



Interview with Glenn Pudelka

**For podcast release
Monday, May 18, 2020**

KENNEALLY: Essential workers in the coronavirus crisis run the spectrum from EMTs and nurses to supermarket clerks and warehouse pick-and-packers. Off hours, the essential activity for everyone is consuming content, from streaming movies and music to reading e-books borrowed online from the local public library.

Welcome to Copyright Clearance Center's podcast series. I'm Christopher Kenneally for Beyond the Book. Copyright, an element of intellectual property law that includes patents, trademarks, and trade secrets, may not save your life in an emergency, yet the sustenance obtained from fiction and nonfiction alike is welcome indeed during life in lockdown. As the world struggles to control the COVID-19 pandemic, IP may be more essential than ever. After all, whoever holds the patents and trademarks for any treatments and vaccines will likely become as celebrated as Dr. Jonas Salk, who developed a vaccine for polio in the teeth of another pandemic 65 years ago.

Glenn Pudelka is currently the president of the Copyright Society of the USA. In the Boston office of Locke Lord, he is a senior counsel in the firm's intellectual property department and co-chair of the firm's trademark, copyright, and advertising group. Prior to joining the firm, he worked for eight years as a book editor for several publishing houses in New York City. Welcome to Beyond the Book, Glenn Pudelka.

PUDELKA: I appreciate you having me, Chris. Thank you very much.

KENNEALLY: Well, we appreciate the chance to catch up with you and to learn a bit about life for an attorney working on the copyright beat. That's an area you specialize in, of course. And you know about your own experiences, but also the experiences of members of the Copyright Society of the USA. I want to start by asking you about a – give us a temperature check on copyright during the coronavirus crisis. What's happening out there?

PUDELKA: Well, I think it's in a lot of ways business as usual. You still see, as we just saw last week, the Supreme Court handing down a copyright decision in *Georgia v. Public Resource Organization* with respect to annotations for the code, the Georgia State Code. You are still seeing people looking to register their works, still looking



to protect their works. In fact, often in these types of crises or economic downturns, that's when clients and content owners look to protect what they have even more. They're looking to ways to generate revenue or maintain revenues, so they look to their lawyers to help them protect things. So you may see an uptick, for example, in litigations. So lots going on in the copyright space.

KENNEALLY: And looking beyond copyright specifically into other areas of intellectual property, Glenn, the trademarks and patents area – that will be especially valuable as we move through the research cycle towards treatments and vaccines.

PUDELKA: Absolutely. And you're seeing changes there, too. As you may have read or heard, under the CARES Act, the USPTO has implemented some emergency changes, as has the Copyright Office emergency changes. But as you say, the important piece will be the patents and the trademarks and the copyrights and the trade secrets that come out of trying to find a solution or a vaccine to this pandemic.

It's interesting – the copyright world has also taken a step in that direction, too. I don't know if you've seen, but the Creative Commons has come up with the Open COVID Pledge, where they have – it's a license that companies agree to adhere to that says that during this crisis that their intellectual property, if they choose to do so, would be licensed under a Creative Commons license which would mean for free temporary access to their IP in order to try to combat COVID-19. The term of the license is basically from now until one year after the World Health Organization declares COVID-19 pandemic to have ended. So you're seeing the copyright space or the intellectual property space trying to react to the crisis by offering what they have, which is content and resources and knowledge and intellectual property.

KENNEALLY: Well, that's an intriguing point, Glenn Pudelka, because what you are describing there is a permissions-based offering, one where the holder – the copyright holder allows someone to use the content with their permission. But there has also been headlines around the Internet Archive and its so-called Emergency Library. Hasn't come to litigation just yet, but it certainly raises the question of infringement at this period and the risks that come from that.

PUDELKA: No, it's very interesting. And how much time do you have? Because you could talk about the Emergency Library for hours. It has a lot of nuances to it, and there are arguments on both sides of the issue. I am a former publishing guy, as you mentioned at the beginning, so I tend to fall more on the sides of authors and publishers in this situation.



