



Mary W.S. Wong: *Professor of Law*

Exploring International Copyright Issues in the Information Society

“Given my background and the nature of digital technology, I suppose it’s natural that I should think it’s important for lawyers to have an awareness of legal issues and developments in countries and systems other than their own. This can be a challenge when many laws are historically and essentially territorial in nature. I also believe it’s important for a law teacher to try to convey to students a sense of the intellectual allure and social relevance that law by its nature possesses. I hope that my students leave my classes with the ability not just to be good practicing lawyers, but also with a passion for thinking about and possibly helping to shape the outcome of the legal issues of their day.” – *Professor Mary W.S. Wong*

Q: Please tell us about your research.

MWSW: My work centers mostly on copyright law with an international and comparative flavor. I like to do comparative research because of my particular background. I was educated in Singapore, which inherited the British common law system, and spent some time with an international law firm in the United States.

Common law involves the interpretation of statutes through case law. In many common law countries, even if the common root is English law, local customs, local circumstances, and technological developments may have taken different countries in somewhat different directions. So my focus has been to look at copyright law to see how it has been applied or how it diverges between the United States and other countries from the same tradition, such as the United Kingdom, Canada, and Australia.

Q: How do you go about researching these topics?

MWSW: I gather my ideas from many sources such as articles, blogs and academic list serves. It doesn’t have to be a law review article; it can be a newspaper such as *The New York Times* or a blog post by a colleague. I also talk to colleagues at Pierce Law and at conferences.



Q: Are you currently writing an article for a specific publication?

MWSW: Actually, I just finished a piece that is quite specific, as it was part of a symposium program where I was invited to present. The symposium was the 2008 Vanderbilt Intellectual Property Roundtable on “User-Generated Content, Social Networks and Virtual Worlds.” Some early ideas that ultimately became the focus of this paper were originally explored in a presentation I made at the 2007 Intellectual Property Scholars’ Conference held at DePaul University. The final paper is entitled “Transformative User Generated Content — Infringing Derivative Works ... or Fair Use?” In it, I discuss two inter-related but less explored principles of United States copyright law, and analyze their intersections and limits in a comparative common law context.

As in most academic writing, you begin with an idea or a theme, and it can become quite different or bigger than you thought it would be. This article is about specific copyright principles, but it is also about the nature of authorship in a technologically advanced economy. Who is an author when you remix somebody else's music or when you create a new form of art from someone else's work? You have invested creativity into this new piece, but your new piece is actually a derivative of or a transformative work of someone else's copyrighted work. Who is the author of the second piece? This implicates copyright notions of authorship, copyright notions of derivative works, and copyright notions of transformative works and fair use — which is actually a very U.S.-centric concept. In this new piece, I'm taking these concepts outside of the U.S. context, looking at how other jurisdictions approach the same problems. It's particularly interesting because they don't have the same definitions.

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Q: Can you provide an example of a derivative work?

MWSW: The most basic example would be translating somebody's novel into a different language. It's still the same work in many respects, but you have now changed it and given it a new form of expressiveness. In the old days it was easier, because the potential types of derivative work were limited, and the legislation may have provided useful definitions. The problem was, and is, that copyright law does not have one single or universal rationale for its existence. You can divide the various possible rationales into two types: economic and moral. In our example, you could say that the translation is the derivative work and provide that the initial author has rights to control that, the idea being that you should be able to exploit your work in a different and secondary market. But if you are thinking about moral rights, this may not be an accurate or ideal position. Furthermore, technology has, over time, enabled you to do so much more to a work. You can break up a piece of music; you can change the rhythm, the entire feel of it or add to it. That's what they do with remixes. You can re-edit an entire movie — you can take a horror movie and turn it in to a romantic comedy, using existing film clips. These are all highly creative, but they are also derivative.

Q: Are there cases you can cite that would be familiar to readers?

MWSW: There are many cases in the U.S. on derivative works and transformative works. One of the most recent that is probably familiar to many is the Harry Potter Lexicon case, where J.K. Rowling and her publishers successfully sued Steve Vander Ark and RDR Books for copying elements of the Harry Potter novels in producing an encyclopedia and companion guides to Rowling's novels.

Q: Do academics from other countries who speak on similar issues see things differently?

MWSW: Yes, actually they do sometimes, and I've received some very interesting feedback on many of my presentations. It's great to get the opportunity to learn from others, especially those from different legal systems. For example, at the

Vanderbilt Roundtable, I heard from an English academic, a Canadian academic and an Israeli academic.

