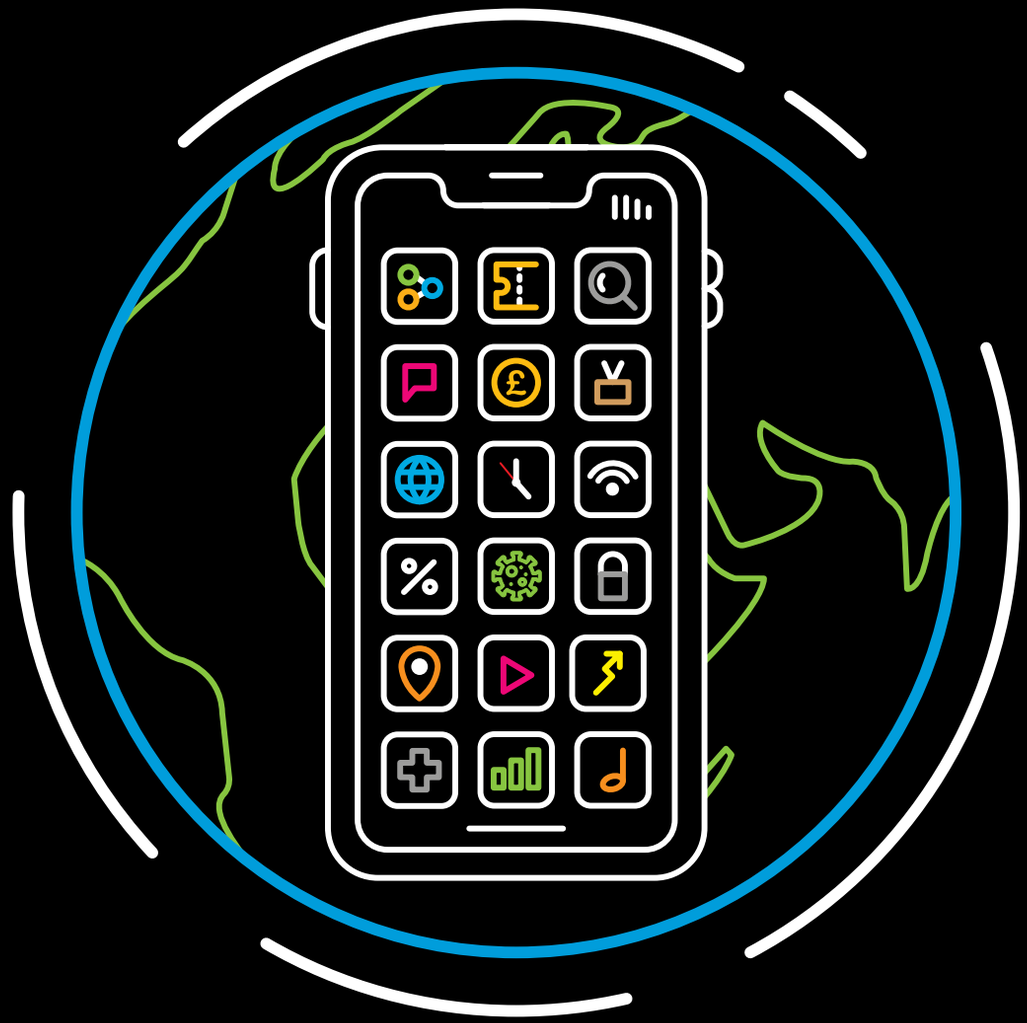
INTERNATIONAL ASSOCIATION OF ENTERTAINMENT LAWYERS

Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

Edited by William Genereux & Marijn Kingma



Message from the President: Jeff Liebenson

Welcome to our 2021 IAEL book. The topic of Nationalism vs Globalism has exceeded my expectations, even covering issues arising from working during a pandemic.

We can only hope that the devastation the pandemic has brought across the globe will subside and we will once again meet in France in next June for our annual IAEL meeting during Midem.

The ongoing relevancy of the topics in the book reflects the world we live in today as the rise of nationalism separates countries and globalization brings them together. While the book focuses on digital and other entertainment deals crossing borders, it also addresses what legal needs still should be considered on a national or country-by-country basis.

