"BY NIGHT SHE FOUGHT FOR FAIR USE": RESTORING THE INTEGRITY OF COPYRIGHT LAW, ONE COMIC-BOOK READER AT A TIME

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BOUND BY LAW? By *Keith Aoki, James Boyle, & Jennifer Jenkins*. Durham, North Carolina: Duke University Center for the Study of the Public Domain. 2006. Pp. 74. $5.95; available for free at http://www.law.duke.edu/cspd/comics/.

INTRODUCTION

Students of copyright law quickly learn that the subject is counterintuitive. One of the first revelations of this is—somewhat alarmingly—the purpose of copyright itself. Contrary to popular belief, copyright is not just about protecting an artist's creation, but sharing it.[1] Simultaneously protecting a work and sharing it helps to fulfill the Constitution's mandate that Congress "promote the Progress of Science . . . by securing for limited Times to Authors . . . the exclusive Right to their . . . Writings." [2] In other words, Congress is to promote learning and the advancement of our culture.

The symbiosis of protecting and sharing is effected through the Copyright Act. First, to encourage artists to create, the Act bestows copyright ownership and all of its attending rights to artists.[3] Second, to allow the public to have access to those creations—and the opportunities for learning that go along with such access—the Act limits the owner's rights.[4] In this way, protection of an artist's work is part of a "copyright deal" that the artist makes with the public. If the Copyright Act does not grant a particular right

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1. *See* Fogerty v. Fantasy, Inc., 510 U.S. 517, 524 (1994) ("The primary objective of the Copyright Act is to encourage the production of original literary, artistic, and musical expression for the good of the public."); Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 349–50 (1991) ("The primary objective of copyright is not to reward the labor of authors, but '[t]o promote the Progress of Science and useful Arts.' To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work." (citations omitted)) .

2. U.S. CONST. art. I, § 8, cl. 8. Because this clause establishes the foundation for both the copyright and patent regimes, I have omitted the words that apply to patents. In the eighteenth century, the word *science* referred to "knowledge or learning," and hence belongs with the copyright portions of the clause. L. RAY PATTERSON & STANLEY W. LINDBERG, THE NATURE OF COPYRIGHT: A LAW OF USERS' RIGHTS 48 (1991). This is clear also from the syntax of the clause.

3. 17 U.S.C. § 106 (2000). Note that copyright protects expression only, not ideas. *Id.* § 102.

4. *Id.* §§ 107–122.

to an artist, then that means the right belongs to the public. Fittingly, works that are not protected by copyright are said to be in the public domain, and the same term applies to particular "aspects of copyrighted works that copyright does not protect."[5]

If copyright is counterintuitive in theory, it should be no surprise that it is equally counterintuitive in practice. This is especially true of the tricky doctrine of fair use, an essential aspect of the copyright regime. Recognizing the current state of confusion surrounding fair use, three academics decided to create a work that would contextualize, explain, and defend the concept. Their medium is a comic book and is entitled *Bound By Law?* Written by Keith Aoki[6] (who also provided the illustrations), James Boyle,[7] and Jennifer Jenkins,[8] *Bound By Law?* chronicles the experiences of a documentary filmmaker named Akiko. Akiko, encumbered by the current copyright system, learns that the solution to her problems is a strengthened doctrine of fair use. One might wonder why Aoki, Boyle, and Jenkins chose to convey their message in the form of a comic book. Their response is compelling:

> For some strange reason, none of our intended audiences seem eager to read scholarly law review articles. What's more, there is something perverse about explaining an essentially visual and frequently surreal reality in gray, lawyerly prose. Finally, what could better illustrate the process we describe than a work which has to feature literally hundreds of copyrighted works in order to tell its story, a living exercise in fair use? (p. 70)

In *Bound By Law?*, Aoki, Boyle, and Jenkins communicate to the lay reader why fair use should matter to everyone, particularly artists.

This Notice critiques *Bound By Law?*, analyzing the major themes of the book and suggesting that at least one additional issue should have been addressed. Part I describes the current confusion threatening fair use. Part II focuses on the book's three major themes, (A) the rise of a "rights culture," (B) the necessary balance that is missing from the present copyright regime, and (C) a consideration of an ideal copyright regime. Part III argues that a key issue is raised in *Bound By Law?* only implicitly and is never fully explored. The book should have addressed the fact that third-party, non-author owners of copyright skew the "copyright deal" envisioned by the Constitution. Such owners are a force driving the growth of the rights culture, and those who wish to preserve the integrity of fair use—and the copyright regime itself—must understand the role that these owners play.

