2017 COPYRIGHT DEVELOPMENTS

Prepared for the American Bar Association’s
Copyright Division
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I. COPYRIGHT DECISIONS

Supreme Court

SCA HYGIENE PRODUCTS AKTIEBOLAG V. FIRST QUALITY BABY PRODUCTS, LLC

We return to a subject that we addressed in Petrella v. Metro-Goldwyn-Mayer, Inc. . . . : the relationship between the equitable defense of laches and claims for damages that are brought within the time allowed by a statute of limitations. In Petrella, we held that laches cannot preclude a claim for damages incurred within the Copyright Act's 3-year limitations period. . . . "[L]aches," we explained, "cannot be invoked to bar legal relief" "[i]n the face of a statute of limitations enacted by Congress." . . . The question in this case is whether Petrella's reasoning applies to a similar provision of the Patent Act . . . . We hold that it does.

STAR ATHLETICA, L.L.C. V. VARSITY BRANDS, INC.

Congress has provided copyright protection for original works of art, but not for industrial designs. The line between art and industrial design, however, is often difficult to draw. This is particularly true when an industrial design incorporates artistic elements. Congress has afforded limited protection for these artistic elements by providing that "pictorial, graphic, or sculptural features" of the "design of a useful article" are eligible for copyright protection as artistic works if those features "can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." 17 U.S.C. § 101.

We granted certiorari to resolve widespread disagreement over the proper test for implementing § 101's separate-identification and independent-existence requirements. . . . We hold that a feature incorporated into the design of a useful article is eligible for copyright protection only if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated. Because that test is satisfied in this case, we affirm.

D.C. Circuit

Court of Appeals for the District of Columbia

SOUNDEXCHANGE, INC. V. MUZAK LLC

This case pits SoundExchange, a nonprofit entity, charged with the responsibility of collecting royalties for performing artists and copyright owners of music, against Muzak, a company that supplies digital music channels to satellite television networks who, in turn, sell to subscribers.
SoundExchange sued Muzak under the Copyright Act in district court, claiming that Muzak underpaid royalties owed. The district court dismissed SoundExchange's complaint. (From the point of view of classic administrative law, the Register of Copyrights, to which we normally are obliged to defer, plays a rather unusual role.) Although the case is close—the controlling statute is dreadfully ambiguous—we conclude that SoundExchange has the better position, and therefore reverse the district court.

We conclude, therefore, that the better interpretation of the statute is that the term "service" contemplates a double limitation; both the business and the program offering must qualify before the transmissions are eligible for the favorable rate.

SPANSKI ENTERS., INC. V. TELEWIZJA POLSKA S.A.

On December 2, 2016, after a trial, this court found that Defendant Telewizja Polska S.A. (TVP) “volitionally and intentionally infringed” Plaintiff Spanski Enterprises Inc. (SEI)'s exclusive copyrights over 51 television episodes by making those episodes available for display in the United States. On February 14, 2017, the court ordered TVP to pay damages to SEI in the amount of $60,000 per episode, for a total of $3,060,000. On February 24, 2017, SEI filed a motion for attorney's fees and costs, pursuant to 17 U.S.C. § 505 and Fed. R. Civ. P. 54(d)(2). Having considered the parties' filings and relevant precedent, and for the reasons that follow, TVP is hereby ORDERED to pay SEI reasonable attorney's fees in a final amount to be determined.

District of Columbia

NICHOLS V. CLUB FOR GROWTH ACTION

Club for Growth Action is a political organization that broadcast a 30–second political advertisement on Wisconsin television and the Internet in September 2015. The advertisement challenged the record of former-Senator Russ Feingold, who was then running for re-election against Ron Johnson. Roger Nichols, an individual, and Three Eagles Music, a division of Roger Nichols, Inc., sue Club for Growth Action, alleging that the advertisement violated copyrights held by Three Eagles Music and Mr. Nichols' rights under trademark law. Club for Growth Action moves to dismiss, arguing that Plaintiffs' allegations have plead them out of court by demonstrating that its use of the copyrighted work was fair use. The Court finds that Plaintiffs have adequately alleged a copyright violation and will not decide the issue of fair use without discovery.

AMERICAN SOCIETY FOR TESTING AND MATERIALS V. PUBLIC.RESOURCE.ORG, INC.
Before the court are motions and cross-motions for summary judgment in two related cases. Because there is significant factual and legal overlap between the two cases, the court issues this consolidated opinion to be filed in both cases.


Plaintiffs moved for summary judgment, and Defendant filed cross-motions for summary judgment in both cases. . . . [T]he ASTM Plaintiffs' motion for summary judgment is GRANTED and Defendant's cross-motion is DENIED. The AERA Plaintiffs' motion for summary judgment is GRANTED IN PART AND DENIED IN PART, and Defendant's cross-motion is DENIED. . . .

1. Feist Prong 1: Ownership of a Valid Copyright. a. Ownership. The ASTM Plaintiffs produced copyright certificates for each of the nine standards at issue, and each of these certificates list the ASTM Plaintiffs as the authors of the works. The AERA Plaintiffs also produced the copyright certificates for the 1999 Standards, listing the AERA Plaintiffs as authors. Two of ASTM's standards . . . were registered more than five years after they were published. The court accords these the same evidentiary weight as if they had been registered within five years . . . . Defendant failed to meet its initial burden, since it did not adduce any additional evidence disproving Plaintiffs' authorship. Instead, Defendant points to weaknesses in the additional evidence that Plaintiffs proffered to establish their ownership . . . . Beyond showing that Plaintiffs' recordkeeping could perhaps be more thorough, Defendant has not identified any evidence that either the ASTM Plaintiffs or AERA Plaintiffs do not own the copyrights of the standards, in whole or in part. . . .

b. Valid Copyrights. . . . (i). Methods or Systems under Copyright Act § 102(b). Defendant primarily argues that the Plaintiffs' standards are completely devoid of creative expression and are merely recitations of processes or procedures that a person or entity would follow . . . . However, simply calling a work a "procedure" or a "method" does not revoke its copyright protection under the Copyright Act . . . . Defendant also emphasizes that because the Plaintiffs' standards are highly technical, complex, and precise, and because testimony shows that the ASTM Plaintiffs attempt to create the "best" standards, then the standards are "dictated by utility" or just "discovered facts," and lack any creative expressive content. However, the court rejects the argument that voluntary consensus standards, such as those here, are analogous to a list of ingredients or basic instructions in a recipe, or a series of yoga poses, as in the cases cited by Defendant. Not only is there a vast gulf between the simplicity of an ingredient list and the
complexity of the standards, but, more importantly, the standards plainly contain expressive
content. . . . Importantly, Baker and § 102(b) bar Plaintiffs from attempting to copyright the
system or method itself, not the written work explaining or describing that method. Here, the
copyright protections held by the Plaintiffs do not prevent any person or entity from using or
applying the procedures described in the standards, only from copying their written descriptions
of those standards. Defendant presented no evidence that the Plaintiffs have sought to block an
entity or person from using the procedures described in the standards. In fact, use of the
procedures described is the entire purpose of such voluntary consensus standards. . . .

(ii). Loss of Copyright Upon Entering the Public Domain. . . . Defendant argues that Sections
102(b) (no protection for systems or methods) and 105 (no protection for Government-authored
works) should be read together to indicate that Congress intended that there be no copyright
protections for incorporated standards because, like judicial opinions—which the Supreme Court
nearly two hundred years ago determined could not be copyrighted—the standards, once
incorporated, are "legal facts" which cannot be copyrighted. . . . Congress was well aware of the
potential copyright issue posed by materials incorporated by reference when it crafted Section
105 in 1976. . . . From 1966 through the present, Congress has remained silent on the question of
whether privately authored standards and other works would lose copyright protection upon
incorporation by reference. If Congress intended to revoke the copyrights of such standards when
it passed the NTTAA, or any time before or since, it surely would have done so expressly. . . .

(iii). Merger Doctrine. . . . [T]he standards maintain copyright protection. At the time they were
authored, there were certainly myriad ways to write and organize the text of the standards, and,
for the reasons discussed above, the standards did not lose their copyright protections upon
incorporation by reference into federal regulations. Therefore, the merger doctrine neither
precludes a finding of copyrightability nor serves as a defense for Defendant.

(iv). Scènes à Faire Doctrine. . . . there is a great deal of difference between every detail of the
phrasing, explanation, and organization across thousands of pages of standards, which Defendant
argues is entirely dictated by Plaintiffs' broad desires for accuracy and clarity, and the inclusion
of a generic bar room scene in a romantic drama where the audience expects it. . . . The court
concludes that the scènes à faire doctrine does not act as a bar to the copyrightability of
Plaintiffs' standards and does not serve as a defense for Defendant's display of the standards

merit there may be in Defendant's goal of furthering access to documents incorporated into
regulations, there is nothing in the Copyright Act or in court precedent to suggest that
distribution of identical copies of copyrighted works for the direct purpose of undermining
Plaintiffs' ability to raise revenue can ever be a fair use. The court thus concludes that the fair use
document does not serve as a valid defense for Defendant's conduct.

SPANSKI ENTERPRISES, INC. V. TELEWIZJA POLSKA S.A.
On December 2, 2016, this court determined that TVP infringed SEI's copyrights with regard to 51 TVP Polonia episodes that SEI had registered in the United States . . . . The court solicited further briefing as to the appropriate amount of statutory damages. Having considered the parties' filings and the relevant precedent, it is hereby ORDERED that Telewizja Polska shall pay Spanski Enterprises $60,000 per work, for a total of $3,060,000.

Federal Circuit

MILO & GABBY LLC V. AMAZON.COM, INC.

Milo & Gabby LLC and Karen Keller (collectively, "Milo & Gabby") appeal from decisions of the Western District of Washington finding that Amazon.com, Inc. ("Amazon"), through its provision of an online marketplace for third parties and its "Fulfillment by Amazon" services, does not infringe the patents, copyrights, and trademark of Milo & Gabby. Because the district court did not err in granting summary judgment on Milo & Gabby's copyright and trademark allegations, and because Milo & Gabby failed to preserve its patent infringement arguments, we affirm . . .

B. Copyright Infringement Claim. Milo & Gabby argues that the district court erred when it found Amazon not liable for copyright infringement because, in its view, Amazon is liable under 17 U.S.C. § 106 (2012) as both (1) a "seller" of the accused products, and (2) a "distributor" of the accused products . . .

1. Milo & Gabby's "Seller" Liability Theory . . . For all these reasons, we find that Milo & Gabby has failed to provide us any reason to find that Amazon is a seller of the pillowcases at issue. Because the third-party sellers retain title to the pillowcases at all times and Amazon, as relevant to this case, merely provides an online marketplace followed by logistical and shipping services after the third-party seller has completed its transaction with a buyer, Amazon is not a seller in this case for the purposes of copyright infringement under 17 U.S.C. § 106.

2. Milo & Gabby's "Distributor" Liability Theory . . . Milo & Gabby has failed to show that the Fulfillment by Amazon service constitutes a "sale" of the accused products in this case. Its "distributor" theory, therefore, depends on its argument that Amazon's actions meet the "other transfer of ownership" aspect of the statute and that such transfers need not include the passage of title by the party allegedly effectuating the transfer . . . . We note, moreover, that, based on the authorities cited above, whatever the phrase "other transfer of ownership" might mean, it too would seem to require an actual transfer of title from the distributor to the recipient.

DAVIDSON V. UNITED STATES
This is an action for copyright infringement. Plaintiff claims a copyright in a large replica of the Statue of Liberty located on the grounds of the New York, New York Hotel & Casino in Las Vegas. It is undisputed that the United States Postal Service used a photograph showing the head of plaintiff's statue on one of its stamps, believing it to have been a picture of the original. Pending are motions for summary judgment by plaintiff and defendant. Plaintiff's motion seeks partial judgment as to liability. Defendant's motion seeks summary judgment of non-infringement based on a comprehensive legal defense—photographic copying of a public architectural work does not constitute copyright infringement. . . . As we ruled at the close of argument, both motions are denied and the matter remains set for trial on both liability and damages. . . .

The government's argument assumes that the only relevant protection for the replica can be as an architectural work. It completely ignores, however, the independent protection for sculptural works that pre-existed the addition of Section 120 in 1990. . . . The premise behind the government's defense is thus wrong. Even if the replica were viewed by the public as a design element of the casino, as defendant's experts contend, that does not strip plaintiff's work of its protection as a sculpture.

First Circuit
Court of Appeals for the First Circuit

SMALL JUSTICE LLC V. XCENTRIC VENTURES LLC

These consolidated appeals concern a lawsuit that involves a number of claims arising under, respectively, federal copyright law, state tort law, and Massachusetts's catch-all consumer protection statute . . . . The defendant in the suit is Xcentric Ventures, LLC (“Xcentric”), which operates a website, the RipoffReport.com (“Ripoff Report”). The named plaintiffs are Richard Goren (“Goren”), a Massachusetts attorney; Small Justice LLC (“Small Justice”), a corporate entity that Goren created; and Christian DuPont (“DuPont”). The plaintiffs' claims all pertain to a dispute arising from two reports that DuPont authored and then posted on the Ripoff Report and that are highly critical of Goren, who had provided legal representation to a plaintiff in an unrelated matter in which DuPont was the defendant.

In the first of these appeals, we affirm the District Court's decision to dismiss the plaintiffs' claims under Massachusetts law for libel and intentional interference with prospective contractual relations, and to bar portions of the plaintiffs' multi-faceted chapter 93A claim from going forward. We also affirm the District Court's decision to grant summary judgment to Xcentric as to the remaining claims. In the second appeal, we affirm the District Court's decision to award attorney's fees and costs to Xcentric. . . .

As to the copyright infringement claim, the District Court concluded, through the footnote that it appended to its initial ruling granting summary judgment to Xcentric, that Xcentric could not be liable for infringement due to the nonexclusive license that Xcentric had received from DuPont. The District Court concluded that “DuPont conveyed a nonexclusive, irrevocable license to
Xcentric to display the "[two postings]" when DuPont clicked the check box next to the accompanying text stating that a user who posts on the Ripoff Report agrees to give an "irrevocable right[ ]" to Xcentric to display his postings on the Ripoff Report website. As a result, the District Court held, even if Xcentric was not "the owner of the copyright to [DuPont's postings]," Xcentric could nevertheless "display them in perpetuity" without infringing DuPont's copyright. . . .

First, the plaintiffs argue that Xcentric offered no consideration for the irrevocable nonexclusive license that the District Court ruled Xcentric had been given by DuPont. . . . The problem with this argument, however, is that, even if consideration is necessary in order for a party to grant an irrevocable nonexclusive license . . . performance can itself constitute consideration sufficient to establish a binding contract. And, in this case, the plaintiffs concede that Xcentric did actually post the reports at issue. Thus, given that performance, the plaintiffs offer no authority or persuasive argument as to why there is insufficient consideration for the conveyance of the irrevocable nonexclusive license in this case. . . .

Second, the plaintiffs contend that the irrevocable nonexclusive license is unenforceable on public policy grounds. . . . But, while the plaintiffs contend that there is a "strong public policy against per se libel[,]" the plaintiffs offer no basis for concluding that this public policy provides a reason to hold the nonexclusive license itself invalid. The fact that one holds such a license does not in and of itself protect one from liability for libeling another. Furthermore, even assuming that DuPont's postings were per se libelous, no aspect of copyright law protects the holder of such a license from liability for libel, and nothing in the District Court's opinion suggests otherwise. Thus, the plaintiffs' assertion that there is a public policy against per se libel fails to show that this nonexclusive license may not be enforced. . . .

We also reject the plaintiffs' contention that Xcentric is not a "prevailing party" under 17 U.S.C. § 505. . . . Finally, the plaintiffs contend that the District Court abused its discretion in applying the nonexclusive Fogerty factors that the Supreme Court has identified to guide district courts in awarding attorney's fees. Here, too, we disagree.

MOTION MEDICAL TECHNOLOGIES, L.L.C. V. THERMOTEK, INCORPORATED
No. 16-11381, 2017 WL 5396406 (5th Cir. Nov. 14, 2017)

ThermoTek, Inc. convinced a jury that Mike Wilford and his companies engaged in unfair competition and fraud in violation of Texas law. The district court, however, granted judgment as a matter of law to the defendants, concluding that federal law preempted the unfair competition claim and that ThermoTek failed to prove its damages for fraud. We affirm. . . .

We agree with the district court that most of the misappropriated information— including ThermoTek's manuals, reports, billing information, and other written documents—is within the subject matter of copyright. . . .
We have twice held that Texas's unfair-competition-by-misappropriation tort does not afford protection qualitatively different from federal copyright law. . . . We do so again here.

HARIHAR V. U.S. BANK NATIONAL ASSOCIATION

Plaintiff Mohan A. Harihar ("Harihar" or "Plaintiff") brings suit against numerous defendants alleging unlawful conduct associated with the foreclosure of his home. Following this Court's April 27, 2016 Order . . . which dismissed several claims and defendants, there are 13 remaining defendants: U.S. Bank N.A. and Wells Fargo (the "Bank Defendants"); RMBS CMLTI 2006 AR-1 (the "Trust"); the Commonwealth of Massachusetts and former Massachusetts Attorney General Martha Coakley; Harmon Law Offices, PC ("Harmon"); Nelson, Mullins, Riley, and Scarborough, LLP ("Nelson Mullins"); Attorney Peter Haley; Mary Daher, Ken Daher, and the Daher Companies (the "Daher Defendants"); and Jeffery and Isabelle Perkins ("the Perkinses").

Presently pending before this Court are seven motions to dismiss all of the remaining claims against each of the remaining defendants. . . . After careful consideration of all the filings submitted by the parties, and for the reasons discussed below, this Court GRANTS all seven of the outstanding motions to dismiss and DISMISSES the Complaint with prejudice. . . .

IVYMEDIA CORP. V. ILIKEBUS, INC.

This case involves a copyright infringement dispute between two competing businesses that provide online ticketing and reservation services for bus companies. Plaintiff IvyMedia Corporation ("IvyMedia" or "plaintiff") alleges that defendants iLIKEBUS, Inc. ("iLIKEBUS"), Tong Wei and Alan Zou (collectively, "defendants") unlawfully copied its website's characteristics. Defendants' motion for summary judgment is pending before the Court. For the reasons that follow, that motion will be allowed, in part, and denied, in part. . . .
2. Plaintiff's Claim that the iLIKEBUS Website Infringes the 2005 Copyright . . . Because a derivative work is only protectable to the extent it includes protectable elements from the copyrighted work, and the GotoBus website does not contain copyrightable elements from the IvyMedia website, the GotoBus website is not protected by the 2005 copyright. Gordon, 409 F.3d at 20. Accordingly, defendants are entitled to judgment as a matter of law on plaintiff's claim that they infringed the 2005 copyright.

3. Plaintiff's Claim that the iLIKEBUS Website Infringes the 2015 Copyright . . . Comparing plaintiff's GotoBus website and the second version of the iLIKEBUS website, sufficient similarities between protectable elements exist to create a genuine dispute of material fact as to whether copyright infringement has occurred. For instance, on the left side of GotoBus's website, there is a box entitled "Schedule Features" that contains the following headings: "Roundtrip Discount", "Buy N Get 1 Free", "Wireless Internet", "Wireless Internet with Power Plug", "Power Plug Available" and "Dynamic Price". Four of those six headings appear in a box entitled "Bus Features" on the left side of iLIKEBUS's website. The placement of the box on the website and the apparent verbatim copying of the headings suffices to preserve a genuine issue of material fact as to whether the websites are substantially similar.

MALLON V. MARSHALL

John Marshall and Dennis Goebel, the prevailing defendants in the underlying copyright dispute, filed the present motion seeking fee shifting under 17 U.S.C. § 505, entitled “Remedies for infringement: costs and attorney's fees,” which allows for the discretionary award of costs and fees to the prevailing party “in any civil action” under the Copyright Act . . . .

Marshall and Goebel argue that Mallon's position that he was a co-author and co-owner of the PLoS Biology paper, and thus had the right to retract its publication, was objectively unreasonable. Even if this court could accept this, the unreasonableness of Mallon's argument would not be, by itself, dispositive following Kirtsaeng. Moreover, this Court does not find Mallon's position regarding his joint authorship was objectively unreasonable. This Court was tasked with wading through a morass of off-point argument produced by both parties, neither of whom clearly or concisely briefed or elucidated the legal question at the heart of this matter. In considering the case as a whole and all other relevant factors, this Court does not find the Defendants' argument concerning the objective unreasonableness of Mallon's position convincing, even when reiterated at length.

Defendants also raise Mallon's motivation or “bad faith.” The Court is well aware that this action is part of a broader dispute between the parties which was not before this Court. It has been onerous for the Court to pick through the ad hominem attacks, invective, hearsay, and attempts to raise irrelevant disputes that both parties, but particularly the Defendants, have indulged in throughout this matter. Mallon's academic work on a project that evolved into the publication in dispute was not acknowledged by authorship or by a right to correct or amend content with which he disagreed. Mallon sought to use copyright to assert what he felt was a legitimate right
concerning disposition and control of academic work that he contends was the result of his efforts. While the Court ultimately concluded that Mallon had no remedy in copyright, this is not to say that the Court didn't understand his motivation. The Court finds no evidence of bad faith on his part, and Defendants' attempts to (re)introduce other elements of their unsavory dispute lack merit here.

Defendants further raise the issue of deterrence. Deterrence is a factor that is properly considered in deciding a § 505 fee-shifting motion, however, in the present case, the Court sees no grounds for specific or general deterrence to favor fee-shifting. There is no reason to believe that Mallon is likely to file a series of similar suits if he is not punished by fee-shifting, and generally, as both parties appeared to have trouble putting their finger on the dispositive legal issue, this court would not want to deter future litigants from seeking redress in hard-to-decide cases.

Considering the totality of the circumstances, this Court declines to award any fees under 17 U.S.C. § 505. The parties will pay their own costs and fees.

TRUST SAFE PAY, LLC V. DYNAMIC DIET, LLC

On April 7, 2017, plaintiff Trust Safe Pay, LLC (Trust Safe) filed the operative first amended complaint (#48) against defendants Dynamic Diet, LLC (Dynamic) and Vilma and Kostas Vadoklis (the individual defendants) alleging copyright infringement, Count I, contributory infringement, Count II, and vicarious infringement, Count III, all in violation of the Copyright Act of 1976, as amended, 17 U.S.C. § 101, et seq.; misappropriation of trade secrets, Count IV, in violation of Mass. Gen. Laws ch. 93, §§ 42 and 42A; intentional fraud, Count V; common law misappropriation of trade secrets, Count VI; and violation of Mass. Gen. Laws ch. 93A, § 11, Count VII. . . . This action stems from a friendship gone awry between plaintiff's principal, Evelina Juchneviciute, her partner and co-member of Trust Safe, Darius Kersulis, and the individual defendants. The problems allegedly resulted in the individual defendants surreptitiously stealing proprietary information relating to Trust Safe, which information was then used to open and operate a competing company, Dynamic. . . . Presently before the court is defendants' motion to dismiss the amended complaint for failure to state a claim . . . .

1. Ownership of a Valid Copyright. . . . The amended complaint asserts that “Plaintiff is the assignee of three (3) applications for copyright registrations in works of visual art, which include [ ] various web-pages of Plaintiff's websites, application numbers 1-3998164856; 1-3998164250; 1-4018230311 ....” . . . Trust Safe takes the position that this allegation is sufficient to pass muster under § 411. . . . While the court need not decide the issue at this juncture – plaintiff's claim fails on other grounds . . . it notes that a plaintiff relying on the “application approach” must demonstrate that it “sent the requisite application (together with deposit and fee) to the Copyright Office.” . . . Contrary to Trust Safe's assertion that such information is “readily verifiable] ... through the Copyright Office website[,]” . . . should plaintiff choose to replead its copyright infringement claim, such a showing must be made in the repleader or via documents attached to it.
2. Copying of Constituent Elements. . . . Taking the facts alleged in a light most favorable to plaintiff, defendants, through Vilma's babysitting and/or defendants' repeated visits to plaintiff's website, may well have had access to plaintiff's protected material.

The next step in establishing actual copying requires plaintiff to demonstrate the existence of some probative similarity between the “original, protected expressive elements” of Trust Safe's works and defendants' allegedly infringing material. . . . The amended complaint alleges that defendants “copied the original expressions contained in the Art without permission and used them in their websites[,] which are distributed worldwide and displayed for the public.... Defendants used the original expressions contained in the Art with the pre-existing knowledge that such original expression was owned by Plaintiff.” . . . Defendants argue that plaintiff fails to identify its website or defendants' websites, nor does it make any comparison between the allegedly protected material and defendants' infringement of that material. . . . In an effort to rebuff this supposed inadequacy, plaintiff directs the court to the above-quoted paragraphs of the amended complaint as well as five paragraphs concerning plaintiff's algorithm. . . . These additional paragraphs fail to bolster plaintiff's position.

As a threshold matter, it is unclear whether plaintiff's algorithm is even included in its copyright applications. More troubling is the amended complaint's failure to allege with any specificity how defendants copied these protected materials. Plaintiff merely asserts that defendants visited plaintiff's website repeatedly, and that “Defendants' websites would be changed in the exact ways Plaintiff would change its website.” . . .

Plaintiff's conclusory assertions, without identification of the specific content that was protected or any explanation as to how defendants' conduct violated plaintiff's copyright protection, frustrate any effort to compare the parties' materials. . . . As plaintiff fails to proffer any specific similarities, it thus fails to show that defendants actually copied its protected material.

District of New Hampshire

INTELLITECH CORPORATION V. THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

This is an action for copyright infringement. Plaintiff, Intellitech Corporation, alleges that defendant, The Institute of Electrical and Electronics Engineers ("IEEE"), infringed its registered work, entitled "Clause for a Pipeline v. 20." By prior order, the court dismissed its claims against the individually named defendants. Defendant, IEEE, has also moved to dismiss the suit, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted. Defendant's motion to dismiss is necessarily denied, as explained below. . . .

Read generously at this stage, the complaint states a viable claim for infringement based not only on IEEE's purported publication of the Work, but based on its purported creation of a derivative work as well. The complaint alleges the Intellitech's ownership of a valid copyright . . . , and that IEEE wrongfully used its Work in at least one of the ways described in 17 U.S.C. § 106. More
specifically, Intellitech's complaint alleges that its copyright was infringed when IEEE published
derivatives of the Work to the P1838 working group. . . . Implicit in that allegation is that IEEE
created a derivative of the Work at issue, and then distributed that derivative to members of the
P1838 working group. While plaintiff's complaint is pretty thin, it sufficiently states a copyright
infringement claim for Rule 12(b)(6) purposes.

District of Puerto Rico

ACEMLA DE PUERTO RICO, INC. V. BANCO POPULAR DE PUERTO RICO, INC.

On September 30, 2015, the Court issued an Order granting a Motion for Summary Judgment
filed by defendants Banco Popular de Puerto Rico (BPPR) and Fundación Banco Popular
(Fundación) . . . . On October 30, 2015, the Court issued its Statement of Reasons: Findings of
Fact and Conclusions of Law . . . in which it found that plaintiffs' claims were barred by the
statute of limitations with regard to the pre-2010 Christmas Specials and by res
judicata/collateral estoppel as to the 2010 and 2012 Christmas Specials. Plaintiffs contended that
songs (1) through (10) listed at page 2 of our Statement of Reasons were used in the 1995-2005
Christmas Specials, that the eleventh song, “Ojos Chinos,” was used in the 2010 Christmas
Special and the twelfth song, “Boricua en la Luna,” was used in the 2012 Christmas Special. The
limitations period established by the Copyright Act, 17 U.S.C. § 507(b), requires that a copyright
claim must be commenced within three years after its accrual. A copyright claim accrues,
pursuant to caselaw cited in the Statement of Reasons, when an infringing act occurs. . . .

Accordingly, the Court's assessment is that plaintiffs did not advance a reasonable claim in this
case. Additionally, as acknowledged in Kirtsaeng, another factor to be taken into account beyond
the reasonableness of the parties' litigating positions is the need to deter repeated instances of
copyright claims as has happened in this case. Having considered the relevant factors of
deterrence and the unreasonableness of plaintiffs' litigation position, the Court reaffirms its
award of attorney's fees in favor of defendants.

District of Rhode Island

K&M INTERNATIONAL, INC. V. RHODE ISLAND NOVELTY, INC.

Before the Court is Plaintiff K&M International, Inc.'s ("K&M") Motion for Partial Summary
Judgment seeking judgment as a matter of law on two of the seven counts alleged in its First
Amended Complaint against Defendant Rhode Island Novelty, Inc. ("RINCO"). . . . For the
reasons that follow, K&M's motion is GRANTED IN PART and DENIED IN PART. . . .

Here, there is no dispute that K&M has valid copyrights for the design of the four plush toys at
issue. . . . The issue before the Court on this claim, therefore, is whether K&M is entitled to
judgment as a matter of law that RINCO copied the original design elements of the four plush
Toys at issue. . . .
The exhibits submitted by both parties demonstrate that the determination of whether RINCO's plush toys are substantially similar to K&M's copyrighted plush toys is a fact-intensive question. This inquiry is therefore not appropriate for resolution on summary judgment. This Court finds that genuine issues of material fact exist as to whether "an ordinary observer would be disposed to overlook any disparities in the works," . . . and that K&M is not entitled to summary judgment on its copyright infringement claim.

Second Circuit

Court of Appeals for the Second Circuit

FLO & EDDIE, INC. V. SIRIUS XM RADIO, INC.

Following the Court of Appeals' answer, we ordered the parties to submit letter briefs addressing the effect of the Court of Appeals' decision on the appeal before this court. In its letter brief, Appellee argued that the Court of Appeals "did not resolve [Appellant's] liability for unauthorized copying of [Appellee's] recordings and engaging in unfair competition by publicly performing those copies for profit, which the District Court had identified as separate and independent grounds for finding [Appellant] liable." . . .

In our opinion certifying the question to the Court of Appeals, however, we noted and held that The fair-use analysis applicable to this copying ... is bound up with whether the ultimate use of the internal copies is permissible. As a result, the certified question is determinative of Appellee's copying claims.... Similarly, Appellee's unfair-competition claim depends upon the resolution of the certified question. . . .

The answer to the certified question being determinative of the other claims, we REVERSE the district court's denial of Appellant's motion for summary judgment and REMAND to that court with instructions to grant Appellant's motion for summary judgment and to dismiss the case with prejudice.

Eastern District of New York

FORTGANG V. PEREIRAS ARCHITECTS UBIQUITOUS LLC

Homeowners Seth Fortgang and Rivka Fortgang (the “Fortgangs”) allege that copyrighted design elements of their home in Lawrence are being illegally infringed through the construction of a look-a-like home in neighboring Cedarhurst.

Presently before the Court is a motion by the Defendants, pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 12(b)(6), seeking to dismiss the Fortgangs' complaint on the ground that it fails to state a plausible claim under the federal Copyright Act of 1976 (the “Copyright Act”), 17 U.S.C. § 101 et seq. . . .
In the Court's view, while there is certainly something of the Fortgangs' personal expression in the selection, coordination, and arrangement of these elements of the Lawrence Home's design, the similarities outlined above generally concern attributes of all colonial-style homes that fall well short of the type of expressive content entitled to copyright protection. Accordingly, since the similarities concern only non-copyrightable elements of the Plaintiffs' work, dismissal at the pleading stage is appropriate.

YESH MUSIC, LLC V. AMAZON.COM, INC.
No. 16 CIV. 1406 (BMC), 2017 WL 1319760 (E.D.N.Y. Apr. 8, 2017)

Plaintiffs are the owners of publishing rights associated with over one hundred copyright registrations covering over two hundred musical recordings. They bring claims against defendants Amazon.com, Inc. and Amazon Digital Service, Inc. (together "Amazon" or "defendant"), alleging that Amazon infringed their copyrights by distributing phonorecords of plaintiffs' recordings on numerous online music service products without first securing "compulsory licenses," as that term is defined under the Copyright Act. Specifically, plaintiffs allege that Amazon failed to timely serve on plaintiffs valid Notices of Intent to Obtain Compulsory Licenses ("NOIs"), as the Copyright Act and applicable regulations require. Alternatively, plaintiffs bring claims against Amazon for failure to pay royalties, alleging that even if Amazon did secure compulsory licenses, it has underpaid royalty payments owed to plaintiffs by manipulating its streaming reports and deleting streaming information. . . . For the reasons given below, Amazon's motion for summary judgment is granted in part and denied in part. . . .

SCHLEIFER V. BERNS
No. 17 CIV. 1649 (BMC), 2017 WL 4011239 (E.D.N.Y. Sep. 11, 2017)

Plaintiff brought this copyright infringement action alleging that defendant's Ethiopian cookbook violated the copyright that plaintiff possesses for his own previously-published Ethiopian cookbook. Defendant moved to dismiss the amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and for attorney's fees and sanctions, both of which I granted. . . . I found the latter award of fees warranted under the Copyright Act . . . because plaintiff had pursued factual and legal contentions that were either frivolous or objectively unreasonable, and the latter award of sanctions warranted because counsel's lack of investigation, research, and attention to this matter based on these manifest deficiencies rose to a level of bad faith that warranted sanctions. I therefore ordered that plaintiff and his firm be jointly and severally liable for the attorney's fees defendant incurred in connection with her defense of this case. I had not assessed the amount of the award, as I had no briefing or evidence on the matter, so I ordered defendant to submit her itemization of costs and her contemporaneous time and billing records for defending this action.

Defendant filed her motion, including an itemization of costs, seeking $29,365 in attorney's fees and $316.15 in reimbursable costs. As part of his opposition to defendant's motion, plaintiff moved for reconsideration, asking this Court to reconsider the assessment of attorney's fees and
sanctions, or in the alternative, to reduce the amount of fees and sanctions. For the reasons that follow, plaintiff's motion for reconsideration is denied, but plaintiff's alternative motion for a reduction in fees is granted, and defendant's motion for fees is granted in part.

JACINO V. ILLINOIS TOOL WORKS INC.
No. 16 CIV. 1704 (BMC), 2017 WL 4480752 (E.D.N.Y. Oct. 6, 2017)

Before me is defendants' motion for partial summary judgment. Of the six claims in plaintiffs' amended complaint, only the following three remain: (1) claim one, copyright infringement as to two copyrights; (2) claim two, unfair competition and false designation of origin under the Lanham Act . . . ; and (3) claim four, unfair competition under New York law. Each of the three claims is brought on behalf of both Anthony Jacino and Glass Star America, Inc. (“Glass Star”). The two copyrights asserted in this action are Copyright Registration Nos. TX 4-945-858 (the “‘858 Copyright”) and TX 4-910-938 (the “‘938 Copyright). Plaintiff Jacino and non-party Gerald Jacino are co-owners of both the ‘858 Copyright and the ‘938 Copyright. Plaintiff Jacino established Glass Star and has granted it the right to use the two copyrights.

Defendants' partial summary judgment motion seeks: (1) dismissal of Glass Star's claim for copyright infringement for lack of standing; (2) to limit plaintiff Jacino's potential recovery on the copyright infringement claim to 50% of the amount of statutory damages that would be awarded because Gerald Jacino, the co-owner of the copyrights, has not joined in this action; (3) to limit consideration of the ‘938 Copyright on plaintiff Jacino's infringement claim to only the original material because the ‘938 Copyright is a derivative work that encompasses elements of another copyrighted work that plaintiffs have not asserted in this case; and (4) dismissal of plaintiffs' federal and state unfair competition claims as preempted by the Copyright Act.

With one exception, plaintiffs' arguments in opposition are without merit and defendant's motion is therefore granted in part and denied in part . . .

I. Glass Star's Copyright Infringement Claim . . . Defendants argue that Glass Star does not have standing to assert a copyright infringement claim against them because Glass Star is neither the owner nor the exclusive licensee of either of the two copyrights asserted in this action. It is undisputed that plaintiff Anthony Jacino and non-party Gerald Jacino each hold 50% ownership interest in both the ‘858 Copyright and the ‘938 Copyright, and that plaintiff Jacino's company, Glass Star, and Gerald Jacino's company, Blue Star, both have permission to use the copyrights. Because both Glass Star and Blue Star have permission to use the subject copyrights, Glass Star cannot be an exclusive licensee, and therefore, defendants contend, it cannot assert a claim for copyright infringement. . . .

Defendants argue that Glass Star does not have standing to assert a copyright infringement claim against them because Glass Star is neither the owner nor the exclusive licensee of either of the two copyrights asserted in this action. It is undisputed that plaintiff Anthony Jacino and non-party Gerald Jacino each hold 50% ownership interest in both the ‘858 Copyright and the ‘938 Copyright, and that plaintiff Jacino's company, Glass Star, and Gerald Jacino's company, Blue
Star, both have permission to use the copyrights. Because both Glass Star and Blue Star have permission to use the subject copyrights, Glass Star cannot be an exclusive licensee, and therefore, defendants contend, it cannot assert a claim for copyright infringement.

II. Plaintiff Jacino's Entitlement to Statutory Damages on the Copyright Infringement Claim. Plaintiff Jacino is only seeking statutory damages, as opposed to actual damages, on his copyright infringement claim. Defendants argue that if Jacino prevails on his infringement claim, he should be limited to recovering only 50% of the total amount of statutory damages in proportion to his percentage of ownership interest in the two subject copyrights. Plaintiff's contend that plaintiff Jacino should be permitted to recover 100% of the statutory damages because if Gerald Jacino decides that he wants to recover his share, he may pursue a claim against plaintiff Jacino. I agree with defendants that plaintiff Jacino is only permitted to recover his share of any potential damages.

III. Infringement of the ‘938 Copyright. As a third basis for limiting the copyright infringement claim, defendants request that the Court narrow the scope of the protected material in the ‘938 Copyright because it is a derivative work of material registered under Copyright Registration No. TX 4-910-936 (the “‘936 Copyright”), which is also jointly owned by plaintiff Jacino and Gerald Jacino. Because plaintiffs did not assert the ‘936 Copyright in this action, defendants argue that any material from the ‘936 Copyright incorporated into the ‘938 Copyright should not be considered when evaluating defendants’ alleged infringement of the ‘938 Copyright. Plaintiffs have failed to respond to this argument.

The ‘938 Copyright is therefore a derivative work and its protection only extends to original material in the work, not the “Clear Star Windshield Saver II – Stock #777 Blister Card,” which is protected by the ‘936 Copyright. Because plaintiffs have not asserted that the ‘936 Copyright has been infringed, the “Clear Star Windshield Saver II – Stock #777 Blister Card,” may not be considered when evaluating defendants' alleged infringement of the ‘938 Copyright.

IV. Plaintiffs' Federal and State Unfair Competition Claims. Plaintiffs have asserted a claim for unfair competition and false designation of origin under the Lanham Act and a claim for unfair competition under New York law. Defendants argue that both the federal and state claims are preempted by the Copyright Act because they are based on the same alleged conduct that constitutes the copyright infringement claim – defendants are selling repair kits with packaging and inserts substantially similar, if not identical, to the works embodied in the copyrights owned by plaintiff Jacino. I agree with defendants that the Copyright Act preempts plaintiffs’ state law claim, but it does not preempt plaintiffs' Lanham Act claim.

A. Lanham Act Claim. I agree with plaintiffs that Dastar does not preclude plaintiffs' Lanham Act claim. Plaintiffs are not claiming that defendants failed to attribute their windshield repair kit packaging and inserts to ideas created by Glass Star. They are alleging that by selling repair kits that contain substantially similar packaging and inserts as those previously made by Glass Star, defendants have created a false designation that their products are still being produced by Glass Star or approved by plaintiff Jacino.
B. New York Unfair Competition Claim . . . Here, this element is satisfied because plaintiffs' repair kit inserts and packaging are copyrightable as written and photographic works. . . . Plaintiffs have not even attempted to identify an “extra element,” nor is there any. Their New York unfair competition claim is therefore preempted by the Copyright Act.

Northern District of New York

UNIVERSAL INSTRUMENTS CORPORATION V. MICRO SYSTEM ENGINEERING, INC.

Plaintiff/consolidated defendant Universal Instruments Corporation commenced this action against defendant/consolidated plaintiff Micro System Engineering, Inc. (MSEI) and defendant Missouri Tooling and Automation (MTA) for copyright infringement, breach of contract, misappropriation of trade secrets, unfair competition, unjust enrichment, and promissory estoppel. . . .

Here, Universal satisfies its burden to show that the source code was only subject to limited publication. Under the EPA, Universal licensed the source code to MSEI for its "internal use only." . . . Thus, MSEI did not have the right to further reproduce or sell the source code to another party. Because the publication was limited, it was never "published" under the Act. . . . Therefore, the presumption of validity still applies to Universal's certificates of registrations, which MSEI and MTA have failed to rebut. . . . As such, Universal satisfies the first element of the infringement claim.

With regard to the second element of copying, however, material questions of fact remain. It is undisputed that MSEI had access to Universal's source code. . . . By contrast, the parties dispute whether MTA had access to this same source code because MSEI modified the code before providing it to MTA. . . . Additionally, the parties dispute the extent of the similarity between Universal's source code and the source code found on the subsequent THS lines. In support of Universal's position, it cites to its experts, Terry Wolfe and Richard Hooper, who opine that software found in the THS1A line existed before the MSEI project and is identical or "almost an exact match" to the source code found in the subsequent THS lines. . . . In support of MSEI's position, it cites to the declaration of its own expert Timothy Rickard who opines that the source code found in the THS1A line was customized for MSEI and is substantially different from that found in Universal's pre-existing code. . . . These differing opinions present a battle of the experts, which must be resolved by a jury. . . . Accordingly, Universal's motion for summary judgment on this claim is denied.

Southern District of New York

FISCHER V. FORREST

Plaintiff James Fischer brought these two related copyright and trademark infringement actions against defendants. Presently before the Court are defendants' motions to dismiss certain claims in Fischer's Third Amended Complaint in both actions. (14 Civ. 1304, Dkt. Nos. 102, 105, 108;
For the reasons set forth below, the motions should be granted as to Fischer's trademark counterfeiting and New York right of publicity claims, but otherwise denied.

At least some of Fischer's copyright infringement claims are timely in both actions. Defendants ignore that “when a defendant commits successive violations, the statute of limitations runs separately from each violation.” The complaint in 14 Civ. 1304 alleges that Fischer asked defendants to cease their infringement in April 2011, “but Defendants refused, and continued their infringement” by displaying Fischer's copyrighted works online. Fischer has plausibly alleged that the infringement “starting in” March 2011 was the beginning of a longer course of action by defendants that has not ended. Fischer's complaint in 14 Civ. 1307 more specifically references the same copyrighted phrases that defendants allegedly used “to promote their own knock-off product from 2011 to the present,” and includes website links and supporting exhibits as proof that the infringement occurred as late as 2014. Defendants therefore cannot establish from the face of either complaint that all of the allegedly infringing acts occurred outside the limitations period such as to warrant complete dismissal of Fischer's claims.

Plaintiffs Energy Intelligence Group, Inc. (“EIG”) and Energy Intelligence Group (UK) Limited bring claims against defendant Scotia Capital (USA), Inc. (“Scotia”) under the Copyright Act of 1976, 17 U.S.C. § 101 et seq. (the “Copyright Act”) alleging willful infringement of plaintiffs' registered copyrights. Defendant moves to dismiss Counts III and IV of plaintiff's four-count complaint under Rule 12(b)(6), Fed. R. Civ. P. for failure to state a claim upon which relief can be granted, arguing that they are barred by the statute of limitations, and to strike any allegations of infringement under the remaining counts that are likewise barred by the statute of limitations. Based on the allegations set forth the complaint the Court cannot rule as a matter of law that the statute of limitations bars plaintiffs from recovery and defendant's motion is thus denied.

Keeping in mind the requirement that all reasonable inferences be drawn in the non-movant's favor when deciding a motion to dismiss, the Court cannot conclude, based only on the pleadings, that plaintiffs were on inquiry notice of the infringement more than three years before the filing of the complaint. Neither the discrepancies between the designated delivery email addresses and the names of the Authorized Users, nor the fact that plaintiffs had filed lawsuits against other parties based on factually similar infringement allegations so obviously indicates infringement that it would be appropriate to dismiss or strike any part of the complaint at this juncture. A statute of limitations is a fact-based affirmative defense which may be better addressed on a more complete record at the summary judgment stage or at trial.

Plaintiffs Latin American Music Company, Inc. bring claims against defendant Spanish Broadcasting System, Inc. under the Copyright Act of 1976, 17 U.S.C. § 101 et seq. (the “Copyright Act”) alleging willful infringement of plaintiffs' registered copyrights. Defendant moves to dismiss Counts III and IV of plaintiff's four-count complaint under Rule 12(b)(6), Fed. R. Civ. P. for failure to state a claim upon which relief can be granted, arguing that they are barred by the statute of limitations, and to strike any allegations of infringement under the remaining counts that are likewise barred by the statute of limitations. Based on the allegations set forth the complaint the Court cannot rule as a matter of law that the statute of limitations bars plaintiffs from recovery and defendant's motion is thus denied.

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Plaintiffs Latin American Music Company, Inc. ("LAMCO") and Asociación de Compositores y Editores de Musica Latinoamericana de Puerto Rico, Inc. ("ACEMLA") bring this action for copyright infringement against Defendant Spanish Broadcasting System, Inc. ("SBS"). Specifically, Plaintiffs allege that Defendant improperly broadcast thirteen songs owned by Plaintiffs on its Spanish-language radio stations without first obtaining licenses from Plaintiffs.

A. Failure to Establish Ownership of the Fania Works. Defendant argues that, because Plaintiffs' infringement claims as to the Fania Works depend on assertions of ownership that are time-barred, Plaintiffs' corresponding infringement claims fail as a matter of law. The Court agrees. Accordingly, since "a time-barred ownership claim will bar a claim for copyright infringement where ... the infringement claim cannot be decided without adjudication of a genuine dispute as to the plaintiff's ownership of the copyright," Plaintiffs' claims of infringement with respect to the Fania Works fail as a matter of law.

B. Evidence of Infringement. Defendant also argues that it is entitled to summary judgment on Plaintiffs' infringement claims as to three other songs at issue in this litigation - Aniversario, La Malanga a/k/a La Malanga Brava, and Chumalacantela / Maquinolandera - on the ground that there is no admissible evidence that these works were actually played by Defendant. The Court disagrees. Accordingly, since Bernard's testimony constitutes at least some evidence that Defendant played the songs at issue, the Court finds that Plaintiffs have introduced sufficient evidence of infringing activity to defeat summary judgment on this issue. Defendant's additional challenges to Bernard's testimony - such as the absence of notes or other documents corroborating Bernard's recollection - go to the weight of Bernard's testimony and are thus more appropriately raised at trial on cross examination.

C. Statutory Damages Versus Actual Damages. With respect to all of Plaintiffs' infringement claims alleged in the third amended complaint, the Court finds that Plaintiffs have elected statutory damages in lieu of actual damages by failing to introduce any evidence of actual damages.

D. Innocent Infringer. Defendant also renews the argument from its last motion for summary judgment that, even if it did infringe Plaintiffs' copyrights, it is an "innocent infringer." Here, Defendant essentially argues that, because the Court's September 23 opinion held that Defendant possessed valid licenses from BMI and ASCAP, Defendant is protected as an innocent infringer. But Defendant appears to ignore the Court's determination in the same opinion that it was unable to conclude whether Defendant was an innocent infringer without a fuller record. On the instant motion, Defendant points to no additional evidence that would satisfy Defendant's burden to establish its subjective good faith and objective reasonableness.

SARA DESIGNS, INC. V. A CLASSIC TIME WATCH CO. INC.
Joshua L. Simmons
joshua.simmons@kirkland.com


Defendants have moved to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff has cross-moved for a preliminary injunction to prohibit Defendants from manufacturing, importing, and selling via wholesale or retail channels, the allegedly infringing watch designs at issue. For the following reasons, Defendants' motion is granted and Plaintiff's motion for a preliminary injunction is denied. . . .

Defendants move to dismiss Plaintiff's federal copyright claim, arguing that Plaintiff's copyright registrations are invalid because wrap watches as a concept are not protectable by copyright law, that there is no substantial similarity between the Plaintiff's watches and those sold by Defendants, and that Plaintiff cannot claim that a single certificate of registration covers multiple styles of watches. . . . Accordingly, because the Complaint has not plausibly pleaded on its face valid copyright registration covering any of the watch images submitted with the Complaint, Defendants' motion to dismiss the federal copyright claim is granted.

FOX V. INTERNATIONAL CONFERENCE OF FUNERAL SERVICE EXAMINING BOARDS

Plaintiff Trent Fox ("Plaintiff") filed this Action against Defendants Deborah Orecki ("Orecki") and the International Conference of Funeral Service Examining Boards (the "Conference," and collectively "Defendants"), alleging that Defendants breached a contract and violated his constitutional rights. . . . Plaintiff is also seeking certain declaratory relief, including a declaration that the Conference's copyrights are invalid and that certain provisions of a non-disclosure agreement are unconscionable. Before the Court are Defendants' Motions To Dismiss the Amended Complaint (the "Motions") pursuant to Federal Rule of Civil Procedure 12(b)(6). . . . The Conference is seeking to dismiss every cause of action except for Plaintiff's breach of contract claim (claim 5). Orecki is seeking the dismissal of all of the causes of action asserted against her. For the reasons explained herein, Orecki's Motion is denied as moot because Plaintiff has withdrawn all claims against her with prejudice . . . and the Conference's Motion is granted. . . .

In this Action, no "case of actual controversy" exists between the Parties. Even if Plaintiff is successful on his copyright claims, his injuries-the 5-year ban on retaking the NBE, the invalidation of his NBE scores, and the $500 fine-cannot "be redressed by a favorable decision."
This is so because Plaintiff was not punished for violating the Conference's copyrights; instead, the Conference determined that Plaintiff breached the Non-Disclosure Agreement. Even if the Court were to determine that the Conference's copyrights are invalid or that Plaintiff had an implied license to distribute exam questions, the Conference would not be required to retract the punishments it imposed. In that circumstance, the Court's decision would be purely advisory. Accordingly, Plaintiff's copyright declaratory judgment claims are dismissed.

Furthermore, even if Plaintiff could demonstrate the existence of an actual controversy, the Court finds that the copyright claims are duplicative of his breach of contract claim and would decline to exercise jurisdiction over them.

CENGAGE LEARNING, INC. V. SHI
No. 13 CIV. 7772 (VSB), 2017 WL 1063463 (S.D.N.Y. Mar. 21, 2017)

Plaintiffs Cengage Learning, Inc., Elsevier, Inc., McGraw-Hill Global Education Holdings, LLC, Pearson Education, Inc., and John Wiley & Sons, Inc., (collectively "Plaintiffs") brought this copyright and trademark action against Defendant Mike Shi ("Shi"), doing business as BolteBooks.com and eBookAve.com (the "Websites," and collectively with Shi, "Defendants"). Before me is the detailed and thorough Report and Recommendation of Magistrate Judge Frank Maas issued on September 3, 2015... recommending that Plaintiffs be awarded $5 million in statutory damages under the Copyright Act, plus prejudgment interest from the date the Complaint was filed, calculated at the rate set forth in 28 U.S.C. § 1961... The Report also recommends that a permanent injunction be entered against further infringing activities by Defendants... Plaintiffs filed an objection to the Report on September 16, 2015, arguing that they are entitled to the full $16,590,000 in statutory damages which they requested, but otherwise agreeing with the Report's conclusions... Because I agree with Magistrate Judge Maas's determination that Plaintiff's statutory damages should be limited to those under the Copyright Act, and that $5,000,000 is an appropriate amount to compensate Plaintiffs for their losses and to deter Defendants' infringing conduct, I ADOPT the Report and Recommendation in its entirety, and grant Plaintiffs' Motion for Default Judgment and Permanent Injunction Against Defendants.

HORIZON COMICS PRODUCTIONS, INC. V. MARVEL ENTERTAINMENT, LLC
No. 16-CV-2499 (JPO), 2017 WL 1157160 (S.D.N.Y. Mar. 27, 2017)

Plaintiff Horizon Comics Productions, Inc. ("Horizon") filed a complaint in this action against Marvel Entertainment, LLC; MVL Film Finance, LLC; Marvel Worldwide, Inc.; Marvel Studios, LLC; DMG Entertainment, LLC; Paramount Pictures Corp.; and Walt Disney Studios Motion Pictures, Inc. ("Marvel" or "Defendants"), on April 4, 2016, alleging copyright infringement under the Copyright Act, 17 U.S.C. § 101, et seq. (Dkt. No. 2 ("Compl.").) Marvel moves pursuant to Federal Rule of Civil Procedure Rule 12(b)(6) to dismiss the Complaint, on the grounds that the elements of Plaintiff's works alleged to have been copied are not protectable as a
matter of law and are, in any event, not substantially similar to Defendants' works. For the reasons that follow, the motion is granted in part and denied in part.

A. The Promotional Art . . . This is not a case where only non-copyrightable elements exist in the work, nor is it one where the Court can conclude, at this stage, that "no reasonable jury, properly instructed, could find that the two works are substantially similar" based on their "total concept and overall feel." . . . As such, Marvel's motion to dismiss Horizon's claim of copyright infringement as between the promotional poster for Iron Man 3 and the promotional piece of art for the Radix comic, as shown in Exhibit B to the Complaint, is denied.

B. The Mechanized Body Armor . . . An average observer would clearly see the dissimilarities between the works and would not conclude that one was copied from the other. . . . The mechanized armor employed by Marvel in its Iron Man and Avengers films are, as a matter of law, not substantially similar to those created by Horizon, and no reasonable juror, properly instructed, could conclude otherwise.

LATIN AM. MUSIC CO. V. SPANISH BROAD. SYS., INC.

Plaintiffs Latin American Music Company, Inc. ("LAMCO") and Asociación de Compositores y Editores Musica Latinoamericana de Puerto Rico, Inc. ("ACEMLA") bring this action for copyright infringement against Spanish Broadcasting System, Inc. ("SBS"). Having presided over a bench trial, the Court issues the following findings of fact and conclusions of law in accordance with Federal Rules of Civil Procedure 52(a) and (c). For the reasons set forth below and stated on the record at the April 17, 2017 trial, the Court finds that Plaintiffs have failed to meet their burden of proof with respect to all of their claims. Accordingly, the Court enters judgment for Defendant.

Plaintiffs have not met their burden of proving infringement because they failed to show, by a preponderance of the evidence, either of the elements of copyright infringement: (1) that they are the valid owners or exclusive licensees of the copyrights to the Songs, and (2) that Defendant's radio stations played the Songs on the dates and times alleged. Bernard's testimony that LAMCO is "the owner" of the copyright registrations covering the Songs is the only evidence Plaintiffs introduced to satisfy the first element. . . . However, Bernard provided only conclusory testimony, which was directly rebutted and acknowledged to be incorrect by Bernard himself on cross-examination. Bernard plainly admitted that his sister-in-law, not LAMCO, owns the rights to the songs, which were transferred to her in 2002. . . . And while Plaintiffs argued that the Sub-Publishing Agreement transferred certain of Ms. Vera's rights back to LAMCO, including the right to sue, they did not prove that the right to sue is equivalent to being an owner or exclusive licensee of the Songs. Either way, Plaintiffs failed to rebut the claim that the Sub-Publishing Agreement automatically terminated in 2014 when LAMCO entered bankruptcy proceedings that lasted for more than 30 days. . . . Plaintiffs have clearly failed to demonstrate, by a preponderance of the evidence, that they are the valid owners or exclusive licensees of the copyrights to the Songs.
With regard to evidence of infringement, the only evidence Plaintiffs presented that the Defendant actually played the Songs in question was the testimony of Bernard. But, as noted above, the Court rejects Bernard's testimony as incredible, self-contradictory, implausible, and evasive. Bernard's testimony, standing alone, is therefore not sufficient to demonstrate, by a preponderance of the evidence, that Defendant infringed on Plaintiffs' rights under the Act.

ESTATE OF SMITH V. CASH MONEY RECORDS, INC.

Plaintiffs the Estate of James Oscar Smith (the "Estate") and Hebrew Hustle, Inc., bring this copyright infringement action against Defendants Cash Money Records, Inc., Universal Republic Records, UMG Recordings, Inc., Universal Music Group Distribution, Corp., EMI Music Publishing Management, LLC, Universal Music-MGB NA, LLC, Warner/Chappell Music, Inc., Sony/ATV Music Publishing, LLC, Aubrey Drake Graham, Mathew Jehu Samuels, Jordan Evans, Apple, Inc., and Amazon Digital Services, Inc. (collectively, "Defendants"). Plaintiffs and Defendants both move for summary judgment. . . . Because there is a genuine dispute of material fact as to ownership and copying, neither party is entitled to summary judgment on Plaintiffs' infringement claims. For the reasons discussed above, however, this Court finds that any liability for Defendants' appropriation of JSR is barred by the doctrine of fair use. Accordingly, Plaintiffs' motion for summary judgment is denied and Defendants' motion for summary judgment is granted.

TCA TELEVISION CORP. V. MCCOLLUM

The plaintiffs in this action, successors-in-interest to the estates of William "Bud" Abbott and Lou Costello (collectively, the "Abbott and Costello Successors")-who together became known as the comedy duo Abbott & Costello-claimed that the defendants, producers of the Tony-nominated play Hand to God (collectively, the "Hand to God Producers"), infringed the copyright in the comedy routine known as "Who's on First?" (also called the "Routine"). The defendants prevailed before the Second Circuit and now seek attorneys' fees pursuant to the Copyright Act's fee-shifting provision, 17 U.S.C. § 505 ("Section 505"). I recommend granting the motion and awarding the Hand to God Producers $50, 123.04 in attorneys' fees and costs.

PK MUSIC PERFORMANCE, INC. V. TIMBERLAKE

Before me is the motion to dismiss of Defendants William Adams p/k/a will.i.am d/b/a will.i.am Music Publishing, i.am composing, llc, will.i.am music, inc., and BMG Rights Management (US) LLC d/b/a BMG Sapphire Songs (the "moving Defendants"). on behalf of themselves and the other named defendants (collectively, "Defendants"). . . . Defendants seek to dismiss Plaintiff
PK Music Performance, Inc.'s copyright infringement claim for all time periods prior to February 17, 2013, arguing that Plaintiff may only recover damages for the time period dating three years back from the filing of the complaint. For the reasons that follow, Defendants' motion to dismiss is denied with leave to refile. . . .

The viability of Defendants' motion to dismiss comes down to a dispute between the parties related to how the Supreme Court's pronouncement of a limitation of three years of retrospective relief from the date a copyright infringement claim is filed . . . interacts with the Second Circuit's adoption of the “discovery rule” when determining recovery for claims brought under the Copyright Act . . . .

In any event, Defendants also note that Plaintiff's “purported delayed discovery of the claims at issue” is “implausible,” and provide a brief summary of the reasons why Plaintiff should have discovered the alleged infringement at an earlier date. . . . Because I find that this issue may be case dispositive and, if found in Defendants' favor, moot Defendants' argument as to the issue of damages, I decline to consider the question raised by Defendants in their motion at this juncture.

KONANGATAA V. AM. BROAD. COS.
No. 16-CV-7382 (LAK), 16-CV-7383 (LAK), 16-CV-7472 (LAK), 2017 WL 2684067 (S.D.N.Y. Jun. 21, 2017)

These previously dismissed copyright infringement actions are before the Court on defendants' joint motion for awards of attorneys' fees pursuant to Section 505 of the Copyright Act and for sanctions pursuant to Section 1927 of the Judicial Code and the inherent power of the Court. . . . This Court concludes, in the exercise of its discretion, that awards of attorneys fees to the defendants would much better serve the purposes of the Copyright Act than the denial of such awards. The question of the amount of the awards, as defendants suggest, will be determined in subsequent proceedings.

GRECCO V. ASSOCIATED PRESS

Plaintiff Michael Grecco brings this action against Associated Press ("AP"), Hearst Communications, Inc., Hearst Seattle Media, LLC, Telegraph Media Group Limited and other John Doe publishers (collectively, "Defendants") for copyright infringement and related claims. Associated Press, joined by Hearst Communications, Inc., and Hearst Seattle Media, LLC, move pursuant to Federal Rule of Civil Procedure 12(c) for a partial judgment on the pleadings that dismisses Plaintiff's claims for statutory damages and attorney's fees associated with his claim for copyright infringement and dismisses his request for a declaratory judgment. . . . For the following reasons, Defendants' motion is DENIED relative to Plaintiff's copyright infringement claims and GRANTED as to Plaintiff's declaratory judgment claim. . . .
[V]iewed in the light most favorable to the Plaintiff, Defendant's request for judgment on the pleadings must be denied. In cases in which a Rule 12(c) or Rule 12(b)(6) motion has succeeded in dismissing claims for statutory damages and attorney's fees associated with copyright infringement claims, the plaintiff included the first date of infringement in the complaint. . . . There is no such allegation here and, critically, the date of first infringement appears to be a disputed fact. Pl. Resp. at 15. Therefore, the Amended Complaint plausibly alleges copyright infringement for which statutory damages and attorney's fees may be awarded.

FISCHER V. FORREST

Plaintiff James Fischer brought these two related copyright and trademark infringement actions against defendants. Presently before the Court are defendants' summary judgment motions in both actions. . . . For the reasons set forth below, the motions should be GRANTED in their entirety. . . .

II. DEFENDANTS HAVE NOT SHOWN THAT FISCHER'S COPYRIGHT REGISTRATION IS INVALID. Defendants challenge Fischer's copyright registration on a number of grounds, arguing that: (1) Fischer failed to provide a proper deposit copy resulting in an invalid registration certificate; (2) Fischer made material misrepresentations in his copyright application that render it invalid; (3) the four Phrases contained in the Fischer's Bee-Quick advertisement are not entitled to copyright protection; and (4) Fischer's copyright registration is not for the four Phrases, but the entire Fischer's Bee-Quick.com website. . . .

[Even if the “true” brochure was not submitted, the initial deposit copy of Fischer's website material included the four Phrases. . . . Defendants have not met their burden of showing the absence of a genuine issue of material fact on this issue. . . . Fischer's testimony and his emails with the Copyright Office registration specialist do not prove a misrepresentation to the Copyright Office. . . . “The ‘ordinary’ phrase may enjoy no protection as such, but its use in a sequence of expressive words does not cause the entire passage to lose protection. And though the ‘ordinary’ phrase may be quoted without fear of infringement, a copier may not quote or paraphrase the sequence of creative expression that includes such a phrase.” . . . The Court accordingly should find that Fischer's brochure-and the four Phrases as a whole-is a copyrightable creative work.

III. FISCHER CANNOT OBTAIN STATUTORY DAMAGES OR ATTORNEYS' FEES FOR DEFENDANTS' ALLEGED COPYRIGHT INFRINGEMENT. . . . Brushy Mountain continued to use the same or a substantially similar advertisement for Natural Honey Harvester in its 2012 through 2014 catalogs, and on its website until at least December 28, 2011. . . . Fischer's February 7, 2011 copyright registration therefore post-dates defendants' first acts of infringement via their website and catalog (December 26, 2010 and January 21, 2011, respectively). . . . Fischer thus is barred from recovering statutory damages or attorneys' fees from defendants for their alleged copyright infringement. . . .
Here, defendants' (alleged) infringement of Fischer's copyright in December 2010 was part of a series of related infringements by defendants and the Vendors of the same copyrighted work. Although defendants and the Vendors may lack a formal licensor-licenssee relationship present in Bouchat, Fischer claims that defendants authorized the Vendors to market the product and allegedly infringing ad. If true, defendants and the Vendors thus would be jointly and severally liable for the Vendors' infringement. . . . This relationship suffices to connect defendants and the Vendors as “participant[s] in a line of related copyright violations.” . . . The Court holds for the purpose of assessing statutory damages under § 412 and § 504(c) that the Vendors' (alleged) infringement commenced on December 10, 2010 when Brushy Mountain's first infringing act took place, thus barring statutory damages and attorneys' fees against defendants for vicarious or contributory infringement based on the Vendors' infringement.

IV. FISCHER HAS NOT ESTABLISHED A DMCA CLAIM . . . A. The Fischer's Bee-Quick Bottle Photo . . . Fischer cannot establish a DMCA violation with respect to the metadata allegedly embedded in the Fischer's Bee-Quick photo because he submitted no evidence as to the contents of the metadata. . . .

B. The Brochure . . . Fischer must show that defendants “intentionally remove[d]” CMI that was “conveyed in connection with copies ... of [his] work or ... displays of [his] work.” . . . The relevant “work” here is the source material, i.e., the brochure, from which the defendants created a derivative advertisement using the four Phrases, and yet another derivative advertisement that removed “Fischer's Bee-Quick.” . . . Thus, defendants did not remove any CMI from Fischer's work itself. . . . Alternatively, assuming arguendo that the “work” is the four Phrases collectively, Fischer's DMCA claim fails because he has not shown that the Phrases contain any CMI.

GRAHAM V. PRINCE

Donald Graham brings this action against Richard Prince, Gagosian Gallery, Inc., and Lawrence Gagosian for copyright infringement arising out of Prince's failure to seek Graham's permission to use one of his photographs in creating the “appropriation art” for which Prince is well known. Prince used Graham's photograph, Rastafarian Smoking a Joint, to create an artwork known as Untitled (Portrait) (“Untitled”), which was featured by defendants as part of an exhibition called New Portraits, as well as in the catalog for that exhibition, a billboard displayed in New York, and in a post by Prince on the social media platform Twitter.

Defendants have asserted the affirmative defense of fair use and moved to dismiss the Corrected Amended Complaint (the “Complaint”), with prejudice. . . . Defendants also urge the Court to limit, as a matter of law, Graham's damages claims to any profits obtained from the sale of Untitled; to restrict the bounds of possible statutory damages, attorneys' fees, and costs that plaintiff may recover; and to bar plaintiff from seeking punitive damages.
Because the affirmative defense of fair use requires the Court to engage in a fact-sensitive inquiry that cannot be completed in this case on a motion to dismiss the complaint, defendants' motion is denied. . . . With respect to defendants' request to limit Graham's potential damages, the Court grants defendants' request to bar Graham from seeking punitive damages but otherwise denies that request. . . .

FAIR USE . . . 1. Purpose and Character of the Use . . . Viewing Graham's Rastafarian Smoking a Joint and Prince's Untitled side-by-side, it is evident that Prince's work does not belong to a class of secondary works that are so aesthetically different from the originals that they can pass the Second Circuit's “reasonable viewer” test as a matter of law. . . . Untitled, along with the Catalog for Prince's New Portraits exhibition, are both commercial works.

2. Nature of the Work . . . Because defendants do not dispute that Rastafarian Smoking a Joint was both creative and published, this factor favors Graham.

3. Amount and Substantiality . . . Verbatim copying of an entire copyrighted work militates against a finding of fair use. . . . The Court cannot weigh the third fair use factor in favor of defendants at the motion to dismiss stage. Unlike the works at issue in Cariou and Bill Graham, Prince's Untitled does not obscure Graham's original photograph but instead reproduces it in its entirety, in a size that enables the original to retain its full aesthetic appeal. According to defendants, Prince needed to use the entirety of Rastafarian Smoking a Joint because he was commenting on an Instagram post which itself already contained Graham's complete photograph. But, as defendants effectively concede, only a determination that Prince's use of the photograph was transformative could enable this factor to weigh in their favor.

4. Effect on the Potential Market for the Copyrighted Work . . . Although the Court does not now have sufficient factual information to conclude whether or not defendants have actually usurped the market for Rastafarian Smoking a Joint, this factor cannot weigh in defendants' favor at the motion to dismiss stage because plaintiff has adequately pled that the “target audience and the nature of [Prince's Untitled work and the New Portraits Catalog] is the same as [Graham's] original.” First, the Complaint alleges that Graham and Prince both market their artwork to “fine art collectors” and display it in fine art galleries, including galleries that display works by both artists. Second, plaintiff has also pled facts that allow the Court to draw a reasonable inference that Prince's work can serve as a substitute for Graham's original work, notwithstanding Prince's alterations. . . .

LIMITATION OF DAMAGES . . . 1. Actual Damages . . . Defendants argue that actual damages in this case cannot exceed defendants' profits from the sale of Untitled because plaintiff has not alleged any actual “lost sales, licensing, or other business opportunities” and because any licensing fee awarded in this case “would necessarily be less than the profits garnered from the sale of [Untitled].” . . . However, defendants have not pointed to any cases that hold that reasonable licensing fees may only be awarded if specific lost licensing opportunities are expressly alleged in the Complaint. . . . Moreover, defendants' position that any reasonable licensing fee will necessarily be lower than defendants' profits from the sale of Untitled is itself unsupported by any materials submitted to the Court. The determination of a reasonable
licensing fee for Rastafarian Smoking a Joint is a question of fact, which could call for the
calculation of the fair market value of licensing the photograph in multiple additional contexts,
including the Catalog, the Billboard, and possibly even the Twitter Compilation. The fact that the
reasonable licensing fee might ultimately be lower than the as yet undetermined profits from the
sale of Untitled does not compel the Court to limit plaintiff's potential damages on the basis of
the pleadings. . . .

2. Infringers' Profits . . . In this case, Graham has not only alleged that defendants directly
profited from the sale of Untitled . . . but has also claimed that Prince indirectly profited by using
Graham's photograph in “promotional and advertising materials” for other New Portraits works
and exhibitions . . . and that Gagosian Gallery and Gagosian “benefited financially from the
publicity and notoriety” they received from the New Portraits exhibition, in which Untitled was
included . . . . Graham has adequately pled a causal nexus between the alleged infringement and
indirect profits by alleging facts-such as the selection of Untitled to appear in a catalog for the
New Portraits exhibition and in a billboard displaying Prince's works-from which it can be
reasonably inferred that the infringing photograph generated profits beyond those earned from
the direct sale of Untitled. . . .

1. Statutory damages and attorneys' fees . . . Here, Graham alleges that Untitled was created and
displayed as part of the New Portraits exhibition prior to the October 20, 2014 registration date
of Rastafarian Smoking a Joint. . . . Therefore, as Graham concedes, 17 U.S.C. § 412(2)
precludes him from recovering statutory damages or attorneys' fees related to Untitled. However,
it would be premature for the Court to determine now whether plaintiff is precluded as a matter
of law from recovering such damages and fees for the other allegedly infringing works. At this
early stage, a decision to bar statutory damages and attorneys' fees for the Twitter Compilation
and Billboard would necessarily be premised on an impermissible prejudgment that these works
can only be infringements if Untitled was one, as well. Accordingly, the Court denies without
prejudice defendants' request to limit the statutory damages and attorneys' fees available to
plaintiff for the Billboard and Twitter Compilation.

HIRSCH V. CBS BROAD. INC.

Plaintiff Steven Hirsch, a photojournalist based in New York City, brings this action against CBS
Broadcasting, Inc. and CBS Interactive, Inc. (together, “CBS”) under the Copyright Act, 17
U.S.C. § 101 et seq. (the “Act”), for copyright infringement and for alteration of copyright
management information. Hirsch alleges that CBS infringed his copyright by using a photograph
Hirsch had taken, without first obtaining a license or his consent, in an episode of the CBS
television program 48 Hours. Hirsch also alleges that CBS intentionally cropped Hirsch's “gutter
credit” out of the photograph, and that this act constitutes unlawful alteration of copyright
management information.

CBS now moves to dismiss Hirsch's complaint for failure to state a claim under Federal Rule of
Civil Procedure 12(b)(6). For the reasons that follow, CBS's motion is denied. . . .

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A. Copyright Infringement—De Minimis . . . Here, having conducted such an inquiry, the Court concludes that a reasonable jury could find substantial similarity between the Photo and CBS's alleged copying of it in the Episode; that the copying was not, as a matter of law, de minimis; and that CBS infringed Hirsch's copyright. . . .

B. Copyright Infringement—Fair Use . . . Applying these familiar principles, the Court holds that CBS's claim of fair use cannot be resolved on the motion to dismiss. Whether or not this defense ultimately proves meritorious, CBS's fair use of the Photo has not been “so clearly established by the complaint as to support dismissal,” . . . .

Here, the fair use inquiry does not turn on visual differences. Instead, CBS simply reproduced a substantial proportion of the Photo, inserting it into a broadcast episode of 48 Hours. CBS's claim that appropriating the Photo for this purpose was fair use will therefore turn on an assessment of the context and content of the Episode. One issue will be whether CBS's use qualifies as “news reporting” or “commentary,” and thus a favored use under the statute. While the Court could hazard an assessment of this factor based on the four corners of the Episode, discovery of the Episode's overall context and content will enable a more careful assessment of how and whether the Episode's use of the Photo “serv[ed] the public by providing access to important ... information,” . . . . Relatedly, CBS's claim that its use of the Photo was “transformative” is not self-evidently correct based on a visual inspection. CBS included the Photo in the Episode, making no changes in it except the apparently non-substantive change of cropping it. Its inclusion of the heart of the Photo in a discussion of events from some seven years ago, does not so obviously “imbue [the Photo] with a character ... different from that for which it was created,” . . . . as to permit a finding, on the pleadings, of transformative character. Discovery is necessary to resolve that claim. Finally, further development of the record is warranted, to clarify what, if any, new insights and understandings were created by CBS's use of the Photo here. Newsworthiness of the subject matter is not enough. . . . As to these and potentially other salient aspects of the fact-intensive fair use inquiry, the pleadings and cognizable materials—limited to the Complaint, the Photo and the Episode—do not contain enough factual content to enable a solid assessment.

C. Removal of Copyright Management Information . . . Here, the conduct pled supplies a fair basis on which to infer this element. Review of the Episode clearly reveals a cropping out of Hirsch's gutter credit from the Photo. The amount of material cropped out was minimal, and within it, Hirsch's photo credit was prominent. It is therefore fairly inferred, at the pleading stage, that the CBS employee(s) who excised Hirsch's photo credit did so aware that a photo credit was being eliminated and that the photo as cropped would therefore appear on a televised episode. The facts adduced in discovery, of course, may place CBS's elimination of Hirsch's photo credit in a more benign light; they may, for example, reveal the cropping to have been inadvertent. But, making all reasonable inferences in Hirsch's favor, as the Court must, the Complaint's allegations that the removal was intentional and knowing and undertaken in support of CBS's infringement of the Photo give rise to a plausible inference of intentional removal of CMI.
Defendants Carlin America, Inc. and Edward B. Marks Music Company bring this motion for attorney's fees in connection with a copyright-infringement action that the Court dismissed on December 30, 2016. . . . For the reasons stated below, the Court denies the motion. . . .

Considering the Fogerty factors, the litigation as a whole, and the purposes of the Copyright Act, the Court has little difficulty concluding that Defendants' request for fees must be denied. Because of the substantial weight accorded to the third factor, the Court begins its analysis with the objective reasonableness of Plaintiff's litigation position and then proceeds with the remaining Fogerty factors.

Plaintiffs Jose Luiz Peleaz, Inc. and Jose Peleaz bring this copyright infringement suit against Defendants McGraw-Hill Global Education Holdings, LLC and McGraw-Hill School Education Holdings, LLC (Collectively “MHE”). Plaintiffs filed their first complaint on July 6, 2016. (Compl. . . .). After some discovery, Plaintiffs filed a Second Amended Complaint (“SAC”), containing numerous new allegations of copyright infringement. (Second Amended Compl. . . .). Defendants MHE have filed a motion to dismiss the Complaint in part for failure to comply with the pleading requirements of Federal Rules of Civil Procedure 8(a) and 12(b)(6). . . . For the reasons set forth below, the Court DENIES Defendants' motion to dismiss. . . .

Copyright Registration . . . Plaintiffs adequately plead copyright registration with respect to the images referenced in Exhibit 2, as well as the images referenced in the remaining exhibits attached to the Second Amended Complaint.

In its second Amended Complaint, Plaintiffs clearly state that they “own the copyrights to the photographic images depicted in Exhibits 1-4 hereto,” and that all of the photographs “have been registered with the United States Copyright Office.” . . . Plaintiffs need not allege copyright registration with any more precision in order to satisfy pleading standards. . . .

Photograph Identification . . . The information contained within the Exhibit sufficiently puts MHE on notice of which photographs Plaintiffs claim were infringed.

Plaintiff Archie MD, Inc. (“Archie”) brings this action against defendant Elsevier, Inc. (“Elsevier”) alleging infringement of its copyright in hundreds of 3–D medical animations that it had previously licensed to Elsevier, breach of the parties' license agreement, and
misappropriation of its trade secrets. On the parties' cross motions for summary judgment, the Court granted summary judgment to Elsevier on all of Archie's claims save for its claim arising out of Elsevier's alleged derivative use of one of Archie's animations. . . . Having referred a question bearing on the validity of Archie's copyright registration for that animation to the Register of Copyrights pursuant to Section 411(b)(2) of the Copyright Act, and having received a response that did not definitively resolve the validity of the registration, the Court now once again considers Elsevier's motion for summary judgment with regard to Archie's remaining claim, and, for the reasons explained below, denies the motion and instructs the parties to contact the Court in order to schedule a trial on the remaining claim. . . .

In sum, the Court concludes that, while the '274 Registration contained inaccurate information in that it described as unpublished a work that had already been published by virtue of its licensing and delivery to Elsevier, such inaccurate information was not included with knowledge that it was inaccurate, and therefore, under 17 U.S.C. § 411(b)(1), that registration may serve as a prerequisite for Archie's remaining copyright claim. The Court therefore denies Elsevier's motion for summary judgment as to that claim . . . .

JETMAX LTD. V. BIG LOTS, INC.

This case centers around a copyright infringement dispute between plaintiff Jetmax Limited ("Jetmax") and defendants Big Lots, Inc. ("Big Lots"), Advance International, Inc. ("Advance"), and Herbert Feinberg ("Feinberg") regarding Jetmax's Metal Wire Wrapped Tear Drop Light Set (the "Tear Drop Light Set"), the subject of U.S. Copyright Registration No. VAu 978-587 (the "'587 Copyright Registration"). The Tear Drop Light Set is an ornamental light set comprised of a series of molded, decorative tear shaped covered lights with a wire frame over the covers.

Now before the Court is plaintiff's motion for summary judgment . . . and defendants' cross-motion for summary judgment . . . . Plaintiff seeks a judgment that defendants have willfully infringed the '587 Copyright Registration through their sale of a substantially similar light set. . . . In opposition, and in furtherance of their cross-motion, defendants argue that plaintiff does not own a valid certificate of copyright registration and that the Tear Drop Light Set is not copyrightable. . . . Specifically, defendants argue that the Tear Drop Light Set is not copyrightable because it is a useful article and because it lacks originality. . . .

As discussed below, the Court determines that under the Supreme Court's recent decision in Star Athletica, L.L.C. v. Varsity Brands, Inc. . . . the Tear Drop Light Set contains artistic elements that "can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." . . . Accordingly, the Court rejects defendants' argument that the Tear Drop Light Set in its entirety it is not entitled to copyright protection as a useful article. The Court also finds, however, that there are genuine disputes of material fact concerning whether plaintiff owns a valid certificate of copyright registration covering the Tear Drop Light Set and whether the Tear Drop Light Set is sufficiently original to warrant copyright protection.
Accordingly, plaintiff's motion for summary judgment is DENIED and defendants' cross-motion for summary judgment is also DENIED.

CHIC HOME DESIGN, LLC V. NEW JOURNEY GROUP LTD.  

This is a case about textile design copyrights. Plaintiffs Chic Home Design, LLC and The Luxury Bedding Co. (collectively, “Chic Home”) claim to own copyrights to three textile patterns named “Livingston Comforter,” “Euphoria Yellow,” and “Pink Floral.” Chic Home accuses Defendant New Journey Group Limited (“New Journey”) of infringing those copyrights. New Journey claims that Chic Home's copyright was improperly registered and is therefore invalid. New Journey also asserts a counterclaim for tortious interference with contract.

New Journey has filed a motion for summary judgment. For the reasons that follow, that motion is denied. . . .

Validity of the Registrations . . . When viewed as registering derivative works, Chic Home's registrations are clearly inaccurate in three ways. First, the registrations do not classify the designs as derivative works. Second, the registrations list a Booming employee as the author instead of a Chic Home employee. Third, the registrations say that Chic Home obtained the copyright by written transfer, which is inconsistent with Chic Home's claim that it was the owner of the derivative work from its inception. . . .

Anticipating this problem, Morad Nasiri, Chic Home's president, states in his declaration that when Chic Home registered the three designs, it intended to copyright both the original works (which it believed it owned by virtue of Chic Home's dealings with Booming) and the “enhanced” designs that were produced using Chic Home's input. . . . As to the mistakes regarding authorship, transfer, and classification, Nasiri declares that Chic Home did not provide the wrong information intentionally or knowingly. . . .

Viewing the facts in the light most favorable to Chic Home, the Court concludes that there remains a genuine dispute over whether Chic Home really intended to register a derivative work. Likewise, there is a genuine dispute, as discussed below, over whether the “enhanced” designs were copyrightable as derivative works. Chic Home, by submitting a sworn declaration from Nasiri, adduced evidence that it authored a derivative work, that it intended to register a derivative work, and that the errors were not intentional. That evidence is enough to stave off summary judgment on the issue of the registration's validity. . . .

Originality . . . Here, Chic Home has submitted a sworn affidavit by Nasiri detailing the changes made to the original CAD files. These include changing colors, adjusting the embroidery, and adding ruffles and buttons. . . . The Court therefore concludes that there is a genuine dispute on the issue of originality.
AUTOMATED MGMT. SYS., INC. V. RAPPAPORT HERTZ CHERSON ROSENTHAL, P.C.

Plaintiff Automated Management Systems, Inc. (“AMSI”), a developer and licensor of software products, commenced this action against Defendants Rappaport Hertz Cherson Rosenthal, P.C. (“RHCR”), its four named partners William Rappaport, Steven M. Hertz, Eliot J. Cherson, and Michael C. Rosenthal (collectively with RHCR for the purposes of the instant motion, “Defendants”), and non-moving Defendant Branko Rakamaric, who has filed an Answer to the Complaint. Plaintiff claims that Defendants and Rakamaric have infringed on Plaintiff's copyrights to certain software, and further asserts common-law tort claims against Defendants and Rakamaric. . . . Defendants have moved pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the Complaint for failure to state a claim. . . .

The Court has carefully considered the submissions of the parties in connection with the instant motion and, for the following reasons, Defendants' motion to dismiss is granted. . . .

Defendants assert that AMSI has failed to state a claim for copyright infringement because the LTLS licensed to RHCR in the Agreement is not the work copyrighted in either the L&T Copyright or the Landlord & Tenant Copyright, and that, accordingly, AMSI has failed to state a claim for copyright infringement. The Court agrees. . . .

The AC also asserts in a wholly conclusory fashion that Defendants “have reproduced the copyrighted works,” without alleging any factual material from which the Court could conclude that Defendants' alleged infringement involved the software or portions of the software whose copyright was registered in either the L&T Copyright or the Landlord & Tenant Copyright. . . . It is equally plausible, drawing only from the sparse allegations in the AC, that the LTLS software licensed to RHCR is an unregistered derivative work of one or both of the registered copyrighted works, which would be insufficient to support a viable claim for infringement. . . .

Accordingly, because the AC does not identify with any specificity the registered copyrighted work that Defendants allegedly copied, nor proffer allegations of infringement that identify with specificity the portions of those registered works that were in fact copied by Defendants, AMSI has failed to state a claim for copyright infringement, and Count One of the AC is dismissed. In light of the dismissal of Plaintiff's sole federal claim, the Court declines to exercise supplemental jurisdiction of Plaintiff's state-law claims, and accordingly the AC will be dismissed in its entirety against Defendants. AMSI will be given leave to replead facts sufficient to demonstrate that Defendants' alleged infringement was of a work covered by a registered copyright.

DICKERSON V. WB STUDIO ENTERS., INC.

Plaintiff Ronald Dickerson, also known as JD Lawrence, commenced this copyright infringement suit against a number of Defendants on April 12, 2016. On August 8, 2016, Plaintiff filed the operative First Amended Complaint . . . (the “FAC”), naming as Defendants
Metro-Goldwyn-Mayer Studios Inc. (“MGM”), Showtime Networks, Inc. (“Showtime”), and WB Studio Enterprises, Inc. (“WB” and, collectively with MGM and Showtime, “Defendants”). Defendants have now moved to dismiss the FAC pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim for which relief may be granted. . . . [F]or the following reasons, Defendants' motion to dismiss is granted. . . .

Applying these standards, the Court finds, as a matter of law, that Barbershop is not substantially similar to the Script or the Recording of Scissors. A comparison of the “total concept and overall feel” of the works makes the differences between them plain. Scissors is, at its core, a play that conveys a religious message – it draws on Biblical themes, and Gospel songs, and makes repeated references to faith and the importance of belief. Scissors is a dramatic work, though one with humorous asides, that deals with complex themes of fatherhood, sickness, forgiveness, and salvation. The primary dramatic tension in Scissors centers on the travails of Job, who suffers the loss of his job and his parents and must cope with those problems. Barbershop, by contrast, is fundamentally a comedic work. It contains no significant religious themes or subtext. The primary dramatic tension involves the threat of the loss of the barbershop, and the efforts of Calvin to save an important part of his life and the life of his community.

Plaintiff seeks to establish substantial similarity through the aggregation of small elements of Scissors – drawing principally from the Recording – that are comparable in some way to Barbershop. As an initial matter, this dissection is not the appropriate means by which substantial similarity is to be shown. . . . A consideration of the elements Plaintiff identifies reveals many of them to be stock elements, or scenes à faire, of a story set in a barbershop or a workplace in general (three barbers' chairs; a pay phone on the wall; one female employee; tension between local businesses). Plaintiff also highlights many aspects of purported character similarity that are equally stock elements (a father figure who is wise and kind; a pregnant woman; a sassy and attractive female employee; a troubled young man wearing a black bandanna).

The few examples Plaintiff provides of direct similarity between Scissors and Barbershop are insufficient to establish substantial similarity of the overall works. . . . Nor has Plaintiff shown that there is “comprehensive non-literal similarity” between the works. . . . The similarities Plaintiff identifies do not speak to the fundamental essence of either work – indeed, by picking and choosing among small aspects of each work in search of comparable elements, Plaintiff only highlights the degree to which the works are, at their core, highly distinct creative works.

NARRATIVE ARK ENTMT LLC V. ARCHIE COMIC PUBS., INC.
No. 16 CV 6109 (VB), 2017 WL 3917040 (S.D.N.Y. Sep. 5, 2017)

Plaintiff Narrative Ark Entertainment, LLC (“Narrative Ark”) brings this action against Archie Comic Publications, Inc. (“Archie”) and Sega of America, Inc. (“Sega”), alleging claims of copyright infringement, violations of the Lanham Act . . . deceptive business practices under the New York General Business Law, and common law claims of unfair competition and unjust enrichment. Narrative Ark also seeks a declaratory judgment that certain of Archie's copyright registrations are invalid. Archie brings a counterclaim against Narrative Ark and a third-party
complaint against third-party defendant Scott D. Fulop, seeking a declaratory judgment that certain of Narrative Ark's copyright registrations are invalid. Archie also brings a third-party claim for slander of title against Fulop.

Before the Court are . . . Archie's partial motion to dismiss Narrative Ark's Lanham Act, unfair competition, and unjust enrichment claims pursuant to Rule 12(b)(6) . . . . For the reasons set forth below, Archie's motion is GRANTED . . . .

1. Lanham Act Claim . . . The Court rejects plaintiff's suggestion that the holding of Dastar is limited to works in the public domain. As other courts in this District considering this question have concluded, Dastar's holding barring Lanham Act claims premised on the false designation of the origin of ideas, concepts, or communications embodied in tangible goods, does not turn on whether the work is still under copyright protection or in the public domain . . . . Moreover, Narrative Ark's reliance on Levine v. Landy is misguided. In that case, the court distinguished its facts from Dastar and its progeny, concluding the plaintiff alleged the defendants had misrepresented the origin of the photographs themselves, rather than the ideas, concepts, or communications embodied in the photographs . . . . Such an argument is inapplicable here.

