

## Kathryn Goldman, Charm City Legal

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**Leanne:** Hi, everyone! This is Leanne Regalla. You're listening to the Make Creativity Pay Podcast and today I'm really happy to be speaking with Kathryn Goldman. So Kathryn Goldman is an attorney with **Charm City Legal** and she specializes in Intellectual Property and especially for online content. And she represents creative professionals, including writers, artists, photographers and other businesses with an online business. And she's a regular contributor to blogs that help creatives and she's also got an eBook that's called **The Rip-off Protection Report for Creative Professionals**.

So, thanks, Kathryn, for joining us today.

**Kathryn:** Oh, you're welcome. Thank you for inviting me, Leanne.

**Leanne:** Sure. So tell our listeners a little bit about what you do and why.

**Kathryn:** OK. Well, you pretty well summarized my background as an intellectual property attorney, which means in my case, copyright and trademark and not patent law, which is another area of intellectual property. But I don't practice in that area.

I have been practicing law for over 25 years. And I am constantly striving for ways to make access to legal services and information affordable and actionable for the creative class, for creative individuals.

And I guess the reason I do it is because I love art and I love to read and I like music and I like going to plays and opera and films. I like street art and street performance and I want to do my part so that creators can do their part by making beautiful stuff for me and everyone else to enjoy.

**Leanne:** Oh, that's great!

**Kathryn:** So that's why I do it. And I just... I like creative personalities.

**Leanne:** OK. Good, good. Yeah, they say that it's kind of the job of the creator to do the things that everybody else has no idea how to do. So we're all performing vital functions here.

**Kathryn:** Absolutely! And we're glad that you do.

**Leanne:** And we're glad that you do, too. So tell me what are some of the common situations that make creators reach out to you?

**Kathryn:** Well, I would have to say that there are three basic reasons why a creative professional would come to me for help.

My first contact usually comes when an artist has to sign a contract. And a contract that has words in it like "indemnity" and "warranty" and "breach" and "payment milestones." And all of these big words that are intentionally not clear. They're written in a way so that if there's an issue down the road, they can be interpreted not in the artist's favor, many times.

So the first time I meet a creative professional is when they've come to me... they have a contract, say for a piece of public art or an agent wants to represent them, and so there's an agency agreement. Or the agent brings them a publishing contract. So that's one way that I come into contact with creative professionals.

The second reason someone comes to me, is because they want to use part of the work of another artist. They want to incorporate somebody else's art in their work and they want to find out what the rules are. And this is... what the "fair use" rules are for using somebody else's art.

For instance, if they wanted to put it in a collage, an image that someone else created in their collage or, if there's something in the background, a piece of art in the background of a film or a documentary. Or if they wanted to put someone else's photo in their book. So they would come to me and ask me what the rules are for doing that. And that's a clearance issue. And so I help them sort through what they can and cannot do, whether it is fair use or whether they need permission. And if they need permission, how to go about getting it.

**Leanne:** OK.

**Kathryn:** So that's the second way I tend to meet creative professionals for the first time.

And then generally the third way is, unfortunately, I hear from artists because they've used someone else's work without permission and they've gotten an email or a cease and desist letter from a lawyer telling them to stop. So that's a different conversation that I have with professionals.

So those are the three ways generally that artists find me.

**Leanne:** OK. Alright. And so we'll dig into those a little bit more in the conversation today, but how widespread are these problems. I mean, does somebody who's just starting out, do they really need to worry about things like that? Is it worth the trouble to go through and, if so, I mean, what should our listeners know, starting out?

**Kathryn:** I would have to say that for someone who is just starting in a creative industry, for artists that obscurity is a bigger problem than infringement, so if you're ranking them on a scale, I'd put obscurity above infringement.

So when you tackle that problem as an artist and as you start punching through that, then you get to the issue of frustration because what are the protections for your art? And how do you enforce your rights? And you have to master that as you build your business. So, I don't want to say that infringement isn't a problem, because it most certainly is a problem. And anyone who puts their work online has to think about how to monitor their work and protect it from infringement.

So then you get to the question of the frustration. Is it worth the trouble of protecting it? And I think when you're talking about beginners, again, or people who are just starting out, building their creative business, there's only so much any one person can do, especially when they're starting out.

**Leanne:** Right. Yep.

**Kathryn:** So if you just set aside the act of creation for a moment, the amount of time that it takes to create the art, which can be all-consuming, so let's just set that aside for a moment. You still need to set up your website or your store or your online presence. You need to manage your social media accounts. You need to build and engage your tribe. You need to market your work, you need to connect with your peers and find a mentor and then you need to make money, so that you can pay your bills. You need to feed yourself and your family and you need to get some sleep and you need to have some fun. And I mean all of these things need to happen first. They all need to happen.