I want to thank Marijn Kingma from The Netherlands and William Genereux from Canada, our co-editors who have brought their experiences from where they live and their legal expertise to life in this book. Our contributors from around the world illuminate these developments from their own perspectives which inform their articles.

Thanks to Duncan Calow and Marcel Bunders for your continued support, guidance and humor with respect to the many adversities we have weathered these past two years.

Our hope is that exploring these legal trends will help us in guiding our clients to deal with our multicultural world of entertainment law, notwithstanding the nationalistic urges of our time. Perhaps this mirrors our IAEL meetings with members from around the world enjoying our different cultures and coordinating our common interests.

We hope this book furthers that spirit, our 35th annual book published by the IAEL, Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

Editors' Introduction: William Genereux & Marijn Kingma

When we had our last IAEL General Meeting in June 2019, we could not have foreseen we would not be able to come together in Cannes for the next two summers – or that as a result of a pandemic we would not be publishing the entire book until well into 2021. We also could not have foreseen how relevant the topic of our book would turn out to be. Over the last year and a half we have been on a global rollercoaster ride and it has become more clear than ever that we do not live in separated worlds, and that national borders do not mean anything when push comes to shove. We have also learned that global efforts are needed to solve global problems. Many countries came together to find the vaccines needed to get us out of this situation. The COVAX program is trying to provide global equitable access to vaccines so that not just some countries, but the whole world can hopefully return back to normal soon. Hopefully we will learn from this experience for that other, even more pressing, global emergency: climate change.

Although it was a difficult decision to postpone the release of our book last year, we believe it was the right decision. It gave us the opportunity to include additional contributions dealing with the impacts of the pandemic on the entertainment industry and take a look at how to move forward. The chapters that were written last year have been updated, resulting in a comprehensive publication that we believe was worth waiting for.

The chapters in this year's IAEL book explore the longstanding conflict between nationalism and globalism as it relates to the entertainment industry. Originally we had intended to use the term "globalization" in the title rather than globalism. That probably would have been more correct, insofar as globalization is a word used by economists to describe a process by which businesses or other organizations develop international reach or increase the international scale of their operations. Globalism, on the other hand, tends to be more of a raw, emotional, political concept. It describes a potential threat that can be rallied-against. It's often rejected by nationalists, conspiracy theorists and indeed anyone who might be content to sit in their own backyard and let the rest of the world be damned. It's used often in a defensive way – to describe existential threats that are perceived to have been created by others, like having rules or market forces emanating from outside our own borders that nevertheless come to affect us.

We decided to go with the more difficult word, globalism, because it more accurately describes the zeitgeist of our times. Our entertainment industry already is global, and international trade, which is what globalization is all about, has been occurring and disrupting markets since at least the early days of spice trading thousands of years ago. Now of course the Internet allows us unprecedented new types of access to foreign markets and the promise of having our services and products seen, heard and used by countless millions of others. This development has moved up a gear due to the pandemic. But here's the thing, there are a lot of vested interests that get in the way. The forces of disruption invariably leave footprints across the backs of incumbents. There usually are winners and losers, and even the venue where this all happens – our planet Earth – becomes a stakeholder as we take environmental issues into consideration. The discussion about what's best for the entertainment industry moving forward becomes nuanced, because it's not simply about changes that make things cheaper, faster or most transparent. Folded into the discussion are issues about people, culture, autonomy, stability, flexibility, privacy, freedom and sexuality. The tension between all these forces is beguiling. It makes for interesting reading but leads to much deeper conclusions. One region or territory might want to defend its culture from being diluted by outside influences, yet might want that same culture to find an audience abroad. A territory or region might enact laws that purport to have transnational reach, yet this might directly encroach on the sovereignty of others. Our willingness to embrace change is tempered with fears of losing the status quo. Ultimately, these are

all political issues laced with policy considerations that demand to be understood.

The 2020-2021 IAEL book examines an array of regional and transnational forces that currently are shaping the entertainment industry. Chapters have been subdivided into three major categories, as shown in the table of contents. The first category focuses on issues in specific jurisdictions and markets. The second attempts to map-out the expansion of regional forces into wider applications. The third seeks to bring a holistic view that reconciles many of the vital issues affecting the industry at large, and which are shaping our future world.