2. Unfair Competition Claim . . . Narrative Ark's state law unfair competition claim is likewise foreclosed by Dastar. “Although Dastar construed the Lanham Act, ‘it is well recognized that the standards for Section 43(a) claims of the Lanham Act and unfair competition claims under New York Law are almost indistinguishable.’ ” . . . And “[u]nder Dastar, ... the law of unfair competition does not allow a claim for false or misleading representations as to the origin of the content of a ‘communicative product.’ ” . . .

4. Unjust Enrichment Claim . . . Archie argues Narrative Ark's unjust enrichment claim is preempted by federal copyright law. The Court agrees . . . . Narrative Ark's unjust enrichment claim is based on Archie's allegedly illicit use of Narrative Ark's stories, characters, and artwork in its publications and advertisements—conduct that constitutes infringement of a copyright owner's exclusive rights under 17 U.S.C. § 106 and the same conduct on which Narrative Ark's direct and contributory copyright infringement claims are premised. This theory of unjust enrichment is “essentially equivalent to rights protected by the Copyright Act” and thus Narrative Ark's unjust enrichment claim relating to the use of copyrighted material is preempted.

LOMBARDO V. DR. SEUSS ENTERPRISES, L.P.
No. 16 CIV. 9974 (AKH), 2017 WL 4129643 (S.D.N.Y. Sep. 15, 2017)

Plaintiff Matthew Lombardo is the author of Who's Holiday! (the “Play”), a comedic play that makes use of the characters, plot, and setting of the Dr. Seuss book, How the Grinch Stole Christmas! (“Grinch”), to make fun of it and to criticize its qualities, i.e., to parody it. Plaintiffs Lombardo and Who's Holiday LLC seek a declaration that the Play is fair use and therefore does not infringe upon defendant Dr. Seuss Enterprises, L.P.’s copyright in Grinch. Defendant asserts counterclaims alleging copyright and trademark infringement. Plaintiffs move for judgment on the pleadings pursuant to Rule 12(c), arguing that the Play constitutes fair use of defendant's
copyright. Plaintiffs also move to dismiss defendant's counterclaims for failure to state a legally sufficient claim for relief. For the reasons stated herein, plaintiffs' motion is granted. The Play constitutes fair use and therefore does not infringe defendant's copyright in Grinch or related trademarks. Defendant's counterclaims are dismissed.

a. First Fair Use Factor: Purpose and Character of the Use . . . I hold that the Play is a parody of Grinch, and thus transformative. . . . Given that the Play's use of Grinch is transformative, it is of little significance that the use is also of a commercial nature.

b. Second Fair Use Factor: Nature of the Copyrighted Work . . . Although this factor favors defendant because Grinch is a creative work, I decline to give much weight to this factor in light of the Play's parodic nature.

c. Third Fair Use Factor: Amount and Substantiality of Use . . . The Play's use of Grinch is not excessive in relation to the parodic purpose of the copying. The Play does incorporate substantial elements of Grinch's characters, setting, plot, and style but, as plaintiffs have articulated, the Play engages in this “distorted imitation” in order to mock the original. In the Play, the character of Cindy-Lou serves an entirely different function than in the original. The Grinch, although referred to throughout the Play, does not appear as an on-stage character at all. With respect to setting, the Play takes place in a “silver bullet trailer in the snowy hills of Mount Crumpit,” a specific setting absent from the original Grinch. And, as discussed above, the Who-Ville described in the Play is considerably different from the Who-Ville depicted in Grinch. Nor does the Play copy or quote any language from Grinch verbatim. The Play does recount the plot of Grinch, but does so for the purpose of “conjuring up” the original.

d. Fourth Fair Use Factor: The Effect On the Potential Market For the Copyrighted Work . . . Here, there is virtually no possibility that consumers will go see the Play in lieu of reading Grinch or watching an authorized derivative work, such as the 2000 film Dr. Seuss' How the Grinch Stole Christmas. Grinch is a children's book intended for an all-ages audience, whereas the Play is a bawdy, off-color parody of Grinch that is clearly intended for adult audiences. “As to parody pure and simple, it is unlikely that the work will act as a substitute for the original, since the two works usually serve different market functions.” . . . The Play is not an unauthorized sequel of Grinch, and given the clear differences in tone and content, it is unreasonable to assume that audiences might confuse the Play for a theatrical version of Grinch, or that the Play would usurp the market for Grinch.

WOLSTENHOLME V. HIRST
No. 16 CIV. 4385 (JGK), 2017 WL 4277691 (S.D.N.Y. Sep. 25, 2017)

This case concerns competing intellectual property claims to use replicas of pharmaceutical pills in jewelry. The plaintiff, Colleen Wolstenholme, brings this action against Damien Hirst and Other Criteria (US), LLC, alleging copyright infringement under the Copyright Act of 1976 . . . and the Canadian Copyright Act . . . as well as state law claims of unfair competition and trade dress infringement. The plaintiff alleges that three pieces of jewelry sold by the defendants,
specifically two bracelets and a necklace, infringe on her works. All of the works at issue use replicas of pharmaceutical pills in various arrangements.

The defendants have moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. The defendants argue that the plaintiff's works are neither original nor substantially similar to their works. They further argue that plaintiff's state law claims are preempted by the United States Copyright Act. For the reasons explained below, the motion to dismiss is granted. . . .

III . . . A . . . The defendants argue that the plaintiff's jewelry lacks the requisite originality to qualify for copyright protection. . . . [A]t the argument on the current motion, the plaintiff withdrew her claim that the pills were themselves copyrightable. This concession was understandable in light of cases stating that derivative works which simply cast a prior work in a new medium are not original. . . . Accordingly, the Court dismisses the claim for copyright infringement of the Pill Charms under the United States Copyright Act. . . .

With respect to Charmed and Hail Mary, the plaintiff maintains her claim for copyright infringement, arguing that the particular selection, coordination, and arrangement of the Pill Charms on the bracelet and necklace satisfy the creativity requirement. In response, the defendants argue those works lack sufficient originality to qualify for copyright protection. . . . The creative selection, arrangement and combination of the pills used in Charmed and Hail Mary is sufficient to meet the low bar of originality. . . .

B . . . The defendants next argue that, even if the plaintiff's works are sufficiently original to warrant copyright protection, the Hirst Works nevertheless do not infringe on the plaintiff's designs because they are not substantially similar. . . . [T]he concept of pill-inspired jewelry is an unprotectable idea. . . . Any similarities in the bracelets and necklaces that stem merely from the fact that they are both pieces of jewelry that incorporate replica pills must be excluded under the substantial similarity analysis. . . .

The Hirst Bracelets contain numerous differences from Charmed in the selection, arrangement and coordination of the charms. The bracelets are comprised of different replica pill charms and a different number of pill charms. The arrangement of the charms is thus necessarily different in each bracelet. . . . Notably, two of the charms on each of the Hirst bracelets are not even replicas of pills. One bracelet has a diamond-encrusted skull charm, as well as a plaque charm which is etched with Mr. Hirst's name on the front and his signature and an edition number on the back. . . . The second bracelet has the same plaque charm with Mr. Hirst's name, as well as a pill-shaped charm engraved with Mr. Hirst's signature. . . . These are charms plainly unique to Mr. Hirst and are not similar to any charms on Charmed.

Similarly, the Hirst Necklace is different from Hail Mary in numerous ways. First, Hail Mary is cast in silver, and the Hirst Necklace is cast in gold. . . . The two necklaces incorporate a different number of replica pills in their chains: Hail Mary incorporates 62 pill replicas, and the Hirst Necklace incorporates only 5 . . . Further, the replica pills in defendants' necklace are not literal replications like those in Hail Mary, but instead contain precious jewels adorned around
the edges of the pills. . . . The pendants on the necklaces, the focal point of the jewelry, are also substantially different. Hail Mary's pendant is comprised of nine replica pills arranged to form a cross. . . . The pendant on Hirst's Necklace, by contrast, is a single replica capsule, which has been split open and has small jewel-covered beads spilling from its interior. . . . The pill in the pendant is also imprinted with Mr. Hirst's initials and those of his collaborator, along with an edition number. . . .

IV . . . In Count Two of the First Amended Complaint, the plaintiff has alleged a claim for copyright and moral rights infringement under the Canadian Copyright Act . . . . The defendants argue that this claim must be dismissed for the same reasons that the copyright infringement claim under the United States Copyright Act must be dismissed. Canadian Copyright law is substantially similar to its United States counterpart . . . . Applying the Canadian standard, there has been no infringement under the Canadian Copyright Act for the same principal reasons discussed above in the analysis of the claim for infringement under the United States Copyright Act.

V . . . In Counts Three and Four of the First Amended Complaint, the plaintiff has alleged state law claims of unfair competition and trade dress infringement. The defendants argue that these claims are preempted by the Copyright Act . . . . The parties do not dispute that the subject matter requirement has been met. Jewelry is subject to copyright protection. However, the parties dispute whether there is an extra element in the claim for either unfair competition or trade dress infringement that renders the claim “qualitatively different” from a copyright infringement claim.

B . . . Where the only source of alleged confusion stems from the fact that the defendant's products have a similar design to the plaintiff's (presumably because the design was copied), the claim is preempted. . . . [L]ike common law claims for unfair competition, a common law claim of trade dress infringement is nevertheless preempted if it is grounded solely on allegations of copying. . . . The plaintiff alleges no facts supporting her common law claims for unfair competition or trade dress infringement beyond those of mere copying. . . . Thus, the plaintiff has failed to allege, in any more than a conclusory fashion, an extra element that makes her common law claims of unfair competition or trade dress infringement “qualitatively different” from a claim for copyright infringement.

C . . . Here, in support of Count Four, the plaintiff merely alleges that the defendants have created and sold “lookalike Wolstenholme designs”. . . . This is a quintessential claim of copying, and the plaintiff has failed to allege sufficiently any extra element beyond those allegations of copying. Count Four is therefore preempted by the United States Copyright Act.

FAMEFLYNET, INC. V. SHOSHANNA COLLECTION, LLC

Plaintiff FameFlynet, Inc. (“FFN” or the “Plaintiff”), a photojournalism corporation, has moved pursuant to Federal Rule of Civil Procedure 56 for summary judgment against defendants Shoshanna Collection (“Shoshanna Collection”) and Shoshanna Group, Inc. (“Shoshanna
ABA Copyright Division
http://apps.americanbar.org/dch/committee.cfm?com=PT030000

Group") (collectively the “Defendants”), alleging direct copyright infringement in violation of 17
U.S.C. § 106. The Defendants have cross-moved for summary judgment under the same Rule to
dismiss the Plaintiff's complaint (the “Complaint”) for copyright infringement. Based on the
facts and conclusions set forth below, the summary judgment motion of the Plaintiff is granted
and the cross-motion of the Defendants is denied . . .

a. The Plaintiff Has Established a Prima Facie Claim for Direct Copyright Infringement. Here,
the Plaintiff registered a compilation of photographs published between “Jul[y] 01, 2015 to Aug
31, 2015; updated daily” with the USCO, under the title “FameFlynet Pictures Database” and
Registration Number “VA 1-971-327.” Pl's. Br. Ex. F. The Defendants concede that Plaintiff
effectively registered some compilation of photographs, but contest that the Rossum Photos are
included within this compilation . . . The Registration constitutes prima facie evidence of the
validity of Plaintiff's copyright, shifting to the Defendants the “heavy burden” of demonstrating
the invalidity of the copyright . . .

A side-by-side comparison demonstrates that, even if there are any disparities between the
Plaintiff's Rossum Photos and those published by the Defendants — which neither party alleges -
there is no doubt that an ordinary observer would not notice them. The Defendants have actually
and improperly copied the Plaintiff’s works and have accordingly infringed the Plaintiff’s
copyright absent a showing of a valid license for such use . . .

b. The Defendants Have Not Shown the Existence of a Valid License Permitting Republication
of the Rossum Photos. The Defendants assert that their republication of the Rossum Photos
does not violate the Copyright Act “because [such] republication mirrors the permitted uses
granted to Plaintiff's licensees, [so] Defendants' [sic] shared the Rossum Photos in a permitted
manner.” . . . The Defendants argue that when E! Entertainment published the Rossum Photos on
its website pursuant to its license with the Plaintiff, website visitors gained “the unfettered
ability” to republish the Photos “throughout the Internet, without any restrictions ... “ . . . The
Defendants assert that they “merely re-published the Rossum Photos in conformity with the
secondary dissemination rights available from E! Entertainment Online ....” . . .

The Defendants have not come forward with the alleged E! Entertainment license they claim as
the basis of their lawful republication of the Photos or any legal authorities in support of their
position. As the Defendants bear the burden of production . . . they have failed to demonstrate
that their publication of the Rossum Photos might be permitted pursuant to a license. For the
aforementioned reasons, the Defendants have infringed FFN's copyright in the Rossum Photos.

c. The Plaintiff is Entitled to Statutory Damages . . . The Plaintiff here seeks a sum total of
$25,000 in statutory damages and asks the Court to adjust this award up to $150,000 upon a
finding of willful infringement. . . . The Plaintiff's rather arbitrary request for $25,000 in
statutory damages is inconsistent with the general approach of trebling the highest licensee fee
paid for use of the works . . . Based on the undisputed facts that the Defendants' knowingly
saved the Photos and then uploaded them to the Website, which they completely controlled and
actively monitored, the Defendants' willfully infringed the copyright . . . However, trebling the
$75 licensee fee to $225 in accordance with this Circuit's 'willful infringement' case law still falls

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short of the mandatory minimum statutory damages of $750 under the Copyright Act. . . . Therefore, the Court approves an award of $750 to the Plaintiff.

d. The Plaintiff is Entitled to Reasonable Attorney's Fees . . . The Plaintiff's request for reasonable attorney's fees and costs is granted as it promotes the stated purposes of the Copyright Act. Specifically, shifting fees here serves to encourage and reward innovators for their contributions in the march toward progress rather than burdening them with the costs of defending their protected works. The Plaintiff's motion for reasonable costs and attorney's fees is granted.

NOBILE V. WATTS

Plaintiff Joseph Nobile is the author and copyright owner of a screenplay, alternately titled The Rootcutter and A Tale of Two Humans (the “Screenplay”), registered with the Copyright Office in 2004 and never produced as a film. Defendant Margot Louise Watts, who writes under the pseudonym M.L. Stedman, is the author of The Light between Oceans (the “Novel”), a best-selling novel published by defendant Simon & Schuster, Inc. (“Simon & Schuster”) and turned into a major motion picture (the “Film”) by defendant DreamWorks II Development Company (“DreamWorks”), and distributed by the American Broadcasting Company, Inc. (“ABC”). Defendant Storyteller Holding Co., LLC (“Storyteller”), doing business as Amblin Partners (“Amblin”) is the successor-in-interest to DreamWorks.

On January 26, 2017, plaintiff filed suit, claiming copyright infringement under 17 U.S.C. § 101 et seq., for both the Novel and the Film, and seeking actual damages, statutory damages, and attorneys' fees. He claims that Watts copied substantially from his unpublished screenplay in creating the Novel. His claims against DreamWorks, et al., are purely derivative as to his claims against Watts, as the Film is directly based on the Novel.

On March 28, 2017, Watts and Simon & Schuster (the “Novel defendants”) filed a Motion to Dismiss for failure to state a claim. . . . On March 29, 2017, DreamWorks, Storyteller, and ABC (the “Film defendants”) filed a Motion to Dismiss, also for failure to state a claim. . . . Upon review of the motions, the Screenplay, the Novel, and the Film, the Court has found that, as a matter of law, the Novel and Film are not “substantially similar” to the Screenplay. Therefore, the Court GRANTS both motions. . . .

A. Plot, Sequence, and Pace . . . The Court finds no substantial similarity in plot, sequence, or pace. The pace of the two works is dramatically different: the Screenplay takes place over the course of a few weeks, while the Novel spans decades . . .

B. Setting . . . Plaintiff argues that the settings are substantially similar as both are set on “remote storm-swept island[s].” . . . However, a setting of a remote storm-swept island is not copyrightable; scores of renowned works of literature . . . . Furthermore, here the settings are far more distinct than plaintiff implies; the Screenplay is set entirely on an Irish island that is
populated, if barren of critical natural resources, while the Novel is set on an Australian island where Tom, Isabel, and later Lucy live in total isolation. In addition, the Novel takes place in substantial part upon mainland Australia. . . .

C. Characters . . . Liam and Caitlin (the Screenplay protagonists) are not well developed; instead they are archetypes. While they call each other by name in the Screenplay, the Screenplay routinely refers to them as simply “Rootcutter” and “Rootcutter's Wife,” as if to imply a fable-like existence. To the degree that they are developed, they are palpably different than Tom and Isabel. Caitlin is a highly-superstitious, God-fearing woman whose movements are almost entirely guided by her faith in a higher power. Liam is impulsive and driven to provide his wife with a baby at all costs.

In contrast, Tom is a World War I veteran with a complex family history, a traumatic war experience, and a strong, if wavering, moral compass. Isabel is a doting mother who finds a way to convince herself that Lucy's mother must be dead. Even when she does discover that Hannah is alive, she is primarily motivated by Lucy's well-being, however misguided. . . .

D. Theme . . . The Court concedes that there are thematic similarities—both works wrestle with what it means to take a child for one’s own when one is desperate to give birth, and the psychological and spiritual consequences of that decision. However, this similarity relates to the unprotectable idea of a childless couple finding a seemingly motherless baby. . . .

E. Total Concept and Feel . . . Finally, and for the reasons discussed above, the total concept and feel of the works is distinct.

BARCROFT MEDIA, LTD. V. COED MEDIA GRP., LLC
No. 16-CV-7634 (JMF), 2017 WL 5032993 (S.D.N.Y. Nov. 2, 2017)

Plaintiffs in this case — Barcroft Media, Ltd. (“Barcroft”) and FameFlynet, Inc. (“FameFlynet”) — are the purveyors of entertainment-related photojournalism and owners of certain copyrighted celebrity and human interest photographs. Defendant Coed Media Group, LLC (“CMG”), which runs celebrity gossip and entertainment websites, displayed several of Plaintiffs' photographs (the “Images”) on its websites without paying licensing fees or otherwise getting authorization. Plaintiffs now sue for copyright infringement. CMG concedes that Plaintiffs own the copyrights to the Images and that it used the Images without prior permission. Nevertheless, it contends that Plaintiffs waived most of their infringement claims and that, in any event, CMG's display of the Images was fair use.

Last month, the Court held a one-day bench trial on Plaintiffs' claims and CMG's defenses. In this Opinion and Order, the Court provides its findings of fact and conclusions of law. Ultimately, for the reasons set forth below, the Court finds that CMG's waiver and fair use defenses fall short, entitling Plaintiffs to injunctive relief and actual and statutory damages derived from the reasonable licensing fee CMG would have paid to use the Images. . . .
Here, CMG asserts fair use with respect to eleven of the twelve Images at issue (namely, all but the Deschanel Image).

1. The Purpose and Character of the Use . . . Applying those standards here, the first factor cuts strongly against CMG. CMG's use of the Images had no transformative effect because it displayed the Images in the same manner and for the same purpose as they were originally intended to be used. Paparazzi photographs — the bulk of the Images — are designed to document the comings and goings of celebrities, illustrate their fashion and lifestyle choices, and accompany gossip and news articles about their lives. As CMG points out, such images are fleetingly relevant and have limited staying power (and therefore market power) beyond a short window in which they offer timely news and gossip about their subjects. . . . The purposes for which CMG used the Images — to serve as banner images and thumbnails for “Daily Dumps” of celebrity news (namely, the Hayek and Michele Images); to accompany articles about celebrity gossip and human interest stories (namely, the Bynes, Loughrey, and Horrocks Images); and to be included in roundups of celebrity fashion trends (namely, the Gomez Image) — are all consistent with the original intent behind taking and copyrighting the Images. Thus, CMG's use was not transformative. . . . Further counseling against a finding of fair use is the commercial nature of CMG's use of the Images. . . .

2. The Nature of the Copyrighted Work . . . This factor weighs in favor of CMG, but only marginally so, because Plaintiffs' Images are essentially factual in nature. The photographers predominantly captured their subjects in public, as they naturally appeared, and were not tasked with directing the subjects, altering the backdrops, or otherwise doing much to impose creative force on the Images or infuse the Images with their own artistic vision. Although photography, including photography of a celebrity walking around in public, certainly involves skill and is not devoid of expressive merit, the Images are further from the core of copyright protections than creative or fictional works would be. That is true even for the Horrocks Images, which are more staged than the others, as they too are factual in nature and do not reflect substantial creative expression. Nonetheless, this factor does not carry great weight in favor of a finding of fair use, particularly because “the use that [CMG] seeks to make of the material is similarly ‘non-creative’ and purely commercial.” . . .

3. The Amount and Substantiality of the Portion Used . . . Here, those considerations weigh against a finding of fair use. First, CMG used all or most of each original Image in its website displays. The Bynes, Loughrey, and Horrocks Images were used more or less in their entirety. For the Gomez Image, CMG did crop out some of the background of the photograph and portions of the singer’s body, but it nonetheless focused on the portion of the Image most likely to grab viewers' attention and induce consumers of celebrity gossip and fashion trends to view the Image — namely, Gomez's “risqué” fashion choice. Finally, the Hayek and Michele Images cut the actresses more or less in half, but provided enough content to show some of the subjects' attire and indicate the behavior in which they were engaged. More importantly, as discussed above, in each case, CMG used the Image exactly as it was intended to be used by its creators and not in a transformative fashion. As such, the “purported justification[ ]” for the use was not reasonable, and thus the qualitative and quantitative amounts used were inherently unreasonable as well. . . .
4. The Effect of the Use . . . Here, this factor also favors Plaintiffs. Because CMG displayed the Images for the very purpose for which they were originally intended, its use necessarily “usurp[ed]” the function of the original works in the market . . . . It may well be that CMG used lower-resolution versions of the original Images, but CMG has done nothing to show that there is an independent market for the higher-resolution versions or that the general audience for paparazzi and human-interest photographs would not be equally satisfied with its versions. Moreover, if CMG's practice of using celebrity and human interest photographs without licensing were to become widespread, it is intuitive that the market for such images would diminish correspondingly: If gossip and entertainment websites could use such images for free, there would be little or no reason to pay for Plaintiffs' works.

5. The Factors Considered Together . . . Considering the statutory factors together, the Court concludes that CMG's use of the Images was not fair. Collectively, the Court finds that CMG copied all or a significant part of Plaintiffs' Images without adding new information or meaning, and for the same commercial purpose that Plaintiffs originally intended for the Images, displacing and superseding the market for the original works. Reproducing a work, in whole or in substantial part, exactly as it was intended to be used by its owner, and without permission, is not “the type of use that furthers the essential goal of copyright law and should be excused from liability for infringement.” . . . Accordingly, CMG's fair use defense fails . . . .

Relief . . . In total, Plaintiffs' statutory damages come to $10,625. With the $255 in actual damages awarded for CMG's infringement of the Bynes Images, the total comes to $10,880.

JANIK V. SPIN MEDIA, INC.
No. 16-CV-7308 (JGK), 2017 WL 6021644 (S.D.N.Y. Dec. 4, 2017)

The defendant, Spin Media, Inc., objects pursuant to Rule 72(a) of the Federal Rules of Civil Procedure to an order of Magistrate Judge Andrew J. Peck denying its motion for attorney's fees and costs pursuant to 17 U.S.C. § 505 against Fran Janik, one of the plaintiffs in this action. For the following reasons, the Magistrate Judge's ruling is vacated and the matter is remanded for further consideration. . . .

Here, the Magistrate Judge ruled that Spin Media was not a prevailing party because Janik's voluntary dismissal with prejudice was not an enforceable judgment on the merits. That ruling was in error. . . . Spin Media is a prevailing party for purposes of Rule 54(d) of the Federal Rules of Civil Procedure and 17 U.S.C. § 505. Accordingly, the Magistrate Judge's decision is vacated and the motion is remanded for an assessment of whether attorney's fees and/or costs are warranted in this case.

KING ZAK INDUS., INC. V. TOYS 4 U USA CORP.
No. 16-CV-9676 (CS), 2017 WL 6210856 (S.D.N.Y. Dec. 8, 2017)
Before the Court is Defendant's Motion for Judgment on the Pleadings with respect to Plaintiff's copyright infringement claim and Defendant's noninfringement counterclaim pursuant to Federal Rule of Civil Procedure 12(c). . . . For the following reasons, Defendant's motion is GRANTED in part and DENIED in part. . . .

While a menorah or dreidel may be one of only a few ways to illustrate Chanukah, and while those items may be standard in depictions relating to the holiday, and while elements such as colors and Hebrew letters are not protected, Defendant's plate is plausibly substantially similar to Plaintiff's when these unprotectable elements are disregarded. As explained below, the Court cannot on this motion conclude as a matter of law that the similarity between the parties' paper plates and cups “concerns only non-copyrightable elements of [Plaintiff's] work, or [that] no reasonable jury, properly instructed, could find that the two works are substantially similar.”

Western District of New York

ARGENTO V. SANTIAGO FOR LOVE OF RAMON LLC

On March 17, 2016, Plaintiff Steven Argento brought this copyright and trademark infringement suit against his Aunt Marilyn Santiago. . . . On June 24, 2016, Plaintiff amended his Complaint to add Defendant All That Jazz (hereinafter “Defendant”). . . . Specifically, Plaintiff accuses Defendant of unlawfully distributing Plaintiff's copyrighted work in violation of 17 U.S.C. § 106(3), and knowingly selling merchandise bearing a false or counterfeit trade-mark in violation of Section 33.09 of the New York Arts and Cultural Affairs Law (“ACAL”). . . . On August 9, 2017, Defendant moved for summary judgment. . . . For the reasons stated below, a ruling on Defendant's Motion is DEFERRED with respect to Plaintiff's copyright infringement claim, and Defendant's Motion is GRANTED with respect to Plaintiff's ACAL claim. . . .

Because “knowing failure to advise the Copyright Office of facts which might have occasioned a rejection of the application constitute [sic] reason for holding the registration invalid and thus incapable of supporting an infringement action,” Defendant believes the Court has reason to invalidate Plaintiff's copyright registration. . . . To answer the first question, the Court concludes that Plaintiff included inaccurate information concerning the authorship of the stylized “R” on his copyright application with the knowledge that it was inaccurate. Indeed, as Defendant argues, that is the only logical conclusion to draw from the facts: Plaintiff at one point was in charge of marketing and selling all of Ramón Santiago's paintings, so he surely noticed the stylized “R” on several of those paintings. It defies reason to assume that Plaintiff coincidentally drew that same “R” without copying Ramón Santiago's. As Ramón Santiago had actually created the “R” and had been using it since at least 1993, Plaintiff surely knew that listing himself as the author of the “R” and the creation date as 2002 on the copyright registration application were inaccurate representations. Plaintiff has not rebutted Defendant's version of the facts, and in any event, the Court cannot devise any alternative explanation that Plaintiff could give. The Court refers to the Register of Copyrights the question of whether the Register would have refused registration had it known that Plaintiff was not the author of the “R.”
ABA Copyright Division
http://apps.americanbar.org/dch/committee.cfm?com=PT030000

**Third Circuit**

District of New Jersey

LIVE FACE ON WEB, LLC V. GUERRA
LIVE FACE ON WEB, LLC V. HIPPOCRATIC SOLUTIONS, LLC
LIVE FACE ON WEB, LLC V. SMART MOVE SEARCH, INC.

This matter is before the Court on Defendant's motion to dismiss the Amended Complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. The Court has reviewed the submissions and decides the matter based on the briefs pursuant to Fed. R. Civ. P. 78(b). For the reasons stated here, Defendant's motion will be denied.

The Court finds that LFOW has sufficiently pled a claim for direct copyright infringement by alleging that Defendant's website causes a copy of the LFOW Software to be automatically downloaded to the website visitor's computer in cache, memory and/or hard drive. "The specific technological mechanism by which this is accomplished may be explored during discovery." Id. Besides sufficiently alleging that Defendant reproduced the computer code, the Amended Complaint also alleges that Defendant's website distributed copies of the code to each of the website's visitors. Whether Defendant's actions were unauthorized or unlawful is not an appropriate issue at this stage of the litigation.

JORGENSEN & COMPANY V. SUTHERLAND

This matter comes before the Court on the Third Amended Complaint (styled "Amended Complaint" but hereinafter "TAC") filed by Jorgensen & Company ("Plaintiff" or "Jorgensen"). Pending before the Court is a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) filed by Defendants Gary Sutherland ("Sutherland"), Stephen Vono ("Vono"), and Dogan Tuncel ("Tuncel", together "the Individual Defendants"). For the following reasons, the motion is GRANTED in part and DENIED in part.

The Court previously held Plaintiff stated a claim for copyright infringement against NAPLIA and Sutherland. Additionally, the TAC states a claim for contributory copyright infringement against Sutherland and Tuncel. Taking the allegations in the TAC as true, Sutherland and Tuncel would have become familiar with Plaintiff's CPAGold(tm) product because they helped market it for over a decade and would be familiar with NAPLIA's allegedly infringing ProSecure product, because of their alleged roles in marketing ProSecure to Plaintiff's CPAGold(tm) customers. At the pleading stage, the Court finds this gives rise to an inference that Sutherland and Tuncel knew of the allegedly infringing activity. Furthermore, the TAC alleges Sutherland and Tuncel personally solicited proprietary information from Plaintiff and provided it to Plaza as part of the effort to convince Plaza to underwrite ProSecure. The Court finds this
alleged action constitutes a "material[ ] contribut[ion]" to the launch of ProSecure. . . . Indeed, had NAPLIA been unable to convince Plaza to underwrite the program, the alleged infringement may never have occurred.

On the other hand, nowhere in the TAC does Plaintiff allege facts describing Vono's individual role in the infringing activity, separate from NAPLIA or the other Individual Defendants. On this basis, the Court cannot conclude the TAC alleges Vono himself induced, caused, or materially contributed to the infringing activity. . . . Therefore, the copyright claim must be dismissed as to Vono, but not as to Sutherland or Tuncel.

BROADCAST MUSIC INC. V. HEMINGWAY'S CAFÉ, INC., d/b/a HEMINGWAY's CAFÉ

 Plaintiffs Broadcast Music, Inc., a “performing rights society” that licenses the rights to publicly perform copyrighted music on behalf of the copyright owners, and nine copyright owners have filed suit against Defendants Hemingway's Café, Inc., Marilyn Craparotta, and Vincent Craparotta, III, alleging ten acts of copyright infringement for publicly performing copyrighted music without a license. . . .

 Plaintiffs filed this motion for summary judgment seeking judgment in their favor on their copyright claims, statutory damages from Defendants jointly and severally, and attorney's fees and costs. . . . For the following reasons, we will grant Plaintiffs' motion for summary judgment, enter judgment in their favor, and award statutory damages and reasonable attorney's fees and costs. . . .

 There is no genuine issue of material fact that Defendants committed ten acts of copyright infringement, in violation of the Copyright Act, by publicly performing ten musical compositions owned by Plaintiffs without authorization. Therefore, we will enter summary judgment in favor of Plaintiffs on their copyright infringement claims. . . .

 We will impose statutory damages as follows: [1] For the three violations . . . occurring during the June 1, 2013 to May 31, 2014 licensing period, we award statutory damages in favor of BMI in the amount of $29,040.00, which is three times the price BMI listed for the licensing fee for the period ($9,680.00). [2] For the seven violations on October 2, 2014 that occurred during the June 1, 2014 to May 31, 2015 licensing period, we award statutory damages in favor of BMI in the amount of $29,700.00, which is three times the price BMI listed for the licensing fee for the period ($9,900.00). In total, the amount of damages awarded to Plaintiffs is $58,740.00.

MARIMAR TEXTILES, INC. V. JUDE CLOTHING & ACCESSORIES CORP.

This matter comes before the Court by way of Defendants Jude Clothing & Accessories Corporation, Jude Connally E-Commerce Corp., Jude Connally Sarasota Limited Liability
Company, Jude Connally Westfield Limited Liability Company, and Jude Connally Zimmerman's ("Defendants") Motion to Partially Dismiss Plaintiff's First Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. . . . For the reasons set forth below, the Court grants in part and denies in part Defendants Motion to Dismiss portions of Plaintiff's Complaint. . . .

Defendants' Motion regarding Plaintiff copyright infringement claim is two-fold. First, Defendants argue that Plaintiff does not own the copyright registration for “Status Geo” pattern, and is therefore barred from asserting a claim with respect to this pattern. . . . Next, Defendants assert that Plaintiff registered the remaining copyrights with the U.S. Copyright Office after the date of infringement and are therefore time barred from seeking attorneys' fees or statutory damages for any alleged infringement relating to these patterns. . . .

Preliminarily, the Court is satisfied that Plaintiff has pled a prima facie cause of action under the Copyright Act. This is because, as to all patterns, Plaintiff has pled it is the rightful owner and that said patterns have been registered with the U.S. Copyright Office. . . . Accordingly, there is a presumption of ownership. . . . Additionally, Plaintiff has properly pled that Defendants infringed on its copyrights by using the Subject Patterns, as well as Plaintiff's other patterns, without Plaintiff's authorization. . . . Accordingly, the Court is satisfied that Plaintiff has sufficiently pled a claim under the Copyright Act.

As to the “Status Geo” pattern, Defendants argue that the copyright registration is owned by Simply Swim, LLC and, therefore, Plaintiff has failed to assert proper ownership of the copyright and cannot bring a claim for infringement of same. . . . However, Plaintiff avers that, while it is true that Simply Swim, LLC initially registered the “Status Geo” copyright on August 16, 2016, Simply Swim, LLC also transferred said rights in the “Status Geo” copyright to Plaintiff on October 16, 2016. . . . Accordingly, Plaintiff is correct that it held the rights to the “Status Geo” copyright well before this action was instituted and therefore may maintain this action. The Court finds that, at this stage in the litigation, Plaintiff has pled sufficient facts concerning the ownership and infringement of the “Status Geo” copyright and, therefore, will not dismiss this claim.

Finally, Plaintiff's are correct that Defendants' statutory damages and attorneys' fees arguments are premature. . . . Indeed, whether statutory damages or attorneys' fees are warranted in a copyright infringement case is a question best decided after the matter has progressed through discovery and not at the motion to dismiss phase. . . . Accordingly, the Court denies Defendants' Motion as it pertains to statutory damages and attorneys' fees, without prejudice, with the right to re-raise same at the summary judgment phase, consistent with Greenfield v. Twin Vision Graphics . . . .

KIPCON, INC. V. D. W. SMITH ASSOCS., LLC
Joshua L. Simmons
joshua.simmons@kirkland.com

This matter comes before the Court on Defendants' D.W. Smith Associates, LLC (“D.W. Smith Associates”), Lynn Voorhees, Eugene Kazmier, and Jennifer Nevins (collectively “Defendants”) Motion to Dismiss Plaintiff Kipcon, Inc.’s (“Kipcon”) Complaint . . . pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6) . . . For the following reasons, the Court will grant Defendants' motion and will dismiss Plaintiff's claims without prejudice. . . .

Kipcon's Complaint contains neither a specific allegation that Kipcon has a valid copyright registration nor one that Kipcon has applied for a copyright. . . . Solely evaluating the Complaint, the Court finds that Kipcon has not made the requisite allegation of a valid copyright registration or pending copyright application, and thus has failed to state a claim under either the “registration approach” or the “application approach.” . . . Kipcon's bald assertions in its Complaint of copyright infringement without specifying a valid registration or pending application are insufficient to survive a motion to dismiss. . . . For these reasons, the Court will grant Defendants' motion and dismiss without prejudice Count One and Count Two.

Eastern District of Pennsylvania

TANKSLEY V. DANIELS

Plaintiff Clayton Prince Tanksley brings this action against numerous Defendants alleging that they infringed on his copyrighted work titled Cream by creating and using copyrighted materials to produce the television series Empire. . . . Defendants in this case can be divided into two identifiable groups. The first one consists of the “Fox Defendants.” . . . The second group has two Defendants: Sharon Pinkenson and the Greater Philadelphia Film Office (“GPFO”). . . . Defendants have filed two Motions to Dismiss the SAC in its entirety. . . .

A. Plaintiff Has Not Plausibly Alleged a Claim of Copyright Infringement Against Fox Defendants . . . [I]n viewing the comparisons in the light most favorable to Plaintiff, it is evident that Cream and Empire contain dramatically different expressions of plot, characters, theme, mood, setting, dialogue, total concept, and overall feel. Consequently, this Court finds that Empire is not substantially similar to Cream. Plaintiff has not stated a claim for copyright infringement against Fox Defendants. Therefore, this claim, as asserted in Count I, will be dismissed. . . .

B. Plaintiff Has Not Plausibly Alleged a Claim of Contributory Copyright Infringement Against Sharon Pinkenson and the Greater Philadelphia Film Office . . . Considering the first element of a contributory copyright infringement claim . . . [b]ecause Plaintiff has failed to plead plausible facts showing that Fox Defendants directly infringed on his copyright of Cream, he cannot state a claim for contributory copyright infringement against Pinkenson and GPFO. With respect to the second element of a contributory infringement claim . . . [t]he SAC alleges that Pinkenson and GPFO "provided a venue" by hosting Philly Pitch, where Plaintiff met Daniels and discussed Cream. . . . It also asserts that Pinkenson and GPFO required each contestant to sign a release attesting that he was presenting an "authentic and genuine" work, but that the release was lacking because it "did not...protect those works from unauthorized use by the judges." . . . These allegations, taken together, fail to show that Pinkenson or GPFO knew or had reason to know
that Daniels or the other Fox Defendants allegedly would infringe on Plaintiff's copyright.

Turning to the third element of a contributory infringement claim . . . the SAC here is devoid of plausible facts showing material contribution. Rather, the SAC alleges only that Pinkenson and GPFO provided a forum where Plaintiff met Daniels. This is not sufficient to show material contribution or inducement.

C. . . . Plaintiff's Negligence Claim is Preempted by the Copyright Act . . . "The grounds for the negligence claim are virtually the same as those for the contributory copyright infringement claim." . . . Moreover, both claims seek the same relief—"monetary damages in the form of lost profits and copyright infringement." . . . In conclusion, Plaintiff's negligence claim against Pinkenson and GPFO covers the same subject matter as that governed by the Copyright Act and lacks any extra element to avoid preemption. Therefore, this claim will be dismissed.

F. Plaintiff Has Not Plausibly Alleged a Claim of Contributory Copyright Infringement Against Leah Daniels-Butler . . As discussed above, Plaintiff has not pled plausible facts alleging a claim for direct copyright infringement against Fox Defendants. Because Plaintiff has failed to plead such facts showing that Fox Defendants directly infringed on his copyright of Cream, he cannot state a claim for contributory copyright infringement against Daniels-Butler. For this reason alone, this contributory copyright infringement claim will be dismissed.
was entirely passive, and does not support that Moving Defendants acted in concert with the infringer. Consistent with the case law cited, Moving Defendants' motion to dismiss is granted as to Plaintiff's claim for contributory copyright infringement. To allege vicarious copyright infringement, a plaintiff must plead sufficient facts to show that the defendant “has the right and ability to supervise the infringing activity and also has a direct financial interest in such activities.” . . . “Financial benefit exists where the availability of infringing material acts as a draw for customers.” . . .

As with his claim for contributory copyright infringement, Plaintiff's claim that Moving Defendants committed vicarious copyright infringement is premised on conclusory allegations. Plaintiff does not allege any facts that, if true, would support that customers are drawn to Moving Defendants' cloud storage business due to the availability of infringing work or the ability to store infringing work on the servers. Thus, this Court cannot conclude that Moving Defendants have an “obvious and direct financial interest in the exploitation of copyrighted materials,” such that they can be found liable for vicarious copyright infringement. . . . Consistent with the case law cited, Moving Defendants' motion to dismiss is granted as to Plaintiff's claim for vicarious copyright infringement.

KASHI V. MCGRAW-HILL GLOBAL EDUCATION HOLDINGS

Plaintiff Ed Kashi, a professional photographer, brings this suit under the Copyright Act . . . against Defendants McGraw-Hill Global Education Holdings and McGraw-Hill School Education Holdings LLC (collectively, “McGraw-Hill”) for using his photos in their publications without paying him. McGraw-Hill has filed a motion to dismiss or, in the alternative, to strike certain allegations. For the reasons set forth in this opinion, McGraw-Hill's motion is denied in its entirety. . . .

What remains of McGraw-Hill's motion to dismiss is its contention that plaintiff has inadequately pled the second element of the prima facie case for copyright infringement—authorized use of the original, constituent elements of Plaintiff's works—with respect to two photographs listed as entries 48 and 54 of Exhibit 1 to the Complaint as well as all claims premised on “additional publications” referred to generally in Paragraph 15 of the Complaint. . . .

In conclusion, neither Gee nor its progeny require a heightened pleading requirement. The question, thus, before the Court is whether Kashi has pled sufficient factual matter to plausibly state his claims. . . . Plausibility is not probability, but the facts alleged must be “suggestive of [the proscribed] conduct.” . . . Thus, the well-pled facts must “raise a reasonable expectation that discovery will reveal evidence of the necessary element.”

Fourth Circuit
District of Maryland

TOPLINE SOLUTIONS, INC. V. SANDLER SYSTEMS, INC.
Almost seven and a half years ago, on November 19, 2009, Topline Solutions, Inc. ("Topline, Inc.") filed suit against Sandler Systems, Inc. ("SSI") alleging, inter alia, that SSI breached two agreements between the parties. . . . In particular, Topline, Inc. asserted that SSI breached a "Co-Development Agreement" (see ECF 1-1, "CDA") and an "Agreement and Mutual Release" ("AMR"), also known as the "High Tech Boot Camp Agreement" ("HTBCA"). . . .

On August 20, 2016, nearly seven years after suit was filed, SSI moved for leave to file a counterclaim against Topline, Inc.; a third-party complaint against Steven Kramer, the founder and president of Topline, Inc.; and a second amended answer. . . . At a hearing held on November 30, 2016 . . . Judge Motz orally granted that motion, as well as SSI's second motion for partial summary judgment . . . Judge Motz's rulings are embodied in an Order of December 1, 2016 . . . Consistent with Judge Motz's ruling, SSI's submissions were docketed collectively on December 1, 2016. ECF 298. A few days later, on December 12, 2016, SSI filed an "Amended Counterclaim and Third-Party Complaint." . . . (the "Counterclaim").

In its Counterclaim, SSI asserts, inter alia, claims against Topline, Inc. for breach of contract (counts I and II); copyright infringement (Count III); and fraud/intentional misrepresentation (Count IV). Counts I, III, and IV are also lodged against Kraner as third-party defendant. . . . The claims are rooted in Topline's registration of a copyright in January 2011 of a work that SSI claims contains its intellectual property. . . .

Topline has moved to dismiss the Counterclaim . . . . Also pending is Topline, Inc.'s motion to strike SSI's newly asserted affirmative defenses in the Second Amended Answer. . . . For the reasons that follow, I shall grant the Motion to Dismiss in part and deny it in part, and I shall deny the Motion to Strike. . . .

B. Statutes of Limitations: Counts I, II, and III . . . . SSI has averred that it only discovered the alleged infringement in 2016. For the reasons stated with respect to counts I and II, Topline's Motion to Dismiss must be denied as to the claim that Count III is barred by the limitations under the Copyright Act. Although the Counterclaim was not filed within three years of the alleged copyright infringement, SSI is not required "to plead affirmatively in [its Counterclaim] matters that might be responsive to affirmative defenses even before the affirmative defenses are raised." . . .

In view of the foregoing, I shall deny the Motion to Dismiss with respect to Topline's contention that counts I, II, and III of the Counterclaim are barred by limitations, because it is not apparent from the face of the Counterclaim that SSI knew of the copyright registration at least three years prior to filing the Counterclaim . . .

E. Failure to State a Claim-Count III . . . . In Count III of the Counterclaim, SSI asserts a claim against Topline for copyright infringement, based on Topline's production and registration of Building Your Sales Factory. . . . Topline urges dismissal of Count III, claiming that SSI has failed adequately to allege which parts of BYSF infringe on SSI's copyright; SSI has not
plausibly alleged that Topline actually published SSI's copyrighted material; and, to the extent that Topline copied any of SSI's protected material, such copying was de minimis.

SSI has presented allegations sufficient to give rise to an inference that Topline produced copyrighted work, and/or prepared derivative works based upon the copyrighted work, without permission. With respect to the first Feist prong, SSI has alleged that it is the owner of a copyright. In particular, SSI has alleged that it is the owner of the Sandler Proprietary Assets and has attached as an exhibit to the Counterclaim certificates of registration for various works.

Moreover, the Counterclaim sufficiently alleges the elements of the second Feist prong. As to access, there can be little dispute that Topline had access to SSI's copyrighted materials by virtue of Topline, Inc.'s position as SSI's franchisee. And, as to copying, the Counterclaim alleges that Topline copied components of the Subject Proprietary Assets and Sandler Proprietary Assets in Building Your Sales Factory, including "pages from the HTBC Materials" and "what appears to be a customized variation of the HTBC Materials for a client by the name of Parature." Although SSI has not made precise allegations as to the specific elements of Building Your Sales Factory that were allegedly copied by Topline from HTBC Materials, SSI's allegations go beyond bald accusations and conclusory statements and satisfy Twombly's requirements of giving counter-defendants fair notice of the claims against them.

BROADCAST MUSIC, INC. V. SECOND CHANCE OPERATING VENTURES LLC

The Court has before it Plaintiffs' Motion for Summary Judgment.

A. Direct Infringement. The parties agree that Plaintiffs have proven that there was a public performance of four songs without authorization at the Sports Bar on the evening of July 12, 2016. Therefore, Plaintiffs are entitled to partial summary judgment establishing direct copyright infringement by the Sports Bar.

B. Vicarious Liability. Defendants do not dispute that Second Chance and Trujillo directly control and benefit from the Sports Bar and are liable for the infringing acts committed at the Sports Bar and should be held vicariously liable for the Sports Bars' infringements. Therefore, Plaintiffs shall be granted summary judgment establishing infringement and liability on the part of Second Chance and Trujillo.

Defendants aver, however, that Hotaling is neither an owner nor operator, nor employed by, Second Chance. Based on the record before the Court, viewed in the light most favorable to Hotaling, there is a material question of fact as to Hotaling's alleged liability. The issues include whether he had the “right and ability to supervise” or had “an obvious and direct financial interest in the exploited copyrighted materials.”

UNDER A FOOT PLANT, CO. V. EXTERIOR DESIGN, INC.
In this copyright infringement action, a jury found that defendant infringed plaintiff's copyrighted plant photographs and awarded plaintiff actual and statutory damages. Currently pending before the court is . . . Plaintiff's Motion for Award of Attorneys' Fees and Costs (“Plaintiff's Motion”) . . . For the reasons stated below, Plaintiff's Motion . . . is DENIED . . . After careful balancing of the factors set forth in Rosciszewski, the court concludes that an award of attorneys' fees is not warranted in this case.

Eastern District of North Carolina

ARNETT V. JACKSON

On October 27, 2016, Timothy J. Arnett (“Arnett”) sued Alan Eugene Jackson and Sony Music Holdings, Inc., (collectively, “defendants”) for copyright infringement under the Copyright Act . . . On November 17, 2016, defendants moved to dismiss Arnett's complaint under Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure . . . On December 15, 2016, Arnett filed an amended complaint . . . Arnett seeks an injunction, profits attributable to defendants' infringement, statutory damages, attorneys' fees, and costs . . . On January 9, 2017, defendants moved to dismiss the amended complaint under Rules 12(b)(2) and 12(b)(6) . . . As explained below, the court denies as moot defendants' motion to dismiss the original complaint and grants defendants' motion to dismiss the amended complaint . . .

Arnett contends that Jackson had access to Remember Me because it was widely disseminated and sent to third-party intermediaries who knew Jackson . . . “[T]he existence of the plaintiff's copyrighted materials on the Internet, even on a public and ‘user-friendly’ site, cannot by itself justify an inference that the defendant accessed those materials.” . . . Thus, the court does not infer Jackson's access to Remember Me based on its presence on the internet . . . Arnett has not alleged that Remember Me was a commercial success, and he offers no estimate of the amount of copies sold. At most, Arnett plausibly alleges the mere possibility that Jackson had the opportunity to listen to or copy Remember Me via Arnett's distributed recordings. That mere possibility does not suffice . . .

Arnett contends that Jackson had access to Remember Me through several third-party intermediaries: Tom Defries, who reviewed Remember Me and “had a business relationship with recording and publishing companies that also handled Mr. Jackson's works”; Dan Huff, “who was an acquaintance of Mr. Jackson”; “T. Bone Burnett, whose work includes recordings handled by Sony Music Entertainment and its labels with which [Jackson] was affiliated”; and Faith Hill, who accepted Remember Me for review and consideration for inclusion on an album and with whom Jackson performed “during that time.” . . . None of these connections constitute the “close connections” the Fourth Circuit requires.

Finally, Arnett argues that Remember When is so “strikingly similar” to Arnett's Remember Me “as to preclude reasonable explanations other than copying.” . . . To the extent Arnett goes beyond reciting legal standards, Arnett alleges that the two works are strikingly similar due to
Jackson's “mimicry of the title and theme” of Remember Me . . . But Arnett does not say what common theme the two works allegedly share or how similar they are. Arnett's bare assertions devoid of further factual enhancement do little to plausibly allege that “the two works in question are so familiar as to create a high probability of copying and negate the reasonable possibility of independent creation.” . . . Arnett's allegations of striking similarity are speculative and do not nudge his claims into the realm of plausibility.

**Western District of North Carolina**

**BROOKWOOD HOMEBUILDING AND REMODELING, LLC V. LANDIS REED HOMES, LLC**


THIS MATTER is before the Court on Defendant's Motion for Summary Judgement . . . .

Defendants contend that summary judgment is appropriate because the evidence shows that Nassar does not own the copyright and in fact shows that D&D owns the copyright to the Caswell Plans. . . . Since the copyrighted work was not registered within five years of the first publication of the work, the statutory presumptions that the registration is valid and the facts stated in the registration are accurate do not apply.

In this case, the dispute comes down to the separation of the creation of the idea of the Caswell Plans and the production of these plans. It is a variation of a distinction that Courts have been struggling to delineate. The tension between creating the idea for a work and making it tangible was described thusly . . . .

For the reasons stated, the Court will not find as a matter of law that D&D owns all copyright to the Caswell Plans. There is a genuine dispute of material fact as to the authorship of the Caswell Plans and so this Court cannot say as a matter of law Brookwood lacks standing to pursue any claim for infringement of the Asserted Copyright Registration. The Court does find as a matter of law that the Defendant lacks standing to challenge the transfer of the copyright assignment because there is no dispute about the identity of the true owner of the copyright between the owner and the transferee.

**SEDGEWICK HOMES, LLC V. STILLWATER HOMES, INC.**


THIS MATTER IS BEFORE THE COURT on Plaintiff Sedgewick Homes, LLC's (Sedgewick) Motion for Partial Summary Judgment (Doc. 45) and Defendant Stillwater Homes, Inc.'s (“Stillwater”) Motion for Summary Judgment (Doc. 63). . . . For the following reasons, Sedgewick's Motion for Partial Summary Judgment (Doc. 45) is DENIED and Stillwater's Motion for Summary Judgment (Doc. 63) is DENIED.

i. First Element: Valid Copyright . . . For purposes of its Motion for Summary Judgment, Stillwater concedes that there is at least a genuine issue of material fact with respect to whether Sedgewick holds a valid copyright. . . .
ii. Second Element: Copying of Original Elements of Plaintiff's Work.  1. Direct Evidence of Copying . . . In an effort to demonstrate that Stillwater copied the Quail Valley plan, Sedgewick contends that Bivins and Shoemaker both possessed materials for the Quail Valley plan and that Bivins and Shoemaker provided Stillwater a copy of the materials and directed Stillwater to copy the plans for the Quail Valley. (Doc. 48 at 21-22). Sedgewick cites four pieces of evidence to support its contention: (1) the plan that served as the basis for the homes built for Bivins and Shoemaker is nearly identical to the Quail Valley plan; (2) an e-mail from Bivins to Baldwin asking for a price quote on the Spring Valley specifications, to which Baldwin responded that he would provide such a price quote; (3) an e-mail from Shoemaker asking for a price quote on a house with 2,081 square feet, the exact square footage of the Quail Valley; and (4) admissions by Bivins, Shoemaker, and Baldwin that Stillwater's Trent plan is “similar” or “very similar” to the Sedgewick's designs. . . . Viewing the evidence identified by Sedgewick in isolation, Sedgewick has not demonstrated direct evidence of copying because the evidence does not amount to an admission of copying or a witness account of copying. Notably, the e-mails merely establish that Bivins and Shoemaker discussed Sedgewick's plans, designs, and pricing when communicating with Stillwater but not that Bivins and Shoemaker specifically directed Stillwater to copy the Quail Valley plan. . . . Furthermore, while there are numerous similarities between the plans, the plans are not identical and Sedgewick has not identified any errors common to both plans. . . .

When the evidence relied on by Sedgewick is reviewed as part of the record as a whole, the lack of undisputed direct evidence of copying is all the more apparent. Notably, Bivins and Shoemaker both deny providing Stillwater with any of Sedgewick's materials. . . . Stillwater also denies receiving Sedgewick's plans from Bivins or Shoemaker and denies copying any of Sedgewick's designs. . . . Stillwater has also presented some evidence in support of its contention that the plan it relied on to build homes for Bivins and Shoemaker was developed prior to any substantive conversations with Bivins and Shoemaker. . . . Accordingly, although the evidence relied on by Sedgewick is worthy of consideration as circumstantial evidence of copying by Stillwater, it is insufficient to establish direct evidence of copying for purposes of summary judgment.

2. Circumstantial Evidence of Copying. a. Inference of Access by Defendant . . . Because there is a genuine issue of material fact regarding whether Stillwater accessed Sedgewick's website and building plans before creating the Trent plan, Sedgewick has not proffered sufficient circumstantial evidence of copying to obtain judgment in its favor as a matter of law and Sedgewick's Motion for Partial Summary Judgment (Doc. 45) is DENIED. The Court, however, must proceed to the substantial similarity analysis because Stillwater can still prevail on its motion for summary judgment if the Quail Valley plan and the Trent plan are not substantially similar.

b. Substantial Similarity . . . Starting with the footprint of the home and the dimensions of the rooms, the Court concludes that the two plans are virtually identical with the dimensions of each room of the Trent plan varying by mere inches from the dimensions of each room of the Quail Valley plan. Furthermore, the shapes of the Trent plan and the Quail Valley plan are identical or nearly identical down to the recessing of the kitchen and breakfast nook area that connects the
two sides of the home. . . . Because the Quail Valley and the Trent are relatively the same shape and size and the rooms are all in the same location relative to the house as a whole, the flow of traffic in homes built under each plan would also be the same. Focusing on the master suite, both plans feature a relatively square two window master bedroom and a master bath with a water closet and separate vanities on either side of the door from the bedroom. . . . Both master suites also feature his and her separate walk in closets, which are accessible only from the master bathroom and are on opposite ends of the master bathroom. . . . Finally, turning to the windows, both plans have the same number of windows, placed in the same location relative to each room. . . . Arguably more striking than where the windows are located in both plans is where there is an absence of windows in both plans—on the side of the house in the non-master bedrooms, on the side of the dining room, on the side of the master bedroom looking in the direction of the deck, and in the laundry room above the washer and dryer. . . .

In contrast to these significant similarities, the differences identified by Stillwater are not so overwhelming as to eliminate a genuine issue of material fact as to extrinsic similarity. Furthermore, it appears that the majority of the differences identified by Stillwater only appear in the final plans for the Bivins and the Shoemaker homes. These final plans are, however, partially the product of customer requested modifications . . . and it would be reasonable for a jury to conclude that had Bivins and Shoemaker contracted with Sedgewick, that Sedgewick would have incorporated some of these very same alleged dissimilarities into its Quail Valley plan. For this reason, and because the initial stock design is the design that the customer views when initially selecting a builder, the Court, for purposes of its substantial similarity analysis, places greater emphasis on the stock plan and the intermediate plans provided to Bivins and Shoemaker than the final plans upon which the Bivins and Shoemaker homes were ultimately built. . . . This conclusion is buttressed by the fact that Sedgewick's architectural plan for the Quail Valley is itself protected by copyright law. . . .

In summation, the enlarged physical overlay of the two plans provided by Sedgewick tells the story regarding the high level of similarity between the Quail Valley plan and the Trent plan. . . . Although the two plans do not perfectly align, if copyright protection extends to architectural works and compilations, then the high level of similarity between the two plans in this case must at least raise a genuine issue of material fact as to extrinsic similarity.

District of South Carolina

BATES V. VANDROFF

This matter is before the Court for consideration of Plaintiff Kenneth Ray Bates' (“Plaintiff”) objections to the Report and Recommendation (“R & R”) of United States Magistrate Judge Thomas E. Rogers, III. . . . The Magistrate Judge recommends that the Court summarily dismiss Plaintiff's complaint without prejudice and without issuance and service of process. . . .

Plaintiff objects to the Magistrate Judge's conclusion that this Court lacks federal question jurisdiction over his copyright infringement claim. . . . The Magistrate Judge makes two proposed findings regarding the copyright infringement claim. First, the Magistrate Judge finds

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Plaintiff's complaint does not allege ownership of a valid copyright, which is one of two elements necessary to state a claim for copyright infringement. . . . Second, the Magistrate Judge finds Section 411(a) of the Copyright Act requires that a copyright must be registered before a copyright infringement claim can be filed—while this requirement is not jurisdictional, it is a statutory precondition.

Southern District of West Virginia

MOLLOHAN V. WARNER

Before the Court is Plaintiff Gerald R. Mollohan's Amended Complaint, Defendants' Counterclaim, and the parties' cross-Motions for Summary Judgment. As discussed below, the Court finds that the doctrines of res judicata and collateral estoppel bar many of Plaintiff's claims. The Court dismisses these claims in order to protect the validity of the Court's judgment in Case No. 2:11-cv-00104. The Court further dismisses Defendants' counterclaim sua sponte, after providing notice of the pleading's inadequacies and an opportunity for response. . . .

The Court must make one point clear. Mollohan has never provided copies of his copyrighted works to the Court. The Court has access only to Mollohan's certificates of registration, from which little can be gleaned. The Court assumes that Mollohan obtained or attempted to obtain copyright protection for a set of by-laws only because first, one of Mollohan's copyright certificates covers a literary work titled "by-laws," and second, Mollohan alleges that BOTW infringes on his copyright by continuing to use its by-laws. . . . Here, Defendants have put forth substantial evidence that Mollohan was not the author of the by-laws at issue.

CSS, INC. V. HERRINGTON

Pending before the court is Plaintiff's Motion for Preliminary Injunction [ECF No. 65]. For the following reasons, the Motion is DENIED. . . .

CSS has Valid Copyrights . . . CSS is the registered owner of three copyrights in computer software code: Document Indexing and Imaging for Counties 2015 (TX 8-230-758), Estate Management 2015 (TX 8-230-809), and Web Inquiry 2013 (TX 8-230-816). CT did not dispute the validity of the copyrights in its Response to CSS's motion. The defendants did not introduce evidence calling the validity of the copyright into question.

Alleged Copyright Infringement . . . a. The Choice of COBOL. CSS has indicated that the choice to use COBOL supports the argument that CT has infringed its software programs, despite the fact that COBOL is not the intellectual property of CSS. . . . Because the choice of coding language is not protected by CSS's copyrights, this was not time well spent. Additionally, CSS's COBOL database and CT's COBOL database are not the same. . . . Mr. McCasker noted during
the hearing that structure of the COBOL files is “similar but different.” . . . I FIND that the choice of COBOL is not evidence of substantial similarity.

b. Structure, Architecture, and Design . . . CSS's allegation regarding the similarity of the software applications' structure and design suffers from many problems. The first is that CSS is unable to perform the abstraction step of the AFC Test. CSS does not “distinguish the copyrightable expressive aspects of software from its underlying ideas, which are not protectable by copyright.” . . . Though software “design” as an aesthetic can be protectable, the way CSS refers to “design” is how the programs function. . . . The second problem is that Mr. McCasker's report did not identify specific files or code at issue. . . . In any case, he did not “do so with enough specificity to be understood.” . . . Though this is a case regarding non-literal infringement, CSS still needed to show specifically which protectable, expressive elements of its software CT had infringed. Thus, I FIND that CSS is not likely to succeed on the merits of its copyright infringement claim with respect to the structure, design, architecture, or design of the parties' software.

c. Third-Party Components and Transaction Flow . . . CSS's allegations regarding the third-party applications and transaction flow are not viable because third-party components must be filtered out in the second step of the AFC Test. . . . I FIND that neither the choice of third-party components, nor the arrangement of those third-party components, nor the similar transaction flow of the parties' software is evidence of substantial similarity.

d. Specific Allegations of Non-Literal Infringement . . . CSS fails to show that CT's software packages are substantially similar to the copyrightable elements of its software. . . . With regard to many of the specifically alleged infringement specifics, most of what CSS has alleged are merely the most efficient or effective ways to implement a task. . . . Thus, despite CT's software having similar or even identical choices to that by CSS, these expressions are not protectable. . . . For the additional allegations, CSS has failed to show similarity at all between its source code and that of CSS. . . . I FIND that CSS is not likely to succeed on any of its copyright infringement claims.

Eastern District of Virginia

BMG RIGHTS MANAGEMENT (US) LLC V. COX COMMUNICATIONS, INC.

After an extended litigation battle and a two-week trial, a jury found Defendants Cox Communications, Inc. and Coxcom, LLC ("Cox") liable for willful contributory copyright infringement. The jury awarded Plaintiff BMG Rights Management ("BMG") $25 million in damages, and the Court denied both parties' post-trial motions for relief. . . . Now pending before the Court are the parties' motions for costs and attorney's fees. Specifically, BMG has filed for attorney's fees and costs against Cox, . . . and Cox, in turn, has filed for fees and costs against Round Hill Music LP ("Round Hill") . . . . For the reasons that follow, BMG's motions are hereby GRANTED IN PART and DENIED IN PART. Cox's motions are hereby DENIED.
This matter comes before the Court on four motions: (1) Defendant Robert Walker, Jr.'s Motion to Dismiss for Failure to State a Claim (the "Walker Motion to Dismiss for Failure to State a Claim"), filed pursuant to Federal Rule of Civil Procedure 12(b)(6) . . . (2) Defendants Lee Daniels and Danny Strong's Motion to Dismiss the Complaint Based on a Lack of Personal Jurisdiction (the "Daniels and Strong Motion to Dismiss for Lack of Personal Jurisdiction"), filed pursuant to Federal Rule of Civil Procedure 12(b)(2) . . . (3) Daniels and Strong's Motion to Dismiss the Complaint with Prejudice Pursuant to Rule 12(b)(6) (the "Daniels and Strong Motion to Dismiss for Failure to State a Claim") . . . and, (4) pro se Plaintiff Timothy J. Levi's Motion for Discovery . . .

a. Levi Fails to State a Claim for Contributory Infringement . . . By alleging that Daniels and Strong obtained the Book's manuscript directly from Walker, Levi alleges that Walker at least caused the copyright infringement. From Levi's allegations, the Court infers that Twentieth Century Fox obtained access to the Book, and thus the ability to infringe on its copyright, through Walker's conduct. . . . The Complaint, however, fails to allege that Walker had knowledge of the alleged infringement activity. . . . Outside of Walker's transfer of the book to Daniels and Strong, nothing in the Complaint alleges any relationship between Walker and the other defendants. . . . Moreover, Levi's Complaint is entirely devoid of even a suggestion that Walker knew or had reason to know of the purported infringement activity. . . .


Western District of Virginia

HAWKINS V. FISHBECK

Todd Hawkins and Jonathan Fishbeck founded the BuilderFish entities, three software development companies. But the partners split, and Hawkins alleges that Fishbeck and the other defendants (a co-worker, Fishbeck's father, and two companies) utilized BuilderFish's resources improperly for their own gain. He claims that they collectively misappropriated trade secrets and infringed copyrights, and that Fishbeck violated a non-compete agreement . . .

 Defendants collectively argue that Hawkins does not plead sufficient facts to plausibly state his claims against them. While Hawkins properly pleads facts that state a trade secret claim, his copyright and covenant not to compete claims are both fatally flawed. The motion will accordingly be granted in part. . . .

Plaintiff's claim for copyright infringement fails because neither the Plaintiff nor the BuilderFish entities have a copyright that can be infringed. The Copyright Act is clear that “no civil action for infringement of the copyright in any United States work shall be instituted until
preregistration or registration of the copyright claim has been made in accordance with this title.” . . . Plaintiff argues that it is the Defendants' collective fault that he has been unable to register the copyright. . . . But “courts should not assume that ‘Congress ... intend[ed] courts to read other unmentioned, open-ended, ‘equitable’ exceptions into the statute that it wrote.’ ” . . . Because the registration requirement is not met, Plaintiff's copyright infringement claim will be dismissed.

**Fifth Circuit**

Court of Appeals for the Fifth Circuit

**ULTRAFLO CORPORATION V. PELICAN TANK PARTS, INCORPORATED**
No. 15-20084, 2017 WL 113897 (5th Cir. Jan. 11, 2017)

This appeal requires us to again consider the preemptive force of the Copyright Act. Plaintiff Ultraflo Corporation asserts an unfair competition by misappropriation claim under Texas law alleging that a competitor stole its drawings showing how to design valves and then used them to make duplicate valves. We have previously held that copyright preempts this Texas cause of action when the intellectual property at issue is within the subject matter of copyright. . . . Ultraflo contends that its claim escapes preemption because its valve design, when separated from the drawing itself, is afforded no protection under the Copyright Act. Because copyright preemption prohibits state interference with Congress's decision not to grant copyright protection just as much as it protects a decision to provide protection, the district court correctly found that the state claim is preempted.

**AVDEEF V. GOOGLE, INCORPORATED**

Stephen M. Avdeef appeals the summary judgment dismissal of his copyright infringement complaint against Google, Inc. . . . Avdeef fails to set forth the substance of his claims in meaningful detail and does not address the grounds upon which the district court dismissed his complaint. He does not mention the district court's finding that Google was entitled to protection under the safe harbor provision of the Digital Millennium Copyright Act . . . . By failing to challenge the district court's reasons for granting summary judgment in favor of Google, Avdeef has abandoned the claim on appeal.

**GEOPHYSICAL SERVICE, INCORPORATED V. TGS-NOPEC GEOPHYSICAL COMPANY**

Canada has a law that requires companies who gather seismic data about the Earth's substructure to submit their findings to the Canadian government. After a period of confidentiality, the Canadian agency that compiles this data is then apparently permitted to release it to members of the public upon specific request. In this case, a Houston company requested seismic data from this Canadian agency pursuant to that law, and the Canadian agency sent copies of a particular
Canadian company's seismic data to the United States. The Canadian company then sued the Houston company, alleging copyright infringement.

We are called upon to determine whether the act of state doctrine forbids a United States court from considering the applicability of copyright's first sale doctrine to foreign-made copies when the foreign copier was a government agency. We hold that it does not. We must also decide whether the inapplicability of the Copyright Act to extraterritorial conduct bars a contributory infringement claim based on the domestic authorization of entirely extraterritorial conduct. We hold that it does. Accordingly, we affirm in part, reverse in part, vacate in part, and remand.

BWP MEDIA USA, INCORPORATED V. T & S SOFTWARE ASSOCIATES, INCORPORATED
No. 16-10510, 2017 WL 1149107 (5th Cir. Mar. 27, 2017)

This appeal is about whether "volitional conduct" is required to establish a claim for direct copyright infringement. Defendant T & S Software Associates, an internet service provider, hosted an internet forum on which third-party users posted images that infringed copyrights owned by plaintiffs BWP Media USA and National Photo Group. The plaintiffs sued T & S for direct and secondary copyright infringement. The district court granted summary judgment in favor of T & S. The plaintiffs appeal the district court's direct-infringement holding. We AFFIRM.

ESTATE OF BARRÉ V. CARTER


Here, Plaintiffs have sufficiently alleged that they can recover statutory damages and attorneys' fees for certain Defendants' violations of Plaintiffs' copyrights after they were registered. Moreover, Plaintiffs allege in their amended complaint that Defendants “continue to willfully infringe on Anthony Barré's voice, works, performance and sound recordings by ... publicly performing ‘Formation’ and ‘Lemonade,’ ” such as in the “Formation World Tour” performances. By contrast, Defendants have not shown that Plaintiffs' instant request constitutes “redundant, immaterial, impertinent, or scandalous matter” such that striking it from the record
pursuant to Rule 12(f) is proper. Accordingly, the Court denies Defendants' motion to strike
Plaintiffs' request for statutory damages and attorneys' fees under the Copyright Act.

THE ESTATE OF BARRÉ v. CARTER

In this litigation, the Estate of Anthony Barré and Angel Barré (collectively, “Plaintiffs”), allege
that the writers, performers, producers, record labels, distributors, and publishers who produced
the song “Formation,” the album “Lemonade,” and the “Formation World Tour” used the actual
voice and copyrighted works of Anthony Barré without authorization or compensation. Pending
before the Court is Defendants Beyoncé Knowles Carter (“Carter”), Parkwood Entertainment,
LLC, Sony Music Entertainment, Michael L. Williams III, Khalif Brown, Asheton Hogan,
Eardrummers Entertainment, LLC, Eardrummers Music Publishing, LLC, Oakland 13 Music,
Melina Matsoukas, and Aspiro AB's (collectively, “Defendants”) “Motion to Dismiss for Failure
to State a Claim.” . . . [T]he Court will grant Defendants' motion to the extent that it seeks
dismissal of Plaintiffs' unjust enrichment claim, as there are other remedies available at law to
Plaintiffs such that Louisiana law precludes an unjust enrichment claim here, and deny
Defendants' motion as to the extent that it seeks dismissal of Plaintiffs' copyright infringement
claims on fair use grounds, Plaintiffs' false endorsement claim under the Lanham Act, and
Plaintiffs' LUTPA claim. . . .

First fair use factor . . . Here, the Court finds that Plaintiffs have alleged sufficient facts in their
amended complaint to support a finding at this stage of litigation that the first factor could
ultimately weigh against a finding of fair use. Plaintiffs plausibly allege that Defendants did not
“add[ ] something new, with a further purpose or different character,” but rather used unmodified
audio clips from Anthony Barré's YouTube videos as an illustrative example of New Orleans
culture through the voice and catchphrases of a well-known local icon. . . . Plaintiffs have
sufficiently alleged that Defendants' “verbatim copying” from YouTube videos of Anthony Barré
saying such lines as “What happened at the New Orleans” did not imbue the short clips with
“new expression, meaning or message,” but rather used Anthony Barré's original “expression,
meaning or message” to introduce “Formation” and “create the tone, mood, setting and location
of the New Orleans-theme ‘Formation.’” . . .

Second fair use factor . . . With regard to the first consideration, the Court finds that Plaintiffs
have sufficiently alleged that Anthony Barré's YouTube videos were creative works, as Plaintiffs
represent in their amended complaint that Anthony Barré was a “well-known performance
comedian” and that the two YouTube videos at issue in this litigation are “performance art.” . . . As
to the second consideration . . . Plaintiffs' amended complaint clearly alleges that both of
Anthony Barré's videos were published on YouTube in 2010. . . .

Third fair use factor . . . Here, it appears to be undisputed that Defendants used four seconds of
audio from the five minute and fourteen second YouTube video titled “Booking the Hoes from
New Wildings,” and six seconds of audio from the one minute and fifty-three second YouTube
video titled “A 27 Piece Huh?” . . . [E]ven assuming that Defendants are correct that the amount of Plaintiffs’ copyrighted works used is quantitatively small, the Court finds that Plaintiffs have plausibly alleged at this stage of litigation that the portions used by Defendants were qualitatively significant and the “heart” of Anthony Barré’s works such that the third factor could ultimately weigh in favor of Plaintiffs. Plaintiffs have sufficiently alleged that Anthony Barré was well known for his catchphrases, words, and unique voice, including the phrase “back by popular demand” that was used by Defendants.

Fourth fair use factor . . . In their amended complaint, Plaintiffs allege that Defendants “unlawfully copied” the YouTube videos without Plaintiffs' permission and “failed to secure a license to copy and exploit” Plaintiffs' works. According to the amended complaint, “[t]he proper licensing of ‘Booking the Hoes from New Wildings' and ‘A 27 Piece Huh?’ for ‘Formation,’ ‘Lemonade’ and the ‘Formation World Tour’ would not have only generated substantial revenues, but it would have generated international recognition for Anthony Barré's performance works and as contributor to a worldwide hit song.” . . .

Based on the foregoing, the Court finds that Plaintiffs have plausibly alleged a claim for copyright infringement against Defendants. Construing Plaintiffs' complaint liberally and accepting all well-pleaded facts as true, Plaintiffs have also alleged sufficient facts at this stage of litigation to show that the four factor fair use test could ultimately weigh against a finding of fair use. Weighing all the factors discussed supra together, the Court concludes at this stage of litigation that “the copyright law's goal of promoting the Progress of Science and useful Arts” would not be better served by allowing Defendants’ use of Plaintiffs' copyrighted material without authorization or compensation than by preventing it. Accordingly, the Court denies Defendants' motion to the extent that it seeks to dismiss Plaintiffs' copyright infringement claim on fair use grounds.

SOUTHERN CREDENTIALING SUPPORT SERV., LLC V. HAMMOND SURGICAL HOSPITAL LLC

Before the Court are Defendant's Motion for Summary Judgment . . . and Plaintiff's Motion for Partial Summary Judgment . . . For the following reasons, the Defendant's Motion is DENIED, and Plaintiff's Motion is GRANTED IN PART . . .

A. Copyright Infringement . . . 1. Valid Copyright . . . Defendant argues that Plaintiff's health credentialing packets cannot meet the requisite level of creativity required for copyright protection because they are factual and do not contain any creative components. Specifically, Defendant alleges the contents of the forms at issue are required by regulation and CPSH's policies and procedures. It also argues that many of the forms were borrowed from a nearby hospital . . . Plaintiff contends, however, that its credentialing packets constitute factual compilations . . . Although Plaintiff's credentialing packets contain facts derived from regulations and CPSH policy, Plaintiff has compiled them into an efficient and streamlined credentialing process that even Defendant admitted was “very efficient.” . . . Accordingly, this
Court finds that Plaintiff has a valid copyright in the healthcare credentialing packets as factual compilations. The Court notes, however, that such a copyright is considered a “thin” copyright with limited protection.

2. Copying . . . The first prong is easily satisfied in this case as Defendant does not deny using portions of Plaintiff's packets. The second prong, however, presents a more difficult question—one which has been glossed over by both parties. . . . Accordingly, Plaintiff has failed to carry its burden to show no material issue of fact exists as to its copyright infringement claim, and its motion is therefore denied.

B. Joint Works . . . Defendant moves for dismissal of Plaintiff’s copyright infringement claim, arguing that the documents at issue are joint works. . . . Even assuming that the facts presented by Defendant are true, however, they do not rise to the level of joint authorship. . . . The evidence submitted by Defendant in support of its argument for joint authorship does not show any intent on the part of Defendant to become a joint author of the credentialing packets. It shows merely that representatives from Defendant collaborated with Plaintiff to ensure the accuracy of the forms for use at Defendant's specific hospital. Defendant does not present any contributions that might warrant independent copyrightability. Accordingly, Defendant has not shown that it is a joint author of the packets, and this argument therefore fails.

C. Waiver . . . Defendant next argues that Plaintiff should be estopped from arguing that Defendant infringed its copyright. . . . Defendant argues that Plaintiff knew that Defendant was using its forms as early as July 8, 2013 but elected to do nothing and did not advise Defendant that it felt its conduct was infringing until more than a year later. . . . Here, however, a material issue of fact exists regarding when Defendant received notice that Plaintiff believe its continued use of a portion of its packets was infringing. Plaintiff contends that its representative informed Defendant of the infringing conduct at a meeting on July 15, 2013. Defendant denies this, creating a material issue of fact regarding whether Plaintiff delayed in giving Defendant notice that it believed it was infringing on its copyright. Accordingly, summary judgment on this issue is inappropriate.

D. Damages . . . Finally, Defendant argues that Plaintiff cannot succeed on its claim because it cannot show damages. . . . Plaintiff need not show actual damages to succeed on its copyright claim as it can elect, at any time prior to final judgment, to receive statutory damages whether Defendant's conduct was willful or not. Defendant's argument for dismissal is therefore unavailing.

Middle District of Louisiana

CHARBONNET V. MALVEAUX

This matter comes before the Court on the Motion to Dismiss . . . filed by Defendant Chester Charles Malveaux. . . . Plaintiff brings a claim for copyright infringement under the Copyright Act of 1976, 17 U.S.C. § 101 et. seq. . . . In the instant motion, Defendant contends that he has a
co-ownership interest in the copyrighted material at issue. As a result, Defendant argues, he cannot be an infringer of a copyright he owns.

Having carefully reviewed the law, the facts in the record, and the arguments and submissions of the parties, the Court finds that Defendant's motion should be denied. Defendant has failed to support his claim of co-ownership beyond conclusory statements. Conversely, Plaintiff has provided a Certificate of Registration issued by the U.S. Copyright Office; this certificate serves as prima facie evidence that he is the sole owner of the copyright. Moreover, even if the certificate is invalid, Plaintiff directly rebuts Defendants claim of co-ownership. As a result, there is a genuine issue of material fact regarding ownership of the copyrighted material, and summary judgment is not warranted.

District of Minnesota

RINGDAHL ARCHITECTS, INC. V. SWENDSRUD CONSTRUCTION, INC.
No. CV 16-1060 (DWF/LIB), 2017 WL 5157605 (D. Minn. Nov. 6, 2017)

This matter is before the Court on cross-motions for summary judgment brought by Defendants Swendsrud Construction, Inc. (“Swendsrud”) and Hilltop Lumber of Glenwood, Inc. (“Hilltop”) (together, “Defendants”) . . . and Plaintiff Ringdahl Architects, Inc. (“Ringdahl” or “Plaintiff”) . . . . For the reasons set forth below, the Court denies Plaintiff's motion and grants Defendants' motion in part. . . .

Plaintiff alleges that both Swendsrud and Hilltop infringed its copyright by using the Plans to design and construct Phase II of the Project. In particular, Plaintiff argues that: (1) Swendsrud directly infringed Ringdahl's copyright by using the Plans and by filing copies of the Plans to obtain permits; (2) Swendsrud is liable for vicarious and contributory infringement because it used derivative infringing plans produced by Hilltop; (3) Hilltop directly infringed Ringdahl's copyright by making modifications to the Plans, labeling the modified drawings as its own, and allowing the modified plans to be used to complete Phase II; and (4) Hilltop is liable for vicarious and contributory infringement because it received the Plans from Swendsrud, turned the Plans over to subcontractors and suppliers, and directed the Plans to be modified. Defendants argue that they are entitled to summary judgment on all of Plaintiff's copyright claims because, as a matter of law, Abbasi had both an express and implied license, as well as a statutory right, to use the Plans to finish his home, and that the license extended to the use of the Plans by Defendants. . . .

In this case, it is undisputed that Plaintiff owns a valid copyright related to the Plans and that Defendants used the Plans to complete Phase II of the Project. The central inquiry on Plaintiff's copyright infringement claim is whether the Court can, as a matter of law, determine that Abbasi had a license or statutory right to use the Plans, thereby providing a defense to any copyright infringement claim. . . .

The Court concludes that the contract is ambiguous as to whether the parties intended to grant Abbasi an express license to use the Plans to complete the Project without Ringdahl. Both
parties' reading of the contract is plausible. Because the contract is ambiguous as to an express license, summary judgment is inappropriate.

For the same reasons discussed above, the Court concludes that the record is not clear as to whether Ringdahl intended for Abbasi to be able to copy and distribute the Plans to complete the Project without using Ringdahl's services. Therefore, summary judgment is not appropriate on the issue of whether Abbasi had an implied license.

Northern District of Mississippi

38 FILMS, LLC V. YAMANO

This matter comes before the Court on Defendants' Motion for Summary Judgment [59], Plaintiffs' Response, and Defendants' Reply. The Court has considered these submissions, relevant case law and evidence, including both films in question, and is now prepared to rule.

It is undisputed that the Plaintiffs converted and digitized media from third-party sources in order to use those clips and photographs in Undefeated. Defendants aver that the media in the 38 Films Archive is not copyrightable and does not belong to the Plaintiffs, as the material is essentially just footage and photographs from third-party sources. The question of whether that originality, or creative expression, is sufficient to make the footage copyrightable is a question for the jury.

Defendants also argue that the Plaintiffs do not own any right to Mullins' story. Plaintiffs assert that copyright laws protect their storytelling in Undefeated, and that the selection of interviewees and their stories, as well as the sequence in which those stories appear, is included in their storytelling. A reasonable jury could find that the selection and order of interviews, stories, and historical footage in Undefeated is an original work of authorship, and further, that the Plaintiffs' expression of Mullins' story is protected under copyright law. For the reasons listed above, sufficient material facts are in dispute regarding the copyright claim. Summary judgment is improper at this time.

Northern District of Texas

JOSEPH PAUL CORP. V. TRADEMARK CUSTOM HOMES, INC.

Before the court is Plaintiff The Joseph Paul Corporation d/b/a Joseph Paul Homes' Motion for Partial Summary Judgment (Doc. 73), filed August 18, 2017. Plaintiff moves for summary judgment on its copyright infringement claims (direct, contributory, and vicarious), as well as Defendants Trademark Custom Homes, Inc.'s (“Trademark”) and Defendant Eric Emil Johnson's (“Johnson”) affirmative defenses of failure to state a claim; lack of standing; laches; unclean hands; estoppel and waiver; authorized use; misuse of copyright; license, consent, and acquiescence; and innocent intent. After carefully considering the motion, response, reply, briefs, evidence, record, and applicable law, the court denies Plaintiff The Joseph Paul Corporation
d/b/a Joseph Paul Homes' Motion for Partial Summary Judgment . . . . The court previously denied Trademark's and Johnson's motion to dismiss based on their defenses of lack of standing and failure to state a claim, and a genuine dispute of material fact exists regarding the elements of the parties' remaining claims and defenses. . . .

In support of their license defense, Trademark and Johnson presented undisputed evidence that the McWhorters requested JP Homes to create the plan(s) for a custom home; and JP Homes created the plans and provided them to the McWhorters without any restrictions regarding use of the plan. In addition, Trademark and Johnson presented evidence that the McWhorters paid JP Homes a certain sum of money for the plans. The parties dispute whether their e-mail communication(s) and the McWhorters' payment created a nonexclusive license in the plans that authorized the McWhorters to copy and distribute the plans to Trademark or another third party for purposes of making additional customized changes to the plans and having Trademark or a builder other than JP Homes build the McWhorters' custom home using the revised version of the plans. Plaintiff contends that it is not reasonable to interpret the parties' e-mails as granting a license to the McWhorters to use JP Home's creative work with a competitor, and Johnson's reliance on the McWhorters' statement that they paid for the plans is not objectively reasonable because no builder would have concluded that the payment for drafting costs paid by the McWhorters granted a license, transferable or otherwise, to the McWhorters in the plans for use with a competitor, particularly after JP Homes sent a cease and desist letter to Trademark and Johnson and filed this lawsuit.

Plaintiff, however, has not presented any evidence to support its interpretation of the parties' communications and contention that Johnson's reliance on the McWhorters' statement regarding payment for the plans was not objectively reasonable based on what other builders would have concluded under similar circumstances. Moreover, evidence of the McWhorters' payment and evidence that JP Homes provided the McWhorters with a copy of the plans without any restrictions is sufficient to create a genuine dispute of material fact as to whether a nonexclusive license was created and whether such license was irrevocable after granted. Accordingly, a genuine dispute of material fact exists as to Trademark's and Johnson's license defense, which in turn creates a genuine dispute of material fact as to Plaintiff's copyright infringement claims. For this reason, Plaintiff is not entitled to summary judgment on its copyright infringement claims or Trademark's and Johnson's license defense and the motion is denied as to these claims and defenses.

LEADER'S INSTITUTE, LLC V. JACKSON

This intellectual-property dispute arises between competitors in the team-building industry. Defendant Robert Jackson worked for Plaintiff The Leadership Institute (TLI), but now he works for Defendant Magnovo Training Group (Magnovo). Jackson's departure from TLI triggered this controversy because TLI and its owner, Plaintiff Doug Staneart, believe Jackson absconded with vital trade secrets and that Jackson and Magnovo are using TLI's federally registered trademarks. Jackson and Magnovo respond that Staneart and TLI have abused the legal process, defamed
Jackson, and infringed Magnovo's federally registered copyrights, and they ask the Court to cancel TLI's trademarks. Robert Jackson seeks partial summary judgment on the plaintiffs' claims against him, and the plaintiffs seek partial summary judgment on the defendants' equitable defenses and counterclaims. The Court DENIES Jackson's motion for partial summary judgment . . . and GRANTS in part and DENIES in part the plaintiffs' motion for partial summary judgment . . . .

The defendants claim that TLI committed copyright infringement by “framing” Magnovo's copyrighted content. In its motion for summary judgment, TLI responds in two ways. First, TLI claims that, as a matter of law, framing cannot constitute copyright infringement. And second, TLI claims that the defendants have failed to present any evidence of damages.

a. Copyright Infringement and Framing . . . The plaintiffs respond simply that framing is not copyright infringement. But the plaintiffs are incorrect; they publicly displayed Magnovo's copyrighted works. By framing Magnovo's copyrighted works, the plaintiffs displayed the works by “show[ing] a copy” of the works via a “process.” . . . That process was the instructing of users' web browsers to display Magnovo's copyrighted works when those users visited one of the accused TLI domain names. And the plaintiffs displayed the copyrighted works publicly. By instructing users' web browsers to display Magnovo's content upon accessing TLI's publicly-accessible websites, the plaintiffs “transmit[ed]...a display of the [defendants'] work...to the public.” . . . Thus, by framing the defendants' copyrighted works, the plaintiffs impermissibly displayed the works to the public. . . .

b. Damages for Copyright Infringement . . . The plaintiffs argue that § 412 prevents the Court from awarding damages because the defendants have presented no evidence of infringement occurring after the effective registration date of their copyrights. . . . The plaintiffs are incorrect—but only partly. The defendants claim to have registered two works: Bicycle-Team-Building-Events.com website and Magnovo Photo 1. . . . Ms. Jackson's affidavit is the only evidence the defendants cite that discusses the two copyrighted works. Ms. Jackson attests that Magnovo first published the copyrighted works on December 5, 2015 and timely filed applications for registration on December 7, 2015 and that TLI's framing of Magnovo's website continued “through at least December 5, 2015.” . . . So although the evidence indicates infringement after the publishing date but before the registration date, the registration date was within three months of the publishing date. Thus, 17 U.S.C. § 412 allows the defendants to seek statutory damages for any infringement that occurred on December 5, 2015. The defendants cannot seek damages for infringement that occurred after December 5, 2015 because they have presented no evidence that the plaintiffs framed Magnovo's copyrighted content after December 5, 2015. Thus, the Court grants the plaintiffs' motion for summary judgment in part but denies the motion insofar as it applies to statutory damages from December 5, 2015.

