

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

This symposium attempts to explore a few of the many ramifications of the contemporary efforts to give some legal protection to what may be termed, speaking broadly, intellectual products, and more particularly, literary and artistic property. The best known form of such protection, of course, is copyright. But it is becoming increasingly apparent that in its present form, at least in many jurisdictions, copyright does not adequately solve the complex problems now arising in this area.

One major difficulty inherent under our nationalistic legal systems, so far as the protection of rights in this type of property is concerned, is that these often highly intangible products are no respecters of national boundaries. Particularly with the rapid development in this century of new, swift, and far-reaching media of mass communication, writers, composers, artists, and performers are increasingly discovering that world-wide rather than nation-wide protection is required for their products, in order to obtain adequate financial returns. Obviously, to obtain agreement among the various sovereign nations, with their often widely divergent legal and copyright systems, on the nature and extent of the protection of such rights, is not an easy task today. Moreover, any such agreement must also take into account the possibility that such rights, if given without adequate restraints and safeguards, may be used either by individuals or by nations to block or obstruct the communication, development, and use of literary and artistic products—a danger all too acute during a cold war period. The rights of the creator, producer, or owner must be balanced against the legitimate demands and needs of others, even if in foreign countries, to enjoy these products at a reasonable, non-prohibitive cost.

Another difficulty arises from the very nature of the subject matter to be protected. Not only is it often highly intangible, but also its concrete manifestations may take many quite different forms. Doubtless all would agree on extending some protection to printed matter in general, such as books, magazines, and sheet music, but what about the status of architectural designs and plans, completed buildings, sculpture, and paintings? Another equally puzzling question is the scope of the protection to be given. Should the creator or producer have the absolute right to veto any use, or should he be compelled to grant licenses, and, if so, on what terms? Revolutionary new media of communication are rapidly outmoding our present law in this field. The artist, author, or composer is no longer limited to royalties from

book sales, sheet music sales, or stage performance rights. In fact, his greatest potential source of profit may be sound movies, phonograph records, or radio or television performances. Moreover, each new technical development in communication may create not simply the possibility of a new right in the composer or author, but also the possibility of one or more new rivals or claimants for a share in the income from that right. The author writes a book, which is subsequently adapted, produced, and performed by others for, in turn, the stage, sound movies, phonograph records, radio, and television. The composer's popular song is performed by a famous soloist for, respectively, a concert audience, a phonograph record manufacturer, a radio broadcast (which is also tape recorded), a television broadcast (which is also filmed), and a sound movie. Author, composer, adapter, performer, record manufacturer, broadcaster, telecaster, movie maker—all (among others) clamor for protection of their rights in the book, the composition, the adaptation, the performance, the phonograph record, the broadcast and the tape recording, the telecast and film thereof, and the sound movie.

Throughout many of these fascinating problems two quite basic but frequently conflicting principles appear. Certainly in our democratic society it can hardly be questioned that literary and artistic products should be given enough legal protection so that private enterprise, encouraged by the financial rewards made possible by such protection, will be willing to create, develop, and use them. We do not wish our writers, artists, and composers to be financially dependent solely or mainly on state subsidies or private philanthropy. On the other hand, an essential element of our democratic society is the transmission, development, and use of intellectual products in the freest possible manner and with the fewest possible restraints. For this reason, we look askance at state censorship or control in these areas. However, such restraints may be no less objectionable if imposed by authors, artists, composers, or producers for their private gains rather than by the state on moral or political grounds. Consequently, those who demand protected rights in intellectual products must be willing also to accept correlative duties and responsibilities. The law must not permit the protections given here to turn into barriers walling off part or all of our society from the use and enjoyment of these literary and artistic products at a cost within their reach.

ROBERT KRAMER.