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The Advantages of Copyright Protection

By Kevin R. Casey

A company's intellectual property assets come in many and varied forms. In addition to patentable inventions and trademarks and trade secrets, protecting original works may be critically important to the company's business and may be protected under copyright law.

Copyrights are authorized by Article I, Section 8, Clause 8 of the U.S. Constitution. Federal statutory law completely governs and regulates copyrights under Title 17 of the United States Code. Copyright protection broadly extends to "original works of authorship" including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, audiovisual, sound recording and architectural works. These categories are very broad; for example, copyrightable literary works encompass such diverse creations as poetry and computer programs.

Copyrights are established automatically when a work is created, which occurs when the work is first fixed in a tangible form such as a written or electronic copy or recording. Copyright registration enhances the owner's rights and is obtained from the U.S. Copyright Office through an application and examination process. The registration of a copyright accords prima facie evidence of copyright validity. Moreover, copyright registration is a prerequisite both to filing an infringement suit in federal court and to obtaining certain types of damages in an infringement action. The term of a copyright is long but limited: the author's life plus 70 years for an individual author. Although no longer required for works first published after March 1, 1989, copyright notice (© + owner + year of publication) remains important; it precludes an infringer from invoking the "innocent infringer" defense in litigation.

Section 106 of the Copyright Act generally gives the copyright owner the exclusive rights to (1) reproduce the work; (2) prepare derivative works (e.g., modifications, adaptations, translations and the like); (3) distribute copies or recordings to the public; and (4) perform or display the work publicly. These rights are limited by statute. Two important limitations are the "fair use" doctrine, an affirmative defense to an infringement charge, and compulsory licenses, which permit certain uses of copyrighted works upon payment of specified statutory royalties.

As counsel for copyright owners, Stradley Ronon has assisted large and small companies to obtain copyright registrations. Stradley Ronon's copyright attorneys

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have also assisted many clients to resolve ownership issues. Such ownership issues often come about because under copyright law, the author owns a copyright absent special circumstances. One such circumstance is where an employer owns a work that is prepared by an employee within the scope of employment. A second recurring ownership area is under the “work made for hire” doctrine, where a written agreement is required to establish that a party who specially orders or commissions a creative work, and not the author, is the owner.

At Stradley Ronon, we understand that copyrights are often a critical component of a client’s intellectual property portfolio. We register copyrights, expedite



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applications for registration, perform title searches, draft agreements (for example, licenses and assignments) transferring rights, record documents with the Copyright Office and manage proceedings in all phases of litigation involving copyright disputes. Our understanding and broad experience enable us to work with our clients to ensure that copyrights are appropriately considered and treated as an important part of a client’s assets. ■

Stradley Matters

Stradley Ronon’s IP group has built a strong relationship with Air Products & Chemicals, Inc., a Fortune 500 company based in Allentown, Pa. With more than 20,000 employees and operations in more than 50 countries around the world, Air Products serves customers in a wide range of industries including food and beverage, health and personal care, energy, transportation and semiconductors. The company supplies a unique portfolio of atmospheric gases, process and specialty gases, performance materials, equipment and services – and is the world’s largest hydrogen supplier.

Joe Rossi, a partner in Stradley Ronon’s IP group, manages multiple patent portfolios for Air Products. Mr. Rossi works from their company’s offices one day each week, working directly with Air Products’ in-house patent counsel, as well as with the businesspeople and inventors at the company. This close relationship gives Stradley Ronon a rare knowledge of the client’s business, its needs and, perhaps most important, its people. That relationship



enables the firm to provide exceptional service to the client as its patent needs continue to evolve.

By recent example, Mr. Rossi secured the allowance of a commercially relevant patent application for the Air Products & Chemicals Prism Membrane Division. An in-person examiner interview was conducted where the examiner took a questionable position with respect to the law of inherent anticipation of a particular reference. After the interview, Stradley Ronon prepared and sent to the examiner a follow-up legal memorandum to explain an obscure aspect of the law known as “accidental anticipation,” as opposed to inherent anticipation, which convinced the examiner to reconsider his position and allow the patent application. ■

A Current Copyright Case May Affect Your Television Viewing

On April 22, in *American Broadcasting Companies Inc. v. Aereo Inc.*, Case No. 13-461, the U.S. Supreme Court heard oral arguments in a case that may decide whether a provider of broadcast television programming over the Internet violates a copyright owner's public performance right.

Aereo's service retransmits over-the-air television to paid subscribers over the Internet without authorization or payment. Aereo says that it essentially rents out antennae for consumers to access already-free television; the broadcasters say Aereo is stealing copyrighted content for which cable companies pay. The U.S. Court of Appeals for the 2nd Circuit decided that the online streaming of television programs to individual subscribers is not an infringing public performance; rather, the defendant creates and transmits a unique copy of each program for each individual subscriber, and therefore the programs do not

stream "to the public." This is the question presented to the Supreme Court: Does a company "publicly perform" a copyrighted television program when it retransmits a broadcast of that program to thousands of paid subscribers over the Internet? At oral argument, Supreme Court justices grilled attorneys for both Aereo and the broadcasters, expressing strong skepticism about the legality of the streaming service but also pushing the networks to explain how the Court could avoid a ruling in the copyright battle that harms cloud computing.

The stakes are high. The broadcasters have repeatedly threatened that if Aereo's retransmissions are ruled "private," they might be forced to pull their television content to their nonbroadcast properties. In fact, after oral argument, counsel for the broadcasters said: "What's at stake in this case is really the nature of broadcast television as we know it." ■

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