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TrustTalk podcast - interview Bill Rosenblatt

Voice-over: Welcome to TrustTalk. Our guest today is Bill Rosenblatt, a New York-based, an internationally acclaimed expert on digital media. He talks about the change of trust in the pre-digital age of copyright and the infinite ways copyrighted works can be dispersed in the digital age, changing the role of trust. Your host today, Severin de Wit.

Interviewer: Bill, thank you for being our guest today at the TrustTalk podcast. You are a consultant at Giant Steps Media Technology Strategies in New York. For those that do not know you, can you tell us a bit about what you do?

Bill Rosenblatt: Sure. Well, as you mentioned, I am the owner and president of Giant Steps Media Technology Strategies, which is a consulting firm that I started back in the year 2000. So I've been in business twenty-one years and generally what I do is I provide strategy advice to a wide range of businesses touching upon copyright issues related to digital media and the digital age. And my clients include technology companies, media companies, online service providers and start-ups. And I also do occasional expert witness work in patent and copyright litigations regarding technologies for digital media and copyright.

Interviewer: Right. Most interviews I did for TrustTalk immediately starts by discussing the expertise of the interviewee. As we know each other some time, I know you are quite an opinionated guy, so I thought, why not ask Bill a more general question about trust? After that, we can go into your expertise and copyright and media relating to trust. So here we go. What would be your thoughts if I were to ask you what the role of trust is in your career as a consultant?

Bill Rosenblatt: That's a great question, and it's one that I think is not asked often enough or thought about often enough. And certainly the most important trust element in consulting is that the client trusts the consultant to do the work, to provide the right level of expertise and all the usual things that consultants are supposed to deliver. But there's a flip side to that, which is the consultant trusting the client to make the work available for the consultant to do. And so I've run across a number of situations where I'm approached by a client or a potential client, and they say they want some work done, but they never actually come through with the

work to be done. The project gets derailed or the funding gets pulled or any number of things can happen, or in the middle of the project something happens to throw it off track and so that it never finishes or has to change in some way. There was one time I remember when I had a client in Boston and I live in New York, which is about an hour's plane ride away from Boston, where literally on the Sunday before I was to begin the project on Monday and fly up to Boston, they cancelled the project on me after having signed the contract. So that to me is a trust issue.

Interviewer: Right, it is. Anyway, let's go into your expertise. You're an internationally recognized independent expert on technology issues and specifically related to copyright in the digital age. So the first question seems to be a logical one. When we talk about copyright or intellectual property in general, you would not immediately think about trust, you wouldn't link that to trust. That seems even more surprising as we have seen that trust plays a major role in business and politics, in law and society. But if you Google "trust and intellectual property", all you get are data related to trust companies, the company fiduciary relationship in which one party known as the trustor gives another party, the trustee, the right to hold title to property or assets. So my question is copyright and trust. How do they relate?

Bill Rosenblatt: So the easiest way to answer that would be to think about what copyright has meant in the pre-digital age and compare that to what copyright means in the digital age. Regarding the everyday people, consumers, if you want to call them that, who engage with media products, they buy them, they subscribe to them and so forth. And so in the pre-digital age, you could trust if you were a media company, a copyright owner, a record label, a book publisher, a movie studio or anything like that, you could, in a sense, trust the consumer not to infringe your copyrights because simply it wasn't very easy for them to do that. It took some effort and cost to engage in activities that might be considered to be infringing. And then, on the other hand, if you're if you are making your materials available to a business as opposed to a consumer, then you have trust issues that are bound up in licensing agreements and other contractual bases. And if your licensee or whatever it may be, is doing something that you don't think is right, you have legal recourse. And the speed at which the entity could do something wrong is roughly equal to the speed of the legal recourse that you could have. You could sue them, you could send them a demand letter. You could do things like that. And so that was the case in the pre-digital age. It was fairly well balanced. You had some sense of trust in your user of copyrighted material, whether that's an individual consumer or a business. But now here we

are in the digital age and certainly in the early days of digital copyright owners decided, in effect, that they could not trust consumers with the material because it's so easy, cheap and fast to reproduce copyrighted material, potentially without authorisation that you have to install or some thought that you had to install mechanisms to create that trust that the copyright owners didn't have in consumers who had all of a sudden access to all this technology that enabled them to send copies of material to their million best friends at the click of a button.

