

Freedom of Expression

Freedom of Expression: Overzealous Copyright Bozos and Other Enemies of Creativity.

By Kembrew McLeod. Doubleday, 2005.

Reviewed by John K. Wilson

University of Iowa professor Kembrew McLeod takes Freedom of Expression very seriously. So seriously, in fact, that he trademarked the phrase “Freedom of Expression” to express his concern about how copyright law is often abused in ways that limit freedom of speech. As McLeod puts it, “We are a nation of pirates.” Even the tune for our National Anthem was stolen from an old English drinking song.

Intellectual-property law is a major concern in higher education, where universities seek to make millions from the government-sponsored research they conduct. McLeod calls the Digital Millennium Copyright Act “one of the biggest threats to free speech online” because it forces Internet Service Providers (including universities) to take down contested material immediately in order to gain legal protection. McLeod concludes, “we need to roll back the recent restrictions that have been imposed on us in the digital age.”(11)

When internal memos from Diebold, the maker of electronic voting machines, were leaked suggesting problems with the security of the voting process, Diebold responded with a series of cease-and-desist orders to ISPs where the memos were posted, including several universities. Swarthmore College student Nelson Pavlosky was among those who fought Diebold for the right to inform the public about these concerns. Eventually, under public pressure, Diebold backed down.

As McLeod puts it, “The overzealous copyright bozos who try to use the law as a censorious weapon mock the idea of democracy, and they step on creativity.”(8) Copyright fears also affect what read. Many book publishers are afraid to include copyrighted material with explicit permission, even when the usage clearly falls under fair use. The profits from books are so small, and the costs of litigation so large, that fear trumps intellectual standards. Authors who write about popular culture are particularly constrained in quoting song lyrics or similar material. In one case, Indiana University Press withdrew a book about obscure composer Rebecca Clarke because of a dispute about 94 lines.

McLeod recounts how one of his Ph.D. students had to meet with University of Iowa lawyers to do a “risk assessment” because he wanted to reproduce five images in his dissertation that he was analyzing.

Sometimes the resistance to “copyright bozos” has unexpected benefits. McLeod’s dissertation advisor, Sut Jhally, created a documentary criticizing sexist images in music videos called *Dreamworlds*. Of course, a documentary about music videos would make no sense unless it showed excerpts from the videos, and MTV threatened to sue. Although Jhally was protected by fair use rules, the University of Massachusetts advised him to back down and refused to help him distribute the video. Jhally then founded the Media Education Foundation, which has continued to produce educational videos that regularly make proper use of copyrighted material.

The law of copyright leads to some strange consequences. Consider the story of “Happy Birthday to You.” Mildred and Patty Hill in 1893 published the melody based on traditional folk tunes for their song, “Good Morning to All.” Children began singing the song at birthday parties, changing the lyrics to “Happy Birthday to You.”

The original melody is in the public domain, so you can legally hum it all you want. But because the lyrics (which the Hill sisters didn’t actually write) were copyrighted later, they have fallen into a series of copyright extensions. “Happy Birthday to You” won’t go into the public domain until 2030—unless Congress extends copyright law yet again in order to help Walt Disney, TimeWarner, and other big corporations.

The family company which owned “Happy Birthday to You” sold the song to TimeWarner in 1988 because monitoring usage was too complicated. And the restrictions were bizarre: in the 1990s, the Girl Scouts were ordered not to sing “Happy Birthday to You” or other copyrighted songs around the campfire, or they would be forced to pay royalties. Copyright law explains why you’ll never see anyone sing “Happy Birthday to You” in a documentary: it’s too expensive to show.

Some copyright violations on campus can have even more serious consequences. When Patr Taborsky patented a kind of kitty litter that he had developed as an undergraduate researcher at the University of South Florida, the university prosecuted him for felony theft, and he was sentenced to three and a half years in prison and assigned to a chain gang. Taborsky is current serving 11 years on probation.

McLeod decided to go to his local mall in Coralville, Iowa, with a stack of First Amendment fliers, and hand them out to customers. It took less than five minutes before he was ordered to stop and threatened with arrest. The cops even confiscated the First Amendment from him.

Despite his fears about restrictions on free expression, McLeod seems optimistic about the power of authors, artists, and activists to defeat the efforts to limit the First Amendment. And McLeod is willing to put his money (or his royalties) where his mouth is. You can download a pdf of the entire Freedom of Expression book for free from his website, www.kembrew.com.