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Copyright in Halacha

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The prohibition of copying material restricted by the copyright holder is a matter discussed by many of the *gedolei haposkim* and is a *shaila* that reportedly dates back to the sixteenth century. In earlier times, copying material was somewhat of a laborious task since it required rewriting manuscripts. Nowadays, however, it is possible to reproduce entire works in minutes or even seconds. This includes audiotapes and computer programs, which can be reproduced by virtually anyone, effectively and inexpensively.

Copyright is an issue that has no clear-cut *halachic* precedence in *Chazal* or *Shulchan Aruch*. There is a need to draw parallels and deduce the *halacha* from similar issues discussed by *Chazal*. As in all areas of *halacha,* even the slightest difference between two cases can cause the *halacha* to vary, and, consequently, result in *machlokes* between *gedolei poskim.* It goes without saying that one who is not completely versed in all the nuances of this topic cannot rule on the matter.

What makes monetary issues a bit more unique and delicate than other areas in *halacha* is that one cannot take the simpler approach and just rule stringently. When dealing with two parties, being stringent in favor of one side will adversely affect the other side and may cause an unnecessary loss of money.

Fortunately, being that many of the earlier *poskim* have already tackled this *shaila*, we already have *halachic* precedences to follow. In almost all cases regarding copyright, the ruling of a *rov* or a *posek* was aimed to protect the rights of an author or an original publisher's proprietary rights. The issue of copyright can be divided into two sections. One deals with the rights of a publisher or printer who disseminated works which are, in theory, considered part of the public domain (e.g. *Shas, Rambam, Shulchan Aruch*). The publisher, however, generally invests time, energy and money towards the project and seeks protective measures to be established so that his project will earn him profit.

The second issue which must be dealt with is the rights of an author or anyone who produces a new composition to protect their creativity.

There have been several angles that various *poskim* have taken in dealing with these *shailos*.

The article will attempt to deal with a number of sources in *Chazal* referenced by the various *poskim* in dealing with these *shailos,* discuss contemporary situations that are analogous to each of the cases in *Chazal*, delineate possible exceptions to each particular rule, and then mention the conclusion of contemporary *poskim*.

Prior to analyzing each prospective *issur* independently, it would be greatly beneficial to synopsize some of the key historical events which many of the earlier *poskim* dealt with and discuss their approaches.

The Controversy Regarding the Printing of an Edition of the *Rambam*

During the middle of the sixteenth century, there was a major dispute between Rav Meir Katzenellenbogen, known as the Maharam Padua, and a rival non-Jewish printer. The Maharam Padua spent a great deal of time, effort and money to publish a revised edition of the *Rambam*'s *Mishnah Torah,* free of the many printing errors which existed in other editions.

The Maharam published this new edition with a certain non-Jewish printer. There was another famous non-Jewish printer, Marcantonio Justinian, who was upset that the Maharam did not choose to contract him. To spite the Maharam, he immediately published another edition of the *Mishnah Torah* without the Maharam's corrections and priced it for less than the Maharam's edition was selling for.

Justinian was a wealthy man and was willing to incur major financial losses just to undercut the Maharam and take away his potential customers. The *shaila* was addressed to the *Rama* and he ruled strongly in favor of the Maharam for four reasons.[1] The first reason was the most significant one and is most relevant to our discussion.

Hasagus Gevul - Unfair Trade Practices

The *Torah* states "*Lo sasig gevul re'echa - you should not move your friend's boundary marker.*" This *posuk* forbids one to encroach on his neighbor's property, thereby expanding his own property.[2] The term *hasogas gevul* is often used in regard to unfair trade practices. It is a borrowed term from this *posuk,* although this *posuk* has no connection to business competition. The prohibition to infringe on someone's business practices is more accurately called *yoreid l'umnus chaveiro*. According to many *poskim,* it is not a prohibition *Mideoraisa*, although some do maintain that it is a form of theft forbidden by the *Torah*. [3]

The *Gemara* quotes Rav Huna who states that if a resident of an alleyway set up a mill for commercial purposes, he can stop a second person, even if he is also a resident of the same alley, from opening another mill. The first person can claim that the second mill will hurt his livelihood by causing him to lose potential customers.

The *Gemara* quotes a differing opinion which limits the restriction to people of another town. A business owner, however, cannot prevent people of the same town from opening up a competing business. Such business competition is not considered to be detrimental to one's livelihood, because even a customer who has patronized the first establishment frequently is not committed to do so in the future. The second competitor can claim that whoever wishes to continue patronizing the first establishment will continue doing so and those who don't will come to him. The right for this claim, as we mentioned, is granted only to people living in that town. [4] The *poskim* rule accordingly. [5]

In the case of the printing of the *Rambam*, the second printer may be able to claim that the first printer does not have any more right to print the *sefer* than he does. The whole world is considered one market, because the sales of the *seforim* are not meant to be limited to a specific town. Therefore, any printer who wishes to do so has the right to compete. Each consumer can choose which edition he wants to purchase.

The *Rama*, however, ruled that this *halacha* only applies when there is no definite damage to the first owner. In this case, the second printer's goal was to undercut the Maharam at all costs - perhaps even at a loss - and take away the Maharam's customers. In such a case, the *Rama* ruled that it is considered an unfair trade practice, and all agree that it is forbidden. [6]

At that time, realizing that the *rabbonim* had no power to prevent the rival printer from selling his edition, the *Rama* issued a harsh ban on purchasing the second edition from Justinian. [7]

The *Haskama* Bans

For many centuries, thousands of *seforim* were printed with unique *haskamos*, or letters of approbation, from at least three *rabbonim*. In addition to extending accolades to the author and praising the work, the *haskamos* also included a ban forbidding the reproduction of the *sefer* for a certain number of years - often between ten and twenty years. This was done in order to allow enough time for the first edition to sell out.

In earlier times, publishing a *sefer* entailed a great deal of effort, which included arranging the text on a printer plate, and it was costly to reproduce them. It was not worth it for anyone to undertake such a project unless he was sure that he would be able to recover the money he invested. If another similar edition of the same text were to be published, even if the second publisher created his own typesetting, the first publisher would undoubtedly incur a great loss.

Thus, during those times, even if a printer did not publish his own original work but reprinted an edition of the *Shas,* the ban forbade anyone from printing another edition of the *Shas* for a certain number of years. Consequently, even if *halachically* no restriction can be imposed on a competing edition using fair trade practices, nevertheless, the *rabbonim* felt that a special enactment had to be made.

The *Chasam Sofer* speculated that the enactment of such types of *haskamos* began in the middle of the sixteenth century after the incident surrounded the printing of the *Rambam.* The *Chasam Sofer* writes that the bans were not issued primarily out of concern for the financial loss of the publishers, but to ensure the perpetuation of *Torah*. If printers were to

become skeptical about whether they'll be able to recover the money they were investing, the publishing of *divrei Torah* would cease. [8]

Nowadays, when it is much easier and more affordable to print *seforim* and other publications, and marketing is much simpler as well, there is no need for such bans and two publishing houses may print competing editions of the same original work and there will be enough buyers to make it worthwhile for each one. [9]

The Controversy Concerning Reusing Typesetting Plates

During the eighteenth century, a *sefer* was written on the *mesechtos* of *Seder Nezikin* and *Seder Kodshim*. The author chose to print the *sefer* on the bottom portion of each *daf* of *Gemara* and contracted a printer for the job. The project involved hiring people to lay out the characters of the *Gemara*, *Rashi*, *Tosafos*, and the author's new *peirush,* and then print and bind the *seforim*.

