

By JORGE MENCHU In today's shop, information is an indispensible tool used daily to diagnose and repair vehicles. Utilizing, creating and sharing information from many sources involve respecting and protecting intellectual property rights.

nformation has easily surpassed the contents of our toolboxes as our most important asset. Information is at the very core of our success or failure—information generated from our largest corporations all the way to the solo technician working after hours documenting a repair problem, its diagnosis and resolution in order to share with other techs in a forum.

Modern technology has changed the way we do business, bringing many new challenges, including the amplification of the issues related to the rights and respect of information—*intellectual property* (IP) rights. Intellectual property refers to thoughts and ideas ("creations of the mind that have value") that are treated by law as if they were tangible objects.

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This is a major concern for many reasons. On one extreme, a violation of intellectual property rights can lead to civil or criminal consequences. On another, as individuals and as a community, how we deal with intellectual

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property can inspire creativity and sharing, helping us all succeed.

Beyond the big picture, why should you and I care about IP rights? For one, we don't want to get into trouble by violating the rights of others. Two, we want to protect any intellectual property we may create. Three, we don't want to be singled out because we're not fitting into the overall culture of our industry.

These are issues that should concern

all of us—definitely anyone who uses a computer and connects to the internet. It's also especially important for the technician who has something important he wants to share. By developing a working knowledge of intellectual property rights, we protect ourselves not only from our own potentially poor decisions but also from the bad decisions of others.

The topic of IP rights is very complex and far-reaching. The goal of this article is threefold: 1. to aid in the development of an industry culture by bringing this issue to the top of the awareness table; 2. to inspire the desire to learn more about this topic; 3. to offer common sense guidance and resources for making good everyday decisions.

To these ends, this article will focus on four aspects of intellectual property—intellectual property rights, copyright and plagiarism, fair use and creative commons.

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Intellectual Property Rights

The phrase *intellectual property rights* refers to the laws set forth to grant the legal rights to own and control the use of intellectual properties for a period of time, thereby creating the opportunity to profit from these properties. It includes the right to license or grant specific uses of these rights to a third party, typically for a fee.

The standard definitions of IP and IP rights are based on the letter of the law. What these definitions omit is that many IP-related issues are not just about the law but also about respect and integrity. This is an important distinction, since for most of us it's about respect and integrity because we're not likely to profit financially from the IP we create. Of course, all of us would like to foster a community that respects the value of hard work, investment and ethics, high moral standards and professionalism.

Copyright and Plagiarism

These aspects of the whole topic of intellectual property are the most relevant to our everyday activities. *Copyright* pro-



tects a person's work from being used without the express permission of the copyright holder. For example, if I copy a picture from someone's blog without asking and use it in a book or seminar, that's copyright infringement. Another example is bootlegging a software program.

Plagiarism is misrepresenting someone else's work as your own and can include the taking of their words, ideas or other creations. Even if you give permission for someone to use your work for a specific purpose and he uses it for another without acknowledging you, thus misleading the audience, it's plagiarism.

Copyright is a legal issue that can be enforced in a court of law. Plagiarism is not in itself a legal issue, but is best described as a "respect and integrity" issue. IP violations are not always a legal issue!

As soon as a new work is created it's automatically covered by copyright. It doesn't even have to be registered with the Copyright Office. The importance of knowing this is that we now know to assume that everything we come across on the internet or in print is copyrighted unless explicitly stated otherwise.

Here are some clarifications of other

common misconceptions: Copyright covers what is called a *derivative* work. You need permission to use and adapt the work of others. The "I'm only making a few changes" notion is a myth. Also note that fair use (discussed later) might apply in some situations. Interestingly, if a copyright holder does not enforce his rights, he does not lose them. And justification to use someone else's work, such as "my application does not compete or cause financial harm," does not circumvent the copyright laws.

Another important issue regarding copyright law has to do with *software licensing*. As with everything, it's also gaining complexity. First, we very seldom actually purchase software. Instead, we purchase the *rights to use it*, and do so under certain conditions that are spelled out in

the licensing agreement.

The principles of plagiarism are extremely important to all disciplines and industries in which personal integrity and the integrity of information is valued. So if these principles are important to us, then yes, plagiarism is important. Also, consider these consequences of plagiarism:

•It denies the original author of becoming part of the lineage of the information, which is a great reward of sharing/publishing.

•It confuses the marketplace and audience about the true origin of that information, opening the gate for further confusion. • It falsely builds up the perceived knowledge or skill of the plagiarist, resulting in an unfair, and undeserved, advantage.

