

## **Copyfraud and Other Abuses of Intellectual Property Law**

By Jason Mazzone

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“Overreaching by copyright owners combined with conservatism by service providers leaves little recourse for the Internet user ...”<sup>1</sup>

The line between laws and societal norms can be blurred when it comes to every day intellectual property. The advent of the Internet has brought a number of changes to the way consumers and copyright owners approach intellectual property. Many of these changes include the questionable strategies used by copyright owners to combat copyright infringement. In Jason Mazzone’s *Copyfraud and Other Abuses of Intellectual Property Law*, he breaks down the ambiguities of the United States’ Copyright Act in order to understand why fundamental differences exist between the law and the current practices of protecting copyrighted material. He explains the history and purpose behind the creation of the copyright statute and how its current use has been pushed beyond its original purpose. By focusing on the overreaching culture of copyright protection, Mazzone walks the reader through numerous examples of the copyright abuse that he has penned “copyfraud.”<sup>2</sup> Mazzone seeks to provide readers with an understanding of what copyfraud is, why it occurs, and how governments and other

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<sup>1</sup> See Jason Mazzone, COPYFRAUD AND OTHER ABUSES OF INTELLECTUAL PROPERTY LAW, 72 (2011).

<sup>2</sup> See *id.* at 2.

organizations can work together to eliminate the abuse of intellectual property laws. This book dispenses with the idea that the law must either choose between protecting the public domain or the interest of copyright owner's and instead advocates for the protection of both.<sup>3</sup>

Jason Mazzone, J.D., L.L.M., is the Lynn H. Murray Scholar in Law and Co-Director of the Program in Constitutional Theory, History, and Law at the University of Illinois College of Law in Champaign, Illinois. Mazzone teaches courses in Constitutional Law and Bill of Rights and focuses his research on intellectual property and constitutional law issues.

Over the course of ten chapters, Mazzone uses popular culture to provide the reader with various examples of copyfraud and its impact on the major digital content industries, particularly the music industry. The first chapter describes the basics of the copyright of law. Mazzone explains to the reader the characteristics of copyright eligible material in order to provide the reader with an understanding of what is and is not protected under copyright law. Further, the first chapter introduces the reader to the "public domain." Mazzone explains that the public domain is the collection of various works of authorship that are no longer protected by the Copyright Act and may be used freely by the public.<sup>4</sup> He provides historic examples of inappropriate assertions of copyright on works in the public domain. One memorable example is the common use of copyright notices on modern reprints of famous literary works found in the public domain.<sup>5</sup> Mazzone explains that the words in these reprints do not belong to the publishers or book companies reproducing these works. However, publishing companies place copyright notices on the reprints anyway to scare the uneducated consumer. He further explains that the copyright notices displayed on the reprints are false and this is a gross misuse of the

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<sup>3</sup> See *id.* at xiii.

<sup>4</sup> See *id.* at 6.

<sup>5</sup> See *id.* at 9.

provisions of the Copyright Act.<sup>6</sup> Mazzone acknowledges this type of reckless use of copyright notices as a common abuse of the Copyright Act and the rights enumerated therein. Mazzone uses the first chapter to set the tone for the rest of the book, highlighting the Copyright Act's failure to protect the public domain by only outlining the rights of copyright holders and not providing any protections to works in the public domain.<sup>7</sup> He quickly condemns the mild penalties imposed on those who falsely assert copyright protections in works that are not their own or are part of the public domain.<sup>8</sup> Mazzone uses the first chapter to address the need for copyright reform in order to correct abuses of this nature. He uses the later chapters to provide greater understanding about the conflict between the rights of copyright holders and protection of the public domain.

The second and third chapters of Mazzone's book address the fair use exception to the Copyright Statute. Specifically, Mazzone discusses the constant interference of copyright holders and owners with the fair use defense. Mazzone walks the reader through basics of the fair use defense to copyright infringement. Explaining that, "a person sued for copyright infringement can assert that the use of the copyrighted material was fair." The second chapter focuses on the diminishing use of fair use as a defense due to interference and scare tactics employed by copyright holders. Mazzone also discusses the history of the fair use defense and its evolution from judge-made law to an enumerated defense in the Copyright Act.<sup>9</sup> Mazzone also takes the time to describe each of the four factors courts evaluate when applying fair use. The second chapter helps the reader understand the remedies available to those sued for copyright infringement and the lengths copyright holders will go to prevent people from

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<sup>6</sup> *See id.*

<sup>7</sup> *See* Mazzone, *supra* note 1, at 6.

<sup>8</sup> *See* Mazzone, *supra* note 1, at 12.

<sup>9</sup> *See* Mazzone, *supra* note 1, at 29.

asserting that defense at all. Chapter three gives the reader real life examples of musicians that have asserted the fair use defense in cases of sampling. This chapter deals with the popular art of sampling in the music industry and details its complicated history and impact on the copyright laws. Mazzone discusses the hypocrisy of the some music's biggest entertainment companies who seek to prevent the sampling of any work their artists without a license, while also developing and selling sampling software for at home use by consumers.<sup>10</sup> Mazzone uses chapter three to address the frustrating ambiguities of the copyright law. He asserts that a clearer copyright law will contribute to creativity and promote free expression. Mazzone wraps up chapter three by using sampling as a lesson for intellectual property law.<sup>11</sup> Specifically, Mazzone points out to the reader that, "vagueness in the law of intellectual property allows the rights of intellectual property owners to expand." Mazzone warns readers that without clear and express laws in place to protect the public domain or the users, only the rights of copyright owners are protected. This limited protection allows for greater expansion of the copyright protections enumerated in the Copyright Act. Finally, the third chapter uses sampling as an example of the Copyright Act's inability to keep up with advances in technology. Mazzone's call for copyright reform is echoed in the third chapter's explanation of sampling technology and its widespread availability greatly surpassed the scope of the copyright statute.

Mazzone uses the next chapters of his book to discuss further instances of overreaching and over assertion of copyrights by copyright owners. He further discusses the use of complicated licenses and contracts for any use of copyrighted material no matter how minimal the use may be. Mazzone even comments about the use of these contracts to "limit criticism and

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<sup>10</sup> See Mazzone, *supra* note 1, at 64-65.

<sup>11</sup> See Mazzone, *supra* note 1, at 67.

curtail speech,” by entertainment or broadcast companies that find the commentary critical or offensive.<sup>12</sup>

Mazzone’s book lays out the issues plaguing modern intellectual property law and proposes strategies to combat these issues. Mazzone’s focus on balancing the interests of copyright holders with the interests of the public domain is the central theme throughout the book. Mazzone’s use of pop culture examples breaks down complicated intellectual property issues for the everyday person. As someone with an interest in intellectual property law and strategy, this book is a must read. This book is also beneficial for any consumer or Internet user looking to understand more about the rights afforded to them under the Copyright Act and what the future may look like as technology continues to advance.

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<sup>12</sup> See Mazzone, *supra* note 1, at 103.