The customary practice was that after a printing job was completed, the plates were discarded by the printer, as they served no further use. In this incident, the printer decided that it is a pity to discard the characters of the *Gemara.* He discarded the characters of the *peirush* on the bottom of each page and retained the typesetting of the *Gemara*. He then proceeded to print volumes of those *mesechtos* using the prearranged printer plates.

The author of the *peirush* claimed that he should be entitled to a share of the printer's earnings, since, after all, he paid for the typesetting and the printer was benefiting from it.

The author sent the *shaila* to the *Noda B'Yehuda*. The *Noda B'Yehuda* responded that it depends on the case. If the author originally paid the printer a set fee per page and then the printer contracted the typesetters, the author has no claim, because even if, for whatever reason, the printer already had those characters (of the *Gemara*, *Rashi* and *Tosafos*), he still could have charged the author the same price. Thus, the characters belong to the printer. However, if the author was the one who had to pay the typesetters to outlay the characters, then they belong to him and the printer would have to give him a portion of the profit.

The *Noda B'Yehuda* based this ruling on the well-known principle in *Shas* of *zeh neheneh v'zeh choseir.* If Reuven benefits from Shimon's property (e.g. he sleeps in his house without permission) and thereby causes him a loss, he is required to compensate him. In this case, explained the *Noda B'Yehuda,* had the printer not printed his volumes of *Shas,* anyone in need of those *mesechtos* would have bought the edition with the *peirush* on bottom, although he would have paid a fraction more than for the *Gemara* alone. However, if the printer published those *mesechtos* and is charging a lower price because his volumes don't have the *peirush* on bottom, many would purchase the less expensive edition if they are not particularly interested in the *peirush*. [10]

The Controversy Regarding the Printing of *Machzorim*

In the early nineteenth century, a reputable *talmid chochom*, Rav Wolf Heidenheim, owned a printing shop in Roedelheim, Germany. He invested much time and money into gathering different manuscripts of *machzorim*, editing, and translating the *piyutim*, and then printing the nine-volume set of the *Roedelheim Siddur* and *Machzor.* The *rabbonim* of Germany issued a ban forbidding anyone to infringe on his copyright for twenty-five years. However, a Jewish publishing house located in a different city did not adhere to the ban and subsequently published the same *machzor* utilizing Rav Heidenheim's works.

This issue of copyright bans was thus revisited and resulted in a difference of opinion amongst the *gedolei haposkim* of the time.

Rav Mordechai Banet, *rov* of Nikolsburg, maintained that there is no legal strength to the bans. He wrote that even if *rabbonim* of a particular city have a right, as a precautionary measure, to forbid things which are technically permitted, they can't impose this on members of other cities. In addition, said Rav Banet, if we were to forbid Jewish printers from publishing competing editions, non-Jewish printers will proceed to do so, and the original printer will end up losing out anyway. There is therefore no justification to forbid other Jewish printers to publish these books. Moreover, in Rav Banet's times, there was governmental involvement in the printing press, and bans that hinder the jurisdiction of the government cannot be instituted.

The *Chasam Sofer* disagreed and strongly forbade the second printer from selling his edition. Likewise, he said that it is forbidden for people to purchase the edition.

The *Chasam Sofer* took issue with all of Rav Banet's points. Firstly, he maintained that although, in theory, Rav Banet was correct that a *rov* cannot impose restrictions on other communities, still, bans are not a new-fangled idea, but a centuries-old one that has been accepted by all communities.

The *Chasam Sofer* referenced the case of the *machzorim* to the case of the *Rama* and the Maharam of Padua and referred to many *seforim* that had bans printed in them. Additionally, the *Chasam Sofer* writes that this is the opinion of his father-in-law, Rav Akiva Eiger.

The *Chasam Sofer* mentions that these bans are very vital, for otherwise publishers would not be able to recover their money and the dissemination of *Torah* material would be hindered. As for the possibility of non-Jewish printers publishing these works, the *Chasam Sofer* maintained that we can easily ban people from purchasing those editions just as the *Rama* did. The *Chasam Sofer* also held that there is no concern of infringing on the jurisdiction of the government, for it is not the govern-

ment that decides who can print which *sefer*. The government simply charges a tax for each book that is printed; it makes no difference to them which printer publishes the books.

Furthermore, the *Chasam Sofer* writes that once the ban was in place, Rav Heidenheim was confident that he would receive the money from all sales for twenty-five years and thus his rights must be protected.

The *Chasam Sofer* brought proof of his ruling from a *Gemara* in *Bava Basra*. The *Gemara* states that although fair trade competition is permitted to people who have equal rights to a market (e.g. members of the same town), nevertheless, fishermen must distance their nets from other fishermen's nets.

Rashi explains that the *Gemara* is discussing a case where a fisherman placed bait in his net and eyed a particular fish that was coming towards his net. In such a case, since the fisherman was confident that he would catch that particular fish and he is in the business of catching fish, his rights must be upheld.

The *Chasam Sofer* writes that in Rav Heidenheim's case, once the ban was in place forbidding reproduction of the *machzorim* for twenty-five years, Rav Heidenheim was confident that all potential customers would purchase his *machzorim*. The *Chasam Sofer* therefore ruled that a competing edition is considered *hasogas gevul.*

Additionally, all of these concerns apply to one who reproduced a work in the 'public domain' (e.g. reprinted an edition of *Shas*) and received a ban, forbidding others from reproducing the same work. Surely, we must uphold the rights of a person who publishes an original work.

This can be further compared to the explanation rendered by Rav Meir, the father of Rabbeinu Tam, regarding the above case of the fishermen. Rav Meir explains that since the fisherman who originally staked out the area baited the net with dead fish, this act of the fisherman resulted in the clustering of other fish in the vicinity of the net. It is forbidden for someone to reap the benefits of a competitor's labor. The same could be said with respect to the *Roedelheim Machzor,* which was considered an original work. Surely, no printer was permitted to benefit from Rav Heidenheim's labor and republish the same *machzor*.

In this particular case, the *Chasam Sofer* ruled that even after the first edition sold out, Rav Heidenheim still had exclusive rights to reprint it during the twenty-five year period. The *Chasam Sofer* viewed, in this particular case, the need to make a second printing simply a result of the fact that the printing cost a substantial amount of money. Thus, Rav Heidenheim could not afford to print enough *machzorim* in the first printing to last for the entire twenty-five years and only after recovering the money invested from a previous printing was he able to go ahead and produce additional copies.[11]

The Controversy Regarding the Printing of the *Pischei Teshuva*

In the mid-1850's, a printer named Yosef Hirsch Balaban published a large size edition of the *Shulchan Aruch*, which included the commentaries of the *Pri Medgadim*, *Chavas Daas* and *Pischei Teshuva*. Until that time, the *peirush* of the *Pischei Teshuva* was only printed as a small separate *sefer*, which included only the text of the *Shulchan Aruch* and one other *peirush*.