Interviewer: So you touch upon the trust that the owner needs to have in the user of the rights and so in the digital age, did the speed of potential infringements changed? It's much higher than the speed of enforcement via legal actions, right, so that the copyright owner has to consider how much they trust the consumer to respect these copyrights. Is it merely trust here?

Bill Rosenblatt: Well, certainly trust is not the only thing. The other thing to consider is that users in the digital age can do things that some might consider to be infringement of copyrights and some might not. And so we have legal terms for this, such as fair use in the United States and fair dealing in most of Europe. And that's a set of principles by which courts can determine whether a particular type of use of content is infringing or not. So, for example, if you use a piece of content in a piece of criticism, so you write a review of a book in a newspaper, in US law that's considered very strong, fair use potential. But there are other things that aren't so obviously one way or the other. And with digital technology, you can do all kinds of things that are fuzzy with respect to whether this is fair use or fair dealing and whatnot. So there are all these considerations. And so in the nineties, mid to late 90s, when these technologies were coming out, there were all these new efforts from start-ups and established companies to essentially establish trust in consumer devices where supposedly without such technology, there wouldn't be any trust. And in fact, one of the most important early companies in this field was called Intertrust.

Bill Rosenblatt: So there's a company called they originally had another name, but they changed their name very quickly to Intertrust. And then there was another technology out of Xerox PARC that it wasn't called trust, but it referred to the technology as trusted systems. So just the most obvious canonical example of this is you had PCs, Windows PCs and Windows PCs were complex systems that had lots of inputs and outputs and ways of getting at material that's

stored on them. And so there was a great concern that we had that copyright owners had to turn PCs into trusted systems, quote unquote, with respect to copyright. So trust is really one of the lenses, certainly through which content owners viewed this issue of digital media technology when it first came up in the 1990s. And it's still there. You still hear people refer to this as a trust issue in terms of technology. Intertrust, the company, is still very much in existence. They've been a client of mine. They're doing all kinds of interesting things. So trust is obviously not the only consideration that copyright owners are looking at in the digital age, but it's definitely an important one.

Interviewer: So talking about some other examples, I think in an earlier conversation we had prior to the interview, you also mentioned Harry Potter.

Bill Rosenblatt: Sure. So another technology that so the technology that I was alluding to previously are called DRM, Digital Rights Management. And that's a fairly well-known term. Severin, I know you've heard of it. Many of your listeners have probably heard of it. But in case they haven't, it refers to generally techniques for encrypting content and sending it to the user or the user's device and then only decrypting it if the user has the proper credentials, which may have resulted from them paying for it or subscribing to it or what have you. So that is what Intertrust did and continues to do as a company. And there are other companies that do this. Google has as a DRM technology. Microsoft has one, Apple has one, Adobe has one. And there are various others. There's a Dutch company called Irdeto that's well known in this field for having that type of technology, mostly used by pay-tv services. But there are other technologies as well that fall in different spots along the trust spectrum. And one of them is the technology of digital watermarking. And that is instead of encrypting the content so that you have to decrypt it to get access to it, there is some invisible or inaudible piece of data embedded in the content that's known as the digital watermark in reference to watermarked paper or watermarked currency in the past. And so the watermark can contain various types of information. Harry Potter e-books are a well-known example of this. So the organization Pottermore, which is the sort of company that manages all things Harry Potter, distributes e-books on its website that are not encrypted with DRM, but they have a watermark in them, and the watermark contains simply an ID number that no one understands the meaning of, except the Pottermore company itself, but it refers to the transaction in the user where the e-book was purchased. And there are other watermarking technologies that are less trustful of the user

in the sense that they embed things like the user's email address. That's one example. There's a publisher of technical books called O'Reilly, which embeds the buyer's email address in every page of an e-book that they buy. And so if you have an e-book that you bought from O'Reilly, it's got your email address on every page. And if you send it to your friends, you are including your email address. So you perhaps think that these are people that I should trust not to distribute the e-book beyond just themselves. And an even more egregious or extreme example of this is there was an older e-book technology from Microsoft back in the early 2000s where one of the options you could set if you were a publisher was to embed the user's credit card number as a watermark and in fact, a visible watermark near the front of the book. So anyone you sent a copy of this e-book to could see your credit card number. And you really know you had to trust whomever you were sending them to in that situation. So the point more generally is that there are there's a panoply of technologies that have been invented and used for distributing digital media that all take a position on how much do I trust the consumer.