Southern District of Texas

SMITH V. HOUSTON INDEPENDENT SCHOOL DISTRICT
This case presented a claim that a school district infringed a vendor's intellectual property. The plaintiff, Arthur Smith, designs and produces customized t-shirts. He alleged that Houston Independent School District (HISD) tortiously broke off an arrangement for Mr. Smith to produce logo t-shirts for a school in the district. At a hearing on June 21, 2016, the court granted the defendants' motion to dismiss the second amended complaint without prejudice and allowed Mr. Smith to replead to try to address the problems with the complaint that led the court to find it deficient. . . . Mr. Smith filed his third amended complaint on July 15, 2016. . . . The defendants moved to dismiss . . . Mr. Smith responded . . . and the defendants replied . . . . Based on the pleadings, the applicable law, and the arguments of counsel, the defendants' motion to dismiss is granted. Because further amendment would be futile, the dismissal is with prejudice. Final judgment is entered by separate order. . . .

Mr. Smith has not registered or taken steps to register a copyright. According to his complaint, Mr. Smith knew or had reason to know that HISD was allegedly continuing to use his designs when it sent the June 12, 2012 cease-and-desist letter. . . . More than three years elapsed before Mr. Smith filed suit on February 15, 2016. The defendants argued in both their April 13 and July 28 motions to dismiss that Mr. Smith's failure to register or to timely initiate a suit barred his copyright claim. . . . Mr. Smith's amended complaint does not correct the deficiency, and indeed, his response to the motion to dismiss does not mention the copyright claim at all. . . . Because the copyright claim is factually insufficient, time-barred, and abandoned, further amendment would be futile.

ENERGY INTELLIGENCE GRP., INC. V. KAYNE ANDERSON CAPITAL ADVISORS, LP

Energy Intelligence Group, Inc. and Energy Intelligence Group (UK) Limited (together, “Plaintiffs” or “EIG”) have sued Kayne Anderson Capital Advisors, LP and KA Fund Advisors, LLC (together, “Defendants” or “Kayne”) for copyright infringement. Pending before the court are Defendants' Motion for Partial Summary Judgment . . . , Plaintiffs' Motion for Partial Summary Judgment on Defendants' Affirmative Defenses (“Plaintiffs' MPSJ”) . . . , and Plaintiffs' Motion for a Protective Order . . . . For the reasons stated below, Defendants' Motion for Partial Summary Judgment will be denied, Plaintiffs' Motion for Partial Summary Judgment on Defendants' Affirmative Defenses will be granted in part and denied in part, and Plaintiffs' Motion for a Protective Order will be granted in part and denied in part. . . .

A. Number of Works. Kayne argues that an annual subscription to Oil Daily (approximately 250 issues) constitutes a single “work” under the Copyright Act. . . . The court is not persuaded by Kayne's arguments. Authorship of a work involves creation, not mere accumulation. The decision to sell works by subscription does not combine several works into one any more than allowing payment in installments divides one work into several. . . .

B. Statute of Limitations. Kayne seeks partial summary judgment on the issue of limitations. . . . Assuming arguendo that the deposition testimony showed that EIG was less diligent when investigating smaller infringement cases, summary judgment would still not be appropriate.
Objective, not relative, reasonableness is the standard. The evidence before the court would permit a reasonable fact-finder to infer that Buttrick exercised due diligence in light of the facts known to him at the time, and the court must draw such inferences in favor of the non-movant.

A. Equitable Estoppel... EIG argues that Kayne has shown no sufficient evidence on any of the elements of equitable estoppel. In sum, Kayne argues that it continued infringing because EIG led them to believe that it would not pursue damages beyond retroactive subscription fees for prior infringement. Kayne would have the court hold that Buttrick's passing reference to one way of resolving infringement is sufficient to show that EIG effectively abandoned its right to statutory damages or other relief. Kayne cites no cases holding that such conduct would support the drastic remedy of equitable estoppel. Moreover, even assuming that Buttrick's warning was misleading, Kayne offers no evidence that it acted in reliance on the warning, reasonably or otherwise.

B. Implied License... Assuming arguendo that the policy could give rise to a nonexclusive license, there is no indication that Kayne's conduct was based upon the supposed existence of such an implied license or that EIG's policy was communicated to Kayne in any way. “[A] nonexclusive implied license need not be evidenced by a writing” and instead “may be implied from conduct or granted orally.” But there must be some conduct or expression from which a license could be implied. Because Kayne offers no evidence of such conduct, the defense fails as a matter of law.

C. Failure to Mitigate... Although Kayne has not proven that EIG knew of the alleged infringement as a matter of law for limitations purposes, Kayne faces a significantly lessened burden as a non-movant under the summary judgment standard. The court must draw all reasonable inferences in Kayne's favor as the non-movant. Because a reasonable fact-finder could infer EIG's actual or constructive knowledge from the available evidence and that the subsequent alleged infringement could have been avoided, Kayne's mitigation defense survives summary judgment.

D. Unclean Hands/"Entrapment"... Kayne does not argue that its infringement was innocent or that it was enticed into infringing. Instead, it argues that EIG strategically delayed litigation in order to augment damages. Kayne cites no examples, and the court can find none, of strategic delay providing the basis for an unclean hands defense. Whatever increased damages may result from EIG's alleged litigation strategy are adequately addressed by other defenses, including the statute of limitations and failure to mitigate. The court sees neither need nor basis in the law to limit EIG's damages in this case on the basis of unclean hands.

PHOENIX ENTERTAINMENT PARTNERS LLC V. BOYTE

This case brings with it an education on karaoke. The word apparently comes from combining two Japanese words, "kara," which means empty, and "okesutora," or orchestra. Karaoke, or
"empty orchestra," is a type of interactive entertainment in which amateur singers, here, customers of bars, restaurants, or clubs, sing along with recorded music and video displays, using a microphone and a public address system. A "karaoke jockey" manages and plays the music and shows the displays, announces the songs, and identifies whose turn it is at the microphone. As this case and other similar lawsuits demonstrate, karaoke is a highly competitive business. This suit is one of hundreds that the plaintiff and its predecessor, a producer and distributor of karaoke accompaniment tracks, has brought around the country invoking the Lanham Act, 15 U.S.C. § 1051 et seq., to challenge the unauthorized copying and performance of its commercial karaoke files as a form of trademark infringement.

In this case, Phoenix Entertainment Partners sued Houston-area bars and two karaoke jockeys, alleging trademark and copyright infringement of karaoke tracks created under the Sound Choice brand. . . . Some defendants have moved to dismiss. . . . Based on the briefs, the complaint, and the applicable law, the motions to dismiss are granted in part and denied in part. . . .

The Boytes devote one paragraph to arguing that the complaint does not state a claim against them for copyright infringement. It is unpersuasive. The complaint alleges that Phoenix owns a set of copyrights, and that the Boytes copied and displayed the copyrighted works without permission. . . . The copyright claims are adequately pleaded and may proceed.

COACH, INC. V. TRENDY TEXAS, LLC

Pending before the court is a motion for default judgment and permanent injunction against defendant Trendy Texas, Inc. ("Trendy"). . . . Trendy has not responded to the motion. Having considered the motion and applicable law, the court is of the opinion that the motion should be GRANTED. . . .

Coach contends that it owns copyrights in the Coach Design Elements used on its products. . . . Specifically, it asserts that it has valid copyrights that are registered with the Copyright Office for the “Legacy Stripe,” “Signature C,” “Op Art”, and “Horse & Carriage” designs, and it provides the registration numbers for these designs. . . . Coach alleges that Trendy violated 17 U.S.C. § 501 by copying the Coach & Lozenge Design, Coach Leatherware Est. 1941 & Design, CC and Design (Signature C), Amended CC & Design (Signature C), and other Coach Design elements. . . .

Here, Coach contends that Trendy's infringement was willful and requests statutory damages of $150,000 for each of its two copyrights at issue. . . . However, the affidavit provided addresses trademarks rather than copyrights. . . . Accordingly, the court defers ruling on damages for the Copyright Act violation until Coach has provided briefing and evidence that will enable the court to determine an appropriate award under the statute.

RN'D PRODS., INC. V. WALT DISNEY RECORDS DIRECT
Pending before the court is Defendant's Motion to Dismiss Plaintiff's First Amended Complaint. The court has considered the motion, Plaintiff's response, Defendant's reply, all other relevant filings, and the applicable law. For the reasons set forth below, the court GRANTS Defendant's motion.

Under Federal Rule of Civil Procedure 17(a), “[a]n action must be prosecuted in the name of the real party in interest.” The Copyright Act requires registration of the copyright claim prior to the institution of a civil action for infringement. In this case, Plaintiff claimed to own copyrights to the recordings it alleges were infringed but failed to allege that it registered its copyright claims in its own name. In fact, in its amended complaint, Plaintiff identified Walt Disney Music Company as the copyright registrant for the three songs at issue. Plaintiff's own pleading, then, concedes that Walt Disney Music Company is the real party in interest to prosecute this action for copyright infringement. Aside from that concession, Plaintiff has not shown that it filed copyright claims on the recordings and, thus, has not satisfied a prerequisite to bringing this copyright infringement action.

Interpreting “Lawfully Made Under This Title” TGS asserts that the seismic data copies were “lawfully made” by the Canadian Board because they would have been authorized by United States law had they been made in the United States. TGS argues that “the Court must pretend that the copies had been made in the United States and determine whether the making of those copies would have violated the Copyright Act.” The court does not need to “pretend” that the copies were made in the United States subject to all United States laws, but instead must determine whether the copies, made abroad, were made in a manner that would have violated Title 17 if it applied. The United States regulatory regime that governed the submission and disclosure of processed seismic data is not part of Title 17. A foreign copy is not “lawfully made under this title” if it would have been lawful under United States laws or regulations besides Title 17. The issue is whether the Board's copying and importation at TGS's request was lawfully made under Title 17, not under another foreign statute, law, or regulation that may have a United States equivalent.

In 1982 as well as in 1999, both Canadian and United States law required parties conducting seismic surveys to submit the data to the government, knowing that it could be disseminated at a later date. But the Canadian and United States regulatory regimes do not affect the copyright status of foreign-made copies of the seismic data obtained from surveying in the foreign country. Canada's licensing does not expand or restrict the rights confirmed by Title 17. If the Canadian Board's copying and importation at TGS's request is unlawful under Title 17, the fact that it satisfied the Canadian or American seismic survey licensing regulations does not mean that the copies were “lawfully made under this title.” If the Canadian Board's copying and importation were lawful under Title 17, they are lawful “under this title” without regard to
whether they complied with or violated the Canadian or the United States regulations on submitted seismic survey data.

The similarities between the United States and Canadian regulatory regimes on seismic survey data do not establish that, as a matter of law, the seismic copies were “lawfully made” under Title 17 because they complied with Canadian licensing regulations on seismic survey data. Dismissal of Geophysical's complaint for this reason is not warranted. Applying § 109's “lawfully made under this title” standard to this case, the creation of the seismic data copies in Canada would not have been authorized under Title 17. TGS's motion to dismiss on ground that the copies were “lawfully made under this title” is denied.

Fair Use . . . Viewing the factual allegations in the light most favorable to Geophysical leads to the conclusion that it is premature to dismiss the complaint on fair-use grounds. . . . The first factor, the purpose and character of the use, cannot be weighed without knowing more about how TGS used the Geophysical seismic data it obtained from the Canadian Board. . . . The second factor, the nature of the work, cannot be weighed without information on how the seismic data was made, processed, and compiled. . . . On the third factor, the amount and substantiality of the copied portion used, TGS states that “complete copying of the lines was necessary to achieve the purpose of the intended subsequent use: offshore exploration and development.” . . . This admission makes this third fair-use factor weigh in Geophysical's favor. . . . TGS relies on its purpose-and-character-of-the-use argument to justify the extent of its copying, but, for the reasons stated above, applying this factor requires further discovery. . . . The fourth factor, the effect on the potential market, cannot be weighed without discovery into whether there was an implied license. . . .

An Implied License . . . TGS argues that Geophysical's complaint allegations establish an intent to convey an implied license because Geophysical was aware of and complied with Canada's licensing requirement to submit the seismic data and agree to a limited confidentiality period. TGS asserts that the Canadian regulatory regime has, at the relevant times, provided that the submitted data would be disclosed on request after a period of confidentiality, and that Geophysical voluntarily submitted its seismic data to the Board knowing that it could be disclosed when this period expired.

TGS is correct that the complaint alleges Geophysical's participation in this regulatory licensing scheme. Geophysical alleges that it “was required to, and did, submit to the [Board] a copy of [its works].” . . . But the parties dispute whether this amounted to an implied license and, if so, the parameters of the license that resulted. These disputes cannot be resolved on the present record.

Western District of Texas

BOB DAEMMRICH PHOTOGRAPHY, INC. V. MCGRAW-HILL GLOBAL EDUCATION HOLDINGS, LLC

Before the Court are Defendants' Motion to Partially Dismiss First Amended Complaint . . .
The District Court referred the above motion to the undersigned Magistrate Judge for report and
recommendation pursuant to 28 U.S.C. § 636(b)(1)(A), FED. R. CIV. P. 72, and Rule 1(c) of Appendix C of the Local Rules. . . .

First, McGraw-Hill argues that Daemmrich has not identified the works that are the subject of its claim in Exhibits 6 and 7 with sufficient particularity. . . . Here, Exhibits 6 and 7 have “identified [with] some specificity the work[s] at issue.”

McGraw-Hill also complains that Daemmrich has failed to plead registration for the works in Exhibits 6 and 7. . . . [T]he Court has found no case in which the plaintiff is required to include copyright registration numbers or copies of the registration certificates in the complaint in order to meet the pleading standard. . . .

McGraw-Hill further argues that the language used in the complaint is insufficient to plead ownership of registered copyrighted works for Exhibits 6 and 7. . . . [T]hough registration information was solely included for the first five exhibits, Daemmrich has sufficiently alleged that the photographs from all seven exhibits have registered copyrights.

McGraw-Hill lastly argues that because Daemmrich uses McGraw-Hill's identification information for Exhibits 6 and 7 rather than information from its own records, it cannot possibly know whether it has a registered copyright in the photographs. . . . Accepting all allegations as true, as is required by Rule 12(b)(6), Daemmrich has provided a list of stock photographs that it claims are owned and registered by Daemmrich.

ADOBE SYS. INC. V. SKH SYS., INC.

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Plaintiffs Adobe Systems Incorporated (Adobe), Autodesk Inc. (Autodesk), and CNC Software, Inc. (CNC) (collectively, Plaintiffs)’ Motion for Summary Judgment [#29], Defendant Chorng “Jack” Hwang (Hwang)’s Response and Motion to Exclude Evidence [#32], and Plaintiffs' Reply [#33] in support. Having reviewed the documents, the governing law, and the file as a whole, the Court now enters the following opinion and orders. . . .

Copyright Infringement . . . Plaintiffs provide copies of the copyright registrations for the software products at issue, Registrations at 2–29, satisfying the first element of their copyright infringement claim. . . . Also, Plaintiffs supply evidence showing how Hwang marketed, sold, and distributed copies of Plaintiffs’ copyrighted software. . . . Hwang does not argue his use of the copyrighted material was licensed or authorized. As a result, Plaintiffs are entitled to summary judgment on their copyright infringement claim. . . .

iii. Circumvention of Copyright Protection . . . Mr. Brick observed Hwang using a program to circumvent Plaintiffs’ access control technology. . . . Specifically, Mr. Brick describes how Hwang’s program bypassed the need for a product activation key by “trying different combinations of characters until it finds a key combination that works and can be used to activate
the software.” . . . Such evidence is sufficient to show Hwang improperly circumvented Plaintiffs' copyright protection measures on one occasion. Plaintiffs offer no other evidence indicating Hwang circumvented Plaintiffs' copyright protections at any other time. . . .

Willful Infringement . . . Here, the record demonstrates Hwang wilfully infringed Plaintiffs' copyrights and trademarks and continued to do so even after this lawsuit was filed. Plaintiffs provide evidence Hwang advertised, sold, and distributed unlicensed versions of Plaintiffs' copyrighted software while using Plaintiffs' exact trademarks. Hwang's statements on Facebook and to Mr. Brick show Hwang's acts were done knowingly and intentionally. Therefore, the Court finds Hwang willfully infringed on Plaintiffs' copyrights and trademarks and Plaintiffs' damages should be enhanced accordingly. . . .

Permanent Injunction . . . Plaintiffs submitted evidence showing Hwang continued to sell unlicensed versions of Plaintiffs' software and use the Marks despite the filing of this lawsuit. Although Hwang ultimately agreed to a preliminary injunction in this case, a permanent injunction is appropriate to prevent Hwang from infringing on Plaintiffs' marks and copyrights in the future. . . .

Statutory Damages . . . Given the wilfulness of Hwang's conduct, his continued infringement after this lawsuit was filed, and the need for deterrence, an award of statutory damages in excess of the minimum is appropriate. There is no evidence of the value of copyrights, the value of the infringing material, or any losses sustained by Plaintiffs other than attorneys' fees and costs in this suit. Given these facts and awards by courts in this circuit in similar cases, this Court awards Plaintiffs statutory damages in the amount of $25,000 for each copyright infringed upon. . . .

Plaintiffs appear to ask the Court to infer Hwang used key generation software to circumvent Plaintiffs' access control technology for sixteen product registrations from the single occasion of circumvention observed by Mr. Brick because Hwang asserted his Fifth Amendment right against self-incrimination and refused to answer Plaintiffs' discovery requests. . . . The Court declines to do so without evidence, direct or circumstantial, showing Hwang circumvented Plaintiffs' copyright protections on other occasions. Instead, the Court awards the maximum statutory damages, $2,500, for the one occasion of circumvention for which Plaintiffs provided evidence. . . .

Costs & Attorneys' Fees . . . Plaintiffs have shown they are entitled to attorneys' fees and costs under 17 U.S.C. § 505. Hwang failed to offer any objectively reasonable explanation for the distribution of unlicensed versions of Plaintiffs' software. Considering the prolonged nature of Hwang's business operations and Hwang's willful copyright infringement, the need for deterrence is strong. An award of reasonable attorneys' fees is appropriate.

_Sixth Circuit_

Court of Appeals for the Sixth Circuit

MALIBU MEDIA, LLC V. RICUPERO
Malibu Media filed suit against David Ricupero for copyright infringement, alleging that he illegally downloaded various films owned by Malibu Media. Ricupero brought a counterclaim against Malibu Media, seeking a declaratory judgment that he was not a copyright infringer, which the district court dismissed as redundant to the plaintiff's claims. Malibu Media filed a motion to voluntarily dismiss the action pursuant to Federal Rule of Civil Procedure 41(a)(2), which the district court granted. Ricupero appeals the district court's dismissal of Malibu Media's claims against him and the dismissal of his counterclaim. For the following reasons, we AFFIRM.

Ricupero's counterclaim allegations track those made in Malibu Media's complaint and seek only a declaratory judgment that he did not infringe its copyrighted works. The heart of Ricupero's counterclaim is whether he infringed the copyrighted works; resolution of Malibu Media's copyright infringement claim would dispose of all factual or legal issues necessary for deciding that counterclaim.

Indeed, Ricupero is not clear what “useful purpose” his counterclaim would serve, arguing only that it would cause no prejudice to Malibu Media and may “deter against future filing of copyright claims to obtain nuisance-value settlements.” A counterclaim would also provide Ricupero an additional avenue for securing an award of attorney's fees, especially where Malibu Media later moved to voluntarily dismiss its complaint without prejudice under Rule 41(a)(2). . . . But the fee-shifting provision of the Copyright Act, 17 U.S.C. § 505, awards reasonable attorney's fees to the prevailing party in a copyright infringement action without regard to whether the defendant has asserted a counterclaim. . . . Thus we affirm the district court's dismissal of the counterclaim as redundant.

SIGNATURE MNGMT TEAM, LLC V. DOE
No. 16-2188, 2017 WL 5710571 (6th Cir. Nov. 28, 2017)

Plaintiff, Signature Management Team, LLC (“Team”), prevailed in this action for copyright infringement but appeals the district court's refusal to unmask Defendant John Doe, an anonymous blogger. Because the district court failed to recognize the presumption in favor of open judicial records, we REMAND with instructions to reconsider unmasking Doe in light of this opinion.

Eastern District of Kentucky

KENTUCKY FORWARD LLC V. SHORT

This matter is before the Court on Defendants' Motion to Vacate Judgments and for New Trial, and Alternative Motion to Alter or Amend Judgments or Make Amended or Additional Findings . . . . Plaintiff responded and Defendants replied, and this matter is ripe for review. . . .
Defendants claim the award for copyright infringement was a clear legal error because they had an implied license to use the artwork on the BerryCare Toothpaste Gum and BerryCare Quick Energy Gum. The accused copyright infringer bears the burden of proving that there was an implied license. 

Defendants offer a few facts in their motion purportedly proving that an implied license existed and that Plaintiff did not ask Defendants to cease using the copyrighted material. Defendants could have come forth with evidence that there was an implied license at any point during the pendency of this litigation; however, Defendants specifically chose not to do so. As the Court noted above, there is no excuse for Defendants' actions in this case. Defendant now seek a “second bite at the apple” to present evidence which was previously available to them. Defendants have not argued, and the Court sees no evidence of, any newly discovered evidence since the imposition of the judgment which would justify reconsideration or amendment of the judgment. For this reason, Court will not consider any evidence that might be presented in the instant motion on the issue of an implied license. If Defendants wished to present evidence on the defense of an implied license, they should have done so prior to the judgment. There is no evidence in the record to support Defendants' claim an implied license existed; thus, the Court will not alter or amend its judgment or make additional findings.

Western District of Kentucky

MITCHELL V. CAPITOL RECORDS, LLC

This matter is before the Court on two motions for partial summary judgment by defendants Capitol Records, LLC (“Capitol”) and Andre Romelle Young p/k/a Dr. Dre d/b/a N.W.A. (“Young”) . . ., as well as a motion by the same defendants for leave to file supplemental authority . . .

A. STATUTE OF LIMITATIONS . . . The first motion for partial summary judgment seeks to limit Mitchell's recovery to only those damages that arose from infringing acts that occurred within three years of the initiation of this suit . . . The Court agrees with Mitchell that Petrella does not require the Court to ignore Sixth Circuit precedent that clearly defines accrual of a copyright claim as occurring when the plaintiff “knew of the potential violation or is chargeable with such knowledge.” . . . Mitchell has presented evidence that his claims did not accrue until May 2014, which the defendants have not contested at this time; as such, they were timely brought when he filed this action in February 2015. Further, he is not precluded from recovering damages for any claims that accrued within three years of the commencement of this action, regardless of the date of occurrence. Thus, the defendants' motion for partial summary judgment as to damages . . . is DENIED.

B. OWNERSHIP OF SOUND RECORDING COPYRIGHT . . . The defendants' next motion for partial summary judgment seeks to preclude Mitchell from pursuing a claim for infringement upon the copyright for the sound recording of “A Star in the Ghetto,” as Mitchell has never actually owned the copyright to the sound recording. . . . At the outset, the Court must note that it cannot consider the application for a copyright to the sound recording as prima facie evidence of
the validity of the copyright. Under the Copyright Act, a certificate of registration of a copyright within a specified time period “shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate.” . . . While Mitchell concedes that Atlantic Records did register a copyright for the sound recording “A Star in the Ghetto” . . . he attempts to rebut the defendants' evidence of his lack of ownership by pointing to a “Mechanical License” that was agreed to by Mitchell/Hot Stuff Publishing and Atlantic Records on July 7, 1977 . . . . However, the Court finds that this document fails to create a genuine issue of fact as to the ownership of the copyright to the sound recording.

Eastern District of Michigan

GENERAL MOTORS LLC. V. DORMAN PRODUCTS, INC.

In August 2015, Plaintiffs General Motors LLC and GM Global Technology Operations LLC ("Plaintiffs" or "GM") filed suit against Defendants Dorman Products Inc. ("Dorman") and Electronics Remanufacturing Company LLC ("ERC"; collectively "Defendants"), alleging copyright infringement under the Copyright Act, 17 U.S.C. 101 et seq., and unlawful circumvention under the Digital Millennium Copyright Act, 17 U.S.C. 1201 et seq. . . . Plaintiffs have shown that one of their copyright registrations (TXu-1-917-502) covers software installed on a module sold by Defendant Dorman. Just because they cannot yet show that Defendants have copied software covered by the other four copyright registrations does not mean that allegations regarding those four registrations are insufficiently plausible to survive a motion to dismiss. Plaintiffs went above and beyond the plausibility standard required for the TXu-1-917-502 copyright registration—but that doesn't obligate them to meet that same heightened standard for the other four copyrights. Plaintiffs are not required to continue attempting to purchase modules from Dorman until they acquire one that corresponds to each copyrighted work. Viewed in the context of the complaint as a whole, and using common sense, it is plausible to infer that, if the software covered by TXu-1-917-502 was found on a Dorman module, then it is more likely that software covered by GM's other copyright registrations may also be found on additional Dorman modules. . . . Despite not pleading in detail that the other four GM copyright registrations cover software found on Dorman modules, Plaintiffs allege enough facts to raise a reasonable expectation that discovery will reveal Dorman modules containing more of GM's copyrighted software. . . .

While the allegations regarding the Software Transfer Tool also support Count III, it is not so far-fetched for this Court to infer that Defendants themselves must have also circumvented GM's technological measures at some point. Taken as true and viewed in the context of the complaint as a whole, Plaintiffs' factual allegations do support a claim that Defendants must have circumvented GM's Security Access feature—whether during the development and distribution of the Software Transfer Tool, or prior to that, when Defendants were allegedly copying the software onto blank modules themselves.
This matter is before the court on a motion to exclude evidence under the authority of Rule 37, Fed. R. Civ. P., . . . filed by plaintiff, Design Basics, LLC. Plaintiff seeks to exclude defendants' use "of any evidence, whether directly or indirectly, on the issue of expenses, deductions, or allocations under § 504(b) that is not specifically identified payment evidence in Exhibit A to Defendant's Supplemental Response to Plaintiff's Interrogatory No. 9." . . . The motion for Rule 37 sanctions is not well taken and will be DENIED. . . .

Here, we don't know that there was any infringement. The court has not determined the elements of plaintiff's designs that were copied by Petros Homes. We don't know whether Petros copied anything. And if a jury concludes that copying did occur, they will have to decide whether defendant's use of plaintiff's original work resulted in a design that was substantially similar. In short, there is much more about plaintiff's claim that is not currently known to the court than is known. And it would be unjust to essentially grant judgment to plaintiff for the millions of dollars in gross receipts generated by Petros' sale of the 80 plus home at issue simply because defendants don't keep their business records in a manner that plaintiff desires.

Plaintiff's second motion for partial summary judgment is premature and lacks merit. Whether defendants will be able to deduct overhead expenses from their profits is dependent on several unresolved questions of fact-such as: 1) whether defendants copied protected elements of plaintiff's design plans; 2) whether such copying, if proven, resulted in substantially similar designs; 3) whether any gross or net profits resulted from the alleged infringement; and 4) whether defendants' method of allocating overhead expenses to specific home construction projects is supported by sufficient evidence and an appropriate methodology so that they can be used in calculating defendants' net profits.
Plaintiff, Design Basics, LLC, holds United States Copyright Office-issued certificates of copyrights on plans for residential homes. It instituted this action for damages contending that defendants used the designs without permission. Plaintiff has moved for partial summary judgment, claiming that there is no genuine dispute of material fact that it is the owner of a valid copyrights on the home plans at issue. If the court so finds, plaintiff will have established one of the elements of its copyright infringement claim. Plaintiff also seeks summary judgment on several of defendant's affirmative defenses. The court will GRANT, in part, and DENY, in part, plaintiff's motion for partial summary judgment.

Defendants have not presented any admissible evidence to rebut the presumption that the copyrighted plans were independently created by plaintiff and that they possess the requisite minimal decree of creativity. As a result, plaintiff is entitled to partial summary judgment on the first element of its copyright infringement claim—that the plans involved in this lawsuit are generally protected by valid copyrights.

There is no innocent infringer defense that completely negates liability for copyright infringement.

The doctrine of copyright misuse prohibits a copyright holder from using a copyright "to secure an exclusive right or limited monopoly not granted by the [Copyright] Office and which is contrary to public policy to grant." Here, there are genuine disputes of material fact on the asserted affirmative defense of copyright misuse and, absent controlling case law holding that such a defense has been rejected, summary judgment on this defense is inappropriate.

Defendants have asserted the fair use defense as an alternate means of defending this case, in the event it is determined that they did, in fact, copy protected elements of plaintiff's designs. After weighing the four factors together, the court cannot conclude, as a matter of law, that the alleged use of plaintiff's designs was unfair. Reasonable minds could differ as to whether fair use applies to the facts of this case, and summary judgment is inappropriate on this affirmative defense.
to distribution-and, as such, the Court must conclude that a question of fact exists with regard to whether plaintiff reproduced the Westgate, Lakewood, and Avon plans that were subject to defendant's copyrights.

Upon review, the Court finds that plaintiff is entitled to summary judgment on the issue of "substantial similarity." Here, defendant makes no effort to point out specific original elements contained in its designs. In fact, defendant does not even refer to a particular plan when addressing this issue. Undoubtedly, the plans are different, yet defendant makes only a generic recitation regarding "original elements" that would apply to essentially any architectural plan. But, even assuming that defendant's generic argument regarding the "overall look and feel" is somehow sufficient to identify the creative elements so that this Court could perform a filtering analysis, defendant wholly fails to point the Court to any allegedly infringing comparison plan for the Court to compare.

2. DMCA . . . Upon review, the Court finds that plaintiff is entitled to summary judgment. Here, plaintiff admittedly sent copyrighted plans to Bialosky, which then scanned the documents into its system. To the extent these actions could arguably constitute copying, there is no evidence even suggesting that the CMI was removed during this process. Accordingly, these actions are not sufficient to establish a violation of the DMCA.

Southern District of Ohio

PAN V. KOHL'S DEPARTMENT STORES, INC.

This matter is before the Court on Defendants' Motion for Attorney Fees. . . . Defendants seek fees and costs incurred during this action. For the reasons set forth herein, Defendants' Motion is GRANTED as to Defendants' entitlement to fees and costs.

YANG V. KOHL'S DEPARTMENT STORES, INC.

This matter is before the Court on Defendants' Motion for Attorney Fees. (Doc. 80). Defendants seek fees and costs incurred during this action. For the reasons set forth herein, Defendants' Motion is GRANTED as to Defendants' entitlement to fees and costs.

Middle District of Tennessee

REINER V. NISHIMORI

TC Reiner brought this action against Ryon Nishimori and the Trustees of Watkins Institute ("Watkins") asserting multiple claims arising from alleged copyright infringements. . . . Before the Court is Defendants' Motion for Summary Judgment. . . . For the following reasons, Defendants' motion is GRANTED. . . .
1. Transfer of Copyright Interest . . . Here, there is a disputed issue of fact as to whether Reiner signed a piece of paper transferring his copyright ownership in "Casablanca." Each party submitted different forms, and it is unclear at this stage when each form was signed or whether the signatures are authentic. Accordingly, there is question of fact as to whether Reiner transferred his copyright ownership in "Casablanca" to SuperStock that a jury must resolve. Summary judgment on this material factual dispute is not appropriate.

2. Validity of Copyright Interest . . . Here, Defendants concede that this is an affirmative defense that they failed to raise prior to summary judgment. . . . Defendants are not entitled to summary judgment on this affirmative defense.

3. Fair Use . . . After weighing all the factors in the light consistent with the purpose of the fair use doctrine, the Court concludes that O'Bryan's educational use of "Casablanca" was fair use. Watkins used the photograph in a nonprofit educational setting and did not profit from the photograph at all. There is no proof before the Court that any market for using photographs in this setting existed for Watkins to disturb by using the photograph without paying for it. Rejecting the fair use defense and allowing this case to go to trial would stifle the creativity that the fair use doctrine is intended to protect. As such, the Court grants summary judgment to Watkins on the fair use defense. . . .

Nishimori used "Casablanca" in two ways: first, as a mock advertisement, and second, on his Flickr account as storage. Both of these uses are noncommercial, and while Nishimori used the entire photograph, at least for the first use he transformed it into a mock advertisement for shoe inserts. The first factor weighs in favor of fair use. The analysis on the second and third factors are the same as with Watkins' use, and both factors slightly mitigate against fair use. However, there is no evidence of any potential market harm. Reiner fails to prove that there is a market for students to use photographs provided by their teachers to complete classroom assignments, nor is there a market for paying for storage of the photographs. The fourth factor weighs strongly in favor of fair use. After balancing the factors consistent with the purpose of fair use discussed above, summary judgment is appropriate as to Nishimori as well.

C. DMCA VIOLATIONS . . . Summary judgment is also appropriate on the DMCA claim against Watkins. For vicarious liability, the plaintiff must prove "(1) a defendant has the right and ability to supervise the infringing conduct and (2) the defendant has an obvious and direct financial interest in the infringement." . . . As explained when discussing fair use above, there are no facts in the record to show that Watkins had a financial interest in the infringement. Accordingly, Watkins is also entitled to summary judgment on the DMCA claim.

MUSIC CITY METALS CO. V. JINGCHANG CAI

Pending before the court are three Motions to Dismiss. HiPacking, Inc., Hyco International Trading Company LP, Jia Ning Liu, Jolyn Junyao Liu, and Shenzhen Hai Pai International
Warehousing Services Limited (“Hyco Defendants”) have filed a Motion to Dismiss Count III of Plaintiff's Complaint . . . . Oceanside BBQ Parts Factory Inc., Baldev Sandhu, and Sukhwinder Bedi (“Oceanside Defendants”) have filed a Motion to Dismiss . . . . Xing Chao, Dongguan Haishengxin Hardware Co. Ltd., Family Mart Co., Ltd., Yuzhen Fu, Liao Houbin, Wen Kun, Xiaomei Li, Real Value International Trading Ltd., Xing Xianhong, and Xing Xiusheng (“Miscellaneous Defendants”) have filed a Motion to Dismiss . . . . For the reasons discussed below, the Hyco Defendants’ Motion will be denied, and the Oceanside and Miscellaneous Defendants' Motions will be granted in part and denied in part. MCM's claims for copyright infringement based solely on the defendants' use of its product model numbers will be dismissed as to all defendants. . . .

MCM has identified three copyright registrations covering works to which it claims to be entitled to copyright protection. U.S. Copyright Registration No. TX 5-258-606 covers a work entitled “Illustrated Gas Grill Parts Search” created or completed in 1999. . . . U.S. Copyright Registration No. TX 7-268-508 covers a work entitled “Gas Grill Replacement Parts,” formerly or alternately entitled “Illustrated Grill Parts Search,” completed and published in 2010. . . . MCM has provided a portion of “Gas Grill Replacement Parts,” which appears to be a parts catalog incorporating both text and graphic elements, including numerous illustrations of grill replacement parts presented alongside their respective model numbers. . . . Finally, U.S. Copyright Registration TX 7-925-681 covers a work entitled “Gas Grill Replacement Parts Catalog 28,” formerly or alternately entitled “Illustrated Gas Grill Parts Search, Heavy Duty BBQ Replacement Parts,” completed and published in 2014. . . . MCM has provided a portion of “Gas Grill Replacement Parts Catalog 28,” which also appears to be a parts catalog incorporating both text and graphic elements, including numerous illustrations of grill replacement parts presented alongside their respective model numbers. . . .

As catalogs, MCM's copyrighted works convey a number of facts about the world that are not subject to copyright protection—namely, that the parts exist; that they look a certain way and consist of certain materials; and that they are available for sale from MCM. However, the catalogs also contain elements that appear at least likely to fall within the boundaries of original works protectable by copyright, such as the original illustrations of the parts themselves. MCM alleges that some defendants have directly copied these illustrations, which is sufficient to survive Rule 12(b)(6) as to those defendants. The Oceanside and Miscellaneous Defendants, however, argue that they, at the most, are alleged to have linked to listings including MCM's model numbers. MCM argues that those model numbers are themselves entitled to copyright protection, while the Oceanside and Miscellaneous Defendants disagree. . . .

MCM has identified a number of allegedly infringing product listings that are, it claims, related to the movants, but it is not immediately clear from the Complaint which allegations of infringement are premised solely on the use of MCM model numbers and which are premised on the inclusion of additional allegedly infringing material. . . . At this stage in the proceedings, however, the court will not penalize MCM for failing to foresee which of its copyright theories would survive a motion to dismiss and which would not. Accordingly, the court will not yet wholly dismiss the copyright claims as to any particular defendants. Dismissal will accordingly
be limited to the relevant subject matter, namely all copyright infringement claims premised solely on the use of model numbers.

HALPER V. SONY/ATV MUSIC PUBLISHING, LLC

This matter is before the Court upon a Motion to Dismiss and Incorporated Memorandum of Law filed pursuant to Fed. R. Civ. P. 12(b)(6) by Defendants Sony/ATV Music Publishing LLC, EMI April Music Inc., Gone Gator Music, Universal-Polygram International Tunes, Inc., Sony/ATV Songs LLC, and UMG Recordings, Inc. . . .

Plaintiff acknowledges that although he wrote “Don't Throw Our Love Away” in 1984, he did not copyright it until 2015, after Sam Smith's “Stay With Me” had been released. . . . Because Plaintiff did not have a copyright on “Don't Throw Our Love Away” when “Stay With Me” was released, “Stay With Me” cannot be said to have infringed on Plaintiff's copyright. For this reason alone Defendants' Motion should be granted.

Even if Plaintiff had copyrighted “Don't Throw Our Love Away” in 1984, however, the fact that Plaintiff gave his demo to Garth Fundis, Don Lanier, Brent Maher, Paul Worley, Rich Alves, Tom Collins, Brian Rawlings, Lee Greenwood, Don Williams, Reba McEntire, Crystal Gayle, “Sylvia,” Gary Morris, Barbara Mandrell, and Ronnie Milsap in 1986, Dolly Parton in 1990, Marvin Hamlisch “before he died,” and Emilio Estefan and Gloria Estefan “via referral from a mutual friend of Gladys Passes whose name was Julio” in 2013, dissemination to these few people does not establish that Plaintiff “widely disseminated” his work. . . . Moreover, Plaintiff has not alleged facts connecting any of these people with Defendants, nor has Plaintiff alleged facts establishing any chain of events whereby “Don't Throw Our Love Away” would have made its way throughout the years from the possession of these individuals to Defendants. Plaintiff cannot establish that Defendants had access to his work, and Defendants' Motion should be granted.

Furthermore, Plaintiff concedes that “Don't Throw Our Love Away” was never published. . . . It is also noteworthy that the 2015 communication that Plaintiff avers establishes that Defendants had knowledge of, and access to, “Don't Throw Our Love Away” occurred after “Stay With Me” had been released and before Plaintiff had copyrighted “Don't Throw Our Love Away.” . . . Accordingly, these 2015 communications cannot establish either knowledge or access, and Defendants' Motion should be granted.

Finally, other than both songs containing the phrases “stay with me” and “lay with me,” Plaintiff has failed to allege that “Don't Throw Our Love Away” and “Stay With Me” are either substantially similar or strikingly similar in composition or melody. Absent sufficient similarity, Plaintiff cannot establish copyright infringement, and Defendants' Motion should be granted.

Western District of Tennessee

DUCKS UNLIMITED, INC. V. BOONDUCK, LLC

Plaintiff Ducks Unlimited, Inc. sues Defendants Boondux, LLC and Caleb Sutton alleging claims of copyright infringement, in violation of § 501 of the Copyright Act . . . trademark infringement . . . false designation of origin or sponsorship . . . and trademark dilution . . . based on Defendants' use of a logo in advertising, promoting, selling, and distributing merchandise bearing that logo. . . .

The Court held a bench trial on Plaintiff's claims against Defendants from March 27, 2017, to March 31, 2017. . . . The Court's findings of fact and conclusions of law required by Federal Rule of Civil Procedure 52 follow. . . .

a. Access . . . Ample evidence of access shows that Sutton had an opportunity to view the DU Logo before he designed the Boondux Logo.

b. Substantial Similarity . . . The Boondux Logo is substantially similar to the DU Logo's copyrightable elements. The DU Logo depicts a right-facing mallard's head shown in profile. The DU Logo is composed of thick, dark lines with no internal coloration. The Boondux Logo exhibits the same features. . . . The Court is not persuaded that the similarities between the DU Logo and the Boondux Logo are a mere collection of unprotectible elements. The similarities include more than the fact that both logos depict right-facing line drawings of a mallard's head in profile. The DU Logo is a particular expression of a duck head. Integral to that expression is, among other details, the distinctive duck head shape that the DU Logo depicts. The Boondux Logo shares the same distinctive shape.

c. Independent Creation . . . Defendants contend that they have presented “overwhelming” evidence that Sutton independently created the Boondux Logo. . . . Because the Court finds that Sutton, in fact, copied the DU Logo when designing the Boondux Logo, there is no need to consider separately Defendants' independent-creation evidence. As discussed above, the Court does not find Sutton's creation narrative credible. Although Defendants' evidence was “detailed” and in some instances “specific,” . . . that evidence is entitled to little weight.

Seventh Circuit

Court of Appeals for the Seventh Circuit

HART V. AMAZON.COM, INC.
No. 16-2793, 2017 WL 65387 (7th Cir. Jan. 6, 2017)

A very unusual case, this. The plaintiff, unrepresented by counsel . . . has sued Amazon, claiming that it permitted third parties to advertise on its website six counterfeit copies of books called Vagabond Natural and Vagabond Spiritual that the plaintiff had written and self-published (that is, published himself rather than handed to a publisher). . . .

There is no plausible allegation that if (a big if) the books sold by Amazon are counterfeits, Amazon was aware of the fact. . . . Granted, there is counterfeiting of books (especially
textbooks), in which Amazon may be involved to the extent of advertising and selling such books, though without necessarily knowing they're counterfeit. . . . But counterfeiting can't be presumed. . . . The judgment of the district court dismissing his suit with prejudice is therefore AFFIRMED.

DESIGN BASICS, LLC V. LEXINGTON HOMES, INC.
No. 16-3817, 2017 WL 2432294 (7th Cir. Jun. 6, 2017)

This copyright suit shows the difficulty in finding protected creative expression in a crowded field, in this case, architectural design of single-family homes. The case also shows the challenge in administering intellectual property law to discourage so-called intellectual property "trolls" while protecting genuine creativity.

Plaintiffs Design Basics, LLC; Prime Designs, Inc.; and Plan Pro, Inc. (collectively, "Design Basics") and their affiliates claim rights to some 2700 home designs. They sued defendants Lexington Homes, Inc. and related parties (collectively, "Lexington") for copyright infringement, contending that Lexington built homes that infringed four of Design Basics' designs.

The district court granted summary judgment to Lexington, finding no evidence that Lexington ever had access to Design Basics' home plans. Without access, the court reasoned, there could be no copying and no copyright infringement. We affirm. We agree with the district court that Design Basics has no evidence of access. We also conclude that no reasonable jury could find that Lexington's accused plans bear substantial similarities to any original material in Design Basics' plans.

Central District of Illinois

DESIGN IDEAS, LTD. V. MEIJER, INC.

Defendants have filed a Joint Motion to Reconsider Summary Judgment Order . . . . The Motion is GRANTED IN PART and DENIED IN PART. In light of the recent United States Supreme Court case, Star Athletica, L.L.C. v. Varsity Brands, Inc. . . . the Court will reconsider the portion of its Opinion . . . granting partial summary judgment in favor of Plaintiff on Count I on the ground that Plaintiff has a valid copyright. Upon reconsideration, the Court finds that partial summary judgment in favor of Plaintiff was properly granted. . . .

Applying the Star Athletica test here, the Court again finds that the bird portion of the Sparrow Clips is subject to copyright protection. First, the bird portion can be perceived as a three-dimensional work of art separate from the useful article. . . . Second, the bird portion would qualify as a protectable sculptural work on its own if it were imagined separately from the useful article into which it is incorporated.
PTG NEVADA, LLC V. CHAN

The Court grants Defendant Michael Affrunti's motion to dismiss . . . . The Court grants PTG Nevada, LLC's motion to strike . . . . The Court strikes Exhibits A and B of Affrunti's motion to dismiss . . . . The Court denies Affrunti's motion for judicial notice of adjudicative facts . . . . The Court dismisses PTG Nevada, LLC's amended complaint without prejudice. Because the Court dismisses the amended complaint without prejudice, the Court also denies PTG Nevada, LLC's motion for entry of default against Defendants Wai Chan and Stephani Fedorovich . . . .

Moving to the merits of Affrunti's motion, the Court need only address his argument that PTG has not plausibly alleged that he is liable for the alleged copyright infringement. PTG alleges “on information and belief” that Affrunti “was observed infringing [PTG’s] motion picture using” the IP address assigned to his Comcast account. . . . The only connection between the alleged downloading and distribution of the copyrighted material and Affrunti is the fact that Affrunti is the subscriber of the IP address. Courts across the country are split as to whether PTG's allegations sufficiently tie a defendant to the infringing conduct. . . . This Court agrees with those courts that have found that the plaintiff needs to allege more than just the registration of an IP address to an individual in order to proceed against that individual for copyright infringement. . . . “While it is possible that the subscriber is also the person who downloaded the movie, it is also possible that a family member, a resident of the household, or an unknown person engaged in the infringing conduct.” . . . “Due to the risk of ‘false positives,’ an allegation that an IP address is registered to an individual is not sufficient in and of itself to support a claim that the individual is guilty of infringement.” . . . Thus, the Court dismisses PTG's complaint without prejudice, allowing PTG the opportunity to amend to provide additional details tying Affrunti to the alleged infringement.

UIRC-GSA HOLDINGS INC. V. WILLIAM BLAIR & COMPANY, L.L.C.

On October 11, 2016, Plaintiff UIRC-GSA Holdings, Inc. ("JCI") brought the present Complaint against Defendants William Blair & Company ("Blair") and Michael Kalt, collectively, "Defendants," alleging copyright infringement in violation of 17 U.S.C. § 101 et seq. and professional negligence. Both Blair and Kalt moved to dismiss Plaintiff's Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, the Court denies Blair's motion to dismiss and grants Kalt's motion to dismiss without prejudice. . . .

Here, Defendants do not dispute that the expression in Plaintiff's Placement Memoranda is substantially similar to the expression in the Placement Memoranda that Blair created for Rainer. Defendants, however, ask the Court to find that the similar language in the two documents is entirely comprised of words and themes that are common to all GSA bond memoranda. Based on Merritt Forbes, and the other cited case law, bond documents and similar financial documents
can in fact contain copyrightable protected expression that is not so general and boilerplate as to constitute common words or themes. . . . Here, Defendants have submitted no such affidavits, and the Court, at this procedural stage, without any factual record regarding the nature of the GSA bond market or the expression contained in bond documents, cannot find that the allegedly copied expression in the Placement Memoranda is unprotectable as a matter of law or that the expression is common to all bond documents.

VITALGO, INC. V. KREG THERAPEUTICS, INC.

Plaintiffs VitalGo, Inc. and VitalGo Systems Ltd. bring this action against Defendants Kreg Therapeutics, Inc. and Craig Poulos alleging copyright and trademark infringement and unfair competition under federal and state law. Currently before the Court is Defendants' motion to dismiss . . . . For the reasons set forth below, the Court grants in part and denies in part Defendants' motion. Defendants' motion to dismiss . . . is denied as to any claims based on the Kreg Catalyst Bed and granted as to Plaintiffs' remaining claims, without prejudice to Plaintiffs seeking leave to amend VitalGo, Inc.'s counterclaims in the 2011 Lawsuit, Kreg Therapeutics, Inc. v. VitalGo, Inc., No. 11-cv-6771. . . .

Defendants argue that Plaintiffs' claim for attorneys' fees pursuant to § 505 of the Copyright Act must be dismissed because Plaintiffs did not register the works at issue with the U.S. Copyright Office within three months of the works' publication as required by § 412 of the Copyright Act for an award of attorneys' fees. . . . VSI's copyright applications were filed with the Copyright Office on March 22, 2016 but state that the works were first published in 2008. . . . Plaintiffs do not respond to this argument and thus waive their right to contest a dismissal on this basis. . . . Thus, Plaintiffs' claims for attorneys' fees pursuant to § 505 of the Copyright Act are dismissed.

SHERIDAN V. IHEARTMEDIA, INC.

Plaintiffs Arthur and Barbara Sheridan own the master recordings of many hit songs from the 1950s and 1960s. Defendant iHeartMedia plays these recordings on its internet and traditional broadcast radio stations without paying any sort of royalty or licensing fees to the Sheridans. The Sheridans sued on behalf of themselves and others like them, claiming iHeartMedia's actions constitute common law copyright infringement, unfair competition, conversion, and unjust enrichment. iHeartMedia has moved to dismiss the complaint for failure to state a claim. For the reasons stated below, the motion is granted. . . .

Federal copyright law extends to sound recordings created on or after February 15, 1972. Copyright protection for sound recordings "fixed" (recorded) prior to February 15, 1972, however, is a matter of state law, rather than federal law. . . . Illinois has no state copyright statute governing sound recordings, unlike some other states, such as California. . . . Illinois recognizes a common law copyright in unpublished productions of "literature, [ ] drama, music,
art, etc." that allows authors to control the initial publication of their work. . . . There is no
dispute that the Sheridans voluntarily sold their recordings. When they did so, the Sheridans lost
their common law right to control the public performance of those recordings in Illinois (and
pretty much everywhere else). Thus, the motion to dismiss is granted as to Count I, the common
law copyright claim.

GC2 INC. V. INT'L GAME TECH. PLC

GC2 Incorporated (GC2) has filed suit against 1) International Game Technology PLC along
with International Game Technology, IGT NV, and DoubleDown Interactive LLC
(DoubleDown) (collectively, IGT), 2) Masque Publishing and Masque Publishing Inc.
(collectively, Masque), 3) WD Encore Software and WD Encore Software, LLC (collectively,
WD Encore), and 4) the consumers of IGT, Masque, and WD Encore, alleging that they have
infringed GC2's copyright. IGT, Masque, and WD Encore have moved under Federal Rule of
Procedure 12(b)(6) to dismiss all claims against them. . . .

B. Ownership of the copyrighted works . . . [T]he Court overrules IGT and WD Encore's
contentions that GC2's claims based on copyright infringement should be dismissed for lack of
standing. In its response brief, GC2 asks the Court to make a definitive ruling on its favor on the
copyright ownership issue-akin to a partial summary judgment-but the Court declines to do so
because GC2 has not filed a motion seeking such relief.

C. False copyright management information . . . GC2 has failed to adequately allege, however,
that the false statements in DoubleDown's terms of use are "conveyed in connection with" GC2's
artwork. . . . GC2 also alleges that IGT is liable for distributing false CMI because DoubleDown
displays GC2's artwork without showing its trademark. Instead, GC2 alleges that IGT either
included its own logo and trademark on the artwork or did not include any indication of
ownership. GC2 contends that IGT's omission of GC2's trademark constitutes altering or
removing CMI. . . . First . . . trademark information may constitute CMI if it is used to signal
authorship of a copyrighted work, as it is here. GC2 identified its authorship by including a
trademark logo on its artwork, and GC2 and IGT agreed to this designation with regard to GC2's
artwork displayed on IGT's physical wagering machines. Second . . . there is liability where a
party intentionally omits CMI or facilitates the omission of CMI. . . . For these reasons, the Court
denies IGT's motion to dismiss on count 12 of GC2's complaint but limits GC2's claim against
IGT in accordance with the discussion in this section. . . .

E. Vicarious copyright liability . . . Masque and WD Encore have moved to dismiss GC2's
vicarious copyright liability claims (counts 9 and 10). GC2 alleges that Masque and WD Encore
are vicariously liable for copyright infringement by their end users. . . . [T]heir relationship with
their consumers extends beyond the initial purchase. . . . Masque and WD Encore are alleged to
have the authority to put a stop to the infringing conduct even after a consumer's one-time
purchase. . . . GC2 has adequately alleged that both Masque and WD Encore received a direct
financial benefit from the infringement of the copyrights in GC2's artwork.
CARTER V. PALLANTE

Plaintiff Tollie Carter has sued Maria A. Pallante in her capacity as the Register of Copyrights, as well as ARC/Conrad Music, LLC (“ARC”), Fuji Music Group, Inc. (“Fuji”), and BMG Rights Management (US) LLC (“BMG”). He challenges certain actions of the Register of Copyrights, which are not at issue for purposes of the present motion, and charges that ARC, Fuji, and BMG (hereafter “the Publisher Defendants”) infringed his copyrights in certain songs by selling unauthorized licenses to third parties, who in turn publicly performed the songs. The Publisher Defendants have moved to dismiss Carter's claims against them under Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6). For the reasons that follow, the motion [43] is granted in part and denied in part. . . .

1. Copyright Infringement . . . Here, the core of Carter's theory of copyright infringement is straightforward: the Publisher Defendants sold licenses to Carter's copyrighted songs to third parties without Carter's authorization. . . . In other words, Carter claims that the Publisher Defendants violated his exclusive right to “distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” . . . The Publisher Defendants maintain that Carter's allegations of copyright infringement “are mere conclusions without any factual basis,” because Carter does not state who the third parties are, which songs were licensed, or when the licenses were sold. . . . But Rule 8's pleading requirement does not require this level of specificity in relation to copyright claims. . . .

2. Contributory & Vicarious Copyright Infringement . . . Here, Carter has stated a plausible claim that the Publisher Defendants wrongfully licensed the copyrighted songs to third parties, who publicly performed the songs at issue pursuant to the allegedly invalid licenses. . . .

3. Claims Premised on the Renewal Songs . . . Here, not only does Carter's complaint fail to establish that the statute of limitations has run in relation to his claims pertaining to the Renewal Songs, but he specifically alleges otherwise: namely, that the Publisher Defendants infringed on his copyrights in the songs up until October 18, 2016. . . . While the Publisher Defendants are correct to point out that the renewal dates for these songs were in the 1980s and 1990s, the dates of the alleged infringement, not renewal, are the dates that govern for purposes of the statute of limitations. Accordingly, the Publisher Defendants' motion to dismiss Carter's infringement claims related to the Renewal Songs is denied. . . .

4. Digital Millennium Copyright Act Claim . . . [T]he plain text of the statute proscribes falsely identifying the copyright owner of a song in connection with licensing its rights. Contrary to the Publisher Defendants' argument, no connection to the Internet or electronic commerce is necessary.

UNITED STATES V. VAULIN

Vaulin, who is currently in Poland and contesting extradition, has moved to dismiss the indictment. In response, the government argues among other things that, because Vaulin is a fugitive and refuses to appear in this proceeding, the Court should decline to entertain his motion under the fugitive disentitlement doctrine. For the following reasons, the Court finds that the fugitive disentitlement doctrine applies here. Nevertheless, following the path charted by the Seventh Circuit in United States v. Bohhari . . . and for the sake of judicial efficiency, the Court reviews and denies Vaulin's motion to dismiss [26] on the merits. . . .

Vaulin further contends that the indictment seeks to charge Vaulin with secondary liability for criminal copyright infringement, which is only valid in the civil context. . . . The Government takes no issue with this line of reasoning. But, as should be clear by now, the indictment does not charge Vaulin with common law secondary liability that the Government seeks to import into 17 U.S.C. § 506. Rather, the indictment relies on the text of the congressionally enacted conspiracy and aiding and abetting statutes . . . . Thus, the indictment charges Vaulin not with crimes based upon common law theories, but for conduct made unlawful under unambiguous statutes. . . .

When Congress amended the Copyright Act in 1976, 18 U.S.C. § 2—which, by its terms, applies to every criminal offense—was in force. For this reason, there was no need to include language within the Copyright Act itself that criminalized aiding and abetting criminal infringement. Doing so would have been redundant.

UIRC-GSA HOLDINGS INC. V. WILLIAM BLAIR & CO.

On April 12, 2016, Plaintiff UIRC-GSA Holdings, Inc. ("UIRC") brought its Fourth Amended Complaint against Defendants William Blair & Company ("Blair") and Michael Kalt, collectively, "Defendants," alleging copyright infringement . . . and professional negligence. . . . Kalt moved to dismiss Plaintiff's contributory and vicarious infringement claims—Counts IV and V—pursuant to Federal Rule of Civil Procedure 12(b)(6). . . . For the following reasons, the Court denies Kalt's motion to dismiss . . . .

In Counts IV and V, Plaintiff alleges that Kalt should be held personally liable for contributory and vicarious infringement because he is a partner at Blair and as Plaintiff's relationship
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manager, he personally supervised and engaged in the infringing activity at issue here. . . . Here, Plaintiff's new allegations are sufficient to support its vicarious and contributory infringement claims at this stage under both Dangler and the specific standards for contributory and vicarious liability. Plaintiff has alleged that Kalt personally circulated the infringing materials and actively encouraged and personally directed Blair employees and Blair's outside counsel to use the infringing materials to solicit other clients, including Rainer, in part because Kalt had a direct financial interest in acquiring these new clients. . . . These allegations meet the Dangler standard because they sufficiently allege that Kalt acted “willfully and knowingly” and that he “personally participated in the manufacture or sale” of the infringing materials. . . . Therefore, under Dangler, viewing the allegations in the light most favorable to Plaintiff, Plaintiff has sufficiently stated personal infringement claims against Kalt pursuant to Rule 8(a). . . .

Plaintiff's new allegations are also sufficient under the specific standards for contributory and vicarious liability. With regard to vicarious infringement, Plaintiff now alleges that Kalt supervised the alleged infringing activity and had a direct financial interest in and received a personal financial benefit from the infringing activity—specifically, that he received a bonus as a direct result of the work he did on the Rainer transactions, which used the infringing materials. . . . Plaintiff's allegations are also sufficient with regard to contributory infringement because Plaintiff has alleged specific details about how Kalt encouraged and assisted the infringement. Specifically, Plaintiff now alleges that Kalt personally supervised the creation of the infringing materials and had consistent input during the drafting process. . . . Plaintiff also alleges that Kalt directed or supervised Blair's use of the infringing materials, which he knew were created for Plaintiff's bond offering, in efforts to solicit clients to retain Blair and Kalt as an investment banker for other offerings and that Kalt personally circulated the infringing materials to potential clients.

BOATMAN V. HONIG REALTY, INC.  

Defendant Honig Realty Inc. sells houses. Plaintiff Michael Boatman is a professional photographer who photographed several houses for Honig. Boatman alleges that Honig infringed his copyrights in the photographs by posting them on a number of real estate websites and altering his copyright management information. Honig has moved to dismiss all the counts of the complaint except for the breach of contract claim. For the reasons explained below, the motion to dismiss is granted in part and denied in part. . . .

I. Direct Infringement . . . The only reasonable interpretation of the license is that Honig could not transfer the license itself to a third party. It does not prevent Honig from distributing the photographs for the stated purposes of listing and marketing the homes. The complaint concedes that when Honig uploaded the photographs to the websites, it was doing so to advertise the properties. Therefore, Honig acted within the scope of its license when it uploaded the photographs and did not directly infringe Boatman's copyright. The motion to dismiss the direct infringement claim is granted.
II. Contributory Infringement . . . Boatman's complaint is that the photographs remained on the websites after the relevant listing agreements were terminated. . . . Therefore, Boatman has alleged conduct that would fall outside the temporal scope of the license and could constitute infringement.

Honig next argues that Boatman has failed to allege Honig's knowledge that Zillow or Realtor.com would engage in infringing conduct. As discussed above, the Court must accept the facts of the complaint at this stage and the complaint currently pleads such knowledge with sufficient particularity. . . . Therefore, the motion to dismiss the claim for contributory infringement is denied.

III. DMCA Violation . . . The Court finds that Boatman has stated a claim under § 1202(b). While a plaintiff perhaps could split an alteration claim into two pieces – a removal claim under § 1202(b) and then an addition claim under § 1202(a) – the fact that the statute plainly includes alterations in § 1202(b) suggests such contortions are not required. If Boatman had included a note at the bottom of his photographs reading “by Mike Boatman” and Honig had altered note to read “by PAAR” (or “by Honig”), that would be an alteration in violation of § 1202(b). Similarly, if Boatman had included his “by Mike Boatman” note and Honig had changed it to “© Honig Realty,” that would surely also constitute an alteration even though arguably the CMI is of different type (one identifies author, the other identifies a copyright holder). The Court has no trouble extending that logic such that Honig removing embedded CMI and replacing it with contradictory watermarked CMI is still an alteration. Therefore, the motion to dismiss the DMCA count is denied. Adding inconsistent information to the existing CMI “alters” the existing CMI.

ALI V. FINAL CALL, INC.

Jesus Muhammad Ali brought this suit against The Final Call, Inc., which publishes a newspaper and sells artistic products on behalf of the Nation of Islam, alleging that it sold unauthorized copies of Ali's work, “Minister Farrakhan Painting,” in violation of the Copyright Act . . . . The court denied Ali’s summary judgment motion . . . and then entered judgment for The Final Call after a bench trial . . . . The Seventh Circuit reversed, holding that Ali had established liability, and remanded with instructions to assess damages . . . .

On remand, Ali seeks statutory damages and an injunction . . . . The parties relied on the existing record in pressing their respective positions on both forms of relief. Pursuant to Federal Rule of Civil Procedure 52(a), the court enters the following Findings of Fact and Conclusions of Law. To the extent that any Findings of Fact may be considered Conclusions of Law, they shall be deemed Conclusions of Law, and vice versa. Having considered the evidence, the court awards Ali $25,000 in statutory damages and issues an injunction as well . . . .

The record demonstrates, by at least a preponderance of the evidence, that by producing and selling the “Star of Guidance” lithographs, The Final Call acted intentionally or, at a minimum,
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in reckless disregard of Ali's copyright in the Minister Farrakhan Painting. This is not The Final Call's first, or even second, infringement of Ali's work; it previously violated Ali's copyrights in two other works by, again, selling print reproductions thereof. This history of infringement weighs in favor of finding that The Final Call acted willfully, or at least with reckless disregard, the third time around. . . . So, too, does the evidence summarized and discussed in the Findings of Fact section above: (1) in 2008 or 2009, Ali informed The Final Call that he owned a copyright in the Minister Farrakhan Painting, which The Final Call knew or was extremely reckless in not knowing was reproduced in the “Star of Guidance” lithographs; (2) Ali expressly informed The Final Call in March 2008 that the “Star of Guidance” was his work; (3) the “Star of Guidance” lithographs bore a copyright symbol and Ali's birth name, Herbert Muhammad, Jr., which The Final Call knew or was extremely reckless in not knowing was Ali's birth name; and (4) in August 2011, Ali sent a letter, copying Fontaine Muhammad, charging that his copyrights were being violated and referencing the fact that he had previously sent The Final Call's attorney a list of his copyrighted works.

ESTATE OF VIVIAN MAIER V. GOLDSTEIN

The Estate of Vivian Maier brings this copyright and trademark infringement case against defendants Jeffrey Goldstein and Vivian Maier Prints, Inc., for allegedly engaging in copying, public exhibition, and commercial exploitation of the unpublished photographs of Vivian Maier, a Chicago photographer who achieved worldwide fame posthumously. Before the Court is defendants' motion to dismiss plaintiff's amended complaint . . . . Defendants also argue that plaintiff fails to state a claim under Fed. R. Civ. P. 12(b)(6). For the following reasons, defendants' motion is denied. . . .

The Court finds that plaintiff has stated a copyright infringement claim. Plaintiff has provided prima facie evidence of the first element, copyright ownership, by attaching its registrations to the complaint . . . . Indeed, the Court has already found in deciding plaintiff's TRO motion that “Plaintiff is the owner of the copyrights” for the Maier works . . . . Plaintiff also has alleged that defendants infringed plaintiff's copyright—the second element of plaintiff's claim—through many acts of “copying of constituent elements of the work that are original.” . . .

Defendants do not meaningfully dispute these facts. Instead, they maintain that they have a “claim to ownership...based on the fact that the underlying works, the photographs, were transferred before Maier's death, making them not a part of the Estate.” . . . This argument fails for two reasons. First, this Court must accept the complaint's well-pleaded allegations as true for purposes of deciding this motion to dismiss . . . and the complaint alleges that Goldstein did not begin acquiring Maier works until after her death. . . . Second, and more importantly, when Goldstein acquired negatives or other physical embodiments of the Maier works is irrelevant to the issue of copyright ownership. As Section 202 of the Copyright Act makes plain, “[o]wnership of a copyright...is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work.
embodied in the object.” . . . Even if it were true that Goldstein bought certain Maier works prior to her death, ownership of those works would not entitle him to the copyright or provide a defense to infringement. Defendants cite no authority to the contrary. Accordingly, plaintiff's copyright claim will proceed.

RUCKER V. FASANO
No. 16-CV-10506, 2017 WL 5593356 (N.D. Ill. Nov. 21, 2017)

Defendants Amazon.com and Donna Fasano have moved for summary judgment in this copyright infringement action. . . . Because, applying the local rules for summary judgment motions, plaintiff has failed to properly contest most of defendants' statement of material undisputed facts (“SMUF”), summary judgment must be granted in defendants' favor. . . .

To the extent that Fasano's work was complete before Rucker began writing hers, plaintiff's case fails because “it is impossible to copy something that does not exist.” . . . But besides the problem of chronology, there is also a problem of access. The undisputed facts make clear that Rucker's only theory of access is incorrect, since Fasano's relationship with Harlequin ended two years before Rucker submitted her chapter and synopsis to Harlequin and Fasano never judged a Harlequin contest. . . . But even in the absence of evidence of access, an inference of access may still be established “by proof of similarity which is so striking that the possibilities of independent creation, coincidence and prior common source are, as a practical matter, precluded.” . . . But for the admitted fact that Fasano revised her manuscript after the termination of her agreement with Harlequin in 2008, the admitted chronology would make comparing the two authors' works unnecessary, but out of an abundance of caution, given defendants' admission of revisions during the 2008–13 period, the court has made a brief comparison of the works and finds the “striking similarity” test unsatisfied. . . .

There is nothing in Fasano's work that is anything like what is found in Rucker's first chapter. One interested in a highly sexualized romance would pick up Rucker's book, not Fasano's. Rucker's novel, according to the synopsis, maintains its rather fevered romantic pitch, with Kai and Sheridan ultimately rediscovering their “incendiary physical connection.” The relationship between the protagonists, Kai and Sheridan, is consistently driven by their sexual attraction.

Northern District of Indiana

BROOKS-NGWENYA V. NATIONAL HERITAGE ACADEMIES

Angela Brooks-Ngwenya brought this case alleging the National Heritage Academies has infringed her copyright on an educational model called Transitioning into Responsible Students (“TIRS”). I dismissed her initial complaint, which claimed that NHA used a “replica” of the TIRS model at a charter school in Indianapolis, because it failed to allege that NHA copied or made derivative works from plaintiff's copyrighted material. . . . Brooks-Ngwenya has since filed an amended complaint, which alleges two claims against NHA: contributory infringement for using TIRS without her consent and intentional infliction of emotional distress for denying her
employment, refusing to allow her to participate in the promotion of TIRS at NHA's school, and
failing to acknowledge that she created the educational program. . . . NHA moves to dismiss on
grounds that the amended complaint fails to allege any viable claim. . . . For the reasons below,
the motion is granted.

The United States Copyright Act provides exclusive rights to the owner of a copyright to
reproduce the copyrighted work and to prepare derivative works. . . . In her amended complaint,
Brooks-Ngwenya does not claim that NHA itself infringed her copyright, but instead that the
defendant was a contributory infringer. To make out a plausible claim of contributory copyright
infringement, a complaint must allege that: (1) a third party infringed plaintiff's registered
copyright; (2) the defendant knew about that infringement; and (3) the defendant materially
contributed to it. . . . Brooks-Ngwenya's amended complaint alleges none of the three elements
of a contributory infringement claim.

DESIGN BASICS, LLC V. IDEAL SUBURBAN HOMES, INC.

This matter comes before the Court on the Motion for Partial Summary Judgment . . . filed by
Defendant Ideal Suburban Homes, Inc., on November 22, 2016. In that Motion, the Defendant
argues that the statute of limitations provision in the Copyright Act bars Plaintiff Design Basics,
LLC's claims based on infringing acts that occurred prior to May 23, 2013 (the "Look-Back
Date"). . . .

Although the discovery rule may be abrogated within this Circuit someday, this Court is "bound
to follow Seventh Circuit precedent." . . . As that precedent stands today, the discovery rule
controls the determination of when a copyright infringement claim accrues, and Petrella does not
instruct otherwise. Accordingly, the Plaintiff's claims regarding infringing acts that occurred
more than three-years before this action commenced are not barred as a matter of law. The
Defendant's Motion for Partial Summary Judgment is denied.

DESIGN BASICS, LLC V. WESTPORT SUBURBAN HOMES OF FORT WAYNE, INC.

This matter comes before the Court on the Motion for Partial Summary Judgment . . . filed by
Defendants Westport Homes of Fort Wayne, Inc. and Westport Home, Inc. (collectively "the
Defendants"), on November 22, 2016. In the Defendants' Brief in Support of the Motion . . . , the
Defendants argue that the statute of limitations provision in the Copyright Act bars Plaintiff
Design Basics, LLC's claims based on infringing acts that occurred prior to May 19, 2013 (the
"Look-Back Date"). . . .

Although the discovery rule may be abrogated within this Circuit someday, this Court is "bound
to follow Seventh Circuit precedent." . . . As that precedent stands today, the discovery rule
controls the determination of when a copyright infringement claim accrues, and Petrella does not
instruct otherwise. Accordingly, the Plaintiff’s claims regarding infringing acts that occurred more than three-years before this action commenced are not barred as a matter of law. The Defendants' Motion for Partial Summary Judgment is denied.

DESIGN BASICS, LLC V. QUALITY CRAFTED HOMES INC.

This matter is before the court on Quality Crafted Homes' motion for partial summary judgment. Quality Crafted Homes argues that a three-year look-back period prevents plaintiffs from claiming that Quality Crafted Homes infringed on copyrights before February 3, 2013. The court disagrees. . . .

Unless a higher court directs otherwise, the discovery rule applies here. The plaintiffs' claims regarding infringing acts that occurred before February 3, 2013 can proceed if the plaintiffs discovered or reasonably should have discovered the acts after that date.

DESIGN BASICS, LLC V. W R BIRKEY & ASSOCIATES, INC.

This matter comes before the Court on the Motion for Partial Summary Judgment [ECF No. 25] filed by the Defendants, W R Birkey & Associates, Inc. and Wayne Birkey, d.b.a. Birkey Homes and W.R. Birkey Realty, on November 18, 2016. In that Motion, the Defendants argue that the statute of limitations provision in the Copyright Act bars Plaintiff Design Basics, LLC's claims based on infringing acts that occurred prior to March 31, 2013 (the "Look-Back Date"). . . .

Although the discovery rule may be abrogated within this Circuit someday, this Court is "bound to follow Seventh Circuit precedent." . . . As that precedent stands today, the discovery rule controls the determination of when a copyright infringement claim accrues, and Petrella does not instruct otherwise. Accordingly, the Plaintiff's claims regarding infringing acts that occurred more than three-years before this action commenced are not barred as a matter of law. The Defendants' Motion for Partial Summary Judgment is denied.

DESIGN BASICS, LLC V. CULVER CONSTRUCTION, INC.

This matter comes before the Court on the Motion for Partial Judgment on the Pleadings . . . filed by Defendants Culver Construction, Inc., Culver Development Corporation, Wes Culver Realty, LLC, and New Paris Development Company, LLC, on October 31, 2016. In that Motion, the Defendants argue that the statute of limitations provision in the Copyright Act bars Plaintiff Design Basics LLC"s claims based on infringing acts that occurred prior to February 3, 2013 (the "Look-Back Date"). . . .
Although the discovery rule may be abrogated within this Circuit someday, this Court is "bound to follow Seventh Circuit precedent." . . . As that precedent stands today, the discovery rule controls the determination of when a copyright infringement claim accrues, and Petrella does not instruct otherwise. Accordingly, the Plaintiff's claims regarding infringing acts that occurred more than three-years before this action commenced are not barred as a matter of law. The Defendants' Motion for Partial Judgment on the Pleadings is denied.

DESIGN BASICS, LLC V. CARRIAGE PLACE HOMES, INC.

This matter comes before the Court on the Motions for Partial Summary Judgment . . . filed by Defendants Carriage Place Homes, Inc., and Bridles Homes, Inc., on November 9, 2016. In those Motions, the Defendants argue that the statute of limitations provision in the Copyright Act bars Plaintiff Design Basics LLC's claims based on infringing acts that occurred prior to February 3, 2013 (the "Look-Back Date"). . . .

Although the discovery rule may be abrogated within this Circuit someday, this Court is "bound to follow Seventh Circuit precedent." . . . As that precedent stands today, the discovery rule controls the determination of when a copyright infringement claim accrues, and Petrella does not instruct otherwise. Accordingly, the Plaintiff's claims regarding infringing acts that occurred more than three-years before this action commenced are not barred as a matter of law. The Defendants' Motions for Partial Summary Judgment are denied.

DESIGN BASICS, LLC V. WINDSOR HOMES, INC.

This matter comes before the Court on the Motions for Partial Summary Judgment . . . filed by Defendants Windsor Construction, Inc., Windsor Construction, LLC, Windsor Homes, Inc., and Windsor, Inc., on October 21, 2016. In that Motion, the Defendants argue that the statute of limitations provision in the Copyright Act bars Plaintiff Design Basics LLC's claims based on infringing acts that occurred prior to February 3, 2013 (the "Look-Back Date"). . . .

Although the discovery rule may be abrogated within this Circuit someday, this Court is "bound to follow Seventh Circuit precedent." . . . As that precedent stands today, the discovery rule controls the determination of when a copyright infringement claim accrues, and Petrella does not instruct otherwise. Accordingly, the Plaintiff's claims regarding infringing acts that occurred more than three-years before this action commenced are not barred as a matter of law. The Defendants' Motion for Partial Summary Judgment is denied.

BROOKS-NGWENYA V. BART PETERSONS' MIND TRUST
This is one of many cases brought by Angela Brooks-Ngwenya, alleging infringement of her copyright on materials she developed for the Transitioning into Responsible Students (TIRS) educational program. The target this time is Bart Petersons' [sic] Mind Trust which has moved to dismiss on grounds that the amended complaint does not state a plausible claim for relief. . . . Brooks-Ngwenya has filed two motions for judgment on the pleadings and a motion for a preliminary injunction. . . . For the reasons below, the defendant's motion to dismiss is granted, and the plaintiff's motions are denied. . . .

To state a claim of contributory infringement, a complaint must allege that: (1) a third party infringed the plaintiff's registered copyright; (2) the defendant knew about that infringement; and (3) the defendant materially contributed to it. . . . The amended complaint here alleges none of these elements. Brooks-Ngwenya alleges that Bart Peterson used her program to create his own educational program, which was then implemented at a charter school. . . . But this falls far short of what's required to show infringement because there is no allegation that Peterson copied the plaintiff's text or used it to create derivative works.

THE ART OF DESIGN, INC. V. PONTOON BOAT, LLC

Plaintiff, The Art of Design, Inc. (“Plaintiff”), alleges that it applied its Shatter Graphics designs to a limited number of pontoon boats for Pontoon Boat LLC, d/b/a Bennington and Bennington Marine (“Bennington”) in exchange for payment. Continuing thereafter, Plaintiff alleges that Bennington incorporated the Shatter Graphics designs, or substantially similar designs, on its products without Plaintiff's authorization. Plaintiff also alleges that Bennington passed along the Shatter Graphics designs to Hawkeye Boat Sales, Inc. (“Hawkeye”), and that Hawkeye likewise began selling products incorporating the Shatter Graphics designs or substantially similar designs.

Bennington and Hawkeye (collectively, “Defendants”) have moved to dismiss Plaintiff's complaint pursuant to Fed. R. Civ. P. Rule 12(b)(6) for failure to state a claim upon which relief can be granted. . . . Apart from arguing a lack of sufficiently pled allegations, Defendants raise the issue of preemption regarding the state law claims. For the reasons stated below, the Court grants Defendants' motion. . . .

Unjust Enrichment . . . The elements of an unjust enrichment claim alone do not render such a claim preempted, but “because one can retain a benefit to the plaintiff's detriment in an infinite variety of ways,” the Court “focuses on the factual basis underlying the claims” to determine whether the unjust enrichment and copyright claims differ qualitatively. . . . Here, Plaintiff alleges that Bennington and Hawkeye “receive[d] a measureable benefit by receiving the value of TAOD's labor, services, and designs without paying TAOD.” . . . Plaintiff distinguishes the “labor and services” contained in its unjust enrichment claim from the value of its designs, but the only “labor and services” allegedly to have been rendered by Plaintiff were those conferred when it painted the limited number of pontoon boats for Bennington. As discussed above, the facts as alleged show that those services were paid for by Bennington. That leaves only
Plaintiff’s theory that Defendants reproduced or prepared derivative works based upon the designs, which overlaps with the rights in the Copyright Act, hence preempting this state law claim.

Copyright Act Claims . . . Defendants argue that Plaintiff has failed to sufficiently identify its own copyrighted designs, much like the plaintiff in Flava Works. . . . Plaintiff here has at least provided the copyright registration numbers for its designs . . . but that does not suffice. Glaringly absent from the complaint are any descriptions or explanations as to what the designs are or look like. . . . Moreover, Plaintiff has neither identified an allegedly infringing work produced by Defendants, nor any description of how Defendants' work infringes on its own.

Digital Millennium Copyright Act Claims . . . While the alleged CMI here claims that “TAOD” owns the labeled designs, the Copyright Office catalog entries for the ‘388 and ‘002 designs themselves do not refer to any entity called “TAOD.” . . . Instead, they note “The Art of Design, Inc.” and “Dean Loucks” as the owners. Importantly, the whole point of CMI is to “inform the public that something is copyrighted and to prevent infringement.” . . . Here, the purported CMI describes “TAOD” as the owner, but if one were to see these designs and the above label, and search for this owner to verify the graphics' copyright status, the search would come up empty because the actual owners are The Art of Design, Inc. and/or Dean Loucks. . . . This problem is only magnified by the additional fact that there are no entities named simply “TAOD” registered in the state of Indiana. . . . Therefore, the notification Plaintiff placed on its designs does not qualify as CMI. . . . “Allowing a plaintiff to make out a DMCA claim based on alleged CMI that does not link up in any way to the copyright registration is an invitation to unfair litigation against parties who have tried to tread carefully to avoid copyright infringement,” and therefore, Plaintiff’s DMCA claim must be dismissed with prejudice.

ABRO INDUS., INC. V. 1 NEW TRADE, INC.

These matters come before the Court on Plaintiff ABRO Industries' (“ABRO”) Motion for Summary Judgment . . . , filed on April 19, 2017; Defendants 1NEW Trade, Igor Zorin, Vadim Fishkin, and Boris Babenchik's (collectively “the Defendants”) Motion for Summary Judgment . . . , filed on May 1, 2017; and Third Party Defendant Peter Baranay's Motion for Summary Judgment . . . filed on April 19, 2017. The Defendants have also filed a Motion to Strike ABRO Industries' Copyright Office Registration Certificates . . . and a Motion to Strike ABRO Industries' Expert Report on Damages . . . . ABRO filed a Motion to Strike Portions of the Joint Declaration Submitted by Defendants . . . and a Motion for Leave to File a Motion to Strike Declarations Filed by the 1NEW Defendants . . . . These matters are fully briefed and ripe for review.

A. ABRO's Claim for Copyright Infringement . . . 1. Presumption of Validity . . . The Defendants argue that ABRO has no admissible evidence of certificates of registration because ABRO did not produce the certificates on which it now relies until it filed its Response to the Defendants' Motion for Summary Judgment. . . . The Court need not determine whether to strike the
certificates from the record because, even if admissible, the certificates do not establish what subject matter is actually registered. Nowhere in the record does the Court find a depiction of what ABRO submitted to the Copyright Office or for what subject matter the Copyright Office issued certificates. . . . Because the copyrights were registered more than five years after the first publication of the works, ABRO is not entitled to a presumption of validity. The Court is not inclined to exercise its discretion to grant such a presumption in light of ABRO's failure to produce any deposit materials that would aid the Court in confirming the scope of the registrations.

2. Existence of Copyrightable Material . . . The Court agrees with the Copyright Office. A layout may be copyrightable only if the “arrangement or layout [is] original and unique,” ABRO's label as a whole, and regardless of its individual elements, simply does not meet this requirement. There is nothing unique about placing the name of the company and the name of a product at the top of a product's packaging with a descriptive image below that text and with instructions and legally mandated warnings wrapped around the remainder of a product's packaging. In fact, as the parties' submissions show, this is a common layout. . . .

The Court finds that the image of a carburetor displayed on ABRO's label for Carb & Choke Cleaner is copyrightable. . . . The Court finds that ABRO's product name “Carb & Choke Cleaner” is not copyrightable. . . . The Court finds that the instructions and warnings placed on the back of ABRO's label are copyrightable.

3. Substantial Similarity . . . The parties do not dispute that the Defendants had access to ABRO's works. Thus, ABRO must show that the components of the Defendants' label are substantially similar to the protectable portions of ABRO's label. . . . It is clear that the Defendants' image of a carburetor is not substantially similar to ABRO's image as there are numerous material differences: (1) the position of each carburetor and the viewing angle are different; (2) the parts on each carburetor image have different colors; (3) the location of many of the mechanical parts on the bodies of the carburetors is different; and (4) the carburetors are not even the same model as each carburetor has parts that are not present in the other. Moreover, ABRO's image is designed to portray a lifelike image of an actual carburetor whereas the Defendants' image is a more artistic rendering. . . .

Although the Court finds that ABRO has a valid copyright on the instructions and warnings on the label, there is still insufficient similarity between ABRO's text and the Defendants' text. ABRO has no monopoly on the method of cleaning a carburetor. . . . The Court finds that there are clear and substantial differences between the parties' instructions and warnings. Only a small portion of the Defendants' text is verbatim, and that portion of the text is necessary to communicate the required warnings and describe to the consumer how to use the product, a process on which ABRO does not hold a monopoly. Thus, ABRO cannot show that the similarities between the two labels do not exceed those which “must unavoidably be produced” in order to communicate the unprotectable idea.

B. The Defendants' Motion for Attorney's Fees . . . The Court finds that the Defendants are entitled to attorney's fees as to ABRO's copyright claims. Because the Court has granted
summary judgment on these claims, the Defendants are the prevailing party, and they are entitled to a “very strong” presumption in favor of awarding fees. Moreover, the Court finds this case far from a “toss-up”; rather, it borders on frivolous.

ART OF DESIGN, INC. V. PONTOON BOAT, LLC

This matter is before the Court on Defendants' Motion to Strike Pursuant to Federal Rule of Civil Procedure 12(f) . . ., filed by Defendants on October 5, 2017. . . .

The limitation on statutory damages imposed by § 412 is not discretionary. Instead, the statute “leaves no room for discretion, mandating that no attorney's fees or statutory damages be awarded so long as the infringement commenced before registration of the copyright.” . . . Because the parties agree that the first instances of alleged infringement occurred well before Plaintiff's registration of its copyrights, under § 412, Plaintiff is not entitled to statutory damages or attorney's fees.

Southern District of Indiana

BELL V. POWELL

This matter is before the Court on Defendant David N. Powell's (“Powell”) Motion to Dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6) (Filing No. 15). Following the discovery of unauthorized use of his photograph of the Indianapolis skyline, Plaintiff Richard N. Bell (“Bell”) initiated this action, seeking damages and declaratory and injunctive relief under copyright laws. Bell asserted a claim for copyright infringement and unfair competition. On November 9, 2016, Powell filed his Motion to Dismiss, asserting that there is no factual basis to support any claim of personal liability against Powell for copyright infringement and unfair competition. For the following reasons, the Court GRANTS Powell's Motion to Dismiss. . . .

A review of Bell's Complaint reveals that the claim for individual liability against Powell is premised upon his role as the executive director of a state government agency. . . . Alleging speculative possibilities and unsupported conclusions is not enough in federal court; rather, case law is clear that the pleadings must include enough facts to state a claim to relief that is plausible. . . . which means the pleadings must allow “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” . . . No such reasonable inference can made in this case based on Bell's allegations as currently pled. . . . Bell's allegations are insufficient to assert a copyright claim against Powell in his individual capacity.

BELL V. MALONEY
Plaintiff, Richard N. Bell, alleges that Defendant, Michael Maloney, committed copyright infringement when he downloaded and published Bell’s photograph of the Indianapolis skyline without authorization. Bell now moves for summary judgment on the issue of infringement, and asks that damages be determined at trial. Maloney cross-moves for summary judgment on the issue of ownership. He argues that the photo is a “work made for hire,” meaning that even though Bell personally took the photograph with his own camera, he does not actually own the copyright. If true, Bell cannot sue for infringement. However, Maloney essentially concedes that if Bell does own the copyright, he infringed.

The court holds that there is a genuine dispute of material fact as to the ownership of the copyright. Therefore, both motions must be DENIED.

**Eastern District of Wisconsin**

**DESIGN BASICS LLC V. LEXINGTON HOMES INC.**
No. 14-C-1102, 2017 WL 1901453 (E.D. Wis. May. 8, 2017)

Plaintiffs Design Basics LLC; Prime Designs, Inc; and Plan Pros, Inc. brought this action against Defendants Lexington Homes, Inc.; Team Stimpson, LLC; Tailwind Crossings, LLC; Ponds of Menasha, LLC; Fieldstone Investments, LLC; Centennial Centre, LLC; Jeffrey Marlow; and Michelle Stimpson (the Lexington Defendants) in 2014. Acuity moved to intervene in the case on December 12, 2014. On January 17, 2017, the court ordered Plaintiffs to pay Defendants’ reasonably incurred attorneys' fees and expenses. Defendants now seek a total of $275,704.88 in attorneys' fees and other expenses. For the reasons below, Acuity is entitled to receive attorneys' fees and other expenses totaling $243,506.28, but the Lexington Defendants are not entitled to recover their requested attorneys' fees.

**Western District of Wisconsin**

**BOEHM V. HEYRMAN PRINTING, LLC**

Plaintiff Scott Boehm is a sports photographer. He alleges that third-party defendant Event USA Corp. obtained digital copies of some of Boehm's copyrighted photos and directed defendant Heyrman Printing, LLC, to print copies of the photos. Boehm filed suit against Heyrman Printing, accusing it of copyright infringement. . . . Heyrman Printing filed a third-party complaint for indemnification against Event USA. Dkt. 10.

Event USA now moves to dismiss both complaints, contending that Boehm's infringement claims are barred by the applicable statute of limitations. . . . Heyrman Printing does not oppose Event USA's motion and agrees that if Boehm's claims are barred, Heyrman Printing's third-party claim for indemnification is moot. . . . Because Boehm may have discovered the allegedly infringing activities within three years of filing suit, the court will deny Event USA's motion. Unrelatedly, Heyrman Printing moves to amend its answer to Boehm's complaint. . . . The court will grant Heyrman Printing's motion.
While the jury was deliberating on the phase II liability verdict, the court heard evidence and argument on issues concerning plaintiff's damages case. The court then issued certain rulings, which resulted in the exclusion of specific expert testimony and argument on certain of plaintiff's damages theories in keeping with defendant's pending motions in limine. The purpose of this order is simply to formalize those rulings. . . .

Here, where the sales are not of the infringing products themselves, like a t-shirt, book cover or poster with the copyrighted work on it, but rather of infringing advertising, plaintiff's burden to prove a casual nexus is admittedly much more challenging, because it involves proof based on indirect profits. . . . As a result, "modern cases more frequently deny profits earned from advertising."

Unlike in Bell, plaintiff, here, was actually allowed this discovery, and still she has no evidence that her illustrations attracted more customers or drove more sales of defendant's products, other than the fact that they continued to be used in subsequent videos made by Designomotion or by defendant itself, or individual illustrations otherwise appeared in online or other displays. . . . Absent some evidence tying defendant's revenues from the promoted product lines to the infringing videos, much less to plaintiff's copyrighted illustrations in those videos, a reasonable jury had no basis to award damages based on defendant's profits. Accordingly, the court excluded that damages theory.