A printer who claimed to have purchased exclusive rights to the *Pischei Teshuva* from its author summoned Balban to a *din Torah*. Rav Shmuel Valdberg of Zalkava was the presiding *rov*. He ruled in favor of Balban for three reasons.

Firstly, no ban had been placed in the *sefer* forbidding it to be reproduced.

Secondly, even if a ban had been placed on reprinting the *sefer,* it would no longer forbid producing the *sefer*, as all volumes of the previous edition had been sold out.

Thirdly, the new set of *Shulchan Aruch* was not really competing with the initial edition of *Pischei Teshuva*, as it was targeting a different market. A person interested in the *peirush* of the *Pischei Teshuva* would not buy the large, more expensive volume, but would purchase the small single volume of the *peirush*.

The *Sho'el U'meishiv* took strong issue with the ruling of Rav Valdberg. He maintained that Rav Valdberg would have been correct in his *p'sak* if the work had been one that was public and the publisher was simply reprinting it. However, an original work, such as the *Pischei Teshuva*, is considered the property of its owner, who has the rights to it and can restrict others from reproducing it for as long as he is desires. The *Sho'el U'meishiv* held that an author is the owner of his intellectual property whether or not a ban has been placed in the *sefer*.

To illustrate the logic behind his ruling, the *Sho'el U'meishiv* cites the case of a certain Polish Jew who invented a type of calculator and was receiving royalties from every sale made for years after. A person's own invention is always accredited to him. Therefore, if he sold those rights exclusively to a certain printer, no one may infringe on that printer's rights, even after the *seforim* sell out. Only that printer has the right to produce them.

Interestingly, the *Sho'el U'meishiv* explains that the bans found in original *seforim* forbidding its reproduction for a given number of years were not instituted to forbid copying the *sefer* during that period of time. For that, said the *Sho'el U'meishiv,* you do not need a ban. Rather, it was enacted in order to permit printing the *sefer* after the period of the ban is over. [12]

A contemporary of the *Sho'el U'meishiv*, Rav Yitzchok Shmelkes, author of *Shu"t Beis Yitzchok,* disagreed with this understanding of intellectual property. He maintained that the original printer's rights have to be upheld

insofar as the government's regulations are concerned. Beyond that which falls under the rubric of government regulation, the original printer does not have any additional rights. He did not recognize the concept of intellectual property as having any basis in *halacha*. Rav Shmelkes held that the only issue to be considered is *dina demalchusa dina* (*the law of the land is the law*). *Halacha* requires that the law of the land be upheld concerning issues such as paying taxes and obeying policies that are instituted to benefit the people of the land. Fair trade practices are included in that. Accordingly, the permissibility of reproducing a work is dependent on the accepted law of the land. Therefore, if the law in a specific country permits the reproduction of books after a certain number of years following an author's passing, then, from that point on, it is likewise *halachically* permitted to do so.[13]

The Slavita and Vilna *Shas* Controversy

The printing of the Slavita and Vilna Shas resulted in one of the biggest controversies in recent Jewish history, creating turbulence in much of the *Torah* world, causing the unfortunate denigration of *gedolei hador* and much friction between *misnagdim* and *chassidim.*

At the beginning of the 1800's, the most popular edition of the *Shas* was printed in Slavita, a city in Russia. In the year 1810, Rav Moshe Shapiro, son of the famous *rebbe,* Rav Pinchos Korritzer, printed an edition of *Shas*. *Rabbonim* forbade all publishers from releasing a competing edition for a period of ten years.

Seven years later, Rav Shapiro and his two children printed a second edition of the *Shas,* enhancing the typesetting and adding some more *meforshim*. When this edition was completed in 1822, a ban appeared in the *seforim*, forbidding publishers from releasing a competing edition for fifteen years.

In 1835, thirteen years into the fifteen-year period, Rav Shapiro's printing house in Slavita decided to print another edition of the *Shas*. They began to fundraise and prepare to print their new edition. No new *haskamos* were received, as they did not think they would run into a problem since it was still in the middle of the fifteen-year original ban. They figured that when they actually print the edition, they would get *haskamos* from *rabbonim* to extend the ban.

In the interim, the Rom family was making plans to print a new edition of *Shas* in their printing house in Vilna. They went around and collected a number of *haskamos* from *gedolei hador* forbidding anyone from competing with them for twenty years. Upon learning of this, the Slavita printing house was in rage, for it was still during the fifteen years of their original ban. They summoned the Vilna printers to a *din Torah*.

The Vilna printers claimed that although the fifteen-year period did not expire, the ban did. The purpose of the ban, they said, was only to assist the Slavita printers in selling all their printed volumes. At that time, all the *seforim* had indeed been sold, and the Vilna printers claimed that the ban was thus terminated.

The Slavita printers countered that they still had some volumes left over. The Vilna printers managed to prove that there were not more than forty volumes left over, a negligible amount.

Virtually all *gedolei Yisroel* of the time were drawn into this *machlokes*. There were those who sided with the Slavita printers and those who backed the Vilna printers. The controversy escalated until it reached Rav Akiva Eiger, who took a strong stand and ruled in favor of the Vilna printers. He said that the ban had already expired and that the most the Slavita printers could impose on the Vilna printers would be to force them to purchase those last forty volumes.

Rumors were spread by the Slavita printers that the Vilna printers had gotten Rav Shlomo Eiger, a big *misnagid*, to oppose the Slavita printers, who were *chassidim,* and to speak to his father and convince him to oppose them as well. Upon learning of these fabricated rumors, Rav Akiva Eiger was upset and wrote a very powerful letter scolding the Slavita printers. In the letter, Rav Akiva Eiger wrote that the debasing of his *kavod* he could tolerate, but that he must protest the disgracing of *kavod Torah.* He wrote that he is not interested in dealing with this issue further and that no one should send him correspondence concerning it. His letter stated that any mail that is sent to him on this topic would not be read or even retrieved from the post office. The letter also made clear that his *p'sak* was final and that the Slavita printers were obligated to adhere to it.

Unfortunately, the *machlokes* did not end pleasantly. A short while after, an employee, Lazer Protegein, was found hanging from a beam in the town's *shul*. He suffered from depression and committed suicide. The local priest, Father Benderovsky, incited the authorities into believing that the Jews killed Protegein for supplying Benderovsky with Jewish texts which denigrated gentiles. The Shapiro brothers (Rav Shapiro's sons who were operating the printer) were arrested and bitterly tortured. They were not released from prison until Czar Nicholai I died in 1855. In the interim, their printing shop was destroyed.

Many *gedolim* said that this catastrophe was a punishment for what they said about Rav Akiva Eiger.

