

FROM TYSON TO TOWERS:

5 UNUSUAL COPYRIGHT TALES AND WHAT THEY TELL US

Copyright is serious business. More than a few times, however, it has been invoked in curious circumstances that sometimes entertain us and occasionally leave us scratching our heads. The following is a round-up of four copyright tales and one prospective tale that amuse and educate.



1

As Plain as the Tattoo on Mike Tyson's Face

The body as canvas:
What defines visual art?

Tattoo law made headlines in 2011 when an artist sought to prevent the opening of the *The Hangover Part II*, a film that prominently featured a copy of the same tribal-style tattoo the artist had inked onto the face of former heavyweight boxing champ Mike Tyson.

Artist Victor Whitmill claimed copyright ownership and had the paperwork to prove it. He had attached his copyright registration for the tattoo to his complaint, as well as the release form Tyson had signed granting him the work, according to news reports.

The *Hangover Part II*'s expected blockbuster status — it would eventually gross \$580 million worldwide — garnered intense media coverage of the dispute. Everyone weighed in . . . from New Zealand, where representatives of the indigenous Maoris questioned Whitmill's appropriation of their native design, to

the blogosphere, where observers pointed out that prominent legal experts long-known for their opinions that tattoos didn't qualify for copyright protection were now taking the opposite position.

Whitmill and Warner Bros. eventually settled out of court. But not before body art's intriguing copyright issues had been debated. That is, when skin is the canvas, does the wearer or the designer own the work?

The *Hangover Part II* suit wasn't the first case of tattoo law. Several years ago an ink-related lawsuit involving an NBA player displaying a tattoo in Nike ads also settled out of court.

Perhaps it won't be the last dispute: With body art on the rise — one in five U.S. adults sport tattoos, according to Harris Interactive's 2012 online poll — more copyright disputes may follow.



2

Confusion in Paris: The Eiffel Tower's Illumination

Zuts alor!

Distinctive lighting as copyrightable art

The Eiffel Tower's iconic design is in the public domain. Its glorious nighttime lighting, however, is copyright-protected. Photographs of the tower's evening illumination may not be reproduced without permission of the tower's operating company, Société d'exploitation de la tour Eiffel — a restriction that regularly confounds and frustrates visitors to one of the world's most distinctive sights.

The concept isn't as unusual as it seems. Creative lighting is part of the tower's history. Automaker Citroën rented the structure in 1925 and boldly emblazoned its name on it in incandescent lights. Since then, tower lightings have included an all-red illumination that celebrated the Chinese New Year for five days in 2004 and other commemorations for which blue and multicolored LED lights have twinkled all the way up to the top of the tower.

That's not to say the copyright restrictions aren't complex. For one thing, nighttime photos that feature the illuminated tower alone require permission, but French law permits evening photos of the tower as part of the Parisian cityscape or a panoramic scene. And daytime photos of the 1,050-foot lattice structure carry no restrictions.

The policies annoy shutterbugs around the world, who regularly light up (pun intended) online photo sites with comments on the policy. But it's not the only image around which photographers have to

tread carefully. The iconic image of the generations-old "Lone Cypress" tree along the northern California coast is carefully managed by property owner The Pebble Beach Company, which has registered the image of the cypress tree as a trademark and features it in its corporate logo.

Public works of art — although sited in public places and paid for with taxpayer dollars — can come with copyright restrictions, too. Just ask sculptor Frank Gaylord. He created the dramatic Washington, D.C., Korean War memorial known as The Column. In 2002, the U.S. Postal Service issued a commemorative stamp featuring a haunting photo of the work on a snowy morning. The USPS claimed fair use — despite acknowledging it had received \$17 million from the sale of 48 million stamps.

Gaylord eventually won the legal victory but his battle prize was minimal: Finding that the stamp caused no harm to the work's value, the court awarded him \$5,000.



3

Is it Fantasy v Fogerty or Fogerty v Fogerty?