So really, it's when these things start happening, when you start making money from your work, there gets to be a point, I find with my clients, that they're businesses hit that kind of tipping point into profitability. And you kind of know when you've reached that, when there's starting to be a steady stream of income. You start licensing your work, for instance. Regular license agreements. And then you start to notice that people are taking your work and so that's when you need to focus on building protection and enforcement mechanisms into your workflow.

But before you get to that point, artists need to be respectful of the rights of other artists. And they need to be mindful of their own rights. So while it doesn't rise to the top ten scale when you're just starting out, you need to have enough information to be mindful about the decisions that you're making and the actions you're taking while you're building your business. Does that make sense?

**Leanne:** Yes, yes. Absolutely. Yeah, and I really love your point... and I kind of want to drive it home and make sure that people listening understand this, that obscurity is really the biggest problem. So that's what you have to tackle first, you have to start getting your work out there,

start building some momentum and then will be the right time to start concerning yourself more so with the protection side of it. Is that right?

**Kathryn:** And at that point, that's when you start investing in protection and enforcement. You invest your time and you invest your money. Not everybody agrees with me on this philosophy. It's kind of anti-lawyer.

**Leanne:** Yes!

**Kathryn:** But I have clients who come to me and they say, "I have this really great idea and I want to spend whatever it takes to protect this fabulous idea so that no one else steals it from me. And so I want to invest all this money upfront in protection." And I have to say no. That's not what you want to do.

**Leanne:** Right.

**Kathryn:** What you want to do is you want to build a business because really you don't have anything to protect yet.

**Leanne:** Yes. Yeah, absolutely. That's an excellent point. So when should people register their copyrights. Let's say -- and you mentioned to me earlier that you don't really work with musicians so much -- but so let's talk about writers, artists, photographers and then get into a little bit about how music is different.

**Kathryn:** OK. Well, I would say there that when you register a copyright, the rule of thumb for all creative professionals -- and this would also include musicians on this particular point -- is to apply for a copyright registration as soon after publication of your work as possible. And not longer than three months after publication. OK?

So now, let's talk about publication for a minute. Publication is a technical term in copyright law. And what it means is that you have made the work available for sale or further distribution by others. OK? So for example, just putting your work on your website is not necessarily publication.

**Leanne:** OK.

**Kathryn:** OK. And so the rules for copyright registration for things that are unpublished are different than the rules for things that are published. And the timing of the application for registration is important because **when** you register your work, determines what remedies you have if someone infringes it.

**Leanne:** OK.

**Kathryn:** OK. Now, that level of enforcement is the very top of what I call the ladder of enforcement, which is to go to court and seek damages, to seek monetary damages. That's all the way up at the top. Very few individual artists do that. Very few small businesses do that. That level of enforcement is generally reserved for corporate enforcement. The music industry, the movie industry -- they're the ones who are really active at that level of enforcement.

**Leanne:** OK.

**Kathryn:** However, having the registration is proof of ownership that you can use in other methods of enforcement further down that ladder, like online enforcement to Facebook or Google or Bing. So you have that registration. That is proof that that's your work and you're more likely to get action out of those big dogs with the registration.

**Leanne:** Oh, OK.

**Kathryn:** OK. And so in that sense, if you've missed that three-month window of opportunity, it doesn't matter.

**Leanne:** Ah...

**Kathryn:** Go get that registration, if you've been infringed and then you can go to those guys and you can get the offender shut down. And there are methods for doing that.

**Leanne:** Right.

**Kathryn:** And for instance, let me tell you a little story that just happened. Are you familiar with the street artist named Rime?

**Leanne:** I think so, yeah.

**Kathryn:** OK. so he did this beautiful... I happen to like graffiti and street art and he did this beautiful painting called "Vandal Eyes" in Detroit. And they made a film, you know, a short film of him creating this beautiful piece of work on an abandoned building in Detroit. And the design, his art, appeared at the Met Ball on a dress worn by Katy Perry.

**Leanne:** Oh, no...

**Kathryn:** Uh, huh.

**Leanne:** Wow...

**Kathryn:** Yeah, wow. And the designer of that dress lifted that piece of art right off the wall, basically, reproduced it on the fabric, including Rime's tag, his name, on the dress. OK, so Rime painted this back in like 2011, 2012 and the dress appeared on the scene this past May. So he, Rime, did not file for a copyright registration on his piece of art. Now you can't go to court unless you have that copyright registration. So he missed the three-month window of opportunity to file and entitle himself to statutory damages. But he filed anyway, got his registration -- he had to expedite it -- got his registration and he has sued the designer for profits, for the designer's profits.

Now if he had filed before the infringement and in that three-month window of opportunity, he would be entitled up to \$150,000 in damages per infringement. And that's for an intentional act

and the fact that his name is on the infringing article would be very strong evidence of intention.