The story did not end peacefully for the Vilna printers either. In 1841, a fire burned down their printing press, killing two workers and leaving the Rom brothers without any money to rebuild their operation.

The lesson to all was clear: *Machlokes* never pays off.

From this controversy and onwards, the government intervened and permitted only two Jewish printing presses to function. One printer was located in Vilna and run by the Rom family, and one was in Zhitomir, Kiev, operated by the grandchildren of the Shapiro brothers. The government began to charge a tax for every *sefer* printed, in addition to thoroughly censoring all works. [14]

A Summary of the Relevant *Halachos* and Additional Reasons to Forbid Copying

As mentioned above, nowadays that printing is much easier and less expensive, the contemporary copyright *shailos* do not usually revolve around issues of producing a competing product on one's own, but actually copying someone else's completed work.

Note: Although below we commonly use the term 'tape' to refer to audio being copied, the halacha is the same for any medium that is being copied or used, such as a CD or MP3. In the interest of simplicity, we have followed the common vernacular and used the general term 'tape'. The same applies when the term sefer is used unless specifically specified.

1. Hasogas Gevul

One reason to forbid copying *seforim* and marketing them is the *din* of *hasogas gevul,* since by doing so one reaps benefit from someone else's labor. Additionally, since the cost is only to print the actual volumes, as all the research and typesetting has already been done, one could afford to charge a cheaper sale price than the original publisher, thereby causing him a sure loss.[15]

Some *poskim* maintain, however, that this whole *din* only forbids a fellow competitor from reproducing a *sefer* and marketing it. An individual copying a friend's *sefer* for himself was never prohibited under the law of *hasogas gevul* even if the person would have otherwise bought the *sefer*. This *issur* of *hasogas gevul* only applies to competitors who are taking business away from others. It is always permitted to give another person a present or lend a person something, even if it results in that person not purchasing the item for himself.[16]

2. Deriving Benefit - Zeh Neheneh

The *din* of *zeh neheneh* only applies when one benefits from someone else's property. In the case of the *Noda B'Yehuda* mentioned earlier, the printer was benefiting from the original author's printing plates. In contemporary copyright issues, we are dealing with benefiting from an item that left the possession of the owner when it was purchased by a consumer. If that consumer permits one to benefit from it, then this din does not apply. [17]

See below concerning the issue of intellectual property, which on the other hand, according to a number of *poskim,* always remains in the possession of its owner (e.g., the author, singer). Consequently, this *din* may then apply.

3. Geneiva - Intellectual Property

The *Sho'el U'meishiv* introduced us to the concept of intellectual property. One who composes an original work has rights to it forever and can restrict others from reproducing it.

Other *poskim* disagree and maintain that there is no such concept of ownership regarding a thought, composition, or invention. This was the opinion of the *Beis Yitzchok* and other *rabbonim*. It would seem that this was the opinion of the *Chasam Sofer* as well. [18]

Rav Moshe Feinstein, in a very brief, cryptic *teshuva,* discusses the issue of copyright. He writes that a Torah tape produced by a *maggid shiur* for sale purposes is considered the *maggid shiur*'s item (even after it was sold) and he can forbid others from copying it. Copying it without permission is considered theft. However, Rav Moshe maintains that if a person delivers a public *shiur,* an attendee is permitted to record the *shiur* and the *maggid shiur* can't object. [19]

It seems from Rav Moshe's *teshuva* that he subscribed somewhat to the concept of intellectual property mentioned by the *Sho'el U'meishiv.* Since the actual tape that was sold cannot be considered the producer's property, Rav Moshe must be referring to the actual composition contained on the tape, which was never sold and remains in the possession of the producer. [20]

Rav Moshe limits the prohibition to copying items which have a market value when they are being sold. This can be explained in two ways.

One is that Rav Moshe maintained that the ownership of one's creation, even something that is intangible, forbids others from copying it if it has a market value. If, however, the item is not being sold by the creator - and there is thus no market value for the item - the creator does not possess any ownership over it and copying it would not be considered theft. [21]

One might ask, however, that there is a concept in *halacha* of *kol u'mareh ain bo mishum me'ilah* - sound and images are not subject to the laws forbidding one to derive benefit from *hekdesh*.[22] The *poskim* maintain that the same applies to *gezel.* Therefore, for example, even though a person owns his house, he cannot forbid other people from looking at it.[23] Based on this, how can copying a tape be considered theft, if all one is doing is simply *listening* to someone else's creation?

This logic holds true only in a case where one is playing the tape in his own domain; he cannot forbid others from listening to it. However, *reproducing* the item and taking the audio into one's own domain where one can always listen to it is an act of theft according to Rav Moshe.[24]

Alternatively, even if one were to contend that there is no concept of stealing an intangible item, one can explain Rav Moshe's words according to the concept of *zeh neheneh v'zeh choseir* mentioned above.

This can be explained as follows: Let's take a case of a person who owns a house and charges rent for the use of the house. If someone comes and stays in the house without the owner knowing and without paying, he is considered a *ganov* and is obligated to pay. The *poskim* refer to this as *ochel kaspo shel chaveiro* - consuming someone else's money.[25] Worse than that is if a person takes the owner, ties him up and collects the rent for himself. Such money belongs to the owner even if he never acquired it physically; it is *halachically* earmarked for him. Collecting that money is considered *geneiva*.[26]

Let's take this concept a step further. A person owns a beautiful painting and charges money for people to view it. If one who would otherwise pay to look at the painting does so without paying, he is considered a *ganov* even though *kol u'mareh ain bo mishum gezel* and he has not physically stolen the painting. Still and all, withholding the money that rightfully belongs to the owner is considered *geneiva.* Far worse would be if one collects all the money that people are paying to view the painting without giving it to the owner. This is obviously much worse than *hasogus gevul,* which is infringing on someone else's business by marketing one's own item. In this case, one is doing business with someone else's item. This is considered *geneiva* even if one has not touched the other person's object and even though the owner never made a *kinyan* on the money. Once the money is *halachically* earmarked for the owner, it is considered *geneiva* to take it.

To expound on this a bit more, let us apply what we have discussed to the concept of intellectual property. One who composes something and has invested time, money, and energy to perfect it to be a marketable product has the exclusive rights to market it and make money from it. People who copy the item and do not pay for it are withholding money that rightfully belongs to him. They are deriving benefit from someone's possession without paying for it. Much worse would be for one to market the item and keep the money for oneself. But taking away any sale from the producer is considered *geneiva*.

Understandably, in a case where the item is not being marketed, copying and listening to the tape is not considered theft since it is not at the expense of the owner.[27]

Whatever the rationale of Rav Moshe's opinion is, the bottom line is that Rav Moshe considered it theft to copy tapes that have a market value.