I. Confusion: An Archenemy of the Fair Use Doctrine

Copyright law has been said to approach "the metaphysics of the law, where the distinctions are, or at least may be, very subtile [sic] and refined,

5. Jessica Litman, *The Public Domain*, 39 Emory L.J. 965, 976 (1990).

6. Professor of Law, University of Oregon School of Law.

7. Professor of Law, Duke Law School.

8. Director, Duke Center for the Study of the Public Domain, Duke Law School.

and, sometimes, almost evanescent."[9] A particularly evanescent concept is that of fair use, which is one of the Act's built-in limitations on the rights of copyright holders. According to § 107 of the Act, fair use encompasses, but is not limited to, use "for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research."[10] Four factors should be considered when determining whether such a use is fair: "(1) the purpose and character of the use . . .; (2) the nature of the copyrighted work; (3) the amount . . . of the portion used . . .; and (4) the effect of the use upon the potential market for or value of the copyrighted work."[11]

Of course, it is not always easy to distinguish between an infringing use and a fair use. Consider the practice of sampling music—or otherwise borrowing and building upon musical ideas. The Supreme Court has set a good example in cases like *Campbell v. Acuff-Rose Music, Inc.*, explaining that "[t]he fair use doctrine thus 'permits [and requires] courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster.' "[12] Unfortunately, too many lower courts are not following this philosophy, and some are even going so far as to equate ostensible fair uses to stealing.[13] One court has found that a sound recording consisting of but three notes did not even warrant an *inquiry* into fair use,[14] even though de minimis use—a use so small it flies under the copyright radar—usually is excused by courts.[15]

And it's not just sampling that is slipping—or being pushed—outside of the safe haven of fair use. In *Princeton University Press v. Michigan*

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9. Folsom v. Marsh, 9 F. Cas. 342, 344 (C.C.D. Mass. 1841) (No. 4901). In this opinion, Justice Story was the first to identify the concept we call *fair use*; although he did not use the term *fair use*, he explained that "a reviewer may fairly cite largely from the original work, if his design be really and truly to use the passages for the purposes of fair and reasonable criticism." *Id.* He then outlined several factors that courts should consider when deciding whether a particular use of copyrighted material is acceptable or infringing: "the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work." *Id.* at 348. These factors now are echoed in the Copyright Act. *See infra* text accompanying note 11.

10. 17 U.S.C. § 107 (2000).

11. *Id.*

12. 510 U.S. 569, 577 (1994) (quoting Stewart v. Abend, 495 U.S. 207, 236 (1990)); *see also supra* note 1. In *Campbell*, the Court found that the 2 Live Crew song "Pretty Woman" was a parody of Roy Orbison's tune. *Campbell*, 510 U.S. at 582.

13. For example, one court, chastising the musician Biz Markie, who arguably was engaged in fair use, proclaimed, " 'Thou shalt not steal.' [sic] has been an admonition followed since the dawn of civilization." Grand Upright Music Ltd. v. Warner Bros. Records, Inc., 780 F. Supp. 182, 183 (S.D.N.Y. 1991). *See also infra* note 14.

14. Bridgeport Music, Inc. v. Dimension Films, 401 F.3d 647, 657 (6th Cir. 2004) ("If you cannot pirate the whole sound recording, can you 'lift' or 'sample' something less than the whole[?] Our answer to that question is in the negative."). The *Bridgeport* court unfortunately became mired in the issue of protecting a recording versus protecting a composition, but the general message concerning de minimis use is clear.

15. *E.g.*, Gordon v. Nextel Commc'ns, 345 F.3d 922, 924 (6th Cir. 2003) (finding that illustrations appearing in a television commercial did not infringe the copyright of the illustrator because the copying was de minimis).

Document Services, for example, a copy shop preparing coursepacks for students was found to have infringed publishers' copyrights.[16] The shopowner, believing his business was within the education exception provided by § 107,[17] had refused to pay royalties to the publishers.[18] As the dissenting judge noted, "Ironically, the majority's rigid statutory construction of the Copyright Act grants publishers the kind of power that Article I, Section 8 of the Constitution is designed to guard against."[19] Decisions like these, deeming an ostensible fair use infringing or stealing,[20] mean that fair use has begun to seem not just evanescent or counterintuitive, but *wrong*. Indeed, the Copyright Office's own website counsels the public that "[t]he safest course is always to get permission from the copyright owner before using copyrighted material."[21] This is practical advice, to be sure, but not sound advice: it undermines the intention of the Article I, Section 8 Copyright Clause.

