



# News from the Hill

BY JASON DICKSTEIN  
AEA WASHINGTON COUNSEL

## Copyright Law for Avionics Shops

Is there a copyright symbol on the component repair manuals in your library? Could you be violating the copyright law when you rely on them to perform an installation?

In last month's article, we examined patent issues that could face the avionics community. This month, we examine copyright issues that crop up during field approvals, STCs and other functions common to the avionics repair station industry.

### What is a Copyright?

A copyright is a form of intellectual property. It relates to a "work," such as a story, a book, or a piece of music. The copyright is an indication that the owner of the copyright owns certain rights to the work. As an owner of intellectual property, the copyright holder is permitted to control the reproduction, distribution, and display of the work. The copyright holder exercises exclusive rights to the usage of the original work as well as derivative works.

Someone who writes a book on wiring may have a copyright in the book. This means that others are generally prohibited from copying the book without the copyright holder's permission. If AEA wanted to publish one chapter of the book in *Avionics News*, then AEA would be required to secure the author's permission—the chapter would be considered to be pro-

TECTED BY copyright even though it was not the whole book—it is still a derivative work. There are exceptions to the general rule about reproduction that we will address later in this article.

### Who Owns the Copyright?

By default, the owner of a copyright is the author of the work. The author may sell his rights to another, in which case the copyright belongs to that buyer.

When a company (or other person) hires someone to create intellectual property, the intellectual property may be considered as a work made for hire.

***Current FAA policy dictates that a repair station that wants a design approval usually must either create its own instructions for continued airworthiness or indicate that the maintenance instructions remain unchanged from the manufacturers published instructions.***

A work made for hire is generally considered to belong to the hiring party. For example, if a manufacturer hires a technical writer to draft installation instructions, then the copyright on the installation instructions belongs to the manufacturer (who hired the work) and not the author. In order to keep clear whether a work is a work made for hire, it is often a good idea for companies to have a clear statement or

contract establishing the boundaries of work made for hire. It is not uncommon for employees under contract to have clauses establishing that all intellectual property developed by the employee during employment belongs to the employer.

### How Do I Acquire a Copyright?

A copyright is automatically acquired whenever you create any work that may be copyrighted. This is called a "common-law copyright." Common law copyrights give you a property interest but in order to enforce the copyright in an American court you will need to register it.

The owner of a copyright can register it with the federal government — copyrights are registered with the Library of Congress. Such registration permits the owner to use the courts to bring an infringement action (enforce the copyright). If registration is accomplished before or within 5 years of publication, it will establish a presumption of validity in court. Finally, if registration is made within 3

## NEWS FROM THE HILL

*Continued from page 23*

months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.

The use of a copyright notice is no longer required under U. S. law, although it is often beneficial. Use of a copyright notice informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then the defendant cannot claim innocent infringement.

### **What Are the Limits of Copyright Protection**

The most important limit on copyright protection is that only the specific expression is protected. Another way of saying this is that copyright protects the text but it does not protect the ideas behind the text. This means that if you copyright a proprietary repair process, then someone who photocopied that text (including drawings, etc.) for the purpose of selling it to others might be in violation of the law but someone who performed the actual repair described by the text would not be in violation of the copyright laws (although other laws might protect the repair, like trade secret laws—a subject for a future article).

Another important limitation is that copyrights do not last forever. Under current law, a copyright lasts for the life of the author plus an additional 70 years. This was recently extended from the earlier "life plus 50 years" rule based on lobbying by organizatio-

like The Disney Corporation (who still own a lucrative copyright on the image of Mickey Mouse).

For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 95 years from publication or 120 years from creation, whichever is shorter

### **Copyright Exceptions**

The best known exception to the copyright rules is known as the fair use exception. This is the broad exception that allows people to use someone else's copyright for non-commercial reasons. The law imposes a balancing test that measure and weighs four questions: 1) What is the purpose and character of the use (is it commercial in nature)? 2) What is the nature of the copyrighted work? 3) What proportion of the copyrighted work was taken? 4) What is the economic impact of the taking?

Let's say that manufacturer "X" publishes component repair instructions. An A&P school wants to circulate some pages from the manual to show their students what a typical manual looks like. This is a fair use because the purpose is to teach, which is not a commercial use in competition with the use made of the text by manufacturer "X," the amount taken was a small portion and there is no appreciable economic impact on the manufacturer who published the manual. On the other hand, if a publisher publishes a textbook on avionics designed for use and study by A&P students, it would not be a fair use for an A&P school to photocopy the entire book and hand out copies to each student, because there is a distinct economic impact to the taking (it is in competition with the sale of the books to the intended target audience), the proportion taken is the entire book, and the nature of the book is such that it was

intended to be sold for a profit to students.

### **What Does this Mean to a Repair Station?**

Many in the aviation maintenance community miss the legal nuances of copyright and this can lead to trouble.

Many repair stations rely on manufacturers data for performing their work. They may copy portions of the manuals onto the approval for return to service document, in order to make sure that the description of work performed is accurate. This appears to be a fair use because the nature of repair manuals is that they are intended to be used for repair, the phrases taken would be only a small portion of the whole manual, and the economic impact to the manufacturer would likely be negligible.

Some repair stations put together data to support the application for a STC, a field approval or some other design approval. Current FAA policy dictates that a repair station that wants a design approval usually must either create its own instructions for continued airworthiness or indicate that the maintenance instructions remain unchanged from the manufacturers published instructions. When creating maintenance instructions to support an application for data approval, it is important to avoid copying the manufacturer's entire copyrighted text, word-for-word. While some field approval applicants may have successfully received approval after copying the manufacturer's instructions outright, this practice can lead to legal jeopardy. The passing off of copyrighted text as your own work may in fact be a copyright violation. It is much better to either 1) write the maintenance instructions in your own words, or 2) simply indicate that the maintenance instructions remain unchanged from the original manufacturer's published instructions (assum-

ing of course this is a true statement).

Ultimately, it is best to rely on your own text when you prepare maintenance instructions related to STCs or field approvals. Similarly, you should be careful about reproducing and/or distributing material copyrighted by another – unless it falls squarely with the fair use exception or another legal pigeonhole, you should generally secure permission from the copyright holder before reproducing or distributing his or her copyrighted text. q