There are some *poskim* who quote a number of earlier *gedolim* who wrote in their wills that they forbid anyone besides for family members from copying and selling their *seforim*. The *Chofetz Chaim,* amongst others, reserved the rights to some of his *seforim* exclusively for his family. Regarding some of his other *seforim,* he designated a small percentage of the sales to his family, and some others he gives permission for anyone to copy. [28]

There are some who deduce from the *hanhagos* of these *gedolim* that they, too, subscribed to the concept of intellectual property. Others disagree and maintain that these *gedolim* never meant to imply that there are any *halachic* issues with deviating from their requests not to reproduce their *seforim*. Rather, they hoped that since the public considered them to be people of stature, the public would be considerate and abide by their wishes.[29]

4. Shiur - Retaining Rights on a Sale

There is a concept in *halacha* referred to as *shiur,* retention. For example, when one sells a house, he can retain for himself the right to visit the property.

Similarly, some *poskim* maintain that when a tape is sold, although the tape is now in the possession of the buyer, the original owner still retains the rights and can restrict the copying of the tape. In effect, the sale of the tape includes all rights except one: permission to copy it.[30]

Other *poskim* take issue with this *p'sak* on two accounts. Firstly, all cases in *Shas* of *shiur* deal with scenarios where the owner retains the right to use the object for himself in certain manners; hence the term *shiur*, retention. *Shiur*, however, does not mean to impose restrictions on the purchaser. Simply put, one who purchases an item becomes its owner in all aspects aside from that which the original owner retains for himself. In our case of retaining the right to copy a tape, it is clear that the producer cannot come to the purchaser's house and demand to use the tape he produced to make copies of it. Thus, the concept of *shiur* would not apply according to these *poskim*, since all one is doing is imposing restrictions without retaining anything for himself.[31]

Furthermore, even we were to say that one can impose certain restrictions on the new owner, logic would dictate that *shiur* only includes restrictions that are related to the normal use of the item. Forbidding the owner from performing an extraneous act which relies on the tape in order to facilitate it is not a normal act whose rights can be retained by the seller. Copying a tape is considered an extraneous act which requires the tape to be playing while recording. Copying is not considered a regular use of the tape and is not related to the concept of *shiur* according to these *poskim.*[32]

(In the next section, we will discuss how such unrelated restrictions can be imposed with the use of *tanaim*, conditions.)

Moreover, some of the *poskim* maintain that even when resorting to the concept of *shiur,* the copyright notice on the item must be written in a manner that states clearly that the rights have been retained and not simply restricted.[33]

5. Tanaim

Some *poskim* maintain that copyright laws must be upheld on the basis of *tanaim,* conditions in the sale. A

seller can impose any condition on the sale and, if agreed upon by the consumer, the conditions are binding. If the condition is violated, the usage of the item is an act of theft. [34]

Many *poskim* disagree. Firstly, there are many *halachos* governing the phraseology of conditions in order for them to be binding. More importantly, however, every conditional sale is directly interrelated with the validity of the sale. If the condition is violated, the sale is void. In such an instance, the buyer must return the item to the seller and the seller must offer him a complete refund. If a person were to copy a tape and then approach the producer and offer to return the original tape for a refund, no producer would acquiesce. If, for example, a producer sells three thousand tapes and one thousand people copy the tapes, the producer would want to at least retain the money received from the three thousand purchases. This demonstrates, then, that the condition was not meant to be a valid one. It was merely a manner to express their wish that people not make copies of the tape. [35]

6. Dina Demalchusa Dina - The Law of the Land is the Law

A number of *poskim* approach the issue of copyright from the standpoint of *dina demulcha dina* - the requirement to follow the laws of the land as they relate to certain matters. The *Rama* rules that laws instituted for the benefit of the general public must be adhered to. Fair trade practices are definitely included in this category. [36]

Some *poskim* are a bit more lenient on this issue and maintain that there are certain limitations.

Firstly, regarding those matters which are laws but are not actively enforced, *halacha* does not mandate that one must adhere to them. The lack of enforcement of the specific law demonstrates that the government does not intend to treat the law seriously. Every government must have a book of laws; not every law, however, is taken seriously or enforced by the government. Additionally, even where the law is technically enforced, nevertheless, if there is a widespread lack of adherence to the law by the general public, the *halacha* does not require a Jew to be more religious, in this sense, than the general public. A few common examples of this are: coming to a complete stop at a stop-sign during the middle of the night, pulling up for a few minutes at *certain* no-parking or no-standing zones, going in *moderate* excess of the speed limit, etc. Similarly, these *poskim* maintain that *dina demalchusa dina* would not obligate one to adhere to copyright laws where there is widespread disobedience of the law. [37]

Conclusion

There are several *halachic* reasons offered by a number of *poskim* to forbid various forms of copying. Although for each reason there have been differing opinions, nevertheless, the general tone of all the *poskim* is to be stringent, as copying results in tremendous financial losses. As we mentioned earlier, Rav Moshe Feinstein ruled that copying is considered bonafide *geneiva*.

We will now discuss practical applications and the differences in *p'sak* in each case depending on the reasons delineated above. [38]

Practical Applications

Copying for Marketing Purposes

Copying material for marketing purposes is strictly forbidden under *hasogas gevul* as well.

Copying Music off of the Radio

The permissibility of copying music off of the radio is dependent on the various reasons mentioned above. *Hasogas gevul* would not apply, since one is not marketing the item. The rules of *shiur* and *tenai* only restrict the purchaser from misusing the actual tape purchased and would not restrict one from copying the audio off a radio. Likewise, *dina demalchusa* would not restrict one from copying music off a radio.

However, according to those who subscribe to the concept of intellectual property as discussed earlier, it would depend on the producer's *hakpada*.

Many producers do not mind if their music is copied in that manner, since the sound quality as recorded from the radio is significantly inferior and would not take away prospective customers. These producers feel that their music gains more popularity this way and that those who identify with their music will go out and purchase their album from a store.

However, there are producers who do maintain this *hakpada*, for they fear that some people won't mind that the sound quality is somewhat inferior on the radio, and they will copy the music off the radio and not purchase the album in the store. In such a case, where the producer does mind, one would not be permitted to copy the music off the radio according to those who subscribe to the concept of intellectual property.

Copying from the Internet

Hasogas gevul does not apply where the copying is being done for non-commercial purposes. The rules of *shiur* and *tenai* would also not forbid copying off the internet since there is no misuse of the object that was purchased. The initial copying is considered a misuse of the object, but copies of copies cannot be restricted.

However, according to those who subscribe to the concept of intellectual property as discussed earlier, this, too, would be considered an act of theft. Similarly, *dina demalchusa* would apply.

Copying Torah Material

The *Shulchan Aruch* discusses a case where someone entrusted a *talmid chochom* to watch one of his *seforim*. The *halacha* is that the *talmid chochom* is permitted to use it and copy it for himself. The *Shach* explains that using the *sefer* is permitted, since when a person entrusts a *talmid chochom* with a *sefer,* he knows that the *talmid chochom* would use it. As far as copying it, he quotes a *Tosefta* that states "*Ain geneiva*

b'divrei Torah - a person is not held liable for stealing *divrei Torah*." On the contrary, one day he will be a big *marbitz Torah* and will teach that *Torah* to others. [39]

There are some *poskim* who disagree with the *Shach*. [40]

Additionally, it is quite reasonable to say that the *Shach's* case cannot be easily compared to contemporary cases. Firstly, the *Shach* is discussing a person who had a *sefer* and the *talmid chochom* wishes to rewrite the *chiddushim* for himself. The *Shach's* case took place prior to the advent of copying machines and involved the effort of rewriting the material. All the *talmid chochom* is left with is the *chiddushei Torah*. However, many publishers, in addition to charging for the actual *sefer,* charge for their nice typesetting design. That layout is worth money and their version can be sold for more money than competing versions with an inferior design. In such a case, the *heter* to reproduce the *sefer* on a copy machine does not apply.