II. A Crusade for Fair Use on Three Fronts

The confusion that threatens fair use is the backdrop to *Bound By Law?* Akiko is thwarted at every turn in her quest to create a film about New York City. She finds, for example, that scenes incidentally incorporating the song "Pretty Woman" or "Happy Birthday" will require her to track down copyright owners, and she'll need to be prepared to pay a licensing fee (pp. 7–11, 15). Even a few seconds of a popular television show playing in the background of a scene likely will come with a price tag determined by the copyright owner (p. 13). As Akiko attempts to navigate the labyrinth of copyright law, with the help of a couple of amiable (though nameless) guides, she is tempted to make changes in order to cut costs or avoid hassle, even when those changes compromise her art (pp. 16–17)—and even when, according to most interpretations of the doctrine of fair use, she should not have to pay at all (pp. 22–23). The more she learns about the current state of copyright, the more exasperated Akiko becomes; "This whole thing is crazy! How are any films going to be made if we spend our time worrying about being sued or cutting and even re-editing them?" she implores (p. 18).

Akiko's guides understand her frustration. They share example after example of copyright gone awry, but they are always careful to emphasize that copyright at its core is a useful system. The guides explain that copyright

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16. Princeton Univ. Press v. Mich. Document Servs., Inc., 99 F.3d 1381, 1383 (6th Cir. 1996).

17. *See supra* text accompanying notes 10–11.

18. *Mich. Document Servs.*, 99 F.3d at 1384.

19. *Id.* at 1393 (Martin, C.J., dissenting).

20. *See supra* note 13 and accompanying text.

21. U.S. Copyright Office, Fair Use, http://www.copyright.gov/fls/fl102.html (last visited Nov. 7, 2006). The site continues, "When it is impracticable to obtain permission, use of copyrighted material should be avoided unless the doctrine of 'fair use' would clearly apply to the situation."

has succumbed to a " 'rights' culture" (p. 19) that upsets the system's crucial balance. They also encourage Akiko to think critically about how she as an artist would want the copyright system to work.

A. *The Rise of the Rights Culture*

When Akiko wonders how films will be made if artists are preoccupied with potential lawsuits, her guide tells her that things have not always been this way. Classic documentaries did not have to "go through this rigamarole" (p. 18). On the contrary, "many factors—new technologies . . . new markets . . . have contributed to the rise of a 'rights' culture" (p. 19). This rights culture is a central theme of *Bound By Law?* The book challenges artists to "change the 'rights' culture by learning more about fair use, and even making some collective decisions about what's fair" (p. 23). Akiko's guides present examples of filmmakers who stuck to their guns by not asking permission when they knew the use would be fair (p. 22–23).

To its credit, *Bound By Law?* does not seek to create militant revolutionary artists who have no sense of the risk such a stand will entail. At the same time that it challenges artists to rise up, the book points out that "regardless of what the law says, rights clearances may play out differently in practice" (p. 52). Akiko's guides explain that artists often "shy away from acts that are actually legal" because "[t]he line between fair and unfair use can be fuzzy, and lawsuits can be expensive and unpleasant" (p. 55).

Still, this recognition of the practical inconveniences does not take away from the stirring call to arms. One of the real strengths of the book is its examples of just how nonsensical the copyright system has become. After reading so many examples of outlandish demands by copyright holders and irrational decisions by courts, it is difficult to resist donning a superhero's costume, picking up the shield of fair use, and fighting against the "crazed[,] out-of-control 'rights monster,' " just as Akiko is tempted to do (p. 28). For instance, Akiko's guides tell her about a documentary film "about the stage hands' view of Wagner's Ring Cycle" that happened to contain in the background 4.5 seconds of an episode of *The Simpsons* (p. 13). The Fox Broadcasting Company "demanded $10,000 for rights to the 4½ seconds" of what "was clearly a 'fair use' " (p. 13). The guides also describe a scene in another documentary film in which a child in a ballroom dance competition was playing foosball (p. 14) and "spontaneously yell[ing], 'Everybody dance now,' a line from the C&C Music Factory hit" (p. 14). Warner Chappell, owner of the copyright to that song, "demanded $5000 for the use of the line" (p. 14).