Interviewer: So let's go to another example where you are an expert in: music, where the record companies the major record companies at least, use DRM during their first several years of digital music in, let's say, mid 2000 on iTunes from Apple. What can you say about their solution in relation to trust?

Bill Rosenblatt: Well, so the first of all, Intertrust, first big customer, was one of the major record labels, Universal Music Group and Intertrust decided that their main big market was going to be music. And as you mentioned, the major record labels decided that they were going to go hard DRM with their music over the first few years of the digital age until the late 2000s. And before that, there was a dichotomy between the major labels who wanted strong DRM on everything because they were dealing mainly with well-known musical artists who didn't need to be discovered by the public versus the small independent labels who mainly had unknown artists and they chose not to use DRM. One reason is because DRM is sort of a heavy-duty technology, there are tech support issues. There are things that as a consumer you might think you should be able to do with digital music that DRM will not let you do, such as make backup copies or if you have more than one device, it might let you play your music on all of your devices, things like that. So the indie labels took a position that they weren't going to use DRM. I actually don't think that was a trust issue so much as an ease of use issue and also an issue of they weren't that concerned if people spread the music around without permission because

they were as much interested in getting their artists discovered as they were in protecting their intellectual property.

Bill Rosenblatt: But then something happened in the late 2000s, which is that the record labels really wanted competition to Apple. iTunes was around, iTunes had an enormous share of the digital music market and then eventually an enormous share of the music market in total, digital or otherwise. And the record labels really wanted a competitor to come in to make it so that Apple had less clout in the market. And along came Amazon. And basically they made a deal with Amazon, one prong of which was Amazon didn't want to have to deal with DRM. They it was so much easier for them if they didn't have to deal with it. So they agreed, the labels agreed with Amazon, OK, we're not going to use DRM. And so they made a deal with Amazon to distribute MP3s without DRM. And so Apple followed suit quickly thereafter and dropped DRM. And then Steve Jobs wrote this public letter taking credit for removal of DRM from the music industry, which is actually a bunch of nonsense. The writing was on the wall about that for a couple of years before Steve Jobs took credit for it. But that's what happened in music. But just to quickly wrap up on that today, of course, we don't have downloads so much as we have streaming with companies like Spotify and Tidal and well, Apple's doing streaming, Google's doing streaming. Everybody is doing streaming. And streaming is all DRM enabled. All streaming services use DRM. So on the one hand, it's extremely easy to use these services and they give you access to these enormous libraries of music, sometimes for free. But DRM is involved. And so there is I think that does take us back to the trust issue. Because when you're using a service like Spotify, if there were no DRM, then you could simply download everything that you stream and do whatever you want with it and the record labels and Spotify don't trust the customer to do that. And what makes that situation more interesting, in fact, is Spotify and the record labels are more aligned in terms of their objectives than what used to be the case where the companies like Apple considered it a burden to have to deal with DRM just because the record labels insisted that they do. Well, Spotify wants you to keep paying that 10 euros a month for your subscription or ten US dollars in the United States. And so they also don't want you to download everything off their service and then cancel your subscription just as much as the record labels don't want you to download everything and use it for free. So DRM is part of an aligned vision between the streaming companies and the record labels today. And that is a trust issue.

Interviewer: Another technology in this regard is levees and maybe in Germany, the example of the levee on photocopiers, is that still relevant or is that old school?

