding sound recordings to federal copyright), 1984 (extending the exclusive rights in sound recordings to cover rentals as well as sales), 1992 (the Audio Home Recording Act), 1995 (the Digital Performance Rights in Sound Recordings Act), and 1998 (various amendments as part of the Digital Millennium Copyright Act). This hardly looks like what you would call an "obsolete" law!

Q. What are the origins of copyright law?

A. Ah, you may not intend it, but this is something of a trick question. The traditional answer, and I give some of the history in my book, is to look back at the Stationers' Licensing Acts in England in the seventeenth century, and to view the 1710 Statute of Anne as an extension of these "censorship" laws. (This embarrassing "origin"

is then emphasized in arguments that we should limit copyright.) But the licensing acts lapsed over a decade before the passage of the Statute of Anne, and the new law was something of a revolution in that it granted rights to authors; not, as the publishers had asked, to the publishers.

While the licensing acts were in place, controlling the publishing of books, there was no pressure to pass a general copyright law to protect authors, since the publishers' monopoly gave them something of an incentive to pay the authors to get the rights in popular works. But once the old structure was abandoned, the need for a general copyright law became apparent. It was picked up in the United States in the Constitution (granting Congress the power to pass copyright law) and the first United States copyright act of 1790. The act was passed with hardly any discussion, since it seemed obvious to most of the legislators (many of whom were themselves authors, and who had been lobbied powerfully by Noah Webster) that a federal copyright law was in the public interest.

Whatever the "origins" of American copyright law, it's obvious that it's no longer limited to what it was in 1790. The "monopoly" approach can't explain the tremendous expansions of copyright in recent years, in terms of the subject matter included in copyright, in terms of the scope of rights granted, and in terms of the way copyright is applied to new technologies. It's commonly recognized that the civil law countries have had a more favorable view of copyright as a "property" or "natural" right than has the United States. Yet, since we've joined the Berne Convention in 1988, our laws are in many ways indistinguishable from the laws of the civil law countries.

In short, I think it misses the point to get too caught up in the "origins" of copyright. As I point out in my introduction, "Thomas Jefferson never saw anything like this," and it would be ludicrous to decide issues of modern copyright by reference to what it might have meant two hundred years ago. Copyright is ever-evolving. That *is* the story of copyright: constant changes, at an ever-accelerating rate, to the challenges of technology.

Q. Has advanced technology in any way created different forms of artistic expression that required copyright law to evolve and adapt to such new technology?

A. Absolutely. Most of the focus in the case of the new technologies has been on the "user" or potentially "infringing" side—technology for reproducing, altering, and distributing works, all of which are supposed to be within the exclusive control of the copyright owner (though with lots of exceptions). But the technology creates new possibilities on the creation side as well.

I do think we tend to over glamorize the possibilities, though. I'm sure we've all gone to computer expos and watched as someone demonstrated how some new program, like Create-A-Masterpiece, is going to make creative geniuses of us all, and we've plopped down \$500 for this great program. Picture someone with a pencil and pad sitting right next to them drawing exquisite creations before our eyes. Would we plod down

\$500 for the pencil that they were using? The new technology is just tools. We still need creativity to make meaningful art, and it's copyright that protects and encourages creativity.

Q. What impact has your research had?

A. That's a tough one. The book has been successful in reaching its audience, if I can believe some of the rave reviews—"succeeds brilliantly" or "succeeds admirably." (Check out the reviews at my website, [www.nyls.edu/samuels/copyright](http://www.nyls.edu/samuels/copyright)—they've been quite generous.) Has it changed the law? I doubt it. Hopefully, it provides something of a balance against some of the recent books that praise the Internet, and blame copyright for somehow inhibiting the development of the Internet to its full potential.

Q. Is this a publication for both practitioners and students?

A. Absolutely, I think there's something here for just about everyone. (Again, don't take my word for it, check out the reviews.) And that includes people involved in the creation or consumption of entertainment works, who otherwise have no training in the law.

Q. Is there a common theme within the book?

A. Basically, it's the optimist's take on copyright. Instead of concluding that copyright can't work in the face of new technologies, I show how copyright has been adapting to the new technologies for years now. I don't think copyright owners should always win their cases, but in fact they don't. There are lots of limiting doctrines, like the idea-expression dichotomy, or the fair use doctrine, or various compulsory licenses that limit the scope of copyright, and create a balance between the rights of copyright owners and copyright users. We can disagree about precisely where to draw some of the lines, but I think that copyright, as a body of law, has actually been quite successful. And I expect it to continue to be so.

Q. Tell our readers a bit about your background.

A. Nothing too exciting here. After a couple of years in practice, I've been teaching for 25 years now at New York Law School. Although I also teach and study and write about commercial law, bankruptcy, and contracts, my favorite area is copyright and intellectual property. It's just a fun area, and the people who are involved in the creation of copyrighted works are just incredible. Over the past three years, as I've contacted hundreds of people, getting permissions to reproduce works for the book, I've been completely rejuvenated in my interest in this field. I only hope it continues to be as exciting for the next 25 years.