Bound By Law? effectively demonstrates why fair use is essential not only for artists, but for the general public, as well. On top of their incensing examples, the guides describe regrettable decisions by artists who compromised when they couldn't afford to use certain materials. One such decision involves the ballroom dance film: the filmmaker had to cut the "Everybody dance now" line, "even though it really fit the movie's theme" (p. 14). Akiko begins to wonder whether "we would have the great documentaries from the

past if these legal changes had been in place back then" (p. 46). The rights culture threatens not only the quality of art, but also the very integrity of copyright law, as it is established in the Constitution.

B. *The Necessity of Balance*

The welfare of both artists and the general public, of course, is at the heart of the Constitutional mandate creating the copyright regime, and the book emphasizes the balance that is necessary for copyright to work as it was intended. Akiko asks what many readers are probably thinking now that they know about the ways the rights culture has manifested itself: "What's this system for? Is copyright actually *bad* for artists?" (p. 28). The guide answers her quite effectively:

> Copyright gives you rights that you can use to control and get paid for your work . . . . Artists sometimes think they want to have as much copyright protection as possible. Well, this may be great on the *output* side; but what about the *input* side? If everything is protected by copyright, then where do you get your raw materials? Copyright law also tries to give artists access to the raw materials they need to create in the first place. (p. 32)

He concludes his speech by quoting Judge Alex Kozinski: "Overprotecting intellectual property is as harmful as underprotecting it."[22]

An important aspect of this balance is the length of the protection provided by copyright. Akiko's guide explains that "[t]he ever-lengthening copyright term seems to be having the opposite effect from what the Constitution intended" (p. 45). Indeed, the prescribed "limited Time[],"[23] which began as a fourteen-year copyright renewable for fourteen more years,[24] has bit by bit become a term of almost 100 years, thanks most recently to the Sonny Bono Copyright Term Extension Act.[25] This arrangement benefits artists—more accurately, it benefits copyright holders—but it ignores the other half of the copyright deal, the benefit to the public. The Constitution's mandate to promote learning is not fulfilled. "Now the balance between what is and isn't protected has been upset. Copyright law may no longer serve the interests of creators" (p. 45) because creators cannot use and build upon the works of others. As Aoki, Boyle, and Jenkins lament in the Afterword, "The system appears to have gone astray" (p. 67).

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22. P. 33 (quoting White v. Samsung Elec. Am., Inc., 989 F.2d 1512, 1513 (9th Cir. 1993)). Judge Kozinski continues, "Creativity is impossible without a rich public domain . . . . Overprotection stifles the very creative forces it's supposed to nurture . . . . Culture . . . grows by accretion, each new creator building on the works of those who came before." *Id.*

23. U.S. CONST. art. I, § 8, cl. 8.

24. Copyright Act of 1790, ch. 15, 1 Stat. 124 (1790).

25. 17 U.S.C. §§ 301–305 (2000). This amendment extended the term of copyright from the life of the author plus fifty years (or seventy-five years for a work of corporate authorship) to the life of the author plus seventy years (or ninety-five years for a work of corporate authorship). Fortunately, the amendment that bears Bono's name does not completely reflect his philosophy: according to Mary Bono, who succeeded her late husband in the House of Representatives, "Sonny wanted the term of copyright protection to last forever." 144 CONG. REC. 24336 (1998).

C. *The Face of an Ideal Copyright Regime*

Although the system indeed appears to have gone astray, that doesn't mean it cannot be set right again. As *Bound By Law?* winds to a close, Akiko begins to consider "what kind of copyright system . . . we want" (p. 60). Do we want "every snippet and fragment" to be owned? (p. 61). Or do we want a "different kind of landscape," to analogize to land use, "where some things need to be private," but with "a lot of open public space in between" (p. 63)? Admittedly, the book's land use references are a bit hokey: "It's as if we were zoning an environment of the mind," "What we need here is sustainable development," "Hmmmm . . . The cultural environmental movement," and so on (pp. 64–65). Even so, the sentiments behind the analogy are important: it is imperative that the system be improved, and the best way to accomplish that starts with consideration of what an ideal system should entail.