Bill Rosenblatt: Well, it's both, actually. It's that's a great way of asking the question. And I would say so, first of all, as you mentioned, Severin, levees are something that the Germans could be said to have invented with respect to this context. And the way that worked was there's a German organization called VG Wort, which is an organization on behalf of copyright owners to collect royalties. And they originally got in law a tax on photocopiers imposed. That's a levy. A levy is a fancy word for tax. And so if you manufactured photocopiers, you had to pay a levy to this collecting society, VG Wort which would then somehow distribute the proceeds as royalties to its members who are authors or publishers. And this is a trust issue in the sense that in European law you are most European law, as I understand it, you are allowed, you, the consumer, are allowed to make copies of content for your own use without having to ask permission in advance. But you are also obligated to pay royalties on that copying. And that's what's called private copying rights. So what the levees do is they say we don't trust consumers to pay those royalties because they have to actually go and make the effort to figure out whom to pay, how much, etc. It's a big amount of effort and so instead, what they say is, OK, we are going to assume that the user of this, let's say copying machine, photocopying machine, is going to make X number of copies over the lifetime of ownership of the device. And therefore, we're going to charge such and such as a tax as a levy to account for the expected use of that photocopying machine to copy copyrighted works. So that was the first instance of a private copying levy. And each country in the EU has its own set of levies on various devices and blank media. So computers, hard disk drives, blank CDs, portable music players, et cetera, et cetera. It really varies greatly from one country to another. A few countries have no levies. A few countries have heavy levies. It really varies. And in fact, there is an academic in your country named Bernt Hugenholtz at the University of Amsterdam who has done an authoritative study on this and has shown just how much of a mess it is. And so the levee system, in my view, is something that, how do I put this, it's something that could be solved much better with technology that measures usage, actual usage, as opposed to predicted estimated usage, where the estimates are very rough. But the technology to do the usage measurement is considered to be intrusive. And then there are privacy issues. So it's a very interesting area. There has been there have been efforts in the European Commission for many years to, if not eliminate levies, then at least to unify them so that they're not so completely different from one EU member

state to another. Now, over in the United States, there are very few levies. The only real one that exists is on a digital audiotape, which is really not a consumer medium. It's just if it's used at all, it's used by professional recording studios.

Interviewer: So how does the US Copyright Clearance Center fit in all this?

Bill Rosenblatt: Sure. So the Copyright Clearance Center is a private, non-profit organization that has implemented an extra legal process for doing this kind of royalty collection and disbursement. This is not something that it doesn't have to do with legislation. So what happened there was some time in, I think it was the 1970s, there were congressional hearings about how difficult and cumbersome it was to pay royalties for photocopying. And so if you wanted to copy an article out of a magazine in a photocopier, just as one example, technically you'd have to go figure out whom to ask for permission. You have to find out how to contact them. They'd quote you a rate for that photocopying fee. The rate would probably be non-negotiable. It would be a big, huge pain. And there were hearings in Congress where Congress said, you know, you publishing industry people need to come up with a better solution. And if you don't, then we will pass legislation that will force you to do something. So that got the publishing industry motivated to come up with this solution and the solution was the Copyright Clearance Center, and one of the things the Copyright Clearance Center does in this particular area is they go around to corporations and say, how would you like to pay us a photocopying fee annually that depends on how big of a company you are. And if you do that, then you're going to be covered for all your photocopying, for the vast, vast majority of materials that you're going to ever want to copyrighted materials that you're ever going to photocopy. If you don't pay the fee, then you could be liable for infringement lawsuits. So that's what the Copyright Clearance Center started doing and now they do all kinds of other things in relation to collecting royalties on behalf of rights holders. And they're very efficient at and they've come up with a number of innovative services. And there are analogous groups to the Copyright Clearance Center elsewhere in the world. But I would say this is the biggest

Interviewer: So going fast forward and talking about legislation, how does the US Copyright Alternative in Small Claims Enforcement Act or shortly CASE, fit in all this?

Bill Rosenblatt: So the CASE Act, that's an interesting thing. So that is an attempt to create a small claims process for copyright infringement claims. And should I explain what a small claims process is or