It is also quite reasonable to say that the *Shach* is talking about an instance where there is a *Torah* manuscript that only that person owns, and by someone else copying it, he might lose its uniqueness and that is why he is *makpid*. Nonetheless, the *Shach* permits rewriting it since the person wants to retain the Torah and there is no other way for him to get it legally. Furthermore, such a person who exhibits such a yearn for Torah that he is willing to go to such lengths to acquire the *chiddushim* will one day be *zoche* to become a big *marbitz Torah*. However, the *Shach* would never permit someone to steal *chiddushei Torah* that he can easily acquire by purchasing it and all he wants is to save a few dollars. In such an instance, the person is not exhibiting a special yearning for Torah but a penny-pinching attitude. [41]

Out-of-Print Seforim and Older Version Computer CDs

One can safely assume that a *mechaber* whose *sefer* goes out of print and does not intend to republish it would not object to people making copies of it. Additionally, the concept of *ain geneiva b'divrei Torah* appropriately applies here. Concerning older version computer CDs, it would depend on the intent of the manufacturer. See below concerning the general issue of copying computer CDs.

Personal Use

One who purchases an item may copy it for reasonable personal use despite the printed warnings. Warnings are meant to stress the level of *hakpada* and that copying should not be treated lightly. It is safe to assume that producers do not object where one who purchases an item copies it for reasonable personal use.

Additionally, it is strongly questionable whether *halachically* a producer can restrict a purchaser from using it in such a manner. Even according to the *poskim* who maintain that unlawful copying is considered theft due to the producer's intellectual property rights, copying for reasonable personal use would still be permitted. It is considered an act of theft only if one transfers the item into someone else's possession or takes away a sale. In the case of making a copy for personal use, the item was always in his possession. [42] Additionally, one is not taking away a sale by copying the tape. Had he not been able to duplicate it, he would not purchase a second copy, but would utilize his first copy even if it is a slight inconvenience for him. Examples will be illustrated below. [43]

Only according to the *poskim* who forbid copying items because of *shiur* or *tenai* can there be restrictions on personal use. However, as mentioned above, many *poskim* disagree with this opinion.

Creating Additional Copies for Use in Multiple Locations

One who owns one copy of a tape which he uses at home and wishes to make a second copy for use in the car to avoid having to carry his tape back and forth is permitted to do so. One can safely assume that producers do not expect one to buy a second tape for this purpose.

In the user license agreement of most computer CDs, many companies write that one may install duplicate copies on different computers, provided that they are not running the same time.

Additionally, as mentioned above, it is strongly questionable whether one can *halachically* restrict such activity. However, if one intends to use both copies at the same time or to make additional copies for all of one's family members, such an act should not be done and one should purchase additional copies.

Creating Mixes or Changing Media Form

One who purchased several tapes is permitted to select several songs from each tape and create his own mix tape. Additionally, one who purchased a CD may copy it onto a tape so that he can play it from a regular tape deck. The same is true for the reverse case. Although CDs are generally sold for a bit more than tapes, that is primarily because the sound quality is better and one has the convenience of separate tracks.

It is safe to assume that producers are not *makpid* on such activity. Additionally, as mentioned, it is strongly questionable whether *halachically* one can forbid such activity.

The same is true with regard to consolidating all of one's tapes and CDs onto a digital MP3 player.

It must be mentioned that although it may be effortless and there exists a strong urge to copy hundreds of songs that one does not own from someone else's digital music player, such an act is considered a bona fide breach of copyright laws.

Creating a Backup Copy

One is permitted to create a protective backup copy of his material in case the original gets ruined. If one did not create a backup copy and his tape

ripped or his CD got seriously scratched, it is questionable whether one is permitted to make a copy of his friend's tape or CD.[44] One should contact the producer to find out whether they give permission to do so.

Copying Several Pages from a Sefer or One Song off of a Tape

It is safe to assume that a publisher is not *makpid* if one copies several pages from a *sefer*, regardless of whether one owns the *sefer* or not. A person is not expected to purchase the *sefer* just for a few pages. However, this must be done in a reasonable manner without going overboard. Although many publishers restrict doing so in their copyright notice, if one would contact them with a request to copy a few pages, they would most probably express their approval. The publishers issue these strong warnings to demonstrate that, in general, they strongly object to people making copies and hope that this warning will deter people who stretch the parameters of reasonable use. [45]

The same technically applies for classroom use. However, many publishers have conveyed that in this situation they would appreciate if one contacts them so they can monitor it and prevent it from getting out of hand. When contacted, they will give permission for reasonable use.

Copying a single song off of a tape is different. Certain hit songs are the reason people purchase an entire album. Producers are definitely *makpid* on people copying these songs. They may not mind if people copy the not-so-popular songs, because at least they get exposure. Others do mind, even in such a case. Recently, a number of producers started selling individual songs on the internet. In such a case, the producers definitely mind if a person makes a copy of these songs.

Borrowing Tape Libraries

Recently, some tapes have had warnings printed on them forbidding people from lending them out to friends.

If the intellectual composition on the tape does not belong to the person who produced the tape (e.g. they merely obtained *shiurim* from a *rosh yeshiva* of the past generation and made copies to sell), the concept of stealing intellectual property is obviously not applicable.

Additionally, even if it was an original composition, we mentioned above that there is a concept of *kol u'mareh ain bo mishum gezel.* We explained that according to this concept, if one does not transfer the item into another *reshus, gezel* is not applicable. When one lends an item, it remains in the possession of the original owner. This is tantamount to the original owner broadcasting it in his house, in which case no producer can forbid anyone else from listening to it.

Only according to the *poskim* who forbid copying items because of *shiur* or *tenai* can restrictions on personal use have an effect. However, as mentioned above, many *poskim* disagree with this view.

Copying a Public Shiur

We mentioned above that Rav Moshe Feinstein maintained that there is no *gezel* with regard to a public *shiur* where the *maggid shiur* does not intend to sell any tapes of the *shiur.* However, if the *maggid shiur* specifically says that he will only deliver the *shiur* if it is not recorded, then it is forbidden to record it. This is because one is causing a person to work against his will. If the *shiur* will be delivered regardless of whether it is recorded or not, there is no *issur* to record it.[46]

If the *maggid shiur* allowed personal tape recorders at the *shiur* but still plans on selling his own professionally recorded tapes of the *shiur*, then, according to Rav Moshe, one who did not attend the *shiur* may not make a copy of an attendee's personally recorded tape.[47]

According to the *poskim* who do not agree with the concept of intellectual property, this would be permitted.