_Eighth Circuit_

_District of Minnesota_

HADDLEY V. NEXT CHAPTER TECHNOLOGY, INC.

This matter is before the Court on Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim . . . and Plaintiff's Motion to Consolidate . . . . For the reasons set forth below, the Court grants in part Defendants' Motion to Dismiss and grants Plaintiff's Motion to Consolidate. . . .

Defendants move to dismiss on the basis that Plaintiff's copyright registration certificate is materially inaccurate. Specifically, Defendants argue that Plaintiff's registration certificate incorrectly identifies Haddley as the author of Scanning Enabler, instead of Blue Duck Pty.-the Australian entity that Plaintiff used to market and sell the program. Before a plaintiff may file a lawsuit for copyright infringement, the plaintiff must register his copyright. . . .

Because Haddley could have retained ownership in the copyright, the Court concludes that Plaintiff has adequately plead standing to bring his claims for copyright infringement. Thus, the Court denies Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction.
PAISLEY PARK ENTERS., INC. V. BOXILL

This lawsuit involves a dispute over the ownership of previously unreleased recordings of five songs by the internationally known recording artist Prince Rogers Nelson (Prince). Defendant George Ian Boxill is a sound engineer who worked with Prince during Prince's lifetime to record and edit the five songs at issue. After Prince's death in 2016, Boxill worked with Defendants Rogue Music Alliance, LLC, and Deliverance, LLC, on a commercial release of the disputed Prince recordings in Boxill's possession. Plaintiffs Paisley Park Enterprises, Inc., and Comerica Bank & Trust, N.A., as Personal Representative of the Estate of Prince Rogers Nelson, initiated this lawsuit to enjoin Defendants from promoting and distributing the disputed recordings and to secure the return of those recordings to Prince's estate.

Plaintiffs moved for a temporary restraining order, which the Court issued on April 19, 2017. . . . Thereafter, Defendants filed a motion to modify the temporary restraining order and for early discovery. Plaintiffs also filed a motion for a preliminary injunction. The Court extended the temporary restraining order in a May 3, 2017 Order, which effectively granted some of the relief sought by Defendants' motion to modify the temporary restraining order. For the reasons addressed below, the Court grants Plaintiffs' motion for a preliminary injunction and denies as moot Defendants' motion to modify the temporary restraining order and for early discovery. . . . Plaintiffs also assert that a preliminary injunction is warranted because they are likely to succeed on the merits of their copyright-infringement claim against each defendant. As a threshold matter, Defendants assert that Plaintiffs' copyright-infringement claim is premature because Plaintiffs have applied for copyright registrations in the disputed recordings but the Copyright Office has not yet rendered a decision on those applications. . . . The Court need not resolve the question of whether an application for copyright registration is sufficient to permit a plaintiff to institute a civil action for copyright infringement because, based on the present record, the Court cannot conclude that Plaintiffs have any likelihood of succeeding on the merits of their copyright-infringement claim. . . .

Authors who create a joint work are co-owners of the copyright in that work. . . . "A co-owner of a copyright cannot be liable to another co-owner for infringement of the copyright." . . . Although Plaintiffs have presented evidence that they filed applications for copyright registrations in the disputed recordings, Boxill possesses certificates of copyright registration for the disputed recordings that list Boxill and Prince as co-authors. Plaintiffs dispute that Prince intended to create joint works with Boxill. But at this stage of the proceedings, the Court cannot conclude that the facts stated in the certificates of copyright registration are erroneous. As a result, the Court also cannot conclude that Plaintiffs have even a "fair chance of prevailing" on the merits of their copyright-infringement claim.

Eastern District of Missouri

ETRAILER CORP. V. ONYX ENTERS., INT'L CORP.
This copyright and unfair competition matter is before the Court on the motion of Defendant Onyx Enterprises, International Corporation (“Onyx”), to dismiss Plaintiff etrailer Corporation's (“etrailer”) complaint. For the reasons set forth below, the motion to dismiss will be denied in part as to etrailer's copyright claims, and granted as to etrailer's unfair competition claims.

As noted above, most of etrailer's exemplar Photos are parts of actually registered photo groups, and thus meet the § 411(a) precondition to sue. With respect to etrailer's remaining copyright infringement claims, there is currently a split among the federal circuit courts on whether applied-for registration satisfies the precondition for an infringement claim under the Copyright Act. Some courts have adopted the “application” approach-allowing an infringement suit after filing a complete copyright application with the Copyright Office-while other courts have adopted the “registration” approach-requiring a complete application and either approval or rejection from the Copyright Office.

In Action Tapes, Inc. . . . the Eighth Circuit stated, as noted above, that “[a] copyright owner may not sue for infringement under the federal Copyright Act until the owner has delivered ‘the deposit, application, and fee required for registration’ to the United States Copyright Office.” Even if this statement in Action Tapes is just dicta, the Court believes this approach is the better-reasoned one.

Western District of Missouri

HEALTHMATE INT'L, LLC V. FRENCH

Plaintiff Healthmate International, LLC initiated this suit, asserting three claims of copyright infringement against Rampant Lion LLC and one of its co-owners, Timothy French. Defendants asserted several counterclaims, including one for false advertising under the Lanham Act. Plaintiff prevailed on two of its three copyright claims against Rampant Lion and on the Lanham Act counterclaim. Rampant Lion prevailed on one of the three copyright claims, and French prevailed on all three of the copyright claims asserted against him. Now pending are the parties' cross motions for attorney fees and costs, in which the parties contest who prevailed and the extent to which each party engaged in inappropriate conduct during the litigation. Both motions . . . are DENIED.

Ninth Circuit

Court of Appeals for the Ninth Circuit

PERFECT 10, INC. V. GIGANEWS, INC.

Appellant Perfect 10, Inc. (“Perfect 10” or “P10”) challenges the district court's partial dismissal of its direct copyright infringement claim and grant of summary judgment in favor of Appellees Giganews, Inc. (“Giganews”) and Livewire Services, Inc. (“Livewire”) as to all remaining
claims. Perfect 10 also appeals the district court's award of attorney's fees and costs under the Copyright Act. On cross-appeal, Giganews and Livewire contend the district court erred by denying their request for supplemental fees and failing to add Perfect 10's sole shareholder and founder, Norman Zada (“Zada”), to the judgment as Perfect 10's alter ego. For the reasons set forth below, we affirm the district court. . . .

i. Display Rights . . . . As the district court correctly concluded, the allegation that Giganews directly infringes Perfect 10's display rights through the Giganews Mimo reader does not state a claim because the fact that “users may use Giganews's reader to display infringing images does not constitute volitional conduct by Giganews.” . . . This is because “Mimo is just a reader, a piece of software that allows a user to view an image,” and therefore, “[t]o the extent that Mimo is used to view infringing images, this is done by the user.” . . .

The sole evidence Perfect 10 points to in support of its argument that Giganews was not merely a passive host shows only that images and thumbnails were accessed through the Giganews platform. The evidence does not demonstrate that Giganews—as opposed to the user who called up the images—caused the images to be displayed. . . .

ii. Distribution Rights . . . . As the district court correctly held, the allegation “that Giganews directly distributes [Perfect 10's] images when a user requests images from Giganews's servers ... does not state a claim, because this distribution happens automatically,” meaning that “Giganews has not engaged in volitional conduct by which it ‘causes' the distribution.” . . .

Perfect 10 failed to show that the distribution does not happen automatically. Indeed, an analysis of Perfect 10's evidence shows only that users uploaded infringing content onto Giganews servers, not that Giganews played any sort of active role in causing the distribution. . . .

iii. Reproduction Rights . . . . Perfect 10 provides no evidence showing Giganews exercised control (other than by general operation of a Usenet service); selected any material for upload, download, transmission, or storage; or instigated any copying, storage, or distribution. Accordingly, the district court correctly held there was no triable issue of material fact as to Perfect 10's claim that Giganews directly infringed Perfect 10's reproduction rights. . . .

2. Contributory Infringement . . . Reviewing this issue de novo, we hold that there were no simple measures available that Giganews failed to take to remove Perfect 10's works from its servers. Giganews presented sufficient evidence that Perfect 10's proposed method for locating infringing messages was onerous and unreasonably complicated. Indeed, Giganews spent more than 20 hours processing 565 Message–IDs from Perfect 10 because they were not machine-readable. Giganews calculates that Perfect 10's method would therefore require 354,000 hours of manual work for every 10 million Message–IDs—the number of Message–IDs that Giganews receives every month. Moreover, the record is clear that when Giganews did receive machine-readable Message–IDs, it immediately processed them and subsequently removed the messages from its servers. . . .
Perfect 10 has also failed to demonstrate that Giganews induced any infringement of Perfect 10's copyrighted works. . . . [N]either of these advertisements nor any other evidence in the record indicates that Giganews itself promoted its product “with the object” of infringing copyright. . . . [N]one of this conduct suggests that Giganews clearly expressed an intent to promote infringement or took “affirmative steps ... to foster infringement.” . . .

3. Vicarious Infringement . . . Perfect 10 provides evidence that suggests only that some subscribers joined Giganews to access infringing material generally; Perfect 10 does not proffer evidence showing that Giganews attracted subscriptions because of the infringing Perfect 10 material.

ACMET, INC. V. THE WET SEAL, INC.
No. 15-55928, 2017 WL 603862 (9th Cir. Feb. 15, 2017)

Acmet, Inc., appeals from the district court's denial of its motion for summary judgment and sua sponte entry of summary judgment in favor of defendants. We have jurisdiction under 28 U.S.C. § 1291 and review the district court's order de novo. . . . We affirm the district court's denial of Acmet's motion for summary judgment and reverse the sua sponte entry of summary judgment in defendants' favor. . . .

Here, reasonable jurors could differ on whether Acmet's and defendants' designs are strikingly similar. . . . There are objective similarities between protectable elements of the designs. . . . The designs have the same number of triangles arranged in the same pattern with the same size ratios. The designs all have a top border that is arranged in the same way. The only differences in the designs are the colors, the bottom border, and the addition of an extra line in two of defendants' designs.

There is also evidence from which reasonable jurors could draw an inference that defendants had access to Acmet's design. . . . Defendant Tony Kim was the president and owner of both the company that Acmet hired to print its design (Design by Nature) and the company that sold allegedly infringing fabric to retailers (Fashion Life). Fashion Life ordered garments bearing the allegedly infringing designs from a Chinese vendor within three months of Acmet's disclosing its design to Design by Nature.

A jury reasonably could resolve these issues in favor of either party, making summary judgment inappropriate.

BASILE V. SONY PICTURES ENTERTAINMENT INC.
No. 14-56418, 2017 WL 745698 (9th Cir. Feb. 27, 2017)

Constantino Basile appeals pro se from the district court's order dismissing his action alleging that defendants' movie Men in Black 3 infringed upon his copyrighted works "Crisis on Jupiter"
and "The World of Jupiter." . . . We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6), . . . and we affirm.

The district court properly dismissed Basile's copyright infringement action because there is no substantial similarity, as a matter of law, between protected elements of Basile's copyrighted works and comparable elements of defendants' film, and any similarities in the general concepts are unprotected.

HAYES V. WEST
No. 13-55836, 2017 WL 745693 (9th Cir. Feb. 27, 2017)

Arika Hayes appeals pro se from the district court's order dismissing her copyright infringement action. . . . We affirm.

The district court properly dismissed Hayes' action because Hayes failed to allege facts sufficient to show she was the owner of a valid copyright.

BASILE V. WARNER BROS. ENTERTAINMENT INC.
No. 16-55067, 2017 WL 745725 (9th Cir. Feb. 27, 2017)

Constantino Basile appeals pro se from the district court's order dismissing his action alleging that defendants' movies The Dark Knight Rises and Jupiter Ascending infringed upon his copyrighted works "Crisis on Jupiter" and "The World of Jupiter." . . . We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6), . . . and we affirm.

The district court properly dismissed Basile's copyright infringement action because there is no substantial similarity, as a matter of law, between protected elements of Basile's copyrighted works and comparable elements of defendants' films, and any similarities in the general concepts are unprotected.

BASILE V. TWENTIETH CENTURY FOX FILM CORPORATION
No. 14-56423, 2017 WL 745699 (9th Cir. Feb. 27, 2017)

Constantino Basile appeals pro se from the district court's order dismissing his action alleging that defendants' movie Prometheus infringed upon his copyrighted works "Crisis on Jupiter" and "The World of Jupiter." . . . We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6), . . . and we affirm.

The district court properly dismissed Basile's copyright infringement claim because there is no substantial similarity, as a matter of law, between protected elements of Basile's copyrighted works and comparable elements of defendants' film, and any similarities in the general concepts are unprotected.
WAKEFIELD V. OLENICOFF
No. 15-55649, 15-55675, 15-56137, 2017 WL 875801 (9th Cir. Mar. 6, 2017)

A jury found that Defendants Igor Olenicoff and Olen Properties Corp. infringed on Plaintiff Donald Wakefield's copyright in his sculpture Untitled by commissioning the creation of six substantially similar sculptures. The jury awarded Plaintiff $450,000 in actual damages. . . . The district court vacated that award, but granted Plaintiff injunctive relief, ordering that Defendants either destroy the six infringing sculptures or turn them over to Plaintiff. After Defendants opted for the former, the district court ordered the destruction of the sculptures. . . .

The district court did not err in denying Defendants' motion for judgment as a matter of law on statute-of-limitations grounds as to the six sculptures that Plaintiff first discovered in 2010. The jury found that Plaintiff had neither actual nor constructive knowledge of the facts giving rise to his claims for copyright infringement as to those six sculptures, and that finding was supported by substantial evidence. We affirm this ruling.

MOOFLY PRODUCTIONS, LLC V. FAVILA

The Corrales Estate ("Estate") and its executrix, Sandra Favila ("Favila") appeal the dismissal of their copyright infringement counterclaim. . . . The rulings of the California Court of Appeal and Los Angeles County Superior Court in Favila v. Souther awarded 51% of the subject copyrights to the Estate. The remaining 49% interest in the copyrights either remained with Raleigh Souther ("Souther") or with Souther's transferee, Get Flipped, Inc. ("GFI"). "A co-owner of a copyright cannot be liable to another co-owner for infringement of the copyright." . . . As co-owner of the copyrights, Souther or GFI was further entitled to grant non-exclusive licenses to the other Appellees.

FOX TELEVISION STATIONS, INC V. AEREOKILLER, LLC
No. 15-56420, 2017 WL 1056095 (9th Cir. Mar. 21, 2017)

We must decide whether a service that captures copyrighted works broadcast over the air, and then retransmits them to paying subscribers over the Internet without the consent of the copyright holders, is a "cable system" eligible for a compulsory license under the Copyright Act. . . .

FilmOn and other Internet-based retransmission services are neither clearly eligible nor clearly ineligible for the compulsory license § 111 makes available to "cable systems." The Copyright Office says they are not eligible. Because the Office's views are persuasive, and because they are reasonable, we defer to them. The judgment of the district court is therefore REVERSED.
UNICOLORS, INC. V. URBAN OUTFITTERS, INC.
No. 15-55507, 2017 WL 1208459 (9th Cir. Apr. 3, 2017)

Urban Outfitters, Inc. and Century 21 Department Stores, LLC (collectively "Urban") appeal the judgment against them in a copyright infringement case involving fabric designs. The district court granted plaintiff Unicolors Inc.'s motion for summary judgment on the issue of copyright infringement and, following a two-day trial, a jury found Urban liable for willful infringement. We reject Urban's arguments that the district court erred in its application of the subjective "intrinsic test" and in its conclusion that Unicolors had validly registered the Subject Design, and further conclude that there was substantial evidence to support the jury's verdict for willful infringement. We thus affirm.

MALONEY V. T3MEDIA, INC.
No. 15-55630, 2017 WL 1244899 (9th Cir. Apr. 5, 2017)

Former student-athletes Patrick Maloney and Tim Judge allege that defendant T3Media, Inc. (T3Media) exploited their likenesses commercially by selling non-exclusive licenses permitting consumers to download photographs from the National Collegiate Athletic Association's (NCAA) Photo Library for non-commercial art use. Maloney and Judge assert statutory and common law publicity-right claims and an unfair competition claim under California law. The district court held that the federal Copyright Act preempts plaintiffs' claims and granted T3Media's special motion to strike pursuant to California's anti-SLAPP statute. We affirm.

MAVRIX PHOTOGRAPHS, LLC V. LIVEJOURNAL, INC.
No. 14-56596, 2017 WL 1289967 (9th Cir. Apr. 7, 2017)

Plaintiff Mavrix Photographs ("Mavrix") appeals the district court's summary judgment in favor of Defendant LiveJournal. Mavrix sued LiveJournal for posting twenty of its copyrighted photographs online. The district court held that the Digital Millennium Copyright Act's ("DMCA") § 512(c) safe harbor protected LiveJournal from liability because Mavrix's photographs were posted at the direction of the user. 17 U.S.C. § 512(c).

To be eligible at the threshold for the § 512(c) safe harbor, LiveJournal must show that the photographs were posted at the direction of the user. Although users submitted Mavrix's photographs to LiveJournal, LiveJournal posted the photographs after a team of volunteer moderators led by a LiveJournal employee reviewed and approved them. Whether these photographs were truly "posted at the direction of the user," or instead whether LiveJournal itself posted the photographs, depends on whether the acts of the moderators can be attributed to LiveJournal. The issue we must decide is whether the common law of agency applies to LiveJournal's safe harbor defense. The district court ruled that the common law of agency does not apply to this analysis. We disagree and conclude that it does. As there are genuine factual disputes regarding whether the moderators are LiveJournal's agents, we reverse the district court's summary judgment and remand for trial.
Because the district court ruled on the remaining elements of the safe harbor, we also proceed to discuss those elements in order to provide guidance to the district court and parties on remand. Finally, we vacate the district court's order denying discovery of the moderators' identities because the agency determination may affect this analysis.

SHAME ON YOU PRODUCTIONS, INC. V. BANKS
No. 15-56372, 2017 WL 1732279 (9th Cir. May. 3, 2017)

Shame on You Productions, Inc. ("SOYP") appeals the district court's order and judgment dismissing SOYP's federal copyright infringement claim and California state law implied-in-fact contract claim. On the basis of the thorough and well-reasoned order of the district court, we affirm.

MICROSOFT CORP. V. BUY MORE, INC.
No. 15-56544, 2017 WL 2790693 (9th Cir. Jun. 27, 2017)

Buy More, Inc., Mojdeh Alam, Laptop Outlet Center, Inc., Maryam Sajjad, Vehid Abdullahi, and Shahram Shirazi (collectively, Defendants) appeal the district court's grant of summary judgment in favor of Microsoft Corporation (Microsoft) on five causes of action and the resulting judgment entered against them for $1,950,000 in statutory damages. We review de novo a district court's grant of summary judgment. . . . We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The undisputed evidence demonstrates that Defendants sold 60 units of software, each of which included a counterfeit copy of Windows 7 or Microsoft Office 2007. Microsoft possesses a total of five copyright registrations for Windows 7 and Microsoft Office 2007, which establishes a presumption of Microsoft's ownership of the copyrights in the software. . . . Distribution by sale is an exclusive right granted by copyright protection, which Defendants violated by selling counterfeit Windows 7 and Microsoft Office 2007 software. . . .

HEUSEY V. EMMERICH

Kenneth Heusey appeals pro se from the district court's judgment dismissing his action alleging copyright infringement and fraud. . . . The district court properly dismissed Heusey's copyright infringement claims because, as a matter of law, Heusey's copyrighted screenplay Not Without Justice and defendants' film Anonymous are not substantially similar under the extrinsic test, and any similarities in the general concepts are unprotected.
We reject as meritless Heusey's contention that the promotional trailers for defendants' film, as freestanding works separate from the film itself, are independently substantially similar to Heusey's screenplay.

ADAMS V. AGRUSA
No. 16-56170, 2017 WL 2839533 (9th Cir. Jul. 3, 2017)

Norman L. Adams, Jr. and Yuling S. Adams appeal pro se from the district court's judgment following a bench trial and partial summary judgment in their action alleging copyright infringement. . . . The district court properly granted summary judgment as to defendant Agrusa's innocent infringement because appellants failed to raise a genuine dispute of material fact as to whether Agrusa knew that her use of the photographs at issue constituted copyright infringement. . . . The district court properly concluded that Agrusa was liable for one count of copyright infringement because the photographs at issue were all part of the same marketing compilation for the subject residential property.

EDWARDS V. CINELOU FILMS
No. 16-56043, 2017 WL 3531453 (9th Cir. Aug. 17, 2017)

Patrice Edwards appeals pro se from the district court's judgment dismissing her copyright action. . . . We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) . . . and we affirm.

The district court properly dismissed Edwards's copyright infringement action because, as a matter of law, Edwards's works titled “Witch” and defendants' film The Last Witch Hunter are not substantially similar under the extrinsic test.

DISNEY ENTERS., INC. V. VIDANGEL, INC.
No. 16-56843, 2017 WL 3623286 (9th Cir. Aug. 24, 2017)

VidAngel, Inc. operates an online streaming service that removes objectionable content from movies and television shows. VidAngel purchases physical discs containing copyrighted movies and television shows, decrypts the discs to "rip" a digital copy to a computer, and then streams to its customers a filtered version of the work.

The district court found that VidAngel had likely violated both the Digital Millennium Copyright Act and the Copyright Act, and preliminarily enjoined VidAngel from circumventing the technological measures controlling access to copyrighted works on DVDs and Blu-ray discs owned by the plaintiff entertainment studios, copying those works, and streaming, transmitting, or otherwise publicly performing or displaying them electronically. VidAngel's appeal presents two issues of first impression. The first is whether the Family Movie Act of 2005 exempts VidAngel from liability for copyright infringement. 17 U.S.C. § 110(11). The second is whether
the anti-circumvention provision of the Digital Millennium Copyright Act covers the plaintiffs' technological protection measures, which control both access to and use of copyrighted works. 17 U.S.C. § 1201(a)(1). The district court resolved these issues against VidAngel. We agree and affirm the preliminary injunction. . . .

1. The Family Movie Act. . . . The FMA permits "the making imperceptible . . . of limited portions of audio or video content of a motion picture, during a performance in or transmitted to [a private household], from an authorized copy of the motion picture." . . . [T]he most natural reading of the statute is that the filtered performance or transmission itself must be "from" an authorized copy of the motion picture. . . .

2. Fair use. . . . VidAngel concedes that the district court correctly found that the second and third factors . . . weigh against finding fair use.

Although removing objectionable content may permit a viewer to enjoy a film, this does not necessarily "add[] something new" or change the "expression, meaning, or message" of the film. . . . Nor does reproducing the films' discs in digital streaming format, because "both formats are used for entertainment purposes." . . . Moreover, VidAngel's service does not require removing a crucial plot element—it requires the use of only one filter, which can be an audio filter temporarily silencing a portion of a scene without removing imagery, or skipping a gratuitous scene. Indeed, the FMA sanctions only making "limited portions" of a work imperceptible.

VidAngel argues that its service actually benefits the Studios because it purchases discs and expands the audience for the copyrighted works to viewers who would not watch without filtering. But, the district court found that "VidAngel's service [is] an effective substitute for Plaintiff's unfiltered works," because surveys suggested that 49% of its customers would watch the movies without filters. This finding was not clearly erroneous. VidAngel's purchases of discs also do not excuse its infringement. . . . Finally . . . [t]he reported decisions unanimously reject the view that space-shifting is fair use under § 107.

C. Circumvention of access control measures under the Digital Millennium Copyright Act. . . . VidAngel concedes that CSS, AACS, and BD+ are encryption access controls, and that it "uses software to decrypt" them. But, it argues that, "like all lawful purchasers, VidAngel is authorized by the Studios to decrypt [the TPMs] to view the discs' content." . . . Like the defendant in Corley, VidAngel "offered no evidence that [the Studios] have either explicitly or implicitly authorized DVD buyers to circumvent encryption technology" to access the digital contents of their discs. . . . Rather, lawful purchasers have permission only to view their purchased discs with a DVD or Blu-ray player licensed to decrypt the TPMs. Therefore, VidAngel's "authorization to circumvent" argument fails.
This appeal raises the now often litigated issue of whether a stock photography agency—here, the Arizona-based agency DRK Photo (“DRK”)—has standing under the Copyright Act of 1976 to pursue infringement claims involving photographs from its collection. Ultimately, there is no bright line answer to this question. Here, we affirm the grant of summary judgment in favor of defendants, McGraw-Hill Global Education Holdings, LLC and McGraw-Hill School Education Holdings, LLC (collectively, “McGraw-Hill”), because DRK is a nonexclusive licensing agent for the photographs at issue and has failed to demonstrate any adequate ownership interest in the copyrights to confer standing. We also affirm the denial of DRK's motion to modify the scheduling order for leave to amend its complaint.

I. Legal Ownership... In so holding, Minden declined to apply a rigid test to determine exclusivity and adopted a more flexible approach that allows for a license to be exclusive even if the copyright owner retains some subset of the rights at issue. ... The key to determining whether Minden's agency agreements conferred a nonexclusive or exclusive license thus was not whether the photographers retained some fractional right but instead that the photographers promised “that Minden, and only Minden, will have the power, as the photographers' licensing agent, to authorize third parties to reproduce, distribute, and display the photographs.” ... DRK's Representation Agreements here at issue, on the other hand, are devoid of that key provision. They also lack any limitation whatsoever on the photographers' authority to contract with other licensing agents. In the absence of any such promise, DRK's Representation Agreements confer nonexclusive licenses and do not render DRK a legal owner for standing purposes.

The alleged acts of infringement occurred prior to the execution of the Assignment Agreements. DRK concedes that following the execution of the Assignment Agreements, photographers who were parties to nonexclusive Representation Agreements could continue to market and sell the covered photographs themselves and through other means under the terms of the Representation Agreements. The photographers did not pay royalties or fees of any kind to DRK following execution of the Assignment Agreements. DRK's admitted course of dealing with photographers following the execution of the Assignment Agreements demonstrates that each party retained the rights it had under the nonexclusive Representation Agreements—meaning the photographers retained the exclusive rights to the photographs and DRK retained a nonexclusive license to authorize their use. As the district court recognized, the email exchanges surrounding execution of the Assignment Agreements further underscore this reality.

II. Beneficial Ownership... We have not previously explored the full extent of who may qualify as a beneficial owner of copyright, and we need not do so here. Indeed, to support its arguments that it is a beneficial owner, DRK once again points solely to the Representation Agreements and the Assignment Agreements. Yet, under those agreements, DRK is a nonexclusive licensing agent and an assignee of accrued causes of action. To hold that DRK is a beneficial owner simply on the very bases that it cannot be deemed the legal owner would effectively negate our holding in Silvers and render portions of section 501(b) superfluous. Thus, on the specific facts of this case, DRK has failed to demonstrate that it is a beneficial owner.
Plaintiffs appeal the dismissal of their complaint without leave to amend. We reverse. . . .

Plaintiffs state a straightforward case of copyright infringement: they (as heirs of the author) are the owners of the copyrights in and to four books—which Plaintiffs identify in their First Amended Complaint (FAC) by title and copyright registration number—and Defendants sell those books without authorization. Plaintiffs thus allege the two elements of a copyright infringement claim—“‘ownership of a valid copyright’” and “‘copying of constituent elements of the work that are original.’” . . . Plaintiffs' FAC gives Defendants fair notice of the alleged wrongdoing, such that they can admit or deny that they sold/sell the books identified in the FAC without permission. The district court erred in concluding Plaintiffs failed to state a claim.

MINTZ V. SUBARU OF AM., INC.
No. 16-16840, 2017 WL 6331141 (9th Cir. Dec. 12, 2017)

Marilyn D. Mintz appeals the district court's judgment dismissing her claims against Subaru of America. We affirm. . . .

The district court properly dismissed Mintz's copyright infringement claims. . . . Mintz does not plausibly allege that Subaru had access to her copyrighted work. Mintz cites her allegations that her copyrights have been featured and advertised in multiple publications that were sold in stores, sent to the general public, and distributed at festivals and trade shows. Without specific allegations that any Subaru employee viewed any of the publications in which her designs were featured or that the publications were widely disseminated to the general public, Mintz has not plausibly alleged that Subaru had access to her works.

Mintz also does not plausibly allege that the works at issue are “substantially similar.” . . . As discussed above, Mintz's designs and phrase are obviously dissimilar from Subaru's designs and phrase. Mintz argues that her copyrighted works are not before the court, and that the court thus cannot determine at the pleading stage whether Subaru's works are substantially similar. As the district court noted, Mintz has had ample opportunity to allege that her copyrighted works differ from the works in which she asserts trademark rights, and she has not done so. While this court is obligated to view allegations in the complaint in the light most favorable to Mintz on a motion to dismiss, the court is not obligated to make “unwarranted deductions of fact, or unreasonable inferences.”

GRAHAM-SULT V. CLAINOS

Plaintiffs Alexander Graham-Sult and David Graham are sons of the late rock-and-roll concert promoter Bill Graham and beneficiaries of his will. Plaintiffs allege that certain intellectual and tangible property belonged to Graham personally, as opposed to his companies, and thus should have passed to them after his death. They assert various claims against Nicholas Clainos; the
executor of Graham's estate, and against Bill Graham Archives LLC, Norton LLC, and William E. Sagan (collectively, “the BGA Defendants”). The district court granted summary judgment for all defendants and awarded attorney's fees to the BGA Defendants under the Copyright Act, 17 U.S.C. § 505. We now affirm. . . .

With respect to the poster copyrights, plaintiffs cannot demonstrate the first element of conversion, a right to possess the property. Because it is undisputed Graham neither created the posters himself nor purchased the intellectual property rights to them, the only way he could have personally owned the poster copyrights is if he was the commissioning party under the works-for-hire doctrine. . . . Plaintiffs raise no triable issue of fact as to whether the posters were created at Graham's personal instance and expense. The posters promoted the companies' concerts. There is no evidence Graham paid any poster artist from personal funds. To the contrary, there is substantial evidence Graham's companies paid some poster artists and considered posters as an expense in determining each show's profit. Because plaintiffs cannot show that they have any right to possess the poster copyrights, their claim for conversion of the copyrights fails as a matter of law.

JOHNSON V. STORIX, INC.
No. 16-55439, 2017 WL 6462472 (9th Cir. Dec. 19, 2017)

Anthony Johnson (“Johnson”) appeals the judgment in favor of Storix, Inc. (“Storix”) after a 5-day jury trial in his copyright infringement action, denial of his summary judgment motion, denial of his motion for a new trial, and award of attorney's fees to Storix. We review a denial of summary judgment de novo. . . . We AFFIRM in part, REVERSE in part, and REMAND. . . .

The Annual Report qualified as a “note or memorandum” that was signed by Johnson and memorialized a transfer of assets. . . . Contrary to Johnson's assertions, the form of a signature and contemporaneity of the writing are not dispositive. First, Section 204(a) does not necessitate the form of the signature to be in the transferor's personal capacity. The purpose of Section 204(a)'s writing requirement is to prevent inadvertent transfers and fraudulent claims of copyright ownership. . . . That concern is virtually absent when Johnson himself admitted to writing and signing the Annual Report that memorialized a transfer of at least some assets to his own wholly-owned company. Johnson conceded that a transfer of some assets did occur, including computers, desks, supplies, and “whatever was necessary to continue doing business as Storix, the same thing that I was doing as Storix Software.” . . .

The district court did not abuse its discretion in awarding fees to Storix because it gave “‘substantial weight’ to the objective reasonableness of [Johnson's] position but did not rely exclusively on it, and thus the Supreme Court's recent decision in Kirtsaeng v. John Wiley & Sons, Inc. does not require a different result.” . . . The district court properly relied on other factors that outweighed its findings that Johnson's claims were not objectively unreasonable or frivolous: Johnson's motivation, the degree of Defendant Storix's success, and the need to advance considerations of compensation and deterrence.
District of Alaska

TD AMERITRADE, INC. V. MATTHEWS

Before the Court at Docket 41 is Plaintiffs' Rule 12(b)(6) Motion to Dismiss. . . . Plaintiffs (collectively, “TD Ameritrade”) initiated this action on June 27, 2016. TD Ameritrade's Amended Complaint asserts three causes of action: declaratory judgment, cancellation and release of claimed nonconsensual common law lien pursuant to Alaska law, and injunctive relief. Defendant James Matthews filed an Answer to the Amended Complaint that also asserted a counterclaim for copyright infringement. On March 20, 2017, Mr. Matthews filed an Amended Answer asserting seven additional counterclaims. . . .

1. Copyright Infringement . . . TD Ameritrade asserts that Mr. Matthews “does not have ownership rights in any asserted copyrightable work” and that it holds “all copyrights relative to the thinkorswim software.” Mr. Matthews responds that registration of a copyright is prima facie evidence of a valid copyright. . . . Although Mr. Matthews alleges that he has obtained a copyright registration for his code, TD Ameritrade points to the Client Agreement to rebut the presumption of the copyright's validity. Mr. Matthews acknowledges he signed and agreed to the terms of the Client Agreement, which states that “[m]y use of [TD Ameritrade's] Services will not confer any title, ownership interest, or intellectual property rights to me.” The agreement also expressly prohibits Mr. Matthews from creating derivative works: “I will not ... create derivative works from, distribute, redistribute, display, sell or transfer, or create derivative products from the Services.” Thus, even if Mr. Matthews obtained a copyright registration for work he claims is original and novel, he appears to be precluded from obtaining a copyright of any derivative works by the terms of the Client Agreement.

Mr. Matthews' claim that he had been given the authority to create and copyright derivative work appears to be directly at odds with the Client Agreement. While such a claim is possible, Mr. Matthews has failed to allege any facts to demonstrate that the claim is plausible. Accordingly, TD Ameritrade's Motion to Dismiss as to the First Counterclaim will be granted. . . .

2. Digital Millennium Copyright Act . . . Ownership of a valid copyright is a predicate to asserting a claim under the Digital Millennium Copyright Act. As discussed above with regard to the copyright infringement counterclaim, the existence of a valid copyright has not been adequately pleaded. Accordingly, Mr. Matthews' Second Counterclaim will be dismissed with leave to amend.

District of Arizona

ORIGAMI OWL LLC V. MAYO

Plaintiff Origami Owl LLC and Defendant Julie E. Mayo have filed cross-motions for summary judgment. . . . The motions are fully briefed. . . . No party requests oral argument. The Court will grant Plaintiff's motion and deny Defendant's motion. . . .
A. Copyright Infringement. . . . 1. Ownership. . . . Plaintiff provides copyright certificates covering all 42 items Plaintiff alleges to be infringed. . . . Each certificate was issued within five years of what the certificate reports to be the product's first publication. Id. Thus, Plaintiff has established a presumption that its ownership of the copyrights is valid, and the burden shifts to Defendant to rebut that presumption. . . . Defendant has failed to meet her burden.

2. Copying of Plaintiff's Protected Works. . . . a. Access. A direct link between Plaintiff's works and Defendant's access is shown in the email exchange between Defendant and Ms. Weems in December 2011. Defendant specifically stated that she intended to use Plaintiff's designs. . . . This link is further shown through the multiple cease and desist letters sent to Defendant between early 2012 and late 2014. . . . Plaintiff alleges that Defendant ignored the letters and continued to manufacture and sell the infringing jewelry. . . . Defendant does not offer any response or opposing explanation of the December 2011 emails or the multiple letters notifying her of the alleged infringement.

b. Substantial Similarity. . . . A side-by-side comparison of Plaintiff's copyrighted works and Defendant's allegedly infringing works shows them to be identical in subject matter, shape, color, and arrangement. . . . In fact, Defendant concedes as much. . . . Defendant was shown a side-by-side comparison of charms from Exhibit A of the amended complaint during her deposition and asked if the charms were identical. Defendant responded: “They appear so.” . . . The Court finds the extrinsic test easily satisfied. . . . Defendant's allegedly infringing works are identical in all respects to Plaintiff's copyrighted jewelry. . . . As noted above, Defendant admitted as much in her deposition. . . . The Court finds that no reasonable juror could conclude that the products are not substantially similar in the “total concept and feel of the works.”

BUDIYANTO V. MY VINTAGE VENUE, LLC

For the reasons that follow, this case will be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. . . . As argued by the Defendants, neither the complaint nor the amended complaint set forth allegations which show that Plaintiffs (rather than their photographer) owned a copyright in the “special wedding photograph” at the time of the alleged infringing conduct, and therefore do not show that Plaintiffs have standing to bring their copyright claims.

KELLY V. MARICOPA COUNTY SHERIFF'S OFFICE

Pending before the Court is Defendant Maricopa County Sheriff Office's (“MCSO”) Motion for Summary Judgment. . . . For the reasons stated below, the Court grants the motion. . . .
A. Alleged Infringement Prior to December 2012 . . . Mr. Kelly first learned that MCSO received the copyrighted photos in December 2011 . . . Mr. Kelly claimed in his deposition that he confronted Sheriff Arpaio about selling the counterfeit image in spring 2012 . . . Although Mr. Kelly's later affidavit contradicted this deposition testimony, that affidavit and Mr. Kelly's April 2012 letter, on which he relies in his subsequent affidavit, confirms that he assumed that the Sheriff's Office was selling his copyrighted photograph . . . Specifically, Mr. Kelly claimed in the April 2012 letter that Mr. Young “donated counterfeit copies to the office of Sheriff Joe Arpaio and caused Sheriff [Arpaio] to engage in the sale of the counterfeit by deceiving him.” . . . Accordingly, Mr. Kelly knew or should have known about copyright infringement in spring 2012. Mr. Kelly brought this civil suit in December 2015 . . . Because Mr. Kelly filed his complaint more than three years after knowing about potential copyright infringement, the statute of limitations bars recovery from any infringement before December 2012.

B. Alleged Infringement after December 2012 . . . Mr. Kelly fails to create an issue of fact on a number of key issues. No evidence contradicts that Mr. Young gave Sheriff Arpaio copies of the photograph in December 2003 . . . Mr. Young testified under oath that he thought that he gave between twenty-five and one hundred posters to Sheriff Arpaio at the 2003 encounter, and no admissible testimony contradicts this statement . . . Further, Mr. Kelly presents no evidence that the MSCO ever sold the posters, as county records showed no evidence of any donations or fundraising sales of the disputed photograph . . . and Mr. Kelly offers no other sufficient evidence that the Defendants ever held or sold copies of the disputed photograph. The sum total of Mr. Kelly's evidence that MCSO sold the copyrighted photograph after December 2012 supposedly comes from two separate encounters—a January 2013 encounter with Sheriff Arpaio and a November 2014 encounter with an MCSO deputy named Rod. Neither is sufficient to withstand summary judgment.

Mr. Kelly alleged an additional conversation with Sheriff Arpaio in January 2013. According to Mr. Kelly's affidavit, Mr. Kelly told Sheriff Arpaio that he believed that the MCSO had sold the posters containing his copyrighted photograph, and Sheriff Arpaio responded “yes” and directed Mr. Kelly to take his deputy's card . . . Even if Mr. Kelly's version of the alleged encounter is true, Sheriff Arpaio did nothing more than say “yes” when Kelly accused the MCSO of having sold the photograph in the past. Nothing in Sheriff Arpaio's alleged statements suggests that any infringement occurred after December 2012, and all claims for any infringement occurring prior to that date, as described above, are barred by the statute of limitations.

Mr. Kelly also claimed that he encountered a plainclothes MCSO deputy named Rod on November 21, 2014, and Rod gave the impression that MCSO recently sold the copyrighted photographs. . . . There is, however, no admissible evidence of this encounter. . . .

Mr. Kelly fails to substantiate his additional claims that MCSO continued to distribute his copyrighted photograph as recently as 2014. Because there are no genuine issues for trial concerning any of the alleged infringement occurring after December 2012, the Court grants defendant's motion for summary judgment.
On January 26, 2015, plaintiff Brighton Collectibles, LLC (“Brighton”) filed a complaint against defendant Believe Productions, Inc. (“Believe”). The original complaint alleged one claim for Copyright Infringement pursuant to 17 U.S.C. § 101 et seq. The gravamen of plaintiff's claim is that defendant violated its copyright in a jewelry design by selling two pieces of jewelry that are substantially similar to Brighton's designs.

On August 30, 2016, the Court granted plaintiff leave to file a First Amended Complaint (“FAC”). . . . On September 2, 2016, plaintiff filed the operative FAC. . . . The FAC alleges two additional claims, namely, a claim for false designation of origin, pursuant to 15 U.S.C. § 1125(a), the Lanham Act, and a claim for common law unfair competition. The gravamen of plaintiff's second and third claims is that Believe marketed and promoted its infringing jewelry by incorporating photographs of Brighton's jewelry into the promotional materials for Believe's lower-quality jewelry. . . .

Although plaintiff does not present evidence that Brighton lost any particular sale due to Believe's alleged infringement, there is sufficient evidence from which a reasonable jury could conclude that Brighton suffered injury. Taking all reasonable inferences from the evidence in plaintiff’s favor, there is evidence suggesting that Believe disseminated nearly 700,000 sales catalogues nationwide wherein Believe used photographs of Brighton products to sell similar, lower-quality jewelry for less than half the cost of Brighton's analogous Reno Heart products. After Believe sold over 9,000 bracelets and earrings using photographs of Believe's copyrighted design, Reno Heart Collection sales declined at a higher rate than Brighton's other jewelry sales. Based on the foregoing, there appears to be a material issue of disputed fact regarding entitlement to lost sales. Furthermore, Wunderlich's Report includes a calculation of Believe's allegedly infringing sales, which “provides an upper range for an award of damages.” Id. Lastly, Wunderlich estimates that Reno Heart Collection sales were 4,313 units lower than if the collection had performed similarly to Brighton's other jewelry and provides a framework for estimating lost revenues based on whatever number of sales may have been lost. The foregoing evidence provides a sufficiently reasonable basis for determining the amount of actual damages such that the Court cannot, at this time, conclude that Brighton's claim to actual damages does not present a material issue of disputed fact. . . .

Although defendant acknowledges that palming off claims are not preempted by the Copyright Act, defendant argues that plaintiff's claim is reverse palming off, which would be preempted by the Copyright Act. . . . Plaintiff does not allege that defendant actually obtained genuine Reno Heart Collection bracelets and earrings and sold them under its own name. Such allegations would constitute reverse palming off and would be preempted by the Copyright Act. . . . Plaintiff's unfair competition claim is based upon Believe's alleged use of photographs of Reno Heart Collection jewelry such that consumers would be confused as to the origin of the pictured jewelry and assume the Reno Heart jewelry pictured was being made and sold by Believe.
Plaintiff does not allege that Believe actually sold Reno Heart Collection jewelry under another name. Brighton alleges quite the opposite—that Believe's sales of lower-quality, but confusingly similar products using pictures of Brighton products gave them an unfair advantage in the marketplace and constituted unfair competition. Accordingly, plaintiff alleges implied palming off. Such a claim is not preempted by the Copyright Act.

BRIGHTON COLLECTIBLES, LLC V. BELIEVE PROD., INC.

On January 26, 2015, plaintiff Brighton Collectibles, LLC ("Brighton") filed a complaint against defendant Believe Productions, Inc. ("Believe"). . . . The gravamen of plaintiff's copyright infringement claim is that defendant sold bracelets and earrings that infringed upon plaintiff's copyright in a particular jewelry pendant design.

Defendant's first motion in limine seeks to prevent plaintiff's counsel and witnesses from referring to the Believe jewelry design as "similar" to Brighton's copyrighted design. . . . "Substantially similar" is a term of art insofar as the jury is limited to consideration of a work's original elements. It may therefore be misunderstood by a layperson. . . . However, that alone does not require the Court to preclude use of the words "similar" or "alike."

URBAN TEXTILE, INC. V. RUE 21, INC.

Following the Court's denial of Plaintiff Urban Textile, Inc.'s ("Urban") motion for summary judgment . . . Defendants filed a motion for partial summary judgment. . . . Defendants request that the Court enter summary judgment in their favor with respect to eleven of the twelve designs at issue in this case: UB-4694; UB-4701; UB-4690; UB-4276; UB-4345; UB-4492; UB-4350; UB-4638; UB-4609; UB-4670; and UB-4672 ("the subject designs"). . . . They do not ask for summary judgment on the one remaining design, UB-4564, presumably because the Court denied Urban's motion with respect to that design on the basis that whether or not Defendants copied it is a question for the trier of fact. . . . For the reasons discussed below, and based on Magistrate Judge Mumm's recommendation regarding sanctions . . . the Court GRANTS Defendants' motion for partial summary judgment. . . .

Here, the element that Defendants argue is missing is ownership of a valid copyright, and the Court agrees. While Urban registered the subject designs as part of an "unpublished collection," the recently-entered sanctions have the effect of establishing that Urban did publish the designs prior to registration. . . . Whether or not a work was published prior to registration matters because the U.S. Copyright Office has different rules for registering published versus unpublished works. . . . If a work registered as part of an unpublished collection turns out to have been previously published, then it is not validly registered as part of that collection. . . . [T]he Court concludes that Urban's placement of the subject designs in its Look Books constituted publication consistent with the Compendium's publication definition of "offer[ing] [designs] to
sales representatives for the purpose of selling those works to wholesalers and retailers." . . . As such, the Court finds that Urban published the works prior to registering them as part of unpublished collections, therefore making the registrations invalid. Because Urban cannot, as a matter of law, prove the first element required for a claim of copyright infringement, Defendants are entitled to summary judgment on Urban's copyright infringement claim regarding the subject designs.

GRAY V. PERRY

On July 1, 2014, Marcus Gray (P.K.A. Flame), Lecrae Moore (P.K.A. Lecrae), Emanuel Lambert, and Chike Ojukwu filed this action alleging that the song "Dark Horse" infringes upon plaintiffs' copyright in the song "Joyful Noise." . . . Since then, plaintiffs have repeatedly amended their pleadings to add or dismiss various parties. The operative Third Amended Complaint ("TAC") no longer lists Moore as a plaintiff and alleges copyright infringement by Katheryn Elizabeth Hudson (P.K.A. Katy Perry, hereinafter "Perry"); Jordan Houston (P.K.A. Juicy J); Lukasz Gottwald (P.K.A. Dr. Luke); Sarah Theresa Hudson; Karl Martin Sandberg (P.K.A. Max Martin); Henry Russell Walter (P.K.A. Cirkut); Kasz Money, Inc.; Capitol Records, LLC; Kitty Purry, Inc; UMG Recordings, Inc.; Universal Music Group, Inc.; WB Music Corp; BMG Rights Management (US) LLC; and Kobalt Music Publishing America, Inc. . . . On January 23, 2017, the Perry defendants filed the instant motion for partial summary judgment seeking a determination that Perry's concerts could not have infringed plaintiffs' copyrights because they were licensed. . . .

"Anyone who is authorized [or licensed] by the copyright owner to use the copyrighted work in a way specified in the statute ... is not an infringer of the copyright with respect to such use." . . . Here, the License authorized the Perry defendants to perform both "Dark Horse" and "Joyful Noise" and said performance could not have infringed plaintiffs' performance rights in "Joyful Noise," even if "Dark Horse" is derivative of "Joyful Noise." Accordingly, defendants' motion for partial summary judgment is GRANTED.

NAKADA + ASSOC., INC. V. CITY OF EL MONTE

In a predominantly contractual dispute with a slight overlay of copyright infringement, Plaintiffs Nakada + Associates, Inc. ("Nakada") and Gannett Fleming, Inc. sue Defendant City of El Monte ("El Monte" or the "City"), a California municipal corporation, alleging claims for: (1) copyright infringement; (2) breach of implied contract; (3) breach of oral contract; and (4) common count: goods and services rendered. . . .

Plaintiffs allege that the following facts relevant to their copyright infringement claim existed at the time they commenced this action: Plaintiffs created a business plan (the "Business Plan") and a physical model (the "Project Model") for Defendant for development work related to "El

Defendant now moves for summary judgment or, in the alternative, partial summary judgment. . . . It is undisputed that on January 20, 2011, a video was posted to YouTube containing images of the Project Model that Plaintiffs contend was under copyright protection. . . . The parties also agree that on May 4, 2012, Nakada sent a Cease & Desist letter to Defendant asking that it "cease and desist use of all [Nakada's] material which includes, but is not limited to removal of [Nakada's] design and from the City Gateway website, State HCD grant application, Metro and discontinue reference of [Nakada's] design to the media or using [Nakada's] material in any other presentation." . . . This action did not commence until July 6, 2016, outside the three years from when Plaintiffs could reasonably be charged with notice that their copyright infringement claim based on the January 20, 2011 posting of the video on YouTube had accrued. . . . Plaintiffs do not submit any evidence to show that a claim for copyright infringement on the basis of the YouTube video had not accrued, or that the statute of limitations tolled for any reason, or that Defendant infringed Plaintiffs' copyrights within the three years preceding the filing of this action. Plaintiffs respond merely that Defendant's "current website has a link to the YouTube video." . . . But that is a separate instance of allegedly infringing conduct based on a purported new infringing act, which is prima facie insufficient to resuscitate a stale claim for copyright infringement on the basis of the January 20, 2011 posting of the video on YouTube. . . . Therefore, the Court agrees with Defendant that Plaintiffs cannot assert a claim of copyright infringement on the basis of the January 20, 2011 posting of the allegedly infringing material on YouTube.

SUGARFINA, INC. V. SWEET PETE'S LLC

Plaintiff Sugarfina, Inc. ("Plaintiff" or "Sugarfina") brought the instant Action against Defendants Sweet Pete's LLC ("Sweet Pete's"); ML Sweets, LLC ("ML Sweets"); Peter Behringer; and Allison Behringer (collectively, "Defendants") alleging trade dress infringement, trademark infringement, unfair business practices, unjust enrichment, patent infringement, and copyright infringement. Currently before the Court is Defendants' Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure ("FRCP" or "Rule") 12(b)(6) ("Motion"). Having reviewed all papers submitted pertaining to the Motion, the Court NOW FINDS AND RULES AS FOLLOWS: Defendants' Motion to Dismiss is GRANTED in part and DENIED in part. . . .

5. Unfair Business Practices . . . Plaintiff's unfair business practices cause of action also includes allegations that Defendants' infringement of Plaintiff's copyrights and patents are "unlawful acts in violation of California Business & Professions Code §§ 17200, et seq." . . . However, unfair business practices claims "may be preempted by federal copyright [and patent] law when the state claim incorporates by reference and merely restates federal patent and copyright claims." . . . Plaintiff's unfair business practices claim, which specifically references the copyright and patent
laws, “asserts no new or different allegations to distinguish it from [Plaintiff's] patent or copyright infringement claims.” . . . Accordingly, Plaintiff's unfair business practices claim based on its patent and copyright claims is preempted by federal copyright and patent law. The Court GRANTS Defendants' Motion as to Plaintiff's unfair business practices claim premised on its patent and copyright claims. . . .

8. Copyright Infringement . . . Plaintiff alleges a cause of action for copyright infringement based on its two registered copyrights, the “Sugarfina Bento Box,” . . . and the “Sugarfina Slider Box,” . . . . Defendants do not dispute that Plaintiff has two registered copyrights. . . .

The parties' product packaging shows that they are substantially similar. While the packages are different colors, with Plaintiff's predominantly light blue and Defendants' predominantly red, both works are covered in a matte, muted primary color. Both works have a thin, white rectangular border about one-half inch from the edge of the packaging's cover. The company names are both placed in the middle of the cover in a simplistic white font. The remainder of the cover of the packaging is minimalistic; there is nothing on either party's cover except for the thin, white rectangular border and the company name. While Defendants point to differences in the two parties' packaging, “ ‘[s]uperficial changes' to the characteristics of a copyrighted work in an accused work may be considered ‘an attempt to disguise an intentional appropriation.'

GREG YOUNG PUBLISHING, INC. V. ZAZZLE, INC.

Absent an affirmative finding of “willful” infringement, the Copyright Act limits statutory damages awards to a maximum of $30,000 per copyrighted work. To willfully infringe a copyright, the defendant must have had actual knowledge of the infringement or have acted with reckless disregard or willful blindness. Here, no reasonable jury could have found on the evidence presented at trial that Defendant Zazzle Inc. (“Zazzle”) willfully infringed any copyrights. Although Plaintiff argued that Zazzle could have done more to detect and avoid potential infringement, as a matter of law, Zazzle's failure to take any of these particular steps is not a sufficient basis for a finding of willful infringement. Accordingly, the Court GRANTS Defendant's renewed motion for judgment as a matter of law on the question of willful infringement and reduces the judgment to $30,000 for each of the five images that exceeds the statutory limit for ordinary infringement.

MARCUS V. ABC SIGNATURE STUDIOS, INC.

Plaintiff David Lloyd Marcus (“Plaintiff”) brought the instant Action against Defendants ABC Signature Studios, Inc. (“ABC”); Khalabo Ink Society (“Khalabo”); and Kenya Barris (“Barris”) (collectively, “Defendants”) alleging copyright infringement and unfair competition. Defendants moved to dismiss Plaintiff's Complaint, and the Court granted Defendants' Motion to Dismiss on September 13, 2017. Currently before the Court is Defendants' Motion for Attorneys' Fees . . . .
Having reviewed all papers submitted pertaining to this Motion, the Court NOW FINDS AND RULES AS FOLLOWS: Defendants' Motion for Attorneys' Fees is GRANTED.

WERNER V. BARCROFT MEDIA, LTD.

On October 5, 2017 Defendant Barcroft Media, Ltd. (“Barcroft”) filed a Motion to Dismiss Plaintiff Jeffery R. Werner's (“Plaintiff”) First Amended Complaint (“FAC”).

Plaintiff alleges in the FAC that “Plaintiff believes and understands that several of the copyrighted works referenced in the First Amended Complaint were obtained through, or with the assistance of, Barcroft. Specifically, Plaintiff believes Valnet had access to Defendant Barcroft's entire image and video library.” At the motion to dismiss stage, the Court must accept all factual allegations pleaded in the FAC as true, and construe them and draw all inferences from them in favor of Plaintiff. Accordingly, the Court concludes that Plaintiff has pled sufficient facts to state a cognizable claim for contributory copyright infringement by alleging that Barcroft materially contributed to Valnet's alleged direct copyright infringement by supplying one or more of the copyrighted images infringed by Valnet.

The Court also concludes that Plaintiff has sufficiently pled a claim for vicarious copyright infringement. Plaintiff alleges in the FAC that Barcroft “represented that it had the full power and authority to grant the [retroactive] license, including the authority to license Plaintiff's photographs” and that, as a result of the license, Barcroft “implicitly or explicitly” controlled “the underlying content in order to validly issue or enter into the license.” Plaintiff argues that these allegations demonstrate that Barcroft had the ability to control Valnet's infringing conduct by virtue of its claimed ownership and control of Plaintiff's photographs as a result of Barcroft's agreement with Plaintiff. Although the Court doubts whether Plaintiff will be able to prove that Barcroft had the requisite degree of control over Valnet necessary to demonstrate it had the right and ability to supervise Valnet's infringing activities, the Court concludes this issue, as well as the issue of whether Barcroft's alleged actions materially contributed to Valnet's direct copyright infringement, are more appropriately resolved on a motion for summary judgment.

TELEVISION EDUCATION, INC. V. CONTRACTORS INTELLIGENCE SCHOOL, INC.

Plaintiff Television Education, Inc. brought this action against defendants Contractors Intelligence School, Contractors Publisher, Leonid Vorontsov, and Oksana Vorontsov (collectively "defendants") for alleged copyright infringement.

1. Ownership of a Valid Copyright. Plaintiff provides no evidence that it has a valid copyright over the allegedly hacked 2010 questions. It has not provided its version of the test that it claims defendants copied in 2010. Plaintiff submitted both the 2010 and 2016 versions of defendants'
questions and a side-by-side comparison of the two versions . . . but provides no evidence that these questions were part of plaintiff's copyrighted material. This is not enough to show that the plaintiff had any copyright interest in the questions at hand. . . .

2. Violation of Copyright Owner's Rights . . . In various exhibits, plaintiff points to 93 purported instances of copying or paraphrasing in defendants' nine manuals that consist of over 400 pages. There are several deficiencies in plaintiff's claim, including the total amount of purported copying, the manuals largely contain facts, and plaintiff has failed to show there is a substantial amount of very close paraphrasing. Plaintiff thus has not shown that it is likely to succeed on the merits of its claim.

Northern District of California

SHAHANI V. MOCTEZUMA

Plaintiff Ray K. Shahani filed suit against Defendant Nieves Moctezuma alleging a claim for relief under the Declaratory Judgment Act and state law claims for breach of contract and violation of California's consumer protection statute. Plaintiff alleges that Defendant breached a contract between the parties when he failed to provide Plaintiff with digital photographs from Plaintiff's wedding and failed to provide raw video footage of Plaintiff's wedding, and instead, provided a video containing at least seven different copyrighted songs. Plaintiff contends this video subjects him to potential claims for copyright infringement. Because the Court had concerns regarding its subject matter jurisdiction, it issued an Order to Show Cause. Having reviewed the response to the Order to Show Cause, the Court concludes that there is no justiciable case or controversy between the parties and DISMISSES this action for lack of subject matter jurisdiction. . . .

Plaintiff seeks a declaration of non-infringement, but Plaintiff does not allege that Defendant owns any of the copyrighted material in question and the true copyright owners are not parties to this litigation.

YATES V. ADAMS

In this copyright infringement action filed by plaintiff Peter Yates, all defendants have collectively moved for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Dkt. No. 61. The Court grants the motion. . . .

Yates granted to defendants an implied, nonexclusive, irrevocable license, and that defeats his copyright infringement claim against them. Defendants' summary judgment motion is granted.

TEESPRING, INC. V. PUETZ
Teespring seeks a declaration in this case that it did not infringe Bradley Puetz's copyright entitled "I'm the Infidel Allah Warned You About" when it sold apparel with a design uploaded by Jonathan Maginnis. Puetz seeks damages and an injunction against Teespring for direct and vicarious infringement and against Maginnis for direct infringement. Now that discovery has closed, Teespring and Maginnis have brought motions for summary judgment, arguing that Puetz cannot show copyright infringement. Puetz has moved for temporary restraining orders or preliminary injunctions against Teespring and Maginnis.

A reasonable jury could find that Puetz's and Maginnis's designs are strikingly similar. Although, as Teespring has pointed out, some of the individual elements of the designs may be common and unprotectable, the feel and look of the two designs, reached through a series of design decisions, would support a finding of striking similarity. The two designs include all of the same design elements with no distinct design elements. The clarity, realism, and detail in the designs are similar (and contrast with Maginnis's prior designs). Both skulls have furrowed, accentuated brows and enlarged eye sockets. Both designs place the Arabic word for "infidel" in monochromatic cursive on the forehead of the skull. Both designs include the phrase "I'm the infidel Allah warned you about," with "I'm the infidel" wrapping around the skull and curving less than the skull. Both designs use smaller font for "Allah warned you about" and break the phrase between the words "infidel" and "Allah." The fonts chosen for the all-capital-letter English text are similarly textured.

MICROSOFT CORPORATION V. A&S ELECTRONICS, INC.

Plaintiff Microsoft Corporation brings this action against defendants A&S Electronics, Inc. and Alan Z. Lin (collectively, "A&S") alleging contributory copyright infringement, as well as claims for trademark infringement, false designation of origin, and unfair competition, and common law counts for constructive trust and an accounting. The Court Denies the Cross-Motions for Summary Judgment on the first sale issue. First, triable issues of material fact exist that preclude summary judgment in favor of either party with respect to the sale of the software originally sold through the Home Use Program ("HUP"). Second, the parties have agreed that, because Microsoft product keys are not copyrightable works, and therefore the sale of cards containing the product keys would not be a sale of a copyrighted work, the first sale doctrine does not apply to the alleged sale of such product keys (as traced back to a Chinese student use program) located on "product key cards."

ARTIFEX SOFTWARE, INC. V. HANCOM, INC.

Plaintiff Artifex Software Inc. ("Artifex") brings breach of contract and copyright infringement claims against Defendant Hancom, Inc. Defendant's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is now pending before the Court. After carefully considering the
arguments and briefing submitted, the Court concludes that oral argument is unnecessary . . . and DENIES the motion to dismiss. . . .

The Breach of Contract Claim is not Preempted . . . Here, both parties agree that the first prong is met-Plaintiff's breach of contract claim is based on Defendant's use of Plaintiff's copyrighted software: Ghostscript. They disagree, however, regarding whether the second prong is met; namely, whether the copyright claim contains an "extra element." . . . In any event, the Ninth Circuit Court has held that the Copyright Act "does not preempt causes of action premised upon possible extraterritorial infringement." . . . As discussed below, both parties agree that this action is premised upon possible extraterritorial infringement to which the Copyright Act would not apply. Because any such extraterritorial infringement would not be subject to the Copyright Act, claims based on this infringement would not be preempted and thus could be maintained under state law instead. . . .

Plaintiff's Copyright Claim . . . [W]hile the Copyright Act may not reach all of Defendant's challenged acts, the Court cannot resolve this issue on this record. The Court therefore denies the motion to dismiss without prejudice to raising this issue in a subsequent pleading should the evidence suggest that the requisite link between the extraterritorial infringement and activities in the United States does not exist.

BLIZZARD ENTMT, INC. V. LILITH GAMES (SHANGHAI) CO.

The various video games at issue in this copyright case take players to fantastical worlds populated by elves, demons, and at least one elf-demon. The earliest of these games, Plaintiff Blizzard Entertainment's "Warcraft III: Reign of Chaos," lets them build their own fantastical worlds populated by custom characters. Playing off the word modification, players call this process "modding" and their modding creations "mods."

Eventually, this rather remarkable chance to play God, like too many human endeavors, devolved into a fight over money. In the early 2000s, a particular Warcraft III mod called "DotA" (short for "Defense of the Ancients") took the gaming community by storm. Companies took notice. In 2013, Plaintiff Valve Corporation released a stand-alone game modeled on DotA called "Dota 2," which also took the gaming community by storm. Still more companies took notice. Defendants Lilith Games and uCool, Inc. released their own iterations-"DotA Legends" and "Heroes Charge," respectively-built specially for smart phones. Blizzard and Valve, who themselves settled copyright disputes between them, are now suing Lilith and uCool. uCool has moved for partial summary judgment against Valve, arguing that Valve does not own copyrights in the original DotA and subsequent mods, and thus has no viable copyright claims against uCool. . . .

At bottom, uCool asks why Valve should get to capitalize on others' "free work." The answer is because Valve, if it prevails, will have proved that it acquired copyrights from people who spent years creating, growing, and (yes) masterminding much of the DotA universe. Help along the
way does not drain those efforts of their considerable value. If helpers feel cheated, they may come to court. But theirs is not uCool's case to make. For that and the foregoing reasons, the Court DENIES the motion for partial summary judgment. In light of that decision, the Court does not require further briefing or argument to resolve the motion for Rule 11 sanctions, which is DENIED in its entirety.

ORACLE AM., INC. V. HEWLETT PACKARD ENTER. CO.

Before the Court is Plaintiff's Motion to Strike Defendant's Affirmative Defense of unclean hands. ECF No. 207. The Court will grant the motion with prejudice. . . . This new iteration of HPE's unclean hands defense suffers from several infirmities. First, the claimed key difference between this version and the prior one-that Oracle not only allegedly changed its policies but maintained publicly that it had not done so-appears nowhere in the SAA itself. . . . Second, HPE has failed to allege how Oracle's alleged conduct injured HPE. . . . The Court strikes HPE's unclean hands affirmative defense. Because the Court concludes that amendment would be futile, leave to amend is denied.

CABELL V. ZORRO PRODS. INC.

Plaintiff Robert W. Cabell ("Plaintiff") brings this action for copyright infringement and related claims against Zorro Productions, Inc. ("ZPI") and ZPI's owner John Gertz (collectively, "Defendants"), in connection with a musical Plaintiff created based on the fictional character "Zorro." Presently before the court is Defendants' Motion to Dismiss Plaintiff's Second Amended and Supplemental Complaint under Federal Rules of Civil Procedure 12(b)(2), 12(b)(6) and forum non conveniens. . . . Having carefully reviewed the pleadings and briefs submitted by the parties in this case, Defendants' Motion to Dismiss will be GRANTED IN PART and DENIED IN PART for the reasons discussed below. . . .

Here, the SAC alleges-and Defendants do not dispute-that Plaintiff owns multiple copyright registrations for his script and related audio recordings. . . . As to the copying "prong," for the purposes of this motion Defendants also do not dispute having "access" to the script, instead focusing their argument on the issue of substantial similarity. . . .

[H]ere, neither party has attached copies of the works at issue for the court to consider, nor does it seem appropriate to do so at this phase in the case. . . . The court finds that Plaintiff has alleged sufficient facts to support his claim that Defendants copied "constituent elements" of his original work, and therefore has adequately plead the required components of copyright infringement cause of action. . . . In relevant part, Plaintiff asserts that his Musical and Defendants' allegedly infringing works uniquely portray the story of a young Don Diego on his journey to becoming "Zorro," leading to substantial similarities in the theme and plot. . . . Plaintiff further alleges that his Musical and Defendants' works incorporate and emphasize gypsies and flamenco dancing as
significant to Zorro's early life when no other authors had previously done so, and that the characters, general mood, and pace of the works are highly similar as a result. . . . Finally, Plaintiff alleges that ZPI copied substantial elements of the songs from his Musical and retitled them for its own production. . . . Taking these assertions as true, Plaintiff has adequately alleged a claim for copyright infringement, and Defendants' Motion to Dismiss is therefore DENIED as to this claim.

MIYASAKI V. TREACY

In this copyright infringement action, Plaintiff Margaret Eve-Lynne Miyasaki (“Plaintiff”) alleges that she created an original work of wearable art to be reproduced on textile fabrics that is protected by copyright. Defendant Kyna Treacy, dba Kini Bikini, kinibikini.com, kinibikini.com.au, and shopkinibikini.com (“Defendant”) has allegedly infringed the copyrighted work by manufacturing, distributing, offering for sale, and selling copyrighted reproductions of the work of wearable art without Plaintiff's consent.

Pending before the Court is Defendant's motion to dismiss the First Amended Complaint (“FAC”) pursuant to Fed.R.Civ.P. 12(b)(3), (b)(6) and (b)(7), or in the alternative to transfer the case pursuant to 14 U.S.C. § 1404 to the Central District of California where Defendant currently resides. For the reasons set forth below, Defendant's motion to dismiss or in the alternative to transfer is DENIED.

A. Pre-suit Registration Requirement . . . Defendant contends that Plaintiff's suit is barred because she did not comply with the preregistration or registration requirement set forth in 17 U.S.C. § 411. . . . The preregistration or registration requirement set forth in Title 17 United States Code Section 411 provides in relevant part that “[e]xcept for an action brought for a violation of the rights of the author under [VARA], and subject to the provisions of subsection (b), no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.” VARA does not define the term “work of visual art,” however the United States Copyright Office construes “work of visual art” to include, among other things, “[a]rtwork applied to clothing or to other useful articles,” “[n]eedlework,” “[f]abric” designs, “[p]atterns for... crochet, needlework,” and “lace designs.” . . . Plaintiff alleges that “Verdant Garden” incorporates a unique crochet/lace stitch pattern and her work thus falls within the definition of “work of visual art” set forth in Circular 40.

Defendant next contends that Plaintiff's wearable art is not eligible for protection under Section 106(A) because it serves a utilitarian purpose. . . . Circular 40 states, however, that “a useful article may have both copyrightable and uncopyrightable features. For example, a carving on the back of a chair or a floral relief design on silver flatware could be protected by copyright, but the design of the chair or flatware itself could not.” . . . Applying this reasoning, Plaintiff's wearable art may also have copyrightable features.
Defendant further contends that Circular 40 was updated in September 2015 and now requires pre-suit registration. Plaintiff's suit, however, was initiated in 2012, well before the updated version of Circular 40 was issued. Defendant has not cited, nor is this Court aware, of any authority that would mandate retroactive application of updated Circular 40 to Plaintiff's case, especially when 17 U.S.C. § 411 has not been expressly amended to exclude Section 106A claims.

B. Statute of Limitations . . . Defendant contends that Plaintiff's claim is time barred, having been filed more than three years after Plaintiff contacted Defendant regarding alleged infringement. Plaintiff contacted Defendant on April 13, 2009, and filed suit more than three years later on August 22, 2012. Plaintiff nevertheless contends that her claim is timely because she has alleged a continuing violation.

Plaintiff alleges ongoing acts of infringement through at least the summer of 2011 based upon Defendant's continued advertising of allegedly infringing items on her website. The alleged advertising provides circumstantial evidence of unlawful infringement. Therefore, Plaintiff's suit is not time barred.

WANG V. GOLF TAILOR, LLC

This case and the three cases consolidated with it generally involve competing claims of design-patent theft related to a golf club — the XE1 — and a golf training aid — the Speed Whip. The plaintiffs (Jonathan Wang and Golf BestBuy) and the defendants (Timothy Oyler and Golf Tailor) both claim to have designed the golf club and training aid; both claim the other stole their designs. In this case, the plaintiffs seek relief under U.S. copyright statutes, among other laws, arguing that the defendants used copies of the plaintiffs' designs to counterfeit the golf club and golf aid. The defendants countersued the plaintiffs with six claims for declaratory relief regarding the copyright-infringement claims (based on inequitable conduct in the form of the plaintiffs' theft of the defendants' trade secrets) and one claim of trade-secrets theft in violation of the California Uniform Trade Secrets Act (“CUTSA”).

The defendants raise the affirmative defenses of inequitable conduct, implied permission, or acquiescence for the plaintiffs' copyright claims for the disputed drawings, and they also bring six counterclaims for a “Declaratory Judgment of Non-Infringement” for the six drawings based on the affirmative defenses. They clarify in their opposition that they plead inequitable conduct as part of the unclean-hands doctrine.

The defendants' allegations of unclean hands sufficiently support their affirmative defense of unclean hands at the pleadings stage. The court lets the estoppel theory stand too (to the extent that it is based on the unclean-hands defense). The court cannot discern any facts supporting a theory of an implied license, implied permission, or acquiescence.
GOPRO, INC. V. 360HEROS, INC.

Plaintiff GoPro, Inc. moves for summary judgment of copyright infringement by defendant 360Heros, Inc. . . . After considering the parties' materials and arguments, the Court GRANTS the summary judgment of copyright infringement and DENIES the Rule 56(d) motion. . . .

GoPro seeks summary judgment on its claim for copyright infringement of four images — one depicting its Smart Remote and three depicting its HERO cameras. . . . 360Heros does not dispute that it had access to the images or that it copied the images. Rather, it presents two challenges to the validity of GoPro's copyrights: (i) whether the copyright to the images was validly assigned to GoPro; and (ii) whether the images are copyrightable. It also presents defenses to copying, including a license defense and the doctrines of merger and scenes a faire. Lastly, 360Heros argues that further discovery is needed before the Court can resolve this claim.

A. Copyright Ownership . . . The assignment form between GoPro and Dow contained all material terms, was signed by both parties, and the signatures were dated. Therefore, the assignment is enforceable and GoPro is the owner of the copyrights being asserted in this case. . . .

B. Copyrightability . . . GoPro has certificates of registration from the U.S. Copyright Office for each of the four photographs, which were first published in 2014. . . . These certificates establish a “rebuttable presumption of originality.” . . . 360Heros has not provided any reason why the creative choices underlying copyrighted works are any less creative or original simply because they came at the direction of a managing producer and were implemented by the photographer, rather than originating from the photographer alone. The Court further finds that the photographs here possess sufficient levels of originality. In particular, as GoPro lists, “the photos reflect a spectrum of creative choices, including... the positioning and angle of the products, shadowing, lens glare, addition of ribbon/bow around the Hero® camera, and crisply-lit product facades that contrast against the photos' backgrounds.” . . . Thus, the photographs are copyrightable.

C. Copying of the Copyrighted Works . . . 360Heros had access to GoPro's copyrighted images through GoPro's website and authorized distributors. . . . Additionally, GoPro has produced copies of its images, copies of the images as they appeared on 360Heros' website, and a side-by-side comparison those images. The images appear identical or, at the very least, “so overwhelmingly similar” to justify granting summary judgment for GoPro on the issue of copying. 360Heros has not put forth any contrary evidence or argued that it did not have access to or copy the images. . . .

Although GoPro has a thin copyright, there is evidence of “virtually identical copying” by 360Heros. Therefore, the doctrines of scenes a faire and merger do not shield 360Heros from liability here. . . .

There is no evidence that 360Heros requested the images from GoPro, that GoPro delivered the images to 360Heros, or that GoPro intended 360Heros to copy and use GoPro's images.
Although 360Heros received GoPro's images through an authorized reseller, there is no evidence that GoPro ever consented. Pursuant to the Authorized Reseller Agreement, any permission or approval from RU4Scuba or Sportech Sales Group was void. Accordingly, 360Heros' license defense fails as a matter of law.

Southern District of California

WALLS V. UNIRADIO CORP.

The matter before the Court is the motion to dismiss filed by Defendant.

To satisfy the first requirement to allege ownership of a valid copyright, Plaintiff alleges that he is a photographer that took the original image, has ownership and copyrights to the image, and has registered the image with the United States Copyright Office under registration number VA 1-789-507. The Court concludes that the FAC alleges facts that when accepted as true are sufficient to support an inference that Plaintiff is the holder of a valid copyright.

To state his claim for copyright infringement, Plaintiff must allege that Defendant had access to the image and that the images are substantially similar in their protected elements. Plaintiff alleges that Defendant “used the image” and that Defendant “intentionally reproduced the Image” and attaches a copy of both the alleged original image and the image allegedly reproduced by Defendant, which appear nearly identical. The Court concludes that the FAC alleges facts sufficient to state a plausible claim for copyright infringement.

MALIBU MEDIA, LLC V. PETERSON
No. 16-CV-786 JLS (NLS), 2017 WL 1550091 (S.D. Cal. May. 1, 2017)

Presently before the Court are Plaintiff Malibu Media, LLC's (1) Motion to Dismiss Defendant's Counterclaim . . . and Motion to Strike Defendant's Answer to Amended Complaint . . .

I. Motion to Dismiss . . . As an initial matter, Plaintiff is right that Defendant's counterclaim is redundant-the Court will determine whether Defendant is liable for copyright infringement based on Plaintiff's direct infringement claim, answering Defendant's counterclaim for declaratory judgment of non-infringement in the process. But although Plaintiff is right that district courts have the discretion to dismiss redundant counterclaims . . . and that many courts have indeed dismissed similar counterclaims in copyright infringement cases . . . the Court here chooses to exercise its discretion and allow Defendant's counterclaim to remain. . . .

II. Motion to Strike . . . 1. First Affirmative Defense: Unclean Hands . . . [T]he Ninth Circuit has clearly explained that "the defense of illegality or unclean hands is 'recognized only rarely, when the plaintiff's transgression is of serious proportions and relates directly to the subject matter of the infringement action. . . . And none of Defendant's allegations of unclean hands directly relate to the propriety of this litigation-they instead encompass general violations of law both in the creation of the works and in monitoring Defendant's IP address. This does not go to the
copyrightability of the works here at issue; therefore, the Court GRANTS Plaintiff's Motion to Strike Defendant's First Affirmative Defense. . . .

2. Second Affirmative Defense: Implied License . . . Plaintiff argues that Defendant's defense must be stricken because he "fails to plead the ... requisite elements to support a viable implied license defense." . . . Defendant argues that there is no indication that this three-part test is the only test used to determine an implied license, and that other courts have rejected a similar argument here made by Plaintiff. . . . The Court agrees with Plaintiff.

3. Third Affirmative Defense: Laches . . . Here, Plaintiff pled separate infringement of each of its works occurring during the three-year limitation period. While Defendant argues that the Ninth Circuit's discovery rule may bar these allegations based on Plaintiff's knowledge of Defendant's previous infringement, Defendant fails to cite any authority demonstrating the discovery rule's applicability in the copyright infringement context. To the contrary, the wealth of authority demonstrates that the statute of limitations begins anew for each act of infringement. . . . Accordingly, the Court GRANTS Plaintiff's Motion to Strike Defendant's Third Affirmative Defense.

KASEBERG V. CONACO, LLC
No. 15CV1637 JLS (DHB), 2017 WL 1969300 (S.D. Cal. May. 12, 2017)

Presently before the Court is Defendants' Motion for Summary Judgment and/or Partial Summary Judgment or, in the Alternative, Summary Adjudication ("MSJ") . . . . After considering the Parties' arguments and the law, the Court takes the matter under submission and GRANTS Defendants' Motion for Summary Judgment as to the (1) Delta Joke and (2) UAB Joke, and GRANTS Defendants' Motion for Summary Adjudication regarding the determination that Plaintiff's jokes are entitled to "thin" copyright protection. The Court otherwise DENIES Defendants' Motion for Summary Judgment.

II. Prior Creation of the Delta and Washington Monument Jokes . . . Plaintiff points to four particular "coincidences" that establish a genuine issue of material fact regarding prior creation of the Delta Joke: (1) Conan's "final meeting where jokes are finalized go all the way up until 'showtime [,]" i.e., 4:30 p.m.; (2) Conan used a similar joke on the previous day's show, and Plaintiff has "never seen Conan use premises like that on back to back days[;]" (3) the two copies of the Comers email before the Court have varying timestamps (11:33 a.m. versus 11:32 a.m.) and one email is truncated; and (4) Conan's writer's assistant testified that January 14, 2015 "was the weird day." . . . But none of these is sufficient to inject a genuine issue of material fact into the question whether Defendants created their version of the Delta Joke prior to Plaintiff's version. Specifically, if the email is true, then the exact hour of Conan's taping is irrelevant; Defendants' creation of the joke predated Plaintiff's creation regardless. And the mere facts that Plaintiff had never seen Conan use back-to-back premises before and Conan's writer's assistant said January 14, 2015 was "the weird day" are insufficient to create a genuine question regarding the validity of the email. Thus, the only remaining evidence is the one-minute discrepancy between the email timestamps and the truncation of one of the messages. However, Defendants
explain the time discrepancy "is due to the separate internal clocks of the email archival system and Comers' email program," and the truncation is due to one email being merely "a preview among a list of results." . . . Given these simple, reasonable explanations, the Court concludes there is no genuine issue of material fact that Defendants created the Delta Joke prior to Plaintiff's version, and therefore GRANTS Defendants' Motion for Summary Judgment as to the Delta Joke.

III. Direct Copying; Access; and the Relevant Standard of Similarity . . . A. Access . . . Because the Court concludes there is a genuine issue of material fact regarding access via a chain of events, the Court DENIES Defendants' Motion for Summary Judgment on this point and does not reach wide-spread dissemination or striking similarity.

B. Similarity . . . Given that Plaintiff's works are entitled to only thin protection, the Court must determine whether there is a genuine dispute of material fact regarding whether Defendants' allegedly infringing jokes are "virtually identical" to Plaintiff's.4 The court concludes that there is no genuine dispute of material fact regarding the UAB jokes' lack of virtual identity, but that a genuine dispute exists regarding all other jokes.

IV. Independent Creation . . . In the present case, the Delta Joke is the only joke implicating this principle of interrelatedness-email records indisputably prove that Defendants created a version of the allegedly infringing Delta Joke prior to Plaintiff's creation of his allegedly infringed-upon version. This directly (and successfully) attacks Plaintiff's theory of access, and therefore summary judgment as to the Delta Joke is proper.

DR. SEUSS ENTERS., L.P. V. COMICMIX LLC

Presently before the Court is Defendant ComicMix LLC's Motion to Dismiss ("MTD") . . . . After considering the Parties' arguments and the law, the Court GRANTS IN PART and DENIES IN PART Defendant's Motion to Dismiss. . . .

This case presents an important question regarding the emerging “mash-up” culture where artists combine two independent works in a new and unique way. . . . Applying the fair use factors in the manner Plaintiff outlines would almost always preclude a finding of fair use under these circumstances. However, if fair use was not viable in a case such as this, an entire body of highly creative work would be effectively foreclosed. Of course that is not to say that all mash-ups will or should succeed on a fair use defense; the level of creativity, variance from the original source materials, resulting commentary, and intended market will necessarily make evaluation particularized. In this regard, mash-ups are no different than the usual fair use case. However, in this particular case the Court has before it a highly transformative work that takes no more than necessary to accomplish its transformative purpose and will not impinge on the original market for Plaintiff's underlying work. And the Court is especially mindful that “[i]t would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of [a work], outside of the narrowest and most obvious limits.”
HIRE A HELPER LLC V. MOVE LIFT, LLC

The matters before the Court are the Motion to Dismiss for Failure to State a Claim . . . and the Motion for Sanctions . . . filed by Defendants Move Lift, LLC and Simple Movers Limited Liability Company. . . .

HAH's state law claims are based upon its allegation that Defendants “engaged in wrongful conduct by presenting a bid for the Potential Budget Contract that included material . . . copied from and infringing upon HireAHelper's copyright in HireAHelper's website.” . . . HAH alleged that the work that forms part of the basis for its state law claims for negligent and intentional interference with prospective economic advantage can be copyrighted. Accepting all of HAH's allegations as true, the work that forms part of the basis for its state law claim for negligent and intentional interference with prospective economic advantage can be copyrighted, and the subject matter of HAH's state law claims falls within the subject matter of copyright. . . .

The “wrongful conduct” alleged by HAH to support its California state law claims for interference with prospective economic advantage is that Defendants “present[ed] a bid for the Potential Budget Contract that included material . . . copied from and infringing upon HireAHelper's copyright in HireAHelper's website.” . . . This alleged wrongful act is based on Defendants' alleged infringement of HAH's copyright to material on its website. Consequently, the rights asserted in HAH's state-law claims are equivalent to the rights of copyright holders.

Because “the ‘subject matter’ of [HAH's] state law claim falls within the subject matter of copyright” and “the rights asserted [by HAH] under state law are equivalent to the rights ... of copyright holders,” HAH's claims for negligent and intentional interference with prospective economic advantage are preempted by the Copyright Act.

DR. SEUSS ENTERS., L.P. V. COMICMIX LLC

Presently before the Court is Defendants' Motion to Dismiss . . . . In its Prior Order, the Court applied four non-exclusive factors in considering fair use . . . . The Court found factor one to weigh in favor of Defendants, factor four to weigh in favor of Plaintiff (thus finding factors one and four to stand in equipoise), factor two to weigh slightly in favor of Plaintiff, and factor three to be neutral. . . . Ultimately, the Court found “given the procedural posture of this motion and near-perfect balancing of the factors ... without relevant evidence regarding factor four the Court concludes that Defendants' fair use defense currently fails as a matter of law.” . . .

Defendants argue “[t]he allegations in the first amended complaint tilt further toward fair use.” . . . Plaintiff argues the fair use defense still fails. . . . Neither party alleges Plaintiff has provided
any new information as to the copyright claim in its FAC besides information as to the forth fair use factor. Thus, the Court finds reason to alter its analysis regarding the first three factors.

A court may presume market harm when the second work supersedes the original and “serves as a market replacement for it, making it likely that cognizable market harm to the original will occur.” But “when ... the second use is transformative, market substitution is at least less certain, and market harm may not be so readily inferred.” The Court has previously found Boldly to be transformative. The Court therefore does not presume market harm but analyzes the potential for market harm based on the allegations in the FAC.

Even without presuming market harm and analyzing this factor in the first instance, the Court finds the amendments in the FAC do not change its finding that factor four weighs in favor of Plaintiff. Plaintiff’s current literary licensing program involves allowing other authors to publish books based off of Plaintiff’s books and even use Plaintiff’s characters. Although these books may not be mash-ups like Boldly, there is a potential market for a literary mash-up involving Plaintiff’s books; such a market would not be unlikely based on Plaintiff’s past licensing programs. Defendant's production of Boldly may result in an adverse impact on Plaintiff's derivative market and the Court therefore finds there is potential harm to the market for Plaintiff's derivative works. Therefore, this factor weighs in favor of Plaintiff.

Thus, after again weighing the fair use factors, the Court finds Defendants' fair use defense fails as a matter of law. The relevant information in the FAC regarding factor four, if anything, shifts the balance more in Plaintiff's favor due to the allegations regarding potential market harm. The Court denies Defendants' Motion to Dismiss Plaintiff's claim of copyright infringement.

PAYTON V. DEFEND, INC.

This case involves alleged copyright infringement. On June 1, 2017, Magistrate Judge Kevin S.C. Chang determined that Plaintiff Keoni Payton's answers to discovery were insufficient and that he had failed to attend his scheduled deposition. Magistrate Judge Change ordered Payton to appear for a deposition in Hilo, Hawaii, within 30 days, with Payton being responsible for paying the court reporter's fees. Payton was ordered to supplement his discovery responses no later than one week prior to his deposition.

When Payton did not supplement his discovery responses, Defendants Defend, Inc., and Michael Buntenbah cancelled the deposition and filed the present motion for sanctions. Defendants also move for summary judgment, arguing that Payton cannot prove damages. The court grants the motion for sanctions in part and denies it in part. The court denies the motion for summary judgment.

Defendants seek summary judgment, arguing that the “court record is completely devoid of information or evidence to support claims by Plaintiff for damages” and that “there is no evidence of damages sustained by Plaintiff.” Defendants further argue that, pursuant to Rule
37(c)(1), Payton's failure to supplement his discovery responses means that he “is not allowed to use that information ... to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” The court is unpersuaded by Defendants' arguments and denies the motion for summary judgment.

PAYTON V. DEFEND, INC.

This case involves alleged copyright infringement. Defendants seek summary judgment, arguing: (1) Plaintiff Keoni Payton lacks a protected copyright in his “Defend Hawaii” image; (2) Payton's copyright claims are barred by the copyright merger doctrine and/or the related scènes à faire doctrine; (3) Payton's copyright claims violate Defendants' First Amendment rights; and (4) Payton is not entitled to statutory damages or attorney's fees. The court denies the motion. . . .

Defendants seek summary judgment, arguing that Payton does not have a valid copyright in an image Defendants contend was copied from a pre-existing work and is not itself original. Defendants also argue that, because Payton did not register any copyright in the “Defend Hawaii” image until 2014, he is not entitled to statutory damages or attorneys' fees for any alleged infringement that began in 2010. . . .

A. There is A Question of Fact as to Whether Payton Has Ownership of a Valid Copyright. . . . 1. Defendants Do Not Establish Entitlement to a Summary Judgment Ruling That the “Defend Hawaii” Image Is Not Copyrightable. . . . In arguing that Payton lacks a valid copyright, Defendants break down the image into parts and argue that each distinct part lacks copyright protection. . . . But Payton's “Defend Hawaii” image is more than a short phrase, as it uses an arched “Stencil” font combined with the silhouette of an AR-15 rifle. Payton is not suing Defendants based solely on their alleged use of words. Instead, his Complaint alleges that Defendants are using the entire “Defend Hawaii” image or designs that are substantially similar to it.

Defendants are similarly unpersuasive in arguing that Payton's use of the “Stencil” font is not eligible for copyright protection. Notwithstanding Copyright Office regulations stating that a typeface is not subject to copyright protection . . . nothing in this case seeks protection based solely on a font.

Nor is this court persuaded by Defendants' claim that the silhouette of an AR-15 rifle is not subject to copyright protection. Although Defendants correctly note that, under 37 C.F.R. § 202.1(a), “familiar symbols or designs” are not subject to copyright protection, Payton used the silhouetted AR-15 as part of a larger design.

While Defendants note that Payton may have simply copied the image from the internet, Payton claims to have taken a picture of a model AR-15 Airsoft gun and used Photoshop to create the silhouette. This is sufficient to create a question of fact as to whether Payton used at least a minimal degree of creativity in coming up with the silhouette. . . .
2. Defendants Do Not Establish As a Matter of Law That the Combination of the Components of the “Defend Hawaii” Image Is Not Subject to Copyright Protection. . . . Defendants are also unpersuasive in arguing that the combination of allegedly unprotected elements is so trivial as to be undeserving of copyright protection. . . . There is an issue of fact as to whether the “Defend Hawaii” image is original enough to merit copyright protection. . . .