While plagiarism contains much gray area, we can close with some important points. For example, to paraphrase someone else's work and not provide proper attribution is plagiarism. In addition, facts and common knowledge need not be acknowledged. According to Purdue University guidelines, common knowledge is something that can be verified from at least three to five independent sources.

Fair Use

Not an easy out to bypass copyright laws or avoid paying for "copies," *fair use* has limited and special applications. According to the Copyright.gov website, there are four factors to consider in determining whether or not a particular use of information falls under fair use guidelines:

•The purpose and character of the use, including whether such use is commercial or is for nonprofit educational purposes.

•The nature of the copyrighted work.

• The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

•The effect of the use of the copyrighted work upon the potential market for, or value of, such work.

The concept of fair use can be complicated, so don't make the assumption that *your* definition of fair use is even close. Fact is, just because we might think use of the information meets the fair use criteria, that does not ensure the copyright holder will agree. Bottom line: When in doubt, just ask permission.

Creative Commons

Creative commons (CC) is a way for a copyright holder to automatically grant permission for his work to be copied, distributed or adapted if certain conditions are met—"some rights reserved." For example, a summary of a creative commons license might sound like this: "You may use my work if you keep my name with it and link to my original work. Also, you may use it only for noncommercial purposes, and the creative commons license has to stay the same." Creative commons can be confusing initially, but it's worth investigating further by anyone who wants to share information. It's definitely an exciting option that provides a balance between copyright and the public domain. To violate the creative commons license agreement is to violate copyright laws. Here are some more cautions:

•A creative commons is not a replacement for registering a copyright.

•Creative commons is something that cannot be applied "at will" to the works of others. For example, I can't go to a website and take a picture without asking permission and justify it later by pointing out that my work is published under creative commons license. I have to have explicit permission or the work has to clearly state the CC license. •Creative commons does not alter the rules of fair use.

•A CC license is not a warranty that the licensor has all the necessary rights to permit reuse. If the licensor has not secured all necessary permissions, then you are also liable "based on your use of the work."

Protecting Your Work

Almost everyone who touches a keyboard today is a publisher, even if it's just e-mail. Sooner or later we might need to know what to do to protect what we create and how to react to a violation of that protection. To learn more, I turned to copyright plagiarism consultant Jonathan Bailey of Plagiarismtoday.com.

When it comes to protecting your creations, it can seem to be overwhelm-

Key IP Terms

The following basic terms and phrases are key to understanding the complexities of intellectual property:

Copyright - covers works of authorship in some tangible form such as text, graphics, photographs, artwork, music, movies and software. Copyrights do not cover thoughts or ideas. **Creative commons** - a license system built upon copyright law, it allows for copyrighted work to be copied and distributed without permission under specific conditions.

Fair use - an exception to the exclusive rights granted by copyright law that allows the use of a work without permission.

Intellectual property rights - the laws set forth to grant the legal rights to own and control the use of intellectual properties for a period of time, thereby creating the opportunity to profit from these properties.

Intellectual property rights violations - intended or not, such violations are considered theft and can result in significant civil and criminal penalties.

Plagiarism - the act of copying any portion of another's work, including ideas, and representing it as your own, regardless of whether or not the work is copyrighted or in the public domain.



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ing. Fortunately, the steps to protect, track and enforce your rights are actually fairly simple.

Register your work. If you create work that you feel is worth protecting from possible infringement, register it promptly with the U.S. Copyright Office at *www.copyright.gov*. It costs \$35 per registration, though you can, in many cases, register multiple works at the same time. This will allow you to sue for infringement of your work and be able to collect the maximum amount in damages.

Monitor and track your creations. Using Google or other search engine(s), look for unique phrases or terms from your work to see if anyone out there is using them. If you find any mention of those phrases, that's something you should look at more closely, as it may be a copyright infringement. For drawings IP. The last thing anyone wants is to unknowingly and unintentionally end up on the stinging end of a copyright infringement issue. Or, when faced with temptation, make decisions without a reasonable awareness of the consequences.

Let's start with a few points that deserve our attention:

•Today, it's easier to commit an IP violation and it's much easier to detect, as well.

•"I didn't know" is not a defense in a court of law.

•Not all consequences are an issue of law, but they can still be very significant.

A final point is that IP violations can have serious consequences. The risks are real and we should not have a false sense of security because we feel we're small fish in a large pond. Consider the case of Jammie Thomas, a mother of four. In November of 2010, a *civil jury*

Legal action for IP violations can be very expensive and time-consuming, and the violations can be hard to prove.

or photos, use a visual search engine such as Tineye (*http://www.tineye.com*) to try and locate your work.

