



Copyright & Technology Conference 2022 Preview

**Interview with
Bill Rosenblatt**

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KENNEALLY: From the invention of the player piano to the creation of the smartphone, copyright and technology have played a seemingly endless game of capture-the-flag. The upcoming Copyright and Technology Conference in New York on Tuesday, September 13th, plants both those flags firmly at Fordham University School of Law.

Welcome to Copyright Clearance Center's podcast series. I'm Christopher Kenneally for Velocity of Content.

Bill Rosenblatt is the program chair and co-producer for the 2022 Copyright and Technology Conference. He is founder of GiantSteps Media Technology Strategies, a management consultancy focused on the content industries, an adjunct professor in the music and performing arts professions department at New York University, and a trustee of the Copyright Society of the USA. He joins me from New York City with a preview. Welcome, Bill Rosenblatt.

ROSENBLATT: Great to be here. Thanks a lot, Chris.

KENNEALLY: Well, we are looking forward to the program. This year, 2022, for Copyright and Technology marks a return to in-person programming. Are you excited to welcome back the copyright community of lawyers, publishers, and musicians back to Fordham University School of Law?

ROSENBLATT: Oh, you cannot believe how excited I am. It's been too long. The Copyright Society had its first in-person annual meeting since the before times back in June, and it was just so wonderful to see everybody. It's going to be great. We're actually going to be hybrid. There will be options to attend by streaming. But we are really focused on the in-person aspect of the conference.

KENNEALLY: I'm looking forward to being there in person, Bill Rosenblatt. I'll moderate an examination of inclusive access, also known as equitable access. It's a new model for distributing text materials for college students.



We'll be looking at a variety of aspects of copyright and technology. In separate discussions, you've got panelists who are going to wrestle with the ways that those two issues continue to play tag, as they have for decades. "Thank You For Your Service: The Future of the Server Test," and "Standard Fare: Standard Technical Measures in the DMCA and Beyond," will examine the relevance of current and future copyright obligations. So tell us – what's at stake in those two discussions for the affected parties?

ROSENBLATT: The server test is something that came out of a court case called *Perfect 10 v. Amazon* – 15 years ago, I think it was. The idea is that if you host an image or other piece of content on a website, then you could be liable for copyright infringement of that image if it's an infringing image. But if you only link to it, even if you're showing a page where the image appears on the page, but you're just linking to somebody else hosting it, then you're not liable. That was called the server test. That's been sort of second-guessed quite a bit recently in various court decisions, such as *Goldman v. Breitbart*. There's a whole bunch of them that have come up. And there are some people who feel that this server test is in jeopardy as a legal precedent. So there's a lot of people who host websites or companies that host websites that will need to look at what they do more carefully if that gets overturned.

KENNEALLY: Is it owing to the fact the world's changed a great deal? Certainly, the world of the internet has changed in the 15 years since that decision.

ROSENBLATT: Definitely. The biggest difference, I would say – there are a lot of differences, but the one that I would point to specifically is cloud storage providers such as Dropbox and Google Drive, OneDrive, iCloud – all these cloud storage providers. Amazon Web Services. So if you operate a website, and you link to or host photos, it's really unclear where exactly that storage is and who controls it. It's much more of a gray area than it was 15 years ago, when companies tended to operate their own servers, and it was much more clear-cut. It's really of great concern to entities that host websites and the owners of copyrights and visual artworks.

KENNEALLY: And standard technical measures – that sounds, if you will, technical, Bill Rosenblatt. Tell us what those are and what the relationship is with the SMART Copyright Act.

ROSENBLATT: Sure. That phrase, standard technical measures, refers to a heretofore obscure section of the Digital Millennium Copyright Act – 512(i), for those keeping score at home – which says something like this. It says that an online service can avoid liability for the copyright infringements committed by its subscribers or members if, among other things, it accommodates and does not interfere with standard technical measures that identify content that may be infringing. So you have technologies out there that identify content,



such as acoustic fingerprinting and image recognition and so on, and they're used to flag allegedly copyrighted works online wherever they may be found. Those technologies are used pretty commonly to aid in the enforcement of copyrights.

The thing is that this law's been on the books for decades now, and no one has really figured out what exactly that provision of it means or what is a standard technical measure as it's defined in that statute. Basically, the statute says a standard technical measure has to be something that's arrived at by consensus of all the stakeholders. There was something similar in European law. There needs to be stakeholder dialogue over the measures that online service providers have to take to identify copyrighted works and figure out whether they're licensed or not. But the problem is that none of these consensus-building activities have really happened.

That has led to this draft legislation called the SMART Act, which is co-sponsored by Senator Tillis from North Carolina and Senator Leahy from Vermont, which basically says that the Copyright Office would be empowered to designate technologies that are designated as standard technical measures using a process that's called a rule-making. Every X number of years – I think it's every three years – they'll get input from parties who are concerned with this, and they'll come out with a determination that says here are the standard technical measures that we're going to designate. So online service providers have to not interfere with and so forth these standard technical measures. That's what the SMART Act is, and it's quite a controversial thing.

KENNEALLY: Bill Rosenblatt, a professional and a personal interest of yours is the intersection of copyright and music. You're indeed a co-author of the forthcoming book *Key Changes: The Ten Times Technology Disrupted the Music Industry*. That'll be out from Oxford University Press. So it's a highlight, I think, of the program in September that you've got a keynote from Kris Ahrend, who is the chief executive officer of the Mechanical Licensing Collective. I'm sure a lot of people aren't familiar with that. Tell us what the Mechanical Licensing Collective is and what you expect Kris to say.

