

Copyright II: They Stole My Idea & Other Myths

Gerald R. Prettyman, Esq., LL.M.
 Patent and Intellectual Property
 (925) 600-7342, grplaw@gmail.com
 Protection for All Your Ideas Under the Sun™

Copyright Basics

- Requirements for Protection
 - Original creativity (idea)
 - Expression of the idea
 - Media: Something tangible
- How to Protect
 - Rights starts on day of creation, even if not published
 - Cannot litigate or receive "statutory damages" with "legal costs and attorneys' fees" until registered.
- Exclusions
 - Lists, instructions, titles & short phrases

Idea vs. Expression: Bob Spongee



Idea vs. Expression (pictorial)



Idea vs. Expression

- | | |
|---|--|
| <ul style="list-style-type: none"> • Bob Spongee <ul style="list-style-type: none"> – Kitchen sponge, no change in outline, shape, color, or proportion – No accessories – Commercially made googly eyes – Marker eyebrows, nose & mouth, slight facial expression – Non-descript house – Family slightly expressed | <ul style="list-style-type: none"> • Sponge Bob Squarepants <ul style="list-style-type: none"> – Wavy outline, trapezoid shape, multiple colors, eyes, body added with out-of-proportion head, nose, mouth & teeth – Accessories of shirt, pants, tie, belt, socks & shoes – Eyes non-commercial, exaggerated & colored – Nose and mouth with added depth and facial expression – Home: colorfully furnished pineapple under water – Well-developed characters |
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Infringement Analysis – Balance Test

- | | |
|---|--|
| <ul style="list-style-type: none"> • Similarity <ul style="list-style-type: none"> – Sponge with eyes, nose mouth & facial expression – Named Bob – Home – Job – Community | <ul style="list-style-type: none"> • Access <ul style="list-style-type: none"> – Distributed ~1000 pieces at Bay Area shopping centers, street fairs, roadside stops and flea markets – Ads in Oakland Tribune sold ~20 pieces – Individual defendant lived in Northern California at the same time |
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Bob Spongee vs. SpongeBob

- Defense: Independent Conception
 - Hillenburg asserted he created SpongeBob in 1989.
- Balance Test
 - Walker failed to prove access.
 - Substantial Dissimilarities

MSJ Granted to Viacom, et al.

Part B. Other Myths (1)

- A work must be registered with the U.S. Copyright Office to obtain a copyright, and if there is no copyright notice, a work is not protected. False. Copyright exists from the moment of creation. While the U.S. 1909 Act required marking, the 1976 Act brought U.S. law to comport with the 1886 Berne Convention, which does not require marking.

Other Myths (2)

- A purchase grants a right to use the idea in every sense. False. A purchase, like a seat ticket, grants use, not the copyright. A play, for example, contains copyrights in (1) the words of the play, (2) the music & lyrics of the songs, (3) the drama of the play, (4) the choreography, (5) the pictures & sculptures on stage, (6) the video recording, (7) the sound recording and (8) the architecture of the buildings on the set. This list is all protected copyrights of 17 U.S.C. § 102.

Other Myths (3)

- Copyright liability is limited to the cost of purchase. False. While some works, such as music, have statutory royalties, the measure of infringement liability is actual damages or statutory damages, which far exceed the statutory royalties.

Other Myths (4)

- If a book is out of print, or if a work is published anonymously or you cannot find the owner, it is in the public domain or you at least are not liable for infringement. False. As Google recently learned, the book publishers will collect royalties for the heirs of book authors, who may otherwise assert infringement.

Other Myths (5)

- If the author gives you a copy without charge or fails to enforce the copyright, a) it is not a copyright violation if you post it on the Internet, or b) the owner loses the copyright. False x 2. Copyright is a property right. A person may loan or give use of the property, or even lose the property, without losing the rights of ownership.



Other Myths (6)

- If you give credit to the author, you do not need permission to use the work. Generally false but factually dependent. Avoiding the consequence of plagiarism is not related to the consequences of copyright infringement.



Other Myths (7)

- It is not copyright infringement if you only use a small portion of a work or change the work by 10 to 20%. Generally false but factually dependent. The measure of de minimis copyright infringement is whether copying has occurred to such a trivial extent as to fall below the quantitative threshold of substantial similarity. Courts have held for infringement with as little as 70% similarity.



Other Myths (8(1))

- a) Using something for nonprofit educational purposes is automatically “fair use.” b) Postings on the Internet are available for free use as fair use. Generally false but factually dependent. Fair use only applies to criticism, comment, news reporting, teaching, scholarship, research and de minimis use but never to mass copying for student or research distribution .



Other Myths (8(2))

- The determination of fair use is (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.