

Entertainment law can have a seductive appeal to those who practice it. This appeal is not based on the metaphysical richness or conceptual elegance of the subject matter, though that occasionally is present. Instead, it is based on what entertainment does and what entertainment law seeks to accomplish.

Entertainment and the intellectual property laws that protect and nourish it literally capture our imagination and give it economic value. They subdivide one's ideas and endow them with the characteristics of Blackacre. They create a twilight zone in which medieval principles of private property infuse and give monetary value to our fantasies. To misquote Shakespeare, not to mention Sam Spade in *The Maltese Falcon*, dreams are the stuff that entertainment law is made of.

To say that entertainment law does all of this does not mean that it does it well. A host of stubborn questions have orbited entertainment laws since their inception. Can ideas be "property," or are they "free as the air"? To what extent should they be considered either, or both? How do we best encourage creativity? What rights, if any, should society have to benefit from a creative work or idea? Should entertainment properties be subject to notions of "public benefit" any more than other real or personal property? If so, how, when, and in what manner should entertainment property rights be granted to individuals to maximize the public good? Entertainment laws can be viewed as an ongoing legislative and judicial debate on how to answer these questions.

This debate historically has been informed and often driven by several factors:

- **Information Control**—Copyright, the bedrock law for protecting entertainment properties, had its origins in the strange marriage of moral rights (i.e., an author's "inherent" right to control their creation) and censorship (i.e., the state's desire to limit dissemination of information). Both of these principles, in turn, conflict with the impulse for "free expression" embodied in the First Amendment. Accommodating these tensions has altered the landscape of current copyright and other entertainment laws.
- **Media Proliferation**—The cultural importance of entertainment has increased as the number of media outlets by which we communicate entertainment has proliferated. Television, for example, is now

viewed through terrestrial broadcast, cable, satellite, digital download, and streaming technologies. The power of entertainment to “cut through the noise” of media competing for our finite attention means that its use, whether authorized or not, will only increase.

- **Interest Group Politics**—Intellectual property law has always been of keen interest to those who profit by the rights it creates. From the British Crown to stationers, authors, actors, motion picture studios, musical artists, music publishers, restaurant owners, streaming services, or Internet service providers, different groups have always used the law to advance their parochial and often conflicting interests. All complain loudly to Congress if they believe their interests are threatened or inadequately represented in current law, and all vigorously argue that the law should be reinterpreted or modified to advance their own agendas.
- **Technology**—If the medium is the message, as Marshall McLuhan noted over 60 years ago, then technology is proliferating both the media and their messages at an astonishing rate. These media and their messages are technology’s children, as others have noted. While creative works and other intellectual property have been valued throughout history, there was no particular economic value or political threat to most such works until the printing press made copying and dissemination of copies profitable for the publisher and troublesome to the state. The first copyright laws were created in response to this technological innovation. New technologies have continually forced intellectual property law to deal with unexpected forms of creative expression and ever easier and less expensive methods of disseminating this expression. The printing press, photography, phonograph records, motion pictures, television, photocopy machines, audiocassette and videocassette recorders, computers, and the Internet have all challenged, contorted, and ultimately changed contemporary notions of creative expression to apply old law to new technologies and new works made possible by those technologies. Further, as technology increasingly dominates our lives, entertainment dominates ever more important parts of our culture. Entertainment and intellectual property laws are not only technology’s children; they are growing and evolving children, continually reinfected with new technology’s mutant DNA.

Technology is now proving especially consequential for the motion picture, music, television, and social media industries. If book publishing and music were the first entertainment industries to be transmogrified by the Internet, the audiovisual works that are viewable through television and similar personal devices have turned twentieth-century ideas of authorship, distribution, and viewership on their heads and made traditional motion

picture, music, and television programming more widely available than ever, and at lower cost. Artificial intelligence is just beginning to do the same thing again, making it even easier for a machine, with minor human prompting, to “create” new content with less effort and fewer people participating, potentially resulting in more generic and less protectible content. New economic models have developed or will develop to take advantage of these creative and technological developments.

This course will discuss the legal implications of these developments, and how they affect the participants. I welcome you to the journey.

A comment on style: The following court decisions and other government- or third party-authored materials have been edited. Most dissenting opinions, all footnotes, and some string citations have been deleted. Facts, procedural history, and legal issues not relevant to the legal principles for which such materials have been included have been deleted. Such deleted sentences and paragraphs are sometimes indicated by ellipses or asterisks but sometimes are not.

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