

Is This Art Illegal? The Role of Law in Communication Breakdown

Presentation

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! Starting point

- " communication breaks down for any number of reasons
 - they can usually be found in one of three places
 - # communicator
 - # receiver
 - # environment
 - one aspect of the environment is law, which includes its effect on states of mind and expectations of receivers
- " Within this understanding it seems apparent that successful communication will flow best in a system that values and protects individual free will, choice, and autonomy
 - communicate what we want
 - when and how we want
- " If we are told not to speak or if we are forced to speak, communication breakdown is more likely

! *If this art is illegal, there is a great potential for communication breakdown, and that breakdown is caused by law*

! Within the realm of communication, law can have a substantial, direct, and often controlling effect on two specific aspects of communication, but one of these is often overlooked:

- " law can affect speech
- " law can affect silence

! Law can affect communication along this spectrum

- " Four primary ways
 - law can stop you speaking
 - law can force you to be silent
 - law can force you to speak
 - law can stop you being silent
- " Each in a tiny bit more detail
 - law can stop you speaking: by this I mean law may stop you from saying particular things, or saying them in particular ways, through either general or specific laws, or by court or administrative order or other action (public or private)
 - law can force you to be silent: this is more general than the first category, and covers situations in which law does not allow you to speak at all, either in a general way, or about a general topic
 - law can force you to speak: law may require that you "say" something, again, in a general way
 - law may stop you being silent: law may not allow you to hold to silence . . .
- " there are, of course, variations on these themes, additional ways in which law may contribute to communication breakdown
 - law may impute meaning to your silence or to your speech, meaning which you do not endorse or accept (receiver will not understand the true meaning)
 - law may also refuse to accept the meanings you place on things, and may refuse to allow others to see these meanings as well
 - I will leave these sub-topics for our purposes here, due primarily to time constraints

! Law may stop you from speaking

- " about specific things, or from speaking in specific ways
- " what is one way it might do this? copyright
 - gives the rights to particular expression of ideas to the "author"
 - if you wish to use this expression to express either the same thing or some other thing, you may violate the author's copyright
 - it is based on the renaissance notion of the author, the sole creator, and Lockean ideals of property ownership and development
 - on the continent they are known as "author's rights"
 - they include notions of moral rights (to the "original author")
 - is progressing/has progressed to economic justifications
 - # incentives to create (if everyone can copy, who will create?)
 - # efficiency: facilitating market based transactions and commodification
 - while it matures, it is also being challenged; who has control over meaning and expression? is it really done by one person?
- " How does it play out?
 - we'll look at some potential ways copyright might be involved in the exhibit when we go down the hallway

! Law might also force you to be silent

- " you might agree to this in contract: to not divulge a business secret
- " it might be imposed by law: not to divulge state secrets, or personal information
- " the distinction in the first and second categories is along the lines that
 - the first
 - # is not as concerned with the substance of your communication as it is with the way it is communicated or expressed, and claims to that expression by others
 - # your relationship to the "other" is usually irrelevant
 - the second
 - # is more concerned with the content of the communication: you may not communicate about someone else's private facts, and often arises by
 - # your relationship to the content is often very relevant to the inquiry (but not always)

! Law might force you to speak

- " you might be forced to include more information than you might like, thus requiring you to speak
- " this might occur if you have to identify original sources of materials
- " you might need to tell of something you witnessed
- " This was the "hue and cry" in the mediaeval days
- " in this category, you are required to divulge specific information as required
- " some examples
 - cigarette packs
 - witness oath

! Finally, law might stop you being silent

- " you wish to remain totally silent
- " law stops you from doing this, not because it wants specific information from you, or for you to say specific things, but because it does not want you to be silent
- " This is John Cage and Batt
 - 4'33" of silence
 - Batt's recording
 - payment to the trust

! Return to our first category: stop you speaking

- " recall
 - primarily about specific things or specific ways of speaking
 - contrast with keeping silent
- " We'll do a brief analysis, but think more about how law might stop an artist, or cause hesitation, to speak
- " Some examples . . .
 - Approximately 234 unsolicited letters, inkjet on paper (Pavel Buchler)
 - CNN Concatenated (Omer Fast)
 - 11 Seconds of Paradise (Phil Coy)
 - Telephones (Christian MarClay)