The first part of the book focuses on regional issues and differences. This part includes articles on sometimes underexposed but increasingly important markets: India and Nigeria. A contribution from Italy focuses on documentary films and cultural heritage, and the viability of specific Italian legislation in the light of Europe's DSM Directive. There are several articles about major legislative developments in the U.S. and the EU, including the U.S. Music Modernization Act and the EU Audiovisual Media Directive. A comparative contribution from three of our authors describes the limitations and exceptions to copyright in three major territories: the EU, the U.S. and Asia.

The second part of the book shows that regional developments can have global consequences. The GDPR, for example, has left its marks all around the world as countries are adapting their data protection legislation to keep up with Europe's strict rules. The infamous article 17 of the EU DSM Directive is bound to have an impact on the rest of the world. These global influences of regional legislation are discussed in this part of the book. This chapter also looks at the global impact of new technology and new industry economics. Important issues that are discussed include licensing in the age of globalization, how to deal with aggregators, and new types of platforms. And let's not forget something that we all have in common: paying taxes. A contribution from the Netherlands looks at the influence of globalization on international tax principles. Finally, we have an article that focuses on jurisdiction of U.S. courts. Under what circumstances can a non-U.S. entity be hauled into a U.S. Court thousands of miles away to defend itself under United States law?

The third part of the book takes a look at some of the broader social and environmental issues of our current and future world. A contribution from Denmark discusses the changing expectations for artists as global role models. Another article looks at the (im)possibility to regulate fake news and political advertising on social media platforms. We also have a very helpful contribution on transgender music artists and the legal issues they encounter. We are also very pleased to have an article on what is no doubt the biggest challenge of our times: global warming. And then there are pandemic-related chapters that we never thought we'd be writing about. They are intended to provide useful information. There's information on data protection laws and privacy from the perspective of several different global regions, and there's information on how the pandemic has affected contractual relations. We also have chapters looking at the effect of the pandemic on future of the entertainment market, such as the acceleration of the shift to streaming and the changed relationship between brands and customers. As the global entertainment industry becomes more entwined, we believe these topics are instructive for everyone in all regions.

We would like to thank IAEL's president Jeff Liebenson for his time, effort and leadership as we've planned, changed our plans, planned again and finally executed on the making of our book. We would also like to thank Janneke Popma, associate at Höcker, for her indispensable organizational skills. Additionally, the authors all need to be recognized for their creativity, diligence and flexibility. A lot of energy that could have been directed toward remunerative, billable work instead has been gifted to us all, so that we can see the issues in their chapters through their specialists' eyes. Without the generosity of all the contributors this book could not have happened. Thank you everyone.

Finally, to quote Vera Lynn who passed away last summer at the respectable age of 103: we'll meet again.

William Genereux & Marijn Kingma

Exceptions and Limitations to United States Copyright Law: A Music Law Analysis

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Ken Abdo is an equity partner at Fox Rothschild. He is approaching his 38th year as legal counsel to artists, creators and businesses in music and the entertainment industry. Firm clients that Ken looks over include multiple GRAMMY® award recipients and gold and platinum recording artists. Ken has extensive experience working with musicians including new, established and legacy artists, and also music estates. Ken's commitment to artist advocacy and the legal profession have led him to national leadership positions. He is a former National Trustee of the Recording Academy (presenter of the GRAMMY® Awards) and currently serves as legal advisor to the GRAMMY Museum Foundation. He also served as the National Chair of the American Bar Association Entertainment Law Forum. Ken is a published author, lecturer and a regular media commentator on music law issues. Among his many recognitions, Ken was selected as one of Billboard magazine's 2021 Top Music Lawyers and a 2021 Midwest Trailblazer award recipient from the American Law Journal.

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>> Introduction

This article provides a basic review and analysis from a music law perspective, of limitations and exceptions to United States copyright law, starting with an examination of the sources and scope of copyright protection. Though each state has its own body of common law and codified copyright laws, this article addresses U.S. federal copyright law, which has primacy over state law. It is important to note that there are two separate music copyrights: the musical composition copyright (songwriting) and the sound recording copyright (recordings embodying a musical composition).

