Williams-Massie Radio

Show #322: Politicians and Copyright

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Kirk: Welcome everyone to WWMR, Williams-Massie Radio. You were just listening to Natural Blues by Moby, an artist who can relate to Mitt Romney these days. Both have been in hot water over copyright controversies lately.

Abby: After a big loss to Newt Gingrich in the South Carolina primary, Mitt Romney was hoping to do some damage control by airing an ad featuring the opening news report from NBC on January 21, 1997, in which Tom Brokaw describes how Newt Gingrich, Speaker of the House at the time, had just been found guilty of ethics violations. NBC and Tom Brokaw recently sent a cease and desist letter to the Romney campaign, however, asking them to pull the ad, citing copyright infringement. Is this how copyright law should be used?

Kirk: Stanford law professor and copyright expert, Paul Goldstein, will be going on the airwaves later today answering this question. Because of this we have a special guest, Archibald Fletcher, with us today. He is a professor of American politics and was a colleague of Mr. Goldstein’s at the State University of New York at Buffalo. Mr. Fletcher, thanks so much for being here today. How are you doing?

Mr. Fletcher: Thanks so much for having me! Paul and I collaborated on many projects regarding politics and copyright so this is right in my wheelhouse so to speak. Anyway, he was always very focused on the idea that copyright is just meant to protect literary and artistic works, even in this new digital age. The question today then, “Is journalism a form of art?”

Abby: Folks, we want to hear your answer to this question. Our number is (212) 660-2245. If you can’t get ahold of us the first time, please stay on the line or keep trying.

Kirk: That’s right, but before we get going we’re going to take a commercial break. Don’t go away though because when we get back, we’ll be talking about what makes something art. Stay tuned.

*COMMERCIAL BREAK 1*

Kirk: Welcome back to WWMR. We left off with the question: What makes something art? Mr. Fletcher, can you explain what art has to do with copyright here?

Mr. Fletcher: Certainly! Paul and I had a few conversations about this topic, and he always reiterated its original purpose. If you ever read his book, *Copyright’s Highway*, on page 192 he writes that “copyright’s exclusion of protection for functionality has deep roots in the law’s concern with literature and art.” He continues this thought on page 216 saying “...copyright’s historic logic [is] that the best prescription for connecting authors to their audiences is to extend rights into every corner where consumers derive value from literary and artistic works.”

Kirk: Is he giving you royalties from this book under the table? If he’s not, you should really make a case for yourself.

Mr. Fletcher: Haha, no. I’m always happy to shamelessly plug for a friend’s work.

Abby: In either case, let’s go to the the phones for our viewer’s input. Becky from New York, you’re on the air!

Becky: First off, love your show. And I definitely think broadcasted material constitutes art. I’m a production manager of a morning news show, and the actual facts and news of the show are but one small part of the entire process. Tons of work goes on behind the scenes when filming and editing. The stories aired are art as is getting the whole show to flow as a cohesive unit.

Abby: Becky, I completely agree. I was involved in an election night broadcast that aired on PBS my sophomore of college. People spent hours framing shots and creating sequences that conveyed their story. Audiovisual representations of ideas are art just as much as visual representations.

Kirk: That’s certainly one interpretation. Let’s see if we have any other opinions out there. Hello, Greg from Nevada!

Greg: Hello, am I on the air?

Kirk: Yes.

Greg: Awesome! Long time listener, first time caller. Glad to finally get on air. But um, to answer your question, broadcasted material from news corporations is certainly not art. It’s information. Claiming that a news broadcast is anything more than a statement of facts and information is plain wrong. And furthermore I...

Abby: Greg, I’m going to cut you off right there. If broadcasting weren’t an art, all reporting would be the same. Fox and the MSNBC would interpret events in similar ways, and we all can agree that this isn’t the case.

