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IP: Thinking ahead about 3D printing

Reads those wishing to tackle a more in-depth review of 3D printing law and issues should consider

BY BRYAN J. VOGEL

As with other disruptive technologies, the breakthroughs 3D printing offer will end up challenging existing laws and governance systems. Together, practitioners, legal scholars, and policymakers will have to find out what current laws and rules work for 3D printing — and those that don't. Legal scholars at the frontlines of 3D printing have already begun to wrestle with the complex legal questions the technology raises. Inspired by the successes (and failures) of earlier efforts to deal with other significant technological advances, these legal scholars have started to propose new regulatory, rights management, and rights interpretation solutions to address the 3D printing challenges they anticipate. For corporate counsel with intellectual property assets at stake in the 3D printing revolution, these articles matter because they may become an important resource to judges and lawmakers looking for guidance on how to mesh existing precedent with 3D printing realities.

Important 3D printing long reads

Those wishing to tackle a more in-depth review of 3D printing law and issues should consider:

Patents, Meet Napster: 3D Printing and the Digitization of Things, Deven R. Desai, Thomas Jefferson School of Law; Gerard N. Magliocca, Indiana University Robert H. McKinney School of Law, Georgetown Law Journal (forthcoming).

"Patents, Meet Napster" is the first, full-length law professor-authored article on 3D printing. The article explores how 3D printing will disrupt patents and other forms of intellectual property that have, until now, relied on the physical limitations inherent in manufacturing to prevent infringement. The article explains 3D printing technology and fully explores the multiple intellectual property law issues 3D printing raises. It also addresses some of the dangers 3D printing present, but characterize the many concerns raised about the ability of a 3D printer to create a functioning fire arm as a "red herring."

The article's authors propose specific Congressional action to address many of the concerns 3D printing raises. First, they argue Congress should address patent litigation's strict liability for 3D printing home uses and give those users some immunity or set a relatively high minimum amount-in-controversy for federal jurisdiction over any infringement claims involving personal 3D printing. They also suggest that Congress create a DCMA-equivalent for patents and trademark/trade dress to help clarify the responsibilities of intermediary websites. The authors believe patent and trademark holders will soon face their own "Napster" moment and should work to find new ways to monetize their rights given the advancements 3D printing offer, rather than trying to restrict or fight consumer end-users.

Downloading Infringement: Patent Law as a Roadblock to the 3D Printing Revolution, Davis Doherty, 26 Harv. J.L. & Tech. (Fall 2012)

A student-authored note, "Downloading Infringement" gives examples of the various patent infringement scenarios and potential defendants that can arise in 3D printing's do-it-yourself "DIY" communities, especially for those that take advantage of online 3D printing files sharing sites and fee-for-service 3D printing services. First, to propose extending the DCMA to patents — an idea adopted and expanded upon in "Patents, Meet Napster" — the note's author also suggests creating an "inventive commons" similar to the Creative Commons model wherein copyright holders obtain access to free copyright licenses that allow them to retain their copyrights while allowing others access to it for ongoing creative expression.

3D Printing and Product Liability: Identifying the Obstacles, Nora Freeman, 162 U. Pa. L. Rev. Online 35 (2013)

Written by a Stanford Law School associate professor, this essay discusses the relationship between objects created on 3D printers that injure someone and products liability laws. The author reviews the potential defendants in a suit arising from an injury caused by a home-printed object and the public policy considerations behind products liability laws in general. She concludes that product liability suits for home printed objects will be difficult and that, by changing the long-established relationship between manufacturers and sellers, 3D printing may actually serve to unsettle products liability law as a whole.

It Will Be Awesome if They Don't Screw it Up: 3D Printing, Intellectual Property and the Fight Over the Next Great Disruptive Technology

Michael Weinberg, vice president of Public Knowledge, authored this early white paper on 3D printing and IP rights in November 2010. Public Knowledge is an organization devoted to upholding consumer rights to use innovative technology lawfully. As a result, "It Will Be Awesome" advocates for future outcomes that respect existing intellectual property rights but do not allow new rights to be created that restrict consumer use of 3D printing advancements.

Especially for its time, "It Will Be Awesome" offers an easy to understand explanation of the how additive manufacturing works and a thorough review of the intellectual property rights 3D printing will most likely affect. Weinberg authored a second white paper more specifically focused on copyright issues and continues to blog on the 3D printing advancements and how intellectual property rights may create potential restrictions on access to the technology.

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Conclusion

Because 3D printing is just beginning to move into mass, consumer acceptance, the technology's jurisprudence is in its infancy. Just how courts and Congress respond to the demands 3D printing places on current personal and intellectual property law must probably await further consumer adoption — and future litigation. But taking the time to investigate the predictions and suggestions of those attuned first to the intersection of the law and this technology is one way to foresee what may happen in 3D printing disputes still to come.

About the Author

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