No Intention to Buy

There are some *poskim* who permit copying a tape or book if one sincerely has no interest in purchasing the item and will not purchase it. They maintain that there is no theft on intangible items and that the only reason to forbid it is when *zeh neheneh v'zeh choseir* - the one using the item benefits from it *and the one who produced it loses a sale.* [48]

Other *poskim* maintain that copying a tape is considered theft even though the intellectual property is intangible. Therefore, whether one intends to buy the item or not, it is still forbidden.[49]

There are, however, certain instances where a singer would not object to someone copying his album, if the person would really not purchase it anyway. Most *frum* singers barely break even on the cost of producing a music album. Their primary goal in producing an album is for advertisement. They hope that once people like their material and their style of singing, they'll be hired for weddings and other events. Thus, in such a situation, at least their music becomes well-known and they gain popularity

It is very important to mention that although what we discussed in this section is technically the *halacha*, nevertheless, it rarely has any practical significance. Often, people deceive themselves into thinking that they would not buy the tape anyway. In almost all situations, if one does like an album, he will buy it if he cannot obtain a copy of it any other way. One should be very diligent before he rules leniently in such a situation. [50]

Copying Computer CDs

According to the *poskim* who maintain that copying a tape is considered an act of *gezel,* the same applies to material produced by a non-Jew.[51]

Similarly, the aforementioned dispute concerning copying an item that one would not purchase anyway, would similarly apply here. [52]

Recently, there has been a trend for computer companies to write in the user license agreement that they are not selling the CD but leasing it. The CD thus remains in their possession and they have the right to restrict one from misusing their product. Also, they can hold one accountable for a more severe infraction than simply infringing on copyright laws.

Accordingly, some wish to claim that in such a situation, even if one rejects all the aforementioned reasons to restrict copying items, it would be forbidden to do so in this case since the buyer does not become the owner of the CD. This, however, is not completely accurate. Many of the earlier *poskim* maintain that once a person receives an item from an *akum* legally, even if it is only to safeguard it, one may use it in any way that he pleases. [53] Consequently, the same would apply in this situation.

Conclusion

This article analyzed the various *halachic* reasons offered by the *poskim* to restrict copying material. We discussed certain situations where only some of the reasons are applicable and some situations where copying is permissible.

The issue of copyright should not be taken lightly. No one who understands the immense losses incurred by many publishers and producers due to the copying of their products would ever give a blanket *heter* to copy items. People must take this into consideration when dealing with these *shailos* and be very diligent when acting in a manner that goes beyond the parameters of normal and fair use of an item.

It is unfounded to claim that the producers are *miyayesh* (i.e. they give up hope of people adhering to copyright requests) because they know that people will be copying their products anyway and there is therefore nothing wrong in doing so as the item is considered *hefker*. The *poskim* refute this theory and strongly emphasize the importance of being *ehrlich* when dealing with someone else's source of income.[54]

