

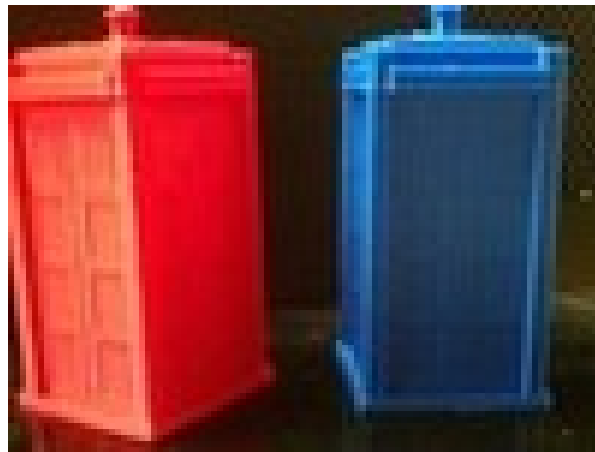


If You Build It, Will the Lawyers Come? 3D Printing and Copyright Infringement

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Guest Post by Jake Linford, Assistant Professor, Florida State University College of Law

As I previewed [earlier this week](#), I want to talk about the copyright implications for 3D printers. A 3D printer is a device that can reproduce a 3-dimensional object by spraying layers of plastic, metal, or ceramic into a given shape. (I imagine the process smelling like those [Mold-a-Rama](#) plastic souvenir vending machines prevalent in many museums, a thought simultaneously nostalgic and sickening). Apparently, early adopters are [already purchasing](#) the first generation of 3D printers, and there are websites like [Thingiverse](#) where you can find plans for items you can print in your home, like these [Tardis salt shakers](#).¹



¹ The TARDIS is the preferred means of locomotion of Doctor Who, the titular character of the long-running BBC science fiction program. It's a time machine / space ship disguised as a 1960s-era London police call box. The shape of the TARDIS, in its distinctive blue color, is protected by [three registered trademarks](#) in the UK.



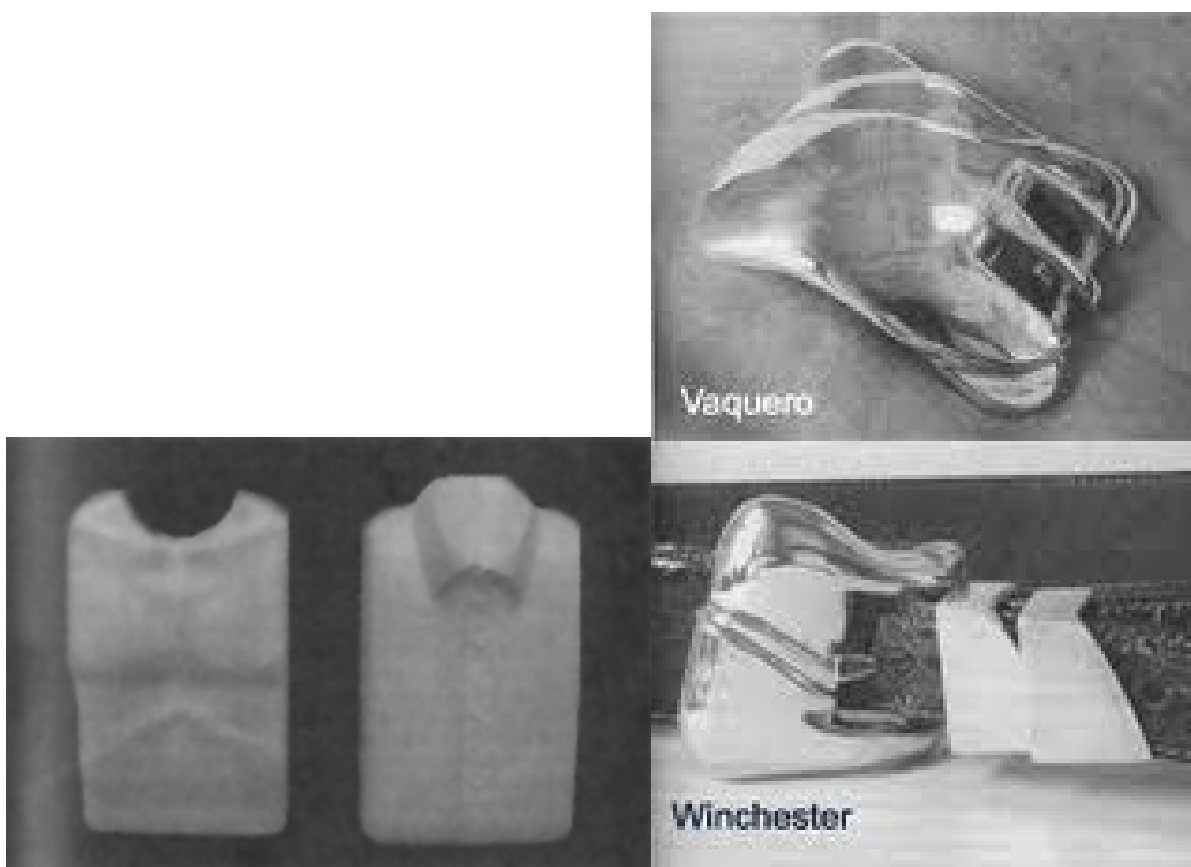
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Perhaps unsurprisingly, there can be copyright implications. A recent [NY Times blog post](#) correctly notes that the 3D printer is primarily suited to reproduce what § 101 of [the Copyright Act](#) calls "useful articles," physical objects that have "an intrinsic utilitarian function," and which, by definition, receive no copyright protection...except when they do.