ROSENBLATT: Sure. First of all, the Mechanical Licensing Collective, or the MLC, was a result of some legislation that passed in 2018 called the Music Modernization Act. That's something that we've talked about a fair bit at my conference. It's a piece of legislation that updates copyright law to deal with streaming music – mainly streaming music in many ways that were badly needed and much anticipated. Essentially, without going into a lengthy explanation of the mechanics of royalty payments on streaming music, there are data problems in the streaming music field that result in particularly songwriters and music publishers not getting properly compensated, because streaming services don't know with certainty who the rights holders are and how much ownership percentage they have and things like that.



Until this act was passed, the onus was on all the streaming music providers – Spotify, Amazon, Google, Deezer, Tidal, etc. – to figure all that stuff out on their own and risk getting sued if they make a mistake – which, in fact, there have been many lawsuits over this. Now, with the Music Modernization Act, a central data hub for music rights ownership, specifically music composition rights ownership, has been established, and that’s what the MLC is. It’s an entity that was designated by the US Copyright Office and that needs to be up for redesignation every five years. Its job is to take data on payouts from all the streaming services, figure out whom to pay, and then pay those royalties. It collects rights ownership information from music publishers and songwriters so that it knows whom to pay and how much and so forth. It collects the streaming data from the services providers. And the service providers all pay a fee into that entity which then gets disbursed in the form of royalty payments.

So it’s this big, hairy database of musical composition and music publishing rights ownership information that was built during a global pandemic and was done on time. They got it up and running pretty much when they were supposed to have gotten it up and running, under an incredibly – even in a non-pandemic situation, it would have been an aggressive schedule. But they got it up and running. And Kris Ahrend is the CEO. He comes from Warner Music Group. He’s got a very rich background in this field. Warner Music Group, among other places – they’ve been paying out lots of money to rights holders. They’ve been operating this thing. They have been on a sort of information-gathering campaign to try and get music composition rights holders to give them good and current data about all this stuff.

And the intent of having Kris keynote the conference is to kind of show everyone how this is working and discuss how it could apply to other types of rights administration scenarios. Chris, you work for Copyright Clearance Center, which is one of the world’s foremost rights administration organizations, with a lot of lessons to teach everyone in this field. This is another example of a big lesson or object lesson that can be learned on how to do rights administration in an online-connected world at a large scale. There are a lot of opportunities to apply what the MLC has done and the lessons that they’ve learned elsewhere, and that’s what I hope to elicit from Kris’s keynote at the conference.

KENNEALLY: Well, the world needs some really positive stories about how copyright and technology can work together. Isn’t that true?

ROSENBLATT: (laughter) Yes, it is. In fact, it’s funny – when I was reviewing some things for this podcast, I was looking at the UK Parliament study on music streaming that was done a couple years ago. And one of the commentators about that cited what the MLC has done



in the United States as an exemplar to follow in certain respects with regard to the UK situation.

KENNEALLY: What else is in that study that's worth sharing with us? As you point out, the UK Parliament study looked at the various music streaming economics – the various aspects of music streaming economics. You'll be looking at that at Copyright and Technology. Tell us a little bit more about the conclusions and how any of them might apply in the United States.

ROSENBLATT: Basically, the UK Parliament did a study on streaming music with the objective of making some recommendations for changes in various practices and laws. One of our speakers is going to be Will Page, who is the former chief economist at Spotify, and before that, he was the chief economist at PRS for Music, which is the UK's equivalent of ASCAP, BMI, and so forth. He referred to the report that was issued as a result of this study as "all killer, no filler," which is a quote that's well known to music industry people. It's when you have an album that's got all great songs and no filler. There are a lot of hard-hitting recommendations in this report, and the whole idea of this panel is to talk about the lessons from that report and how they could or not could not, in some cases, apply here in the United States.

For example, one of the main takeaways is there is a split of royalties from streaming between the record labels, and in turn, recording artists on the one side, which is the sound recording side, and the songwriters and music publishers on the other side. Those are two separate copyright holders for each song that gets streamed – the recording artists and record labels on one side, the songwriters and music publishers on the other side. Right now, there is a split of royalties between those two types of entities that's very, very heavily weighted toward the record label and the recording artist side by a factor of more than three to one. And one of the recommendations they make is for the industry to figure out ways to even that balance a little bit, even though currently the industry situation is such that the major music publishing entities are owned by major record labels. (laughter) So they have to answer to their corporate parents when it comes to figuring out where those pieces of money go. That's one interesting takeaway.

I think the lesson that the MLC teaches in this context is that if you pick a specific application and not try to boil the ocean – and in this case, the application is streaming music mechanical royalties for musical compositions – you can get a solution going, and you can get something to happen that's practical and solves real-world problems.

KENNEALLY: Bill Rosenblatt, thank you very much for a preview of the 2022 Copyright and Technology Conference, coming to Fordham University School of Law on Tuesday, September 13th.



ROSENBLATT: Thank you so much.

KENNEALLY: That's all for now. Our producer is Jeremy Brieske of Burst Marketing. You can subscribe to the program wherever you go for podcasts, and please do follow us on Twitter and on Facebook. I'm Christopher Kenneally. Thanks for joining me on Velocity of Content from CCC.

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