B. Defendants Are Not Entitled to Summary Judgment Based on the Copyright Merger Doctrine or the Related Scènes à Faire Doctrine. . . . Defendants do not meet their initial burden on this motion for summary judgment of showing that the idea expressed by “Defend Hawaii” can only be expressed in a limited number of ways. In fact, there is a question of fact as to what the idea behind “Defend Hawaii” is. According to an article in the Honolulu Magazine . . . “Defend Hawaii” began as a brand in Mixed Martial Arts for athletes from Hawaii who were participating in fights on the mainland and abroad. That brand became “about defending everything that Hawaii means to you.” . . . This article is hearsay that Defendants do not show is admissible for purposes of this motion. Even if the “Defend Hawaii” image is indeed about defending what Hawaii means to each individual, that idea could be represented in many different ways. If it is about representing Hawaii in Mixed Martial Arts fights, other words like “Pride Rock,” “Hawaiian Pride,” or “Represent the 808” appear to express the same sentiment.

C. Defendants Fail to Demonstrate that the Copyright Act Violates Their First Amendment Rights. . . . Even if “Defend Hawaii” is a form of protected speech, it does not necessarily follow that Defendants had a right to put that speech on a shirt, sticker, etc. The Copyright Act does not impermissibly infringe on a person's right to express the idea of “Defend Hawaii.” Payton alleges an exclusive right to put the “Defend Hawaii” image on merchandise, and, at least on the present motion, Defendants do not show that this alleged right is constitutionally overridden by their own alleged right.

D. Summary Judgment is Denied With Respect to Statutory Damages and Attorney's Fees. . . . Defendants argue that they are entitled to summary judgment with respect to statutory damages and attorneys' fees pursuant to § 412. But the record does not indicate that Defendants' use of the “Defend Hawaii” image was the beginning of a series of ongoing infringements that were of the same kind such that they can be considered one continuing infringement. To the contrary, there is no evidence before the court regarding the nature of Defendants' alleged infringements over time.

District of Nevada

RIMINI STREET, INC. V. ORACLE INT'L CORP.

Before the court is plaintiff/counter-defendants Rimini Street, Inc. (“Rimini Street”) and Seth Ravin's (“Ravin”) motion to dismiss defendant/counter-claimants Oracle International Corporation and Oracle America, Inc.'s (collectively “Oracle”) third amended counterclaims (ECF No. 397). . . .
Initially, Rimini Street and Ravin contend that several of Oracle's non-copyright-based business
torts - particularly Oracle's claims for violation of the Lanham Act, inducing breach of contract,
and intentional interference with prospective economic advantage - are preempted by the
Copyright Act because these claims are interrelated to, and effectively indistinguishable from,
Oracle's separately pled copyright infringement claim. . . . As addressed in detail below, the
court disagrees.

APPS V. UNIVERSAL MUSIC GRP., INC.

Las Vegas-based singer and songwriter Alisa Apps sues Universal Music Group, Inc. (UMGI),
Island Records, and the songwriters John Newman and Steve Booker for copyright infringement,
alleging that the song “Love Me Again”—sung by Newman—is a copy of her song “Need to
Know.” UMGI moves for summary judgment, arguing that Apps has not presented sufficient
evidence for a reasonable jury to conclude that “Love Me Again” copied “Need to Know.” I
agree that Apps has not met her evidentiary burden, so I grant summary judgment in UMGI's
favor. . . .

1. Original Lyrics . . . Even if an entire song is copyrighted, copyright protection only extends to
those elements of the work that are original to the author;30 it does not extend to common
phrases.31 Apps's claim fails right here. She contends that the phrase “I need to know now” in
the chorus of her song “Need to Know” was copied by defendants and included in the chorus of
their song “Love Me Again.” This phrase is not Apps's original phrase, so she has no copyright
protection for it.

Apps wrote and copyrighted “Need to Know” on February 16, 2007. In Apps's deposition,
UMGI provided and played a list of other songs predating “Need to Know” that also include the
phrase “I need to know now” . . . . The phrase “I need to know now” is present in all of those
songs, whether it's in the chorus, bridge, or some other verse. It is plainly not an original phrase,
so Apps cannot claim that it is protected by copyright.

2. Access . . . Apps has no direct evidence that UMGI (or any of the unserved defendants) copied
her song, so she must prove through circumstantial evidence that they had access to it. She can
do this by presenting evidence of a chain of events between her work and the defendants' access
to it or by showing that it was widely disseminated. . . . Apps offers two theories—both of which
are highly attenuated—that link her song “Need to Know” to the defendants: the Jay–Z story and
the Tony Swain story. She includes only the Jay–Z story in her complaint, and she discusses the
Tony Swain story in her deposition and opposition to this summary-judgment motion. Neither
satisfies her burden.

Apps also attempts to show that “Need to Know” was so widely disseminated that the defendants
had access to it . . . But Apps presents no evidence that her advertisements on MTV, in
magazines, and on taxis actually drew people to her website and music catalog. She provides no
evidence of how many people listened to her song across the various Internet websites, she did
not perform her song on the radio or on television, and her CD distribution is too insignificant to qualify as wide dissemination under the law. There is also no evidence that her live performances were so grand that the defendants or another member of the Universal Music Group were present and heard it. I thus cannot find that a reasonable jury could conclude that “Need to Know” was widely disseminated.

3. Substantial similarity . . . Nor can I conclude on this record that “Love Me Again” and “Need to Know” are substantially similar. . . . As I discussed in Section C(1), the phrase “I need to know now” is ubiquitous in music, so it is not copyrightable, and, in any event, Apps did not provide expert testimony to compare the two works. Accordingly, Apps has not sustained her burden to demonstrate a genuine issue of substantial similarity between protected elements of her song and “Love Me Again.” Because Apps has not sustained her burden to show genuine issues that preclude summary judgment on her claims, I grant UMGI's motion.

RIMINI STREET, INC. V. ORACLE INTL CORP.

Before the court is defendant and counter-claimants Oracle International Corporation and Oracle America, Inc.'s (collectively “Oracle”) motion to dismiss claims two through eight of plaintiff Rimini Street, Inc.'s (“Rimini Street”) third amended complaint . . .

In its third claim for relief, Rimini Street seeks a declaratory judgment that Oracle has engaged in copyright misuse arises from its January 17, 2017 cease-and-desist letter and, as such, Oracle's software copyrights are unenforceable as a matter of law. . . . Oracle moves to dismiss this claim contending that Rimini Street's present copyright misuse claim is duplicative of its separately pled affirmative defense of copyright misuse raised in response to Oracle's copyright infringement counterclaims and should be dismissed. . . . The court agrees.

District of Oregon

COBBLER NEVADA, LLC V. GONZALES

United States Magistrate Judge Stacie Beckerman issued Findings and Recommendation in this case on December 2, 2016. ECF 51. Judge Beckerman recommended that the Court issue a judgment dismissing all claims against Defendant Thomas Gonzales with prejudice and that his motion for attorney's fees be granted. . . .

The Court ADOPTS IN PART Judge Beckerman's Findings and Recommendation, ECF 51, as explained herein. Plaintiff's motion for attorney's fees and costs (ECF 47) is GRANTED IN PART. The Court will issue a Judgment dismissing with prejudice Plaintiff's indirect infringement claim and without prejudice Plaintiff's direct infringement claim against Mr. Gonzales. Attorney's fees are awarded in the amount of $17,222.40 and costs are awarded in the amount of $252.20.
SEGURA V. SOFA ENTMT' INC.


Segura seeks to recover statutory damages in the amount of $150,000 and attorney fees due to SOFA's alleged copyright infringement of a musical interlude. SOFA moves for partial summary judgment on the issue of statutory damages and attorney fees, claiming Section 412 bars Segura's recovery. . . . The court grants SOFA's motion because the undisputed facts show Section 412 bars Segura's recovery for statutory damages and attorney fees.

ROSADO V. ROMAN

Plaintiff Samuel Rivera Rosado (“Rosado”) filed this lawsuit pro se naming as defendants: Richard Roman, CEO, Lucid Energy, Lucid Energy System, Susan Priddy, Project Director, Lucid Commercial Micro-Hydro Energy System, Roger Johnson, Deputy Director of the California Energy Commission, and the California Energy Commission. ECF 1 at 1-2. Lucid Energy, Inc. (“LEI”), although not specifically named as a defendant, filed a motion to dismiss in the event that the Court liberally construes Rosado's complaint as asserting claims against LEI, arguing that it was not properly named or served and that the Court lacks jurisdiction over LEI. Roger Johnson and the California Energy Commission (collectively the “California Defendants”) filed a motion to dismiss, arguing that Rosado fails to state a claim on which relief can be granted. The Court finds that even under the liberal pleading standards afforded a pro se plaintiff, Rosado fails to state a claim upon which relief may be granted against any defendant. Accordingly, for the reasons that follow, this case is dismissed. . . .

Rosado attempts to expand the scope of copyright protection to include the act of manufacturing an article using the copyrighted drawing. He cites to no authority, however, and the Court was unable to find any, to support such protection. A copyright confers on its owner an exclusive right to reproduce the original work—not the exclusive right to manufacture. It is a patent that gives its owner a far broader right: “the right to exclude others from making, using, offering for sale, or selling the invention.” . . . Rosado, however, has not patented his pipeline or the process by which one can make energy from water. Thus, Rosado does not have the exclusive right to manufacture from his technical drawings. He fails to state a claim for copyright infringement against the energy corporation defendants.

Although the Complaint is not a model of clarity, it appears that Rosado's claims against the California Defendants are that they failed to investigate whether LEI (the corporation licensed in California, although not named in the Complaint) was infringing Rosado's copyrighted technical
drawings before the California Defendants granted LEI a license to operate in California. . . .
Because Rosado fails to state a claim that LEI was operating in a manner that infringes on any
protected interest of Rosado, he fails to state a claim against the California Defendants.
Moreover, Rosado has not cited to any authority, and the Court is aware of none, that required
the California Defendants to check the copyright databases to ensure whether LEI had any device
that was potentially infringing on another's copyrighted drawings. Further, even after the
potential infringement was called to the attention of the California Defendants, Rosado has not
cited to any authority that would give the California Defendants a duty, or the authority, to stop
LEI. Accordingly, the California Defendants' motion to dismiss is granted.

Western District of Washington

VHT, INC. V. ZILLOW GRP., INC.

Before the court are two post-trial motions: Defendants Zillow Group, Inc., and Zillow, Inc.'s
(collectively, “Zillow”) motion for judgment notwithstanding the verdict or for a new trial . . . ;
and Plaintiff VHT, Inc.'s motion to amend the judgment to add a permanent injunction . . . .

[T]he court GRANTS in part and DENIES in part Zillow's motion, DENIES VHT's motion, and
DIRECTS the parties to meet and confer, file a statement, and attend a status conference as
detailed below. . . .

Zillow's argument regarding VHT's direct infringement claims relies heavily on Perfect 10, Inc.
v. Giganews, Inc. . . . which the Ninth Circuit issued the day trial began. . . . Having reviewed the
evidence and legal authority that VHT contends supports the liability verdict on VHT's claim for
direct infringement of its reproduction right in the undisplayed VHT Photos, the court concludes
that a rational juror could not have found in favor of VHT. . . . For similar reasons, the court
concludes VHT failed to present sufficient evidence that Zillow caused a violation of VHT's
adaptation right. . . . The court also grants Zillow's motion as it pertains to the undisplayed VHT
Photos violating the display right. . . . Finally, the court concludes that the evidence does not
support a conclusion that Zillow violated VHT's distribution right in the undisplayed VHT
Photos.

There are 28,125 VHT Photos. . . . The court grants Zillow judgment notwithstanding the verdict
on VHT's direct infringement claims as to the 22,109 undisplayed VHT Photos. . . . Of the
remaining 6,016 VHT Photos, the court grants Zillow judgment notwithstanding the verdict on
VHT's direct infringement claims as to 2,093 of the 2,094 non-searchable VHT Photos; the
exception being the one non-searchable VHT Photo that Zillow also distributed in an email. . . .
The direct infringement liability verdict stands as to the remaining 3,923 VHT Photos.

The court grants Zillow judgment notwithstanding the verdict on VHT's indirect infringement
claims as to all but the 131 VHT Photos that were created on Digs after VHT first specifically
identified the image. . . . Of those 131 VHT Photos, 17 images are among the 3,923 VHT Photos
for which the direct liability verdict stands. . . . As to the remaining 114 VHT Photos, the court
has vacated the direct infringement liability verdict, Zillow did not challenge the sufficiency of
the evidence of indirect infringement . . . and the jury made no finding specific to those images
regarding VHT's indirect infringement claims. Accordingly, the court orders a new trial on VHT's indirect infringement claims as to those 114 VHT Photos.

Of the 3,923 VHT Photos for which the direct infringement liability verdict remains intact, 2,702 images were eligible for statutory damages and 1,221 images were ineligible for statutory damages. Of the 2,702 VHT Photos that were eligible for statutory damages, the jury found that Zillow infringed 2,700 images willfully leaving two images that VHT infringed innocently. The jury awarded $1,500.00 in statutory damages per willful infringement and $200.00 in statutory damages per innocent infringement. Accordingly, the court reduces the statutory damages award to $4,050,400.00. Because the jury awarded $2.84 in actual damages per infringement and VHT opted to receive actual damages only for infringement of images that were ineligible for statutory damages the court reduces the actual damages award to $3,467.64. Based on these calculations, the court reduces the total damages award to $4,053,867.64.

**Tenth Circuit**

Court of Appeals for the Tenth Circuit

SCO GRP., INC. V. INT’L BUSINESS MACHINES CORP.

No. 16-4040, 2017 WL 4900570 (10th Cir. Oct. 30, 2017)

This case arises out of a business deal gone wrong. The Santa Cruz Operation, Inc. (Santa Cruz) entered into a business arrangement with International Business Machines Corp. (IBM) to develop a new operating system that would run on a more advanced processor manufactured by Intel Corporation (Intel). The parties signed an agreement memorializing this collaborative effort and called it Project Monterey. Another technology company, The SCO Group, Inc. (SCO), then acquired Santa Cruz’s intellectual property assets and now brings this lawsuit for IBM's alleged misconduct during and immediately after Project Monterey.

Project Monterey involved mutual contributions by IBM and Santa Cruz of proprietary materials, including computer code for their respective operating systems. SCO believes that IBM merely pretended to go along with the arrangement in order to gain access to Santa Cruz's coveted source code. SCO, the successor-in-interest to Santa Cruz's intellectual property assets, accused IBM of stealing and improperly using this source code to strengthen its own operating system, thereby committing the tort of unfair competition by means of misappropriation. The district court awarded summary judgment to IBM on this claim based on the independent tort doctrine, which bars a separate tort action where there is no violation of a duty independent of a party's contractual obligations.

SCO also accused IBM of disclosing Santa Cruz's proprietary materials to the computer programming community for inclusion in an open-source operating system called Linux. When SCO acquired Santa Cruz's assets involved in Project Monterey and then sought licensing agreements from various technology companies, IBM allegedly instructed SCO's business affiliates and investors to cut ties with SCO. These alleged efforts to disrupt SCO's business relationships, together with the purportedly improper Linux disclosures, prompted SCO also to
file suit against IBM for tortious interference of contract and business relations. In a separate order, finding insufficient evidence of actionable interference by IBM, the district court granted summary judgment in favor of IBM on these tortious interference claims.

Finally, after the deadline for amended pleadings in this case, SCO sought leave to add a new claim for copyright infringement based on the allegedly stolen source code from Project Monterey. SCO claimed it had only discovered the essential facts to support this claim in IBM's most recent discovery disclosures. The district court rejected SCO's proposed amendment for failure to show good cause.

SCO now appeals all three decisions by the district court: (1) the summary judgment order on the misappropriation claim; (2) the separate summary judgment order on the tortious interference claims, and (3) the denial of leave to amend the complaint. We REVERSE and REMAND the district court's summary judgment order on the misappropriation claim, and AFFIRM as to the remaining issues . . .

IBM argues that SCO's misappropriation claim is preempted by federal copyright law. . . . Misappropriation claims in New York require the victim to demonstrate that the defendant acted with bad faith. . . . Because misappropriation under New York law has the extra element of bad faith, SCO's claim is not “equivalent” to a federal copyright infringement claim. Accordingly, it is not preempted by the Section 301 of the Copyright Act.

Western District of Oklahoma

MCNEESE V. ACCESS MIDSTREAM PARTNERS, L.P.

Plaintiff David McNeese (McNeese) brings this action against Defendant Access Midstream Partners, L.P. (Access) for copyright infringement and fraud. Before the Court is Access's Motion for Summary Judgment ("Mot.") . . .

I. Group 1 . . . Access disputes the validity of McNeese's copyright as to Group 1 on the ground that the photographs were not published together as a single unit as is required for a single work registration of a published collection. . . . Viewing the evidence in the light most favorable to McNeese, including all reasonable inferences, the record supports the finding or inference that the images contained in Group 1 were first published as a single group on May 11, 2011. Access' motion on this issue is denied. . . .

II. Group 2 . . . It is undisputed that the Group 2 compilation contains published works that were originally contained in Group 1. Viewed in the light most favorable to McNeese, however, the record does not demonstrate that McNeese knowingly included the photographs such that the error was anything other than an inadvertent mistake, or that McNeese intended to defraud the Copyright Office. . . .

III. Ownership of Valid Copyrights. In light of the low threshold for the creativity element, and given that the types of decisions McNeese made about lighting, shading, angle, background, and
arrangement of the photographs at issue have been recognized as sufficient to convey copyright protection, the Court concludes Access has not met its burden of showing the invalidity of McNeese's copyright in the photographs, and a genuine issue of material fact exists as to whether the photos are sufficiently creative, and thus sufficiently original, to merit copyright protection.

IV. Substantial Similarity . . . Access contends it is entitled to summary judgment on this issue because under the "abstraction-filtration-comparison" test and scenes à faire doctrine . . . . However, as the Tenth Circuit noted in Mitel, the abstraction-filtration-comparison test is either unnecessary or simply inapplicable in cases where literal copying is admitted.

DREWRY V. COX

This matter is on the Court's September 2017 trial docket. Before the Court is Defendant Danny Cox's Motion for Partial Summary Judgement . . . .

Defendant contends that plaintiff is not entitled to actual damages because she revealed she has not suffered any damages. Plaintiff contends that she is entitled to present her evidence as to her damages sustained a result of defendant's admitted infringement of the Song. Having carefully reviewed the parties' submissions, and viewing the evidence in the light most favorable to plaintiff and viewing all reasonable inferences in plaintiff's favor, the Court finds that sufficient evidence has been presented to show plaintiff has suffered actual damages from defendant's copyright infringement of the Song. Specifically, in defendant's affidavit, he admits that he sold some of the CDs he published with the Song on it. . . . Further, plaintiff, in her response to defendant's interrogatory no. 2, responded that “Mr. Cox has received money from sales of records containing the infringing song. The money he has received is unknow[n] to me at present.” . . . The Court finds the fact defendant admits he sold some of the CDs he published containing plaintiff's protected song, despite the fact that plaintiff is unaware of the amount of money defendant made from the sale of the CDs, is sufficient evidence to show defendant infringed on plaintiff's protected copyright, which as a result entitles her to actual damages. Therefore, defendant's motion for summary judgment as to plaintiff's claim for actual damages . . . should be denied.

BUCHANAN V. SHAPARD RESEARCH, LLC

Before the Court is Defendant's Motion to Dismiss Plaintiff's copyright infringement action. Doc. 11. Defendant argues that Plaintiff failed to state a plausible claim for relief under Fed. R. Civ. Pro. 12(b)(6) and failed to join two Rule 19-required parties in violation of Rule 12(b)(7). In response, Plaintiff argues that Defendant's alleged infringement does not constitute fair use and disputes that either absent party is required under Rule 19. Defendant's Motion is DENIED. . . .
A. Count 1: Copyright Infringement . . . Plaintiff pleads sufficient facts, viewed in a light most favorable to him as the nonmoving party, to refute Defendant's fair use argument. . . . Regarding the first factor, Defendant cites the article's medical subject matter and relation to pending state legislation to frame it as a non-profit “journalistic piece.” . . . Yet, Plaintiff presents a plausible argument that Defendant's use of the copyrighted photograph was commercial in nature. Defendant operates a for-profit “market research” and “data collection firm,” and posted the copyrighted picture alongside a poll describing the company's findings. . . . Presumably, Defendant would only include the picture if it felt the image would help drive traffic to their website. Plaintiff's “Paterson Affidavit” supports this theory and describes a conversation in which Defendant allegedly admitted that the poll summary accompanying the photograph furthered a for-profit purpose. . . .

Next is the nature of the copyrighted work, which speaks to the creativity of the protected work and whether it is published. . . . Plaintiff's complaint shows that he granted a license to a construction company to publish the photograph on its website. . . . Plaintiff also notes the extensive work and creativity entailed in capturing the photograph in question.

The third factor concerns the copyright infringement's substantiality. Plaintiff alleges that Defendant copied the photograph in its entirety and without alteration, save for the removed copyright notice. Meanwhile, Defendant argues that one photograph is insubstantial relative to “all the photographs”—what appear from the copyright registration record to be over 1,200 photographs covered by the copyright in question. . . .

Lastly, the Court looks to Defendant's impact on the copyright's value. Parties disagree on this factor, particularly what Defendant would owe Plaintiff to obtain a license on the photograph. Plaintiff alleges damages based both on compensation for such a license and the alleged infringement's effect on the market for this photograph.

Viewing the factors in totality and in the light most favorable to Plaintiff, the nonmoving party, Plaintiff presents a plausible response to Defendant's fair use defense. Thus, Defendant fails its burden to dismiss Plaintiff's copyright infringement action. . . .

B. Count 2: Contributory Infringement . . . Plaintiff presents a plausible claim that Defendant possessed the necessary intent to produce liability for contributory infringement.

C. Count 3: Alteration of Copyright Management Information . . . [T]he Court views Plaintiff's allegations as true and assumes that the alleged infringing photograph originated from Plaintiff's website, not Hoffman's. Therefore, Plaintiff presents a plausible claim that Defendant altered the photograph in violation of 12 U.S.C. § 1202.

District of Utah

ISRAEL V. UNIVERSITY OF UTAH
This matter is before the Court on Plaintiff's Motion for Leave to File an Amended Complaint. For the reasons discussed below, the Court will deny the Motion.

Based on the above, the Court finds that Plaintiff has failed to adequately allege that the Publication copied any protected elements of Plaintiff's Original Materials. Therefore, Plaintiff fails to state a claim, rendering amendment futile.

ITN FLIX, LLC V. UNIVISION TELEVISION GRP., INC.

This memorandum decision and order addresses whether a copyright infringement claim should be dismissed against media broadcasters who broadcasted a motion picture over their networks. The allegations show that the broadcasters did not create the allegedly infringing work which was broadcasted and did not broadcast the copyrighted work. The copyright infringement claim need not be dismissed. Broadcasters who distribute an infringing work may be held liable for infringing the distribution right of the copyrighted work even if they did not participate in the creation of the infringing work.

Defendants Univision Television Group, Inc.; Univision Salt Lake City, LLC; Univision Communications, Inc.; and El Rey Network, LLC (collectively "Broadcaster Defendants") move to dismiss the Second Amended Complaint under Rule 12(b)(6) ("Motion"). For the reasons below, the Motion is DENIED.

Eleventh Circuit
Court of Appeals for the Eleventh Circuit

PRONMAN V. STYLES
No. 16-12157, 2017 WL 191933 (11th Cir. Jan. 18, 2017)

Dan and Gary Pronman (collectively, the “Plaintiffs”), pro se litigants, appeal the district court's granting Brian Styles (“B. Styles”), Samantha Styles (“S. Styles”), and S. Styles in her capacity as trustee for the S. Styles revocable trust (collectively, the “Defendants”) $13,961.16 in attorney's fees incurred while defending against the Plaintiffs' copyright infringement claim. On appeal, the Plaintiffs' argue that district court abused its discretion in deciding to award the Defendants attorney's fees because their copyright claim had merit. They also argue that the district court abused its discretion in determining the amount of the fee award the Defendants received.

The law of the case doctrine likely bars the Plaintiffs from challenging the decision to award attorney fees on the copyright claim. But even assuming that the law of the case doctrine is inapplicable here, the district court did not abuse its discretion in awarding attorney's fees to the Defendants. The Plaintiffs raised their copyright claim seeking millions of dollars in statutory and actual damages even though they produced no evidence of any actual damages and statutory damages were plainly unavailable. In addition, the district court did not abuse its discretion in
determining the amount of attorney's fees because it represented a permissible choice in a range of options from which the court could freely choose. Accordingly, we affirm.

HIGHLAND HOLDINGS, INC. V. MID-CONTINENT CASUALTY CO.
No. 16-14981, 2017 WL 1628953 (11th Cir. May. 2, 2017)

Highland Holdings, Inc., appeals the summary judgment in favor of its insurer, Mid-Continent Casualty Company. Highland sued Mid-Continent for refusing to indemnify Highland after it settled a dispute for its alleged infringement of copyrighted house designs. The district court ruled that Mid-Continent owed no duty to indemnify because Highland could not prove how much it paid to settle any claims covered under its commercial general liability insurance policy. We affirm.

FOURTH ESTATE PUBLIC BENEFIT CORP. V. WALL-STREET.COM, LLC
No. 16-13726, 2017 WL 2191243 (11th Cir. May. 18, 2017)

"Registration" of a copyright is a precondition to filing suit for copyright infringement. . . . This appeal requires us to decide an issue that has divided the circuits: whether registration occurs when an owner files an application to register the copyright or when the Register of Copyrights registers the copyright. . . . Fourth Estate Public Benefit Corporation filed a suit for infringement against Wall-Street.com and Jerrold Burden. The complaint alleged that Fourth Estate had filed an application to register its allegedly infringed copyrights, but that the Copyright Office had not registered its claims. The district court dismissed the action because Fourth Estate failed to plead compliance with the registration requirement, 17 U.S.C. § 411(a). Because registration occurs when the Register of Copyrights "register[s] the claim," . . . we affirm.

ROBERTS V. GORDY
No. 16-12284, 2017 WL 6397621 (11th Cir. Dec. 15, 2017)

William L. Roberts II, Andrew Harr, and Jermaine Jackson (collectively “Appellants”), who are artists in the hip-hop industry, appeal the dismissal of their copyright infringement case. On appeal, they argue that their copyright registrations were improperly invalidated under 17 U.S.C. § 411 without a showing of scienter and that they made a proper showing of copyright ownership. Appellees counter that 17 U.S.C. § 411(b)(1) does not require scienter for nullification of a copyright registration and that a web of transfer and licensing agreements reflect a murky disposition of legal ownership. The Court need not reach a decision on the ownership issue because the district court misapplied the law by invalidating the copyright registrations. Accordingly, the district court's dismissal order will be reversed and remanded for further proceedings. . . .

Therefore, in order to invalidate a registration, (1) the application must contain inaccuracies, (2) the inaccuracies must be material, and (3) the applicant must have the required scienter of
intentional or purposeful concealment. While the district court correctly found material inaccuracies in the registrations, it erred by not applying the appropriate scienter for Fraud on the Copyright Office.

Middle District of Florida

DISH NETWORK, L.L.C. V. FRAIFER

THIS CAUSE comes before the Court upon Defendants' Motions to Dismiss . . . , to which Plaintiff responds in opposition . . . . Upon consideration, the motions are denied . . .

Invoking Florida agency principles, Fraifer argues that the Complaint fails to plausibly allege his personal liability for copyright infringement . . . Fraifer and TCI jointly move to dismiss the Complaint because it pleads a single count for copyright infringement, rather than separate counts against Fraifer and TCI . . . This action includes only two defendants, who are alleged to have engaged in the same conduct. Under these circumstances, “[t]he fact that defendants are accused collectively does not render the complaint deficient. The complaint can be fairly read to aver that all defendants are responsible for the alleged conduct.”

CONNOR V. FERRIS MARKETING, INC.

This matter comes before the Court on review of defendant's Motion to Dismiss Plaintiff's Claim for Declaratory Judgment Under the Copyright Act (Count IX) . . . filed on January 20, 2017 . . .

In Count IX, plaintiff more specifically alleges that he is the original author of PC Gear Head's logos, artistic packaging, artistic product design, graphic art, and other two and three-dimensional works of fine, graphic, and applied art. Plaintiff alleges that these visual works were used in PC Gear Head's business, and are pictorial, graphic, and sculptural works under the Copyright Act. Plaintiff alleges that he was never an employee of PC Gear Head, and there is no express written agreement that the visual works were works made for hire. Plaintiff alleges that an actual controversy exists between plaintiff and PC Gear Head as to ownership of the visual works, and that plaintiff is suffering from ongoing injury in the form of unpaid licensing rights and the denial of rights to use or license the visual works as the exclusive owner. The Court finds that the factual allegations are sufficient to satisfy the federal pleading standard.

CONNOR V. FERRIS MARKETING, INC.

This matter comes before the Court on Plaintiff's Motion to Strike . . . filed on February 11, 2017 . . . Plaintiff seeks to strike the Affirmative Defenses . . . asserted by defendants Ferris Marketing, Inc., Ronald M. Ferris, Jr., and PC Gear Head, LLC. Defendants assert six defenses
to the claims set forth in the Complaint. Plaintiff seeks to strike the Second, Third, and Fourth Affirmative Defenses because they are denials and not true affirmative defenses, and plaintiff seeks to strike all six defenses because they lack the factual support to state a claim. The motion will be granted as set forth below. . . .

In the First Affirmative Defense, defendants assert the doctrine of unclean hands. Defendants provide no factual support for this defense. "The Eleventh Circuit has observed that to successfully invoke the unclean hands doctrine requires a defendant to establish two things: "First, the defendant must demonstrate that the plaintiff's wrongdoing is directly related to the claim against which it is asserted. Second, even if directly related, the plaintiff's wrongdoing does not bar relief unless the defendant can show that it was personally injured by [his] conduct."

. . . Without even an indication of which claim in the Complaint the defense relates to, the first defense must be stricken for failure to comply with Rule 8(c). . . .

In the Second Affirmative Defense, defendants assert that plaintiff failed to plead a claim in Count IX under the Copyright Act. Defendants do not state why plaintiff has failed to state a claim, and in any event, by merely pointing out a defect in plaintiff's prima facie case, defendants are only stating a general defense or denial and not an affirmative defense. . . . The defense will be stricken.

ANAND VIHAR LLC V. EVANS GRP. INC.

BEFORE THE COURT are Plaintiff's Motion for Summary Judgment . . . and Defendant's Motion for Partial Summary Judgment . . . . Anand Vihar LLC, a real estate developer, brought this single count declaratory judgment action in Pasco County Circuit Court to determine its rights to copyrighted conceptual site drawings prepared by The Evans Group Incorporated, an architecture and design firm. Evans Group removed the action to this Court and asserted counterclaims for copyright infringement and breach of contract. Evans Group moves for summary judgment on its copyright counterclaim. Anand moves for summary judgment on its contention that it has an unrestricted license to use the copyrighted drawings for its construction project. Upon consideration, the Motions are DENIED. . . .

I. Copyright Infringement . . . Evans Group argues that the conceptual drawings were “drawn from a blank piece of paper, and contain an original composition and arrangement of features [.]” This argument lacks evidentiary support. There are a finite number of ways to permute a rectangular space. . . . While Dawn Michele Evans avers that design considerations were researched for a unique community concept, her affidavit is silent regarding the unique features of the copyrighted conceptual drawings. Donald Evans' testimony is likewise silent regarding the same. While the concept of creating a community for the “older, affluent, traditional Indian audience” may be unique, the expression of the design for a clubhouse, homes, and condominiums for this community may not be. Evans Group fails to identify the protectable elements of its designs that “depart[ ] from customary style and industry standards and espouses unusual design choices.” . . . Because Evans Group fails to meet its burden that the discovery
drawings infringe on protectable elements of the conceptual drawings, its motion for summary judgment will be denied.

II. License to Use Conceptual Drawings . . . Anand contends that the Agreement grants it a license to use the conceptual drawings without restriction on the Project and that the license only restricts its use of the conceptual drawings outside of the Project. Evans Group counters that Anand is prohibited from reproducing or changing the conceptual drawings without consent. There are questions of material fact concerning the parties' respective interpretations of the Agreement that cannot be resolved at summary judgment.

JOHNSON V. NEW DESTINY CHRISTIAN CENTER CHURCH, INC.

In the present motion, Defendants move to dismiss Plaintiff's Complaint for failure to state a claim upon which relief may be granted. . . . For the reasons set forth below, the Court finds that the MTD is due be granted in part and denied in part. . . .

Here, Johnson has presented facts sufficient for the Court to draw the reasonable inference that Defendants knowingly misrepresented copyright infringement to YouTube. Specifically, the verified Complaint avers that: (1) on multiple occasions, PWM/New Destiny “willfully, knowingly[,] and materially” made § 512(f) misrepresentations to YouTube that Johnson's videos were infringing PWM's copyrights . . . ; (2) “PWM did not hold a valid copyright registration or certificate to the content contained in [Johnson's] videos at the time of the misrepresentations” . . . ; and (3) the material posted on Johnson's YouTube channel “was used lawfully in accordance with 17 U.S.C. § 107 of the Copyright Act”—the fair use doctrine . . . . These allegations suffice to support a § 512(f) claim.

Defendants also argue that Johnson “should not be allowed to rely on allegations against PWM in an attempt to hold...Defendants liable, without providing sufficient factual allegations demonstrating...the relationship between...Defendants and PWM.” . . . Johnson, however, sufficiently describes Defendants' relationship with PWM. In particular, the Complaint provides that New Destiny operates under the fictitious name PWM and that Ms. White is “President of the Board, a Director, President and Senior Pastor of PWM/[New Destiny].” . . . The case caption in the Complaint also references these alleged relationship. . . .

Finally, Defendants assert that Johnson has not properly plead the existence of an injury caused by the misrepresentations. . . . Injury is a critical element of a § 512(f) claim. . . . As such, Johnson must allege that the purported misrepresentations proximately caused her damages. . . . In the Malicious Prosecution Action, the Court found that Johnson failed to state a § 512(f) claim because “each factual allegation related to Johnson's damages stem[med] from the prosecution of the Copyright Action rather than the removal of her videos from YouTube.” . . . Here, Johnson again asserts damages stemming from prosecution of the Copyright Action in her Complaint, but she also cites damages resulting from the termination of her YouTube channel. . . . Thus, Johnson has sufficiently pled the existence of an injury caused by the misrepresentations. Her
assertion that she was deprived of her First Amendment rights, however, warrants a different outcome.

Southern District of Florida

TOBIAS DESIGNS, INC. V. CHROMCRAFT REINGTON DOUGLAS IND., INC.
No. 16-CV-62502, 2017 WL 1953431 (S.D. Fla. May. 11, 2017)

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss Copyright Claims for Lack of Declaratory Judgment Jurisdiction . . . . The Court has reviewed the Motion and the record and is otherwise fully advised. For the reasons that follow, the Motion is granted . . . .

Defendant moves to dismiss Claims I and II of the Complaint, arguing that a declaratory judgment action concerning copyright infringement cannot be instituted where the declaratory defendant does not possess copyright registrations. The Court disagrees . . . . While the absence of a registered copyright might be the basis for a 12(b)(6) motion to dismiss a copyright infringement claim, it "does not prevent a federal court from exercising jurisdiction over a copyright infringement suit." . . . Accordingly, Defendant's motion to dismiss, on this ground, is denied.

COMPULIFE SOFTWARE, INC. V. NEWMAN

THIS CAUSE is before the Court on the Motion for Preliminary Injunction and Memorandum of Law in Support [DE 5]1 filed by Plaintiff, Compulife Software, Inc. (“Compulife”). . . . For the reasons set forth below, Compulife's Motion is DENIED . . . .

Whether or not Compulife has properly asserted a substantial likelihood of success on the merits of its copyright infringement claim in addition to its misappropriation of trade secrets claim, the Court need not determine whether Compulife has in fact established a substantial likelihood of success on the merits of either claim. As discussed in greater detail below, Compulife has failed to establish that it will suffer irreparable injury unless the injunction issues. Accordingly, Compulife is not entitled to preliminary injunctive relief . . . .

It is unlikely that further scraping or similar activity will occur in the immediate future. Compulife presented no evidence that any attempts at scraping occurred before or since September 2016; rather, the scraping in September 2016 was the only incident of its kind. Similarly, there is no evidence of any specific threat of another type of invasion. Finally, Mr. Barney testified that it would be very difficult for anyone to scrape or otherwise obtain Compulife's information going forward due to the measures he has taken since September 2016.

CAS A DIMITRI CORP. D/B/A DIMITRI & CO. V. INVICTA WATCH CO. OF AM., INC.
THIS CAUSE came before the Court upon Defendants Invicta Watch Company of America, Inc. (“Invicta”), TM Brands, LLC (“TM Brands”), Eyal Lalo (“Lalo”) and Technomarine USA, Inc.’s (collectively “Defendants”) Motion for Summary Judgment (ECF No. 229), and upon Counter–Plaintiff TM Brands' Motion for Summary Judgment as to Liability (ECF No. 228). . . . For the reasons set forth below, Defendants' Motion for Summary Judgment is granted and Counter–Plaintiff's Motion for Summary Judgment is granted in part and denied in part. . . .

A. Plaintiffs' Copyright Infringement Claim (Count I) . . . The Court finds that Plaintiffs have failed to satisfy the registration precondition to bringing a copyright infringement action. Accordingly, the claim fails as a matter of law and the Court need not address any of the remaining arguments. . . .

B. Plaintiffs' FDUTPA Claim (Count II) . . . Finally, the remaining alleged deceptive acts and unfair practices (claims vii, viii, and xii) fail because they are nothing more than a restated copyright infringement claim. Assuming without deciding that Plaintiffs' work is copyrightable, the FDUTPA claims based exclusively on allegations of copying fail because they are preempted by the Copyright Act. . . . As such, the Copyright Act preempts a FDUTPA claim premised on allegations of copying.

KELLY TRACHT, LLC V. DAZZLE UP, LLC

This cause is before the Court upon Defendants' Motion to Dismiss Plaintiff's Amended Complaint . . . .

Defendants contend, however, that the allegations only demonstrate a limited sale and distribution of Plaintiff's works, and fail to identify sale volume, revenue, duration or location of Plaintiff's goods. Defendants also argue that the Amended Complaint does not state how long the images in question were displayed at what galleries. . . . The Court concludes that these arguments are more appropriate at the summary judgment stage, rather than at this early stage in the proceedings. Indeed, most of the cases cited by Defendants in support of these arguments addressed access at the summary judgment or post-trial stage after fact discovery had been completed and an evidentiary record was considered.

With respect to allegations regarding Plaintiff's presence on the internet, Defendants claim that placing copyrighted works on the internet is not enough to establish access. . . . The cases cited by Defendants . . . , however, considered evidence about the website, not just the mere presence of a website. . . . Plaintiff should be afforded the same opportunity to provide evidence about its internet presence. Therefore, the motion to dismiss the federal copyright claims is denied.

KELLY TRACHT, LLC V. DAZZLE UP, LLC

OAKLEY V. AMAZON.COM, INC.

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Joshua L. Simmons
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On October 7, 2016, Magistrate Judge Alan J. Baverman granted Plaintiff Reginald Oakley leave to proceed in forma pauperis in this case. It is now before the Court for a frivolity determination. Also before the Court are Defendant Amazon.com, Inc.’s Motion to Dismiss [5], Plaintiff's Motion to Proceed and to Appoint Counsel [6], and Plaintiff's Motion to Proceed to Grant Rights to Relatives [7]. After reviewing the record, the Court enters the following Order. . . .

Plaintiff next alleges that Defendants violated the copyrights for both of his books by “tying” or “bundling” his books together, enabling the “Look Inside” feature on his books, and leaking his books online. . . . First, the Court notes that any allegations about “tying” or “bundling” appear to go to antitrust claims, not copyright infringement. And as the Court articulated above, Plaintiff's Complaint fails to state a claim for an illegal tying arrangement. As a result, the Court will not rehash Plaintiff's tying allegations here.

Next, as Amazon correctly points out, Plaintiff's copyright infringement claims are likely barred by the statute of limitations. . . . Here, Plaintiff alleges that Defendants leaked his books online in 2010 and that they “took control of Plaintiff's books” and marketed them without his permission in 2012. . . . But Plaintiff did not file this suit until September 30, 2016. So any infringement claim based on those allegations falls at least one year after the statute of limitations expired.

Still, the copyright statute of limitations is subject to the “separate-accrual rule.” . . . “Under that rule, when a defendant commits successive violations, the statute of limitations runs separately from each violation.” . . . Applying the separate-accrual rule here, the Court takes pause at some of Plaintiff's other allegations, such as Defendants' use of the “Look Inside” feature. The Complaint does not say when Defendants first enabled that feature nor when they disabled it, if ever. As a result, it is possible that a copyright infringement claim based on Defendants' use of the “Look Inside” feature could be within the statute of limitations.

Even so, Plaintiff's allegations based on that feature are not enough to state a plausible claim for copyright infringement. . . . Here, Plaintiff has alleged valid ownership as he attached to the Complaint the copyright registration certificates for both of his books. . . . But Plaintiff does not adequately allege that Defendants copied protected elements of those books. Plaintiff's Complaint is devoid of any explanation of the “Look Inside” feature or how Defendants' use of that feature constituted copying. Assuming that the “Look Inside” feature allowed potential buyers to view excerpts of Plaintiff's books, Plaintiff does not specify what those excerpts entailed or how they overlapped with protected elements of his copyrighted works. For all these reasons, Amazon's Motion to Dismiss [5] is GRANTED as to Counts II and III.
II. COPYRIGHT-RELATED LEGISLATION

House

H.R. 1: Tax Cuts and Jobs Act

On November 2, 2017, H.R. 1 was introduced in the House by Rep. Kevin Brady [R-TX], and cosponsored by 24 representatives. It was referred to the House Committee on Ways and Means.

It is intended to "provide for reconciliation pursuant to title II of the concurrent resolution on the budget for fiscal year 2018." It provides that "Section 1221(a)(3) is amended by inserting 'a patent, invention, model or design (whether or not patented), a secret formula or process,' before 'a copyright'." It also provides that "Section 1231(b)(1)(C) is amended by inserting 'a patent, invention, model or design (whether or not patented), a secret formula or process,' before 'a copyright'."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/1/.


On January 3, 2017, H.R. 25 was introduced in the House by Rep. Rob Woodall [R-GA] and cosponsored by 34 other Representatives. It was referred to the House Committee on Ways and Means. S. 18 is a related bill.

The Bill is intended to "promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States." It provides that "the sale of a copyright . . . shall be treated as the sale of taxable services (within the meaning of section 101(a)) if the substance of the sales of copyright . . . constituted the sale of the services that produced the copyrighted material."


H.R. 244: Consolidated Appropriations Act, 2017

In May 2017, H.R. 244 became the vehicle for passage of the Consolidated Appropriations Act of 2017. It is intended for "[m]aking appropriations for the fiscal year ending September 30, 2017, and for other purposes." It provides:

Copyright Office: Salaries and Expenses. For all necessary expenses of the Copyright Office, $68,825,000, of which not more than $33,619,000, to remain available until expended, shall be derived from collections credited to this appropriation during fiscal year 2017 under section 708(d) of title 17, United States Code: Provided, That the Copyright Office may not obligate or expend any funds derived from collections under such section, in excess of the amount authorized for obligation or expenditure in appropriations Acts: Provided further, That not more than $5,929,000 shall be derived
from collections during fiscal year 2017 under sections 111(d)(2), 119(b)(3), 803(e), 1005, and 1316 of such title: Provided further, That the total amount available for obligation shall be reduced by the amount by which collections are less than $39,548,000: Provided further, That $6,179,000 shall be derived from prior year unobligated balances: Provided further, That not more than $100,000 of the amount appropriated is available for the maintenance of an "International Copyright Institute" in the Copyright Office of the Library of Congress for the purpose of training nationals of developing countries in intellectual property laws and policies: Provided further, That not more than $6,500 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for activities of the International Copyright Institute and for copyright delegations, visitors, and seminars: Provided further, That, notwithstanding any provision of chapter 8 of title 17, United States Code, any amounts made available under this heading which are attributable to royalty fees and payments received by the Copyright Office pursuant to sections 111, 119, and chapter 10 of such title may be used for the costs incurred in the administration of the Copyright Royalty Judges program, with the exception of the costs of salaries and benefits for the Copyright Royalty Judges and staff under section 802(e).

It was signed by the President on May 5, 2017.

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/244/.

H.R. 272: Back to Basics Job Creation Act of 2017

On January 4, 2017, H.R. 272 was introduced in the House by Rep. John Lewis [D-GA]. It was referred to the House Committee on Ways and Means.

The Bill is intended to "amend title XX of the Social Security Act to provide grants to support job creation initiatives, and for other purposes." It provides that "An eligible entity awarded a grant under [Section 2010] shall use the grant—(A) to provide education and training for . . . copyright processes; and (B) to provide funding for new small businesses that pay employees at a living wage."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/272/.

H.R. 881: Allocation for Music Producers Act

On February 6, 2017, H.R. 881 was introduced in the House by Rep. Joseph Crowley [D-NY] and cosponsored by 23 Representatives. It was referred to the Committee on the Judiciary.

The Bill is intended to "provide for direct payment of statutory sound recording performance royalties to record producers, and for other purposes."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/881/.
H.R. 890: Copyright Office for the Digital Economy Act


The Bill is intended to "establish the United States Copyright Office as an agency in the legislative branch, and for other purposes." The Congressional Research Service authored the following summary:

- This bill establishes the U.S. Copyright Office as a separate independent agency in the legislative branch, to be headed by a director appointed by the President with the advice and consent of the Senate. (Currently, the Copyright Office is part of the Library of Congress [LOC] and is headed by the Register of Copyrights.)

- The director's term of office is limited to 10 years without eligibility for reappointment. The director must appoint officers and employees responsible for administering the Copyright Office's technology and data systems.

- The Copyright Office shall: (1) provide services in a manner that reflects technological needs and developments, and (2) promptly register copyright claims within a period that does not adversely impact the timely enforcement of rights and remedies.

- No U.S. agency is authorized to require the Copyright Office to obtain an agency's approval before the Copyright Office submits legislative recommendations to Congress.

- Copyright owners may register their copyright claims by delivering examination copies of their works to the Copyright Office. The Copyright Office must then provide the LOC access to such examination copies and related data solely for the LOC's determination of whether to demand a deposit of the material or to otherwise engage with copyright owners regarding works of authorship that may be of curatorial and collection interest to the national library. The Copyright Office must also consult with the LOC on other matters of common interest.

- The director must establish a Copyright Advisory Board to advise the Copyright Office and to provide information on emerging technology practices.

- The Copyright Office must also: (1) submit a report on the future administration of mandatory deposit provisions and their application to the digital era, and (2) conduct studies to ensure that it has the technology and staff to establish and maintain a modern copyright system.

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/890/.
H.R. 1120: Alice Cogswell and Anne Sullivan Macy Act

On February 16, 2017, H.R. 1120 was introduced in the House by Rep. Matt Cartwright [D-PA] and cosponsored by 15 Representatives. It was referred to the Committee on Education and the Workforce.

The Bill is intended to "promote and ensure delivery of high quality special education and related services to students with visual disabilities or who are deaf or hard of hearing or deaf-blind through instructional methodologies meeting their unique learning needs; to enhance accountability for the provision of such services, and for other purposes." It provides that "All matter produced by the Anne Sullivan Macy Center shall be the property of the United States Government, except that entities comprising the consortium of entities described in section 212(b) shall be individually free, within the terms of the contract or cooperative agreement described in section 212(a), to reproduce, or author copyrighted derivative works, using such matter."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/1120/.

H.R. 1303: H-1B and L-1 Visa Reform Act of 2017


The Bill was intended to "amend the Immigration and Nationality Act to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States, and for other purposes." It provides, "The ownership of . . . copyrighted works by a petitioner under section 101(a)(15)(L) does not establish that a particular employee has specialized knowledge. In order to meet the definition under clause (i), the beneficiary shall be a key person with knowledge that is critical for performance of the job duties and is protected from disclosure through . . . copyright . . . ."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/1303/.

H.R. 1358: Scientific Integrity Act

On March 2, 2017, H.R. 1358 was introduced in the House by Rep. Paul Tonko [D-NY], and cosponsored by 76 Representatives. It was referred to the House Committee on Science, Space, and Technology.

The Bill is intended to "protect scientific integrity in Federal research and policymaking, and for other purposes." It provides that "Nothing in this Act shall affect the application of United States copyright law."
For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/1358/.

**H.R. 1649: Comprehensive Resources for Entrepreneurs in the Arts to Transform the Economy Act of 2017**

On March 21, 2017, H.R. 1649 was introduced in the House by Rep. Debbie Dingell [D-MI]. It was referred to the House Committee on Ways and Means, as well as the House Committees on Small Business, Transportation and Infrastructure, the Judiciary, Education and the Workforce, Financial Services, and Agriculture. It is identical to S. 661.

H.R. 1649 is intended to "assist entrepreneurs, support development of the creative economy, and encourage international cultural exchange, and for other purposes." It provides that "the term 'qualified artistic charitable contribution' means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only" under certain conditions and that, "[i]n the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3)." The Congressional Research Service authored the following summary of H.R. 1649:

- This bill amends the Internal Revenue Code to: (1) allow artists to claim tax deductions for qualified artistic charitable contributions based on the fair market value of a piece of artwork, rather than the value of the materials used to create it; and (2) revise income and gift tax requirements for charitable contributions of fractional gifts, the valuation of subsequent gifts, and recapture of the charitable deduction.

- The Small Business Act is amended to require the Small Business Administration to develop loan criteria, evaluation procedures, and technical assistance programs for small business concerns owned and controlled by artists and concerns that support the creative economy.

- The Public Works and Economic Development Act of 1965 and the Consolidated Farm and Rural Development Act are amended to require the Departments of Commerce and Agriculture to ensure that traditional economic development tools, such as business incubators and grant programs, support the arts industry and creative economy.

- The Immigration and Nationality Act is amended to require the Department of Homeland Security to adjudicate petitions for nonimmigrant visas for aliens with extraordinary ability or achievement, and artists and entertainers within 14 days after receiving them.

- The Federal Emergency Management Agency (FEMA) shall promulgate rules to ensure that expenses incurred, because of a major disaster or emergency, by specified artists,
designers, or musicians to repair or replace needed tools are considered eligible for disaster assistance.

- The National and Community Service Act of 1990 is amended to authorize the recipient of a national service program grant to carry out the program through an Artist Corps that identifies and meets unmet needs within communities through artistic activities, including technical assistance for grant writing, marketing, and financial planning.

- The Department of the Treasury shall develop guidelines for the creation and operation of qualified community development entities focusing on investment in and the development and encouragement of the creative economy in low-income communities.

- Commerce shall establish a demonstration program to promote creative and performing arts in the economic planning of local governments.

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/1649/.

**H.R. 1695: Register of Copyrights Selection and Accountability Act**

On March 23, 2017, H.R. 1695 was introduced by Rep. Bob Goodlatte [R-VA], and cosponsored by 30 Representatives. It was referred to the House Committee on the Judiciary.

H.R. 1695 is intended to "amend title 17, United States Code, to provide additional responsibilities for the Register of Copyrights, and for other purposes." It provides, among other things, that "[t]he Register of Copyrights shall be a citizen of the United States with a professional background and experience in copyright law and shall be appointed by the President, by and with the advice and consent of the Senate." The Congressional Research Service authored the following summary:

- This bill amends federal copyright law to require the President, with the advice and consent of the Senate, to appoint a Register of Copyrights from a list of at least three individuals recommended by a panel composed of:
  
  the Speaker of the House of Representatives;
  
  the President pro tempore of the Senate;
  
  the majority and minority leaders of the House and the Senate; and
  
  the Librarian of Congress.

  (Currently, the Register of Copyrights is appointed by the Librarian of Congress.)

- To be eligible for appointment, the individual must be a citizen of the United States with a professional background and experience in copyright law and must be capable of identifying and supervising a chief information officer responsible for managing modern information technology systems.
• The bill limits the term of office for the Register of Copyrights to 10 years, but the individual may be reappointed subject to the same requirements established in this bill.

• The President may remove the Register of Copyrights from office and must notify both chambers of Congress of any such removal.

• Nothing in this bill may be construed to impact the mandatory deposit requirements under which owners of a copyright or of an exclusive right of publication must deposit in the U.S. Copyright Office two copies or phonorecords of works published in the United States for the use or disposition of the Library of Congress.

On March 29, 2017, the House Committee on the Judiciary considered H.R. 1695 and held a mark-up session. The bill was ordered to be reported as amended by the Yeas and Nays: 27-1. It was sent to the House as a whole for consideration on March 29, 2017.

On April 3, 2017, H.R. 1695 was added to the House's schedule.


On April 25, 2017, the House Rules Committee met to consider H.R. 1695. Rules Committee Resolution H. Res. 275 was reported to the House, providing for consideration of H.R. 1695. For more information on H. Res. 275, please visit https://www.congress.gov/bill/115th-congress/house-resolution/275.

On April 26, 2017, H. Res. 275 passed the House. H.R. 1695 was then considered by the Committee of the Whole House under the provisions H. Res. 275. Rep. Theodore Deutch [D-FL] offered H. Amdt. 109, which would require the Register of Copyrights to be capable of identifying and supervising a Chief Information Officer or similar official responsible for managing information technology systems. It was agreed to by a recorded vote of 410-14. Rep. Judy Chu [D-CA] offered H. Amdt. 110, which specifies that nothing in the bill shall impact the mandatory deposit requirements of title 17. It was agreed to by a voice vote. The House adopted the amended in the nature of a substitute as agreed by the Committee of the Whole House.


On April 27, 2017, H.R. 1695 was received in the Senate and referred to the Committee on Rules and Administration.
H.R. 1770: Open, Public, Electronic, and Necessary Government Data Act

On March 29, 2017, H.R. 1770 was introduced in the House by Rep. Derek Kilmer [D-WA], and cosponsored by Rep. Blake Farenthold [R-TX]. It was referred to the House Committee on Oversight and Government Reform.

H.R. 1770 is intended to "expand the Government's use and administration of data to facilitate transparency, effective governance, and innovation, and for other purposes." It provides that "the term 'nonpublic data asset' . . . includes data provided by contractors that is protected by . . . copyright." The Congressional Research Service authored the following summary of H.R. 1770:

- This bill requires open government data assets made available by federal agencies (excluding the Government Accountability Office, the Federal Election Commission, and certain other government entities) to be published as machine-readable data. When not otherwise prohibited by law, and to the extent practicable, public data assets and nonpublic data assets maintained by the federal government must be available: (1) in an open format that does not impede use or reuse and that has standards maintained by a standards organization; and (2) under open licenses with a legal guarantee that the data be available at no cost to the public with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting.

- If published government data assets are not available under an open license, the data must be considered part of the worldwide public domain. Agencies may engage with outside organizations and citizens to leverage public data assets for innovation in public and private sectors.

- Agencies must: (1) make their enterprise data inventories available to the public on Data.gov, and (2) designate a point of contact to assist the public and respond to complaints about adherence to open data requirements. For privacy, security, confidentiality, or regulatory reasons, agencies may maintain a nonpublic portion of their inventories.

- The General Services Administration must maintain a single public interface online as a point of entry dedicated to sharing open government data with the public.

- The Office of Management and Budget must develop and maintain an online repository of tools, best practices, and schema standards to facilitate the adoption of open data practices.

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/1770/.
H.R. 1830: Artist-Museum Partnership Act of 2017

On March 30, 2017, H.R. 1830 was introduced by Rep. John Lewis [D-GA]. It has been referred to the House Committee on Ways and Means.

H.R. 1830 is intended to "amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor." It provides: "In the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3)." The Congressional Research Service authored the following summary of H.R. 1830:

- This bill amends the Internal Revenue Code to allow taxpayers who create literary, musical, artistic, scholarly compositions, or similar property a fair market value (determined at the time of contribution) tax deduction for contributions of such properties, the copyrights thereon, or both, to certain tax-exempt organizations, if such properties are properly appraised and are donated no less than 18 months after their creation. The bill limits the amount of the deduction based upon the donor's artistic adjusted gross income, as defined by this bill.

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/1830.

H.R. 1836: Fair Play Fair Pay Act of 2017

On March 30, 2017, H.R. 1836 was introduced by Rep. Jerrold Nadler [D-NY], and cosponsored by five representatives. It has been referred to the House Committee on the Judiciary.

H.R. 1836 is intended to "amend title 17, United States Code, to provide fair treatment of radio stations and artists for the use of sound recordings, and for other purposes." The Congressional Research Service authored the following summary of H.R. 1836:

- This bill amends federal copyright law to extend a sound recording copyright owner's rights to include the exclusive right to perform or authorize the performance of the recording publicly by means of any audio transmission, thereby requiring terrestrial AM/FM broadcast radio stations that play copyrighted sound recordings to pay royalties for the nondigital audio transmissions of the recordings. (Currently, sound recording copyright owners have a performance right that applies only to digital transmissions by cable, satellite, and Internet radio stations.)

- Copyright Royalty Judges (CRJs) must commence a proceeding to determine royalty rates and terms for nondigital broadcast transmissions. In determining royalty rates for statutory licensing of such digital or nondigital transmissions, the CRJs must: (1) distinguish among different types of services, and (2) include a minimum fee for each type of service. Differences may be based on the quantity and nature of the use of sound...
recordings and the degree to which use of the service may substitute for or promote consumer purchases of phonorecords.

- The CRJs must establish rates that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. The decision must be based on economic, competitive, and programming information presented by the parties, including: (1) the sound recording copyright owner's other streams of revenue from the recordings; and (2) the relative creative contribution, technological contribution, capital investment, cost, and risk of the copyright owner and the transmitting entity.

- The bill caps the annual royalty rate at: (1) $500 for small commercial broadcast stations with less than $1 million in revenues for the calendar year, and (2) $100 for public broadcasting stations. Exemptions are provided for religious service broadcasts or incidental uses of music from royalty payment requirements.

- Proceeds for direct licenses of transmissions otherwise licensable under the statutory license must be distributed in the same manner as statutory license proceeds. The bill requires payment of 45% to featured artists, 2.5% to nonfeatured musicians, and 2.5% to nonfeatured vocalists. Such payments shall be the sole payments to which featured and nonfeatured artists are entitled under a direct license.

- Performance royalties for sound recordings fixed before February 15, 1972, must be paid in the same manner as royalties for sound recordings fixed after such date.

- A collective designated by the CRJs must implement a policy to accept instructions (referred to as a "letter of direction") from a sound recording copyright owner, or from a recording artist, to distribute a portion of performance royalty payments to a producer, mixer, or sound engineer who was part of the creative process behind the sound recording.

- The collective must adopt special procedures for a producer, mixer, or sound engineer to receive a portion of royalties for recordings fixed before November 1, 1995, by certifying that a reasonable effort has been made to obtain a letter of direction from an artist who owns the right to receipts payable with respect to the sound recording.


H.R. 1914: Performance Royalty Owners of Music Opportunity to Earn Act of 2017

On April 5, 2017, H.R. 1914 was introduced by Rep. Darrell E. Issa [R-CA], and cosponsored by Rep. Theodore E. Deutch [D-FL]. It has been referred to the House Committee on the Judiciary.
H.R. 1914 is intended to "amend title 17, United States Code, to grant owners of copyright in sound recordings the exclusive right to prohibit the broadcast transmission of the sound recordings by means of terrestrial radio stations, and for other purposes." The Congressional Research Service authored the following summary:

- This bill amends federal copyright law to provide copyright owners the exclusive right to prohibit performance of a sound recording publicly by a broadcast transmission of a terrestrial AM/FM radio station. Exceptions are provided that allow terrestrial AM/FM radio broadcasts of a sound recording without the copyright owner's permission if: (1) a terrestrial AM/FM radio station pays royalties identical to those paid under the statutory license rates determined by Copyright Royalty Judges for eligible nonsubscription transmission services that apply to digital Internet radio streaming and webcasts; (2) the broadcast is of a religious service, by an educational terrestrial radio station, or by a low-power FM radio station; or (3) the broadcast is an incidental use. (Under current law, the exclusive right for the public performance of sound recordings extends only to digital audio transmissions, such as Internet and satellite radio broadcasts.)

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/1914/.

H.R. 2189: Trade Protection Not Troll Protection Act

On April 27, 2017, H.R. 2189 was introduced in the House by Rep. Tony Cardenas [D-CA] and cosponsored by Reps. Blake Farenthold [R-TX], Eric Swalwell [D-CA], and Darrell E. Issa [R-CA]. It was referred to the Committee on Ways and Means.

H.R. 2189 is intended to "amend section 337 of the Tariff Act of 1930 with respect to requirements for domestic industries, and for other purposes." It provides, among other things, that "Subsection (a) is amended-(A) in paragraph (3) . . . by adding after subparagraph (C) the following: '(D) substantial investment in licensing activities that leads to the adoption and development of articles that incorporate the . . . copyright . . . .' . . . (C) by inserting after paragraph 3 the following: 'For purposes of paragraph (3), the complainant may not rely upon activities by its licensees unless the license leads to the adoption and development of articles that incorporate the claimed . . . copyright . . . for sale in the United States.'" The Congressional Research Service authored the following summary of H.R. 2189:

- This bill amends the Tariff Act of 1930, with respect to unfair practices in the import trade, to consider an industry in the United States to exist if there is in the United States substantial investment in licensing activities that leads to the adoption and development of articles that incorporate the patent, copyright, trademark, mask work, or design.

- If the U.S. International Trade Commission (ITC), at the beginning of an investigation of an alleged unfair practice, identifies a domestic industry as the dispositive issue in question, it shall direct the assigned administrative law judge (ALJ) to:
expedite fact finding on the domestic industry requirement, and
issue an initial determination on this matter within 100 days after the investigation begins.

- Any initial determination by the assigned ALJ shall stay the investigation pending ITC action.

- The ITC may determine during an investigation that exclusion of the articles concerned from entry into the United States would not be in the public interest, and terminate the investigation, in whole or in part, without any further determination, after considering the nature of the articles concerned and the effect of exclusion upon:

  the public health and welfare,
  the U.S. economy (including competitive conditions),
  the production of like or directly competitive articles by the complainant and its licensees, and
  U.S. consumers.

- Any person adversely affected by an ITC ruling that identifies a domestic industry as the dispositive issue in question may appeal that ruling, within 60 days after all administrative remedies are exhausted, to the U.S. Court of Appeals for the Federal Circuit.

- ITC discretion not to exclude any articles concerned, even though an importer has violated the ban on unfair competition, is repealed. If the ITC also determines that exclusion would be in the public interest, it shall direct exclusion of the articles.

- During an investigation, if the ITC determines there is reason to believe that an unfair import practice has occurred, and exclusion of the articles concerned would be in the public interest, the ITC may direct the exclusion the articles concerned, after considering the factors mentioned above. (Currently the ITC may not direct an exclusion until an investigation concludes and it determines, as a result of the investigation, that an unfair import trade practice has occurred.)

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/2189.


On May 3, 2017, H.R. 2335 was introduced in the House by Rep. Leonard Lance [R-NJ] and cosponsored by Rep. Mike Quigley [D-IL]. It was referred to the House Committee on House Administration.

H.R. 2335 is intended to "direct the Director of the Government Publishing Office to provide members of the public with Internet access to Congressional Research Service reports, and for other purposes." It provides "The GPO Director, in consultation with the CRS Director, shall
ABA Copyright Division
http://apps.americanbar.org/dch/committee.cfm?com=PT030000

ensure that the Website . . . displays the following statement in reference to the CRS Reports included on the Website: 'These documents were prepared by the Congressional Research Service (CRS). . . . CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.'"


H.R. 3301: CREATE Act

On July 19, 2017, H.R. 3301 was introduced in the House by Rep. Darrell E. Issa [R-CA], and cosponsored by five representatives. It was referred to the House Committee on the Judiciary.

The Bill is intended to "amend title 17, United States Code, to provide Federal protection to the digital audio transmission of a sound recording fixed before February 15, 1972, and for other purposes."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/3301/.

H.R. 3350: Transparcency in Music Licensing and Ownership Act

On July 20, 2017, H.R. 3350 was introduced in the House by Rep. F. James Sensenbrenner, Jr. [R-WI], and cosponsored by Reps. Steve Chabot [R-OH], Suzan K. Delbene [D-WA], and Blake Fraenthold [R-TX]. It was referred to the House Committee on the Judiciary.

The Bill is intended to "amend title 17, United States Code, to establish a database of nondramatic musical works and sound recordings to help entities that wish to publicly perform such works and recordings to identify and compensate the owners of rights in such works and recordings, and for other purposes."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/3350/.


H.R. 3354 was introduced in the House on July 21, 2017 by Rep. Ken Calvert [R-CA]. Among other things, it provides:
For all necessary expenses of the Copyright Office, $72,011,000, of which not more than $35,218,000, to remain available until expended, shall be derived from collections credited to this appropriation during fiscal year 2018 under section 708(d) of title 17, United States Code: Provided, That the Copyright Office may not obligate or expend any funds derived from collections under such section, in excess of the amount authorized for obligation or expenditure in appropriations Acts: Provided further, That not more than $6,087,000 shall be derived from collections during fiscal year 2018 under sections 111(d)(2), 119(b)(3), 803(e), 1005, and 1316 of such title: Provided further, That the total amount available for obligation shall be reduced by the amount by which collections are less than $41,305,000: Provided further, That not more than $100,000 of the amount appropriated is available for the maintenance of an “International Copyright Institute” in the Copyright Office of the Library of Congress for the purpose of training nationals of developing countries in intellectual property laws and policies: Provided further, That $2,260,000 shall be derived from prior year unobligated balances: Provided further, That not more than $6,500 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for activities of the International Copyright Institute and for copyright delegations, visitors, and seminars: Provided further, That, notwithstanding any provision of chapter 8 of title 17, United States Code, any amounts made available under this heading which are attributable to royalty fees and payments received by the Copyright Office pursuant to sections 111, 119, and chapter 10 of such title may be used for the costs incurred in the administration of the Copyright Royalty Judges program, with the exception of the costs of salaries and benefits for the Copyright Royalty Judges and staff under section 802(e).

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/3354/.

H.R. 3427: Fair Access to Science and Technology Research Act of 2017

On July 26, 2017, H.R. 3427 was introduced in the House by Rep. Michael F. Doyle [D-PA], and cosponsored by Reps. Kevin Yoder [R-KS] and Zoe Lofgren [D-CA]. It was referred to the House Committee on Oversight and Government Reform.

The Bill is intended to "provide for Federal agencies to develop public access policies relating to research conducted by employees of that agency or from funds administered by that agency." It provides, among other things, that "Each Federal research public access policy shall not apply to . . . classified research, research resulting in works that generate revenue or royalties for authors (such as books) or patentable discoveries, to the extent necessary to protect a copyright or patent." It also provides that "Each report under this subsection shall include . . . the results of a study by the Federal agency of the terms of use applicable to the research papers described in subsection(b)(4), including . . . an examination of whether such research papers should include a royalty-free copyright license that is available to the public and that permits the reuse of those research papers, on the condition that attribution is given to the author or authors of the research and any others designated by the copyright owner."
For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/3427/.

**H.R. 3840: Affordable College Textbook Act**

On September 26, 2017, H.R. 3840 was introduced in the House by Rep. Jared Polis [D-CO], and cosponsored by Rep. Kyrsten Sinema [D-AZ]. It was referred to the House Committee on Education and the Workforce.

The Bill is intended to "expand the use of open textbooks in order to achieve savings for students." It provides "Educational resources created under subsection (e) shall be licensed under a nonexclusive, irrevocable license to the public to exercise any of the rights under copyright conditioned only on the requirement that attribution be given as directed by the copyright owner."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/3840/.

**H.R. 3870: E-BOOK Act of 2017**

On September 28, 2017, H.R. 3870 was introduced in the House by Rep. Suzan K. DelBene [D-WA], and cosponsored by Rep. Tom Marino [R-PA]. It was referred to House Committee on Education and the Workforce.

It is intended to "amend the Higher Education Act of 1965 to lower the cost of college education by establishing pilot programs to expand student access to digital course materials." It provides, among other things, that there "term ‘open educational resources’ means digital course materials that are made freely available online to the public with a permanent copyright license granting advance permission for the public to access, distribute, adapt, and otherwise use the work with appropriate attribution to the authors as set forth in the materials."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/3870/.

**H.R. 3945: Copyright Alternative in Small-Claims Enforcement Act of 2017**

On October 4, 2017, H.R. 3945 was introduced in the House Rep. Hakeem S. Jeffries [D-NY], and cosponsored by five Representatives. It was referred to the House Committee on the Judiciary.

It is intended to "amend title 17, United States Code, to establish an alternative dispute resolution program for copyright small claims, and for other purposes."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/3945/.
H.R. 4045: Removing Onerous Obstacles in the Tax Code for Mainstreet Businesses Act

On October 12, 2016, H.R. 4045 was introduced in the House by Rep. Andy Barr [R-KY], and cosponsored by Rep. Patrick J. Tiberi [R-OH]. It was referred to the House Committee on Ways and Means.

It is intended to "amend the Internal Revenue Code of 1986 for shareholder ownership and passive income rules of the personal holding company tax provisions." It provides "Paragraph (4) of section 543(a) of such Code is amended by inserting ', which do not qualify for the active conduct of a trade or business exception in subsection (a)(1)(F)' after 'Copyright royalties' in the matter preceding subparagraph (A)."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/4045/.

H.R. 4504: Transparency in Government Act of 2017

On November 30, 2017, H.R. 4504 was introduced in the House by Rep. Mike Quigley [D-IL], and cosponsored by Rep. Eleanor Holmes Norton [D-DC]. It was referred to the House Committee on Oversight and Government Reform, and in addition to the House Committees on Rules, House Administration, the Judiciary, Ethics, Ways and Means, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

It is intended to "amend the Ethics in Government Act of 1978, the Rules of the House of Representatives, the Lobbying Disclosure Act of 1995, the Legislative Reorganization Act of 1946, the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, the Internal Revenue Code of 1986, the Foreign Agents Registration Act of 1938, the Financial Stability Act of 2010, and the Federal Funding Accountability and Transparency Act of 2006 to improve access to information in the legislative and executive branches of the Government, and for other purposes." It provides that the "Comptroller General shall conduct annual audits of the implementation of the provisions in this Act." "Audits conducted under this section shall address whether the congressional and executive branch data that is required to be provided to the public through the Internet is . . . Not subject to any copyright, patent, trademark, or trade secret regulation (with reasonable privacy, security, and privilege restrictions)."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/4504/.

H.R. 4508: Promoting Real Opportunity, Success, and Prosperity Through Education Reform Act

On December 1, 2017, H.R. 4508 was introduced in the House by Rep. Virginia Foxx [R-NC], and cosponsored by Rep. Brett Guthrie [R-KY]. It was referred to the House Committee on Education and the Workforce.
H.R. 4508 is intended to "support students in completing an affordable postsecondary education that will prepare them to enter the workforce with the skills they need for lifelong success." It provides that "Section 485(a)(1)(P) (20 U.S.C. 1092(a)(1)(P)) is amended by striking ', including—' and all that follows and inserting a period" and that "Section 487(a)(29) (20 U.S.C. 1094(a)(29)) is amended to read as follows: '(29) The institution will have a policy prohibiting copyright infringement.'"

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/4508/.

H.R. 4682: Open Internet Preservation Act

On December 19, 2017, H.R. 4682 was introduced in the House by Rep. Marsha Blackburn [R-TN], and cosponsored by 15 Representatives. It was referred to the House Committee on Energy and Commerce.

H.R. 4682 was intended to "amend the Communications Act of 1934 to ensure internet openness, to prohibit blocking of lawful content, applications, services, and non-harmful devices, to prohibit impairment or degradation of lawful internet traffic, to limit the authority of the Federal Communications Commission and to preempt State law with respect to internet openness obligations, to provide that broadband internet access service shall be considered to be an information service, and for other purposes." It provides that "Nothing in this section . . . prohibits reasonable efforts by a provider of broadband internet access service to address copyright infringement or other unlawful activity."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/4682/.

H.R. 4686: 21st Century Competition Act of 2017

On December 19, 2017, H.R. 4686 was introduced in the House by Rep. Keith Ellison [D-MN], and cosponsored by Reps. Ramila Jayapal [D-WA], Mark Pocan [D-WI], and David N. Cicilline [D-RI]. It was referred to the House Committee on the Judiciary.

H.R. 4686 was intended to "establish the National Commission on Economic Concentration to study the effects of economic concentration on competition, and for other purposes." It provides that a "National Commission on Economic Concentration . . . shall conduct a study of economic concentration to determine . . . [t]he extent of distribution of patent, copyright, and trademark ownership across firms."

For more information, please visit https://www.congress.gov/bill/115th-congress/house-bill/4686/.
Senate

S. 1: An Original Bill to Provide for Reconciliation Pursuant to Title II of the Concurrent Resolution on the Budget for Fiscal Year 2018

On November 28, 2017, S. 1 was introduced in the Senate by Sen. Michael B. Enzi [R-WY]. The Senate Committee on the Budget reported it as an original measure to the Senate, and it was placed on the Senate Legislative Calendar under General Orders (Calendar No. 269).

S. 1 was intended to "provide for reconciliation pursuant to title II of the concurrent resolution on the budget for fiscal year 2018." It provides: "Section 513 is amended by adding at the end the following new subsection: '(k) Name and logo royalties.—Any sale or licensing by an organization of any name or logo of the organization (including any trademark or copyright relating to such name or logo) shall be treated as an unrelated trade or business regularly carried on by such organization.'"

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-bill/1/.

S. 18: Fair Tax Act of 2017

On January 3, 2017, S. 18 was introduced in the Senate by Sen. Jerry Moran [R-KS] and cosponsored by Sen. David Perdue [R-GA]. It was read twice and referred to the Senate Committee on Finance. H.R. 25 is a related bill.

The Bill is intended to "promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States." It provides that "the sale of a copyright . . . shall be treated as the sale of taxable services (within the meaning of section 101(a)) if the substance of the sales of copyright . . . constituted the sale of the services that produced the copyrighted material."

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-bill/18/.

S. 180: H-1B and L-1 Visa Reform Act of 2017


The Bill is intended to "amend the Immigration and Nationality Act to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States, and for other purposes." It provides that "The ownership of . . . copyrighted works by a petitioner under section 101(a)(15)(L) does not establish that a particular employee has specialized knowledge. In order to meet the definition under clause (i), the beneficiary shall be a key person with knowledge that is critical for performance of the job duties and is protected from disclosure through . . . copyright . . . ."
For more information, please visit https://www.congress.gov/bill/115th-congress/senate-bill/180/.

S. 661: Comprehensive Resources for Entrepreneurs in the Arts to Transform the Economy Act of 2017

On March 15, 2017, S. 661 was introduced by Sen. Tom Udall [D-NM]. It was referred to the Committee on Finance. It is identical to H.R. 1649.

S. 661 is intended to "assist entrepreneurs, support development of the creative economy, and encourage international cultural exchange, and for other purposes." It provides that "the term 'qualified artistic charitable contribution' means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only" under certain conditions and that, "[i]n the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3)."

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-bill/661/.

S. 760: Open, Public, Electronic, and Necessary Government Data Act

On March 29, 2017, S. 760 was introduced by Sen. Brian Schatz [D-HI], and cosponsored by Sen. Ben Sasse [R-NE]. It has been referred to the Senate Committee on Homeland Security and Governmental Affairs.

S. 760 is intended to "expand the Government's use and administration of data to facilitate transparency, effective governance, and innovation, and for other purposes." It provides that "the term 'nonpublic data asset' . . . includes data provided by contractors that is protected by . . . copyright . . ." It also provides that "When not otherwise prohibited by law, and to the extent practicable, public data assets and nonpublic data assets maintained by the Federal Government shall-(1) be available in an open format; and (2) be available under open licenses." The Congressional Research Service authored the following summary of S. 760:

- This bill requires open government data assets made available by federal agencies (excluding the Government Accountability Office, the Federal Election Commission, and certain other government entities) to be published as machine-readable data. When not otherwise prohibited by law, and to the extent practicable, public data assets and nonpublic data assets maintained by the federal government must be available: (1) in an open format that does not impede use or reuse and that has standards maintained by a standards organization; and (2) under open licenses with a legal guarantee that the data be available at no cost to the public with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting.
• If published government data assets are not available under an open license, the data must be considered part of the worldwide public domain. Agencies may engage with outside organizations and citizens to leverage public data assets for innovation in public and private sectors.

• Agencies must: (1) make their enterprise data inventories available to the public on Data.gov, and (2) designate a point of contact to assist the public and respond to complaints about adherence to open data requirements. For privacy, security, confidentiality, or regulatory reasons, agencies may maintain a nonpublic portion of their inventories.

• The General Services Administration must maintain a single public interface online as a point of entry dedicated to sharing open government data with the public.

• The Office of Management and Budget must develop and maintain an online repository of tools, best practices, and schema standards to facilitate the adoption of open data practices.

On May 17, 2017, the House Committee on Homeland Security and Governmental Affairs ordered S. 760 to be reported favorably and without amendment.


For more information, please visit https://www.congress.gov/bill/115th-congress/senate-bill/760/.

S. 960: Preserving Data in Government Act of 2017

On April 27, 2017, S. 960 was introduced in the Senate by Sen. Gary C. Peters [D-MI] and cosponsored by Sen. Cory Gardner [R-CO]. It was referred to the Committee on Homeland Security and Governmental Affairs.

S. 960 is intended to "amend title 44, United States Code, to protect open, machine-readable databases." It provides, among other things, that "the term 'public data asset' means a data asset created or maintained by an agency, or a contractor of an agency, that-(A) is not protected under copyright . . . laws; and (B)(i) may be released to the public; or (ii) has been released to the public in an open format."

S. 1010: Register of Copyrights Selection and Accountability Act of 2017

On May 2, 2017, S. 1010 was introduced in the Senate by Sen. Chuck Grassley [R-IA] and cosponsored by Sens. Dianne Feinstein [D-CA], Patrick J. Leahy [D-VT], and Orrin G. Hatch [R-UT]. It was referred to the Committee on Rules and Administration.

On May 11, 2017, the text of S. 1010 was made available. It is intended to "amend title 17, United States Code, to provide additional responsibilities for the Register of Copyrights, and for other purposes." The Congressional Resource Service authored the following summary of S. 1010:

- This bill amends federal copyright law to require the President, with the advice and consent of the Senate, to appoint a Register of Copyrights from a list of at least three individuals recommended by a panel composed of:
  
  the Speaker of the House of Representatives;
  the President pro tempore of the Senate;
  the majority and minority leaders of the House and the Senate; and
  the Librarian of Congress.

  (Currently, the Register of Copyrights is appointed by the Librarian of Congress.)

- To be eligible for appointment, the individual must be a U.S. citizen with a professional background and experience in copyright law and must be capable of identifying and supervising a chief information officer responsible for managing modern information technology systems.

- The bill limits the term of office for the Register of Copyrights to 10 years, but the individual may be reappointed subject to the same requirements established in this bill.

- The President may remove the Register of Copyrights from office and must notify both chambers of Congress of any such removal.

- Nothing in this bill may be construed to impact the mandatory deposit requirements under which owners of a copyright or of an exclusive right of publication must deposit in the U.S. Copyright Office two copies or phonorecords of works published in the United States for the use or disposition of the Library of Congress.

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-bill/1010.

S. 1174: Artist-Museum Partnership Act of 2017

On May 18, 2017, S. 1174 was introduced in the Senate by Sen. Patrick Leahy [D-VT]. It was referred to the Committee on Finance. It is identical to H.R. 1830.
S. 1174 was intended to "amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor." It provides that "the term 'qualified artistic charitable contribution' means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only" under certain circumstances. It also provides that in "the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3)." The Congressional Research Service authored the following summary:

- This bill amends the Internal Revenue Code to allow taxpayers who create literary, musical, artistic, scholarly compositions, or similar property a fair market value (determined at the time of contribution) tax deduction for contributions of such properties, the copyrights thereon, or both, to certain tax-exempt organizations, if such properties are properly appraised and are donated no less than 18 months after their creation. The bill limits the amount of the deduction based upon the donor's artistic adjusted gross income, as defined by this bill.


S. 1648: Legislative Branch Appropriations Act, 2018

On July 27, 2017, S. 1648 was introduced as an original measure by the Senate Committee on Appropriations by Sen. James Lankford [R-OK]. It was placed on the Senate Legislative Calendar under General Orders (Calendar No. 184). It is related to H.R. 3162.

The Bill is intended to "mak[e] appropriations for the Legislative Branch for the fiscal year ending September 30, 2018, and for other purposes." It provides as follows:

For all necessary expenses of the Copyright Office, $68,825,000, of which not more than $35,218,000, to remain available until expended, shall be derived from collections credited to this appropriation during fiscal year 2018 under section 708(d) of title 17, United States Code: Provided, That the Copyright Office may not obligate or expend any funds derived from collections under such section, in excess of the amount authorized for obligation or expenditure in appropriations Acts: Provided further, That not more than $6,087,000 shall be derived from collections during fiscal year 2018 under sections 111(d)(2), 119(b)(3), 803(e), 1005, and 1316 of such title: Provided further, That the total amount available for obligation shall be reduced by the amount by which collections are less than $41,305,000: Provided further, That $2,260,000 shall be derived from prior year unobligated balances: Provided further, That not more than $100,000 of the amount appropriated is available for the maintenance of an “International Copyright Institute” in the Copyright Office of the Library of Congress for the purpose of training nationals of developing countries in intellectual property laws and policies: Provided further, That not more than $6,500 may be expended, on the certification of the Librarian of Congress, in
connection with official representation and reception expenses for activities of the International Copyright Institute and for copyright delegations, visitors, and seminars:

Provided further, That, notwithstanding any provision of chapter 8 of title 17, United States Code, any amounts made available under this heading which are attributable to royalty fees and payments received by the Copyright Office pursuant to sections 111, 119, and chapter 10 of such title may be used for the costs incurred in the administration of the Copyright Royalty Judges program, with the exception of the costs of salaries and benefits for the Copyright Royalty Judges and staff under section 802(e).

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-bill/1648/.

S. 1691: Internet of things (IOT) Cybersecurity Improvement Act of 2017

On August 1, 2017, S. 1691 was introduced in the Senate by Sen. Mark R. Warner [D-VA], and cosponsored by Sens. Cory Gardner [R-CO], Sen. Ron Wyden [D-OR], and Sen. Steve Daines [R-MT]. It was referred to the Senate Committee on Homeland Security and Governmental Affairs.

The Bill is intended to "provide minimal cybersecurity operational standards for Internet-connected devices purchased by Federal agencies, and for other purposes." It provides, among other things, adding the following at the end of Section 1203:

(d) Limitation of liability.—A person shall not be held liable under this section if the individual—

(1) in good faith, engaged in researching the cybersecurity of an Internet-connected device of the class, model, or type provided by a contractor to a department or agency of the United States; and

(2) acted in compliance with the guidelines required to be issued by the National Protection and Programs Directorate, and adopted by the contractor described in paragraph (1), under section 3(b) of the Internet of Things (IoT) Cybersecurity Improvement Act of 2017.

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-bill/1691/.

S. 1701: Fair Access to Science and Technology Research Act of 2017

On August 2, 2017, S. 1701 was introduced in the Senate by Sen. John Cornyn [R-TX], and cosponsored by Sen. Ron Wyden [D-OR]. It was referred to the Senate Committee on Homeland Security and Governmental Affairs. It is related to H.R. 3427.

The Bill is intended "provide for Federal agencies to develop public access policies relating to research conducted by employees of that agency or from funds administered by that agency." It
provides, among other things, "Each Federal research public access policy shall not apply to . . .
classified research, research resulting in works that generate revenue or royalties for authors
(such as books) or patentable discoveries, to the extent necessary to protect a copyright or
patent." It also provides that "[n]othing in this Act shall be construed to affect any right under
the provisions of title 17 or 35, United States Code."

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-
bill/1701/.

**S. 1864: Affordable College Textbook Act**

On September 26, 2017, S. 1864 was introduced in the Senate by Sen. Richard J. Durbin [D-IL],
and cosponsored by Sen. Al Franken [D-MN] and Sen. Angus S. King, Jr. [I-ME]. It was
referred to the Senate Committee on Health, Education, Labor, and Pensions.

It is intended to "expand the use of open textbooks in order to achieve savings for students." It
provides, among other things, "Educational resources created under subsection (e) shall be
licensed under a nonexclusive, irrevocable license to the public to exercise any of the rights
under copyright conditioned only on the requirement that attribution be given as directed by the
copyright owner."

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-
bill/1864/.

**S. 1973: Basic Research Act**

On October 17, 2017, S. 1973 was introduced in the Senate by Sen. Rand Paul [R-KY]. It was
referred to the Senate Committee on Homeland Security and Governmental Affairs.

It is intended to "provide for Federal research grant reform." It provides that "Each Federal
research public access policy shall not apply to . . . classified research, research resulting in
works that generate revenue or royalties for authors (such as books) or patentable discoveries, to
the extent necessary to protect a copyright or patent."

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-
bill/1973/.

**S. 2087: Alice Cogswell and Anne Sullivan Macy Act**

On November 7, 2017, S. 2087 was introduced in the Senate by Sen. Edward J. Markey [D-MA],
and cosponsored by Sen. Shelley Moore Capito [R-WV]. It was referred to the Senate
Committee on Health, Education, Labor, and Pensions.

It is intended to "promote and ensure delivery of high-quality special education and related
services to students with visual disabilities or who are deaf or hard of hearing or deaf-blind
through instructional methodologies meeting their unique learning needs, to enhance
accountability for the provision of such services, and for other purposes." It provides: "All matter produced by the Anne Sullivan Macy Center shall be the property of the United States Government, except that entities comprising the consortium of entities described in section 212(b) shall be individually free, within the terms of the contract or cooperative agreement described in section 212(a), to reproduce, or author copyrighted derivative works, using such matter."

For more information, please visit https://www.congress.gov/bill/115th-congress/senate-bill/2087/.
III. COPYRIGHT OFFICE

Policy Studies

Study on the Moral Rights of Attribution and Integrity

STUDY ON THE MORAL RIGHTS OF ATTRIBUTION AND INTEGRITY
Notice on 1/23/2017

The United States Copyright Office is undertaking a public study to assess the current state of U.S. law recognizing and protecting moral rights for authors, specifically the rights of attribution and integrity. As part of this study, the Office will review existing law on the moral rights of attribution and integrity, including provisions found in title 17 of the U.S. Code as well as other federal and state laws, and whether any additional protection is advisable in this area. To support this effort and provide thorough assistance to Congress, the Office is seeking public input on a number of questions.

STUDY ON THE MORAL RIGHTS OF ATTRIBUTION AND INTEGRITY: EXTENSION OF COMMENT PERIOD
Notice on 3/2/2017
URL: https://www.federalregister.gov/documents/2017/03/02/2017-04061/study-on-the-moral-rights-of-attribution-and-integrity-extension-of-comment-period

The United States Copyright Office is extending the deadline for the submission of written comments in response to its January 23, 2017 Notice of Inquiry regarding the study on the moral rights of attribution and integrity.