Interviewer: yes, please

Bill Rosenblatt: OK, well, it's basically a way that you can bring a claim against somebody without hiring a lawyer by engaging in a simple process before, it's someone who's not really a judge or maybe a judge, but not it's a much simpler and cheaper and faster process than hiring a lawyer and going into what would be a federal court in the United States and equivalents in other countries. What's been happening in the US and actually around the world is particularly with regard to images on the Internet. So whenever you see an image online, copying it is a simple matter of right clicking, if you're using a PC, right-clicking, and selecting copy image. It's highly unlikely that you're going to be able to find out even if you wanted to know who the copyright owner is or on what terms they're making it available, if at all. And so it's much easier to just take the image and do what you want with it and people who use images are often naive about all this copyright stuff, and they do this anyway. And so image copyright owners have a real problem. There is no good solution for it. And so what was suggested was and the other thing worth mentioning is that it's very expensive and time consuming to file a lawsuit in federal court. It cost tens of thousands of dollars at a minimum. So the CASE Act establishes a small claims process for copyright holders where you don't have to hire a lawyer, you can choose to file in the case procedure as opposed to in federal court. And you can just sort of opt into this process. And the entity that you're accusing also has to opt into the process. And you can do this. And of course, the downside is that the damages you can recover are much lower than the astronomically high damages that are potentially recoverable in federal court litigation, at least in the US. A 150,000 dollars per work infringed. And I think in small claims court, it's I can't remember it's in the single digit thousands or low tens of thousands or something like that. But right now, the case is so, this first of all, let's tie this back to the trust topic. This has to do with the fact that image copyright owners do not trust anyone because of how easy it is to copy images online. And you can think of this as what we've been what we were discussing a little while ago regarding how easy digital technology makes it to potentially infringe copyright. The worst, most egregious example of this is images on the Internet because they are so trivially easy to make copies of and it's so difficult to get information about who the

rights holders are and under what terms, if any, are they willing to license the material. There's no database for it. There's no registry. There's no way of finding this out in a reliable way. So the CASE Act is being implemented now, they're going through these processes to set up all the mechanisms and the rules and of course, the devil's in the details. There are a lot of arguments on both sides of this, whether it's going to have bad unintended consequences or whether it's going to be fit for purpose. And we'll see. You know, it's an interesting idea, for sure.

Interviewer: Well, Bill, to conclude our interview, copyright owners have in general not very much trust in legislation. What do you think is the reason for that hesitancy?

Bill Rosenblatt: Well, because, again, we're dealing with digital technology, which changes constantly, and it takes a long time for legislation to be enacted. And often by the time legislation is enacted, the technology's moved on or is soon going to move on. So one example of that that I'll give you is something that was enacted in the United States called the Digital Millennium Copyright Act of 1998. One of the features of that act was to make it a violation of copyright law, to hack a DRM to break a DRM in some way. And this was meant to be addressed to things like digital music files, digital publications, things of that nature. So the law got enacted after a period of many years. And now there really aren't very many, if any, lawsuits brought on that law that actually have to do with these canonical digital media use cases. They have to do with things like coffeemakers and garage door-openers and laser printer toner cartridges. And so this is we're in the land of unintended consequences. The Copyright Office has to deal with this incredibly onerous procedure every three years of deciding on exceptions to this law, what cases, what use cases are exempt from this law, such as for cryptography, research and things of that nature. And it's just become a big burden and arguably outlived its usefulness for the purpose for which it was originally intended. So this is a typical example of these laws that attempt to get passed. And then, of course, there's the lengthy process of passing laws in the first place where Congress isn't going to look at anything unless and until all of the interested parties have arrived at a at least a framework of a solution and they're all in agreement, then they go to Congress and say, we've got something that we've agreed on. Congress is not going to take years, Yeah it takes years. And Congress does not want to be in the business of managing the fights between various industry factions in this. So it's a very difficult process and very frustrating for sure.

Interviewer: Well, Bill, as usual, it was very interesting to talk to you. Thank you very much for your insights in the relationship between trust and intellectual property, more specifically, copyright. In the beginning of the interview, we wondered what the relationship is, I think you made very clear what the relationship is. And I thank you for that and thank you for being our guest today.

Bill Rosenblatt: Thank you so much. Your podcast is on a fascinating topic, and I love how you're exploring all these different angles of it.

Voice-over: We hope you enjoyed this episode of TrustTalk. We would be very grateful if you leave us a review on Apple Podcasts or on Stitcher. Don't miss out on future travels around trust and subscribe to this channel or visit us on our website, TrustTalk.co or on Twitter at [TrustTalkCo](https://twitter.com/TrustTalkCo). We look forward to seeing you again.

(Interview by podcast host Severin de Wit)

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