

Intellectual Property Law & Interactive Media: Free for a Fee

By Edward Lee Lamoureux, Steven L. Baron, and Claire Stewart
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The advances in technology in today's world allows for the digitizing of intellectual property and the ease and speed with which it can be copied, transmitted, and globally shared. Intellectual property law often lags behind these developments in technology, which result in legal problems for consumers, industries, and governments. This particular area of law encompasses copyright laws, patent laws, trademark laws, trade secrets, as well as laws pertaining to the right of publicity and privacy. The authors¹ of *Intellectual Property Law & Interactive Media: Free for a Fee* address these legal issues through an analysis of the multiple areas of intellectual property law and provide some thoughts on the future of these issues.

The theme the authors present through the book is that "Nothing has changed; everything has changed."² The laws regarding intellectual property have not changed in that artists and innovators still create content and seek protections from federal and state laws while violators of those protections get punished. At the same time, the technological world has changed and intellectual property laws have not kept up with the developments, making enforcement ineffective, especially internationally. This book discusses this problem with regard to each

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² EDWARD LEE LAMOUREUX, STEVEN L. BARON & CLAIRE STEWART, *INTELLECTUAL PROPERTY LAW & INTERACTIVE MEDIA: FREE FOR A FEE* 1 (2009).

category of intellectual property law while incorporating the problems involved with international intellectual property laws, digital rights management, and the increasing development of virtual worlds. In each chapter the authors explain the development of each area of law and apply the area to interactive media. Importantly, the authors make the application through both traditional and new media cases that assist in explaining the law as well as the laws current trend.

This book starts by explaining copyright law and how it developed from English law from the Statute of Anne³ and by U.S. legislation at different periods of time. The book discusses the Copyright Act of 1909, the Copyright Act of 1976, the Digital Millennium Copyright Act, and numerous legislations passed from 1999 to 2005. The authors then discuss traditional leading cases such as *Baker v. Selden*⁴ and *Harper & Row v. Nation Enterprises Case Media*⁵, while ending with recent cases such as *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*⁶ In addition, the book explores three issues of copyright law, such as fair use, the public domain, and orphaned works. All three issues are again developed through important case law and the authors leave off with the idea that the current trend disfavors the common citizen or creator, and favors corporations as copyrights are often extended and left out of the public domain decreasing innovation.

The authors then tackle the issues related to patent law, and develop the subject through case law and legislation. The book discusses patent law in the context of media cases like *E-bay, Inc. v. MercExchange*.⁷ Also, the authors discuss the fact that with new media the high costs and time-intensive nature of the patent process create a lot of problems for small middle-class

³ *Id.* at 34-35.

⁴ *Baker v. Selden*, 101 U.S. 99 (1879).

⁵ *Harper & Row v. Nation Enterprises Case Media*, 471 U.S. 539 (1985).

⁶ *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005).

⁷ *E-bay, Inc. v. MercExchange*, 547 U.S. 1015 (2006).

inventors. The pace of developing new media laps the pace of the patent process and big businesses tend to benefit as they can deal with the long wait and high costs. However the patent system is still in place so the fundamentals of the process need to be understood if small level innovators in new media are to stay clear of infringements and litigation.

Similar to other areas of intellectual property law, trademark law was developed from English law and through U.S. legislation such as the Lanham Act of 1946. The Act sets the terms for establishing and registering trademarks. The book continues its trend and further develops trademark law through case law and U.S. legislation. The authors discuss issues with cyber squatting, search engine manipulations, meta-tags, etc. New media trademarks can be reproduced easily and profusely, and can dilute the value of the mark, or assist in distributing the identity of the trademark increasing its value. The chapter ends with the thought that trademark law will have to face these issues in the near future.