MORAL RIGHTS OF ATTRIBUTION AND INTEGRITY STUDY WRITTEN COMMENTS

The Copyright Office received 15 short form and 31 long form written comment submissions in response to its Moral Rights of Attribution and Integrity study. The long form submissions are available by clicking on the links below:

- American Association of Law Libraries

- American Society of Journalists & Authors, ASJA

MORAL RIGHTS OF ATTRIBUTION AND INTEGRITY STUDY REPLY WRITTEN COMMENTS

The Copyright Office received 16 reply written comment submissions in response to its moral rights of attribution and integrity study. They are available by clicking on the links below:

The United States Copyright Office is extending the deadlines for the submission of written comments and empirical research studies in response to its November 8, 2016 request for additional comments (“Second Notice”) regarding the Digital Millennium Copyright Act (“DMCA”) safe harbor provisions contained in 17 U.S.C. 512.

SECTION 512 STUDY WRITTEN COMMENTS TO SECOND NOTICE
The Copyright Office received 77 written comment submissions in response to the Second Notice in its Section 512 study. They are available by clicking on the links below:


• Floor64 d/b/a the Copia Institute (https://www.regulations.gov/document?D=COLC-2015-0013-92481)


Motion Picture Association of America, Inc.


Organization for Transformative Works


Joshua L. Simmons
joshua.simmons@kirkland.com


SECTION 512 STUDY WRITTEN COMMENTS ON EMPIRICAL STUDIES

The Copyright Office received 9 written comment submissions in response to its request for empirical studies for its Section 512 study. They are available by clicking on the links below:


COPYRIGHT OFFICE RELEASES REPORT ON SECTION 1201

The U.S. Copyright Office released a report entitled "Section 1201 of Title 17." The report details the findings of the Office’s study of section 1201—the first comprehensive public study of that provision since it was enacted nearly twenty years ago. Section 1201 provides legal protection for technological protection measures (TPMs) used by copyright owners to prevent unauthorized access to or use of their works. The report addresses a variety of issues raised by stakeholders over the course of the study, including consumer issues, the need for new or amended statutory exemptions, the triennial rulemaking process governing temporary exemptions, and the prohibitions on trafficking in tools designed to circumvent TPMs.

The Office does not recommend altering the basic framework of section 1201, concluding that its overall structure and scope remain sound. The Office does, however, recommend certain legislative updates, including expanding existing provisions that allow circumvention of TPMs for security and encryption research and adding new provisions to allow circumvention for other purposes, such as the use of assistive reading technologies and the repair of devices. The Office also recommends an amendment to give the Librarian of Congress discretion to authorize third parties to assist the beneficiaries of temporary exemptions granted via the statute’s triennial rulemaking proceeding. In addition, the Office has identified changes it can make under the current regulatory framework to streamline the process for renewing exemptions and otherwise improve upon the rulemaking process for greater efficiency and public participation.

The full report is available on the Copyright Office’s website at https://www.copyright.gov/policy/1201/.

COPYRIGHT OFFICE RELEASES SECTION 108 DISCUSSION DOCUMENT

The U.S. Copyright Office released its Section 108 Discussion Document. Congress enacted section 108 of Title 17 in 1976, authorizing libraries and archives to reproduce and distribute, without permission, certain copyrighted works on a limited basis for the purposes of preservation, replacement, and research. However, the exceptions outlined in section 108 did not anticipate and no longer address the ways in which copyrighted works are created, distributed, preserved, and accessed in the twenty-first century.

The Discussion Document emphasizes the Copyright Office’s longstanding position that section 108 needs to be updated so that libraries, archives, and museums have a robust, comprehensible, and balanced safe harbor to fulfill their missions. The primary objective of the Discussion Document is to provide a concrete framework for further discussion among stakeholders and
members of Congress. In an effort to provide this framework, the Discussion Document includes model statutory language to guide future discussions and to assist in generating consensus on various discrete issues, such as adding museums to the statute; allowing preservation copies to be made of all works in an eligible entity’s collections; replacing the current three-copy limit with a “reasonably necessary” standard when making copies for preservation and research; clarifying the contract supremacy provision to grant libraries, archives, and museums more flexibility to make preservation and security copies of works covered by licensing and purchasing agreements; and eliminating the exclusion of musical, pictorial, graphic, or sculptural works, and motion pictures or other audiovisual works from the provisions permitting copies made upon the request of users, under certain conditions.

The full Discussion Document, along with background material, is available on the Copyright Office’s website at https://www.copyright.gov/policy/section108/.

Study on Mass Digitization Pilot Program

COPYRIGHT OFFICE REPORTS RESULTS OF PUBLIC INQUIRY ON MASS DIGITIZATION PILOT PROGRAM

The U.S. Copyright Office has submitted a letter to Congress reporting the results of the Office’s public inquiry on establishing a pilot program to facilitate the mass digitization of books and other copyrighted works. The inquiry followed the June 2015 publication of the Office’s report on Orphan Works and Mass Digitization, which proposed extended collective licensing (ECL) as a means of enabling the large-scale clearance of rights necessary for such projects. Because the United States lacks experience with such a system, the report recommended that ECL initially take the form of a limited pilot program. In addition, noting that stakeholder support is essential for ECL to succeed, the Office published a Federal Register notice inviting public input on the appropriate structure and operation of a pilot program. In response, the Office received more than eighty written comments from a wide range of interested parties.

In its letter, the Office reports that the comments indicate an overall lack of stakeholder consensus on key elements of an ECL pilot program. Therefore, the Office concludes that the submission of proposed legislation to Congress would be premature at this time. The Office, however, continues to believe that ECL offers a viable solution for mass digitization projects and stands ready to assist stakeholders in developing consensus-based legislation should Congress wish to pursue further discussion in this area.

The letter, public comments, and background material are available on the Copyright Office website at https://www.copyright.gov/policy/massdigitization/.

Proposed Rulemakings

Rulemaking on Disruption of Copyright Office Electronic Systems

DISRUPTION OF COPYRIGHT OFFICE ELECTRONIC SYSTEMS
Proposed Rule on 3/2/2017
The U.S. Copyright Office is proposing to amend its regulations governing delays in the receipt of material caused by the disruption of postal or other transportation or communication services. As proposed, the amended rule would, for the first time, specifically address the effect of a disruption or suspension of any Copyright Office electronic system on the Office's receipt of applications, fees, deposits, or other materials, and the assignment of a constructive date of receipt to such materials. The proposed rule would also make various revisions to the existing portions of the rule for usability and readability. In addition, the proposed rule would specify how the Office will assign effective dates of receipt when a specific submission is lost in the absence of a declaration of disruption, as might occur during the security screening procedures used for mail that is delivered to the Office.

DISRUPTION OF COPYRIGHT OFFICE ELECTRONIC SYSTEMS PROPOSED RULEMAKING WRITTEN COMMENTS

The Copyright Office received six written comment submissions in response to its Disruption of Copyright Office Electronic Systems proposed rulemaking. They are available by clicking on the links below:


DISRUPTION OF COPYRIGHT OFFICE ELECTRONIC SYSTEMS
Rule on 5/19/2017
URL: https://www.federalregister.gov/documents/2017/05/19/2017-10218/disruption-of-copyright-office-electronic-systems

The U.S. Copyright Office is amending its regulations governing delays in the receipt of material caused by the disruption of postal or other transportation or communication services. The amendments, for the first time, specifically address the effect of a disruption or suspension of
any Copyright Office electronic system on the Office's receipt of applications, fees, deposits, or other materials, and the assignment of a constructive date of receipt to such materials. The amendments also make various revisions to the existing portions of the rule for usability and readability. In addition, the amendments specify how the Office will assign effective dates of receipt when, in the absence of a declaration of a general disruption, the Office does not receive, loses, or misplaces materials that were physically delivered or attempted to be physically delivered to the Office.

Rulemaking on Removal of Personally Identifiable Information From Registration Records

REMOVAL OF PERSONALLY IDENTIFIABLE INFORMATION FROM REGISTRATION RECORDS
Final Rule on 2/2/2017
URL: https://www.federalregister.gov/documents/2017/02/02/2017-02238/removal-of-personally-identifiable-information-from-registration-records

The U.S. Copyright Office is issuing a final rule to allow authors and claimants to replace or remove personally identifiable information (“PII”) from the Office's online registration catalog. This rule allows authors and claimants, or their authorized representatives, to request the replacement or removal of certain PII that is requested by the Office and collected on a registration application, such as a home addresses or personal phone numbers, from the Office's internet-accessible public catalog, while retaining that information in the Office's offline records as required by law. The rule also codifies an existing practice that removes extraneous PII, such as driver's license numbers, social security numbers, banking information, and credit card information, on the Office's own volition or upon request by authors, claimants, or their authorized representatives.

Rulemaking on the Freedom of Information Act

FREEDOM OF INFORMATION ACT REGULATIONS
Rule on 2/7/2017
URL: https://www.federalregister.gov/documents/2017/02/07/2017-01770/freedom-of-information-act-regulations

The U.S. Copyright Office is issuing an interim rule that amends its regulations governing its practices and procedures under the Freedom of Information Act (FOIA), to implement the FOIA Improvement Act of 2016. The regulations are issued on an interim basis without opportunity to comment to ensure that updated regulations are in place as soon as practicable to implement the Act. These amendments are intended to incorporate changes in the law, and provide clear guidance to members of the public in filing a FOIA request with the Office.

FREEDOM OF INFORMATION ACT RULEMAKING WRITTEN COMMENTS
The Copyright Office received four written comment submissions in response to its Freedom of Information Act proposed rulemaking. They are available by clicking on the links below:

- [National Archives and Records Administration](https://www.regulations.gov/document?D=COLC-2017-0001-0002)
- [West Bloomfield High school](https://www.regulations.gov/document?D=COLC-2017-0001-0004)

**Rulemaking on Modernizing Copyright Recordation**

MODERNIZING COPYRIGHT RECORDATION
Proposed Rule on 5/18/2017
URL: [https://www.federalregister.gov/documents/2017/05/18/2017-09810/modernizing-copyright-recordation](https://www.federalregister.gov/documents/2017/05/18/2017-09810/modernizing-copyright-recordation)

The United States Copyright Office is proposing to amend its regulations governing recordation of transfers of copyright ownership, notices of termination, and other documents pertaining to a copyright. These amendments are being proposed in conjunction with the anticipated commencement of development effort for a modernized electronic recordation system.

MODERNIZING COPYRIGHT RECORDATION
Interim Rule on 11/13/2017

The United States Copyright Office is issuing an interim rule amending its regulations governing recordation of transfers of copyright ownership, other documents pertaining to a copyright, and notices of termination. The interim rule adopts a number of the regulatory updates proposed in the notice of proposed rulemaking published on May 18, 2017.

**Rulemaking on Designation of Agent to Receive Notification of Claimed Infringement**

DESIGNATION OF AGENT TO RECEIVE NOTIFICATION OF CLAIMED INFRINGEMENT
Finale Rule on 5/10/2017
This final rule makes non-substantive technical amendments to the U.S. Copyright Office's regulations governing the submission of designated agent and service provider information to the Office pursuant to the Digital Millennium Copyright Act ("DMCA").

UPDATE AND REMINDER CONCERNING ELECTRONIC SYSTEM FOR DESIGNATING AGENTS UNDER DMCA

The U.S. Copyright Office issued a new release of its electronic system to designate and search for agents to receive notifications of claimed infringement under the Digital Millennium Copyright Act ("DMCA"). This release makes a number of updates designed to enhance user experience. . . . For more information about the Office’s DMCA Designated Agent Directory, please visit the system’s home page at https://www.copyright.gov/dmca-directory/.

FINAL REMINDER TO RE-REGISTER DMCA AGENTS IN ELECTRONIC SYSTEM

This is the final reminder from the U.S. Copyright Office that any online service provider that designated an agent with the Office pursuant to the Digital Millennium Copyright Act (DMCA) under the Office’s old paper-based registration process, and that wishes to maintain an active designation with the Office, has until December 31, 2017, to re-register its designation using the Office’s new online registration system. After December 31, 2017, all paper designations will expire and become invalid. Registration in the new system only costs $6 and should only take a few minutes to complete.

Rulemaking on Authentication of Electronic Signatures on Electronically Filed Statements of Account

AUTHENTICATION OF ELECTRONIC SIGNATURES ON ELECTRONICALLY FILED STATEMENTS OF ACCOUNT
Rule on 5/19/2017
URL: https://www.federalregister.gov/documents/2017/05/19/2017-10219/authentication-of-electronic-signatures-on-electronically-filed-statements-of-account

The United States Copyright Office is amending its regulation prescribing requirements related to the submission of Statements of Account under the section 111 license for secondary transmissions of broadcast programming by cable systems. The amendments will allow cable systems operating under the statutory license to electronically sign Statements of Account, and to submit them to the Office electronically.

Rulemaking on Secured Tests

SECURE TESTS
Interim Rule with Request for Comments on 6/12/2017
URL: https://www.federalregister.gov/documents/2017/06/12/2017-12021/secure-tests
The U.S. Copyright Office is issuing an interim rule that memorializes its special procedure for examining secure tests. The interim rule also includes a new workflow that will increase the efficiency of these examinations. Going forward, applicants must submit an online application, upload a redacted copy of the entire test to the electronic registration system, and complete and submit a brief questionnaire about the test. If the work appears to be eligible for the secure test process, the Office will contact the applicant and schedule an appointment to deliver the test to the Office in person. On the appointed date, the applicant must bring a copy of the application and a complete unredacted copy of the actual test. In addition, the applicant must bring a copy of the redacted version of the test, and a signed declaration confirming that this copy is identical to the redacted copy that was uploaded to the electronic registration system. If the Office confirms that the work qualifies as a secure test, it will examine the test as a whole to determine if it contains sufficient copyrightable authorship. If the Office registers the secure test, the registration will be effective as of the date that the Office received the application, filing fee, and the redacted copy of the entire test in proper form through the electronic registration system. The Office welcomes public comment on the interim rule.

SECURE TESTS
Interim Rule with Request for Comments on 11/13/2017
URL: https://www.federalregister.gov/documents/2017/11/13/2017-24532/secure-tests

The U.S. Copyright Office is issuing an update to its interim rule, issued June 12, 2017, governing registration of secure tests. Based on the initial comments received on that interim rule, the Office has determined that there is an immediate need to establish a new group registration option for secure test questions and answers and other related materials (referred to as “test items”) that are stored in an electronic database, test bank, or other medium of expression. This interim rule incorporates most of the same procedures that the Office adopted in its recent interim rule on secure tests and adds additional procedures for group registration. To seek a group registration, applicants will be required to submit an online application, upload a redacted copy of the individual test items to the electronic registration system, and complete and submit a brief questionnaire. If, based on the answers to the questionnaire, the test items appear to be eligible for the group registration option, the Office will contact the applicant and schedule an appointment to deliver these materials to the Office in person. On the appointed date, the applicant must bring a copy of the application and a complete unredacted copy of the actual test items. In addition, the applicant must bring a redacted copy of the test items, and a signed declaration confirming that this copy is identical to the redacted copy that was uploaded to the electronic registration system. The Office will examine each test item to determine if it contains sufficient copyrightable authorship. If the Office registers the claim, the registration will cover each test item as a separate work of authorship, and the registration will be effective as of the date the Office initially received the application, filing fee, and the redacted copy of the test items in proper form through the electronic registration system. To be clear, the previous interim rule otherwise remains in effect, and applicants may continue to use that rule to register individual secure tests. The Office welcomes public comment on both this interim rule and the June 12, 2017 interim rule.
SECURE TESTS: EXTENSION OF COMMENT PERIOD
Interim Rule with Request for Comments; Extension of Comment Period on 12/1/2017
URL: https://www.federalregister.gov/documents/2017/12/01/2017-25859/secure-tests-extension-of-comment-period

The U.S. Copyright Office is extending the deadline for the submission of written comments in response to its June 12, 2017 and November 13, 2017 interim rules, regarding changes to the special procedure for examining secure tests, and the creation of a new group registration option for secure tests, respectively.

Rulemaking on Supplementary Registration

SUPPLEMENTARY REGISTRATION
Final Rule on 6/15/2017
URL: https://www.federalregister.gov/documents/2017/06/15/2017-12453/supplementary-registration

The United States Copyright Office is modernizing its registration practices to increase the efficiency of the registration process for both the Office and copyright owners. To further these efforts, this final rule adopts modifications to the Office's procedures for supplementary registration. Specifically, the Office adopts a new rule that, in most cases, requires applicants to submit an online application in order to correct or amplify the information set forth in a basic registration. In addition, the Office is amending the regulation to codify and update certain practices that are set forth in the Compendium of U.S. Copyright Office Practices, Third Edition and to improve the readability of the regulation.

Rulemaking on Exemptions to Permit Circumvention of Access Controls on Copyrighted Works

EXEMPTIONS TO PERMIT CIRCUMVENTION OF ACCESS CONTROLS ON COPYRIGHTED WORKS
Notice of Inquiry and Request for Petitions on 6/30/2017
URL: https://www.federalregister.gov/documents/2017/06/30/2017-13815/exemptions-to-permit-circumvention-of-access-controls-on-copyrighted-works

The United States Copyright Office is initiating the seventh triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”), concerning possible temporary exemptions to the DMCA’s prohibition against circumvention of technological measures that control access to copyrighted works. In this proceeding, the Copyright Office is establishing a new, streamlined procedure for the renewal of exemptions that were granted during the sixth triennial rulemaking. If renewed, those current exemptions would remain in force for an additional three-year period (October 2018—October 2021). Members of the public seeking the renewal of current exemptions should submit petitions as described below; parties opposing such renewal will then have the opportunity to file comments in response. The Office is also accepting petitions for new exemptions to engage in activities not currently permitted by existing
exemptions, which may include proposals that expand upon a current exemption. Those petitions, and any renewal petitions that are meaningfully opposed, will be considered pursuant to a more comprehensive rulemaking process similar to that used for the sixth rulemaking (i.e., three rounds of written comment, followed by public hearings).

RENEWAL PETITIONS IN SEVENTH TRIENNIAL SECTION 1201 PROCEEDING (2018)

The Copyright Office received 39 written petitions for renewal of current exemptions in response to the Seventh Triennial Section 1201 Proceeding. They are available by clicking on the links below:

- AFB, ACB, TLPC, ARL - Assistive Tech.  

- American Farm Bureau Federation - Repair  

- Auto Care Association, Consumer Technology Association, ifixit.com and Owners Rights Initiative - Repair  

- Bobette Buster, Authors Alliance, American Association of University Professors - Film Analysis  

- Center for Democracy & Technology - Security Research  

- Competitive Carriers Association - Unblocking  

- Consumers Union - Unlocking  

- Peter Decherney - AV Educ. MOOCs  

- Peter Decherney - AV Educ. Univ.  

- Ed Felten, Alex Halderman, and Owners' Rights Initiative - Security Research  

- Electronic Frontier Foundation - Abandoned Video Games  
• Electronic Frontier Foundation - Jailbreaking

• Electronic Frontier Foundation - Repair

• Renee Hobbs - AV Educ. K-12

• Renee Hobbs - AV Educ. Nonprofits

• Renee Hobbs - AV Educ. Univ.

• Institute of Scrap Recycling Industries, Inc. - Unlocking

• International Documentary Association et al. - Documentary Films

• Libiquity LLC - Jailbreaking

• Libiquity LLC - Security Research

• Library Copyright Alliance - Abandoned Video Games

• Library Copyright Alliance - AV Educ. K-12

• Library Copyright Alliance - AV Educ. Nonprofits

• New Media Rights - Documentary Films

• New Media Rights - Jailbreaking

• New Media Rights - Noncom. Videos
ABA Copyright Division
http://apps.americanbar.org/dch/committee.cfm?com=PT030000

- Organization for Transformative Works - Noncom. Videos


- Software Freedom Conservancy - Jailbreaking

- The Medical Device Researchers Coalition - Hugo Campos, Karen Sandler, and Jay Radcliffe - Medical Devices

- The Medical Device Researchers Coalition - Hugo Campos, Karen Sandler, and Jay Radcliffe - Security Research

- The Motor & Equipment Manufacturers Association - Repair

- The Motor & Equipment Manufacturers Association - Security Research

- The Security Researchers - Security Research

- University of Michigan Library Copyright Office - Abandoned Video Games

- University of Michigan Library Copyright Office - Assistive Tech.

- University of Michigan Library Copyright Office - AV Educ. Univ.

- USC Intellectual Property and Technology Law Clinic - Repair

- Michael Weinberg, et al - 3D Printers

COMMENTS ON RENEWAL PETITIONS IN SEVENTH TRIENNIAL SECTION 1201 PROCEEDING (2018)
The Copyright Office received six comments on written petitions for renewal of current exemptions in response to the Seventh Triennial Section 1201 Proceeding. They are available by clicking on the links below:

- Alliance of Automobile Manufacturers

- BSA The Software Alliance

- BSA | The Software Alliance - Jailbreaking

- DVD CCA and AACS LA

- DVD CCA and AACS LA

- Joint Creators and Copyright Owners (ESA, MPAA, RIAA)

NEW PETITIONS IN SEVENTH TRIENNIAL SECTION 1201 PROCEEDING (2018)

The Copyright Office received 23 written petitions for new exemptions in response to the Seventh Triennial Section 1201 Proceeding. They are available by clicking on the links below:

- Air Informatics LLC

- ATSP, ARL, ALA, ACRL

- Authors Alliance et al.

- Auto Care Association and Consumer Technology Association

- Brigham Young University, Brigham Young University - Idaho

- Center for Democracy & Technology

• Electronic Frontier Foundation

• Electronic Frontier Foundation

• Electronic Frontier Foundation, New Media Rights, and Organization for Transformative Works

• Prof. Ed Felten and Prof. J. Alex Halderman

• Professor Matthew Green


• Film Independent, et al.


• Institute of Scrap Recycling Industries, Inc.

• Institute of Scrap Recycling Industries, Inc.

• IPT USC, AFBF, NCGA, and NFU

• The Museum of Art and Digital Entertainment


EXEMPTIONS TO PERMIT CIRCUMVENTION OF ACCESS CONTROLS ON COPYRIGHTED WORKS

Notice of Proposed Rulemaking on 10/26/2017
URL: https://www.federalregister.gov/documents/2017/10/26/2017-23038/exemptions-to-permit-circumvention-of-access-controls-on-copyrighted-works

The United States Copyright Office (“Copyright Office” or “Office”) is conducting the seventh triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”), concerning possible temporary exemptions to the DMCA’s prohibition against circumvention of technological measures that control access to copyrighted works. In this proceeding, the Copyright Office has established a new, streamlined procedure for the renewal of exemptions that were granted during the sixth triennial rulemaking. It is also considering petitions for new exemptions to engage in activities not currently permitted by existing exemptions. On June 30, 2017, the Office published a Notice of Inquiry requesting petitions to renew existing exemptions and comments in response to those petitions, as well as petitions for new exemptions to engage in activities not currently permitted by existing exemptions. The Office has carefully considered the comments received in response to that Notice. With this Notice of Proposed Rulemaking (“NPRM”), the Office intends to recommend each of the existing exemptions for readoption. This NPRM also initiates three rounds of public comment on the newly-proposed exemptions. Interested parties are invited to make full legal and evidentiary submissions in support of or in opposition to the proposed exemptions, in accordance with the requirements set forth below.

Rulemaking on Group Registration of Contributions to Periodicals

GROUP REGISTRATION OF CONTRIBUTIONS TO PERIODICALS
Final Rule on 6/29/2017
URL: https://www.federalregister.gov/documents/2017/06/29/2017-13548/group-registration-of-contributions-to-periodicals

The United States Copyright Office is modernizing its registration practices to increase the efficiency of the registration process for both the Office and copyright owners. To further these efforts, this final rule adopts modifications to the Office's procedures for group registration for contributions to periodicals. Specifically, the Office adopts a new requirement that applicants seeking copyright registrations for groups of contributions to periodicals must submit applications through the Office's electronic registration system; modifies the deposit requirement by requiring applicants to submit their contributions in a digital format and to upload those files through the electronic system; clarifies the eligibility requirements; and alters the administrative classes used for such registrations.

Rulemaking on Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions

SIMPLIFYING DEPOSIT REQUIREMENTS FOR CERTAIN LITERARY WORKS AND MUSICAL COMPOSITIONS
Notice of Proposed Rulemaking on 8/16/2017
The United States Copyright Office is proposing to amend the regulations governing the deposit requirements for certain types of literary works and musical compositions. Specifically, the proposed rule will apply to certain types of “literary monographs,” which are defined, in part, as literary works published in one volume or a finite number of separate volumes. The proposed rule also applies to musical compositions that are published in the United States in print formats—that is, compositions published as “copies” rather than solely as phonorecords, as referenced in the Copyright Act. Under the current regulations, two copies of the best edition are generally needed to register these types of works and to comply with the mandatory deposit requirement. Under the proposed rule, copyright owners will be able to satisfy both requirements for literary monographs by submitting one copy of the best edition of the work, although the Office will retain the right to demand a second copy under the mandatory deposit provision should the Library need it. Copyright owners will also be able to satisfy both requirements for certain musical compositions by submitting one copy of the best edition. As part of these changes, the proposed rule also clarifies the deposit requirements for musical compositions published both in print and phonorecord formats. For musical works (i.e., musical compositions) published in both formats, the Office will require the submission of the print version for purposes of copyright registration. If the musical composition is published only as a phonorecord, the applicant should submit the phonorecord. All of these changes will improve the efficiency of registration and mandatory deposit for both the Office and copyright owners alike, ensuring that the Office has an adequate registration record and continuing to make these works available to the Library of Congress when needed for use in its collections or other disposition. The Office invites public comment on this proposal.

Rulemaking on Affixation and Position of Copyright Notice

AFFIXATION AND POSITION OF COPYRIGHT NOTICE
Final Rule on 9/12/2017

This final rule makes a non-substantive technical change to the U.S. Copyright Office's regulations governing the affixation and position of copyright notice on various types of works.

Rulemaking on Group Registration of Unpublished Works

GROUP REGISTRATION OF UNPUBLISHED WORKS
Notice of Proposed Rulemaking on 10/12/2017
URL: https://www.federalregister.gov/documents/2017/10/12/2017-21722/group-registration-of-unpublished-works

The U.S. Copyright Office is proposing to create a new group registration option for a limited number of unpublished works. To qualify for this group option, all the works must be created by the same author or the same joint authors, and the author or joint authors must be named as the
copyright claimant for each work. The claim to copyright in each work must be the same, and each work must be registered in the same administrative class. In general, applicants will be allowed to include up to five works in each submission. Applicants will be required to submit an online application and upload their works to the electronic registration system, although the Office may waive these requirements in exceptional cases. This new group registration option will replace the current “unpublished collections” option, which the Office has determined is an ineffective mechanism for registration of multiple unpublished works; among other things, it allows applicants to register an essentially unlimited number of works. The proposed rule will allow the Office to more easily examine each work for copyrightable authorship, create a more robust record of the claim, and improve the efficiency of the registration process. The Proposed Rule also makes unrelated technical amendments to the “unit of publication” regulation.

GROUP REGISTRATION OF UNPUBLISHED WORKS: EXTENSION OF COMMENT PERIOD
Notice of Proposed Rulemaking; Extension of Comment Period on 11/13/2017

The U.S. Copyright Office is extending the deadlines for the submission of written comments in response to its October 12, 2017 notice of proposed rulemaking, regarding the creation of a new group registration option for unpublished works to replace the existing “unpublished collections” registration option. In this document, the Office also clarifies that the new group registration option is not intended for group registration of unpublished photographs; that is the subject of a separate proposed rulemaking, which would permit submission of up to 750 photographs on one application.

Rulemaking on Group Registration of Newspapers

GROUP REGISTRATION OF NEWSPAPERS
Notice of Proposed Rulemaking on 11/6/2017
URL: https://www.federalregister.gov/documents/2017/11/06/2017-23917/group-registration-of-newspapers

The U.S. Copyright Office is proposing to amend its regulation governing the group registration option for newspapers. The proposed rule will make a number of changes to reflect current Office practices, promote efficiency of the registration process, and encourage broader participation in the registration system by reducing the burden on applicants. Specifically, the proposed rule revises the definition of “newspaper issues” and clarifies that the group registration option is available to any qualifying “newspaper issue.” The proposed rule will require applicants to file an online application rather than a paper application, and upload a complete digital copy of each issue through the electronic registration system instead of submitting them in physical form. The Library of Congress intends to incorporate digital copies of newspapers received by the Office under this group registration option, and provide public access to them, subject to certain restrictions set forth in the proposed rule. Applicants may continue to submit their issues on microfilm (in addition to submitting digital files) on a
Rulemaking on Statutory Cable, Satellite, and DART License Reporting Practices

STATUTORY CABLE, SATELLITE, AND DART LICENSE REPORTING PRACTICES
Notice of Proposed Rulemaking on 12/1/2017
URL: https://www.federalregister.gov/documents/2017/12/01/2017-25487/statutory-cable-satellite-and-dart-license-reporting-practices

The U.S. Copyright Office (“Office”) is seeking comment on proposed rules governing the royalty reporting practices of cable operators under section 111 and proposed revisions to the Statement of Account forms, and on proposed amendments to the Statement of Account filing requirements. With this Notice of Proposed Rulemaking, the Office intends to resolve issues raised in an earlier Notice of Inquiry directed towards cable reporting practices,[1] as well as address additional issues that have subsequently arisen. Further, to the extent this rulemaking proposes changes to the Office's section 111 regulations governing the processing of refunds, supplemental or amended payments, or calculation of interest, as well as case management procedures, the Office proposes similar changes with regard to the regulations governing the statutory licenses for satellite carriers and digital audio recording devices or media.

STATUTORY CABLE, SATELLITE, AND DART LICENSE REPORTING PRACTICES
Request for Reply Comments; Notice of Ex-Parte Communication on 12/11/2017

On December 1, 2017, the United States Copyright Office published a notice of proposed rulemaking and request for comments concerning the royalty reporting practices of cable operators under section 111 and proposed revisions to the Statement of Account forms, and on proposed amendments to the Statement of Account filing requirements. The Copyright Office has determined that reply comments would also be appropriate for this rulemaking. In addition, the Office has determined that informal ex-parte communications with interested parties might be beneficial, such as to discuss nuances of proposed regulatory language.

STATUTORY CABLE, SATELLITE, AND DART LICENSE REPORTING PRACTICES
Notice of Proposed Rulemaking; Extension of Comment Period on 12/27/2017

voluntary basis if the microfilm is received by December 31, 2019. After that date, the microfilm option will be phased out. The proposed rule will clarify that each newspaper issue in the group must be a new collective work and a work made for hire, that the author and copyright claimant for each issue must be the same person or organization, and will clarify the scope of protection for newspaper issues, compared to individual components appearing within those issues. In addition, the proposed rule will require applicants to submit a full month of issues, and submit their claims within three months after the publication of the earliest issue in the group. The Office invites public comment on these proposed changes.
The United States Copyright Office is extending the deadlines for the submission of written comments in response to its December 1, 2017 notice of proposed rulemaking concerning the royalty reporting practices of cable operators under section 111 and proposed revisions to the Statement of Account forms, and on proposed amendments to the Statement of Account filing requirements.

Registration Practices

COPYRIGHT OFFICE RELEASES AN UPDATED DRAFT OF THE COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES, THIRD EDITION

Acting Register of Copyrights Karyn Temple Claggett released a revised draft of the Compendium of U.S. Copyright Office Practices, Third Edition. This draft includes the first proposed updates to the Compendium since its release in December 2014. The public draft is available on the Office's website at https://copyright.gov/comp3/draft.html. It will go into effect on July 3, 2017.

The proposed updates are the result of a comprehensive review of the Office's practices and procedures. The draft revisions to the registration chapters clarify how and when the Office communicates with applicants and how it handles duplicate claims, deposit requirements, and claims involving multiple works, among other improvements. The update also provides preliminary guidance for claims involving useful articles based on the Supreme Court's recent decision in Star Athletica v. Varsity Brands.

The draft revisions to the recordation chapter provide additional guidance for recording notices of termination and information on the Office's new electronic system for the designation of agents. The draft update also addresses recent changes in the Office's regulations, including the "mailbox rule" for requests for reconsideration, new procedures for removing personally identifiable information, and changes made by the Office's technical amendments.

Additionally, the Compendium has been reformatted to improve readability for online and offline users. When the revision is released in final form, it will include improved hyperlinks to provide direct access to legal citations and resources on the Office's website, as well as improved cross-references between chapters.

Public comments on this draft may be submitted from June 1 to June 30 using the provided form. See www.copyright.gov/comp3/draft.html for more information.

COPYRIGHT OFFICE RELEASES REDLINES FOR DRAFT COMPELLDIUM

The U.S. Copyright Office announced the posting of redlines comparing the current version of Compendium of Copyright Office Practices (Third), which was released December 22, 2014, and
the public draft of Compendium (Third), which was released June 1, 2017. The redlines are available on the revision history portion of the Compendium webpage at https://www.copyright.gov/comp3/revisions.html. They are intended to assist members of the public in understanding the amendments and revisions contained in the public draft. The Office previously released a list of all sections that have been added, amended, or removed in this update, and a set of release notes providing a brief summary of the substantive revisions. The Office has extended the deadline to provide comments until July 30, 2017. Comments may be submitted on the Office’s website.

COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES

The U.S. Copyright Office is announcing the release of an update to its administrative manual, the Compendium of U.S. Copyright Office Practices, Third Edition, which goes into effect as of September 29, 2017.

Circulars

COPYRIGHT OFFICE BEGINS RELEASE OF REFRESHED AND UPDATED CIRCULARS

The U.S. Copyright Office began its release of refreshed and updated circulars to provide up-to-date and authoritative copyright information for a broad general audience. This release of 31 circulars represents a wide range of topics including copyright fundamentals, core Office procedures, Licensing Division practices, and work-specific application tips. These circulars are subject to two notable changes: (1) reformatting for optimal online reading and (2) revision to conform to the third edition of the Compendium of U.S. Copyright Office Practices. Circulars have served as a gateway to copyright law and Office practices since the late 1800s, and this is the first design update in more than a decade.

Remaining circulars will be released on a rolling basis through the end of 2017. The updated circulars are available at https://www.copyright.gov/circs/, and a table of topics can be found at https://www.copyright.gov/circs/circular-update-guide.pdf.

Public Notices

Pilot Program for Bulk Submission of Claims to Copyright

PILOT PROGRAM FOR BULK SUBMISSION OF CLAIMS TO COPYRIGHT
Public Notice on 5/9/2017
URL: https://www.federalregister.gov/documents/2017/05/09/2017-09317/pilot-program-for-bulk-submission-of-claims-to-copyright
The U.S. Copyright Office is announcing a pilot program that will allow for the bulk submission of claims to copyright in certain limited types of literary works. Specifically, at this time, the pilot program is limited to claims to single literary works that have a single author, where all content that appears in the work was created and is owned solely by that single author. Applicants that participate in the pilot will be required to provide author, title, and other pertinent information for each work they submit. And they will be required to upload a copy of each work and pay the appropriate filing fee. But they will be able to bypass the Office's online interface and transmit their claims directly into the electronic registration system, instead of filing them on an individual basis. To participate in the pilot, applicants would have to comply with certain technical requirements, which are discussed below. The Office is offering this pilot as part of its continuing effort to increase the efficiency of the registration system for both applicants and the Office alike.

**IT Modernization Plan**

**MODIFIED U.S. COPYRIGHT OFFICE PROVISIONAL IT MODERNIZATION PLAN**

The U.S. Copyright Office has prepared a Modified U.S. Copyright Office Provisional IT Modernization Plan at the direction of the House Committee on Appropriations. See 163 Cong. Rec. H4033 (daily ed. May 3, 2017). The Committee directed the Register to modify the Provisional Information Technology Modernization Plan and Cost Analysis (Provisional IT Plan) published by the Office in 2016 to “include potential opportunities for shared efficiencies and cost-savings as well as ways the Library’s CIO Office can support the Copyright Office in its overall modernization efforts.”

The Modified IT Plan maintains the Office’s focus on creating an IT system that is robust and flexible enough to facilitate the work of Copyright Office not only as it exists now, but also as it may be in the future, and documents how this goal may be achieved under a shared services model. The Modified IT Plan further describes the progress that has been made on Copyright Office IT modernization to date and sets forth anticipated milestones and timelines for further work on this important task.

The Committee further charged the Office to “include any new funding strategies based on the comments received from the public regarding changes in fee structures.” See 163 Cong. Rec. H4033 (daily ed. May 3, 2017). The Modified IT Plan accordingly reiterates the Office’s belief in the importance of increased flexibility for the Office in the collection and application of fees, including potential adoption of innovative fee strategies such as subscription fees, differential fees, or additional fees for high-volume access to improved and modernized data.

The Modified IT Plan is available at https://www.copyright.gov/reports/itplan/.

**Publication of Review Board Decisions**

**COPYRIGHT OFFICE PUBLISHES RECENT REVIEW BOARD DECISIONS**
The Copyright Office today announces the launch of an online database of decisions from April 2016 to present by the U.S. Copyright Office Review Board, which hears final administrative appeals of refusals of copyright registration. The decisions are searchable and include an index; new decisions will be added as they are issued. The decisions will be a valuable resource to those seeking a better understanding of how the Copyright Office assesses whether works satisfy the legal and formal requirements for copyright registration. The index is available at https://www.copyright.gov/rulings-filings/review-board/.

COPYRIGHT OFFICE PUBLISHES ARCHIVE OF BRIEFS AND LEGAL OPINIONS

Under the Copyright Act, the Copyright Office is responsible for advising the courts on issues of copyright law. This advice manifests itself in many forms. For instance, based on advice received from the Office, the Department of Justice files briefs in federal court on behalf of the federal government on issues of copyright law. In addition, the Copyright Office issues binding opinions on questions of copyright law to the Copyright Royalty Board.

These briefs and legal opinions are valuable resources for those seeking to understand the Copyright Office’s view of copyright law. Today, for the first time, the Copyright Office has published at one place on its website an archive of these briefs and legal opinions. The Office plans to periodically update this archive with new documents and any older documents it discovers.

The archive is available https://www.copyright.gov/rulings-filings/index.html.

COPYRIGHT OFFICE WELCOMES NEW CLASS OF RINGER FELLOWS

The U.S. Copyright Office is pleased to announce that Sarah Gersten and Emma Kleiner are joining the Office as fellows in the 2017–2019 Barbara A. Ringer Copyright Honors Program. Gersten and Kleiner begin their two-year appointments this month and will receive assignments from multiple departments within the Copyright Office, including the Office of the Register, Office of the General Counsel, Office of Policy and International Affairs, and Office of Registration Policy and Practice. For more information, please visit https://copyright.gov/about/special-programs/ringer.html.

COPYRIGHT OFFICE TECHNICAL AMENDMENTS

Final Rule on 2/6/2017
URL: https://www.federalregister.gov/documents/2017/02/06/2016-29625/copyright-office-technical-amendments
The U.S. Copyright Office is amending its regulations governing registration, recordation, licensing, and other services that the Office provides. The amendments will improve the quality of the Office's regulations by updating cross-references to the Copyright Act and the Office's regulations, replacing outdated terminology, reflecting structural changes to the Office and its senior management, eliminating expired or obsolete provisions, and correcting nonsubstantive errors.

COPYRIGHT OFFICE TECHNICAL AMENDMENTS
Rule on 3/1/2017
URL: https://www.federalregister.gov/documents/2017/03/01/2017-03946/copyright-office-technical-amendments

This document withdraws a portion of the final rule that would revise the Office's Privacy Act regulations, because that section will have already been amended in a separate document by the time this rule is effective.

Audit
NOTICE OF INTENT TO AUDIT
Public Notice on 2/3/2017
URL: https://www.federalregister.gov/documents/2017/02/03/2017-02294/notice-of-intent-to-audit

The U.S. Copyright Office is announcing receipt of eight notices of intent to audit certain statements of account filed by cable operators and satellite carriers pursuant to the section 111 and 119 statutory licenses.

Fees
COPYRIGHT OFFICE SUBMITS PROPOSED FEE SCHEDULE AND ANALYSIS TO CONGRESS

Today, the U.S. Copyright Office submitted to Congress a schedule and analysis of a proposed fee for recording certain types of documents with the Office. Specifically, the Office proposes to establish a separate, lower fee for documents submitted for recordation that are accompanied by an electronic title list; i.e., a list of certain indexing information about the copyrighted works to which such documents pertain. These lists save Office staff from needing to find and input this often voluminous information manually. The Office anticipates that a lower fee will incentivize more remitters to use these electronic lists, which should help the Office to improve its processing efficiency. The Office also anticipates that a lower fee should result in an increase in documents submitted for recordation.

Pursuant to 17 U.S.C. § 708(b), the Register of Copyrights may institute the new fee 120 days after the proposed schedule is submitted to Congress unless Congress enacts a law within the

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120-day period stating that it does not approve the schedule. The Office seeks to implement the new fee on or about December 18, 2017.


FEES FOR ELECTRONIC RECORDATION AND NOTICES OF INTENTION TO OBTAIN A COMPULSORY LICENSE
Final Rule on 11/13/2017

The U.S. Copyright Office is publishing a final rule establishing a separate, lower filing fee for recording documents when they are submitted with an electronic title list. Separately, the Office is noting a policy change, effective on the same date as the final rule, to require the payment of fees for the filing of all notices of intention to obtain a compulsory license to make and distribute phonorecords, including those that are filed in the Office after failed delivery to the copyright owner.

Events

SAVE THE DATE: CELEBRATE WORLD IP DAY AT THE COPYRIGHT OFFICE

The U.S. Copyright Office will host a program in recognition of World Intellectual Property Day on Wednesday, April 26, 2017, at 10:30 a.m. in the historic Coolidge Auditorium in the Jefferson Building in Washington, DC. This year's theme, as announced by the World Intellectual Property Organization (WIPO), is "Innovation - Improving Lives."

This program will feature remarks and panel discussions focusing on the impact of creative works and performances on the lives of both creators and the public. In partnership with the Copyright Alliance, this Copyright Office program will include panel discussions featuring Linda Perry (rock singer-songwriter, producer, member of the Songwriters Hall of Fame), Jason King (musician, performer, journalist, scholar), and Steve Bogard (writer of ten number one country songs, member of Nashville Songwriters Association International). The panel will be moderated by Eric Schwartz (partner, Mitchell, Silberberg & Knupp LLP). Introductory remarks will be made by Karyn Temple Claggett, Acting Register of Copyrights, and Keith Kupferschmid, Chief Executive Officer of the Copyright Alliance.

To show the importance of recording technology as a tool of creativity, this program also will include excerpts from the eight-part PBS documentary series, Soundbreaking: Stories From the Cutting Edge of Recorded Music.

World Intellectual Property Day, observed on April 26th since 2000, marks the date in 1970 when the WIPO Convention came into force. The anniversary of this occasion is observed as a way of promoting and increasing general understanding of intellectual property. This program is
part of the Copyright Matters lecture series, and is free and open to the public. Please visit the event page at https://www.copyright.gov/copyrightmatters/worldip2017.html to stay apprised of updated information about this program and speakers. Request ADA accommodations five business days in advance at (202) 707-6362 or ada@loc.gov.
IV. COPYRIGHT ROYALTY BOARD

Determinations of Royalty Rates and Terms

DETERMINATION OF ROYALTY RATES AND TERMS FOR MAKING EPHEMERAL COPIES OF SOUND RECORDINGS FOR TRANSMISSION TO BUSINESS ESTABLISHMENTS (BUSINESS ESTABLISHMENTS III)
Notice on 1/3/2017

The Copyright Royalty Judges (Judges) announce commencement of a proceeding [1] to determine reasonable royalty rates and terms for the recording of ephemeral copies of sound recordings pursuant to 17 U.S.C. 112(e)(1) to facilitate digital audio transmissions of those sound recordings to business establishments pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv). The royalty rates and terms the Judges determine in this proceeding will apply during the period beginning January 1, 2019, and ending December 31, 2023. The Judges also announce the date by which a party wishing to participate in the rate determination proceeding must file its Petition to Participate and pay the accompanying $150 filing fee.

DETERMINATION OF ROYALTY RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (PHONORECORDS III); SUBPART A CONFIGURATIONS OF THE MECHANICAL LICENSE
Final Rule on 3/28/2017

The Copyright Royalty Judges publish final regulations that set continued, unaltered rates and terms for subpart A configurations subject to the statutory license to use nondramatic musical works to make and distribute phonorecords of those works (the Mechanical License). In addition, the Judges correct an outdated cross-reference in the regulations.

DETERMINATION OF RATES AND TERMS FOR PUBLIC BROADCASTING (PB III)
Proposed Rule on 11/7/2017

The Copyright Royalty Judges solicit comments on proposed rates and terms for use of certain works in connection with noncommercial broadcasting for the period commencing January 1, 2018, and ending on December 31, 2022.

DETERMINATION OF RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES AND SATELLITE DIGITAL AUDIO RADIO SERVICES
Ruling on Regulatory Interpretation on 11/30/2017

The Copyright Royalty Judges publish their ruling on regulatory interpretation that was referred to them by the United States District Court for the District Of Columbia. The regulation at issue is about gross revenue exclusions that a satellite digital audio radio service may use when calculating royalty payments owed to SoundExchange, a collective for copyright owners, for digital transmissions of sound recordings pursuant to a statutory license. The Judges find that Sirius XM properly interpreted the regulation to apply to pre-'72 sound recordings and that it improperly excluded certain revenues from its Gross Revenues royalty base.

**Adjustment of Royalty Rates**

**ADJUSTMENT OF CABLE STATUTORY LICENSE ROYALTY RATES**
Proposed Rule on 5/30/2017
URL: https://www.federalregister.gov/documents/2017/05/30/2017-10970/adjustment-of-cable-statutory-license-royalty-rates

The Copyright Royalty Judges (Judges) publish for comment proposed regulations to require covered cable systems to pay a separate per-telecast royalty (a Sports Surcharge) in addition to the other royalties that that cable system must pay under Section 111 of the Copyright Act.

**ADJUSTMENT OF ROYALTY RATES FOR STATUTORY CABLE RETRANSMISSION LICENSE**
Request for Comments on 9/22/2017

The Copyright Royalty Judges solicit reply comments on the legal issue of the purported reach of the proposed rules relating to a cable system license royalty surcharge for retransmission of broadcasts of certain professional sports events.

**COST OF LIVING ADJUSTMENT TO SATELLITE CARRIER COMPULSORY LICENSE ROYALTY RATES**
Final Rule on 11/27/2017

The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 2.0% in the royalty rates satellite carriers pay for a compulsory license under the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2016 to October 2017.
COST OF LIVING ADJUSTMENT TO ROYALTY RATES FOR WEBCASTER STATUTORY LICENSE
Final Rule on 11/27/2017

The Copyright Royalty Judges announce a cost of living adjustment (COLA) in the royalty rates that commercial and noncommercial noninteractive webcasters pay for eligible transmissions pursuant to the statutory licenses for the public performance of and for the making of ephemeral reproductions of sound recordings.

Distribution of Royalty Funds

DISTRIBUTION OF 2010-13 SATELLITE ROYALTY FUNDS
Notice on 1/23/2017

The Copyright Royalty Judges announce settlement of controversies and a request for partial distribution of satellite television retransmission royalties claimed by Music Claimants. Music Claimants include Broadcast Music, Inc. (BMI) and the American Society of Composers, Authors, and Publishers (ASCAP), as well as SESAC, Inc.

DISTRIBUTION OF 2010-13 CABLE ROYALTY FUNDS
Notice on 1/23/2017

The Copyright Royalty Judges announce settlement of controversies and requests for partial distribution of cable television distant retransmission royalties claimed by National Public Radio (NPR) and Music Claimants. National Public Radio appeared in this proceeding on its own behalf and on behalf of its NPR Members retransmitted as distant signals by cable television operators. Music Claimants include Broadcast Music, Inc. (BMI) and the American Society of Composers, Authors, and Publishers (ASCAP), as well as SESAC, Inc.

DISTRIBUTION OF 2015 SATELLITE ROYALTY FUNDS
Notice Requesting Comments on 4/17/2017

The Copyright Royalty Judges solicit comments on a motion of Allocation Phase claimants for partial distribution of 2015 satellite royalty funds.
DISTRIBUTION OF 2015 CABLE ROYALTY FUNDS
Notice Requesting Comments on 5/25/2017

The Copyright Royalty Judges solicit comments on a motion of Allocation Phase Claimants for partial distribution of 2015 cable royalty funds.

DISTRIBUTION OF 2015 DART SOUND RECORDINGS FUND ROYALTIES (COPYRIGHT OWNERS AND FEATURED ARTISTS SUBFUNDS)
Notice Soliciting Comments on Motion for Partial Distribution on 9/14/2017

The Copyright Royalty Judges solicit comments on a motion for partial distribution in connection with 2015 DART Sound Recordings Fund royalties.

Notice Announcing Commencement of Proceeding with Request for Petitions to Participate on 9/1/2017

The Copyright Royalty Judges announce the commencement of a proceeding to determine the distribution of the digital audio recording technology royalty fees in the 2009, 2010, and 2011 Musical Works Funds. The Judges also announce the date by which a party who wishes to participate in this proceeding must file its Petition to Participate and the accompanying filing fee, if applicable.

DISTRIBUTION OF 2015 SATELLITE ROYALTY FUNDS
Notice Requesting Reply Comments on 9/29/2017

The Copyright Royalty Judges solicit reply comments on a motion of Allocation Phase claimants for partial distribution of 2015 satellite royalty funds.

Register of Copyright Referrals

SCOPE OF PREEXISTING SUBSCRIPTION SERVICES
Final Order on 12/15/2017
The Copyright Royalty Judges referred novel material questions of substantive law to the Register of Copyrights for resolution in connection with the SDARS III proceeding. The Register responded with a written opinion that is reproduced below.

Audit

NOTICE OF INTENT TO AUDIT
Notice on 1/23/2017

The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2013, 2014, and 2015 statements of account of Music Choice concerning the royalty payments its Preexisting Subscription Service and Business Establishments Service made pursuant to two statutory licenses.

NOTICE OF INTENT TO AUDIT
Notice on 1/23/2017

The Copyright Royalty Judges announce receipt of three notices of intent to audit the 2013, 2014, and 2015 statements of account submitted by commercial webcasters Radionomy (Docket No. 17-CRB-0004-AU), IMVU, Inc. (Docket No. 17-CRB-0007-AU), and Slacker, Inc. (Docket No. 17-CRB-0010-AU), concerning the royalty payments each made pursuant to two statutory licenses.

NOTICE OF INTENT TO AUDIT
Notice on 1/23/2017

The Copyright Royalty Judges announce receipt of two notices of intent to audit the 2013, 2014, and 2015 statements of account submitted by broadcasters Cox Radio (Docket No. 17-CRB-0009-AU) and Hubbard Broadcasting (Docket No. 17-CRB-0008-AU) concerning royalty payments each made pursuant to two statutory licenses.

NOTICE OF INTENT TO AUDIT
Notice on 1/23/2017
NOTICE OF INTENT TO AUDIT
Public Notice on 5/11/2017
URL: https://www.federalregister.gov/documents/2017/05/11/2017-09546/notice-of-intent-to-audit

The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2015 and 2016 statements of account submitted by commercial webcaster Pandora Media, Inc. concerning the royalty payments it made pursuant to two statutory licenses.

NOTICE OF SOUNDEXCHANGE'S INTENT TO AUDIT MUSIC CHOICE'S "PREEXISTING" SUBSCRIPTION SERVICE AND BUSINESS ESTABLISHMENT SERVICE FOR CY 2016
Public Notice of Receipt of A Notice of Intent to Audit Statements of Account on 7/25/2017

The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2016 statements of account of Music Choice concerning the royalty payments its Preexisting Subscription Service and Business Establishments Service made pursuant to two statutory licenses.

Regulations

COPYRIGHT ROYALTY BOARD REGULATIONS REGARDING FILING OF CLAIMS TO ROYALTY FEES COLLECTED UNDER COMPULSORY LICENSE
Proposed Rule on 3/17/2017

The Copyright Royalty Judges propose to amend regulations governing the filing of claims to royalty fees collected under compulsory license to reflect implementation of a new electronic filing system and to consolidate cable and satellite rules. The Judges solicit comments on the proposed rule.
The Copyright Royalty Judges propose to adopt a new Copyright Royalty Board rule that would authorize the Judges to bar, either temporarily or permanently, certain individuals and entities from participating in proceedings before the Judges.

The Copyright Royalty Judges are amending and augmenting procedural regulations governing the filing and delivery of documents to allow for electronic filing of documents.

The Copyright Royalty Judges are amending regulations governing claims to royalty fees deposited with the Copyright Office under compulsory licenses to reflect implementation of a new electronic filing system and to consolidate cable and satellite rules.

The Copyright Royalty Judges seek reply comments regarding a proposed new Copyright Royalty Board rule that would authorize the Judges to bar, either temporarily or permanently, certain individuals and entities from participating in proceedings before the Judges.
On June 13, 2017, the Copyright Royalty Judges revised their rules regarding filing of claims. That document inadvertently added a requirement that filers of joint DART claims include addresses and email addresses for all claimants. Interested parties filed a petition to amend asking the Judges to remove the requirement because the proposed rule did not include it. This document corrects the final regulations to remove the requirement.
V. OTHER AGENCIES

Customs and Border Protection

DONATIONS OF TECHNOLOGY AND SUPPORT SERVICES TO ENFORCE INTELLECTUAL PROPERTY RIGHTS
Proposed Rule on 1/17/2017

The Department of Homeland Security's notice of proposed rulemaking proposes amendments to the U.S. Customs and Border Protection (CBP) regulations pertaining to the enforcement of intellectual property rights. Specifically, CBP is proposing amendments to implement a section of the Trade Facilitation and Trade Enforcement Act of 2015 which requires CBP to prescribe regulatory procedures for the donation of technologies, training, or other support services for the purpose of assisting CBP in intellectual property enforcement. The proposed regulations would enhance CBP's intellectual property rights enforcement capabilities.

DONATIONS OF TECHNOLOGY AND RELATED SUPPORT SERVICES TO ENFORCE INTELLECTUAL PROPERTY RIGHTS
Final Rule on 12/15/2017

This document amends the U.S. Customs and Border Protection (CBP) regulations relating to the enforcement of intellectual property rights. This final rule implements section 308(d) of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which requires CBP to prescribe regulatory procedures for the donation of technologies, training, or other related services for the purpose of assisting CBP in intellectual property enforcement.

Department of Commerce

Internet Policy Task Force

PUBLIC MEETING ON CONSUMER MESSAGING IN CONNECTION WITH ONLINE TRANSACTIONS INVOLVING COPYRIGHTED WORKS
Notice of Public Meeting on 3/21/2017
URL: https://www.federalregister.gov/documents/2017/03/21/2017-05511/public-meeting-on-consumer-messaging-in-connection-with-online-transactions-involving-copyrighted

The Department of Commerce's Internet Policy Task Force (Task Force) will host a public meeting at the United States Patent and Trademark Office (USPTO) facility in Alexandria, Virginia, on April 18, 2017, to discuss how best to communicate to consumers regarding license terms and restrictions in connection with online transactions involving copyrighted works. This
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follows up on one of the recommendations that the Task Force presented in its January 2016 White Paper on Remixes, First Sale, and Statutory Damages.

FINAL AGENDA FOR PUBLIC MEETING ON CONSUMER MESSAGING IN CONNECTION WITH ONLINE TRANSACTIONS INVOLVING COPYRIGHTED WORKS

Final agenda is now available for the public meeting on Consumer Messaging in Connection with Online Transactions Involving Copyrighted Works. The Department of Commerce's Internet Policy Task Force will host the event at the USPTO's headquarters in Alexandria, Va. from 1 - 5 p.m. ET on April 18, 2017. The meeting will be webcast, and members of the public will have opportunities to participate.

Additional details about the meeting, including webcast information, are on the USPTO's Website at https://www.uspto.gov/learning-and-resources/ip-policy/copyright/consumer-messaging-connection-online-transactions. For non-press inquiries, please contact Linda Quigley, Attorney-Adviser, Office of Policy and International Affairs (Copyright), USPTO, at linda.quigley@uspto.gov.

Please note, for those attending the event in person in Alexandria, registration is required and free. The meeting will be open to members of the public, space permitting, on a first-come, first-served basis. Register to attend.

PUBLIC MEETING ON CONSUMER MESSAGING IN CONNECTION WITH ONLINE TRANSACTIONS INVOLVING COPYRIGHTED WORKS (April 18, 2017)

The transcript and video recording of the April 18, 2017 public meeting on Consumer Messaging in Connection with Online Transactions Involving Copyrighted Works are now available at https://www.uspto.gov/learning-and-resources/ip-policy/copyright/consumer-messaging-connection-online-transactions. The Department of Commerce's Internet Policy Task Force held the meeting at the U.S. Patent and Trademark Office's headquarters in Alexandria, Virginia.

The meeting focused on ways to improve consumers' understanding of license terms and restrictions in connection with online transactions involving copyrighted works. It included research presentations by Aaron Perzanowski (Case Western Reserve Univ. Law School), Lorrie Cranor (Carnegie Mellon Univ.), Florencia Marotta-Wurgler (NYU Law School), and Deborah Lodge (Squire Patton Boggs) addressing issues relating to consumer perceptions and online licensing terms. Several panel discussions featuring representatives from industry associations, civil society, and academia provided different perspectives about communicating copyright-related terms and conditions to consumers in the online environment. Additional information about the Task Force and the meeting is available on the USPTO's Website.
NOTICE OF PUBLIC MEETING ON DEVELOPING THE DIGITAL MARKETPLACE FOR COPYRIGHTED WORKS
Notice of Public Meeting on 12/22/2017

The Department of Commerce's internet Policy Task Force (Task Force) will hold a conference at the United States Patent and Trademark Office (USPTO) facility in Alexandria, Virginia, on January 25, 2018, to discuss current initiatives and technologies used to develop a more robust and collaborative digital marketplace for copyrighted works. This follows up on three earlier public meetings held by the Task Force: On December 12, 2013, which included panels focusing on access to rights information and online licensing transactions; on April 1, 2015, which focused on how the Government can assist in facilitating the development and use of standard identifiers for all types of works of authorship; and on December 9, 2016, which was designed to facilitate constructive, cross-industry dialogue among stakeholders about ways to promote a more robust and collaborative online marketplace for copyrighted works.

Patent & Trademark Office

NOTICE OF PUBLIC MEETING ON VOLUNTARY INITIATIVES TO COMBAT INFRINGEMENT OF INTELLECTUAL PROPERTY IN THE ONLINE ENVIRONMENT
Notice of Public Meeting on 6/22/2017
URL: https://www.federalregister.gov/documents/2017/06/22/2017-12992/notice-of-public-meeting-on-voluntary-initiatives-to-combat-infringement-of-intellectual-property-in

The United States Patent and Trademark Office (USPTO) will host a public meeting at its headquarters in Alexandria, Virginia, on July 17, 2017, on measuring the impact of voluntary initiatives undertaken to reduce intellectual property infringement, such as copyright piracy and trademark counterfeiting, that occurs online.

NOTICE OF PUBLIC MEETING ON VOLUNTARY INITIATIVES TO COMBAT INFRINGEMENT OF INTELLECTUAL PROPERTY IN THE ONLINE ENVIRONMENT; CANCELLATION
Notice of Cancellation of Public Meeting on 7/5/2017
URL: https://www.federalregister.gov/documents/2017/07/05/2017-14072/notice-of-public-meeting-on-voluntary-initiatives-to-combat-infringement-of-intellectual-property-in

The United States Patent and Trademark Office published a notice in the Federal Register of June 22, 2017, concerning a public meeting on measuring the impact of voluntary initiatives undertaken to reduce intellectual property infringement, such as copyright piracy and trademark counterfeiting, that occurs online. This notice announces that the July 17, 2017 meeting has been cancelled.

NOTICE OF ROUNDTABLE ON INTELLECTUAL PROPERTY AND TRADE SHOWS
Notice of Public Roundtable on 9/14/2017

The United States Patent and Trademark Office (USPTO) will host a roundtable discussion at its headquarters in Alexandria, Virginia, on October 18, 2017, on addressing intellectual property infringements at trade shows.

Department of Education

OPEN LICENSING REQUIREMENT FOR COMPETITIVE GRANT PROGRAMS
Rule on 1/19/2017
URL: https://www.federalregister.gov/documents/2017/01/19/2017-00910/open-licensing-requirement-for-competitive-grant-programs

The Secretary amends the regulations of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in order to require, subject to certain categorical exceptions and case-by-case exceptions, that Department grantees awarded competitive grant funds openly license to the public copyrightable grant deliverables created with Department grant funds.

ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED BY THE EVERY STUDENT SUCCEEDS ACT-ACCOUNTABILITY AND STATE PLANS; OPEN LICENSING REQUIREMENT FOR COMPETITIVE GRANT PROGRAMS; FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT
Rule on 1/30/2017

In accordance with the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” published in the Federal Register on January 24, 2017, the Department delays the effective dates of the following regulations until March 21, 2017: Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans (ESSA Accountability and State Plans), RIN 1810-AB27; Open Licensing Requirement for Competitive Grant Programs (Open Licensing), RIN 1894-AA07; and Family Educational Rights and Privacy Act.

Library of Congress

LIBRARY OF CONGRESS LICENSE AGREEMENTS
Final Rule on 6/27/2017
ABA Copyright Division
http://apps.americanbar.org/dch/committee.cfm?com=PT030000

The Library of Congress is issuing this final rule regarding license agreements and similar agreements and instruments entered into by it. The rule will prevent the Library from potentially violating the Anti-Deficiency Act and other restrictions under Federal law, preserve the Library's rights under copyright law in regard to electronic resources and software, and streamline the Library's contracting and collections acquisitions processes for these electronic resources and software.
VI. COPYRIGHT IN THE NEWS

January 2017

KOREAN COSMETIC COMPANY AND JAPANESE ARTIST IN COPYRIGHT DISPUTE
via Korea Times by Hong Dam-young on 1/1/2017

Korean cosmetic company W. Lab and Japanese pop artist Yoshimoto Nara are in a copyright dispute, with the company suing the artist who claims ...

GOOGLE HELPING MOBILE PUBLISHING? SOME PUBLISHERS ARE NOT SO SURE
via NYT > Media & Advertising by Daisuke Wakabayashi on 1/1/2017
URL: http://www.nytimes.com/2017/01/01/technology/google-amp-mobile-publishing.html

“It looks like a Google story,” said Danny Sullivan, founding editor of Search Engine Land, a web search news site. “That’s part of the reason why you’re getting the nervousness from some of these publishers.”

PIRATE SITES IN THE U.S. TO FACE SAME FATE AS AUSTRALIA AND EUROPE THIS YEAR?
via International Business Times by Sami Khan on 1/1/2017
URL: http://www.ibtimes.co.in/pirate-sites-u-s-face-same-fate-australia-europe-this-year-710668

Most of the copyright holders that have secured orders to clamp down on pirate sites in Europe and Australia are based in the U.S. According to ...

IS GOOGLE ABOUT TO LAUNCH THE LARGEST TORRENT SEARCH ENGINE EVER SEEN?
via International Business Times by Aditya Bhat on 1/1/2017
URL: http://www.ibtimes.co.in/going-rogue-google-about-launch-largest-torrent-search-engine-ever-seen-710661

After years of catering to copyright holders and their increasing demands, is Google about to go rogue in sheer frustration? According to a report by ...

FLORIDA CASES TO WATCH IN 2017
via Intellectual Property Law360 by Carolina Bolado on 1/2/2017
URL: https://www.law360.com/ip/articles/876436
Florida courts are set to take on wide-ranging issues in 2017 like the expert witness standard, whether or not counties can approve gambling without the Legislature's consent, and a high-profile copyright dispute involving The Turtles.

COPYRIGHT CASES TO WATCH IN 2017
via Intellectual Property Law360 by Bill Donahue on 1/2/2017
URL: https://www.law360.com/ip/articles/875526

From a Supreme Court case on cheerleader uniforms to a Federal Circuit battle between Google and Oracle over the fair use doctrine and everything in between, 2017 won't be a slow year on the copyright front. Here's what you need to watch.

TIME TO TAKE COPYRIGHTS SERIOUSLY
via The New Times by Kigali Girl on 1/2/2017
URL: http://www.newtimes.co.rw/section/article/2017-01-03/206773/

Good and pertinent points Mr. Ntayombya! It's such a shame to see renowned artistes like Aime Uwimana, Luc Buntu, Patient Bizimana and others' ...

DISNEY WINS COPYRIGHT INFRINGEMENT CASE AGAINST CHINESE COMPANIES
via China Daily by Xinhua on 1/2/2017
URL: http://www.chinadaily.com.cn/bizchina/2017-01/03/content_27844568.htm

Disney Enterprises, Inc and Pixar, holders of the copyrights of animated comedies "Cars" and "Cars 2" as well as the character images, sued G-Point ...

2017 IN COPYRIGHT LAW AND POLICY
via Copyhype by Terry Hart on 1/2/2017

As I’ve done in previous years (2015 and 2016), I’d like to take a look ahead at what we may expect in the world of copyright policy in the year ahead.

BMG BITES BACK AT COX COMMUNICATIONS APPEAL
via World IP Review on 1/3/2017

Music company BMG Rights Management has hit back at an appeal filed by internet service provider (ISP) Cox Communications against a copyright ...
HOW RONDA ROUSEY CLIPS REVEAL FACEBOOK'S COPYRIGHT CHALLENGE
via Fortune by Jeff John Roberts on 1/3/2017
URL: http://fortune.com/2017/01/03/ronda-rousey-facebook-copyright-2/

In mid-2015, one-time UFC champion Ronda Rousey destroyed her opponent in just 34 seconds, and the flight clip was all over Facebook.

HERITAGE AUCTIONS SUES RIVAL CHRISTIE’S FOR WIDESPREAD THEFT, COPYRIGHT INFRINGEMENT
via The Fashion Law on 1/3/2017

Christie's and Heritage Auctions are still at war. Over two years after Texas-based Heritage Auctions filed suit against New York-based Christie's, ...

THE LIBRARIAN OF CONGRESS LOOKS FOR PUBLIC OPINIONS
via CreativeFuture by Cesar Fishman on 1/3/2017
URL: http://www.creativefuture.org/locsurvey/

As you know, the former Register of Copyrights, Maria Pallante, was removed from her post by the new Librarian of Congress in October.

DISTRICT COURT CAN KEEP MUSIC ROYALTY SPAT, DC CIRC. TOLD
via Intellectual Property Law360 by Kelly Knaub on 1/3/2017
URL: https://www.law360.com/ip/articles/876988

A music royalties collector and a major satellite music company told the D.C. Circuit Tuesday that they have properly litigated their royalty rate dispute in a district court, regardless of the potential jurisdiction of the Copyright Royalty Board, while the federal government filed an amicus brief echoing the same argument.

INDIA COURT GIVES MYSPACE BREATHING ROOM ON COPYRIGHT
via Bloomberg BNA by Madhur Singh on 1/3/2017
URL: https://www.bna.com/india-court-gives-n73014449283/

In the meantime, SCIL's label T-series must provide MySpace with a “specific” list of any copyrighted works posted without authorization on MySpace ...
CHINESE COMPANIES TO PAY DISNEY $194000 IN COPYRIGHT DISPUTE
via World IP Review on 1/3/2017

Two China-based companies have been ordered to pay Disney and Pixar RMB 1.35 million ($194,000) in a copyright infringement dispute. According ...

'STAR TREK' FAN FILM DISPUTE GOES TO JURY TRIAL IN BIG RULING
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 1/4/2017

A judge rules that the "Axanar" production company can't claim fair use. But a jury will decide the question of subjective substantial similarity.

IT'S TIME FOR SCOTUS TO WEIGH IN ON DIGITAL FAIR USE
via The Hill by Charles Duan & Sasha Moss on 1/4/2017

The Constitution provides limited protections for copyrighted works. As technology has become more complex, Congress and the courts have found ...

'STAR TREK' FAN FILM IS NOT FAIR USE, JUDGE SAYS
via Intellectual Property Law360 by Bill Donahue on 1/4/2017
URL: https://www.law360.com/ip/articles/877387

A federal judge on Tuesday sided with Paramount Pictures Corp. and ruled that an unauthorized "Star Trek" film was not protected by copyright's fair use doctrine, sending an infringement lawsuit against the creators of the project toward trial.

EX-BOWIE MANAGER CAN'T UNDO $9M COPYRIGHT LOSS
via Intellectual Property Law360 by Kelly Knaub on 1/4/2017
URL: https://www.law360.com/ip/articles/877220

Former David Bowie manager Anthony Defries cannot escape a $9.35 million judgment for distributing the rock star's copyrighted tracks despite signing deals that handed over the ex-manager's rights to the songs years ago, a New York federal judge ruled Tuesday.
STREAMING TV CO. PRESIDENT CAN'T DUCK DISH COPYRIGHT SUIT
via Intellectual Property Law360 by Chuck Stanley on 1/4/2017
URL: https://www.law360.com/ip/articles/877135

The owner of an Arabic pay-TV company must face a copyright infringement suit claiming the service steals signals from Dish Network LLC because he personally supervised the alleged infringing activity, a Florida federal judge ruled Wednesday.

SONY, WARNER SETTLE AMWAY COPYRIGHT 'AMBUSH' SUIT
via Intellectual Property Law360 by Dorothy Atkins on 1/4/2017
URL: https://www.law360.com/ip/articles/877380

Sony Music Entertainment, Warner Music Group Corp. and UMG Recordings Inc. have reached a confidential settlement with Amway Corp. over claims the music giants "ambushed" Amway with infringement claims over distributors' videos uploaded to YouTube, breaching a previous agreement, according to court documents filed Wednesday.

5 ISSUES THAT GRAMMY VOTERS NEED TO KNOW (AND WHAT TO DO ABOUT THEM)
via Billboard by Robert Levine on 1/4/2017

Bob Goodlatte (R-Va.), and committee member John Conyers (D-Mich.) released their first proposal for the long-awaited copyright reform process.

UMG BEATS BLUES MUSICIAN'S SUIT OVER SONG SAMPLE
via Intellectual Property Law360 by Kelly Knaub on 1/4/2017
URL: https://www.law360.com/ip/articles/877513

An Illinois federal judge on Wednesday tossed a blues musician’s complaint accusing UMG of misappropriating his "I Feel the Urge" track by illegally sampling it in the 1991 song "Know the Ledge,” which was included in the soundtrack for the smash hip hop film “Juice,” as well as selling products containing the song.

SPAT OVER 'STAR TREK' FAN FILM HEADED TO TRIAL
via Courthouse News Service by Mike Heuer on 1/4/2017
URL: http://courthousenews.com/spat-over-star-trek-fan-film-headed-to-trial/
“There is no dispute that plaintiffs have ownership of copyrights to the Star Trek copyrighted works and that defendants have access to these works,” ...

AUSTRALIA NEEDS BETTER COPYRIGHT ENFORCEMENT, SAYS COMMISSION via IP Pro The Internet by Barney Dixon on 1/4/2017 URL: http://ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5249

Australian consumers bear the brunt of copyright enforcement, according to a final report from the government's productivity commission. The report ...


This is the latest case from attorney Charles Harder, who previously represented Hulk Hogan against Gawker.

EPISODE 14: EQUITABLE RESALE ROYALTIES via IPLJ by Anthony Zangrillo on 1/5/2017 URL: http://www.fordhamiplj.org/2017/01/05/episode-14-equitable-resale-royalties/

This episode of the podcast discusses resale royalties.

CBS AND PARAMOUNT PUT JUDICIAL VULCAN DEATH GRIP ON 'STAR TREK' FAN FILM via Comics Alliance by Charles Bramesco on 1/5/2017 URL: http://comicsalliance.com/cbs-paramount-axanar-lawsuit/

The latest chapter in the ongoing saga of CBS and Paramount’s efforts to sue the Spock ears off of the producers of Star Trek fan film Axanar continues today, with a new development from the Los Angeles federal court system.

THE ACCOUNTABILITY OF WEB PLATFORMS via The Illusion of More by David Newhoff on 1/5/2017 URL: http://illusionofmore.com/the-accountability-of-web-platforms/

Online service providers (OSPs) are generally shielded by two major statutes from liabilities that may stem from the content uploaded by users of their platforms. Section 512 of …
9TH CIRC. REJECTS VIDANGEL'S EMERGENCY STAY BID
via Intellectual Property Law360 by Bill Donahue on 1/5/2017
URL: https://www.law360.com/ip/articles/877896

Siding with Disney Enterprises Inc. and other major Hollywood studios, the Ninth Circuit on Wednesday refused an emergency motion that would have allowed VidAngel Inc. to continue to operate while it appeals a ruling saying that the family-friendly video streaming service violates copyright law.

BMG ASKS COURT TO UPHOLD COPYRIGHT VERDICT AGAINST COX COMMUNICATIONS
via MediaPost by Wendy Davis on 1/5/2017

RCN said the notices were problematic for many reasons including that they don't show whether any copyrighted material was actually downloaded ...

AXANAR ISN’T FAIR USE, JUDGE FINDS, SETTING STAGE FOR STAR TREK COPYRIGHT TRIAL
via Ars Technica by Cyrus Farivar on 1/5/2017

A federal judge in Los Angeles has decided that the copyright lawsuit over the pending Star Trek fan film Prelude to Axanar should move forward.

PARAMOUNT PICTURES CORP. V. AXANAR PRODUCTIONS, INC. - "STAR TREK" COPYRIGHT INFRINGEMENT CASE
via The Entertainment, Arts and Sports Law Blog by Cynthia Arato on 1/5/2017
URL: http://nysbar.com/blogs/EASL/2017/01/paramount_pictures_corp_v_axan.html

Essentially on the eve of trial of a copyright infringement case against the producers of an unauthorized "prequel" to the "Star Trek" enterprise -- of which only a trailer was produced, and which was to be distributed for free -- an L.A. District Court Judge made several substantive rulings, including: a) that the Ninth Circuit's "objective extrinsic similarity" test had been met; b) that the Circuit's "subjective substantial similarity" test was for the jury; c) that the character "Garth of Izar" "is entitled to copyright protection"; d) "all four factors" compel the rejection of the defendants' "fair use" defense; and e) the issue of willfulness was for the jury.
JUDGE ORDERS JURY TRIAL FOR STAR TREK COPYRIGHT SUIT
via Reuters by Barbara Grzincic on 1/5/2017
URL: http://www.reuters.com/article/ip-cbs-startrek-idUSL1N1EW01H

A federal judge in Los Angeles has said CBS Studios and Paramount Pictures must take their copyright battle against a Star Trek superfan to trial, but ...

COULD A PATENT ATTORNEY (PROSECUTION OR LITIGATION) LEND PRO BONO HELP TO TECHDIRT'S MIKE MASNICK?
via FOSS Patents by Florian Mueller on 1/5/2017
URL: http://www.fosspatents.com/2017/01/could-patent-attorney-prosecution-or.html

This morning I have just become aware of a Hollywood Reporter article on a defamation lawsuit (complaint, PDF) against the company behind and the principal author (Mike Masnick) of the Techdirt website brought by Dr. Shiva Ayyadurai, whom Techdirt has attacked over his claims to have invented email.

ROUTES TAKEN BY UK PROSECUTORS OVER SUPPLY OF MODIFIED TV SET-TOP BOXES
via The Register on 1/5/2017
URL: http://www.theregister.co.uk/2017/01/06/uk_cases_highlight_different_routes_taken_by_prosecutors_over_the_supply_of_modified_tv_settop_boxes/

Analysis Prosecutors are turning to fraud charges in cases against people supplying set top boxes that can be used to access copyrighted material ...

JURY TO DECIDE 'STAR TREK' COPYRIGHT FIGHT
via World IP Review on 1/5/2017

US media companies Paramount Pictures and CBS Studios are preparing to argue a copyright infringement case centring on a crowdfunded “Star ...

COPYRIGHT SPAT FORCES BULGARIA RADIO TO PLAY OLD TUNES
via BBC on 1/6/2017
Bulgaria's public radio broadcaster has been banned from playing millions of contemporary songs because of a row over copyright payments. Since 1 ...

STAR TREK AXANAR FAN FILM NOT FAIR USE, US COURT RULES
via Wired by Matt Kamen on 1/6/2017
URL: http://www.wired.co.uk/article/star-trek-axanar-fan-film-not-fair-use-copyright

Fan films are a murky business, as the creators are using properties without permission, often relying on fair use provisions for copyrighted and ...

VIDANGEL FOUND IN CONTEMPT FOR DELAY IN REMOVING DISPUTED FILMS
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 1/6/2017
URL: http://www.hollywoodreporter.com/thr-esq/vidangel-found-contempt-delay-removing-disputed-films-961609

"Our bad, your honor," said VidAngel attorney David Quinto in a Friday hearing.

VIDANGEL HELD IN CONTEMPT FOR FLOUTING COPYRIGHT INJUNCTION
via Intellectual Property Law360 by Daniel Siegal on 1/6/2017
URL: https://www.law360.com/ip/articles/878505

A California federal judge on Friday held streaming service VidAngel, which allows users to edit films to remove nudity and violence, in contempt for making a “strategic decision” and ignoring his order to stop streaming the films of the major studios suing it for copyright infringement.

DISH WANTS RULING AGAINST ALLEGED TV PIRATE IN IP ROW
via Intellectual Property Law360 by Kat Greene on 1/6/2017
URL: https://www.law360.com/ip/articles/878441

Dish Network LLC, China Central Television and a pair of other companies that license foreign-language TV asked a New York federal judge Friday to enter default judgment against HTV International Ltd. in their copyright infringement suit after the alleged piracy perpetrator fired its own lawyers.

US MOVIE STUDIOS ACCUSE NZ INTERNET USERS OF FLOCKING TO PIRACY SITES
via Stuff by Tom Pullar-Strecker on 1/7/2017
A fresh battle is looming on both sides of the Tasman this year over copyright reform and piracy, after Australia’s Productivity Commission released a ...

STARTING THE NEW YEAR OFF RIGHT: EFFECTIVE WAYS TO FIGHT ONLINE PIRACY IN CANADA—(DON’T PICK ON GRANNY!)
via Hugh Stephens Blog on 1/8/2017
URL: http://hughstephensblog.net/2017/01/09/starting-the-new-year-off-right-effective-ways-to-fight-online-piracy-in-canada-dont-pick-on-granny

It was inevitable. Sooner or later an infringement notice would arrive in the inbox of someone’s granny accusing her of illegally downloading an online warfare video game/hip hop music video/22nd Century rogue robot movie (take your pick).

MERGER AND SCÈNES À FAIRE: TWO DEFENSES TO SUBSTANTIAL SIMILARITY IN COPYRIGHT LITIGATION
via Tennenbaum, Helpern, Syracuse & Hirschtritt LLP by Andrew Berger

There are various defenses defendants can invoke to avoid a finding of copyright infringement. Other than fair use, two of the most potent are the concept of scènes à faire and the doctrine of merger.

SOFTWARE COPYRIGHT LITIGATION AFTER ORACLE V. GOOGLE
via Project Disco by Jonathan Band on 1/9/2017
URL: http://www.project-disco.org/intellectual-property/010917-software-copyright-litigation-oracle-v-google/

Many observers, including me, predicted that the 2014 decision of the U.S. Court of Appeals for the Federal Circuit (“CAFC”) in Oracle America v.

INSTAGRAM “APPROPRIATION ARTIST” SUED FOR COPYRIGHT INFRINGEMENT – AGAIN
via Columbia Journal of Law and the Arts on 1/9/2017
URL: http://lawandarts.org/2017/01/09/instagram-appropriation-artist-sued-for-copyright-infringement-again/

“Appropriation” artist Richard Prince, known for his controversial Instagram photo series, has been sued again on claims that he unlawfully reproduced a photographer’s copyrighted work.
A significant copyright tussle over the appropriate scope of “fan films”.... “Axanar” uses copyrighted material for a transformative purpose — creating a ...
ROC NATION, TIDAL CHALLENGE THE AUTHORITY OF THE ADMINISTRATOR OF PRINCE’S ESTATE
via Hollywood Reporter - THR, Esq by Eriq Gardner on 1/10/2017

The Jay Z-affiliated companies file court papers in response to a copyright lawsuit.

IP AND THE 115TH CONGRESS: MEET THE SENATE REPUBLICANS ON THE JUDICIARY COMMITTEE
via IPWatchdog.com | Patents & Patent Law by Gene Quinn on 1/10/2017
URL: http://www.ipwatchdog.com/2017/01/10/115th-congress-senate-republicans-judiciary-committee/id=76547/

The Senate Judiciary Committee is where any action relating to intellectual property reform will be played out during the 115th Congress, at least on the Senate side of the Capitol. Unlike in previous years, we enter 2017 without much support for a fresh round of patent reform, but at least some patent reform measures are sure to be introduced during the 115th Congress... Look for efforts to grant the Copyright Office greater autonomy and independence during the 115th Congress, even a push to...

A SEISMIC RULING REVISITED: NO COMMON-LAW PUBLIC PERFORMANCE RIGHTS IN PRE-1972 SOUND RECORDINGS IN NEW YORK–FLO & EDDIE V. SIRIUS
via Technology & Marketing Law Blog by Tyler Ochoa on 1/10/2017

On December 20, 2016, the New York Court of Appeals (the highest court in the State of New York) held 4-2 (with one judge recused) that “New York common-law copyright does not recognize a right of public performance for creators of sound recordings.”

TOP 10 INTERNET LAW DEVELOPMENTS OF 2016
via Technology & Marketing Law Blog by Eric Goldman on 1/10/2017

Donald Trump’s election as president pretty much dominated our thoughts about 2016 (though Brexit was pretty significant too). So I decided to break up my annual top 10 list into two separate top 5 lists, one election-related, one not.
Thanks to those of you who attended the "Intellectual Property & Federalism" panel at AALS, moderated by Jennifer Rothman and organized by Joe Miller. I truly enjoyed each of the presentations of my fellow panelists: Guy Rub, Brian Frye, Rothman, and Sharon Sandeen. If you missed it, read more at the jump.

FACEBOOK FACES $2B TRIAL OVER VIRTUAL REALITY SOFTWARE
via Intellectual Property Law360 by Jess Krochtengel on 1/10/2017
URL: https://www.law360.com/ip/articles/878763

A video game developer on Tuesday told a Texas federal jury Oculus VR LLC pulled "one of the biggest technology heists ever" when it allegedly stole proprietary source code to make its popular virtual reality device before selling the company to Facebook Inc., causing it $2 billion in damages.

RESEARCH BODIES SEEK CHANGES TO EU COPYRIGHT PROPOSALS
via University World News by Brendan O'Malley on 1/11/2017

Five key European research organisations have called on legislator to modify current EU copyright reform proposals, including broadening exceptions ...

JAY-Z'S TIDAL, ROC NATION AND BREMER TRUST BATTLE OVER PRINCE'S MUSIC
via Forbes by Michael Feispor on 1/11/2017

In response to Bremer Trust's copyright infringement lawsuit, Tidal and Roc Nation have challenged the administrator's right to oversee the late ...

CISCO V. ARISTA PATENT AND COPYRIGHT INFRINGEMENT CASES SEE CONFLICTING RULINGS AT ITC, N.D. CAL.
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 1/11/2017
URL: http://www.ipwatchdog.com/2017/01/12/cisco-v-arista-patent-copyright-infringement-conflicting-rulings/id=76615/

A patent and copyright squabble involving two players in the networking space for information technology (IT) development, which has ramped up in recent years, saw an interesting round of
events play out in federal court and regulatory agencies this past December. At the center of the brouhaha is American networking and telecommunications giant Cisco Systems (NASDAQ: CSCO) of San Jose, CA, which has filed multiple legal actions against Arista Networks (NYSE: ANET) of Santa Clara, CA, alleging...

FORMER COPYRIGHT OFFICE HEAD TO RUN PUBLISHING TRADE GROUP
via Washington Times by Hillel Italie on 1/12/2017

The former head of the U.S. Copyright Office, whose ouster last fall angered many in the arts world, has been chosen to lead the ...

FRANCE’S SACEM HEADS TO THE CLOUD WITH IBM ON NEW MUSIC COPYRIGHT SYSTEM
via Billboard by Richard Smirke on 1/12/2017

French authors' rights society SACEM has partnered with tech giant IBM to develop a new online music copyright management platform that it says ...

'DEAR PIRATE' WARNING LETTERS COMING SOON TO ALLEGED UK COPYRIGHT INFRINGERS
via Billboard by Marc Schneider on 1/12/2017
URL: http://www.billboard.com/articles/business/7654992/copyright-letters-creative-content-uk-isp

"It looks like someone has been using your broadband to share copyrighted material (that means things like music, films, sport or books). And as your ...

IBM AND SACEM TO DEVELOP ONLINE COPYRIGHT PLATFORM
via World IP Review on 1/12/2017

The copyright platform, URights, is designed to track and capture music creators' and publishers' rights. Built on the IBM Cloud, a cloud-based data ...
OUSTERED COPYRIGHT OFFICE HEAD TO RUN PUBLISHING TRADE GROUP
via Billboard on 1/12/2017
URL: http://www.billboard.com/articles/business/7654959/maria-a-pallante-copyright-office-aap-publishing-trade-group

The former head of the U.S. Copyright Office, whose ouster last fall angered many in the arts world, has been chosen to lead the book publishers’ ...
On Friday the publisher received notification from YouTube that the copyright claims were filed by the Modern Languages Association (MLA) based on ...

YouTube has terminated a channel belonging to conservative law blog Legal Insurrection due to alleged copyright violations — a move the blog's ...

The ISP may also forward the original notice from the copyright holder – such as a movie studio, or media company – but this is where it gets tricky.

IBM has entered a 10-year strategic alliance with SACEM to develop URights, a copyright platform designed to track and capture the value of online ...

Kieron Sharp, director general of the Federation Against Copyright Theft (FACT), commented: “FACT is a proud original partner of Operation Creative ...
Among other things, the court will consider whether pronouncing "fire" as "fi-ya" is protectable by a copyright.

Copyright questions are rarely easy. Even the simple questions don't always have straightforward answers: What kinds of works are protected?

Urban Outfitters Inc. urged the Ninth Circuit at a hearing Friday to reverse a judge’s finding that it infringed a copyrighted fabric design, saying the question of whether a pattern on one of its dresses was substantially similar to the fabric was for a jury to decide.

Just as there can be many copyrighted books with the same title, there can be many copyrighted programs with the same title. (Selling a book or a ...

On January 17, former U.S. register of copyrights Maria Pallante officially joins the Association of American Publishers as president and CEO, ...
PIPCU VISITS BRANDS TO TACKLE DIGITAL PIRACY
via World IP Review on 1/14/2017

PIPCU identified the organisations, with the help of the Federation Against Copyright Theft, British Phonographic Industry, International Federation of ...

53 YEARS LATER, YOU STILL HAVE TO PAY TO USE MARTIN LUTHER KING JR.'S FAMOUS 'I HAVE A DREAM' SPEECH
via Washington Post by Valerie Strauss on 1/15/2017

Unless the family decides to put it in the public domain beforehand, it will happen in 2038, under copyright law. There is, however, a copy of it on ...

53 YEARS LATER, YOU STILL HAVE TO PAY TO USE MARTIN LUTHER KING JR.'S FAMOUS 'I HAVE A DREAM' SPEECH
via Washington Post by Valerie Strauss on 1/15/2017

... are not challenged when they use the speech in violation of the copyright — the makers of the 2014 film “Selma” were never given permission to use ...

