
WHAT'S MY COPY RIGHT?

by MICHAEL J. MADISON*

(with references to *Folsom v. Marsh*,
9 F. Cas. 342 (C.C.D. Mass.1841)
and Lou Abbott & Bud Costello)

Folsom: Well, Marsh, I've been out using my computer and surfing the Internet, and I have to tell you, there's a lot of interesting music out there to listen to online.

Marsh: Well, Folsom, I've seen the same thing. And I have to tell you, I'm a little confused about how a lot of it got there. I've got a lot of CD's, and my friends around the country have asked me to make copies of some of the songs from one of them and put them up on a free website so that they could download them and listen to them. It's a lot cheaper than their buying their own CDs, or my sending my CDs in the mail, and I get to hang on to my collection. But I wonder—is it legal? You're a law professor; you must know all about copyright law.

Folsom: I certainly do.

Marsh: You know I've been using the Internet a lot but haven't paid a lot of attention to what the different parts of copyright are. So you can tell me, and then I'll know whether what I'm doing is against the law.

Folsom: Oh, I'll tell you the parts of copyright, but you know it seems to me these days the law comes with some very peculiar rights.

Marsh: You mean funny rights?

Folsom: Strange rights, pet rights . . . like the compulsory license for cable television re-transmissions . . . rights in architectural works . . .

Marsh: Like buildings?

Folsom: Sometimes . . . well, let's see, we'll start with the basics of copyright. There's the right to copy. . .

Marsh: That's what I want to find out.

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Folsom: I say, there's the right to copy . . .

Marsh: Are you the law professor?

Folsom: Yes.

Marsh: You're going to be my lawyer too?

Folsom: Yes.

Marsh: And you don't know the copyright law.

Folsom: Well I should.

Marsh: Well then, do I have the right to my copy?

Folsom: Yes.

Marsh: I mean the copyright.

Folsom: No.

Marsh: I don't have the copyright?

Folsom: Yes.

Marsh: So I don't have the right to my copy?

Folsom: No.

Marsh: I do have the copyright.

Folsom: You don't have the right to copy!

Marsh: I'm asking you if I have the right to my copy.

Folsom: That's what I told you.

Marsh: You told me I don't have the copyright.

Folsom: Yes.

Marsh: Well go ahead and tell me. I have the right to my copy, but I don't have the right to copy.

Folsom: That's it.

Marsh: That's it?

Folsom: Yes.

Pause

Marsh: Look, is there another right?

Folsom: Certainly.

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Marsh: First, there's the right to copy.

Folsom: That's right.

Marsh: When the songwriter writes the song, he gets the right to copy?

Folsom: Absolutely.

Marsh: All I'm trying to find out is who owns the copyright?

Folsom: The songwriter.

Marsh: The guy that gets . . .

Folsom: That's it.

Marsh: The songwriter gets the copyright . . .

Folsom: He does, every bit of it. Sometimes he gives it to his record company.

Marsh: The record company?

Folsom: Yes.

Pause

Folsom: What's wrong with that?

Marsh: What I want to know is when you buy a CD, who gets the right to my copy?

Folsom: You.

Marsh: Me?

Folsom: You.

Marsh: How do I get . . .

Folsom: You paid for it.

Marsh: I did?

Folsom: Yes.

Pause

Marsh: All I'm trying to find out is whether I can copy my CD for my friend across the country.

Folsom: No. The copyright owner has the right to distribute the song.

Marsh: I'm not asking you about being a distributor.

Folsom: The copyright owner has the right to distribute.

Marsh: One right at a time!

Folsom: Well, don't change around what you're doing.

Marsh: I'm not changing anything!

Folsom: Take it easy, pal.

Marsh: I'm only asking you, who has the right to my copy?

Folsom: You do. That's right.

Marsh: OK.

Folsom: All right.

Pause

Marsh: If I want to take my copy, play it in the CD-ROM drive of my computer, for myself and a few friends, I have the right to do that.

Folsom: Yes. But that's fair use.

Marsh: I'm not asking you about fair use. I want to make an MP3 of my CD so that my friends can listen to my music, off of the Internet.

Folsom: That's the right to make derivative works.

Marsh: What?

Folsom: We're not talking about that right now.

Marsh: How did I get on to derivative works?

Folsom: You mentioned them. The MP3 format edits and compresses the recording found on the CD into a much smaller digital file.

Marsh: Then I don't have the right to my copy?

Folsom: No. You have the right to your copy.

Marsh: I have the right to my copy?

Folsom: Yes.

Marsh: I can listen to my copy as an MP3 as well as a CD.

Folsom: No, that's the derivative right.

Marsh: There I go, back on derivative works again.