Q: Do they persuade you to think differently?

MWSW: Well, it's more about raising questions and stimulating discussion. They'll ask, for example, if I've read certain articles by someone from their country. It creates dialogue and allows for a lively exchange of views as well as learning about a different approach.

Q: You speak at conferences around the world. Do you approach your topics differently when you speak to audiences outside the United States?

MWSW: Yes, for example, if I give a talk on fair use for a U.S. audience, my starting point would be U.S. law. But outside the United States, I try to begin with a comparison with their domestic laws. This way, I learn more about their legal system and it also generates better discussion.

Q: One of your most recent works involves copyright and human rights. Can you tell us more about this concept?

MWSW: I've received lots of feedback about this piece. It's titled "Toward an Alternative Normative Framework for Copyright Law: From Private Property to Human Rights", and it was published in the *Cardozo Arts & Entertainment Law Journal* this past winter. Normally we think of copyright as a form of intellectual property. We talk about it in terms of ownership — this is what I own so I can exclude you from it. I was trying to think of copyright outside of this traditional private property framework. How would it look within a human rights framework?

Q: How does this relate to the moral rights issue you mentioned earlier?

MWSW: Well, these frameworks are really two very different starting points. Intellectual property scholars are not used to looking outside the private property framework. But human rights is a different arena: it is more within the realm of public international law. I was looking at these two different models to see if some of the problems I perceive with the private property model could be alleviated using a human rights model.

Under a human rights framework, there is a fundamental human right to own property. But there are also other fundamental human rights such as free speech and freedom of expression, to make a decent living and to participate in the cultural life of a community. Where traditional copyright is concerned, you create something, and you are given rights of private property over it. Yet the ultimate objective is the betterment of society and the advancement of human learning and progress; copyright also continues to place the authorial figure on a figurative pedestal.

Q: How does human rights fit into what you've just described?

MWSW: If you look at the larger human interest — learning, progress, knowledge, development, and education — these are all part of what human rights tries to achieve. As such, there is a fundamental tension between owning something privately and being able to exclude everyone else; versus saying what you own is supposed to be for the fundamental good. I think that we have dealt with this tension as far as we can within the private property framework. For example, we say private property is limited by certain exceptions, such as fair use. I wanted to see whether those of us who have been steeped in the private property framework could learn something from the different norms and principles that have emerged in human rights jurisprudence.

Q: What do you consider the main benefit you obtain from your research?

MWSW: How I've benefited from doing my research, as well as the conferences, roundtables, symposia I speak at, is just being part of a global community of scholars. There are many individuals out there, often more senior than yourself, who are taking your work seriously. They are giving you feedback, and sometimes it can be negative, but it's meant to be constructive. You can learn from others — they come up with ideas and theories you might not have thought of. It makes you realize you're part of a larger intellectual community, and I think it makes you a better scholar.

Wong's latest article, entitled "Toward an Alternative, Normative Framework for Copyright: From Private Property to Human Rights," appears in the Cardozo Arts & Entertainment Law Journal (2009, Volume 26, Number 3). Wong currently teaches Copyright Law, Copyright Licensing and IP in the Information Society. She serves as faculty advisor to the Student Intellectual Property Law Association (SIPLA), the Entertainment Law Society (ELS) and the Asian Pacific American Law Students Association (APALSA). She is currently an elected Councilor for the Non-Commercial User Constituency to the Generic Names Supporting Organization at ICANN and chairs the American Bar Association IP Law Section's (ABA-IPL) international copyright subcommittee. In addition, she is a member of the ABA-IPL Copyright Reform Task Force and the Editorial Board for the Section's flagship publication, Landslide. Wong joined Pierce Law from the Singapore Management University, where she was an Associate Professor of Law in the Lee Kong Chian School of Business. From 1998 to 2003, she was special counsel to Morrison & Foerster LLP where she counseled American, European and Asian clients on a wide range of technology transactions. Wong has also been a senior lecturer at the Faculty of Law of the National University of Singapore, where she taught intellectual property and contract law. In addition to her teaching and research, Wong speaks regularly at conferences in the United States, Europe and Asia. She is an associate fellow of the Intellectual Property Academy of Singapore and has also served as a member of the New York New Media Association's Programs Committee, the Singapore Government's e-Commerce Consultative Committee, and the Singapore Academy of Law's Membership and Social Committee.