INDIA’S TELEVISION DILEMMA: REGULATING FOR CONSUMERS OR UNDERMINING COPYRIGHT? (IT DOESN’T HAVE TO BE EITHER/OR)
via Hugh Stephens Blog » Feed on 1/16/2017
URL: http://hughstephensblog.net/2017/01/16/indias-television-dilemma-regulating-for-consumers-or-undermining-copyright-it-doesnt-have-to-be-eitheror

An interesting drama is currently being played out in India, according to some the world’s second largest pay TV market. It pits pay-TV networks (copyright owners) against the broadcast regulator, the Telecom Regulatory Authority of India (TRAI).
PHARRELL WILLIAMS AND GWEN STEFANI IN COPYRIGHT INFRINGEMENT SUIT
via World IP Review on 1/16/2017

Singers Gwen Stefani and Pharrell Williams have been targeted in a copyright infringement suit by a US-based resident. Richard Morrill filed his ...

YOUTUBE RESTORES INFLUENTIAL CONSERVATIVE WEBSITE'S CHANNEL
via Fox News by James Rogers on 1/16/2017
URL: http://www.foxnews.com/tech/2017/01/16/youtube-restores-influential-conservative-websites-channel.html

YouTube had cited copyright infringement claims when it took the channel down on Jan.12. Legal Insurrection founder and publisher and Cornell ...

ARTICLE 13 COULD CREATE A 'CENSORSHIP MACHINE'
via IP Pro The Internet by Mark Dugdale on 1/16/2017
URL: http://iprotheoninternet.com/iprotheoninternetnews/copyrightarticle.php?article_id=5272

Article 13 of the Directive on Copyright in the Digital Single Market, which was proposed in September of last year, would require “information society ...

WATCH PIRATE TV ONLINE? YOU COULD BE ABOUT TO GET A SCARY LETTER THROUGH YOUR DOOR
via Mirror by Josh Parry on 1/16/2017
URL: http://www.mirror.co.uk/news/uk-news/watch-pirate-tv-online-you-9635222

It letter reads: “Get it Right is a government-backed campaign acting for copyright owners who think their content's been shared without their ...

BMG V COX GOES TO 4TH CIRCUIT APPELLATE COURT
via The Illusion of More by David Newhoff on 1/17/2017
URL: http://illusionofmore.com/bmg-v-cox-goes-4th-circuit-appellate-court/

Amicus briefs were filed recently in the 4th Circuit Court of Appeals in the case of BMG Rights Management v Cox Communications. In November of 2014, BMG sued Cox (an ISP) for contributory copyright infringement, and a US District Court …
WARNER BROS AND NIKE OBTAIN INJUNCTION AGAINST COUNTERFEITERS
via World IP Review on 1/17/2017

Back in February 2014, Warner Bros and Nike, along with Disney, DC Comics and Sanrio Company, filed a copyright and trademark infringement ...

PATENT, COPYRIGHT LAWSUIT VOLUMES FALL IN 2016
via BNA Bloomberg by Malathi Nayak on 1/17/2017
URL: https://www.bna.com/patent-copyright-lawsuit-n73014449878/

Intellectual property infringement complaints in U.S. federal courts dropped in 2016 from a year ago, driven by declines in patent and copyright ...

FIXING EULAS CAN IMPROVE COPYRIGHT, SAYS EFF
via IP Pro The Internet by Barney Dixon on 1/17/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5276

The Electronic Frontier Foundation (EFF) has called on US Congress to forbid the use of end-user licence agreements (EULAs) to “improve copyright”.

REAL-LIFE STAR TREK BATTLE OF AXANAR IS HEATING UP
via IPWatchdog.com | Patents & Patent Law by Dan Bonilla on 1/18/2017
URL: http://www.ipwatchdog.com/2017/01/18/star-trek-battle-of-axanar-heating-up/id=77168/

A copyright infringement battle of intergalactic proportions between Plaintiffs CBS and Paramount Pictures, and the company (along with its principal Alec Peters) looking to produce the crowdfunded Star Trek fan film Axanar (“Defendants”) is heating up. The parties have filed numerous motions in the past month, and the Court’s recent ruling on the parties’ motions for summary judgment means the case is inching closer and closer to its January 31 trial date... The Court then concluded that the...
FIVE YEARS AGO, INTERNET USERS SHOWED THEIR POLITICAL MIGHT. AND THEY WILL DO IT AGAIN.
via Slate by Kerry Maeve Sheehan on 1/18/2017

The bills were backed by Hollywood lobbyists that had long run the scene on Capitol Hill when it came to copyright. They were accustomed to ...

BT BACKS GET IT RIGHT CAMPAIGN
via IP Pro The Internet by Barney Dixon on 1/18/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5277

Content owners will spot alleged copyright infringement on peer-to-peer networks and contact the Get It Right campaign, which will then notify the ...

12 THINGS YOU COULD STILL DO IF SOPA HAD PASSED
via The Illusion of More by David Newhoff on 1/18/2017
URL: http://illusionofmore.com/12-things-still-do-if-sopa-had-passed/

photo by tomasmikula Because today is the five-year anniversary of “Blackout Day,” the day millions of users were suckered into doing the internet industry’s bidding for no good reason, the always-relevant BuzzFeed offers us a missive published by the organization ReCreate …

OPEN SOURCE SOFTWARE LICENSES
via IPLJ on 1/18/2017
URL: http://www.fordhamiplj.org/2017/01/18/open-source-software-licenses/

The use of open source software has become more and more ubiquitous.

PAUL MCCARTNEY SUES SONY TO REGAIN RIGHTS TO BEATLES SONGS
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 1/18/2017

Sony/ATV is the defendant and could be primed to make a defense similar to the one being used against Duran Duran.
STAR TREK FAN FILM 'AXANAR' GOES TO TRIAL FOR COPYRIGHT INFRINGEMENT
via FindLaw Writ - Recent Articles by William Vogeler on 1/18/2017

Here's an IP lawsuit that's almost from another universe: Paramount v. Axanar is a copyright case against a start-up company that makes fan fiction based on the Star Trek television and movie series.

CISCO, ARISTA PUSH FOR NEW RULINGS IN $335M IP BATTLE
via Intellectual Property Law360 by Dorothy Atkins on 1/18/2017
URL: https://www.law360.com/ip/articles/882276

Tech rivals Arista Networks Inc. and Cisco Systems Inc. both asked a California federal judge for separate judgments as a matter of law in a $335 million suit Tuesday, after a jury found Arista’s popular Ethernet switches are shielded from infringement claims by the scènes à faire doctrine.

PAUL MCCARTNEY TELLS SONY TO 'LET IT BE' OVER EARLY WORK
via Intellectual Property Law360 by Kat Greene on 1/18/2017
URL: https://www.law360.com/ip/articles/882375

Paul McCartney lodged a suit against Sony/ATV on Wednesday over copyright interests in The Beatles’ songs, asking a New York federal judge to confirm that the legendary songwriter won’t face breach of contract claims if he cuts off rights Sony’s predecessors acquired 50 years ago.

AUTHOR SUED FOR "CHILDREN'S VERSIONS" OF 'BREAKFAST AT TIFFANY'S,' '2001: A SPACE ODYSSEY'
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 1/19/2017

Big publishers and the estates of Truman Capote, Jack Kerouac, Ernest Hemingway and Arthur C. Clarke have teamed up for a copyright lawsuit.
WEB STREAMING LIKE CABLE, 7TH CIRC. TOLD IN COPYRIGHT SUIT
via Intellectual Property Law360 by Diana Novak Jones on 1/19/2017
URL: https://www.law360.com/ip/articles/882680

Web streaming service FilmOn X LLC took its battle for a license to broadcast copyrighted content to the Seventh Circuit on Thursday, telling the appellate panel that the service is fundamentally the same as cable and thus should be eligible under the Copyright Act.

'JERSEY BOYS' CREATORS PUSH FOR NEW TRIAL IN IP SUIT
via Intellectual Property Law360 by Cara Salvatore on 1/19/2017
URL: https://www.law360.com/ip/articles/882708

The creators of “Jersey Boys,” the hit Broadway musical about Frankie Valli and the Four Seasons, pushed Wednesday for reversal of a jury's finding that they infringed a book copyright, citing a Ninth Circuit ruling made the day after the jury started its deliberations.

SOUNDEXCHANGE FIGHTS FOR HIGHER ROYALTY RATES AT DC CIRC.
via Intellectual Property Law360 by Bryan Koenig on 1/19/2017
URL: https://www.law360.com/ip/articles/882413

SoundExchange, the company that collects royalties for record labels and artists, urged the D.C. Circuit on Tuesday to nix digital streaming music rates it says are too low, arguing that the Copyright Royalty Board imposed its own policy preferences rather than properly assessing what rates open negotiation would have yielded.

IP PROFS FAVOR REJECTED PROGRAMMER IN $3.6M MADDEN ROW
via Intellectual Property Law360 by Joyce Hanson on 1/19/2017
URL: https://www.law360.com/ip/articles/882424

A group of seven intellectual property law professors waded into a high-profile video game copyright case on Wednesday, calling the criteria used by the Ninth Circuit to reject a programmer's bid to reinstate his $3.6M jury award from game company Electronic Arts Inc. "deeply problematic."

HEMINGWAY, KEROUAC HEIRS SUE OVER KID-FRIENDLY CLASSICS
via Intellectual Property Law360 by Bill Donahue on 1/19/2017
URL: https://www.law360.com/ip/articles/882718

The estates of Ernest Hemingway, Jack Kerouac and other iconic authors filed a copyright lawsuit Thursday in Manhattan federal court over unauthorized "children's versions" of classic works like “The Old Man and the Sea.”
AUTHOR WHO TURNS CLASSICS INTO CHILDREN’S BOOKS IS SUED
via NYT > Media & Advertising by Alexandra Alter on 1/19/2017

Two publishers and the estates of Arthur C. Clarke, Jack Kerouac, Truman Capote and Ernest Hemingway accused Fredrik Colting of copyright infringement.

MUSICFIRST COALITION PENS LETTER TO CONGRESS ON RADIO, COPYRIGHT CONCERNS
via Billboard by Dan Rys on 1/19/2017

Music industry coalition MusicFirst, an advocacy group for artists and musicians that includes the RIAA, the Recording Academy and the American ...

WEBSITE OPERATORS MUST COMPLY WITH NEW DMCA AGENT REGISTRATION PROCEDURES OR RISK LIABILITY ...
via National Law Review by Adam R. Bialek on 1/19/2017
URL: http://www.natlawreview.com/article/website-operators-must-comply-new-dmca-agent-registration-procedures-or-risk

If your website lets users post content, the Digital Millennium Copyright Act (DMCA) ... between the operators of websites and the owners of copyrights.

PAUL MCCARTNEY SUES SONY OVER BEATLES MUSIC
via Courthouse News Service by Josh Russell on 1/19/2017
URL: http://courthousenews.com/paul-mccartney-sues-sony-over-beatles-music/

The 1976 Copyright Act extended the ownership term for works created ... for a total of 75 years from the date the copyright was originally secured.

MICROSOFT SUES COMPANY OVER UNAUTHORISED SOFTWARE
via World IP Review on 1/19/2017

Microsoft has filed a complaint against an entity called M. Media for alleged copyright and trademark infringement. M. Media operates under the name ...
US MUSIC ASSOCIATION ADDRESSES COPYRIGHT CONCERNS IN LETTER TO CONGRESS
via World IP Review on 1/19/2017

US-based music advocacy group MusicFirst has written a letter to Congress outlining copyright concerns for “thousands” of musicians and recording ...

THE FILM AT THE END OF THE YELLOW BRICK ROAD
via The Newscastle Herald by Joanne McCarthy on 1/20/2017

He chose a Somewhere Over the Rainbow clip, and snatches of two other songs with potential copyright problems, after discussions with his drama ...

COMPETITION IN MUSIC RIGHTS — UNFINISHED BUSINESS FOR DOJ
via Intellectual Property Law360 by Thomas Lenard & Lawrence White on 1/20/2017
URL: https://www.law360.com/ip/articles/882068

ASCAP and BMI are the two largest music performing rights organizations that represent composers/song writers and their publishers in music copyright license contracts with radio stations, internet and other digital music services, TV and movies, restaurants and bars, and other music distributors.

PARAMOUNT SETTLES 'STAR TREK' FAN FILM COPYRIGHT SUIT
via Intellectual Property Law360 by Bill Donahue on 1/20/2017
URL: https://www.law360.com/ip/articles/883119

The producers of an unauthorized "Star Trek" fan film have reached a settlement with Paramount Pictures and CBS to end a closely watched copyright infringement lawsuit over the project, the parties announced Friday.

CBS, PARAMOUNT SETTLE LAWSUIT OVER 'STAR TREK' FAN FILM
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 1/20/2017

A deal comes as the the studios were prepared to head to an unexplored copyright galaxy at trial on Jan. 31.
AXANAR PRODUCTIONS, PARAMOUNT, AND CBS SETTLE STAR TREK COPYRIGHT LAWSUIT
via Ars Technica by Megan Geuss on 1/20/2017

On Friday, litigants announced a settlement to end a contentious copyright lawsuit over a short film and a proposed feature-length film based in the Star Trek universe.

HP MUST FACE COPYRIGHT CLAIM OVER ORACLE CODE
via Intellectual Property Law360 by Kelcee Griffis on 1/20/2017
URL: https://www.law360.com/ip/articles/882989

A California federal court on Thursday ruled Hewlett Packard Enterprise Co. must face a claim for vicarious copyright infringement in Oracle International Corp.’s suit alleging HP support companies distributed copyrighted Oracle code.

COPYRIGHT CLASH OVER ‘STAR TREK’ FAN FILM ENDS IN SETTLEMENT
via WSJ.com: Law Blog - WSJ.com by Jacob Gershman on 1/20/2017
URL: http://blogs.wsj.com/law/2017/01/20/copyright-clash-over-star-trek-fan-film-ends-in-settlement/

The “Star Trek” fan film won’t be long and its budget won’t be prosperous, but it gets to live. Those are essentially the terms of a just-announced settlement in the high-profile copyright case against the makers of a crowdfunded Star Trek film. Paramount Pictures Corp. and CBS Studios Inc., which own the copyrights to the […]

SPANISH PRODUCER FIRES BACK AT MOTION TO DISMISS ‘TIMELESS’ LAWSUIT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 1/20/2017

Onza Partners says comparing only the series pilot episodes to establish infringement would encourage idea theft.

ONE IN THREE WATCH PIRATED CONTENT IN US
via IP Pro The Internet by Barney Dixon on 1/20/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5281

The survey, conducted by YouGov at the behest of digital platform security specialist Irdeto, found that 39 percent of consumers were unconcerned ...
HOW THE NMPA FIGHTS FOR MUSIC PUBLISHERS -- WITH HELP FROM STING, STEVEN TYLER, BON JOVI AND MORE
via Billboard by Robert Levine on 1/20/2017
URL: http://www.billboard.com/articles/business/7662334/national-music-publishers-association-100th-anniversary

... Israelite has collected more than $575 million in legal judgments and settlements — a powerful way of underlining the value of song copyrights.

IP CLAIMS AGAINST DEX MEDIA SURVIVE, BANKRUPTCY JUDGE SAYS
via Intellectual Property Law360 by Vince Sullivan on 1/20/2017
URL: https://www.law360.com/ip/articles/883099

A copyright infringement suit against the publisher of the Yellow Pages can continue because the owner of stock photos used in the directories stated a plausible cause of action, a Delaware bankruptcy judge ruled late Thursday.

PARAMOUNT PICTURES AND CBS STUDIOS END YEARLONG LEGAL BATTLE AGAINST MAKERS OF FAN-MADE ...
via Rolling Stones by Daniel Kreps on 1/20/2017

Over a year after Star Trek's copyright holders engaged in a legal war with the sci-fi series' own fans over a crowdfunded, unofficial prequel film, the ...

‘STAR TREK’ COPYRIGHT SETTLEMENT ALLOWS FAN FILM TO PROCEED
via NYT > Media & Advertising by Christopher Mele on 1/20/2017

A legal battle that was worthy of a Federation starship taking on a Klingon destroyer pitted an amateur filmmaker against two Hollywood studios.
Florence Welch, the leading lady of Florence and the Machine, asked a crowd of 25,000 at her Camden performance if they could refrain from taking photos or videos during one song.

Artist Vlada Haggerty and her legal counsel managed to get budding cosmetics mogul Kylie Jenner to credit her Instagram photos with Haggerty's ...

MUSICIANS NOT FAIRLY COMPENSATED, SAYS MUSICFIRST
via IP Pro The Internet by Katherine Brown on 1/22/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5283

It argued: “Radio must join every other platform that builds a business delivering copyrighted content and compensate artists for their music.” “Radio in ...

US media companies Paramount Pictures and CBS Studios have settled a copyright infringement battle with Axanar Studios, the makers of a “Star ...
EASL SPEAKERS BUREAU/NEW YORK FOUNDATION OF THE ARTS PROGRAM: YOUR ART WILL OUTLIVE YOU - HOW TO PROTECT IT NOW!
via The Entertainment, Arts and Sports Law Blog on 1/23/2017
URL: http://nysbar.com/blogs/EASL/2017/01/easl_speakers_bureaunew_york_f.html

The New York Foundation for the Arts (NYFA) and New York State Bar Association Entertainment, Arts, and Sports Law Section's Fine Arts and Pro Bono Committees recently joined forces to present a panel about how to preserve and extend a creative legacy after the creator's death.

APPEALS COURT MAKES IT TOUGHER FOR CONTENT COMPANIES TO SUE TECH SERVICES FOR MASS PIRACY
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 1/23/2017

A legally infamous adult publisher — along with friends at the Recording Industry Association of America — suffer a defeat.

RIMINI URGES 9TH CIRC. TO NIX ORACLE COPYRIGHT LOSS
via Intellectual Property Law360 by Bill Donahue on 1/23/2017
URL: https://www.law360.com/ip/articles/883425

Rimini Street has fired its opening shot in a Ninth Circuit appeal aimed at overturning an $88 million copyright loss to Oracle USA Inc., framing the case as an effort by a larger company to quash competition in the market for software support service.

FOUR REASONS WHY HOLLYWOOD SUPPORTED THE TRANS-PACIFIC PARTNERSHIP
via Los Angeles Times by Meg James on 1/23/2017

The treaty ensured that copyright owners of digital material had the exclusive right to make their works available online. It extended the length of ...
9TH CIRC. SAYS AEREO DIDN'T NIX COPYRIGHT 'VOLITIONAL' RULE
via Intellectual Property Law360 by Bill Donahue on 1/23/2017
URL: https://www.law360.com/ip/articles/883834

The Ninth Circuit ruled Monday that adult website operator Perfect 10 Inc. couldn’t directly sue an online service provider over images illegally shared by users over its network, rejecting the argument that the U.S. Supreme Court's Aereo ruling had removed the so-called “volitional conduct” requirement for such claims.

ADULT WEBSITE PERFECT 10 STRIKES OUT ON COPYRIGHT APPEAL AGAINST SERVER OWNER
via Reuters by Barbara Grzincic on 1/24/2017
URL: http://www.reuters.com/article/ip-giganews-9th-idUSL1N1FE449

Adult-content purveyor Perfect 10 failed to show copyright infringement of any kind by newsgroup operator Giganews, a federal appeals court ruled ...

TEXAS A&M UNIVERSITY NAMED IN '12TH MAN' COPYRIGHT SUIT
via World IP Review on 1/24/2017

The organisation filed its lawsuit (pdf) at the US District Court for the Southern District of Texas, Houston Division on Thursday, January 19.

COPYRIGHT OWNERSHIP (THAT'S WHAT MCCARTNEY WANTS)
via Forbes by Jeff Kobulnick on 1/24/2017

Under that section, an author may reclaim their copyright ownership interest by serving a termination notice on the rightsholder between 56 and 61 ...

'INVENTOR OF EMAIL' CITES COPYRIGHT REGISTRATION AS PROOF
via FindLaw Writ - Recent Articles by Casey C. Sullivan, Esq. on 1/24/2017

Shiva Ayyadurai wants to be known as the man who created email -- so much so that he once trademarked the phrase "the inventor of email."
ADULT PUBLISHER'S APPEALS COURT LOSS MAKES IT TOUGHER TO SUE TECH SERVICES FOR MASS PIRACY
via Billboard by Eriq Gardner on 1/24/2017

Hollywood studios and major record labels may again be cursing the name of Perfect 10, an adult publisher with a history of aggressive copyright ...

FILMON X SAYS VIMEO RULING HELPS COPYRIGHT LICENSE BID
via Intellectual Property Law360 by Bill Donahue on 1/24/2017
URL: https://www.law360.com/ip/articles/883929

Internet streaming service FilmOn X, fighting in both the Ninth and D.C. Circuits for access to the same automatic copyright licenses as cable companies, told those courts Monday the Second Circuit’s recent Vimeo ruling should swing the battle in its direction.

11TH CIRC. REVERSES 90 PERCENT FEE CUT AFTER COPYRIGHT WIN
via Intellectual Property Law360 by Carolina Bolado on 1/24/2017
URL: https://www.law360.com/ip/articles/884303

The Eleventh Circuit on Tuesday reversed a decision that cut Yellow Pages Photos Inc.'s $1.6 million request for attorneys' fees and costs by more than 90 percent after it won a copyright infringement suit against Ziplocal LP.

VIACOM, OTHERS GET $26.7M IN PROGRAM REBROADCASTING ROW
via Intellectual Property Law360 by Kevin Penton on 1/24/2017
URL: https://www.law360.com/ip/articles/884356

A Virginia federal judge on Tuesday awarded $26.65 million in copyright damages to a joint venture involving Viacom and several other media companies, following a default judgment that two Canadian residents had been rebroadcasting Indian programming without permission.

DISTRICT PLACES BURBANK HIGH SCHOOL SHOW CHOIR DIRECTOR ON LEAVE
via Burbank Leader by Kelly Corrigan on 1/24/2017

The lawsuit accused Carroll of copyright infringement, but the court ruled that Tresóna lacked standing for three of four songs at the center of the ...
YEAR AHEAD: COPYRIGHT ISSUES RANK HIGH ON EU TO-DO LIST THIS YEAR via Intellectual Property Watch by Dugie Standeford on 1/25/2017
URL: http://www.ip-watch.org/2017/01/25/year-ahead-copyright-issues-rank-high-on-eu-to-do-list-this-year/

Copyright, copyright and more copyright tops Europe's intellectual property agenda for 2017. With the EU institutions mulling major reforms to copyright laws, publishers are pushing for a right to bar unauthorised copying or reuse of their content for commercial purposes, audiovisual authors for fair remuneration for use of their works on platforms like YouTube. The European Commission will begin reviewing the enforcement of IP rights as well as delving further into issues related to liability of platforms for infringement. But there are many patent issues too, including plant variety protection, patent incentives, and the ongoing unitary patent court.

PERFECT 10 LOSES TO GIGANEWS
via IP Pro The Internet by Barney Dixon on 1/25/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5286

Purported copyright troll Perfect 10 cannot directly sue an online service provider for images illegally shared by users over its network, according to the ...

COPYRIGHT ALLIANCE URGES TRUMP TO ENHANCE PIRACY FIGHT
via World IP Review on 1/25/2017

The Copyright Alliance, an organisation representing more than 1.8 million creators and 13,000 organisations, has urged US President Donald Trump ...

UNICOLORS FILES SUIT AGAINST GARMENT VENDORS OVER ALLEGED COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 1/25/2017
URL: http://norcalrecord.com/stories/511074276-unicolors-files-suit-again-against-garment-vendors-over-alleged-copyright-infringement

Vernon-based Unicolors alleges one of its copyrighted ... Fashion Inc., Zulily LLC and Does 1-10 alleging copyright infringement.
Earlier this month, unnamed representatives of the Trump Administration commissioned Washington, D.C.’s Buttercream Bakeshop (and its owner, Tiffany MacIsaac), to make a cake for Trump’s “Salute to Our Armed Services” ball on Friday, January 20, 2017.

In TCA Television Corp. v. McCollum, 839 F.3d 168 (2d Cir. 2016), the Second Circuit provided guidance regarding how courts should analyze “transformativeness” under the fair use doctrine. The court held that a near-verbatim recitation of Abbott and Costello’s comedy routine “Who’s on First?” in a play was not fair use. Past cases, including from the Second Circuit, had suggested that a use of an unaltered work incorporated into a larger work could be transformative so long as the use...

A few weeks ago I noted that the CA district court had handed CBS/Paramount a significant victory in its copyright infringement lawsuit against the ...

The trial judge in a copyright infringement case should not have limited the plaintiff to recovering 7.5 percent of its attorneys' fees based on the fact that ...
COPYRIGHT OFFICE UPDATES DMCA SAFE HARBOR AGENT REGISTRATION REQUIREMENTS
via National Law Review by David A.W. Wong on 1/25/2017

The Digital Millennium Copyright Act (DMCA) provides online service providers (OSP) “safe harbor” protection from liability for certain content posted ...

RADIO ROYALTIES BATTLE LINES BEING DRAWN (ONCE AGAIN) WITH NEW CONGRESS
via Billboard by Ed Christman on 1/25/2017

This year, in addition to radio legislation, the music industry is hoping that the copyright review process that is now two years old will finally result in ...

IT'S TIME TO MODERNIZE THE COPYRIGHT OFFICE
via Forbes by Gabriel Horwitz on 1/25/2017

Donald Trump jokes with the press before his meeting at Trump International Golf Club, November 19, 2016 in Bedminster Township, New Jersey.

FOREVER 21 FILES COPYRIGHT INFRINGEMENT SUIT, ACCUSES OTHER RETAILERS OF COPYING
via Fashion Law by Ariel Givner on 1/25/2017
URL: http://www.thefashionlaw.com/home/forever-21-files-suit-accuses-other-retailers-of-copying

Here is a lawsuit you do not see every day. Forever 21 has filed suit, accusing multiple other retailers of copying its designs. That is right; according to ...
EU LAW DOESN'T PREVENT PUNITIVE DAMAGES IN IP SUITS, SAYS CJEU
via World IP Review on 1/26/2017

It also filed an application with the Polish Copyright Commission asking the body to set the fee payable for use of the copyright managed by SFP.

DISNEY HIT WITH COPYRIGHT SUIT OVER 'LIGHT BETWEEN OCEANS'
via Intellectual Property Law360 by Bill Donahue on 1/26/2017
URL: https://www.law360.com/ip/articles/885280

The Walt Disney Co. and others were hit with a copyright lawsuit Thursday in Manhattan federal court from an author who claims the 2016 film "The Light Between Oceans" was ripped from his earlier screenplay.

ROSS STORES ACCUSED OF COPYRIGHT INFRINGEMENT OVER FABRIC DESIGN
via Northern California Record by Wadi Reformado on 1/26/2017

According to the complaint, the plaintiff alleges that it suffered damages to its business from having its copyrighted designs used by another business.

DESIGN BASICS LLC ACCUSES PENNSYLVANIA COMPANIES OF COPYRIGHT INFRINGEMENT
via Penn Record by Louie Torres on 1/26/2017
URL: http://pennrecord.com/stories/511070973-design-basics-llc-accuses-pennsylvania-companies-of-copyright-infringement

A Nebraska company is suing MTF Associates Inc.; Haubert Construction LLC, d/b/a Fogarty Homes; Fogarty Homes Inc.; ...

SANS COPYRIGHT, FASTCASE RULEBOOK ROW KICKED FROM FED COURT
via Intellectual Property Law360 by Kat Greene on 1/26/2017
URL: https://www.law360.com/ip/articles/885433

Lawriter LLC and Fastcase Inc. will have to take their fight over the right to publish online a Georgia law rulebook elsewhere, a Georgia federal judge ruled Thursday, finding that the suit didn’t belong in federal court because no one had a copyright for the rulebook yet.
DISNEY, DREAMWORKS SUED BY WRITER ALLEGING 'THE LIGHT BETWEEN OCEANS' COPYRIGHT INFRINGEMENT
via Wrap by Matt Pressberg on 1/26/2017

Writer Joseph Nobile has sued Disney, DreamWorks, its successor companies, as well as author Margot Louise Watts and her publisher Simon ... 

BEAUTY RIVALS WAGE WAR OVER LOOKALIKE MAKEUP BRUSHES AND BRANDING
via Fashion Law on 1/26/2017
URL: http://www.thefashionlaw.com/home/beauty-rivals-wage-war-over-lookalike-make-up-brushes-and-branding

Worth Beauty has filed suit against Michael Todd Beauty, accusing its fellow cosmetics company of copyright infringement and trade dress ...

PASTE MEDIA ACCUSED OF COPYRIGHT INFRINGEMENT OVER USE OF MARTIN SCORSESE PHOTO
via Northern California Record by Wadi Reformado on 1/27/2017

The plaintiff requests a trial by jury and seeks enjoin the defendants from further infringing plaintiff's copyrights, award all profits and damages, ...

COPYING CLASSIC DESIGNS IS NOW OFF LIMITS
via National Law Review by Florian Traub & Gillian M. Dennis on 1/27/2017
URL: http://www.natlawreview.com/article/copying-classic-designs-now-limits

Designers may also need advice on enforcing the copyright they now own against businesses continuing to deal in replicas despite the change in the ...
RUSSIA PERMANENTLY BLOCKS DAILYMOTION FOLLOWING COPYRIGHT VIOLATIONS
via World IP Review on 1/27/2017

Russia has allegedly blocked online video service Dailymotion after the site was found to be illegally hosting TV content. According to reports ...

ACMET INC. ACCUSES ZULILY OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 1/27/2017
URL: http://norcalrecord.com/stories/511076051-acmet-inc-accuses-zulily-of-copyright-infringement

Acmet Inc. accuses Zulily of copyright infringement ... Central District of California against Zulily LLC and Does 1-10 alleging copyright infringement.

INTERNET SERVICE PROVIDERS, STUDIOS AND RECORD LABELS CALL IT QUITS ON COPYRIGHT ALERT SYSTEM
via Variety by Ted Johnson on 1/27/2017

Major internet providers are ending a four-year-old system in which consumers received “copyright alerts” when they viewed peer-to-peer pirated ...

COPYRIGHT CLAIM AGAINST 'LIGHT BETWEEN OCEANS'
via Courthouse News Service by Nick Rummell on 1/27/2017
URL: http://courthousenews.com/copyright-claim-against-light-between-oceans/

“The Light Between Oceans” barely flickered at the box office, but an American writer says the film and the book on which it was ...
FASTCASE SUIT BOOTED FROM FEDERAL COURT BECAUSE CASEMAKER LACKS COPYRIGHT ON GEORGIA REGULATIONS
via ABA Journal by Stephanie Francis Ward on 1/27/2017

The information in question is not actually copyrighted, U.S. District Judge Thomas C. Batten Sr wrote in his Jan. 26 order (PDF), and the court does ...

MANNY THE MOVIE GUY ACCUSED OF COPYRIGHT INFRINGEMENT OVER USE OF SCORSESE PHOTO
via Northern California Record by Wadi Reformado on 1/27/2017

According to the complaint, the plaintiff alleges that it created a photo of Martin Scorsese in 2006 and owns the copyrights. The plaintiff holds De La ...

NEW LOOK, MELROSE ACCUSED OF INFRINGING COPYRIGHTED TEXTILE DESIGN
via Northern California Record by Wadi Reformado on 1/27/2017

New Look, Melrose accused of infringing copyrighted textile design ... of using a Vernon company's copyrighted fabric design without authorization.

EDITORIAL: UI COPYRIGHT CLAIM LIMITS PUBLIC ACCESS
via Des Moines Register on 1/27/2017

There is no exemption in Iowa's Open Records Law for copyrighted works — perhaps because government agencies typically don't try to assert ...

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FOREVER 21 FILES COPYRIGHT INFRINGEMENT LAWSUIT AGAINST COPYCAT COMPANIES
via Yahoo by Hayley FitzPatrick on 1/27/2017
URL: https://www.yahoo.com/style/forever-21-files-copyright-infringement-lawsuit-against-copycat-companies-180735603.html

Forever 21 has been accused of ripping off other designers many times in the past — from big labels like Adidas and H&M to smaller individuals like ...

SINGER SUES APPLE FOR USING HIS SONG, VIOLATING RIGHT OF PUBLICITY
via FindLaw Writ - Recent Articles by Casey C. Sullivan on 1/27/2017

You've written a song -- a successful one, maybe. Long after it has fallen off the charts, it's picked up and sampled in a new hit.

SIRIUS BATTLE OVER ATTORNEY FEES FOLLOWS TURTLES' PRE-72 SOUND RECORDINGS SETTLEMENT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 1/27/2017

Does a recent 2nd Circuit ruling count as a win for Sirius or The Turtles under their settlement?

PAUL MCCARTNEY FIGHTS SONY/ATV OVER COPYRIGHT TERMINATION NOTICES TO RECLAIM BEATLES COPYRIGHTS
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 1/28/2017

In the official complaint filed by McCartney, the British rock legend is seeking to reclaim ownership of the Beatles copyrights under provisions of the Copyright Act, as amended in 1976. Section 304(c) of that legislation gives authors the right to terminate transfers to reclaim copyright interests for copyrights that were assigned to transferred to third parties before January 1st, 1978. Living authors, or surviving family members of authors who have died, have a five-year period starting 56...
HAVE YOUR CAKE AND PROTECT IT TOO: HOW COPYRIGHT APPLIES TO EDIBLE ART
via Mister Copyright by Kevin Madigan on 1/29/2017
URL: http://mistercopyright.org/have-your-cake-and-protect-it-too-how-copyright-applies-to-edible-art

Amidst a flurry of inaugural ball appearances on the evening of January 20th, Donald Trump took a moment to participate in a cake cutting ceremony at the Armed Services Ball.

COPYRIGHT SCHOLARSHIP – PHILADELPHIA, PA
via Legal Scholarship Blog by Mary Whisner on 1/29/2017
URL: http://www.legalscholarshipblog.com/2017/01/29/copyright-scholarship-philadelphia-pa/

The Center for Technology, Innovation and Competition (CTIC) at the University of Pennsylvania Law School hosts the Second Copyright Scholarship Roundtable March 24-25, 2017.

COPYRIGHT INFRINGING ALERT SYSTEM ABANDONED IN US
via ZDNet by Corinne Reichert on 1/29/2017

The Center for Copyright Information (CCI) has announced that the United States Copyright Alert System (CAS), designed to combat online piracy, has ...

VIDANGEL BLASTS COPYRIGHT DEFEAT AT 9TH CIRC.
via Intellectual Property Law360 by Bill Donahue on 1/30/2017
URL: https://www.law360.com/ip/articles/886415

VidAngel Inc. kicked off an appeal to the Ninth Circuit on Friday of a ruling that the movie filtering service is violating the copyrights of Walt Disney and other Hollywood studios, saying the decision ran contrary to “common sense.”

DURAN DURAN CASE SHOULDN'T AFFECT PAUL MCCARTNEY CONTRACTS
via Intellectual Property Law360 by Helene Freeman on 1/30/2017
URL: https://www.law360.com/ip/articles/882786

Under the United States Copyright Act, authors have the right to terminate contracts for the assignment of copyright, or rights under copyright. This termination right is “inalienable” and it cannot be waived by contract. Under the Berne Convention, foreign authors enjoy the same rights under the U.S. copyright law as American authors enjoy.
LA MAIN CONNECTION INC., ROSS STORES ALLEGES TO HAVE USED COPYRIGHTED DESIGN WITHOUT PERMISSION
via Northern California Record by Wadi Reformado on 1/30/2017
URL: http://norcalrecord.com/stories/511076061-la-main-connection-inc-ross-stores-alleges-to-have-used-copyrighted-design-without-permission

... District of California against La Main Connection Inc., doing business as Espresso; Ross Stores Inc.; and Does 1-10 alleging copyright infringement.

ZHANYOU INC., SHOPTIQUES INC., OTHERS ACCUSED OF COPYRIGHT INFRINGEMENT OVER DESIGN USE
via Northern California Record by Wadi Reformado on 1/30/2017
URL: http://norcalrecord.com/stories/511076333-zhanyou-inc-shoptiques-inc-others-accused-of-copyright-infringement-over-design-use

17 in the U.S. District Court for the Central District of California against Zhanyou Inc., Jinhai Qin, Shoptiques Inc. and Does 1-10 alleging copyright ...

TALKING COPYRIGHT ABUSE, YOUTUBE CHANGES WITH ICG'S LAURA CHERNIKOFF
via Forbes by Fruzsina Eordogh on 1/30/2017

The Internet Creators Guild (ICG), a non-profit organization created by Hank Green, was launched June of 2016 in order to help support and represent ...

AUSTRALIA TO REVIEW EFFECTIVENESS OF ISPS' COPYRIGHT-DEFENDING WEBSITE BLOCKS
via Register by Simon Sharwood on 1/30/2017
URL: https://www.theregister.co.uk/2017/01/30/australia_to_review_effectiveness_of_isps_COPYRIGHTdefending_website_blocks/

Szathmari replied that “We respect the artist's right to make money, nor are we opposed to copyright. What we do believe is that destroying the ...
IP AND THE 115TH CONGRESS: MEET THE REPUBLICANS OF THE HOUSE IP SUBCOMMITTEE
via IPWatchdog.com | Patents & Patent Law by Gene Quinn on 1/31/2017

The House Judiciary Committee will set the agenda for any intellectual property legislative reforms that will arise over the next two years during the 115th Congress, and the Subcommittee on Courts, Intellectual Property, and the Internet will take the lead for the full House Judiciary Committee. Congressman Bob Goodlatte (R-VA) is once again Chair of the House Judiciary Committee, and in that role will continue to have tremendous influence on any intellectual property related matters... At the...

ESPN REACHES SETTLEMENT IN MUSIC LICENSING DISPUTE
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 1/31/2017
URL: http://www.hollywoodreporter.com/thr-esq/espn-reaches-settlement-music-licensing-dispute-970550

The sports network sued BMI in February 2016, claiming that licensing demands for broadcasting ambient music were unreasonable.

STAR TREK FAN FICTION SUIT SETTLES
via FindLaw Writ - Recent Articles by William Vogeler on 1/31/2017

This notable fan fiction case has been pending in federal court for about a year. Paramount, which owns the rights to the Star Trek television and movie franchise, sued a small studio for producing a "fan fiction" film called "Axanar" based on the popular sci-fi enterprise.

IP SCHOLARS EXPLAIN WHY WE SHOULDN’T USE SURVEYMONKEY TO SELECT OUR NEXT REGISTER OF COPYRIGHTS
via Center for the Protection of Intellectual Property by Kevin Madigan on 1/31/2017

In a letter submitted to House Judiciary Committee today, nine IP scholars (organized by CPIP’s Sandra Aistars) express their support for the Committee’s proposal to modernize the Copyright Office.
IN USENET SUIT, 9TH CIR. DEFENDS VOLITIONAL CONDUCT RULE IN COPYRIGHT CLAIMS
via FindLaw Writ - Recent Articles by Casey C. Sullivan on 1/31/2017

The Ninth Circuit hung fast to its volitional conduct rule in copyright claims last week, while making it a bit harder for copyright holders to go after online service providers for copyright infringement.

JURY AWARDS $460K OVER CULT HORROR FILM INFRINGEMENT
via Intellectual Property Law360 by Kelcee Griffis on 1/31/2017
URL: https://www.law360.com/ip/articles/886585

Movie sales and distribution company PFG Entertainment Inc. must pay $460,000 for using footage originally intended for the 2013 cult horror film “Toolbox Murders 2” and marketing a re-edited version as “Coffin Baby,” a California federal jury decided Friday.

NO COPYRIGHT CRIME IN KICKASS TORRENTS CASE, SAYS DEFENSE
via Intellectual Property Law360 by Jessica Corso on 1/31/2017
URL: https://www.law360.com/ip/articles/886990

An Illinois federal judge heard arguments Tuesday over an attempt to throw out the criminal case against the owner of the highly trafficked Kickass Torrents, who says that the files shared on his website don’t contain any of the copyrighted materials the government is accusing him of illegally sharing.

COUTURE TEXTILE ACCUSES ROSS STORES, JAINSON'S INTERNATIONAL OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 1/31/2017

Couture Textile accuses Ross Stores, Jainson's International of copyright ... International Inc. and Does 1 through 10 alleging copyright infringement.
SORRY, GAMERS. YOU CAN'T COPYRIGHT YOUR FACE.
via cNet by Rochelle Garner on 1/31/2017

The Golden State Warriors played the Cleveland Cavaliers on January 16 in Oakland. Ezra Shaw, Getty Images. Ready to go toe-to-toe against the ...
February 2017

EU ADOPTION OF MARRAKESH TREATY FOR BLIND READERS IMMINENT AFTER YEARS OF DELAY?

via Intellectual Property Watch by Monika Ermert on 2/1/2017
URL: http://www.ip-watch.org/2017/02/01/eu-adoption-marrakesh-treaty-blind-readers-imminent-years-delay/

The European Parliament Legal Committee this week did not bother to further discuss the ratification of the Marrakesh Treaty on copyright exceptions for print disabled persons. Instead, Rapporteur Max Andersson declared that he had favoured putting the file to a vote right away. Andersson told Intellectual Property Watch that the parliament would adopt the report in March or latest April.

EP. 16: PAUL MCCARTNEY SUES SONY/ATV OVER THE BEATLES’ MUSIC RIGHTS

via IPLJ by Anthony Zangrillo on 2/1/2017

James Sammataro, Managing Partner of Stroock, Stroock, & Lavan’s Miami office returns to the podcast to discuss Paul McCartney’s recent declaratory action against music publisher Sony/ATV over the ownership of some of the Beatles’ most famous songs!

DEFENDING COPYRIGHT IN THE CONTEXT OF TRUMP

via The Illusion of More by David Newhoff on 2/1/2017
URL: http://illusionofmore.com/defending-copyright-context-trump/

Well, here we go. I’ve been waiting for this shoe to drop, and it looks like Josh Tabish, campaigns director for Vancouver-based OpenMedia, has decided to be among the first to throw a loafer. In an editorial for Wired, …

CREATIVEFUTURE’S HOUSE JUDICIARY COMMITTEE SUBMISSION

via CreativeFuture by Cesar Fishman on 2/1/2017
URL: http://www.creativefuture.org/creativefutures-house-judiciary-committee-submission/

The House Judiciary Committee, led by Congressman Goodlatte and Congressman Conyers, recently released a proposal that “identifies important reforms to help ensure the Copyright Office keeps pace in the digital age.”
JUDGE GORSUCH ON COPYRIGHT AND TECHNOLOGY
via The Laboratorium by James Grimmelmann on 2/1/2017
URL: https://laboratorium2d.tumblr.com/post/156672468995

I’ve done a quick pass through Judge Gorsuch’s opinions in the fields I know something about (mainly IP and Internet law) and I’m impressed by what I’ve found.

GOODLATTE PLEDGES TO PURSUE PATENT LITIGATION REFORM, COPYRIGHT REFORM IN 115TH CONGRESS
via IPWatchdog.com | Patents & Patent Law by Gene Quinn on 2/1/2017
URL: http://www.ipwatchdog.com/2017/02/01/goodlatte-patent-litigation-reform-copyright-reform/id=77879/

Congressman Bob Goodlatte (R-VA) holds the Chairmanship of the House Judiciary Committee, and as such will wield a great deal of power over any intellectual property related legislative reforms that will occur during the 115th Congress. Earlier today Goodlatte unveiled his agenda for the 115th Congress. Not surprisingly, a portion of his agenda includes additional patent litigation reform in order to address what he characterizes as "truly frivolous lawsuits," as well as reforms to keep...

OCULUS, EXECS LIABLE FOR $500 MILLION IN ZENIMAX VR TRIAL
via Ars Technica by Kyle Orland on 2/1/2017
URL: https://arstechnica.com/gaming/2017/02/oculus-execs liable-for-500-million-in-zenimax-vr-trial/

A jury has found Oculus and its executives liable for a combined $500 million in damages in a trial over improper use of technology created at Id Software parent company ZeniMax Media.

OCULUS GIFT: VR BIZ TO COUGH UP HALF A BILLION DOLLARS FOR RIPPING OFF SOFTWARE COPYRIGHT
via Register by Thomas Claburn on 2/1/2017
URL: https://www.theregister.co.uk/2017/02/01/oculus_500m_penalty_for_breached_agreement/

The jury also found that Oculus had violated ZeniMax's software copyrights, even as it rejected the claim that Oculus had stolen trade secrets.
AUTHOR ASKS COURT TO BE HIS 12TH MAN
via IP Pro The Internet by Barney Dixon on 2/1/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5295

“This is a case of willful copyright infringement motivated by an unyielding desire to show that Texas A&M University is the true owner of the '12th Man' ...

WAYS THE MUSIC INDUSTRY CAN CHANGE FOR THE BETTER
via Forbes by Erin Jacobson on 2/1/2017

... as well as to loosen copyright laws. Many of these platforms have built their business on using music as their main commodity; yet they don't want to ...

NORDSTROM RIPS FABRIC CO. FOR 'COPYRIGHT TROLL CASE'
via Intellectual Property Law360 by Bill Donahue on 2/1/2017
URL: https://www.law360.com/ip/articles/887131

Department store Nordstrom Inc. filed a scathing motion in New York federal court Tuesday demanding the dismissal of an infringement lawsuit over copyrighted lace designs, blasting the action as a “copyright troll case.”

FACEBOOK TO PAY $500 MILLION PENALTY OVER OCULUS VR COPYRIGHT INFRINGEMENT
via International Business Times by Deependra Jha on 2/1/2017
URL: http://www.ibtimes.co.in/facebook-pay-500-million-penalty-over-oculus-vr-copyright-infringement-714511

ZeniMax had alleged in a lawsuit that Oculus Rift was developed using source code illegally obtained from ZeniMax. Facebook purchased Oculus VR ...

FACEBOOK'S OCULUS FINED $500 MILLION FOR INFRINGING COPYRIGHT
via Evening Standard by Clare Hutchison on 2/2/2017
URL: http://www.standard.co.uk/business/facebooks-oculus-fined-500-million-for-infringing-copyright-a3456441.html

Facebook and its virtual reality business Oculus must pay $500 million (£390 million) after a legal battle over allegations they stole another firm's ...
DISNEY, DREAMWORKS NAMED AS DEFENDANTS IN COPYRIGHT INFRINGEMENT SUIT INVOLVING “THE LIGHT BETWEEN OCEANS”
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 2/2/2017
URL: http://www.ipwatchdog.com/2017/02/02/disney-dreamworks-copyright-infringement-light-between-oceans/id=77706/

On Thursday, January 26th, Burbank, CA-based entertainment giant Walt Disney Company (NYSE:DIS) and movie production firm DreamWorks of Universal City, CA, were named as defendants in a copyright infringement suit involving the 2016 romantic drama The Light Between Oceans. The suit, which also targets the screenplay author and NYC-based book publisher Simon & Schuster, Inc., charges that both the 2016 movie and the 2012 novel upon which it is based were both plagiarized from a 2004...

THE CREATIVE COMMONS, OR "COMMONLY CREATIVE"
via The Entertainment, Arts and Sports Law Blog by Cheryl Davis on 2/2/2017
URL: http://nysbar.com/blogs/EASL/2017/01/the_creative_commons_or_common.html

Any playwright or other theatre artist ought to have some familiarity with the copyright law, not only to protect their own rights to their creative work, but also to understand what kind of work they can use created by somebody else--no one works in a vacuum.

FOCUSED PATENT, COPYRIGHT BILLS ARE ON HOUSE AGENDA
via Bloomberg BNA by Tony Dutra on 2/2/2017
URL: https://www.bna.com/focused-patent-copyright-n57982083203/

The House Judiciary Committee will advance bills to update copyright law and curb patent litigation abuses this year, committee chairman Robert W.

ZENIMAX SAYS IT MAY TRY TO STOP OCULUS FROM SELLING VR HEADSETS
via Ars Technica by Kyle Orland on 2/2/2017
URL: https://arstechnica.com/gaming/2017/02/zenimax-says-it-may-try-to-stop-oculus-from-selling-vr-headsets/

Zenimax Media says it will consider "seeking an injunction to restrain Oculus and Facebook from their ongoing use of computer code that the jury found infringed Zenimax's copyrights" following a $500 million verdict against Oculus and its executives in a recent federal civil suit.
DID DONALD TRUMP JUST MAKE A COPYRIGHT CHANGE TO PROTECT TRANSGENDER INDIVIDUALS?
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 2/2/2017

Authors now get to change their names in the online registration catalog.

JURY: OCULUS OWES $500M IN COPYRIGHT CASE
via FindLaw Writ - Recent Articles by Christopher Coble on 2/2/2017

The reality may be virtual, but the jury's verdict is very real. Oculus VR, makers of the Rift virtual reality headset, along with founders Palmer Luckey and Brendan Iribe, were found to have violated a nondisclosure agreement as well as copyright infringement and false designation in a legal rift with ZeniMax Media. And now Oculus -- or more accurately its new owner, Facebook -- owe ZeniMax half a billion dollars.

GOODLATTE COMMITS TO IP REFORM
via IP Pro The Internet by Barney Dixon on 2/2/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5301

Goodlatte outlined reforms of the US's litigation system, discourage abusive patent litigation and review its copyright laws as part of its agenda for the ...

WHY YOU NEED TO BE CAREFUL WHAT YOU TAKE WITH YOU WHEN LEAVING A COMPANY
via Business Insider by Chris Pash on 2/2/2017

“IT is not only the employee who leaves with valuable client lists or copyright material that has a problem,” says Riley. “The new business employer can ...

GOODLATTE PROMISES PATENT LITIGATION REFORMS
via World IP Review on 2/3/2017

In December last year, WIPR reported that the committee had revealed a set of proposed reforms for modernising the US Copyright Office to ensure it ...
DOOM CO-CREATOR DEFENDS HIS CODE AGAINST ZENIMAX COPYING ACCUSATIONS
via Ars Technica by Kyle Orland on 2/3/2017
URL: https://arstechnica.com/gaming/2017/02/doom-co-creator-defends-his-code-against-zenimax-copying-accusations/

Oculus CTO John Carmack was largely vindicated last week when a jury cleared him of any personal liability in a case where he was accused of exploiting trade secrets, stealing and reusing code, and destroying evidence from his time working at Id Software parent ZeniMax Media.

CHINESE PIRATES ARE FACING LIFELONG 'SOCIAL CREDIT' DOWNGRADE
via Register by Andrew Orlowski on 2/3/2017
URL: https://www.theregister.co.uk/2017/02/03/chinese_pirates_face_lifelong_social_credit_downgrade/

Copyright infringement and use of counterfeit goods in China could downgrade a citizen's "social credit" with lifelong consequences as the country ...

MUSIC INDUSTRY MAJORS SUE HIP-HOP STREAMING SITE SPINRILLA
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 2/3/2017
URL: http://www.hollywoodreporter.com/thr-esq/music-industry-majors-sue-hip-hop-streaming-site-spinrilla-971831

“Spinrilla specializes in ripping off music creators by offering thousands of unlicensed sound recordings for free,” says the RIAA.

FEDERAL REGULATIONS CAN BE COPYRIGHTED, COURT RULES
via Intellectual Property Law360 by Bill Donahue on 2/3/2017
URL: https://www.law360.com/ip/articles/888182

A D.C. federal court ruled Thursday that private standards-setting groups can claim copyright ownership of industry rules that are transformed into federal law, thwarting a nonprofit that wanted to post the regulations online for better public access.

STAR TREK COPYRIGHT SUIT IS SETTLED BUT FAN-FILMMAKERS GET GUIDANCE
URL: http://www.newyorklawjournal.com/id=1202778415309

The Star Trek franchise so far includes six television series (more than 700 episodes)—and another that launches this year—plus 13 feature-length ...
GOOGLE, WAZE REACH DEAL IN GPS APP MAKER'S COPYRIGHT SUIT
via Intellectual Property Law360 by Suevon Lee on 2/3/2017
URL: https://www.law360.com/ip/articles/888427

Google Inc.-owned Waze Inc. has reached a deal with global positioning system navigation app maker PhantomALERT Inc. in its copyright infringement suit alleging the companies copied its database that compiles traffic conditions, according to a Friday filing in California federal court.

COPYRIGHT OFFICE IS ANALOG IN DIGITAL WORLD, AND THAT MUST CHANGE
via Hill by Gregory Alan Barnes on 2/3/2017
URL: http://thehill.com/blogs/pundits-blog/sports-entertainment/317869-a-better-copyright-office-requires-better-technology

The online process to register copyrighted works is rather clumsy and fails to capture important metadata that would make it easier for individuals to ...

DURAN DURAN TO APPEAL UK DECISION THAT SPURRED MCCARTNEY SUIT
via Forbes by Daniel Fisher on 2/3/2017
URL: http://www.forbes.com/sites/danielfisher/2017/02/03/duran-duran-to-appeal-uk-decision-that-spurred-mccartney-suit/

The conflict stems from differences between U.S. and foreign copyright law, which Congress has been trying to close with a series of statutes and ...

JITRADE ALLEGES COPYRIGHT INFRINGEMENT AGAINST CUBE INSTYLE, OTHERS
via Northern California Record by Wadi Reformado on 2/3/2017
URL: http://norcalrecord.com/stories/511077897-jitrade-alleges-copyright-infringement-against-cube-instyle-others

Jitrade alleges copyright infringement against Cube Instyle, others ... Plus; Du Kim California Inc., doing business as Daylight, et al. alleging copyright ...

DANNY GREEN VS ANTHONY MUNDINE LIVE STREAMERS WILL FACE LEGAL ACTION FROM FOXTEL
via ABC by Lily Mayers & Riley Stuart on 2/3/2017
URL: http://www.abc.net.au/news/2017-02-04/green-v-mundine-live-streamers-warned-to-brace-for-legal-action/8241276

Rep: "It's a criminal offence against the copyright act, mate. We've got technical protection methods inside the box so exactly this thing can't happen.".
MUSIC COPYRIGHT FEES TO BE COLLECTED FROM PIANO, GUITAR SCHOOLS via Japan Today on 2/4/2017
URL: https://www.japantoday.com/category/national/view/music-copyright-fees-to-be-collected-from-piano-guitar-schools

Japan's music copyright management organization plans to collect ... Under JASRAC's plan, music copyright usage fees would be charged on ...

INFORMATION MINISTRY STRESSES COMMITMENT TO COPYRIGHTS via Bahrain News Agency on 2/5/2017

Information Affairs Ministry has seized more than 100,000 illegal works, as well as three websites that receive and decrypt ...

WHERE DOES COPYRIGHT GOVERNANCE FIT WITHIN GOVERNMENT? via Hugh Stephens Blog » Feed on 2/5/2017
URL: http://hughstephensblog.net/2017/02/05/where-does-copyright-governance-fit-within-government

The recent controversy over the effective dismissal/forced resignation of Maria Pallante, the former Register of Copyrights of the US Copyright Office (USCO) by the Librarian of Congress, Dr. Carla Hayden, and the debate as to whether it was logical for the custodian of copyright (and the advisor to Congress on copyright issues) to be located within the Library of Congress, raises the issue of how and where copyright registration is managed in other countries.

STEMTECH PICTURES HIGH COURT TAKING UP $1.6M PHOTO CASE via Intellectual Property Law360 by Dorothy Atkins on 2/6/2017
URL: https://www.law360.com/ip/articles/888387

Florida-based nutritional supplement maker Stemtech International Inc. has urged the U.S. Supreme Court to take up a ruling that affirmed a $1.6 million copyright damages verdict against the company over the use of photographs, saying the decision improperly broadens infringement liability laws as they apply to the internet.

VIDEO GAME CO. WANTS 'BASELESS' BLIZZARD, VALVE SUIT AXED via Intellectual Property Law360 by Matthew Guarnaccia on 2/6/2017
URL: https://www.law360.com/ip/articles/888450

A mobile app publisher fighting a lawsuit by video game giants Blizzard Entertainment Inc. and Valve Corp. over the alleged use of copyrighted material has asked a California federal judge to
dismiss the case as a sanction, saying the companies and their attorneys knew their claims were baseless but pursued them anyway.

CHILDREN'S AUTHOR APPEALS TOSSED DISNEY IP 'FROZEN' RULING
via Intellectual Property Law360 by Suevon Lee on 2/6/2017
URL: https://www.law360.com/ip/articles/888608

A Kuwaiti author who claims Disney ripped off her 2007 story, "The Snow Princess," for its hit animated feature film "Frozen" has appealed her tossed copyright suit to the Ninth Circuit, arguing the trial judge erred when he dismissed the case for lack of similarities between the two works.

DR. SEUSS ESTATE SAYS COPYRIGHT THREAT LETTER WAS LEGAL
via Intellectual Property Law360 by Bill Donahue on 2/6/2017
URL: https://www.law360.com/ip/articles/888602

The estate of Dr. Seuss is pushing back against claims that it committed tortious interference by sending a copyright threat letter to an unauthorized off-Broadway adaptation, saying it has an "absolute right" to protect its intellectual property.

LABELS SLAP HIP-HOP STREAMING SITE WITH COPYRIGHT SUIT
via Intellectual Property Law360 by Suevon Lee on 2/6/2017
URL: https://www.law360.com/ip/articles/888926

Major record labels including Atlantic Recording Corporation and Sony Music Entertainment on Friday slapped a hip-hop music streaming site with a copyright infringement suit in Georgia federal court, alleging it and its founder have been streaming copyrighted sound recordings without permission or payment.

TEXAS JURY AWARDS $500 MILLION IN COPYRIGHT AND TRADE SECRET CASE AGAINST FACEBOOK'S OCULUS VR
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 2/7/2017
URL: http://www.ipwatchdog.com/2017/02/07/texas-jury-awards-500-million-copyright-trade-secret-against-facebook-s-oculus-vr/id=78007/

On Wednesday, February 1st, a jury in the U.S. District Court for the Northern District of Texas (N.D. Tex.) entered a case verdict which orders virtual reality developer Oculus VR to pay $500 million to Rockville, MD-based interactive computing firm ZeniMax Media Inc. The verdict is the latest activity in a case involving allegations of copyright infringement and trade secret misappropriation levied against Oculus, now a subsidiary of social media giant Facebook Inc. (NASDAQ:FB) of Menlo Park,...
FACEBOOK, OCULUS, ZENIMAX, AND NONLITERAL COPYING OF CODE
via IPWatchdog.com | Patents & Patent Law by Bob Zeidman on 2/7/2017
URL: http://www.ipwatchdog.com/2017/02/07/facebook-oculus-zenimax-nonliteral-copying-code/id=78105/

So what about the ZeniMax v. Facebook case? While you read many reports that make fantastical claims, it is important to remember that software copyright has been accepted and understood by the legal community as well as any law can be. Software copyrights have been formally codified since 1980, though copyrights on written works have been accepted since the founding of our nation. Nonliteral infringement is a long-standing and universally accepted result of copyright law and a legitimate...

EX-COPYRIGHT OFFICE GC JOINS COVINGTON IN NY
via Intellectual Property Law360 by Kelly Knaub on 2/7/2017
URL: https://www.law360.com/ip/articles/888890

Covington & Burling LLP said Monday that it has strengthened its intellectual property rights and media communication practices in its New York office with the addition of the former general counsel of the U.S. Copyright Office.

HEARST SUED OVER USE OF JANET JACKSON, 'X-FILES' PICS
via Intellectual Property Law360 by Kelly Knaub on 2/7/2017
URL: https://www.law360.com/ip/articles/889436

A California-based photographer filed suit against Hearst Communications Inc. in New York federal court on Tuesday, alleging that the media giant reprinted four of his photographs, including ones of Janet Jackson and "The X-Files," without his permission.

BEYONCÉ HIT WITH $20M 'FORMATION' IP SUIT OVER SAMPLING
via Intellectual Property Law360 by Dorothy Atkins on 2/7/2017
URL: https://www.law360.com/ip/articles/889522

The estate of a deceased YouTube star hit Beyoncé and Sony Music Entertainment with a $20 million infringement suit in Louisiana federal court Monday, alleging they misappropriated the star's copyrighted works to make Beyoncé's hit song "Formation."
REPS PITCH BILL TO ENFORCE ROYALTIES FOR MUSIC PRODUCERS
via Intellectual Property Law360 by Kat Greene on 2/7/2017
URL: https://www.law360.com/ip/articles/889628

A pair of federal lawmakers on Tuesday reintroduced a bill that aims to amend a rule on royalty payments in the music industry to allow producers and engineers that help create songs to collect earnings on the work by law, instead of just based on the contracts they strike.

CREATIVE COMMONS' NEW SEARCH ENGINE MAKES IT EASY TO FIND FREE-TO-USE IMAGES
via Forbes by Kevin Murnane on 2/7/2017

Many people copyright their images with a Creative Commons license that allows you to use their work for free as long as you give them credit when ...

THE SHOW MUST (NOT) GO ON: THEATER'S COPYRIGHT WOES
via Intellectual Property Law360 by Bill Donahue on 2/8/2017
URL: https://www.law360.com/ip/articles/889544

There's a legal battle looming between the estate of Dr. Seuss and the producers of an unauthorized "Grinch" play, but it's hardly the first of its kind. The case is just the latest in a string of recent copyright courtroom fights in the booming world of live theater.

IMITATION VS. COPYING IN PHOTOGRAPHY: THE ISSUE OF DERIVATIVE WORKS
via PetaPixel by Adam Remsen on 2/8/2017
URL: https://petapixel.com/2017/02/08/imitation-vs-copying-photography-issue-derivative-works/

There's an important principle of copyright law at work here, which is that an idea cannot be copyrighted. Only a specific "tangible expression" of that ...

TV AND FILM STUDIOS SUE ISPS IN IRELAND OVER STREAMING SITES
via World IP Review on 2/8/2017

Nine internet service providers (ISPs) have been sued by six film and television studios in Ireland over access to streaming websites. 20th Century Fox ...
DOMAIN NAME ASSOCIATION BACKS UDRP-STYLE COPYRIGHT INFRINGEMENT SYSTEM
domainsassociationbackusdrp-stylecopyrightinfringementsystem

Interview: Since the IACC's Spring Conference, the coalition has continued its fight against counterfeiters across the globe. President Bob Barchiesi ...

AG ADVISES CJEU THAT PIRATE BAY COMMUNICATES TO THE PUBLIC
agadvisesceuthatpiratebaycommunicates
tothepublic

Back in November 2015, the Dutch Supreme Court referred a question on the copyright directive to the Court of Justice of the European Union (CJEU).

BEYONCÉ TANGLED UP IN $20M COPYRIGHT CLAIM
beyoncetangledupin20mcopyrightclaim

Pop star Beyoncé is tangled up in a $20 million copyright claim centring on a sampling in her song and video "Formation". The estate of Anthony Barré ...

MOVIE STUDIOS ATTEMPT TO BLOCK ACCESS TO INFRINGING WEBSITES IN IRELAND
moviesstudiosattempttoblockaccess
toinfringingwebsitesinireland

... access to three websites suspected of enabling copyright infringement. ... blocked in Europe since 2010 for distributing copyrighted content illegally, ...

YOUTUBE SINGER'S ESTATE SUES BEYONCE FOR $20M IN COPYRIGHT INFRINGEMENT SUIT
youtubeingersestatesuesbeyoncedue$20mincopyrightinfringementsuit

Beyonce is facing a $20 million copyright infringement lawsuit from the estate of a late New Orleans YouTube star who claims the pop star used his ...
BLIND MELON SETTLES "INSANE" COPYRIGHT LAWSUIT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 2/9/2017

The dispute veered from a possible discussion of cover songs to differing interpretations of what happened in licensing negotiations.

SONA AND SONGWRITERS FIGHT DOJ'S MISGUIDED 100% LICENSING RULE
via Center for the Protection of Intellectual Property by Devlin Hartline on 2/9/2017
URL: http://cpip.gmu.edu/2017/02/09/sona-and-songwriters-fight-dojs-misguided-100-licensing-rule/

Things are heating up in the lawsuit filed by Songwriters of North America and three of its members (SONA) challenging the new gloss of the Department of Justice (DOJ) on the 75-year old consent decrees that govern the licensing practices of ASCAP and BMI, the two largest performance rights organizations (PROs). SONA sued the DOJ on September 13, 2016, challenging the DOJ's reinterpretation of the consent decrees requiring the PROs to license all of the works in their repertories on a 100% basis.

BLIND MELON SETTLES UNUSUAL 'NO RAIN' COPYRIGHT SUIT
via Intellectual Property Law360 by Bill Donahue on 2/9/2017
URL: https://www.law360.com/ip/articles/890416

Nineties rock band Blind Melon has settled a copyright infringement lawsuit premised on an unusual argument: that a singer who used their 1992 hit "No Rain" without permission should have used even more.

ON THE HEELS OF CARTIER CASE, AUSTRALIA HANDS DOWN LANDMARK ISP RULING OF ITS OWN
via Fashion Law on 2/9/2017

Late last year, an array of copyright holders in various films and television programs successfully applied to the Federal Court of Australia for orders ...
BEYONCE HIT WITH $20 MILLION COPYRIGHT LAWSUIT
via SF Gate on 2/9/2017

Over the use of his voice in Beyonce's song "Formation," the estate of a late New Orleans YouTube star has filed a $20 million copyright infringement ...

DISNEY WARNS 9TH CIRC. OF 'ABSORD RESULTS' IN VIDANGEL CASE
via Intellectual Property Law360 by Bill Donahue on 2/9/2017
URL: https://www.law360.com/ip/articles/890561

Walt Disney warned the Ninth Circuit on Thursday of "absurd results" if the court finds that movie filtering service VidAngel Inc. is protected by the obscure Family Movie Act.

9TH CIRC. REVERSES SOFTWARE CO.'S LOSS IN COPYRIGHT ROW
via Intellectual Property Law360 by Kat Greene on 2/9/2017
URL: https://www.law360.com/ip/articles/890637

The Ninth Circuit, in a decision published Thursday, ruled that a steel detailing design company's possible use of a design software maker's product without paying for it wasn't de minimis copyright infringement, reversing a California federal judge's decision.

'LUCIFER' SONGWRITERS HIT WARNER BROS WITH COPYRIGHT SUIT
via Intellectual Property Law360 by Suevon Lee on 2/9/2017
URL: https://www.law360.com/ip/articles/890739

Warner Bros. Entertainment Inc. was slapped with a copyright infringement suit Thursday in California federal court by a pair of composers who allege the studio is using without authorization a musical composition they wrote for part of the title theme to drama series "Lucifer."

THE TOP US COPYRIGHT PLAINTIFFS SINCE 2015 REVEALED
via Managing Intellectual Property by Natalie Rahhal on 2/9/2017

Broadcast Music continues to be the top filer, but in the last year the number of textile copyright suits filed has shot up. Since 2015 to the end of the ...
THE MET JUST GOT A WHOLE LOT MORE INCLUSIVE
via Vogue by Kaitlin Menza on 2/10/2017
URL: http://www.vogue.com/article/metropolitan-museum-of-art-open-access-public-domain

... the world and to anyone with an Internet connection, by waiving the copyright to all artworks in the collection thought to be under the public domain.

WARNER BROS. FACING LAWSUIT OVER 'LUCIFER' TITLE MUSIC
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 2/10/2017

A copyright and fraud complaint alleges the credited writer reached out to other composers and then passed off the work as his own.

SIRIUS COPYRIGHT RULING IS SETBACK FOR RECORDING ARTISTS
via Intellectual Property Law360 by Ian Ballon on 2/10/2017
URL: https://www.law360.com/ip/articles/884957

Justin MacLean On Dec. 20, 2016, the New York Court of Appeals issued its decision in Flo & Eddie Inc. v. Sirius XM Radio Inc.,[1] holding, by a 4-2 vote, that New York law does not recognize a public performance right in sound recordings fixed before Feb. 15, 1972. Flo & Eddie dealt a setback to recording artists and record companies seeking royalty payments from digital music services that perform their sound recordings over the internet. However, the full impact of the court's decision...

CATCH ME IF YOU CAN: INDEPENDENT DESIGNERS' FIGHT AGAINST COPYCAT FAST FASHION
via IPLJ by Anthony Zangrillo on 2/10/2017
URL: http://www.fordhamiplj.org/2017/02/10/fashion-catch-me-if-you-can/

One of the most common stories we hear about fast fashion brands and intellectual property has to do with copying luxury brands.

DOMAIN NAME ASSOCIATION LAUNCHES HEALTHY DOMAIN PROPOSALS
via IP Pro The Internet by Barney Dixon on 2/10/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5315

The fully voluntary system would handle trademark violations and address illegal infringement of copyright material through the use of domain names.
STATUTORY DAMAGES IN COPYRIGHT LAW: "ON FORGETTING HOW TO READ A STATUTE"
via Washington Post by Eugene Volokh on 2/10/2017

My colleague Sam Bray, who is one of the nation's leading remedies experts, and also someone whose judgment I very much trust, passes along this ...

ZILLOW ORDERED TO PAY $8.3M IN COPYRIGHT LAWSUIT
via Seattle Times on 2/10/2017
URL: http://www.seattletimes.com/business/zillow-ordered-to-pay-in-copyright-lawsuit/

A federal jury in Seattle ordered Zillow to pay $8.3 million after finding the Seattle company infringed on copyrights of VHT Inc. on its Zillow Digs ...

RUE21, VINTED ACCUSED OF COPYRIGHT INFRINGEMENT OVER FABRIC PATTERN
via Northern California Record by Wadi Reformado on 2/10/2017

1 in the U.S. District Court for the Central District of California against Rue21 Inc., Vinted Inc. and Does 1 through 10 alleging copyright infringement.

ORACLE SAYS TRIAL JUDGE 'UNDERMINED' GOOGLE COPYRIGHT CASE
via Intellectual Property Law360 by Bill Donahue on 2/10/2017
URL: https://www.law360.com/ip/articles/886939

Oracle kicked off a hotly anticipated appeal Friday aimed at reviving its $8.8 billion copyright lawsuit against Google, saying jurors sided with the rival company only because a trial judge "undermined" Oracle's case.

STAR FABRICS INC. CLAIMS COPYRIGHTED FLORAL PATTERN WAS UNLAWFULLY COPIED
via Northern California Record by Wadi Reformado on 2/10/2017
URL: http://norcalrecord.com/stories/511080544-star-fabrics-inc-claims-copyrighted-floral-pattern-was-unlawfully-copied

Star Fabrics Inc. filed a complaint on Feb. 1 in the U.S. District Court for the Central District of California against Eska Inc., Inspire, Lollol USA Inc., ...
"In the first trial in this case, the jury found that Google's Android software infringes Oracle's copyrights in the Java Standard Edition ('SE') platform but ...
END OF COPYRIGHT ALERT SYSTEM SHOULDN'T DETER VOLUNTARY AGREEMENTS
via Mister Copyright by Kevin Madigan on 2/12/2017
URL: http://mistercopyright.org/end-of-copyright-alert-system-shouldn-t-deter-voluntary-agreements

In late January, it was reported that the "six strikes" Copyright Alert System (CAS) was coming to an end.

EFF SLAMS PROPOSALS FOR UDRP-STYLE COPYRIGHT INFRINGEMENT SYSTEM
via IP Pro The Internet by Barney Dixon on 2/12/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5317

The Electronic Frontier Foundation (EFF) has slammed the Domain Name Association's (DNA) proposal for a third-party copyright infringement system ...

PHOTOGRAPHER ACCUSES MCGRAW-HILL OF COPYRIGHT INFRINGEMENT
via Penn Record by Louie Torres on 2/13/2017
URL: http://pennrecord.com/stories/511078955-photographer-accuses-mcgraw-hill-of-copyright-infringement

Jeffrey Greenberg of Miami-Dade County, Florida, filed a complaint Jan. 31 in U.S. District Court for the Eastern District of Pennsylvania against ...

DC CIRC. AFFIRMS DISTRIBUTION OF CABLE TV ROYALTIES
via Intellectual Property Law360 by Kevin Penton on 2/13/2017
URL: https://www.law360.com/ip/articles/891155

The Copyright Royalty Board did not make a clear error when it chose a method for distributing cable TV royalties that was based on viewership, the D.C. Circuit held on Friday.

HERE COME THE VIKINGS: PIRACY IN THE NORDIC WORLD
via Hugh Stephens Blog on 2/13/2017
URL: http://hughstephensblog.net/2017/02/13/here-come-the-vikings-piracy-in-the-nordic-world

What is it about Scandinavia and piracy?
FILIPINO NETWORK WINS ALMOST $8M FROM STREAMING WEBSITES
via Intellectual Property Law360 by Carolina Bolado on 2/13/2017
URL: https://www.law360.com/ip/articles/891640

The largest media and entertainment company in the Philippines won a nearly $8 million default judgment Monday against online streaming websites that the company says regularly showcase pirated versions of its programming.

REUTERS 9/11 PHOTO COPYRIGHT DISPUTE SENT FOR TALKS
via Intellectual Property Law360 by William Gorta on 2/13/2017
URL: https://www.law360.com/ip/articles/891769

A New York federal judge on Monday shipped a copyright flap to a magistrate judge in the hope of settling a dispute between Thomson Reuters Inc. and a photographer who says the Reuters news agency distributed her 9/11 images without permission.

A LIST OF LABELS AND OTHER UNUSUAL COPYRIGHT REGISTRATIONS, COMPILED IN 1859
via Mostly IP History by Zvi S. Rosen on 2/13/2017
URL: http://www.zvirosen.com/2017/02/13/a-list-of-labels-and-other-unusual-copyright-registrations-compiled-in-1859/

Although most of the copyright records from before 1870 are held in the Rare Book Room of the Library of Congress, the Manuscript Division of the Library of Congress also has substantial holdings of miscellaneous documents regarding copyright before 1870 in the Library's Archives, most of which seem to be sourced from the State Department or the Library itself.

PHOTOGRAPHER SUES TIFFANY FOR COPYRIGHT INFRINGEMENT
via World IP Review on 2/13/2017

Gould argued that Tiffany infringed his copyright in a photograph of jewellery designer Elsa Peretti, as well as removing copyright management ...

ORACLE PUSHES FOR 'FAIR USE' DO-OVER IN GOOGLE COPYRIGHT BATTLE
via Reuters by Jan Wolfe on 2/13/2017
URL: http://www.reuters.com/article/ip-oracle-copyright-idUSL1N1FZ0FB

Oracle Corp has asked a federal appeals court to revive its $9 billion lawsuit alleging Google Inc unlawfully copied its Java programming language to ...
EU TO GO IT ALONE ON COPYRIGHT TREATY, DESPITE UK OPPOSITION
via Law Society Gazette by Max Walters on 2/14/2017
URL: https://www.lawgazette.co.uk/law/eu-to-go-it-alone-on-copyright-treaty-despite-uk-opposition/5059824.article

The European Union can ratify a treaty that will require countries to free up access to copyright-protected work for visually impaired people without ...

SAKS & CO. LLC ACCUSED OF COPYRIGHT INFRINGEMENT BY STAR FABRICS
via Northern California Record by Wadi Reformado on 2/14/2017

Saks & Co. LLC accused of copyright infringement by Star Fabrics ... LLC and Does 1 through 1 alleging copyright infringement. According to the ...

EU COURT OF JUSTICE: EU IS COMPETENT TO RATIFY MARRAKESH TREATY
via Intellectual Property Watch by Catherine Saez on 2/14/2017
URL: http://www.ip-watch.org/2017/02/14/eu-court-justice-eu-competent-ratify-marrakesh-treaty/

The European Union ratification of a treaty allowing an exception to copyright for the benefit of visually impaired people might be yet one step closer as the Court of Justice of the EU found today that the EU has exclusive competence to conclude it.

COPYRIGHT OWNERS ALLEGE PREMIUM DEVELOPMENT CONTINUED TO PERFORM SONGS WITHOUT LICENSE
via Northern California Record by Jenie Mallari-Torres on 2/14/2017

31 in the U.S. District Court for the Southern District of California against Premium Development LLC and Orrin Day alleging copyright infringement.

DALLAS BUYERS CLUB TAKES ON BITTORRENT FILM DISTRIBUTOR
via World IP Review on 2/14/2017

Texas-based Dallas Buyers Club (DBC) has filed a copyright infringement lawsuit against an individual who allegedly distributed award-winning film ...
COPYRIGHT OFFICE Q&A SESSION ABOUT THE NEW ONLINE DMCA DESIGNATED AGENTS DIRECTORY
via Technology & Marketing Law Blog by Franklin Graves on 2/14/2017

Last week, at the ABA's Midyear Meeting in Miami, Florida, the Section of Intellectual Property Law's Computer Program & New Technologies Committee hosted a Q&A event with the U.S. Copyright Office to discuss the new online DMCA Designated Agent Directory.

FLORIDA SUPREME COURT TO HEAR TURTLES COPYRIGHT CASE
via Florida Record by Rebecca Campbell on 2/14/2017

The Florida Supreme Court is set to hear arguments in a copyright infringement lawsuit that was filed by 1960s rock group The ...

LUMINEERS SETTLE WITH EX-BANDMATE OVER SONG COPYRIGHTS
via Intellectual Property Law360 by Dorothy Atkins on 2/14/2017
URL: https://www.law360.com/ip/articles/892002

The Lumineers have settled a former bandmate's suit that accused its founding members of forcing him out of the folk rock band and filing fraudulent patent and trademark applications to conceal his financial interest and creative contributions, a New Jersey federal court said Tuesday.

COX HIT WITH $8M IN ATTY FEES IN MUSIC PIRACY BATTLE
via Intellectual Property Law360 by Bill Donahue on 2/14/2017
URL: https://www.law360.com/ip/articles/892099

A federal judge on Tuesday ordered Cox Communications to pay more than $8 million in legal fees on top of $25 million in copyright damages it already owes in a lawsuit over illegal downloading, saying such an award would encourage others to take on "willful infringers with deep pockets."
5 TAKEAWAYS FROM ORACLE’S APPEAL OF GOOGLE’S JURY WIN
via Law.com - Newswire by Scott Graham on 2/14/2017

Oracle has renewed its copyright clash with Google in a return trip to the U.S. Court of Appeals for the Federal Circuit. The software giant submitted...

EU CLEARED TO RATIFY TREATY THAT WILL HELP BLIND READERS
via Courthouse News Service by William Dotinga on 2/14/2017
URL: http://courthousenews.com/eu-cleared-to-ratify-treaty-that-will-help-blind-readers/

The court also noted that EU copyright law already allows member states to limit authors' rights for the benefit of people with disabilities. Since the ...

NY COURT OF APPEALS DETERMINES COMMON LAW RIGHTS IN SOUND RECORDINGS
via New York Law Journal by Robert J. Bernstein & Robert W. Clarida on 2/14/2017

F&E acquired ownership of the common-law copyrights in the group's sound recordings, all of which were recorded before 1972. Like other holders of ...

TIFFANY & CO. NAMED IN COPYRIGHT INFRINGEMENT SUIT OVER WEBSITE PHOTO
via Fashion Law by Ariel Givner on 2/14/2017
URL: http://www.thefashionlaw.com/home/tiffany-co-named-in-copyright-infringement-suit-over-website-photo

Tiffany & Co. is in a bit of hot water over a photograph it is using in connection with one of its jewelry lines. Last Friday, New York-based ...

COPYRIGHT LITIGATION IN 2016 SAW RISE IN TEXTILE PLAINTIFFS, DECLINE IN FILE SHARING CASES
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 2/15/2017
URL: http://www.ipwatchdog.com/2017/02/15/copyright-litigation-textile-plaintiffs-decline-file-sharing-cases/id=78287/

The most active defendants in copyright lawsuits include department store chain Ross Stores, Inc. (NASDAQ:ROST), which was named as a defendant in 276 cases. Following Ross Stores
are a series of retailers: TJX Companies, Inc. (NYSE:TJX), named a defendant in 123 cases; Amazon.com Inc. (NASDAQ:AMZN), a defendant in 84 cases; Burlington Coat Factory (NYSE:BURL), a defendant in 74 cases; and Rainbow USA Inc., a defendant in 66 cases. Except for Amazon, these are primarily off-price department.

GOOGLE ASKED TO BLACKLIST A MILLION 'PIRATE' WEBSITES, BUT THEY INCLUDE WHITE HOUSE, NASA
via ZDNet by Liam Tung on 2/15/2017
URL: http://www.zdnet.com/article/google-asked-to-blacklist-a-million-pirate-websites-but-they-include-white-house-nasa/

Google is flooded with requests to purge its index of alleged copyright-infringing links. Last year alone rights holders asked it to remove just over one ...

UNIVERSAL DYEING & PRINTING INC. FILES COPYRIGHT INFRINGEMENT SUIT OVER ALLEGED USE OF TEXTILE DESIGNS
via Northern California Record by Wadi Reformado on 2/15/2017

Universal Dyeing & Printing Inc. files copyright infringement suit over alleged ... Fashion Corp. and Does 1 through 10 alleging copyright infringement.

POLISH TELECOM TOLD TO PAY $3M FOR INFRINGING COPYRIGHTS
via Intellectual Property Law360 by Kevin Penton on 2/15/2017
URL: https://www.law360.com/ip/articles/892268

A District of Columbia federal judge on Tuesday ordered a telecommunications company to pay $3.06 million to the owner of copyrights for Polish television programming that it was found to infringe.

FACEBOOK BIRTH VIDEO COPYRIGHT CLAIMS ARE TOSSED
via Intellectual Property Law360 by William Gorta on 2/15/2017
URL: https://www.law360.com/ip/articles/892568

A New York federal judge on Wednesday dismissed copyright infringement claims against ABC, NBC, Yahoo and COED Media, saying their use of video and screen grabs from a birth streamed over Facebook Live fell squarely within fair use.
COPYRIGHT LAW PROFS BLAST REDIGI MUSIC RULING AT 2ND CIRC.
via Intellectual Property Law360 by Kelly Knaub on 2/15/2017
URL: https://www.law360.com/ip/articles/892239

Two dozen copyright law professors urged the Second Circuit on Tuesday to overturn a district court's $3.5 million judgment against music sharing service ReDigi for infringing Capitol Records' copyrights, saying the decision undermines the law's careful balance between the rights of copyright holders and purchasers.

TIMELESS' LAWSUIT SURVIVES MOTION TO DISMISS
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 2/15/2017
URL: http://www.hollywoodreporter.com/thr-esq/timeless-lawsuit-survives-motion-dismiss-976563

While copyright plaintiffs often don't clear this legal hurdle, the ruling isn't all bad news for Sony and NBC.

JUDGE REFUSES TO DISMISS 'TIMELESS' COPYRIGHT INFRINGEMENT LAWSUIT
via Variety by Ted Johnson on 2/15/2017

A federal judge refused to dismiss a lawsuit claiming that NBC's "Timeless" is a ripoff of a Spanish TV time travel series. U.S. District Judge Stephen ... 

FATHER WHO LIVE STREAMED SON'S BIRTH LOSES COPYRIGHT BATTLE WITH BROADCASTERS
via Media Post by Wendy Davis on 2/15/2017

Siding with ABC, Yahoo and other media companies, a federal judge in Manhattan has dismissed copyright infringement lawsuits brought by a man ...

US COURT RULING SPARKS DEBATE OVER ACCESS TO LAWS IN THE DIGITAL SPACE
via Government Technology by Zack Quaintance on 2/15/2017

Civic technologists say copyrights for technical standards incorporated into law create unfair barriers between the public and regulations. by Zack ...
CONGRESS SEEKS TO 'MODERNISE' COPYRIGHT OFFICE
via IP Pro The Internet by Barney Dixon on 2/15/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5323

Members of US Congress have reintroduced bipartisan legislation for modernising the Copyright Office and housing it under the legislative branch of ...

RIGHTS HOLDERS REJECT AUSTRALIAN FAIR USE
via IP Pro The Internet by Mark Dugdale on 2/15/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5322

Rights holder groups in Australia have rejected claims that the country's copyright laws are too broad and inflexible. The groups, including the ...

UK COPYRIGHT BILL COULD MAKE PEOPLE 'VULNERABLE TO BLACKMAIL'
via World IP Review on 2/15/2017

A UK-based digital campaigning organisation has said that the proposed Digital Economy Bill 2016-17 could leave UK citizens "vulnerable to ...

SIRIUS XM WINS DISMISSAL OF TURTLES COPYRIGHT LAWSUIT IN NEW YORK
via Reuters by Jonathan Stempel on 2/16/2017

Such songs lack federal copyright protection, but some artists and labels have won protection under various state laws. Flo & Eddie's class-action ...

SIRIUSXM WINS NEW YORK CASE OVER PRE-1972 SOUND RECORDINGS
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 2/16/2017

The 2nd Circuit rules that the satcaster deserves summary judgment and the lawsuit from Flo & Eddie should be dismissed.
LIBRARY GROUPS PUSH FOR DIGITAL FAIR USE IN 11TH CIRC.
via Intellectual Property Law360 by Kelcee Griffis on 2/16/2017
URL: https://www.law360.com/ip/articles/892087

A group of associations representing libraries is urging the Eleventh Circuit to side with Georgia State University in an extended battle with three publishers over the school's policy of providing supplementary readings for classes, saying excerpts of academic texts held on e-reserves should be subject to a low bar of copyright protection.

2ND CIRC. FINALIZES NEW YORK PRE-1972 SONG RULING
via Intellectual Property Law360 by Bill Donahue on 2/16/2017
URL: https://www.law360.com/ip/articles/892982

The Second Circuit on Thursday made official what New York's highest court said in December: that state law does not require radio companies like Sirius XM to pay millions in new royalties to play songs recorded before 1972.

DAD WHO LIVE-STREAMED HIS SON'S BIRTH ON FACEBOOK LOSES IN COURT
via Ars Technica by Joe Mullin on 2/16/2017

A father who live-streamed his son's birth on Facebook and proceeded to sue several media outlets that used the clips for copyright infringement has lost his case.

WHEN MACHINES CREATE INTELLECTUAL PROPERTY, WHO OWNS WHAT?
via Intellectual Property Watch by Bruce Gain on 2/16/2017
URL: http://www.ip-watch.org/2017/02/16/machines-create-intellectual-property-owns/

The concept of machines that can think and create in ways that are indistinguishable from humans has been the stuff of science fiction for decades. Now, following major advances in artificial intelligence (AI), intellectual property created by machines without human input is fast becoming a reality. The development thus begs the question among legal scholars, legislative bodies, and judiciary branches of governments worldwide of who owns the intellectual property that humans did not create.
BIEBER SKIPPED DEPO TO 'CHUG BEER,' COPYRIGHT ACCUSER SAYS
via Intellectual Property Law360 by Bill Donahue on 2/16/2017
URL: https://www.law360.com/ip/articles/893174

A singer-songwriter who is suing Justin Bieber for copyright infringement over his hit "Sorry" on Thursday accused the pop star of acting like he was "above the law" by "chugging beer" rather than appearing for a scheduled deposition.

LIBRARIES, LAW PROFESSORS BACK REDIGI IN FIGHT OVER 'USED' MUSIC
via Media Post by Wendy Davis on 2/16/2017

Two dozen copyright law professors, including UC Berkeley's Pamela Samuelson, also sided with ReDigi in a separate friend-of-the-court brief.

TIME INC IN BREAST PUMP PHOTO COPYRIGHT ROW
via World IP Review on 2/16/2017

US publisher Time Inc has been ensnared in a copyright row centring on a ... Award-winning photographer Michael Grecco brought the copyright ...

COX COMMUNICATIONS TO PAY $8.4M ATTORNEYS' FEES IN BMG CLASH
via World IP Review on 2/17/2017

A jury at the US District Court for the Eastern District of Virginia ruled that Cox was liable for direct and contributory copyright infringement in its dispute ...

ARGENTINIAN COPYRIGHT OFFICE PROPOSES TO ADD EXCEPTIONS AND LIMITATIONS TO COPYRIGHT ACT
via Intellectual Property Watch by Maximiliano Marzetti on 2/17/2017

On 12 December, the Argentinian Copyright Office and the Ministry of Culture invited a group of stakeholders, among which was this author, to discuss the final draft of the Exceptions and Limitations Bill (Proyecto de Ley de Excepciones) to modify current Copyright Act no.11.723 of
1933. One wonders whether it would be better to draft from scratch a modern Copyright Act instead of patching up the old 1933 Act. Nevertheless, the bill is welcomed. Argentina, as this author has already expressed, has one of the most restrictive copyright laws in the world (see Propuestas para ampliar el acceso a los bienes públicos en Argentina - Estableciendo el necesario balance entre derechos de propiedad intelectual y dominio público, Maximiliano Marzetti, Buenos Aires, 2013).

