

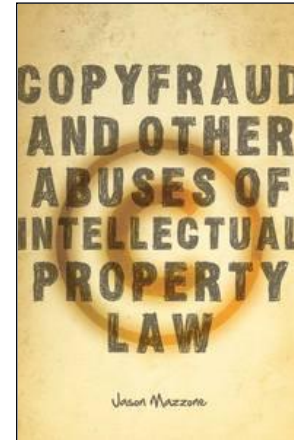
Jason Mazzone, **Copyfraud and Other Abuses of Intellectual Property Law**, Stanford Law Books, 2011, 312 pp., \$18.45 (hardcover), \$14.99 (Kindle).

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Within technical circles, it is common knowledge that the Internet Age has been something of a double-edged sword for copyright holders. Digital technology makes it possible for movies, books, and films to be cheaply reproduced in near infinite number and sold throughout the world via the magic of electronic commerce. But, a side effect of such ease of reproduction is that it also allows parties other than the copyright holder to make and transmit unauthorized copies. One consequence of this is that the U.S. content industries, fearful that infringers will be the death of their business, have sought to increase both the scope of their exclusive rights over creative works and the penalties for violating them. A corollary of these proposed changes is that the privileges afforded to the public with respect to the use of copyrighted works would proportionally diminish. Thus, efforts in recent years to introduce a number of bills into the Congress that would significantly strengthen intellectual property rights, such as the recently failed Stop Online Piracy Act (SOPA), have fueled a thorny debate amongst industry, policymakers, and academics concerning the appropriate balance between private and public interests.



Jason Mazzone's **Copyfraud and Other Abuses of Intellectual Property Law** adds a strong voice to the chorus of those who argue on behalf of the public. The central thesis presented in this carefully detailed work is that significant action must be taken to significantly reduce *copyfraud*, a term Mazzone coined in a 2006 article (*New York University Law Review*) to describe situations in which copyright is erroneously claimed over public domain works or when copyright owners claim rights in excess of the privileges conferred upon them by the law. Mazzone demonstrates that copyright owners motivated by financial, competitive, or political incentives may falsely append copyright notices to works where no copyright exists. He goes on to argue that they are enabled—even incentivized—to do so by the law's failure to adequately penalize incorrect uses of copyright. Despite a bold claim in the preface, Mazzone is not the first to present overreaching rights holders as a discrete problem. The issue has been highlighted over the years by other legal eagles including Google senior counsel William Patry and Berkeley Law School's Pam Samuelson. However, **Copyfraud** arguably presents the most lucid, extensively detailed description of this phenomenon to date and Mazzone may well be the first to offer a clear typology of the various abuses falling under this rubric.

The author deserves particular praise for his attention to the layman. Statutes and provisions are drawn up from the dry annals of legal texts and illustrated, with numerous colorful examples, in language accessible to novices. With rare exceptions, all in the latter chapters, Mazzone is careful to define legal terminology in a tone that walks the line between conversational and educational. There are some issues with repetition; Mazzone palpably toils across the first seven chapters to explain how, why, when, and to

what extent overreaching occurs and the text veers at times from conscientious to somewhat laborious. Each chapter offers a different context for his argument, stretching from the use of contracts as a mechanism by which citizens are coerced into signing away their privileges, to the application of digital rights management tools to electronic products as a method to restrict otherwise permissible uses of copyrighted works. Undergraduates and law students in particular will be grateful for the level of detail, as Mazzone's explanations of the workings of such laws as the Digital Millennium Copyright Act and the nebulous factors underlying the Fair Use Doctrine far surpass those found in most intellectual property textbooks. Advanced readers and policymakers, however, may want to skim through to the last three chapters, where the arguments are re-summarized and prescriptions are offered for significant reform.

Regardless on which side of the debate one stands—that intellectual property rights stifle and undermine the public or that they should be strengthened to protect industry—most stakeholders concur that U.S. copyright law is broken and in dire need of repair. Mazzone adds his star to the growing constellation of law professors who have argued in recent years for practical solutions to the problem of intellectual property and the public interest. In just this past year, William Patry's *How to Fix Copyright* (Oxford University Press, 2012), Robert Merges' *Justifying Intellectual Property* (Harvard University Press, 2011), and Patricia Aufderheide's *Reclaiming Fair Use* (University of Chicago Press, 2011) explored these issues. Mazzone's approach, in stark contrast to these authors, entirely avoids questions about whether copyright protections afford too many rights to copyright owners or whether the life of the creator plus 70 years, as laid out in the current incarnation of copyright doctrine, is too long a protection period to be reasonable. Instead, he professes to be agnostic on these subjects and readers are offered three series of remedies that focus sequentially on curbing overreaching, establishing protections for fair use, and promotion of the public domain.

Mazzone's proposals largely fall under two categories: actions that Congress should take and the establishment of new governmental bodies with judicial or adjudicatory power. He suggests that Congress should amend the Copyright Act to a) create a system of civil liability for copyfraud such that private parties and courts can deter and remedy copyright claims and claim monetary damages against defendants; b) require publishers to distinguish between copyrighted and non-copyrighted content in each work; and c) modify the elements of fraud such that any member of the public, not just injured parties, can bring a claim and act as private attorney general. Furthermore, he argues for the creation of new agencies that would be charged with protecting fair use and creating a registry of public domain works or, barring this, that an existing agency such as the Copyright Office should be given more authority and responsibility. The problem with both sets of proposals is that although they seem feasible in theory and emphasize important problems to be solved, Mazzone fails to convincingly elaborate how his reforms might be implemented in a political arena that is rife with special interests and agencies that are frequently subject to regulatory capture by corporate influence peddlers with large pockets.

Overall, **Copyfraud** highlights—for a broad audience—a critical imbalance in intellectual property law and the mechanisms by which it is enforced. Although Mazzone's remedies feel at times divorced from the disheartening reality of an inefficient Congressional process, he makes a thorough and cogent case for why a balanced copyright regime requires that the repercussions of copyfraud be held equal to the repercussions of copyright infringement. In addition, he does much to clarify the role of risk-averse

gatekeepers, such as publishers, distributors, insurers and universities, in perpetuating the system rather than safeguarding the public domain. That Mazzone simultaneously embeds into his work an excellent primer on copyright law is an unexpected and welcome bonus. Students, scholars and stakeholders would all do well to keep a copy on hand as an aid to navigating the muddy waters of the current discourse around copyright.