One attempt to rethink the copyright system has resulted in an entity—or perhaps more appropriately, a *philosophy*—called Creative Commons.[26] Creative Commons is a way to fight back against the rights culture that *Bound By Law?* deplores. According to the Creative Commons website, "Balance, compromise, and moderation—once the driving forces of a copyright system that valued innovation and protection equally—have become endangered species. Creative Commons is working to revive them. We use private rights to create public goods: creative works set free for certain uses."[27] Creative Commons offers templates for an array of licenses that helps to fill in the gaps "between full copyright—*all rights reserved*—and the public domain—*no rights reserved*. Our licenses help you keep your copyright while inviting certain uses of your work—a 'some rights reserved' copyright."[28] Authors can download, free of charge, the symbols that reflect the particular licenses they wish to offer potential users of their works.[29] Because Creative Commons focuses on the wants and needs of artists and the public, it promotes what the Constitution intends, and therefore it is considered by many to be an ideal system—or at least as close to ideal as is possible.

Oddly, though the book pays homage to Creative Commons, it never explains what it is and why it represents a promising alternative to the current system. Apparently as an inside joke, Lawrence Lessig, Chairman and one of the founders of Creative Commons, is portrayed in *Bound By Law?* as the Statue of Liberty, holding a video camera, his pedestal inscribed with the

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26. One of the founders of Creative Commons is *Bound By Law?* author James Boyle. Creative Commons, Frequently Asked Questions, http://wiki.creativecommons.org/FAQ (last visited Aug. 31, 2006).

27. Creative Commons, About Us, http://creativecommons.org/about/history (last visited Aug. 31, 2006).

28. Creative Commons, Learn More about Creative Commons, http://creativecommons.org/learnmore (last visited Aug. 31, 2006).

29. Creative Commons, Choosing a License, http://creativecommons.org/about/licenses (last visited Aug. 31, 2006).

words "Give me your wired, re-mixing masses yearning to be free" (p. 21). Later, one of the guides suggests that Akiko consider using Creative Commons, and the book suggests that the readers visit the Creative Commons website (p. 31). Still later, in the Afterword, it is explained briefly that Creative Commons is "a non-profit organization that provides simplified copyright tools for artists and creators" (p. 67), and the copyright page of *Bound By Law?* itself is stamped with Creative Commons symbols. Because this patchwork is the extent of the information provided, most lay readers probably will not understand why Creative Commons is so useful or why they should care to view the website in the first place. The authors should have been more explicit, particularly because Creative Commons pertains to the theme of creating an ideal system.

III. A Forgotten Front: The Skewing of the Copyright Deal

Another aspect of *Bound By Law?* that should have been more explicit is the manner in which third-party, non-author owners of copyrights skew the copyright deal that the Constitution envisions. Indeed, the failure to explore the issue is a major shortcoming of the book. Third-party, non-author owners of copyrights upset the balance of copyright, and they are a force driving the growth of the rights culture.

This issue, perhaps inadvertently, appears in a fleeting example in *Bound By Law?*, but it is never fully explored. The opportunity arose in the example involving *The Simpsons*, discussed in Section I.A. Akiko's guide explains that in *Sing Faster*, the Ring Cycle stagehands documentary, "a small TV in the background was showing 'The Simpsons.' Matt Groening [creator of *The Simpsons*] didn't object, but Fox demanded $10,000 for rights to the 4½ seconds! This was clearly a fair use, but [the documentary filmmaker] was told Fox would make litigating the issue difficult and costly" (p. 13). The copyright deal that was established between Groening and the public—and which Groening seems to have intuited—was skewed by the interests of Fox Broadcasting. Fair use of Groening's work, which would certainly have resulted in a richer new creative work, was prevented by the third-party non-author.

The copyright system envisioned by the drafters of the Constitution was intended to remedy situations like this one.[30] The system embraced in the Copyright Act of 1790 was modeled after England's Statute of Anne.[31] Before the enactment of the Statute of Anne, English booksellers, who functioned also as publishers, had control over the circulation of books—

30. *See* U.S. Const. art. I, § 8, cl. 8. Third-party, non-author copyright owners are not addressed in the Copyright Clause; the copyright deal does not encompass such owners.

