

Copyright Law and Cultural Festivals

Events promoting art, music or other types of cultural content pose many challenges for copyright and trademark protection.

BY LESLEY ELLEN HARRIS

If you are organizing a folk, art, or other type of cultural festival, protecting intellectual property (IP) should be part of your plans. As you may know, intellectual property is intangible property or intangible elements of a tangible work and includes patents, trademarks, and copyright. Each of these areas of IP is an important part of cultural festivals.

Due to their very nature, festivals have many IP-related aspects that need to be identified, managed, and protected. The program for the festival may be protected by copyright, and the festival's logo may be protected by trademark law. Content displayed or presented at the festival may be protected by copyright; in fact, there may also be underlying rights that need to be cleared. For example, if music is performed and the music belongs to someone other than the performer, the performer may need to get permission from the music composer and publisher.

Copyrights, Patents and Trademarks

According to Article 1, Section 8, Clause 8 of the U.S. Constitution, the purpose of copyright protection is "to promote the progress of science and useful arts,

by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." The U.S. Copyright Act specifically identifies literary, musical, and dramatic works, choreography, pictures and sculptures, movies, sound recordings, and architectural works "fixed in any tangible medium of expression" as eligible for protection. This protection extends to compilations and derivative works.

Copyright protection includes the exclusive rights to (1) reproduce or distribute a work, (2) sell, rent, lease, lend, or transfer ownership of the work, and (3) perform or display the work. It also protects moral rights, thus ensuring that the work cannot be altered in a way that injures the reputation of the author or creator.

The U.S. Patent and Trademark Office (USPTO) describes a trademark as "a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of another." It defines a patent as "a limited duration property right relating to an invention, granted by the USPTO in exchange for public disclosure of the invention." The agency differentiates trademarks and patents

from copyright, which it describes as intended to protect "works of authorship, such as writings, music, and works of art that have been tangibly expressed." (<http://www.uspto.gov/trademarks/basics/definitions.jsp>)

Ensuring Protection

Participants in folk, art, or cultural festivals benefit personally and financially from copyright protection. For example, you wouldn't want to host a music festival that results in bootleg videos showing up on YouTube.

Copyright protection can be effected in several ways. First, your solicitation for vendors and exhibitors can include a mention that copyright protection strategies such as posted warnings and notices as well as onsite monitoring will be in place. The notices should state that taking still images or videos or making audio recordings of performances or displays is prohibited. While the use of a copyright symbol or copyright notice is not required under U.S. copyright law (or in most developed countries), including copyright symbols in festival literature and posting notices will alert attendees that copyright exists in the music being performed and/or art being displayed or sold.

Onsite monitoring could include instructing your staff in using appropriate procedures to identify and address potential infractions. Staff can watch for anyone using recording equipment, although this has become more difficult as recording equipment has become smaller and more portable. Staff also can intercede if they witness an infraction; appropriate measures might include asking someone using recording equipment to stop or simply notifying event security staff.

In addition to protecting the exhibitors and vendors participating in your festival, it's important to consider the framework that you, the organizer, construct in order to stage the event. Items used

LESLEY ELLEN HARRIS has spent her entire career in copyright law, as a lawyer-consultant, author, and educator. She developed the SLA Certificate in Copyright Management Program in 2007 and teaches the nine courses in the program. She has written four books and regularly blogs at www.copyrightlaws.com in plain English. She tweets at @Copyrightlaws.



The Magazine of the Special Libraries Association
Vol. 19, No. 01
January/February 2015

to promote the event, solicit exhibitors and performers, and stage the event—posters, brochures, banners, advertising materials, and photos come to mind—could merit protection. Often, these materials require significant financial and temporal investments, so copyright protection is a valuable resource. Keep in mind that the festival's logo or any icon identifying the festival may deserve trademark protection as well.