Deal with infringements. If you find any infringements of your work, you can deal with them in any number of ways. If you haven't registered with the Copyright Office, you're limited to sending cease and desist letters, which demand the infringer stop his actions, and filing takedown notices, which force the host to remove the content. If you *have* registered your work, you're eligible to sue for the infringement even though some form of warning, usually via a cease and desist, is still considered normal procedure.

Considerations in Decision-Making

Perhaps the biggest risk regarding use of intellectual property is not knowing what the risks are or the factors that need to be considered before using someone else's awarded a judgment against her for \$1.5 million for the unauthorized sharing and downloading of 24 songs. Reportedly, she ignored the original cease and desist letter.

Another point that we can take from this case is that when those with the resources decide to exercise their rights, they will!

The first step to good decision-making to avoid copyright infringement is to develop awareness and educate ourselves so we know what to be concerned about.

In general, follow these simple guidelines for a good start:

•Regarding copyright and fair use issues, ask for clarification if you don't understand permitted usage.

•Regarding software licenses, read the license or, again, send an e-mail and ask for clarification.

•Regarding plagiarism, acknowledge. A couple of good next steps are the

typical "walk in the other person's shoes" and to look beyond our own needs, remembering that there is always someone on the other side of the issue being affected—even if it seems to be a "faceless" corporation.

These steps start with asking ourselves, *How would I want my work to be treated?*

People who create, use and share intellectual property come from widely varying economic situations. Perhaps you are salaried with great benefits and a nice retirement plan while the other person is a flat-rater breaking his back to put his kids through college. Also, what may seem simple to us may actually have taken a huge investment of time, money and effort.

A more technical and thorough method for good decision-making is to evaluate and weigh out the main principles at play:

•Ethics. Are my actions within the boundaries of my moral code?

•**Respect.** Am I treating others the way I wish to be treated, and am I ac-knowledging or dismissing value?

•Legal. Are my actions within the boundary of the law, and what are the possible consequences if they're not?

•**Peer Pressure**. How do my actions affect my social networks and the community at large?

•Self-Interest. How do my wants and needs weigh against all other factors?

•Justification. Does my rationalization for my proposed actions support or dismiss all other reasoning?

(These bullet points are based on *Ethics for the Real World* by Howard and Korver.)

And when the situation calls for it, do not hesitate to consult an IP professional—a consultant or an attorney. An hour's consultation fee is minor compared to getting caught on the wrong side of a copyright infringement issue.

Rights, Respect and Rewards

Legal action for IP violations can be very expensive, time-consuming and hard to prove. For most violations, legal action is not even a consideration. Consider one of our most important resources and perhaps the most vulnerable—our "shop floor innovators," meaning technicians who have found unique solutions to vehicle problems. Every single one of us, from the largest corporations all the way down to the first-year student, owes some level of gratitude and debt to our shop floor innovators.

Certainly, it is on our best interest to build a community that encourages sharing and inspires more of the same. Who makes this possible? We do, through our decisions and actions as individuals and collectively as a group.

Ultimately, our actions are about respect and peer pressure. As individuals we supply the respect. As a group we provide the peer pressure...which influences the respect. The result is a *value system*.

A value system is not about being judge and jury; instead, it's about defining and influencing what's in our best interest, which is determined and accomplished through discussion, awareness and education. In the end, the spirit of IP rights is about providing an environment, incentives and rewards. For many, the reward is not about money; it's about giving back. For whatever reason someone chooses to contribute something of value to our community, our reward to them should be respect, which also results in incentive.

Consider the reward of acknowledgment for a contribution of shared IP. Acknowledgment is in itself a "Thank you." In the big picture, it's the ticket to becoming part of the legacy of our shared collective of information—to become part of "our" recorded history. Acknowledgment, as a university professor once pointed out, teaches humility and reminds us that we all stand on the shoulders of others—a gift to all of us.

Conclusion

From nuts & bolts to cutting-edge technology, the auto service and repair industry has faced amazing challenges and we should be proud of our accomplishments. We're waist-deep in the information age and all of the challenges that come along with it, including intellectual property rights.

From the shop floor and beyond, IP rights are about respect and value. On many levels this is a very complex issue. Still, it should be obvious that, on personal and industrywide bases, we have a lot to lose by ignoring it.

To not ignore it is to develop awareness, encourage education and discussion. We'll be protecting ourselves now as well as investing in our future—a future ideally that continues to build on our tradition of "helping each other to be successful for each other." That, by the way, is one of the means that allowed us to survive over the last two decades and, interestingly enough, is the very spirit of what IP rights are about.

This article can be found online at www.motormagazine.com.