**Leanne:** Yes, wow. OK, yeah, that's a great story. I was hoping that you had some good ones to help illustrate some of these concepts because it can be a little bit confusing for people so that's really good.

Do you have any other good stories? I think that I read somewhere... did you help a client that had some eBooks stolen?

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**Kathryn:** Yes. I have done a lot of work with self-published writers. Many of whom who have had their works pirated and posted on torrent sites. I mean there's almost not an eBook out there that hasn't appeared on multiple torrent sites. Torrent sites are a huge problem. And I'm struggling with that problem on a number of levels. I'm desperately... I'm really interested in finding the solution to that.

Now here's a fun story. There's this video game manufacturer -- now they're really battling torrent sites and the movie industry battles torrent sites, too -- so there's this video game manufacturer... developer called **Shooting Stars**. And they just came out with a new video game -- and this just happened this week -- and they came out with a new video game and they took a version of their video game that was unwinnable and they went out to all the torrent sites and planted their fake video game on the torrent sites.

And so all the video gamers quickly went to the torrent site and downloaded this brand new video game and they're playing along and they're playing along and they get to like level four and they cannot win it. It's impossible to win. And then a big message comes up on the screen, says: *You should have paid for this download.*

**Leanne:** Oh, my gosh! Wow!

**Kathryn:** I know. I love that. I would love it... I would like to see somebody develop an app or develop a website where self-published authors could go and enter a fake eBook of the book they're getting ready to publish and have that app hunt down all the torrent sites and seed

them with like the first two and a half chapters and then a message. So I'd like to see that happen.

**Leanne:** Wow. So are you talking about... when you're talking about self-published, are you talking about like through Amazon or just on their own sites where they have a pdf download or how is that happening?

**Kathryn:** I'm mostly talking about Amazon.

**Leanne:** OK.

**Kathryn:** I'm mostly talking about people who have published on Amazon KDP -- Kindle Direct Publishing. Now the other side of the torrent site problem is the malware site problem. And there are a lot of sites out there that pretend they're torrent sites and then they lure people into clicking the download button and then their computer gets infested with malware. So that's another problem.

**Leanne:** Yeah. Wow. So, OK, well this has been good. Do you have any final thoughts that you'd like to leave our listeners with today?

**Kathryn:** You know, I think that technology is really exciting. I think we live in really exciting times and it's opened so many doors for writers and artists and musicians and other creative professionals with not just new ways and tools to create art, but with new methods and tools that give artists the opportunity to now make a living creating art.

And so if you're going to make a living from your work, I would like you to remember; I would like your audience to remember to protect your work and to monitor your portfolio and enforce your rights. I think that those are the keys to being successful in any business, not just a creative business.

**Leanne:** Right, right, right. And if people, if anyone listening doesn't know how to do that, I think you mention that in your eBook, don't you? Where you should go and what type of registration you need for what kind of work you're doing.

**Kathryn:** I do talk about that in my eBook, yes, I do. And in other materials, I have content protection tips on my Facebook page, Charm City Legal. And I'm constantly tweeting out useful -- and sometimes useless -- things on Twitter.

**Leanne:** Well, yeah, that's kind of how Twitter goes. Alright good. And should have asked you this before, but just mention a little bit about any musicians who are listening, what advice you have particularly for them.

**Kathryn:** Well, copyright law in music is a little different than it is for visual artists and writers. There are many levels of rights. You've got rights in the composition, you have rights in the lyrics, you have rights in the performance. And so for musicians, especially groups, bands, there has to be understanding as to who owns what. And I've seen over time, a lot of bands really get into about who are the creatives, the masterminds, the owners of the different types of rights that are available in a single piece of music. I mean you can look at the Beatles, right?

And that kind of battle. And I think that my best advice for musicians is to try and have a working understanding of who owns and controls those rights as you move forward. Just get some clarity.

**Leanne:** OK. Good, good. Alright. And so how can our listeners find you?

**Kathryn:** Well, you can find me at my website, which is ***charmcitylegal.com***. And on Facebook at Charm City Legal and on Twitter, @catherinegoldman.

**Leanne:** Alright, very good. Alright, Kathryn, well thank you so much. This has been really very informative, so I hope it helps everyone listening.

**Kathryn:** I appreciate the opportunity to be on your show, Leanne.

Thanks so much for listening to the Make Creativity Pay podcast. I'm Leanne Regalla and I appreciate you hanging out with me. So if you'd like the show notes and transcripts and any links that we talked about during this episode, just go to ***makecreativitypay.com/14***. And as always, if you enjoyed the show, please subscribe, leave a rating and a review on iTunes and that definitely helps other creatives to find us.

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Thanks again and I'll talk to you soon. Bye.