Cultural and Ethical Interests

In 2005, the World Intellectual Property Organization (WIPO) published a paper on protecting cultural expressions and folklore. This document describes folklore as “a means of self expression and social identity” as well as “a living and still developing tradition” for developing countries. The paper likens unfair exploitation of folklore and folk art to “piratical activity” in that it “seriously prejudices the legitimate moral and economic interests of the communities” of origin.

The paper details the efforts of WIPO and others as early as 1967 to encourage international protection. Protections do not exist for folklore or folk art itself, and there are only tangential protections for folklore or folk art performances or fixed expressions. In the interest of fairness and respect, however, best practices are emerging for recognizing culturally sensitive materials that are not specifically protected. For example, WIPO's International Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (<http://www.wipo.int/tk/en/igc>) continues to pursue “balanced and appropriate legal and practical means to protect TK [traditional knowledge] and TCE [traditional cultural expression].”

Steps to Take

Education, communication, and planning are important elements of an effective

copyright management strategy. Educate both yourself and festival staff so that they can readily identify copyright issues, understand the implications, address any concerns, and mitigate risk.

A festival checklist should include the following actions:

- Identify the festival's protectable assets and any potential cultural or ethical concerns.
- Determine acceptable uses of those assets.
- Communicate with your exhibitors and vendors to ensure you have permissions (licensing agreements) as needed.
- Advertise or post guidelines, notices, and warnings; monitor and curtail IP infringements as necessary. The Annex of WIPO's Intellectual Property and Folk, Arts and Cultural Festivals publication (www.wipo.int/edocs/pubdocs/en/wipo_pub_1043.pdf) contains examples of warnings and notices that offer some guidance.

Protecting the copyright interests of both the festival and its participants can help ensure both the short- and long-term success of your festival. **SLA**

Editorial and Production:

Information Outlook Advisory Council:

Wei Wei (chair), Kevin Adams, Tina Franks, Elizabeth Greenfield, Debbie Jan, Theo Jones-Quartey, Julia Leggett

Editor: Stuart Hales

Graphic Design: Thought Word & Deed

Publisher:

Special Libraries Association,
331 South Patrick Street
Alexandria, Virginia 22314,
Phone: +1.703.647.4900
Fax: +1.703.647.4901
magazine@sla.org

Frequency:

Information Outlook® (ISSN 1091-0808) is published online 6 times a year (January/February, March/April, May/June, July/August, September/October, November/December).

Advertising:

Acceptance of an advertisement does not constitute endorsement of the product by the Special Libraries Association. For ad specifications and rates, visit www.sla.org. To advertise, contact:

Everett Woods

SLA
331 S. Patrick Street
Alexandria, Virginia 22314
Phone: +1.703.647.4917
Fax: +1.703.647.4901
ewoods@sla.org

Subscriptions:

Annual subscriptions to *Information Outlook* cost US\$ 240. Subscribers receive a digital online version; access is through IP address authentication. For details, contact editor@sla.org.

Writing for Information Outlook:

Information Outlook welcomes queries from authors about articles of interest to information professionals. For writer's guidelines and a current editorial calendar, visit www.sla.org or write to editor@sla.org.

Letters to the Editor:

Comments about articles or columns published in *Information Outlook* may be submitted as letters to the editor. Letters should be sent to editor@sla.org with a subject line of “Letter to Editor.” All letters should include the writer's name, SLA volunteer title (if applicable), city and state/province, and e-mail address. Letters may be edited for brevity or clarity or to conform to the publication's style. Letters may be rejected for any reason.

Copyright and Permissions:

© 2015 by the Special Libraries Association. Material protected by this copyright may be duplicated for the non-commercial purpose of scholarship or research. Authors may distribute their articles as photocopies or post them to corporate intranets or personal Websites without advance permission provided they are used for educational purposes only. In all cases, the reprinted or republished articles must include a complete citation and also reference SLA's Website address (www.sla.org). For permission to reprint *Information Outlook* articles in other publications, write to editor@sla.org. Include the issue in which the article was published, the title of the article, and a description of how the article will be used.

Information Outlook® is a registered trademark of the Special Libraries Association.