1. עי' שו"ת הרמ"א סי' י', א. אם המדפיס השני מוזיל את המחיר הספרים יש בזה משום "פסקת חיותאי," ב. כשהמדפיס הראשון ת"ח, יש דין של "נקוט ליה שוקא," ג. כשהמדפיס השני אינו יהודי, יש להעדיף את היהודי משום "וכי תמכרו ממכר לעמיתך או קנה," ד. כשהוצאתו מוגה יותר משל השני, יש בקניה מהשני משום "לא תשכן באהלך עולה."
2. דברים יט:יד.
3. עי' מס' סנהדרין פא. ובמס' מכות כד. שמקורו בדברי קבלה ועי' בחת"ס חו"מ סי' עט שחידש שכל מה שאסור מדין יורד לאומנתו אסור מדאורייתא וגזל גמור הוא, מ"מ חידוש זה לא מצינו בשער אחרונים.
4. מס' ב"ב כא:
5. עי' שו"ע חו"מ סי' קנ"ו סע' ה.
6. עי' ב"י שם שהביא מרדכי במס' ב"ב סי' תקט"ז בשם אביאסף, ועי' דרכי משה שם סק"ד שפסק כן, וכן פסק בשו"ת רמ"א שם.
7. שו"ת רמ"א שם.
8. שו"ת חת"ס חו"מ סי' עט, ועי"ש בח"ו סי' כז שמי פסי יכנוס עצמו בספק הפסד כמה אלפים, ע"ש.
9. כך שמעתי מפוסקי זמנינו.
10. עי' שו"ת נוב"י חו"מ סי' כד, וע"ש בהג"ה בנוב"י החדש ששימות ראובן ושמעון נתחלפו, ולפי גירסא נכונה הפשט כמבואר בפנים, ודו"ק.
11. עי' שו"ת חת"ס חו"מ סי' מא ועע"ש בס' עט. ועי' שו"ת שבט הלוי ח"ו סי' רל"ט שבזמן הזה כו"ע יסכימו שאסור, ועי' בהסכמה על ספר שאגת אריה מהגר"מ בנעט שכזר לשיטתו.
12. שו"ת שו"מ ח"א סי' מד ועי' בהסכמתו לשאגת אריה החדשות שהוא קנין כספו, ואין להקשות מהגמ' יומא פד. מר' יוחנן שגילה הרפואה שקיבל מההוא מטרוניתא שהקפיד ע"ז, די"ל שפקוח נפש שאני, וכך שמעתי מהגר"י בעלסקי שליט"א.
13. שו"ת בית יצחק יו"ד ח"ב סי' עה.
14. עי' ספר מאורן של ישראל (על רע"א) פרק כ"ה, שהאריך בסיפור הדברים, ועי' מאמר על הדפסת התלמוד, ועי' פ"ת יו"ד רלו:א בענין זכות אחר שמכר ספריו.
15. עי' שו"ת הרמ"א, והחת"ס הנ"ל, ועי' ספר משנת זכויות היוצר פרק י"ח שהביא מהגרש"ז אוירבאך זצ"ל שכל האיסור ששייך הוא מטעם יורד לאומנות חבירו, ועי' בהסכמה מהגר"י קניבסקי זצ"ל על יד החזקה מהדורת שבתי פרנקל.
16. עי' פתחי החושן הל' גניבה פ"ט הע' כז ועע"ש בהע' ז' בענין אם מותר לאסוף נוסעים הממתינים בתחנת אוטובוס, וכך שמעתי מהגר"י בעלסקי שליט"א ומשער פוסקי זמנינו.
17. עי' שבחין אסדר שאלה ו' מהגאון ר' אליהו לאווין שליט"א, וע"ע בספר משנת זכויות היוצר שהביא שיש מחלקין באופן זה.
18. עי' המח' שהביא לעיל, ועי' שו"ת חת"ס סי' עט שאיירי בדבר חדש ולא אסרו אלא מטעם דהוי כצד דגים, עי"ש.
19. עי' אג"מ או"ח ח"ד סי' מ:יט.
20. עי"ש שכתב כיון שהוא חפצו אין רשאין ליקח אותו להשתמש בו שלא ברשות, וע"ע בהסכמה שכתב מרן זצ"ל על יד החזקה מהדורת שבתי פרנקל שזכות הדפסת רמב"ם כזה הוא קנין שלו, ואין לומר שהאיסור הוא מטעם שיור שאיתא שם שהוא קנין שלו מטעם עבודתו הגדולה והממונו הרב, עי"ש. וגם שיור הוא רק זכות, ואינו נחשב חפצו, ושמעתי מהרב אלימלך בלוט שליט"א ששמע ממרן זצ"ל שאינו משום שיור. וע"ע בהסכמה שם שיש איסור מזיק.
21. אולי יש לציין דבריו בדברות משה על מס' בב"ק סי' יב סק"ב שאם יש חסר לבעלים אז הויא ההנאה דין ממון של הבעלים, עי"ש.
22. עי' מס' פסחים כו., ועי"ש שמ"מ איסורא איכא וכן איתא בשו"ת הלכות קטנות ח"א סי' ו בענין נדר.
23. עי' רמב"ם הל' שופר פ"א ה"ג, דאין בקול דין גזל, ועי' חשוקי חמד על מס' פסחים שם שי"ל שבגזל אפי' איסורא ליכא.
24. כך שמעתי מכמה פוסקי זמנינו.
25. עי' מס' בב"ק כ., ועי' שו"ע חו"מ שס"ג בסמ"ע ס"ק יז.
26. כך שמעתי מפוסקי זמנינו.
27. כך שמעתי מהגר"י בעלסקי שליט"א בביאור דברי מרן זצ"ל, וכן מדוייק ממה שכתב בהסכמה הנ"ל שזכות הדפסה הוא קנין שלו ממה שטרח בזה הרבה ושלם ממון הרבה ע"ז, וע"ע באג"מ שנקט ענין של כופין על מדת סדום, וזה יסוד גדול בסוגיא של זה נהנה. וי"ל שבליכא חסר, ולא שייך להרויח מזה התקליט כיון שאי לאו הקליטה לא היה מי שיקנה זה התקליט, עי' רמ"א אף אם מקפיד אמרינן כופין על מדת סדום, וזה שייך אפי' שלא בב"ד כמו שמותר להכניס זיזין בחצר חבירו, כך שמעתי מהגר"ש מילר שליט"א.
28. עי' צוואת הח"ח, ועי' שו"ת מנח"י ח"ט סי' קנ"ג שדייק מכאן שיש זכות בחכמה. ועי' ספר הפלאה בהקדמה שכ' הנני גוזר בעצמי ואפי' מקצתו עי"ש, וכן בעל קצשו"ע נתן מודעה בעיתון שאוסר זה.
29. כך שמעתי מכמה פוסקי זמנינו.
30. עי' תשו' מהג' ר' זלמן נחמיה גולדברג שליט"א שנדפס בקובץ תחומים שהאריך בזה, וכך שמעתי מהגר"מ היינעמאן שליט"א.
31. עי' שבחין אסדר שם, וכן נראה מתשו' האחרונים שטרח למצוא אופן לאסור העתקת ספרים, ואף אחד לא הזכיר אופן של שיור או תנאי.
32. עי' משנת זכויות היוצר בסוף הספר מכתב ד' מהג' ר' שמואל אליעזר שטרן שליט"א, וז"ל שהאויר הוא מזכותי ההשתמשות של הבית עצמו, דלכל בית וחדר עשוי לכך ליהנות ולהשתמש באוירו, ולהכי שייך ביה ענין שיורא, אבל לשייר בספרים את ענין העתקה או הצילום, שהוא פעולה מסויימת חיצונית שנעשה ע"י הספר, מנא לן דאפשר לשייר עשיית פעולת שונות בדבר הנמכר.
33. עי' בתשו' מהגרז"נ גולדברג שליט"א.
34. כך שמעתי מהגר"ד פיינשטיין שליט"א.
35. כך שמעתי מהרבה פוסקי זמנינו בא"י ובחו"ל, ועי' ספר משנת זכויות היוצר שהביא הרבה שפקפק בזה.
36. עי' שו"ע חו"מ סי' שס"ט ססע' יא. ועי' שו"ת בית יצחק הנ"ל.
37. כך שמעתי מכמה פוסקי זמנינו.
38. בציורים לקמן היכא שהטעם מפורש בפנים לא הבאתי מראה מקומות, ולכל הדברים הסכימו פוסקי זמנינו.
39. עי' שו"ע חו"מ סי' רצ"ב סע' כ, ועי' ש"ך שם בס"ק לה שהאריך בביאור דברי התוספתא בבב"ק פ"ז.
40. עי' בסמ"ע שם שהיכא שמקפיד אסור, אכן עי' ביהגר"א שם שבמקום ביטול תורה מותר.
41. כך שמעתי מכמה פוסקי זמנינו.
42. ואם כן שייך המוסג של קול ומראה אין בו משום גזל.
43. כך שמעתי מהגר"י בעלסקי שליט"א.
44. שבציור כזה יש לומר שהיה קונה אחר במקומו, וגם היכא שהרשות להשתמש בחכמת יצירה הוא רק כל זמן שהמקליט קיימת, א"כ היכא שלקח מחבירו לא שייך כאן המוסג אין גזל בקול.
45. עי' שו"ת שבט הלוי ח"ד סי' רב, מ"מ שמעתי שאינם מקפידים על זה. ועי' שו"ת ציץ אליעזר חי"ח סי' פ.
46. עי' אג"מ שם.
47. מי שבא לשיעור מותר להעתיקו כדי לזכור מה שלמד, עי' אג"מ, וכן שמעתי מפוסקי זמנינו.
48. כך שמעתי בשם הגר' ר' יעקב ישע' בלוי שליט"א בעל מחבר פתחי חושן, וכן יצא ע"פ ביאור הגר"י בעלסקי שליט"א תשו' אג"מ, וכן שמעתי מכמה פוסקי זמנינו.
49. כך שמעתי מפוס' אחרים.
50. כך שמעתי מהגר"י בעלסקי שליט"א.
51. עי' משנת זכויות היוצר בשם הגרי"ש אלישב שליט"א.
52. פשוט.
53. הרבה פוסקים האריכו בענין שואל שלא מדעת מעכו"ם, ואכמ"ל רק לציין כמה מקורות, עי' ט"ז בי"ד סי' קכ סקי"א שהתיר, אכן עי' מג"א באו"ח תע"ב סק"ב, ועי' שו"ת בצל החכמה ח"ג סי' מח שהתיר, אכן עי' בה"ל סי' תרל"ז סע' ב' בענין סוכה ברשות הרבים שמשמע שמחמיר בזה, ועי' פתחי החושן שהאריך בזה.
54. עי' משנת זכויות היוצר פרק יח בשם הגרי"ש אלישיב שליט"א, דאינו דומה כ"זוטו של ים" שהרי היצירה אינה אבודה מכל אדם, וגם לא נחשב "אבידה מדעת", שהרי נתנו רק תמורת תשלום ועל דעת שלא יעתיקו את יצירתו.

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