A useful article can include elements that are protectable as a "pictorial, graphic, [or] sculptural work." The elements are protectable to the extent "the pictorial, graphic, or sculptural features...can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." There are half a dozen tests courts have employed to determine whether protectable features can be separated from utilitarian aspects. Courts have rejected copyright protection for [mannequin torsos](#) and the ubiquitous [ribbon bike rack](#), but granted it for [belt buckles](#) with ornamental elements that were not a necessarily part of a functioning belt.



Print out a "functional" mannequin torso (or post your plans for it on the internet) and you should have no trouble. Post a schematic for the Vaquero belt buckle, and you may well be violating the copyright protection in the sculptural elements. But even that can be convoluted. The case law is mixed on how to think about 2D works derived from 3D works, and vice versa. A substantially similar 3D work can infringe a 2D graphic or pictorial work (*Ideal Toy Corp. v. Kenner Prods. Div.*, 443 F. Supp. 291 (S.D.N.Y. 1977)), but constructing a building without permission from protectable architectural plans was not infringement, prior to a recent revision to the Copyright Act. Likewise, a

drawing of a utilitarian item might be protectable as a drawing, but does [not grant the copyright holder the right to control the manufacture of the item](#).

And if consumers are infringing, there is a significant risk that the manufacturer of the 3D printer could be vicariously or contributorily liable for that infringement. The famous [Sony](#) decision, which insulated the distribution of devices capable of commercially significant noninfringing uses, even if they could also be used for copyright infringement, has been narrowed both by recent [Grokster](#) filesharing decision and by the DMCA [anticircumvention](#) provisions. The easy, but unsatisfying takeaway is that 3D printers will keep copyright lawyers employed for years to come.

Back to the Tardis shakers, for a moment: the individual who posted them to the Thingiverse noted that the shaker "is derivative of thingiverse.com/thing:1528 and thingiverse.com/thing:12278", a Tardis sculpture and the lid of bottle, respectively. I found this striking for two reasons. First, it suggests a custom of attribution on Thingiverse, but I don't yet have a sense for whether it's widespread. Second, if either of those first things are protectable as copyrighted works, (which seems more likely for the Tardis sculpture, and less so for the lid) then the Tardis salt shaker may be an unauthorized, and infringing, derivative work, and the decision to offer attribution perhaps unwise in retrospect.

Cross-posted at [PrawfsBlawg](#).