You know, I think that if you look at it, what the Internet Archive is trying to do is say, look, whereas libraries currently – as many may not know, but currently are allowed in the ebook spectrum to rent out ebooks on a temporary period of time certain numbers, and you have to get your name on the waiting list, similar – thinking of it as a physical book. I want to go to my library. They have five copies. All five copies are out. So I can't get a copy until one comes back. Same thing in the ebooks spectrum. Five copies are being lent out to others right now. As soon as one of those comes back, then I can be the next one on the list to use it.

What the Internet Archive is saying is that no longer do they need to have the number of copies. They'll let everybody who wants a copy use a copy for this period of time that they're asking of two weeks. And they are relying mostly on what they would say is the first-sale doctrine under copyright – which is once I've bought a copy, I own that copy, and I can do whatever I want with it – and fair use.

On the other side, if you look at what publishers and authors are saying is that, yeah, this is a revenue stream. Publishers and authors have worked very hard to establish this e-book revenue stream so that they can actually make money off of libraries lending. And this is taking away from that completely by saying – the Internet Archive saying we can take as many copies as we want, make as many copies as we want, and distribute them for free.

So it's certainly complex. It's certainly heated. My personal view is that I sort of tend – I lean towards the publishers and authors. I think that if you look at the copyright law and cases that have recently come down with respect to either the first sale in the digital age – the *ReDigi* case, for example – it's a copy. They're making a copy. And under the Copyright Act, I don't think this falls under fair use, and I think it also doesn't fall, at least under current case law, under what would be considered a first-sale doctrine.

KENNEALLY: Well, as we say, it has not yet come to litigation. If it does, we'll have to wait a while, because the courthouses are mostly closed. (laughter) But in addition to courthouses being closed, Glenn Pudelka, the Copyright Office itself in Washington, DC, is closed and is operating remotely. Does that have much of an impact for rightsholders?

PUDELKA: It does. I think it is working fairly well, quite frankly. It's astounding in a lot of ways how quickly the government and these government organizations and departments have been able to get themselves up and running virtually and have everyone work from home and do it in a way that protects what we expect to have the USPTO and the Copyright Office working in the way they work.



Obviously, there are some delays, and it makes people concerned over some things as well. As I mentioned earlier, the registrar of copyrights did use the powers given to her under the CARES Act to put in place some extensions of deadlines. Obviously, some of the things that are – people were concerned about is obviously registering my claims, termination notices. Under Section 115 for music, if you want a mechanical royalty, you have to make a notice in paper form. Those types of things, obviously, with the mail not coming in is not going to work.

The registration of claims, particularly when you publish – as many of our listeners know, copyright – statutory damages are available if you register a work prior to infringement or within three months of publication. Well, if you can't register because you can't get your deposit copy in – your best edition deposit copy in during this, because the mail is not getting delivered and the office is closed, then what happens to that three-month grace period that you get?

So the Copyright Office has put in a lot of ways that you can do things electronically that normally required paper. If you can send an email for your termination notice rather than sending it via mail – same thing, if you can upload your best edition, filling out a form that under penalty of perjury, the electronic version is the same as what your best edition would have been if you'd been able to send it in physically, then you can file that way, and you can get your registration that way.

I noticed, actually, just the other day that that was extended. It was originally put in place – those temporary changes were put in place until May 12. The Copyright Office just came out on May 1 saying that those are going to get extended until at least now June 10.

KENNEALLY: Glenn Pudelka, another area where we have flipped from the physical to the virtual is for the annual meeting of the Copyright Society itself. You made the tough decision late winter to do so. Tell us about that and tell us about what people who are going to attend virtually online can expect.

PUDELKA: Yes. So obviously we were very disappointed that we couldn't hold our meeting in person, which was supposed to be Newport, Rhode Island, just down the road from here in Boston. It was going to be a great meeting. And it would have been my last meeting as president. But we're thrilled that we were able to make this transition to the virtual meeting quite quickly, and the response so far is good.