Source of United States Copyright Law

The fundamental importance of copyright is recognized in Article I, Section 8 of the Constitution of the United States, which empowers Congress "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[1] The U.S. Supreme Court has found that the philosophy behind the copyright clause "is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare."[2] The author's benefit, however, is a "secondary" consideration.[3] "[T]he ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good."[4] In this way, copyright law seeks to balance the competing interests of incentivizing authors to create and distribute their works while at the same time avoiding the effects of "monopolistic stagnation."[5] This delicate equilibrium is achieved by imposing certain limitations on the subject matter, duration, and scope of copyright protection as well as defenses against liability for protected forms of infringement. These boundaries to copyright come from the Constitution, the Copyright Act, and court decisions as old as copyright itself.

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As technology, social attitudes, and economic forces shift, so too has copyright law. The first U.S. Copyright Act was promulgated in 1790.[6] The Act closely mirrored England's Statute of Anne that provided only limited protection for maps, charts, books, and engravings.[7] Since 1790, the United States Congress has amended the Copyright Act (or enacted entirely new legislation) to offer greater protection for a longer duration to more classes of works.[8] For example, the U.S. Copyright Act of 1831 first recognizing "musical compositions" as a statutorily enumerated subject matter.[9] In 1971, Congress amended the Copyright Act to grant limited copyright protection to sound recordings fixed on or after February 15, 1972.[10] In 1998, a digital performance right in sound recordings was created in the amendment titled the Digital Millennium Copyright Act (DMCA).The DMCA paved the way for the monetization of sound recordings exploited via music streaming. In 2018, the Music Modernization Act amended the 1976 Copyright Act by providing: (1) a blanket licensing regime for setting licensing rates and collecting licensing fees from the streaming exploitation of musical compositions; (2) a digital performance right in post-1971 sound recordings; and (3) a minimum producer's participation in the featured artist's share of non-interactive sound recording streaming revenues collected and administered by SoundExchange. Throughout its evolution, the Copyright Act has required that works are original, fixed in a tangible medium of expression, and protected for a limited (non-perpetual) term.

The Supremacy Clause of the U.S. Constitution provides that federal law shall prevail over state law.[11] Thus, while the states are permitted to legislate in the field of copyright, their influence is significantly restricted. The space made available for states to regulate copyright is defined largely by Section 301 of the 1976 Copyright Act.[12] While states can legislate on sound recordings that were fixed before February 15, 1972, this power is of little practical value to songwriters and recording artists.

Scope of Protection

Originality is "the touchstone of copyright protection" and "is the very premise of copyright law today."[13] Originality means that the work was independently created by the author (not copied) and that it possesses at least some minimal degree of creativity, no matter how "crude, humble or obvious it may be."[14] A poorly written song or a poorly recorded version of a great song are equally protected.

Originality issues arise in two important instances: copyright registration and copyright infringement. Originality is scrutinized upon the work's registration with the Copyright Office. If the work lacks creativity within the meaning of the copyright statute and settled case law, registration is refused. The registrant may petition the Copyright Office to reconsider its refusal. In the case of musical compositions and sound recordings, creativity is generally not a fighting point. A musical composition or sound recording, taken as a whole, will almost certainly meet the crude, humble, or obvious test.

A work must also be fixed in a tangible medium of expression to qualify for copyright protection. In the context of musical compositions, this can be accomplished in two ways: (1) musical notation (e.g., sheet music, tablature, or any other method of notation that captures key elements of the work), or (2) by making a sound recording that captures the underlying composition. Sound recordings are by their nature fixed, meaning that the sounds are captured in a medium from which they can be perceived, reproduced, or otherwise communicated. The medium of fixation can be any format known or later developed. Copyright may protect the selection and arrangement of otherwise unprotectable elements so long as they are made independently and entail a minimal degree of creativity.[15]

Copyright Infringement

To establish infringement, the plaintiff must prove two elements: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original[16] Proof of copyright infringement is often circumstantial, particularly in cases involving music. Absent direct evidence of copying, proof of infringement involves fact-based showings that the defendant had "access" to the plaintiff's work and that the two works are "substantially similar."[17] If a work is created independently

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of another and yet is substantially similar to that work, each work will be afforded copyright protection and neither infringes on the other, as there is no "access" (the "independently created" doctrine). Appropriation by the defendant of "highly unique patterns" and/or signature elements from the plaintiff's work weigh in favor of infringement.[18] Whereas use by the defendant of trivial aspects, commonplace elements and/or brief segments of the plaintiff's work weighs against infringement[19] Recent high profile copyright litigation has turned on whether allegedly copied elements of the plaintiff's work were sufficiently original to warrant copyright protection.