The authors then discuss trade secret law and the implications of digital technologies. Trade secret law developed from common law, particularly from the Restatement of Torts 1939⁸ and the Uniform Trade Secrets Act.⁹ The book then discusses new media cases associated with trade secrets, and that with new media it is difficult to keep a secret. From blogs and bloggers information regarding new products is increasingly being networked without knowledge of trade secret law. The digital age has increased the risks in the trade secret field while the law has not been able to catch up. The system needs to undergo major changes if it is going to be effective as new media keeps on developing at a faster pace.

The book takes a different direction and next discusses content torts such as right to publicity, right to privacy, and defamation. To connect the category with technology the authors

⁸ See LAMOUREUX, BARON & STEWART, *supra* note 2, at 135-136.

⁹ See LAMOUREUX, BARON & STEWART, *supra* note 2, at 136-139.

mostly explain the laws through extensive case law with traditional and new media. Issues arise with new media, such as the World Wide Web, which is fast and far-reaching and causes the amount of content posted about people in the digital world to increase. The three laws mentioned seem archaic and ineffectual when compared to new media. Just like the other aspects of intellectual property law, new media puts the existing system far behind.

The authors also discuss the issues facing international intellectual property law with new media. The book first discusses the development of international laws and how integrated the United States is with the rest of the world. The issues associated with culture are discussed as is the issue associated with the Internet. There is no universal agreement to how the Internet should work, and is only controlled from national borders. The book mentions groups and organizations that try to keep the Internet from being chaotic by making advisements on the regulations of the Internet. However, the problem still arises because there is no “ruling” international law with intellectual property only trade agreements and international standards. The Internet is also so personal that the issues not only affect large industries and governments it affects everyday users and innovators in the sub-areas of intellectual property law. The authors end the chapter with a discussion on the United States role in facing these issues. The country cannot afford inaction as there are economic risks from ineffective protection of intellectual property.

In the next chapter the authors discuss digital rights management (“DRM”). DRM is technology that enforces a restriction on the use of digital content. Similar to the other chapters this book explores the history of DRM and its development through federal copyright laws and recent case law. Much of intellectual property laws are based on legislation and judicial action, which operate under a representative government, but DRM did not follow the same path.

Consumers did not vote for representative bodies to establish DRM, which caused issues with consumer rights. While DRM industries can control how consumers use their digital media, such a control often interferes with a consumer's legal use of the content. Consumers do not see many intellectual property law protections with their personal use under DRM. DRM seems to be effective over a mass distribution but ineffective in a small scale in particular with willing piracy causing irony as DRM infringes upon legal use but not illegal use of digital media.

In the final chapter, the book takes the intellectual property laws explained throughout the preceding chapters and applies the laws to future technology, such as virtual worlds. The authors discuss jurisdictional and ownership of property issues within virtual worlds. They use recent case law involving virtual worlds to explain how the law is being applied in this new technological world. In this chapter the authors also discuss the direction intellectual property law is heading and discuss its continuing problems. Intellectual property law lags far behind the pace of the technological world, and the system that creates the laws do not have consumers and everyday citizens in mind. Intellectual property has been and continues to be written by and for large corporate content industries that hold rights to the works. User law in intellectual property is scarce, but the authors leave the reader with the idea that virtual worlds can create changes in the intellectual property law system, because they take users into more consideration, as intellectual property activities are conducted more by average citizens than corporate entities.

Intellectual Property Law & Interactive Media: Free for a Fee is an appropriate book for anyone that wishes to study, and possibly practice in the field of intellectual property law. The book is a great introduction into the various areas of intellectual property law and supplies its developments and shortcomings as it applies it to the increasing technological world. In particular, the book succeeds by using numerous authorities to explain the multiple fields of

intellectual property law. The reader will be able to understand intellectual property law from statutes and recent important case law. Also, the authors at the end of each chapter supply the reader with discussion questions that allow the reader to think back towards the chapter and analyze the case law and elements of the law discussed. The brief summaries I supplied in the preceding paragraphs are only the tip of the ice berg when it comes to the books actual in-depth explanation of the intellectual property laws. If any law student plans to take any intellectual property law classes and needs supplemental materials to help grasp the material, I would recommend this book.