But when we thought about it, how do we do a virtual meeting, something none of us – quite frankly, I didn't – no one told me when I interviewed for this job that this



was something I was going to have to do was the last six months of my presidency deal with a pandemic. So we thought long and hard about several things. One, I want to thank all of our panelists who immediately said, yes, they would be more than willing to jump on a virtual setting, which was great. How would we do this? What platform would we use? What would we charge? How would we spread it out?

One thing that was sort of certain is that obviously having a two-day conference, which is what our annual meeting normally is, would be very difficult to get our membership or non-members to sit on a Zoom or any kind of virtual platform for two straight days – you know, back to back panels. So instead, we decided to make all of June our annual meeting, and the plan is to have, starting on June 9 with the view from the Copyright Office, a panel on Tuesdays and Thursdays for the next three weeks after. So it's six panels total, and there'll be a panel on Tuesday and a panel on Thursday.

We also knew that some people might not be able to set aside either that amount of time, or students or other academics might not have – or anyone, actually – sole practitioners' finances might be tight in this time. So we actually broke it up and allowed you to pick a track as well as attend the whole meeting. So you can attend all six conferences, or you can pick a track that is on the Tuesdays or the track that is on the Thursdays.

But for our annual meeting, that is never just what that is about is just to go and have panels and meet people and listen and get your CLE credit. The most important piece of this is the social aspect and the networking aspect, so we've been thinking about ways to include that. So we're going to have Friday events that are going to be focused more on the social aspects. We'll have a happy hour on one of them – a virtual happy hour. We also are planning a trivia contest where we'll have people and hopefully be able to break them out into these meeting rooms so that we're not having the entire large group together – which as many people are learning, the larger the group on Zoom calls, the more difficult it is to actually get any real conversation going. So we'll try to break people out into smaller groups in these meeting rooms and hopefully maybe do a speed dating. We're still working through the details of how we will get the social aspect into the meeting, because that's an important part of any annual or midwinter meeting of the Copyright Society.

KENNEALLY: You mentioned the challenge there with adapting to this virtual world. It was a challenge you didn't expect to have as president of the Copyright Society of the USA. But, Glenn, reflect on the last two years and what the experience has been like to lead such an organization.



PUDELKA: It's been an honor. The people, I will say – and I have said this to anyone who's ever asked. I think copyright attorneys are some of the best attorneys in the world. They are interesting. They have a passion for content, music, literature, art, photographs. And they share that passion. Often, a lot of the copyright attorneys that I've met, this is their second career. They were a musician. They were a photographer. Or they are a photographer. And they continue that passion in the legal space as well.

Through the recent events of dealing with the pandemic, I can say that they are truly a compassionate group of people. Many of our calls have been focused on what can we do for the membership? How can we make sure that the membership can still get content, be there for them, but also do it in a way when we understand that law firms and sole practitioners and everyone is dealing with a lot of issues that are much bigger than attending a webinar?

Our webinars so far have actually been a big success. We had one recently on Creative Commons licensing two weeks ago which had over 150 participants. We've got one coming up at the end of May on joint authorship that has so far – as of today has 80 people signed up. So it's actually been – if there's anything good for the Copyright Society coming out of this whole situation, is that we've been able to – we made the decision for our chapter events, which are regional events traditionally – we decided since they were all going online, we would open them up to the entire world – nationwide, Canada, anywhere we had members or if anybody just finds the Copyright Society, they could sign up and attend one of these programs. And we've really seen that that's had a positive effect of people who probably wouldn't normally get to go to these, because it's a New York chapter lunch on a Tuesday that they were not able to attend, everyone can get on these Zoom calls. We're seeing an uptick in participation, which is great.

KENNEALLY: Glenn Pudelka, president of the Copyright Society of the USA and a senior counsel in the Boston office of Locke Lord, thanks so much for joining me on Beyond the Book.

PUDELKA: I appreciate it. Thank you very much, Chris. Stay safe.

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