In Skidmore v. Zeppelin, the Ninth Circuit affirmed the district court's judgement in favor of Led Zeppelin in a copyright action alleging that the opening notes of "Stairway to Heaven" infringed "Taurus," a song written by guitarist Randy Wolfe and performed by his band Spirit.[20] The estate of Randy Wolfe claimed that Jimmy Page and Robert Plant of Led Zeppelin copied portions of "Taurus." As a threshold matter, the court found that the 1909 Copyright Act, not the 1976 Copyright Act, controlled its analysis because "Taurus" was registered in 1967. As such, the scope of protection was limited to the single page of music used to register the work. The en banc Ninth Circuit then took occasion to reject the inverse ratio rule. Under that rule, a lower standard of proof of substantial similarity is required when a high degree of access is shown.[21] In overruling the inverse ratio rule, the Ninth Circuit joined the majority of U.S. circuits.

In Gray v. Perry, plaintiffs Marchs Gary (p/k/a Flame), Emanuel Lambert, and Chike Ojukwu, alleged that defendants' Katheryn Hudson (p/k/a Katy Perry), Jordan Huston (p/k/a Juicy J), Lukasz Gotwald (p/k/a Dr. Luke), Karl Sandberg (p/k/a Max Martin), and others, infringed plaintiffs' 8-note ostinato pattern in their song "Joyful Noise."[22] Plaintiffs claimed that the ostinato pattern was a protectable original expression and that the defendants copied that expression in their song "Dark Horse." The jury found for the plaintiffs and awarded $2.8 million in damages. Defendants moved for a renewed motion for judgement as a matter of law, or, in the alternative, a new trial. The trial judge granted defendants' motion for judgement as a matter of law on the grounds that the elements at issue were not independently protectable. The court opined that copyright protection for commonplace elements, such as the ostinato pattern, is properly denied as a matter of law, and that the plaintiffs failed to demonstrate that their selection and arrangement of the independently unprotectable elements gave rise to copyright protection.

Limitations and Exceptions to United States Copyright Law Protection

Public Domain

The public domain refers to material that no longer is, or never was, protected by copyright.[23] Examples of non-protected elements include the basic building blocks of music such as tempo, individual notes, short phrases, song titles, commonly used slogans, basic rhythms, song structures, and harmonic progressions. Such elements that do not possess sufficient originality to warrant copyright protection belong to the public domain and may be used freely.[24] Longer phrases are also not protectable if they are common or cliché.[25] However, copyright may protect the selection and arrangement of otherwise unprotectable Public Domain elements so long as they are made independently and entail a minimal degree of creativity.[26]

In May v. Sony Music Entertainment, Jamaican musician Michael May brought suit against Miley Cyrus, among others, for her use of the phrase "We Run Things, Things Don't Run We" in her 2013 hit song "We Can't Stop" alleging that it infringed the copyright in his 1988 song "We Run Things." The court could not conclude that the phrase lacked requisite originality.[27] The case subsequently settled for an undisclosed amount[28] This case illustrates the paradoxical application of the prohibition against protecting short phrases or slogans when applied to and in the context of song lyrics.

Works that qualify for U.S. copyright protection will eventually lose protection after the passing of time to be measured from the date of registration. Generally, for works created after January 1, 1978, copyright protection lasts for the life of the author (or last surviving co-author) plus an additional 70 years. For an anonymous work, a

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pseudonymous work or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. For works first published prior to 1978, the term will vary.