31. An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of Such Copies, During the Times Therein Mentioned, 1710, 8 Anne, c. 19 (Eng.).

they owned all copyrights, and their copyrights lasted indefinitely.[32] This was good for the publishers, but not good for the public. The Statute provided that authors would own copyrights and that they would only last for a limited time.[33] Taking control of books away from publishers and creating a deal between authors and the public encourages learning by making materials more widely available, as the official title of the Statute and its text explain.[34]

When third-party non-authors own copyrights, the resulting triangle of interests skews the copyright deal, and fair use usually gets lost in the shuffle. Authors are likely to understand the importance of fair use in creating new works by building on existing works,[35] and the public is likely to understand the benefit it receives when fair use results in new works. But third-party non-author copyright owners are likely to focus on the profits they can reap by licensing uses of the works. As demonstrated by *Bound By Law?*, attaching a price tag to uses of a work inhibits many of those who might otherwise build upon that work to create new works.[36] When the copyright deal is skewed, authors and the public thus get the short end of the stick.[37]

Strengthening the copyright deal between artists and the public would be the first step toward restoring the integrity of the copyright regime. It seems clear that artists alone are best positioned to accomplish this.[38] The public is an unpromising conduit of reform because its influence is exercised mainly though Congress, which has been mesmerized by Sonny Bono's misguided philosophy of copyright.[39] Likewise, the courts cannot be relied upon,[40] and third-party, non-author owners naturally are unlikely to sacrifice their upper hand. *Bound By Law?* provides inspiration for artists who wish to reestablish

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32. *Id.*; *see also* PATTERSON & LINDBERG, *supra* note 2, at 29.

33. *Id.*

34. *See supra* note 31. However, it is important to note the argument that, despite the promising language of the Statute of Anne, authors actually found themselves in much the same position as before. In other words, "[a]lthough the Statute of Anne ostensibly provides for an author's copyright, the main beneficiaries were the booksellers, because the law made copyright assignable to others . . . . [As a result of this] catch-22 situation, . . . an author had to assign the copyright in order to be paid" and to have his work published. PATTERSON & LINDBERG, *supra* note 2, at 28. For a dissenting view, see RONAN DEAZLEY, ON THE ORIGIN OF THE RIGHT TO COPY: CHARTING THE MOVEMENT OF COPYRIGHT LAW IN EIGHTEENTH-CENTURY BRITAIN (1695–1775) 46 (2004) ("Parliament focused upon the social contribution the author could make in the encouragement and advancement of learning . . . . It was the free market of ideas, not the marketplace of the bookseller, which provided the central focus for the *Statute of Anne*.").

35. *But see supra* note 25 (describing Sonny Bono's desire that the term of copyright be indefinite).

36. *See supra* Section II.A.

37. This issue shows itself in a number of cases. For example, in *Princeton University Press v. Michigan Document Services*, 99 F.3d 1381 (6th Cir. 1996), the plaintiff suing the copyshop owner was a third-party non-author copyright owner. The same was true in *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

38. *See supra* Section II.A.

39. *See supra* note 25 and accompanying text.

40. *See supra* Part I.

the copyright deal: Akiko's guides describe potential "ammunition against unreasonable denials of fair use" (p. 24) in the form of a well-reasoned fair use decision.[41] Unfortunately, *Bound By Law?* fails to connect the dots between an artist's push for fair use, an artist's fight against the rights culture, and an artist's unique position for strengthening the copyright deal. Had the book explicitly made these connections, it could have reinforced its message that artists must consider "what kind of copyright system . . . we want" (p. 60).

Conclusion

Despite my contention that *Bound By Law?* misses an important opportunity to address the skewing of the copyright deal, the book is overall an informative and engaging discussion of fair use. The choice of medium, a comic book, is indeed an effective way to "feature literally hundreds of copyrighted works" (p. 70). Perhaps most importantly, *Bound By Law?* explains why readers should care about fair use. As the authors bemoan, "One of the under-appreciated tragedies of the [rights] culture is that many young artists only experience copyright as an impediment, a source of incomprehensible demands for payment, cease and desist letters, and legal transaction costs" (p. 69). To combat this tragedy, Aoki, Boyle, and Jenkins offer "a living exercise in fair use" (p. 70), along with some powerful examples and practical advice. The concept of fair use is still evanescent, to be sure, but it is somewhat easier to grasp and appreciate because of the guidance provided in *Bound By Law?*

41. Mattel, Inc. v. Walking Mountain Prods., No. CV 99-8543 RSWL (RZx), 2004 U.S. Dist. LEXIS 12469 (C.D. Cal. June 24, 2004). In this decision, the triumphant defendant artist was awarded costs and fees after the Ninth Circuit, in *Mattel, Inc. v. Walking Mountain Productions*, 353 F.3d 792 (9th Cir. 2003), affirmed the lower court's ruling. The district judge stated that the litigation was "objectively unreasonable" and "contravene[d] the intent of the Copyright Act." 2004 U.S. Dist. LEXIS 12469, at *7.