Pause

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Marsh: Would you just stay on this right to make derivative works?

Folsom: All right, what do you want to know?

Marsh: Now who's got the right to make derivative copies?

Folsom: Why do you insist on combining the right to copy and the right to make derivative works?

Marsh: I'm talking about making MP3's for my friends.

Folsom: That's the right to make derivative works.

Marsh: You don't want me copying CD's for my friends?

Folsom: The copyright owner has the right to copy.

Marsh: I have the right to listen to my copy?

Folsom: What you do with your CD at home is your own business, if it's
...

Together: Fair use!

Pause

Marsh: Look, are there other rights here?

Folsom: Sure. There's the right to distribute.

Marsh: I'm in distribution?

Folsom: Yes.

Marsh: I have the right to my copy?

Folsom: Yes.

Marsh: Then I can distribute my copy?

Folsom: Yes.

Marsh: Since I can't put a CD on the Internet, I can distribute my CD as an MP3.

Folsom: No, that's the right to make derivative works.

Marsh: I'm not asking you about derivative copies.

Folsom: You don't have the right to copy.

Marsh: But I can listen to my copy?

Folsom: What you do with your CD at home is your own business, if it's
...

506 Journal, Copyright Society of the U.S.A.

Together: Fair use!

Pause

Marsh: Anything else?

Folsom: The right to perform.

Marsh: Because I'm putting the song on the Internet, I'm a performer?

Folsom: Yes.

Pause

Marsh: Look, I thought the singer is the performer. Copyright lets you have two performers of the same song?

Folsom: Sure.

Marsh: I put my copy of the song on the Internet, that makes me a performer?

Folsom: Could be.

Marsh: You don't want to tell me if that's a copy?

Folsom: You don't have the right to copy.

Marsh: I have the right to perform my copy?

Folsom: But not if it's a copy.

Marsh: I don't have the right to listen to a copy?

Folsom: What?

Marsh: My friends don't have the right to listen to my copy?

Folsom: You do not have . . .

Marsh: I'll break your arm if you say I don't have the right to copy!!! I want to know if I can make MP3s for my friends to listen to.

Folsom: That's the right to create derivative works.

Marsh: I can't listen to my CDs with my friends?

Folsom: What you do with your CD at home is your own business, if it's . . .

Together: Fair use!

Pause

Marsh: You ever write songs?

Folsom: As a matter of fact, I do.

Marsh: You record them and sell them?

Folsom: Yes.

Marsh: You own the copyright to these songs?

Folsom: Certainly.

Marsh: So you have the right to copy. And if I buy your CD, I have the right to my copy.

Folsom: Now you've got it.

Pause

Marsh: So I get up after dinner some evening to have some fun with my copy of your CD. I sit down at the computer and put the CD in the CD-ROM drive. I start playing the music through the computer speakers. My friend sends me an email asking me if he could listen to it, too. I make an MP3 of the track that I'm listening to, upload it to my website, and my friend tells me in another email that he's listening to the MP3 off of the Web, and he's enjoying it. I'm listening to my copy, but I've made a copy, I've made a derivative work, and I've become a distributor and performer, too.

Folsom: Now that's the first thing you've said right.

Marsh: I don't even know what I'm talking about!

Pause

Folsom: That's all you have to do.

Marsh: Is not copy.

Folsom: Yes!

Pause

Marsh: Look, I know something about computers. If I listen to my CD on my computer, I'm making a copy.

Folsom: Yes indeed.

Marsh: So I'm listening to a copy.

Folsom: That's right.

Marsh: And I'm also listening to my copy.

Folsom: Naturally.

Marsh: So my friend who gets the MP3 from me is listening to a copy, but is also listening to my copy.

Folsom: No, that's different.

Marsh: That's what I said.

Folsom: You're not saying it . . .

Marsh: I share my copy of the song with my friend?

Folsom: You copy your copy.

Marsh: Yes.

Folsom: That's it.

Marsh: That's what I said!

Folsom: You asked me.

Marsh: When I listen to the song, I use my copy.

Folsom: Naturally.

Marsh: And I copy my copy.

Folsom: OK.

Marsh: And if I send an MP3 of my copy to you, and you listen to it, you copy my copy.

Folsom: That's it.

Marsh: So, I listen to the song and make a copy. Then I make an MP3 of my copy and put it on the Web for my friend to listen to, but doing that creates a derivative work, and maybe makes me a distributor and performer, which I can't do because I own my copy, not the right to copy—unless I listen to it in the privacy of my own home, or with only a few of my friends, and then it might be fair use. You know, this is crazy. I should have the right to a law that I can understand.

Folsom: What?

Marsh: I said: I don't understand.

Folsom: Oh—that's right, too!