Fair Use

The most meaningful limitation to copyright law is the fair use defense. The origins of the fair use doctrine can be traced to the infancy of copyright protection.[29] Courts recognized that, in certain circumstances, "giving authors absolute control over all copying from their works would tend in some circumstances to limit, rather than expand, public knowledge."[30] Fair use functions as a limit on authors' absolute control over all copying from their works in favor of expanding public knowledge.[31] The doctrine was broadly recognized at common law and was statutorily enshrined under section 107 of the Copyright Act of 1976.[32] Congress intended that courts continue the common-law tradition of fair use adjudication.[33] Fair use is an affirmative defense carried by the asserting party that, if successful, insulates an otherwise infringing use against liability.[34] Section 107 provides:

> [T]he fair use of a copyrighted work ... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —
>
> (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
> (2) the nature of the copyrighted work;
> (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
> (4) the effect of the use upon the potential market for or value of the copyrighted work.
>
> The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.[35]

The examples found in the statute's preamble are illustrative and not limitative.[36] The statute "calls for case-by-case analysis" and "is not to be simplified with bright-line rules."[37] At bottom, the fair use doctrine seeks "to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which the law is designed to foster."[38]

In Estate of Smith v. Graham, the Second Circuit affirmed a district court ruling that Drake's rap sampling in his 2013 song "Pound Cake" of a 35-second clip of a spoken word jazz track called "Jimmy Smith Rap" was legal fair use.[39] The court found Drake's work to be a transformative new use that did not harm the economic value of the old song. Under the first prong of the fair use analysis, the court evaluated the transformative nature of the use, finding that the "Jimmy Smith Rap" expounds the supremacy of jazz to the derogation of other types of music while "Pound Cake" criticizes the jazz-elitism that the "Jimmy Smith Rap" espouses. This transformative use weighed in favor of fair use. The Smith opinion was a sharp departure from the Sixth Circuit's Bridgeport Music, Inc. v. Dimension Films opinion, which counsels against finding fair use in the context of sound recordings.

Regarding Moral Rights

The United States copyright law protects authors' economic rights and property interests. It does not protect authors' moral rights to the same degree as Western European nations. Therefore, the absence of moral rights protection in the U.S. could be interpreted as a limitation of copyright protection. European jurisdictions afford authors' certain moral rights to their works beyond those secured under U.S. copyright law. Moral rights protect the personal and reputational, rather than purely monetary, value of a work to its creator. These rights generally include: (1) the right of attribution, which requires the author to be identified as such, independent of the author's economic right and even after the transfer of the ownership right; and (2) the right to protect the integrity of the work, which prohibits a subsequent buyer or owner of the work to alter the work and therefore allows the author to object to alteration, distortion, or mutilation of the work that is prejudicial to the author's

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honor or reputation. The United States has recently begun to enact legislation to recognize authors' rights beyond the economic protections that the copyright laws.[40] However, such rights are slight compared to their European counterparts and do not constitute a meaningful limitation in the context of U.S. music copyright law.

Conclusion

U.S. copyright protection and limitations thereon are designed to promote the progress of science and useful arts for the benefit of both copyright owners and the public welfare. While this regime may seem counter-intuitive, the elements of copyright protection weighed against limitations imposed by public domain and fair use have been long-standing. The absence of moral rights, given the foundation of U.S. law in European models, is a curiosity no doubt influenced by the importance and interpretation placed in the U.S. on what constitutes a property right. Intellectual property protection is as old as the Constitution, yet the Copyright Act, promulgated under the authority of the Constitution's original enumerated powers, has been regularly amended to address evolving realities. Intellectual property remains one of the most valuable U.S. exports. As the result of an expanding global economy, perhaps U.S. IP protection and limitations on protection will become increasingly harmonized with other nations.

[1] *U.S. Const. art. I, § 8, cl. 8.*

[2] *Mazer v. Stein, 347 U.S. 201, 219 (1954).*

[3] *See United States v. Paramount Pictures, Inc., 334 U.S. 131, 158 (1948).*

[4] *Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156 (1975).*

[5] *Comput. Assoc's. Intern., Inc. v. Altai, 982 F. 3d 693, 696 (1992).*

[6] *Copyright Act of 1790, ch. 15, 1 Stat. 124.*

[7] *See David Rabinowitz, Everything You Ever Wanted to Know About the Copyright Act Before 1909, But Couldn't Be Bothered to Look Up 49 J. Copyright Soc'y U.S.A. 641, 651 (2001-2002) ("The 1790 Act, slavishly followed the Statute of Anne . . . .").*