Separating personal style from the art that expresses it

Can a musician infringe his own work? Creedence Clearwater Revival front man John Fogerty found the answer is a definitive “not really.”

In 1988, the owner of many of Fogerty’s compositions from his Creedence days sued Fogerty for his 1985 solo recording “The Old Man Down the Road,” claiming it infringed on Creedence’s 1970 B-side “Run Through the Jungle.” Fogerty argued the two songs merely reflected his swamp-rock musical style. Fantasy Records, which owned his catalog of compositions, claimed one song infringed the other due to “substantial similarity.”

Substantial similarity, however, proved tricky to define, as it always does in copyright cases; in the context of the same musician, the difficulty was even greater.

Music experts who testified at the trial differed widely on whether the two tunes met the criteria, according to news reports.

Jurors sided with Fogerty, finding that his later work was not substantially similar to his earlier work for copyright purposes but that they were merely alike in style.



4

Papal Primacy

The Vatican has stepped up its assertions of copyright ownership to include speeches, texts, and even naming rights.

At just 110 acres, population 800, Vatican City is the world's smallest sovereign state. When the Pope speaks as its titular head of state, his comments are fair game for reproduction, as are the public comments of any national leader. Not so for his comments as head of the Roman Catholic Church. When it comes to the Pope's speeches and musings as the top Catholic, the Vatican claims a self-declared "unique copyright" ownership — and isn't afraid to invoke it.

In 2006, the Vatican transferred copyright on papal texts to its own publishing house. The texts were always subject to copyright, a Vatican spokesman told news outlets, but enforcement had lagged. The message? Be duly forewarned. The upside? Royalties would be incurred on a sliding scale.

Three years later, the Vatican asserted the right to protect against unauthorized use of the Pope's name, title and image. The catalyst, according to the Holy See, was the "great increase of affection and esteem for the person of the Holy Father", as evidenced by the naming of educational and cultural institutions, civic groups and foundations for him. From now on, it said, such honors would require express authorization.

Interestingly, not long after the latter pronouncement, Pope Benedict criticized "rich countries" for "excessive zeal" in protecting knowledge through "an unduly rigid assertion of the right to intellectual property." Ownership, it seems, is in the eye of the beholder.



5

Serialized Fiction Returns with a Modern Spin

The copyright implications are still unknown for literature's newest — and briefest — entrants

It's called micro-lit. First published on cell phones, it's literature as told in the staccato rhythms of the always-on digital world. Text-message novels came first, written in SMS. Now there is storytelling in the 140-character bursts of Twitter.

Not surprisingly, it was Japan's mobile phone-friendly culture that thumbed out the first cell-phone novel a decade ago. Text novels became a craze of sorts in Japan, with several works expanding into print production and becoming hardcover bestsellers.

Then global digerati began tapping out literary works. The New York Times pronounced China's first entry in the genre, *Out of the Fortress* by Qian Fuzhang, a "marriage of haiku and Hemingway." In Finland — home of what was then the world's top handset maker Nokia — *The Last Messages* followed an executive who ditches his job and texts his friends and family as he explores Europe and India.

Micro-lit has been catching on in short, forward bursts befitting the genre. The website www.TextNovel.com invites aspiring authors to upload their works. For its first annual literary journal, *Unstuck* solicited submissions on Twitter of fiction, poetry and non-fiction broken into 12 tweets.

Now the venerable *The New Yorker* magazine says it is putting a fresh spin — not to mention the air of respectability — on this newest form of serial publishing by reposting on its web site the novel written on Twitter by Pulitzer Prize winning author Jennifer Egan. Yes, the magazine that published the serialized work of Truman Capote has embraced the 140-character format.

To date, micro-lit's copyright ramifications have not yet been explored. Will each work be protected as a whole? Do installments as short as 140 characters qualify for copyright protection? To find out, we'll have to wait for the next chapter of copyright law.