Kirk: I completely disagree with you, Abby. I was involved in the PBS broadcast too, and there are artistic aspects to broadcasts, I’ll give you that. But just because one station has a different interpretation of the facts does not make the display of its opinion art. The mission statement of any reputable news station is to report the news, not provide an artistic showcase of world events.

Abby: I’ll guess we’ll agree to disagree. Broadcast networks are artists in this digital age.

Kirk: The digital content seems to be an added wrinkle to this copyright discussion. Mr. Fletcher, what do you think Mr. Goldstein would say?

Mr. Fletcher: I think that Paul would say that digital advancements change nothing. If anything, keeping to the original intent of copyright law becomes even more important.

Kirk: I assume you have another quote from *Copyright Highway*.

Mr. Fletcher: Indeed I do. Paul takes his stance on page 189, saying “courts have sought to ensure that the copyright monopoly does not cover more than it should, so that the building blocks of expression remain open for use by all... [T]he requirements of original and expressive content [...] promise to be even more essential in a digital environment where new technologies may produce unintended monopolies over ideas.”

Kirk: Interesting. Let’s go to some calls to see what our viewers think about this statement. Kyle from Michigan, you’re on the Williams-Massie show.

Kyle: Hey Kirk, thanks for taking my call. What I think Goldstein is trying to say is that copyright law is still needed with the advent of modern media. As important as copyright is, however, it is equally important to not deviate from its original intention. With technology outpacing copyright law by leaps and bounds, it is only natural to have a knee-jerk reaction to increase the power of copyright. We must be careful to stay within sight of the original purpose of the law. If someone or some campaign adds a new interpretation or effect to a work, they should be allowed to air it.

Abby: Great point, and I don’t think we’ve found that equilibrium yet.

Kirk: This segways nicely into the next part of the discussion: Does NBC have the right to claim copyright infringement? Does this overstep the balance? Can the Romney campaign claim fair use?

Abby: If we’re looking at fair use, we need to focus on four questions. What is the copyrighted work, why is it being used, how much of it is being copied, and what are the real world effects? Mr. Fletcher, do you have any ideas about how Mr. Goldstein would respond to Kirk’s questions?

Mr. Fletcher: I’ll once again turn to his book because he uses some loaded language. Paul calls it the “safety valve” of copyright, which “symbolizes the more pragmatic American culture” (139, 196). He goes on to say that, “Fair use is a hard-edged economic instrument that will excuse an unauthorized use of copyrighted work as being a fair one any time that it is too costly for the parties to negotiate a license” (139).

Abby: Well, I don’t think we need to debate how he feels about fair use. But besides my daily coffee habit, what would Goldstein consider too costly?

Kirk: Unfortunately we have run out of time so we will have to continue this conversation more tomorrow. Thank you, Mr. Fletcher, for being here with us today. Any last remarks before we return tomorrow?

Mr. Fletcher: Sure, and I’ll keep the streak of shameless plugs going with what is perhaps my favorite quote from Paul’s book. He stated once that “fair use operates on the pragmatic notion that half a loaf is better than none: without it, the copyright owner would get no revenues because the costs of negotiating a license are insufferably high, while the prospective user would for the same reason get no copy; with it, the copyright owner still gets nothing, but the user at least gets to make a copy” (139). Who needs cake when you can let them eat bread instead?

Kirk: Truly food for thought when we return to the air tomorrow.

Abby: Well, for both of us here at WWMR, thank you for tuning in again today. Looks like we’ll digest the role of fair use in the battle between broadcast networks and politicians. Are networks censoring political speech and infringing on politicians’ First Amendment rights?

Kirk: For the best puns and political talk radio, keep listening to Williams-Massie radio. Have a great day!

Works Cited

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 I thought our collaboration went very well, especially when you take into account how much other work we both had that week. I think the best part of our collaboration was our efficiency in working both together and alone. We were able to split up the work evenly and work around both of our busy schedules to put together a pretty good, interesting paper. Abby was a great partner to work with and was very accommodating with my golf schedule this week as well.