[8] *See Jessica D. Letman, Copyright Compromise and Legislative History, 72 Cornell L. Rev. 857, 857-58 (1986-1987) (discussing the expansion of copyright law to accommodate new technology).*

[9] *Copyright Act of 1831, Ch. 16, 4 Stat. 436; see also Robert Brauneis, Musical Work Copyright for the Era of Digital Sound Technology: Looking Beyond Composition and Performance (Feb. 23, 2014) ("Although case law had previously established that scores might be federally protected as "books," the recognition of musical compositions as distinct objects of copyright protection lent weight to the notion that notated musical works were central to the practice of music.").*

[10] *The amendment was influenced by the development of home/private tape-recording machines, which allowed for widespread unlawful copying of phonorecords.*

[11] *U.S. Const., art VI, cl. 2.*

[12] *17 U.S.C. § 301.*

[13] *Feist Publ'ns., Inc. v. Rural Tel. Serv., Co., 400 US 340, 347 (1991).*

[14] *Id. at 345.*

[15] *See Feist Publ'ns, Inc. v. Rural Tel. Serv., Co., 499 U.S. 340, 348 (1991).*

[16] *See Id. at 361.*

[17] *See Three Boys Music Corp. v. Bolton, 212 F. 3d 477, 418 (9th Cir. 2000) (discussing the "inverse ratio rule," which holds that a lower standard of proof of substantial similarity is required when a high degree of access is shown).*

[18] *See ABKCO Music v. Harrisong Music, Ltd. 722 F. 2d 988, 998-99 (2d Cir. 1983) (affirming a jury's verdict that George Harrison subconsciously copied the Chiffons' song "He's So Fine").*

[19] *See Newton v. Diamond, 388 F.3d 1189, 1194 (9th Cir. 2004) (discussing de minimis use).*

[20] *Skidmore v. Zeppelin, Nos. 16-56057, 16-56287 (9th Cir. March 9, 2020) (en banc).*

[21] *Shaw v. Lindheim, 919 F.2d 1353, 1361-62 (9th Cir.1990).*

[22] *Gray v. Perry, No. 2:15-CV-05642-CAS-JCx (C.D. Cal. Mar. 16, 2020)*

[23] *See 3 Nimmer § [9A].01.*

[24] *See Arica Institute, Inc. v. Palmer, 970 F. 2d 1067, 1072 (2d Cir. 1992); 37 C.F.R. § 202.1.*

[25] *See Acuff-Rose Music, Inc. v. Jostens, Inc. 155 F.3d 140, 143-44 (2d Cir. 1998).*

[26] *See Feist Publ'ns, Inc. v. Rural Tel. Serv., Co., 499 U.S. 340, 348 (1991).*

[27] *May v. Sony Music Ent., No. 18-cv-2238, 399 F.Supp.3d 169 (S.D.N.Y Jun. 28, 2019).*

[28] *Jonathan Stempel, Miley Cyrus Settles $300 Million Lawsuit Claiming She Stole 'We Can't Stop,' Reuters (Jan. 3, 2020, 5:13 PM).*

[29] *Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 574 (1994).*

[30] *Authors Guild v. Google, Inc., 804 F. 3d 202, 212 (2d Cir. 2015).*

[31] *See id.*

[32] *17 U.S.C. § 107 (2018).*

[33] *See H. R. Rep. No. 94-1476, p. 66 (1976); S. Rep. No. 94-473, p. 62 (1975).*

[34] *Campbell v. Acuff-Rose Music, Inc., 510 U.S. at 590.*

[35] *17 U.S.C. § 107.*

[36] *Campbell v. Acuff-Rose Music, Inc., 510 U.S. at 557-578.*

[37] *Id.*

[38] *Stewart v. Abend, 495 U.S. 207, 236 (1990).*

[39] *Estate of Smith v. Graham, No. 19-28, 2020 WL 522013 (2d Cir. Feb. 3, 2020).*

[40] *See Henry Hansmann & Marina Santilli, Authors' and Artists' Moral Rights: A Comparative Legal and Economic Analysis, 26 J. Legal Stud. 95, 95-96 (1997); Cyrill P. Rigamonti, Deconstructing Moral Rights, Harv. Int'l L.J. 353, (2006).*