US FEDERAL COURT BARS ONLINE PUBLICATION OF COPYRIGHTED STANDARDS INCORPORATED INTO LAWS
via Intellectual Property Watch by Dugie Standeford on 2/17/2017

In a case pitting standards development organisations against internet content aggregators, a United States federal court ruled that Public.Resource.Org breached copyright by posting unauthorised copies of standards incorporated into government education regulations. Public Resource has appealed.

IP TRADE GROUP SINGLES OUT CANADA
via IP Pro The Internet by Barney Dixon on 2/17/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5324

"The greatly expanded exceptions to copyright protection that were the hallmark of the Copyright Modernization Act have already caused serious ..."

VIRTUAL REALITY INFRINGEMENT LAWSUIT ENDS IN $500 MILLION DAMAGES
via Columbia Journal of Law and the Arts on 2/17/2017

ZeniMax Media LLC was recently awarded $500 million in its trade secret and copyright infringement case against Facebook Inc. stemming from Facebook's purchase of Oculus.

CELEBRATING AMERICA'S INNOVATORS-IN-CHIEF
via Global Intellectual Property Center by Courtney Paul on 2/17/2017
URL: http://www.theglobalipcenter.com/celebrating-americas-innovators-in-chief/

We learned about Woodrow Wilson and his Ford Model T, purchased in celebration of the revolutionary assembly line method of production.
CAN COPYRIGHT HELP FIGHT CENSORSHIP IN CHINA?
via Center for the Protection of Intellectual Property by Bhamati Viswanathan on 2/17/2017
URL: http://cpip.gmu.edu/2017/02/17/can-copyright-help-fight-censorship-in-china/

Free expression in China has long been a fraught concern for the entertainment industry.

JUDGE TRIMS SOME OF HP'S DEFENSES IN ORACLE COPYRIGHT ROW
via Intellectual Property Law360 by Melissa Daniels on 2/17/2017
URL: https://www.law360.com/ip/articles/893301

A California federal judge on Thursday struck five of Hewlett Packard's defenses in a suit brought by Oracle claiming HP was part of a conspiracy to distribute its copyrighted software code through support companies, while allowing fair use and other defenses to move forward.

THE MOVIE MARKET INC. ACCUSED OF UNLAWFULLY SELLING COPYRIGHTED PHOTOS
via Northern California Record by Wadi Reformado on 2/17/2017

... the Central District of California against The Movie Market Inc., doing business as moviemarket.com, and Does 1-20 alleging copyright infringement.

FITNESS CELEB CLAIMS GYM INFRINGED EXERCISE MACHINE, IP
via Intellectual Property Law360 by Melissa Daniels on 2/17/2017
URL: https://www.law360.com/ip/articles/893708

Fitness guru and celebrity trainer Sebastien Lagree and his Lagree Fitness sued the BodyRok franchise in California federal court on Friday alleging infringement of his patents, copyright and trademarks with a fitness machine nearly identical to his "Megaformer."

NCAA CHAMPS URGE 9TH CIRC. TO REVIVE LIKENESS RIGHTS ROW
via Intellectual Property Law360 by Daniel Siegal on 2/17/2017
URL: https://www.law360.com/ip/articles/890882

Two former Division III college basketball champions urged the Ninth Circuit on Friday to revive their proposed class action against a website that sold official NCAA photos, arguing the Copyright Act doesn't bar them from pursuing their name and likeness rights in NCAA-copyrighted photos.
INEFFECTIVE LAWS FUELLING CANADA'S ONLINE PIRACY PROBLEM, US COPYRIGHT GROUP SAYS
via CBC News by Brendan Burke on 2/18/2017

Ineffective laws that lag behind international standards have made Canada a hot spot for online piracy and copyright infringement, according to a ...

VIDANGEL: A LITANY OF COPYRIGHT DEFENSES
via The Illusion of More by David Newhoff on 2/19/2017
URL: http://illusionofmore.com/vidangel-litany-copyright-defenses/

Photo by rootstocks VidAngel offers what is functionally a video-on-demand (VOD) service plus "filtering" for viewers who want to see mainstream fare with certain naughty bits-sex, foul language, violence, etc.-removed. To provide this service, though, VidAngel allegedly violates the copyright owners' ...

KIM DOTCOM LEGAL SAGA: EXTRADITION TO US OVER MEGAUPLOAD STILL ON CARDS BUT HE CLAIMS COURT RULING ...
via NZHerald by David Fisher on 2/19/2017

The judge found in favour of arguments put by Dotcom's legal team, led by Ron Mansfield, that there was no equivalent "copyright" crime in New ...

GOOGLE AND BING SIGN VOLUNTARY COPYRIGHT CODE
via IP Pro The Internet by Barney Dixon on 2/19/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5326

Google, Bing and creative industry groups have signed a voluntary code of practice covering the removal of links to infringing content from search ...

RESPECT FOR IP CAN BE TAUGHT AND NURTURED
via IPWatchdog.com | Patents & Patent Law by Marshall Phelps on 2/19/2017
URL: http://www.ipwatchdog.com/2017/02/20/respect-ip-taught-nurtured/id=78553/

IP rights are often viewed as barriers, not assets. No wonder respect for IP is at an all-time low, and pilfering of IP rights is widely acceptable. Our culture seems to be saying: “It’s ok to shoplift intangibles, if it’s not too obvious.” But buying fake goods, copying content, or appropriating someone’s trade secrets are not victimless crimes. They have a dramatic economic impact.
Kim Dotcom, the founder of content-sharing site MegaUpload, can legally be extradited to the US, according to New Zealand's High Court. The court ...

Not that copyright stories should hope to compete with the drama coming out of Washington these days, but it’s more than likely that copyright policy and news will now be viewed through that multi-faceted, jittery lens; and the political climate …

Search engines Google and Bing have signed a voluntary code of conduct with the British Phonographic Industry (BPI) and the Motion Picture Association to prevent consumers from being directed to copyright-infringing websites, the UK Intellectual Property Office said on 20 February. The deal, brokered by the IPO, comes into effect immediately and is intended to reduce the visibility of infringing content in searches by 1 June, the office said.

In its return-trip to the Federal Circuit, the Oracle’s JAVA-Copyright case against Google appears have some chance of once again making interesting precedent. I previously described the case as follows:
GOOGLE AND MICROSOFT AGREE TO DEMOTE PIRACY SEARCH RESULTS IN THE UK
via Ars Technica by Kelly Fiveash on 2/20/2017
URL: https://arstechnica.com/gaming/2017/02/google-and-microsoft-demote-piracy-sites/

Google and Microsoft's Bing have agreed to crack down on piracy sites in the UK after years of wrangling with film and music rights holders.

NEW ZEALAND COURT RULES KIM DOTCOM CAN BE EXTRADITED TO THE US
via Wired by Matt Burgess on 2/20/2017
URL: http://www.wired.co.uk/article/megaupload-kim-dotcom-extradite

The argument that it is not possible to prosecute someone for sharing copyrighted works in New Zealand was put forward by Dotcom's lawyers.

OPEN SOURCE SOFTWARE AND STANDARDS DEVELOPMENT ORGANIZATIONS: SYMBIOTIC FUNCTIONS IN THE INNOVATION EQUATION
via Columbia Science and Technology Law Review by David J. Kappos on 2/20/2017

Two groups—industry standards development organizations (SDOs) and the open source software (OSS) community—have contributed enormously to the breathtaking technological achievements of recent decades that permit anyone almost anywhere in the world to catch a Pokémon on a $100 smart-phone.

SAP WINS MAJOR LAWSUIT BASED ON INDIRECT USE AND NAMED USER LICENSE TERMS: SAP V DIAGEO
via Barry Sookman on 2/20/2017

If you use software licensed by SAP you better read your license.

REFINERY29 NAMED IN COPYRIGHT INFRINGEMENT LAWSUIT
via Fashion Law on 2/20/2017
URL: http://www.thefashionlaw.com/home/refinery29-named-in-copyright-infringement-lawsuit

Refinery29 is being sued for reproducing “a copyrighted photograph of a package of chicken cutlets” in a recent article, entitled, “This Ad Is Going Viral ...
IN US, NEW TACTICS TO COMBAT ONLINE COPYRIGHT INFRINGEMENT
via Intellectual Property Watch by Steven Seidenberg on 2/21/2017
URL: http://www.ip-watch.org/2017/02/21/us-new-tactics-combat-online-copyright-infringement/

The death was quick, quiet, and unmourned. The Copyright Alert System – a once vaunted plan to stop online copyright infringement in the US – was killed on 27 January. Lasting only four years, CAS had accomplished little and satisfied no one, according to many experts. What went wrong? And what is the movie and music industries’ next plan to combat online infringement?

BALANCE IS EVERYTHING
via Hill by Jim Neal on 2/21/2017
URL: http://thehill.com/blogs/congress-blog/judicial/320390-balance-is-everything

Know it or not, you were benefitting from “fair use” and other key parts of our nation's copyright laws. These critical provisions balance copyright ...

T BONE BURNETT DELIVERS SCATHING MESSAGE TO COPYRIGHT OFFICE, URGING REFORM: 'OUR CULTURE IS AT ...
via Billboard by Dan Rys on 2/21/2017

T Bone Burnett today submitted a five minute video to the U.S. Copyright Office that issued a scathing critique of current copyright laws, taking aim at ...

SUPREME COURT URGED TO STAY OUT OF COPYRIGHT BATTLE OVER 'GOLDEN OLDIES'
via MediaPost by Wendy Davis on 2/21/2017

The online video platform Vimeo is urging the Supreme Court to reject Capitol Records' request to revive a battle over music recorded before 1972, ...
COALITION OF 15 MUSIC ORGS FILE COMPLAINT OVER DIGITAL MILLENNIUM COPYRIGHT ACT
via Billboard by Robert Levine on 2/21/2017

A coalition of 15 music organizations representing creators and companies has submitted comments to the U.S. Copyright Office about the safe ... 

WARNER BROS. ACCUSES INDIANA EBAY SELLER OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 2/21/2017

Warner Bros. accuses Indiana eBay seller of copyright infringement ... against William Walter and Does 1-10 alleging copyright infringement.

DR. SEUSS COPYRIGHT THREAT AGAINST PLAY A 'SHOT IN DARK'
via Intellectual Property Law360 by Bill Donahue on 2/21/2017
URL: https://www.law360.com/ip/articles/893817

The producers of an unauthorized Dr. Seuss play are once again blasting the late author’s estate for threatening to sue for copyright infringement without ever having read the script, accusing it of “shooting in the dark first, and asking questions later.”

KANYE SAYS COPYRIGHT DEPOSITION DEMAND IS 'HARASSMENT'
via Intellectual Property Law360 by Bill Donahue on 2/21/2017
URL: https://www.law360.com/ip/articles/894112

Demands that Kanye West travel to New York for a deposition on copyright accusations are “pure harassment” designed to “extract settlement leverage,” the superstar’s attorneys told a federal court Tuesday.

NEW ZEALAND COURT OKS KIM DOTCOM'S EXTRADITION TO US
via Intellectual Property Law360 by Stewart Bishop on 2/21/2017
URL: https://www.law360.com/ip/articles/893895

A New Zealand court on Monday ruled that Megaupload Ltd. founder and accused online piracy kingpin Kim Dotcom can be extradited to the U.S., saying while Dotcom's alleged copyright offenses don't warrant removal to the U.S., he can still be extradited for fraud.
A STEP IN THE RIGHT DIRECTION?
via Vox Indie by Ellen Seidler on 2/21/2017
URL: http://voxindie.org/step-right-direction/

Leave it to our friends across the ocean to make some (apparent) progress in the ongoing war against online piracy. According to a story published in The Guardian this week Google and Microsoft have agreed to make changes as to where links to pirated content appear in search results on Google and Bing.

CPIP SCHOLARS JOIN OPEN LETTER PROVIDING IP GUIDANCE FOR NEW ADMINISTRATION AND CONGRESS
via Center for the Protection of Intellectual Property by Kevin Madigan on 2/22/2017

The Center for the Protection of Intellectual Property and several of its Senior Scholars are proud to support an open letter released today providing intellectual property guidelines for the Trump administration and the 115th Congress.

FAKE ART? RICHARD PRINCE DISAVOWS PORTRAIT OF IVANKA TRUMP
via Columbia Journal of Law and the Arts on 2/22/2017
URL: http://lawandarts.org/2017/02/22/fake-art-richard-prince-disavows-portrait-of-ivanka-trump/

Appropriation artist Richard Prince is involved in yet another dispute over his New Portrait series.

SIRIUSXM RADIO WINS COPYRIGHT BATTLE IN NY APPEALS COURT
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 2/22/2017

If only life were as simple as the songwriters say, like in the hit song from the the Turtles' "Happy Together."
KANYE WILL NOT HAVE TO ATTEND NY DEPOSITION IN COPYRIGHT SUIT
via Intellectual Property Law360 by Kelly Knaub on 2/22/2017
URL: https://www.law360.com/ip/articles/894653

A New York federal judge has ruled that Kanye West does not have to travel to New York to
appear for a deposition in a copyright suit he is facing, saying the superstar can be deposed in
Los Angeles instead.

KIM DOTCOM SEEKS DAMAGES AS PROSECUTORS ACTED IN 'ILLEGAL' WAY
AFTER EXTRADITION RULING, LAWYER SAYS
via CNBC by Arjun Kharpal on 2/22/2017

Earlier this week, the New Zealand High Court ruled that Dotcom and three co-accused could
not be extradited to the U.S. on copyright infringement ...

SPLIT OVER DMCA SAFE HARBOUR CONTINUES TO ROIL US COPYRIGHT OFFICE
REFORM EFFORTS
via Intellectual Property Watch by Dugie Standeford on 2/23/2017

Internet service providers and copyright owners remain deeply divided over the effectiveness of
the Digital Millennium Copyright Act safe harbour provisions, they said in additional
submissions to a US Copyright Office inquiry.

REDIGI, FAIR USE, AND LIBRARIES
via The Illusion of More by David Newhoff on 2/23/2017
URL: http://illusionofmore.com/redigi-fair-use-and-libraries/

Photo by author. In my last post, I opined that the fair use interests of librarians and educators are
not necessarily aligned with for-profit business ventures seeking to exploit creative works in
ways that can harm authors. For instance, in …
FAKE MOUSTACHE SPARKS COPYRIGHT LAWSUIT AGAINST AB INBEV
via World IP Review on 2/23/2017

An American woman who donned a fake moustache and drank from a bottle of beer has filed a copyright infringement lawsuit against Anheuser-Busch ...

STAR FABRICS INC. ACCUSES MACY'S INC., PRIVATE BRANDS LLC OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 2/23/2017

16 in the U.S. District Court for the Central District of California against Private Brands LLC, Macy's Inc. and Does 1 through 10 alleging copyright ...

EFF FILES BRIEF DEFENDING USER-GENERATED PLATFORMS
via World IP Review on 2/23/2017

Most online speech platforms could not exist without the Digital Millennium Copyright Act's (DMCA) section 512 safe harbour, according to the ...

YOUTUBE CAN DO BETTER': CEE LO, EVANESCENCE, RUSH AMONG ARTISTS CALLING FOR DMCA ACTION ...
via Billboard by Robert Levine on 2/23/2017

It doesn't directly mention the Copyright Office's study of the DMCA safe harbors. The list of acts is wide-ranging, including The Black Keys, Cee Lo ...

WHAT WOULD JUDGE GORSUCH MEAN FOR FAIR USE?
via Center for the Protection of Intellectual Property by Kevin Madigan on 2/23/2017
URL: http://cpip.gmu.edu/2017/02/23/what-would-judge-gorsuch-mean-for-fair-use/

On February 1st, President Trump nominated Neil Gorsuch to fill the Supreme Court seat left vacant by the passing of Justice Antonin Scalia.
A coalition of music organisations has criticised the Digital Millennium Copyright Act (DMCA) as being “broken and antiquated”, in a filing at the US ...

The fair use doctrine has expanded far beyond its purpose, according to an amicus brief filed this past Friday on behalf of 13 law professors in Oracle v. Google, a copyright case currently before the Federal Circuit.

Porsche escaped claims it created a fake version of the X Ambassadors' hit song "Jungle" for its commercial for the 718 Cayman, as the music publishing company that brought the suit agreed to voluntarily dismiss its complaint, according to court filings Thursday.

Analysis Big corporations are abusing the system for taking down files and links to copyright-infringing content by sending millions of fake links, ...

When lawyers get into legal disputes with each other, it tends to get messy. Indonesia has in the past struggled to maintain a single bar association for ...
RIGHTS HOLDERS AND ISPS SLAM DMCA'S NOTICE AND TAKE-DOWN
via IP Pro The Internet by Barney Dixon on 2/24/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5333

Rights holders and ISPs have slated the US Digital Millennium Copyright Act's (DMCA) notice and takedown system in comments to the Copyright ...
NINTENDO THROWS BLUE SHELL AT BUSINESS THAT LETS YOU PLAY 'MARIO KART' IN REAL LIFE
via Tech Times by Aaron Mamiit on 2/25/2017

Nintendo has filed a lawsuit against Tokyo-based MariCar for copyright infringement. The "Mario Kart"-inspired business offers go-kart tours around ...

THREE BOOKED FOR COPYRIGHT VIOLATION OF POPULAR FOLK SONG
via Times of India on 2/25/2017

However, Lalit and Kirti Lalan stole our copyrighted materials and uploaded on YouTube without any credit and gained economic benefits," Herma ...

FORGET DMCA TAKEOWNS—RIAA WANTS ISPS TO FILTER FOR PIRATED CONTENT
via Ars Technica by David Kravets on 2/26/2017

The Recording Industry Association of America and other rights holders are urging US copyright regulators to update the "antiquated" DMCA takedown process.

RIAA, OTHER COPYRIGHT HOLDERS WANT ISPS TO INTRODUCE PIRACY FILTERS
via Softpedia by Gabriela Vatu on 2/26/2017

The Recording Industry Association of America, alongside other rightsholders, are not happy with the DMCA takedown process anymore and want ...

WILL US FOLLOW UK LEAD IN CASE ON COPYRIGHT AND INTEROPERABILITY?
via Intellectual Property Watch by Dugie Standeford on 2/27/2017
URL: http://www.ip-watch.org/2017/02/27/will-us-follow-uk-lead-case-copyright-interoperability/

In a case pitting copyright protection against competition, the United States Court of Appeals for the Fourth Circuit must decide whether World Programming Limited (WPL) violated SAS
Institute's copyright by copying software interfaces that enable interoperability. WPL has already won the argument in the UK and in Europe's highest court. The case has drawn strong support on both sides from the tech sector and a civil liberties group.

COPYSHOP COVERED BY "NON-COMMERCIAL" CREATIVE COMMONS LICENSE-GREAT MINDS V. FEDEX
via Technology & Marketing Law Blog by Eric Goldman on 2/27/2017

Great Minds developed a math curriculum called Eureka Math.

IP SCHOLARS WARN ABOUT STRINGENT COPYRIGHT RULES IN ASIAN RCEP AGREEMENT
via Intellectual Property Watch by Catherine Saez on 2/27/2017

As negotiations take place this week in Japan for a free trade agreement covering the Asia-Pacific region, a group of intellectual property scholars is calling for the public interest to be clearly considered in the copyright rules of the future agreement.

THE DNA BACKTRACKS ON THIRD-PARTY COPYRIGHT SYSTEM
via IP Pro The Internet by Barney Dixon on 2/27/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5334

The Domain Name Association (DNA) is going back to the drawing board with its proposal for a UDRP-style system to resolve copyright infringement ...

CHINA SURPASSES TWO MILLION COPYRIGHT REGISTRATIONS
via IP Pro The Internet by Barney Dixon on 2/27/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5336

Liu also identified the rapid growth in copyright for computer software, literary works, movies, TV and music as showing the "development of the ...
ICANN IS MOVING TOWARD COPYRIGHT ENFORCEMENT, ACADEMIC SAYS via Intellectual Property Watch by Dugie Standeford on 2/27/2017

The Internet Corporation for Assigned Names and Numbers (ICANN) is on an "ambivalent drift" into online content regulation through its contractual facilitation of a "trusted notifier" copyright enforcement program between the Motion Picture Association of America (MPAA) and the registry operators for two new generic top-level domains, University of Idaho College of Law Professor Annemarie Bridy says in a draft article for the Washington & Lee Law Review.

NINTENDO THROWS BANANA PEEL UNDER MARICAR via IP Pro The Internet by Barney Dixon on 2/28/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5337

Nintendo has taken a Mario Kart-inspired road car rental service to court, claiming copyright infringement. The public road cart service, MariCar, has ...

REVISITING IF SUING BLOGGERS FOR COPYRIGHT INFRINGEMENT CAN BE PROFITABLE-BWP V. MISHKA via Technology & Marketing Law Blog by Eric Goldman on 2/28/2017
URL: http://blog.ericgoldman.org/archives/2017/02/revisiting-if-suing-bloggers-for-copyright-infringement-can-be-profitable-bwp-v-mishka.htm

Ever since the Righthaven debacle, I've been wondering about the profitability of copyright enforcement actions against bloggers.

USENET SERVER OWNERS, OPERATORS ARE NOT DIRECTLY OR SECONDARILY LIABLE FOR COPYRIGHT INFRINGEMENT via National Law Review by Ulrika E. Mattsson on 2/28/2017
URL: http://www.natlawreview.com/article/usenet-server-owners-operators-are-not-directly-or-secondarily liable-copyright

The Court found that Giganews did not contributorily infringe Perfect 10's copyrights because it did not "materially contribute[] to or induce[] ...
CPIP'S SANDRA AISTARS & SCALIA LAW ALUMNAE URGE FEDERAL CIRCUIT TO PROTECT CREATORS AND REIN IN FAIR USE IN ORACLE V. GOOGLE
via Center for the Protection of Intellectual Property by Kevin Madigan on 2/28/2017

On February 17, 2017, CPIP Senior Scholar Sandra Aistars filed an amicus brief in Oracle v. Google, a copyright case currently before the Federal Circuit.

VIVENDI DEMANDS SPINAL TAP MEMBERS BE OUSTED FROM LAWSUIT "ABSURDLY" CLAIMING $400M IN DAMAGES
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 2/28/2017

The conglomerate offers a "reality check" to Harry Shearer's claim over contingent profits and also states he has no termination rights because his co-written material was a work-for-hire.

U2 HIT WITH COPYRIGHT SUIT OVER DECADES-OLD SONG
via Intellectual Property Law360 by Bill Donahue on 2/28/2017
URL: https://www.law360.com/ip/articles/896353

Rock band U2 was hit with a copyright lawsuit Monday in Manhattan federal court claiming the group's 1991 hit "The Fly" borrowed heavily from a little-known 1989 song.

ELMO, COOKIE MONSTER INFRINGED PUERTO RICAN SONG, SUIT SAYS
via Intellectual Property Law360 by Kevin Penton on 2/28/2017
URL: https://www.law360.com/ip/articles/896676

Univision bit off a well known Puerto Rican "anthem" in a commercial for a Spanish-language "Sesame Street" program starring Elmo and the Cookie Monster, the composer of the song and owner of its copyright alleged in Florida federal court on Tuesday.

STATE LAW CANNOT BLUR THE LINE BETWEEN PATENTS AND COPYRIGHTS
via National Law Review by Blake Wong on 2/28/2017

Patents protect ideas, and copyrights protect expressions. As the Court explained, Ultraflo's claim would have been an end run around this distinction.
COPYRIGHT OFFICE PITCHES RULE ON COMPUTER GLITCHES
via Intellectual Property Law360 by Kat Greene on 3/1/2017
URL: https://www.law360.com/ip/articles/897142

The U.S. Copyright Office on Wednesday proposed a new rule for how it will keep records of when submissions were received when its computer or mail systems are down, pitching a scheme that would allow the Register of Copyrights discretion to decide the copyright's effective date.

GM COPYRIGHT, DMCA CLAIMS SURVIVE IN STOLEN SOFTWARE SUIT
URL: https://www.law360.com/ip/articles/897108

Two General Motors LLC units have presented plausible claims that two companies stole GM-copyrighted software and sold it to the public, a Michigan federal judge ruled on Wednesday, declining to dismiss Copyright Act and Digital Millennium Copyright Act claims.

"BIG PIMPIN" LEGAL BATTLE CENTERS ON MORAL RIGHTS
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 3/1/2017

Does the Egyptian heir who considers "Big Pimpin" a vulgar, misogynistic and offensive song have any recourse in U.S. courts?

BRITISH TV STREAMER HITS EU COPYRIGHT ROADBLOCK
via Courthouse News Service by William Dotinga on 3/1/2017
URL: https://www.courthousenews.com/british-tv-streamer-hits-eu-copyright-roadblock/

The networks claim TV Catchup's rebroadcasts amount to copyright infringement, as a "communication to the public" under British copyright law.

COPYRIGHT DATE ALONE DOES NOT PROVE PUBLIC ACCESSIBILITY OF SOFTWARE USER GUIDE
via National Law Review by Timothy V. Fisher on 3/1/2017

Addressing the standard for establishing whether a prior art reference qualifies as a "printed publication," the Patent Trial and Appeal Board (PTAB) ...
LEGAL BATTLE OVER JAY Z'S 'BIG PIMPIN' CENTERS ON MORAL RIGHTS
via Billboard by Ashley Cullins on 3/1/2017

Wesley is asking the 9th Circuit to grant Fahmy judgment as a matter of law in regards to whether Jay Z and Timbaland are liable for copyright ...

MARCO BICEGO USA CLAIMS IT IS WRONGFULLY ACCUSED OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 3/1/2017
URL: http://norcalrecord.com/stories/511085419-marco-bicego-usa-claims-it-is-wrongfully-accused-of-copyright-infringement

Two fine jewelers allege a Florida company and individual have unlawfully accused them of copyright infringement. Marco Bicego ...

LANHAM ACT CANNOT BE USED TO CREATE "SPECIES OF MUTANT COPYRIGHT LAW"
via National Law Review by Lynne Boisineau on 3/1/2017

The US Court of Appeals for the Ninth Circuit upheld a district court decision granting summary judgment to a defendant that its use of digital files did ...

TRUSTED NOTIFIER PROGRAM DEFENDED AGAINST MISLEADING RHETORIC
via Center for the Protection of Intellectual Property by Kevin Madigan on 3/2/2017
URL: http://cpip.gmu.edu/2017/03/02/trusted-notifier-program-defended-against-misleading-rhetoric/

One year ago, domain name registry Donuts, Inc. and the Motion Picture Association of America (MPAA) entered into an agreement termed the Trusted Notifier Program in a joint effort to combat piracy.

COPYRIGHT SURVIVES
via Written Description by Michael Risch on 3/3/2017
URL: http://writtendescription.blogspot.com/2017/03/copyright-survives.html

When I teach ProCD in my internet law class, I make two primary points.
CANADA TAKES TOUGH COPYRIGHT STANCE IN $13M NINTENDO SUIT
URL: https://www.law360.com/ip/articles/898012

A Canadian court has sided with Nintendo in a copyright infringement case, awarding the popular game maker about $12.8 million in a tough interpretation of the nation's Copyright Act after it found an online retailer liable for selling devices known as "game copiers."

ELITE: DANGEROUS CROWDFUNDING CAMPAIGN REINSTATED AFTER COPYRIGHT FLAP [UPDATED]
via Ars Technica by Lee Hutchinson on 3/3/2017
URL: https://arstechnica.com/gaming/2017/03/elite-dangerous-crowdfunding-campaign-reinstated-after-copyright-flap/

After a three-week pause due to a copyright complaint, Kickstarter has un-frozen the crowdfunding campaign for Spidermind Games' Elite: Dangerous pen-and-paper RPG.

NS INT'L TEXTILES ACCUSES ALL MODERN FURNITURE, OTHERS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 3/3/2017

... the Central District of California against All Modern Furniture Inc., Wayfair LLC, Overstock.com Inc. and Does 1-10 alleging copyright infringement.

PHOTOGRAPHER TAKES ON BUZZFEED IN COPYRIGHT SUIT
via World IP Review on 3/3/2017

A London-based Italian photojournalist has accused media website BuzzFeed of infringing his copyright in a photograph. Alessandro Masi alleged ...

MCNAUGHTON HOMES, OTHERS ACCUSED OF COPYRIGHT INFRINGEMENT
via Penn Record by Louie Torres on 3/3/2017

Nebraska companies are suing Pennsvylvania-based defendants The McNaughton Company d/b/a McNaughton Homes and ...
SCREENWITERS PUSH 9TH CIRC. TO REVERSE HBO 'BALLERS' WIN
URL: https://www.law360.com/ip/articles/898189

The screenwriters who sued Home Box Office Inc. over the TV show "Ballers" asked the Ninth Circuit to reverse a California federal court's July decision to dismiss the $200 million copyright infringement suit, arguing Thursday the lower court applied the wrong standard of review for similarity.

SUING U2: WHO REALLY CREATED THAT 'ACHTUNG BABY' GUITAR SOLO?
via Irish Times by Kevin Courtney on 3/4/2017
URL: http://www.irishtimes.com/culture/music/suing-u2-who-really-created-that-achtung-baby-guitar-solo-1.2995561

A British songwriter and guitarist, Paul Rose, is suing the band for copyright infringement, claiming it nicked significant elements of his 1989 ...

SEVENTY ORGANIZATIONS PEN LETTER TO CONGRESS ON IP
via Global Intellectual Property Center by Courtney Paul on 3/6/2017

These days, there are few things that Washington can agree on.

IS THE TPP REALLY "DEAD"? MAYBE NOT IF YOU BELIEVE IN "TWELVE MINUS ONE"
via Hugh Stephens Blog on 3/6/2017
URL: http://hughstephensblog.net/2017/03/06/is-the-tpp-really-dead-maybe-not-if-you-believe-in-twelve-minus-one

Late last year, after Mr. Trump's election but before his inauguration, I wrote a blog on the "Demise of the TPP and its Impact on Copyright".

DR. SEUSS ESTATE DENIES DEFAULT IN PLAY'S COPYRIGHT CASE
via Intellectual Property Law360 by Kelly Knaub on 3/6/2017
URL: https://www.law360.com/ip/articles/898253

The estate of Dr. Seuss urged a New York federal judge Friday to deny a default judgment bid in a preemptive suit by the producers of an unauthorized Dr. Seuss play, saying just because it failed to seek dismissal of the copyright fair use claim doesn't mean it defaulted.
PRENDA PORN TROLL ATTY COPS TO COPYRIGHT FRAUD SCHEME
via Intellectual Property Law360 by Bonnie Eslinger on 3/6/2017
URL: https://www.law360.com/ip/articles/898898

An attorney with Prenda Law, a firm long accused of so-called porn trolling, pleaded guilty Monday for his role in a scheme to extort millions in fraudulent copyright infringement settlements from victims who downloaded pornographic movies, according to a Department of Justice announcement.

IT'S FINALLY OVER: MASTERMIND BEHIND PRENDA LAW PORN TROLLS PLEADS GUILTY
via Ars Technica by Joe Mullin on 3/6/2017

One of the attorneys behind the Prenda Law "copyright trolling" scheme has pleaded guilty to federal charges of fraud and money laundering.

CHER ASKS JUDGE TO DISMISS LAWSUIT OVER ALBUM COVER TYPEFACE
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 3/7/2017

A graphic designer alleges his work was used for the singer's album "Closer to the Truth."

THE HIDDEN RISK OF OPEN SOURCE SOFTWARE: THE LAW
via Intellectual Property Law360 by Jeff Luszcz on 3/7/2017
URL: https://www.law360.com/ip/articles/899139

The legal profession has an old saying: Ignorance of the law is no defense. Yet, software companies, their general counsels and the law firms that advise them are often unaware of the open source components in their software, and their corresponding compliance status.

FOX NEWS APPEARS TO HAVE EDGE IN SHOWDOWN THAT COULD CURTAIL SHARING OF CLIPS
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 3/7/2017
URL: http://www.hollywoodreporter.com/thr-esq/fox-news-appears-have-appellate-edge-showdown-could-curtail-sharing-clips-983955

At a hearing on Tuesday, the 2nd Circuit reviews copyright fair use arguments by the media monitoring service TVEyes.
FOX NEWS URGES APPEALS COURT TO BLOCK TVEYES
via Media Post by Wendy Davis on 3/7/2017

The fight between Web service TVEyes and Fox News marks a "a crucial case to the future of television journalism." That's according to Dale Cendali, ...

RICK ROSS TAKES LMFAO COPYRIGHT FIGHT TO 11TH CIRC.
via Intellectual Property Law360 by Bill Donahue on 3/7/2017
URL: https://www.law360.com/ip/articles/898859

Rapper Rick Ross is asking the Eleventh Circuit to revive his claims that pop duo LMFAO ripped off his song with their smash hit "Party Rock Anthem," saying unintentional errors in his copyright registration should not have torpedoed his lawsuit.

6TWO APPAREL GROUP LTD, BURLINGTON COAT FACTORY DIRECT CORP.
ACCUSED OF COPYRIGHT INFRINGEMENT
via Northern California Record by Philip Gonzales on 3/7/2017

The plaintiff requests a trial by jury and seeks an order enjoining defendants from infringing plaintiff's copyrights in any manner, award for all profits of ...

WILL SCOTUS COPYRIGHT PRECEDENT INFLUENCE UPCOMING PATENT DECISIONS?
via New York Law Journal by Lewis R. Clayton & Eric Alan Stone on 3/7/2017
URL: http://www.newyorklawjournal.com/home/id=1202780741036/Will-SCOTUS-Copyright-Precedent-Influence-Upcoming-Patent-Decisions

In a pair of recent Copyright Act cases, the Supreme Court clarified the doctrines of laches and exhaustion. The court now is now set to decide whether ...

THE DIGITAL BLACK MARKET: HOW A FESTIVAL USED COPYRIGHT LAWS TO SELL THE FILMS IT SCREENED
via Yahoo! by Chris O'Falt on 3/7/2017
URL: https://www.yahoo.com/movies/digital-black-market-festival-used-200854212.html

It sounds impossible: The founder of an obscure Swiss film festival used Amazon, Vimeo, and other streaming sites to sell Terrence Malick's "The Tree ...
IT'S OFFICIAL: PRENDA COPYRIGHT TROLLS MADE THEIR OWN PORN, SEEDED ON PIRATE BAY
via Ars Technica by Nate Anderson on 3/7/2017

One of the more incredible allegations about Prenda Law—the porn copyright-trolling operation that sued people for downloading movies online—was that the lawyers behind it might have created and uploaded some of the porn in question simply as a way to catch more offenders.

DEATHROCK ARTIST SUES DIGITAL DISTRIBUTOR FOR INFRINGEMENT
URL: https://www.law360.com/ip/articles/899230

The founder of a Los Angeles deathrock band hit a record label and a digital distribution company with a copyright infringement suit in Illinois federal court on Tuesday, alleging his songs were repeatedly licensed to streaming outlets like iTunes and Spotify without his permission and seeking an injunction and roughly $1 million in damages.

BEAUTIFUL SLIDES INC. SEEKS DECLARATORY JUDGMENT IN COPYRIGHT MATTER
via Northern California Record by Wadi Reformado on 3/8/2017

In October 2016, the suit states that Allen’s counsel contacted Grasso over copyright infringement claims regarding the software. The plaintiff seeks...

COPYRIGHT OFFICE ASKING ARTISTS FOR INPUT ON MORAL RIGHTS
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 3/8/2017

Did some kid use an app to morph your selfie into a picture of you with dog ears? Or did someone snag your profile picture and post it somewhere that you would rather not see? Maybe these questions are funny, but the U.S. Copyright Office seriously wants to know......
SCULPTOR WINS BIG IN 9TH CIR. AFTER BILLIONAIRE COPIES HIS WORK
via FindLaw Writ - Recent Articles by Casey C. Sullivan, Esq. on 3/8/2017

Ever see contemporary art and think "I could do that." Well, actually doing it could cost you a pretty penny, as one real estate billionaire recently found out. Igor Olenicoff, the 156th richest person in the world, was accused of ripping off the work of Donald Wakefield. A federal......

EC COPYRIGHT REFORM PROPOSAL ENCOUNTERS RESISTANCE IN EUROPEAN PARLIAMENT
via Intellectual Property Watch by Dugie Standeford on 3/9/2017

European Commission plans to modernise copyright rules have run into opposition in European Parliament committees, with lawmakers particularly pushing back against the proposal for a publishers' right to licence snippets of news content.

KNOW THY NEIGHBOR, EH! - KEY DIFFERENCES BETWEEN U.S. AND CANADIAN COPYRIGHT LAWS
via IPLJ on 3/9/2017
URL: http://www.fordhamiplj.org/2017/03/09/us_canada_copyright/

Retailers are continuously moving beyond U.S. borders in order to achieve brand recognition and success.

4000 SONGWRITERS SIGN NMPA PETITION AS COPYRIGHT ROYALTY RATE HEARINGS HEAT UP
via Billboard by Ed Christman on 3/9/2017

To coincide with the beginning of the Copyright Royalty Board rate setting proceedings yesterday, the National Music Publishers' Assn. has so far ...
ARTISTS TAKE CALIF. ROYALTY LAW FIGHT BACK TO 9TH CIRC.
via Intellectual Property Law360 by Melissa Daniels on 3/9/2017
URL: https://www.law360.com/ip/articles/900325

Artists suing Christie's Inc., Sotheby's Inc. and eBay Inc. over the auctioneers' refusal to pay state-required royalties on art sales urged the Ninth Circuit on Wednesday to toss out a lower court's holding that the California Resale Royalties Act is preempted by the Copyright Act.

LAWYER ADMITS MAKING PORN TO TRAP COPYRIGHT VIOLATORS
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 3/10/2017

It turns out that Prenda Law was Prenda Porn. John Steele, formerly of Prenda Law, has admitted that his firm made pornographic films to trick people into downloading them from file-sharing websites. Then, Steele said, he and his former law partner Paul Hansmeier would sue those people for copyright......

CONTESTING CONVENTIONAL WISDOM ON COPYRIGHT DISGORGEMENT
via Intellectual Property Law360 by Benjamin M. Stern & Yasmin Ghassab on 3/10/2017
URL: https://www.law360.com/ip/articles/899809

A common issue in copyright infringement cases under the Copyright Act of 1976 is whether the plaintiff can recover disgorgement of the defendant's profits "attributable to" the alleged infringement.[1] Under the pertinent statutory Section § 504(b), the copyright owner merely identifies a defendant's "gross revenue" that results, at least in part, from the alleged infringement.[2] It then falls to the defendant to prove all "deductible expenses and elements of profit attributable to factors other than the copyrighted work."[3]

LEPRECHAUN' CREATOR SUES OVER 'VAMPRECHAUN' FILM
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 3/10/2017

The legal drama behind the creation of a vampire-leprechaun hybrid film is almost as colorful as the creature itself.
MPAA STUDIOS TAKING ON LARGE-SCALE PIRACY RING IN NEW YORK COURT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 3/10/2017

A February lawsuit has just been unsealed.

SALT & PEPPER CLOTHING INC. ACCUSES KISSUI OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 3/10/2017

Salt & Pepper Clothing Inc. accuses Kissui of copyright infringement ... Inc., doing business as Kith, and Does 1-10 alleging copyright infringement.

PUBLISHERS WITHDRAW COPYRIGHT SUIT AGAINST DELHI UNIVERSITY
PHOTOCOPY KIOSK
via HuffPost by Prajakta Hebbar on 3/10/2017
URL: http://www.huffingtonpost.in/2017/03/09/delhi-university-photocopy-case-publishers-withdraw-copyright-s/

Three publishers locked in a legal battle with a photocopy shop situated inside the Delhi University campus announced on Thursday that they had ...

SURVEY: HALF OF CONSUMERS WATCH PIRATED CONTENT
via IP Pro The Internet by Barney Dixon on 3/10/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5359

More than half of internet users who responded to a survey admitted to watching pirated video content online. Software company Irdeto, which ...

PHOTOGRAPHERS APPEAL AGAINST NFL COPYRIGHT DECISION
via World IP Review on 3/10/2017

Seven sports photographers have appealed against a decision that saw a judge toss copyright claims brought by the group against the National ...
FOLK BAND SEEKS GWICH'IN SONGWRITER'S FAMILY TO SOLVE COPYRIGHT CONUNDRUM
via Yahoo! on 3/11/2017
URL: https://ca.news.yahoo.com/folk-band-seeks-gwichin-songwriters-140000477.html

A Gwich'in love song, passed down for generations through oral tradition, has become a copyright roadblock for Tsiigehtchic, N.W.T., band the ...
DO GITHUB'S UPDATED TERMS OF SERVICE CONFLICT WITH COPYLEFT?
via Free Software Foundation - FSF Blogs by Donald Robertson on 3/14/2017

GitHub recently updated their terms of service (ToS).

PHOTOG SUES OVER FAMED IMAGE OF BASEBALL FIGHT
via Intellectual Property Law360 by Bill Donahue on 3/14/2017
URL: https://www.law360.com/ip/articles/901536

A Dallas sports photographer is suing over unauthorized copies of a widely distributed image of Texas Rangers baseball player Rougned Odor and his infamous punch to the face of Jose Bautista of the Toronto Blue Jays.

MCCARTNEY 'FORUM SHOPPING' WITH BEATLES SUIT, SONY/ATV SAYS
via Intellectual Property Law360 by Bill Donahue on 3/14/2017
URL: https://www.law360.com/ip/articles/901730

Music publisher Sony/ATV moved Monday to kill a lawsuit filed by Paul McCartney over the rights to hundreds of Beatles songs, saying the rock legend's case was both premature and a clear case of "forum shopping."

FORBES TARGETED IN HARVARD PHOTO COPYRIGHT CLAIM
via World IP Review on 3/14/2017

US business magazine Forbes illegally used a photo of a Harvard University lecturer, according to a copyright claim filed yesterday. Photojournalist ...

KODI SOFTWARE ENABLING WIDESPREAD COPYRIGHT INFRINGEMENT
via Center for the Protection of Intellectual Property by Kevin Madigan on 3/15/2017
URL: https://cpip.gmu.edu/2017/03/15/kodi-software-enabling-widespread-copyright-infringement/

Awards season always seems to arrive with new stories about how piracy is affecting the film industry and the way we watch movies.
PERFORMANCE RIGHTS IN PRE-1972 SOUND RECORDINGS KICKED TO CALIFORNIA SUPREME COURT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 3/15/2017

Pandora is appealing a denied bid to escape a class action lawsuit.

9TH CIRC. SENDS PRE-1972 SONG FIGHT TO CALIF. HIGH COURT
via Intellectual Property Law360 by Suevon Lee on 3/15/2017
URL: https://www.law360.com/ip/articles/902299

The Ninth Circuit on Wednesday asked California's highest court to weigh in on whether radio services like Pandora Media Inc. must pay millions in new royalties to stream songs recorded before 1972.

VIDEOGAME HACKER COULD PAY $8.5 MILLION
via IP Pro The Internet by Mark Dugdale on 3/15/2017
URL: http://ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5365

... Court for the Central District of California that these hacks violate the anti-circumvention provisions of the Digital Millennium Copyright Act (DMCA).

PAUL MCCARTNEY ACCUSED OF FORUM-SHOPPING IN BEATLES COPYRIGHT CASE
via World IP Review on 3/15/2017

McCarty and Lennon assigned their copyright to music publishers during that time, and Sony/ATV Publishing acquired copyright from two of the ...

SONOS GETS PARTIAL WIN OVER DENON IN COPYRIGHT INFRINGEMENT CASE
via cNet by Ty Pendlebury on 3/15/2017

Sonos gets partial win over Denon in copyright infringement case ... in its lawsuit against Denon's HEOS wireless system for copyright infringement.
BUCKAROO BANZAI' CREATORS CLAIM MGM INFRINGED COPYRIGHT BY SHOPPING TV SERIES
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 3/16/2017

Earl Mac Rauch and Walter Richter say in court papers that the early 1980s deal with MGM was a limited one.

BREITBART STOLE IMMIGRATION PHOTO, SUIT SAYS
via Intellectual Property Law360 by Bill Donahue on 3/16/2017
URL: https://www.law360.com/ip/articles/902604

Conservative website Breitbart News was hit with a copyright lawsuit Wednesday from a photojournalist who claims the site used his image of Mexican immigrants crossing the border without his permission.

LED ZEPPELIN ACCUSER STEPS UP 'STAIRWAY' FIGHT TO 9TH CIRC.
via Intellectual Property Law360 by Bill Donahue on 3/16/2017
URL: https://www.law360.com/ip/articles/902969

A man who unsuccessfully accused Led Zeppelin of stealing the iconic intro to "Stairway to Heaven" climbed his case to the Ninth Circuit on Thursday, saying serious errors by a trial judge had torpedoed his chances with jurors.

UNICOLORS INC. ACCUSES MISS LOVE, ZULILY, OTHERS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 3/16/2017

A Vernon business alleges one of its textile designs was used without its permission. Unicolors Inc. filed a complaint on March 7 in ...

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YOU, BABY - NINTH CIRCUIT ASKS CALIFORNIA SUPREME COURT TO DECIDE TURTLES COPYRIGHT SUIT
via Recorder by Scott Graham on 3/16/2017
URL: http://www.therecorder.com/id=1202781403580/You-Baby-mdash-Ninth-Circuit-Asks-California-Supreme-Court-to-Decide-Turtles-Copyright-Suit

It also disclaimed any common-law copyrights in published works. ... time, the Legislature repealed the provision disclaiming common-law copyrights.

PHONE RECORDINGS OF CONCERTS ARE MORE THAN JUST ANNOYING, THEY'RE POTENTIALLY ILLEGAL: GUEST POST
via Billboard by Rachel Stilwell & Makenna Cox on 3/17/2017

But when it comes to live performances, there are times when copyright law is not applicable at all. For example, if an audience member takes a video ...

OMELET LLC ACCUSES ENTITIES OF COPYRIGHT INFRINGEMENT REGARDING FILM 'LICENSE TO OPERATE'
via Northern California Record by Louie Torres on 3/17/2017

According to the complaint, the plaintiff alleges that it owns copyrights to the 2015 film "License to Operate." The plaintiff holds Hevesy, Thin Man ...

FURNITURE MANUFACTURER ALLEGES COPYRIGHT INFRINGEMENT
via Northern California Record by Jenie Mallari-Torres on 3/17/2017
URL: http://norcalrecord.com/stories/511092862-furniture-manufacturer-alleges-copyright-infringement

Furniture manufacturer alleges copyright infringement ... to its ownership rights in its copyrighted works, from Muuduu Furniture's wrongful conduct to ...
ARTIST ACCUSES JOINT VENTURES OF COPYRIGHT INFRINGEMENT
via Northern California Record by Jenie Mallari-Torres on 3/17/2017

A Los Angeles County artist is suing joint ventures, alleging breach of contract, breach of fiduciary duty, copyright infringement, ...

CALIFORNIA BUSINESS ACCUSES TEXAS COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Louie Torres on 3/17/2017

Classic Concepts Inc. filed a complaint March 8 in U.S. District Court for the Central District of California against Jodhpur, Inc. and Dr. Vivek, alleging ...

ONLINE MERCHANT ACCUSES CALIFORNIA COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Louie Torres on 3/17/2017
URL: http://norcalrecord.com/stories/511093587-online-merchant-accuses-california-competitor-of-copyright-infringement

Online merchant accuses California competitor of copyright infringement ... woman is suing a California competitor, alleging copyright infringement.

STAIRWAY TO HEAVEN' FIGHT HEADS TO 9TH CIRCUIT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 3/17/2017

Same tune, different venue.

JUDGES PROBE FILMON, NETWORKS ON COPYRIGHT ISSUE
via Broadcasting & Cable by John Eggerton on 3/17/2017

A federal appeals court Friday heard argument in the long-running court battle between TV station content providers and FilmOn, and, according to an ...
APPEAL FILED IN LED ZEPPELIN 'STAIRWAY TO HEAVEN' COPYRIGHT TRIAL
via Rolling Stone by Daniel Kreps on 3/18/2017

The battle over "Stairway to Heaven" will rage on for at least one more chapter as the copyright infringement case heads to a federal appeals court.

LED ZEPPELIN'S "STAIRWAY TO HEAVEN" COPYRIGHT CASE GETS APPEAL
via Spin by Dale Eisinger on 3/19/2017
URL: http://www.spin.com/2017/03/led-zeppelins-stairway-to-heaven-copyright-case-gets-appeal/

The battle over the rights to one of rock's most famous songs will continue in a US appeals court. Last June, a federal jury ruled in favor of Jimmy Page ...

EU HIGH COURT RULING'S IMPLICATIONS FOR CONTENT STREAMING IN EUROPE AND WORLDWIDE
via Intellectual Property Watch by Bruce Gain on 3/20/2017
URL: https://www.ip-watch.org/2017/03/20/eu-high-court-rulings-implications-content-streaming-europe-worldwide/

A recent Court of Justice of the European Union (CJEU) ruling relating to TV internet broadcasts from the UK underscores tight restrictions in place for content streaming in the European Union (EU), legal scholars say.

COPYRIGHT IN CANADA: WHEN TEN PERCENT IS TOO MUCH
via Hugh Stephens Blog on 3/20/2017
URL: http://hughstephensblog.net/2017/03/20/copyright-in-canada-when-ten-percent-is-too-much

While the assault on writers and publishers by the university community in Canada continues, based on the dubious proposition that the educational exception for fair dealing means that institutions of higher learning no longer need to obtain licences to reproduce material in course packs and other classroom material, there is some hope for redress through the courts.
ANTHROPOLOGIE, URBAN OUTFITTERS ACCUSED OF COPYRIGHT INFRINGEMENT OVER FABRIC DESIGN USE
via Northern California Record by Wadi Reformado on 3/20/2017

A California corporation claims it was damaged because one of its textile designs was unlawfully used by Anthropologie and Urban ...

MARRAKESH TREATY FOR BLIND READERS JEOPARDISED BY EU PUBLISHING INDUSTRY LOBBYING, GROUP SAYS
via Intellectual Property Watch by Catherine Saez on 3/21/2017
URL: https://www.ip-watch.org/2017/03/21/publishing-industry-lobbying-eu-marrakesh-treaty-discussions-jeopardises-effects-group-charges/

The treaty adopted almost four years ago in Marrakesh allowing for exceptions to copyright for the benefit of visually impaired people was hailed as a victory for human rights over private rights. However, as the European Union is preparing to ratify the treaty, according to a civil society group report, intense lobbying by the publishing industry is influencing the debate and might diminish the hard-gained ground in the treaty on copyright exceptions. The World Blind Union, meanwhile, said it finds the report "revealing and shocking".

APPEALS COURT RULES TV STREAMERS DON'T GET COMPULSORY LICENSE TO BROADCAST NETWORKS
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 3/21/2017

The 9th Circuit has reversed a federal judge who concluded otherwise.

WEB STREAMERS CAN'T USE TV LICENSE, 9TH CIRC. SAYS
via Intellectual Property Law360 by Bill Donahue on 3/21/2017
URL: https://www.law360.com/ip/articles/904331

The Ninth Circuit sided with the major broadcast networks Tuesday and ruled that internet streaming services cannot use the same automatic copyright license that traditional cable companies use, reversing an earlier decision to the contrary.
DISNEY HIT WITH LAWSUIT CLAIMING 'ZOOTOPIA' RIPPED OFF 'TOTAL RECALL' WRITER
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 3/21/2017

According to the complaint, Gary Goldman pitched his own 'Zootopia' project twice to Disney.

DISNEY ACCUSED OF STEALING IDEA FOR 'ZOOTOPIA' MOVIE
via Intellectual Property Law360 by Bill Donahue on 3/21/2017
URL: https://www.law360.com/ip/articles/904490

The Walt Disney Co. was hit with a copyright lawsuit Thursday accusing the studio of stealing much of its smash hit "Zootopia" from a prominent screenwriter's unproduced treatment.

LEAKED TEXT: IS EU TEMPTED BY TOO MANY SAFEGUARDS LIMITING THE SCOPE OF BLIND TREATY?
via Intellectual Property Watch by Catherine Saez on 3/21/2017
URL: https://www.ip-watch.org/2017/03/21/leaked-text-eu-tempted-many-safeguards-limiting-scope-blind-treaty/

As the ratification by the European Union of an international treaty creating an exception to copyright for visually impaired people nears, a leaked text shows that the directive implementing the treaty in the EU might come with safeguards limiting the scope of the treaty, allegedly pushed by the publishing industry.

9TH CIRC. NIXES CLAIMS NFL STOLE TV SHOW IDEA
via Intellectual Property Law360 by Zachary Zagger on 3/21/2017
URL: https://www.law360.com/ip/articles/904248

The Ninth Circuit refused Monday to revive claims that the NFL stole a man's idea for a television show about undrafted football players, saying the accuser never alleged his offer to present the new show was conditioned on his being paid if it was used.

HOPE FADES FOR CHEAP TV-OVER-INTERNET AS FILMON LOSES COPYRIGHT FIGHT [UPDATED]
via Ars Technica by Joe Mullin on 3/21/2017

Remember the startup Aereo?
DISNEY SUED FOR 'ZOOTOPIA' COPYRIGHT INFRINGEMENT: REPORT
via Washington Times by Ken Shepherd on 3/21/2017

This image released by Disney shows Judy Hopps, voiced by Ginnifer Goodwin, in a scene from the animated film, "Zootopia." Screenwriter and ...

TV NETWORKS WIN ANOTHER BATTLE ON STREAMING
via Recorder by Ben Hancock on 3/21/2017
URL: http://www.therecorder.com/home/id=1202781773991/TV-Networks-Win-Another-Battle-on-Streaming

As the court noted in its decision, compulsory licenses allow cable systems to pay copyright holders a statutory "de minimis" amount of royalties to ...

NETWORKS PREVAIL IN LONG FIGHT WITH ONLINE TV SERVICE
via Courthouse News Service by Matt Reynolds on 3/21/2017
URL: https://www.courthousenews.com/networks-prevail-long-fight-online-tv-service/

TV Catchup fell back on a subsection of British copyright law which permits retransmission by cable to users in the region where the original broadcast ...

SUPREME COURT CHEERS ON COPYRIGHT SEPARABILITY
via Patent Law Blog (Patently-O) by Dennis Crouch on 3/22/2017
URL: https://patentlyo.com/patent/2017/03/supreme-copyright-separability.html

In a new Copyright decision, the Supreme Court has modified the doctrine of separability that allows for copyright of works of authorship associated with useful articles.

HIGH COURT SAYS CHEERLEADER UNIFORM COPYRIGHTABLE
via Intellectual Property Law360 by Bill Donahue on 3/22/2017
URL: https://www.law360.com/ip/articles/892456

The U.S. Supreme Court ruled Wednesday that decorative elements of a cheerleading uniform could be protected by copyright law, a ruling it said was aimed at resolving "widespread disagreement" on when such designs are eligible for protection.
COPYRIGHT OFFICE LAUNCHES UPDATED WEBSITE
via Copyright: Creativity at Work by Alison Hall on 3/22/2017
URL: http://blogs.loc.gov/copyright/2017/03/copyright-office-launches-updated-website/

On March 1, the Copyright Office launched its updated website, www.copyright.gov.

SUPREME COURT 6-2 DECISION IN STAR ATHLETICA, LLC V. VARSITY BRANDS, INC.
via The Entertainment, Arts and Sports Law Blog by Olena Ripnick-O'Farrell on 3/22/2017
URL: http://nysbar.com/blogs/EASL/2017/03/supreme_court_decision_in_star.html

This morning, the Supreme Court decided Star Athletica v. Varsity Brands, Inc., holding that that decorative elements of a cheerleading uniform could be protected by copyright law.

INTERNET STREAMING ISN'T THE SAME AS CABLE TV, 9TH CIR. RULES
via FindLaw Writ - Recent Articles by Casey C. Sullivan, Esq. on 3/22/2017

More and more Americans are cutting their cables and ditching their TVs, choosing to consume their video entertainment through online streaming services like Netflix or Hulu. But as online streamers begin to encroach on the realm of cable and broadcast TV, are they entitled to the same treatment as......

SUPREME COURT USES IMAGINATION IN RULING CHEERLEADER UNIFORM DESIGNS CAN BE COPYRIGHTED
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 3/22/2017
URL: http://www.hollywoodreporter.com/thr-esq/supreme-court-uses-imagination-holding-cheerleader-uniform-designs-get-copyright-protection-

At least one justice can't conceive of stripes, chevrons and color blocks as being anything but useful.

PRACTITIONER PERSPECTIVE: STAR ATHLETICA V. VARSITY BRANDS
via IPLJ on 3/22/2017
URL: http://www.fordhamiplj.org/2017/03/22/practitioner-perspective-star-athletica-v-varsity-brands/

Today, the Supreme Court held that Varsity Brands is entitled to copyright protection in the various two-dimensional designs featured on its cheerleading uniforms in Star Athletica v. Varsity Brands.
Supreme Court rules uniform design elements can be copyrighted ... that basic elements in cheerleader uniform designs merit copyright protection, ...

The U.S. Supreme Court upheld an apparel company's copyrights on its cheerleading outfits in a ruling that bolsters the legal protections for pictures ...

After going before the U.S. Supreme Court in October for oral arguments, Star Athletica v. Varsity Brands, the much-anticipated copyright dispute over ...

The Supreme Court issued a 5-2 opinion (PDF) today allowing cheerleading uniforms to be copyrighted.

Cheerleading uniforms may be copyrighted, says SCOTUS ... Under section 101, "useful" articles are eligible for copyright protection as artistic works if ...
FASHION INDUSTRY WINS AS SUPREME COURT SAYS CHEERLEADER UNIFORM DESIGN MAY BE COPYRIGHTED
via Forbes by Daniel Fisher on 3/22/2017

The design of an elegant Shaker chair or a particularly beautiful shovel can't be copyrighted, for example, but graphic elements applied to those ...

COPYRIGHTS AT THE SUPREME COURT: STAR ATHLETICA V. VARSITY BRANDS
via IPWatchdog.com | Patents & Patent Law by Gene Quinn on 3/22/2017
URL: http://www.ipwatchdog.com/2017/03/22/copyrights-supreme-court-star-athletica-v-varsity-brands/id=79767/

On Wednesday, March 22nd, the U.S. Supreme Court handed down a decision in a copyright case, which clarifies federal copyright law surrounding whether features incorporated into the design of a useful article are eligible for copyright protection. In a 6-2 decision, the Supreme Court held in Star Athletica, LLC v. Varsity Brands, Inc. that such features are eligible for copyright protection if they can be perceived as a work of art separate from the useful article and would qualify as an...

COPYRIGHT LAWYERS: SCOTUS MISSED CHANCE TO FINE-TUNE IP PROTECTION FOR APPAREL
via Law.com - Newswire by Scott Graham on 3/22/2017

While the U.S. Supreme Court's copyright decision on cheerleader uniforms strengthens IP protection for fashion designers somewhat, some copyright lawyers whose practice includes the apparel industry said the high court missed a golden opportunity to provide more clarity.

JARED LETO ASKS 9TH CIRC. TO REVIVE TMZ SWIFT VIDEO SUIT
via Intellectual Property Law360 by Melissa Daniels on 3/22/2017
URL: https://www.law360.com/ip/articles/904683

Singer and actor Jared Leto's production company asked the Ninth Circuit on Monday to toss out a lower court's ruling dismissing his copyright infringement suit against TMZ, saying the videographer behind a clip of him criticizing Taylor Swift didn't have the right to sell the clip.
LAW PROFS BACK BID TO UNSEAL TESTIMONY IN $500M OCULUS CASE
URL: https://www.law360.com/ip/articles/904623

In the aftermath of a $500 million verdict against the virtual reality company Oculus, two law professors and the Electronic Freedom Foundation on Tuesday requested that a Texas federal court unseal portions of the trial transcript related to the jury's finding of copyright infringement.

POLITICAL STRUGGLE EMERGES OVER WHO WILL APPOINT NEXT US COPYRIGHT OFFICE HEAD
via Wall Street Journal by John D. McKinnon on 3/22/2017
URL: https://www.wsj.com/articles/political-struggle-emerges-over-who-will-appoint-next-u-s-copyright-office-head-1490222010

A political tug of war is breaking out over who will appoint the next head of the U.S. Copyright Office, a job that is vitally important to ...

RODALE SETTLES COPYRIGHT ROW WITH DAD WHO STREAMED BIRTH
via Intellectual Property Law360 by Kevin Penton on 3/22/2017
URL: https://www.law360.com/ip/articles/904931

Publishing giant Rodale Inc. has struck a confidential settlement with a California man who filed copyright infringement claims after the company used video footage he inadvertently posted on Facebook of his son's birth, according to a filing in New York federal court Wednesday.

5 KEYS TO HIGH COURT'S CHEERLEADER UNIFORM RULING
via Intellectual Property Law360 by Bill Donahue on 3/22/2017
URL: https://www.law360.com/ip/articles/905066

To get you up to speed on the U.S. Supreme Court's complex decision on copyright law and cheerleading uniforms, here are the key things experts say you need to know, including what the ruling says, what it doesn't and what comes next.

NO CHEERS FOR STAR ATHLETICA
via Concurring Opinions by Gerard Magliocca on 3/23/2017
URL: https://concurringopinions.com/archives/2017/03/no-cheers-for-star-athletica.html

Yesterday the Supreme Court issued its decision in Star Athletica LLC v. Varsity Brands, Inc., which addressed the issue of conceptual separability in copyright for useful articles (in this case, cheerleading uniforms). I'll post about the opinion in greater detail later today or tomorrow, but for now I want to say that this is a mess of an opinion that is bound to cause a lot of confusion.
FILMON NOT A "CABLE PROVIDER" SAYS NINTH CIRCUIT
via The Illusion of More by David Newhoff on 3/23/2017

A recurring narrative promoted by the internet industry and its cheerleaders is that the old creative industry, which relies on copyright law, is "outdated." The major rights holders, they keep saying, "cling to old models," pretending the future is not ...

DAN AYKROYD BREAKS DOWN BOOZE BOTTLE ANGLES IN IP TRIAL
URL: https://www.law360.com/ip/articles/905598

Comedy legend Dan Aykroyd on Thursday told a California federal jury that a tequila company had ripped off his Crystal Head Vodka brand's unique skull-shaped bottle, pulling out a ruler to dissect what he said are obvious similarities between the two bottles.

MAZER AND THE BALINESE DANCER
via Mostly IP History by Zvi S. Rosen on 3/23/2017

As folks who read this blog have doubtless heard, the Supreme Court recently decided the "Cheerleader Case" of Star Athletica v. Varsity Brands, which is the first case to seriously examine the Useful Articles doctrine in copyright since the Mazer v. Stein decision from 1954.

U.S. CHAMBER SUPPORTS CONGRESSIONAL COPYRIGHT OFFICE BILL
via Global Intellectual Property Center by Courtney Paul on 3/23/2017

U.S. Chamber of Commerce Executive Vice President of the Global Intellectual Property Center Mark Elliot released the following statement in support of the Register of Copyrights Selection and Accountability Act, the result of a bipartisan, bicameral effort led by House Judiciary Committee Chairman Bob Goodlatte (R-Va.) and Ranking Member John Conyers (D-Mich.), Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa) and Ranking Member Dianne Feinstein (D-Calif.), and Senate Judiciary Committee Member Patrick Leahy (D-Vt.).:
HOW THE BATTLE OVER CONTROL OF THE US COPYRIGHT OFFICE COULD AFFECT THE MUSIC INDUSTRY
via Billboard by Robert Levine on 3/23/2017
URL: http://www.billboard.com/articles/business/7736441/battle-control-copyright-office-affect-music-industry

The struggle over who will be the next Register of Copyrights is about to begin with the expected introduction of a bill to make the position a ...

HOUSE INTRODUCES BILL MOVING TOWARD USCO MODERNIZATION
via The Illusion of More by David Newhoff on 3/24/2017
URL: http://illusionofmore.com/house-introduces-bill-moving-toward-usco-modernization/

Photo by maxkabakov Against the drama of day-to-day Washington-and I'm already exhausted-Rep. Goodlatte, Chairman of the House Judiciary Committee, introduced a bill that most people won't notice except the copyright watchers. Unlike certain congressional action making the headlines this week, H.R. 1695 ...

DISNEY TARGETED IN 'ZOOTOPIA' COPYRIGHT INFRINGEMENT SUIT
via World IP Review on 3/24/2017

The suit argued that Disney had infringed Goldman's copyright and an implied-in-fact contract, that there was a breach of confidence and that Disney ...

2-4-6-8, LET'S GIVE A CHEER FOR COPYRIGHT: SCOTUS HOLDS ORIGINAL IMPRINTED DESIGNS ON FUNCTIONAL CHEERLEADER UNIFORMS ARE PROTECTED BY COPYRIGHT IF "SEPARABLE"
via The Entertainment, Arts and Sports Law Blog by Barry Werbin Herrick on 3/24/2017
URL: http://nysbar.com/blogs/EASL/2017/03/2-4-6-8_lets_give_a_cheer_for_.html

In Kieselstein-Cord v. Accessories by Pearl, Inc., 632 F.2d 989 (2d Cir. 1980), the Second Circuit held in a seminal decision that original artistic sculptural designs depicted on designer silver belt buckles were protectable by copyright notwithstanding the functionality of the buckles themselves, because the designs could be separated from the utilitarian function of the buckles.
SAFE HARBOUR REFORMS DROPPED FROM AUSTRALIAN BILL
via IP Pro The Internet by Barney Dixon on 3/24/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5385

The bill will enable fair access to copyrighted material in suitable formats. The government said that this "reflects the government's commitment to ..."

GOODLATTE INTRODUCES BILL ON REGISTER OF COPYRIGHT APPOINTMENT
via Bloomberg BNA by Mike Wilczek on 3/24/2017
URL: https://www.bna.com/goodlatte-introduces-bill-n57982085668/

The Register of Copyrights Selection and Accountability Act, was the product of bipartisan and bicameral discussions, according to a press release ...

COPYRIGHT EMINENT DOMAIN
via Concurring Opinions by Gerard Magliocca on 3/24/2017
URL: https://concurringopinions.com/archives/2017/03/copyright-eminent-domain.html

28 U.S.C. Sec. 1498(b) provides that the United States may (in effect) convert any copyright into a compulsory license by authorizing the reproduction of a copyrighted work subject to the need to pay reasonable compensation to the copyright owner. Does anyone know if this authority has ever been used? It's hard to think of a situation where the Government would need to do this.

A NEW BILL ON US COPYRIGHT LAW WOULD TAKE POWER FROM THE LIBRARY OF CONGRESS AND GIVE IT TO TRUMP
via Quartz by Thu-Huong Ha on 3/24/2017
URL: https://qz.com/941292/donald-trump-could-get-more-presidential-appointee-to-oversee-copyright-law/

US copyright laws are severely outdated, and it looks like lawmakers are finally taking action. Yesterday, a bipartisan bill was introduced in the House ...

KANYE WEST SETTLES COPYRIGHT FIGHT OVER 'NEW SLAVES'
via Intellectual Property Law360 by Bill Donahue on 3/24/2017
URL: https://www.law360.com/ip/articles/905483

Kanye West has reached a settlement with a member of a Hungarian rock band who accused the hip-hop superstar of illegally sampling one of the group's songs.
HOUSE BILL WOULD MAKE COPYRIGHT CHIEF PRESIDENT APPOINTEE
via Intellectual Property Law360 by Ryan Boysen on 3/24/2017
URL: https://www.law360.com/ip/articles/905713

The House of Representatives on Thursday introduced a bipartisan bill that would make the register of copyrights a presidentially appointed position, in a move lawmakers are calling a first step in a broader overhaul intended to bring the office into the digital age by giving it more resources and more independence.

APPEAL SEEKS TO REVIVE COPYRIGHT CASE TARGETING LED ZEPPELIN CLASSIC 'STAIRWAY TO HEAVEN'
URL: http://www.ipwatchdog.com/2017/03/25/appeal-copyright-led-zeppelin-stairway-to-heaven/id=79696/

On March 15th, an appeal filed in the U.S. Court of Appeals for the Ninth Circuit (9th Cir.) gave new life to a copyright battle that has been waged over arguably the most popular rock song of all time. Counsel representing Randy Wolfe, guitarist for the rock band Spirit, appealed an earlier decision from California [...] 

STAR ATHLETICA V. VARSITY: CECI N'EST PAS UNE ... USEFUL ARTICLE
URL: https://www.law360.com/ip/articles/890333

Every so often, in the annals of contemporary copyright law, it is refreshing to encounter a decision that does not contain the terms "fair use" or "Digital Millennium Copyright Act," and to spend some time thinking about the actual intellectual property copyright is supposed to protect - or not. Does copyright extend to an artistically crafted pipe, or only a picture of the pipe?

REGISTER OF COPYRIGHTS SELECTION AND ACCOUNTABILITY ACT IS FIRST STEP TOWARDS A MODERN COPYRIGHT OFFICE
via Mister Copyright by Kevin Madigan on 3/27/2017

Last Thursday, House Judiciary Committee Chairman Bob Goodlatte and Ranking Member John Conyers, Jr. introduced the Register of Copyrights Selection and Accountability Act.
GEORGIA LAW ANNOTATIONS COPYRIGHTABLE, COURT SAYS
via Intellectual Property Law360 by Bill Donahue on 3/27/2017
URL: https://www.law360.com/ip/articles/906378

A federal judge has ruled that the state of Georgia can claim copyright ownership of annotations made to its official legal code, shooting down arguments from a transparency group that said the additions should be free for all to see.

SUPREME COURT WON'T TACKLE PRE-1972 SONG DMCA BATTLE
via Intellectual Property Law360 by Bill Donahue on 3/27/2017
URL: https://www.law360.com/ip/articles/906263

The U.S. Supreme Court on Monday refused to hear a case from Capitol Records challenging a ruling last year that the Digital Millennium Copyright Act's so-called safe harbor protects sites like Vimeo from liability even for songs recorded prior to 1972, which aren't covered by federal copyright law.

ADDITIONAL THOUGHTS ON STAR ATHLETICA
via Concurring Opinions by Gerard Magliocca on 3/27/2017
URL: https://concurringopinions.com/archives/2017/03/additional-thoughts-on-star-athletica.html

I mentioned last week that I did not think highly of the Supreme Court's opinion in the "cheerleader uniform" copyright case. Let me explain why and then make some observations about how the case may be received by the lower courts.

MARVEL TRIMS ARTISTS' IP SUIT OVER IRON MAN ARMOR DESIGN
URL: https://www.law360.com/ip/articles/906469

Marvel on Monday won partial dismissal of an infringement suit alleging it stole the body armor design worn by Iron Man from two comic book artists, though a New York federal court allowed a claim, saying a promotional poster bore similarity to one from the artists' comic book series.

COPYRIGHT CLAUSE SHOWS FALLACY OF ORIGINALISM
via Intellectual Property Law360 by Andrew Stroud on 3/27/2017
URL: https://www.law360.com/ip/articles/903928

With U.S. Supreme Court confirmation hearings of Judge Neil Gorsuch underway, headlines are full of items about the so-called "original meaning" theory of constitutional interpretation. The late Justice Antonin Scalia was the most well-known proponent of this doctrine, which calls for
judges to determine the meaning of a constitutional provision by ascertaining how the provision was understood by "a reasonable person" at the time it was drafted. Thus, originalism tends to focus on the meaning of words as they were understood when used by the framers as...

COPYRIGHT LAW AND THE FUTURE OF 3D PRINTING
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 3/27/2017

What came first in the world of copyright and 3D printing, the egg or the egg holder? Like the chicken-and-the-egg question, the copyright question seems so simple at first. The egg, right? You can't have an egg holder without an egg? But throw in a U.S. Supreme Court decision......

THE EFF IS FULL OF IT ON INDIE REGISTER OF COPYRIGHTS
via The Illusion of More by David Newhoff on 3/28/2017
URL: http://illusionofmore.com/eff-full-indie-register-copyrights/

Photo by GlobalIP Okay. I'm not remotely surprised that the EFF & Co. don't like the bill H.R. 1695 to make the Register of Copyrights a presidential appointee rather than an employee of the Librarian of Congress. And I'm way ...

JUDGE ALLOWS COPYRIGHT LAWSUIT AGAINST MARVEL OVER 'IRON MAN 3' POSTER
URL: http://www.hollywoodreporter.com/thr-esq/judge-allows-copyright-lawsuit-marvel-iron-man-3-poster-989295

The body armor, though, is too common in the comic book or superhero genre.

ANOTHER HUGE SETBACK IN CLOUDFLARE'S QUIXOTIC CAMPAIGN TO PROTECT PIRATE SITES
via Center for the Protection of Intellectual Property by Devlin Hartline on 3/28/2017
URL: https://cpip.gmu.edu/2017/03/28/another-huge-setback-in-cloudflares-quinixotic-campaign-to-protect-pirate-sites/

Last August, I wrote about CloudFlare's "desperate new strategy" to protect MP3Skull, a notorious pirate site that was sued by various recording companies for copyright infringement.
ABA Copyright Division
http://apps.americanbar.org/dch/committee.cfm?com=PT030000

AEREO DIDN'T KILL COPYRIGHT 'VOLITIONAL' RULE, 5TH CIRC. SAYS
via Intellectual Property Law360 by Bill Donahue on 3/28/2017
URL: https://www.law360.com/ip/articles/906771

The Fifth Circuit ruled Monday that a web forum was not directly liable for copyright-infringing images uploaded by its users, becoming the latest appeals court to reject the argument that the U.S. Supreme Court's 2014 Aereo ruling eliminated the "volitional-conduct" requirement for such claims.

CANDY CRUSH' SEEKS TO CRUSH RIVAL APPS IN COPYRIGHT SUIT
via Intellectual Property Law360 by Emma Cueto on 3/28/2017
URL: https://www.law360.com/ip/articles/906614

The maker of the popular game "Candy Crush Saga" filed suit Monday in California federal court against a Chinese game company it claims ripped off its apps, including "Candy Crush," in violation of copyright law.

SUPREME COURT WILL NOT HEAR CAPITOL V. VIMEO CASE
via The Illusion of More by David Newhoff on 3/28/2017
URL: http://illusionofmore.com/supreme-court-will-not-hear-capitol-v-vimeo-case/

The Supreme Court has denied cert in the case of Capitol Records v Vimeo, leaving in place the holding of the Second Circuit Court of Appeals that video-hosting site Vimeo was shielded by the "safe harbors" of the DMCA ...

BIG BANG THEORY' BEATS SUIT OVER 'WARM KITTY' LYRICS
URL: https://www.law360.com/ip/articles/907244

The daughters of a nursery-rhyme writer whose work later appeared on the TV sitcom "The Big Bang Theory" may not bring copyright infringement claims against the show over its use of the ditty "Warm Kitty," a New York federal court ruled Monday.

HIGH COURT RULING LIKELY TO SPUR 3-D PRINTING COPYRIGHTS
via Bloomberg BNA by Alexis Kramer on 3/28/2017
URL: https://www.bna.com/high-court-ruling-n57982085821/

A U.S. Supreme Court decision on cheerleader uniform design copyrights will expand the number of 3-D printed objects with intellectual property ...
LET'S GO, BIG ©! LET'S GO! US SUPREME COURT BACKS COPYRIGHT PROTECTION FOR CHEERLEADING UNIFORMS

In a decision that may have broader implications in the U.S. fashion industry, the U.S. Supreme Court in Star Athletica, L.L.C. v. Varsity Brands, Inc. (No ... 

MOVING COPYRIGHT OFFICE AUTHORITIES TO EXECUTIVE BRANCH COULD IMPROVE ACCOUNTABILITY
via Hill by Jarrett Dieterle & Sasha Moss on 3/28/2017

Created in 1870, the body that registers and renews U.S. copyrights is actually housed within the Library of Congress. That makes it formally a part of ... 

'CANDY CRUSH' MAKER SUES COMPANY FOR COPYRIGHT INFRINGEMENT
via World IP Review on 3/29/2017

The maker behind the mobile game "Candy Crash Saga" has sued a China-based company for copyright infringement. King.com sued JoyFox ... 

BCBG MAX AZRIA GROUP ACCUSED OF COPYRIGHT, PATENT INFRINGEMENT WITH USE OF FABRIC DESIGN
via Northern Californina Record by Wadi Reformado on 3/29/2017

A Korean corporation claims that one of its patented knitting fabric designs and one of its textile designs were unlawfully used.
MCCARTNEY SAYS BEATLES SONG FIGHT MUST BE DECIDED NOW
via Intellectual Property Law360 by Bill Donahue on 3/29/2017
URL: https://www.law360.com/ip/articles/907020

Attorneys for Paul McCartney fired back Wednesday over claims that he prematurely filed a
lawsuit in a bid to recover the rights to hundreds of Beatles songs from Sony/ATV, saying the
music publisher is trying to "leave McCartney in suspense."

PAUL MCCARTNEY CLAIMS SONY IS DEVALUING HIS BEATLES RIGHTS
URL: http://www.hollywoodreporter.com/thr-esq/paul-mccartney-claims-sony-is-devaluing-his-
beatles-rights-by-attempting-delay-lawsuit-98980

His lawyer also tells a judge that without resolution to his attempt to reclaim rights, McCartney
would be exposing himself - and others - to liability.

COPYRIGHT CHIEF APPOINTEE BILL CLEAR HOUSE HURDLE
URL: https://www.law360.com/ip/articles/907550

The House Judiciary Committee voted 27-1 on Wednesday to approve a bipartisan bill that
would make the Register of Copyrights a presidentially appointed position, a step toward a
broader initiative of modernizing the U.S. Copyright Office.

IF YOU PUBLISH GEORGIA'S STATE LAWS, YOU'LL GET SUED FOR COPYRIGHT
AND LOSE
via Ars Technica by Joe Mullin on 3/30/2017
URL: https://arstechnica.com/tech-policy/2017/03/public-records-activist-violated-copyright-by-
publishing-georgia-legal-code-online/

If you want to read the official laws of the state of Georgia, it will cost you more than $1,000.

HORIZON COMICS PRODUCTIONS, INC. V. MARVEL ENTERTAINMENT, LLC ET AL
via The Entertainment, Arts and Sports Law Blog by Mike Steger on 3/30/2017
URL: http://nysbar.com/blogs/EASL/2017/03/horizon_comics_productions_inc.html

In this case, brought by Horizon Comics, Horizon claims that the armored suits used in Marvel's
"Iron Man" and "Avengers" movies infringe on Horizon's copyrights in armor displayed in its
"Radix" comic book series. On Marvel's motion to dismiss the complaint, the court ruled that (1)
issues of fact exist as to similarities between the armor used in a promotional poster for "Iron
Man 3" and promotional art for the "Radix" series, and (2) the mechanized body armor in the films was not substantially similar to that in the "Radix" series.

CERT DENIED IN CAPITAL RECORDS V. VIMEO
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 3/30/2017
URL: http://nysbar.com/blogs/EASL/2017/03/cert_denied_in_capital_records.html

On Monday, March 17th, the Supreme Court denied cert in Capital Records v. Vimeo, thereby leaving intact the Second Circuit's 2016 decision (826 F.3d 78 (2d Cir. 2016)) finding that the DMCA does apply to pre-1972 sound recordings to protect compliant providers from copyright claims under state laws.

"WARM KITTY"
via The Entertainment, Arts and Sports Law Blog by Elissa D. Hecker on 3/30/2017
URL: http://nysbar.com/blogs/EASL/2017/03/warm_kitty.html

In Ellen Newlin Chase and Margaret Chase Perry v. Warner Bros. Entertainment, Inc., et al, Judge Buchwald of the Southern District dismissed the copyright action brought by daughters of a poet for failure to state a claim against "The Big Bang Theory" for the song "Warm Kitty".

AUTHORS LIVING OFF WELFARE AND WRITING FOR FREE IS NOT A COHERENT COPYRIGHT PLAN
via IPWatchdog.com | Patents & Patent Law by Gene Quinn on 3/30/2017
URL: http://www.ipwatchdog.com/2017/03/30/authors-living-off-welfare-writing-for-free-not-coherent-copyright-plan/id=81462/

Authors who are making a wage that is at or below the poverty line create a burdensome charge for readers? Well when you put it that way what Justice Breyer wrote just sounds stupid... There is a cost associated with discovering whether there are previous copyrights and securing permission to copy? Is Justice Breyer really suggesting that the grant of rights to copyright holders is too onerous for copycats and plagiarists to bear? What about this radical idea Justice Breyer - don't copy what...

THE TERMINATOR COMES TO HOLLYWOOD TO DESTROY OLD COPYRIGHT GRANTS
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 3/30/2017

From a mockumentary classic to an Oscar winning best picture, studios are fighting to hold onto properties from hungry authors.
MUSIC LABEL CLAIMS PJ RYAN'S OF PHOENIXVILLE REPEATEDLY VIOLATED COPYRIGHT LAWS
via Penn Record by Louie Torres on 3/30/2017

A music publishing label is suing Ryan Brothers LLC d/b/a PJ Ryan's, Patrick Ryan and Paul Ryan, a Phoenixville pub and its ...

INSANE CLOWN' PASSED OFF POET'S WORK AS HIS OWN, SUIT SAYS
via Intellectual Property Law360 by Kat Greene on 3/30/2017
URL: https://www.law360.com/ip/articles/908129

A poet has accused a member of the Insane Clown Posse, a rap-metal group with a large fan following in the Midwest, of taking a poem published in the "Chicken Soup for the Soul" series and passing it off as the group's own, according to filings in Michigan federal court Wednesday.

SUPREME COURT CLARIFIES THE SCOPE OF COPYRIGHT PROTECTION FOR FEATURES OF USEFUL ARTICLES
via National Law Review by Jessica Rissman Cohen & Antony J. McShane on 3/31/2017

In addition, copyrights endow their owners with the ability to enjoin others from making unauthorized copies of their designs, and from using the ...

DOWNLOADING PIRATED SOFTWARE WITHOUT INSTALLING IT MAY CONSTITUTE INFRINGEMENT
via National Law Review by Blake Wong on 3/31/2017
URL: http://www.natlawreview.com/article/downloading-pirated-software-without-installing-it-may-constitute-infringement

Unauthorized use of a copyrighted work is not actionable unless it is ... taken together, were significant enough to constitute copyright infringement.
ON THE SCOTUS CHEERLEADER UNIFORM RULING
via The Illusion of More by David Newhoff on 3/31/2017
URL: http://illusionofmore.com/on-the-scotus-cheerleader-uniform-ruling/

Last week, the Supreme Court ruled in a copyright case that addresses the principle of "separability." This is one of those areas of IP that a colleague of mine would call the "metaphysics of law," and that's not a criticism. ...

WARNER BROS. FACING $900 MILLION LAWSUIT OVER 'THE CONJURING' FRANCHISE
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 3/31/2017

Gerald Brittle, author of a 1980 book on the paranormal investigators, claims not only to have had an exclusive deal with Lorraine Warren, but that producers substantially lifted his work.

US CONGRESS CONSIDERS PLAN FOR PRESIDENTIAL APPOINTMENT OF COPYRIGHT REGISTER
via Intellectual Property Watch by Dugie Standeford on 3/31/2017

Legislation authorising the president to appoint the Register of Copyright in the United States Copyright Office is working its way through Congress. The "Register of Copyrights Selection and Accountability Act" garnered strong bipartisan support in the House of Representatives Judiciary Committee as well as from the content community, but others fear it will politicise the [...]

REGISTER OF COPYRIGHTS: AMENDING THE PROCESS OF SELECTION
via Patent Law Blog (Patently-O) by Dennis Crouch on 3/31/2017
URL: https://patentlyo.com/patent/2017/03/register-copyrights-selection.html

My proposal is to join the United States Copyright Office with the already existing United States Patent and Trademark Office to form a cross-doctrine United States Intellectual Property Office (USIPO). Congress has other plans.
NOVELIST'S 'EMPIRE' COPYRIGHT SUIT GETS TRIMMED
via Intellectual Property Law360 by Dorothy Atkins on 3/31/2017
URL: https://www.law360.com/ip/articles/908458

A Virginia federal judge on Friday dismissed two people and a criminal attorney from a suit brought by a Virginia-based author who says the television show "Empire" was lifted from his 2007 novel, ruling that the attorney's alleged "entertainment connections" aren't enough to establish the court's jurisdiction over the matter.

CARTOON NETWORK STOLE 'BLACK JESUS' SHOW IDEA, AUTHOR SAYS
via Intellectual Property Law360 by Kelcee Griffis on 3/31/2017
URL: https://www.law360.com/ip/articles/908378

Cartoon Network Inc. used less-than-holy methods to create its Adult Swim TV show "Black Jesus," an author has claimed in a $50 million copyright infringement suit in New York federal court, saying that the company ripped off characters and plotlines from his short story collection for the show.

JUDICIARY COMMITTEE VOTES FOR A 21ST CENTURY COPYRIGHT OFFICE
via Hill by Howard Berman on 3/31/2017

The House Judiciary Committee favorably reported H.R. 1695, the Register of Copyrights Selection and Accountability Act, sponsored by Committee...

IT'S ABOUT TIME FOR CONGRESS TO IMPROVES THE COPYRIGHT OFFICE
via Forbes by Harold Furchtgott-Roth on 3/31/2017

A bill, H.R. 1695, sponsored by Bob Goodlatte, Chairman of the House Judiciary Committee, is moving through the House of Representatives.
PUMA FILES PATENT, COPYRIGHT, TRADE DRESS SUIT AGAINST FOREVER 21 OVER RIHANNA SHOES
via Fashion Law on 4/3/2017
URL: http://www.thefashionlaw.com/home/puma-files-design-patent-copyright-trade-dress-suit-against-forever-21-over-rihanna-footwear

On the heels of reports that Forever 21 is offering lookalike versions of footwear from Rihanna's Fenty line for Puma, the German sportswear giant has ...

WARNER BROS TANGLED UP IN $900M 'THE CONJURING' COPYRIGHT CLAIM
via World IP Review on 4/3/2017

Gerald Brittle, the author of a book on paranormal investigators, has taken a shot at Warner Bros in a copyright infringement claim focusing on film ...

PHOTOGRAPHER'S ESTATE FILES REDBUBBLE SUBPOENA OVER COPYRIGHT INFRINGEMENT
via World IP Review on 4/3/2017

The estate of Vivian Maier, who was a US street photographer, has filed a subpoena against online marketplace Redbubble to identify alleged ...

WE KNOW THAT A MONKEY CAN'T OWN A COPYRIGHT, BUT CAN A COMPUTER?
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 4/3/2017
URL: http://nysbar.com/blogs/EASL/2017/04/we_know_that_a_monkey_cant_own.html

IBM's Watson supercomputer created its own video trailer for the upcoming film thriller called "Morgan" about an AI robot child who rebels. It's creative and haunting. Who owns the copyright in the trailer, if there is one...
THREE THREADS LLC HOME DECOR COMPANY ACCUSES INDIVIDUAL OF COPYRIGHT INFRINGEMENT
via Louisiana Record by Lhalie Castillo on 4/3/2017

A Baton Rouge home decor company claims a St. Tammany Parish individual is using its marks and creating similar products.

JEFF KOONS LOSES IN YET ANOTHER COPYRIGHT INFRINGEMENT CASE
via IPLJ by Celeste Dufournier on 4/3/2017
URL: http://www.fordhamiplj.org/2017/04/03/23917/

The recent ruling against contemporary artist Jeff Koons in a copyright infringement case revives the discussion as to the artistic value of appropriation art as well as the legal protection it deserves.

NYC GRAFFITI ARTISTS HEADED TO TRIAL OVER DESTROYED WORKS
via Intellectual Property Law360 by Bill Donahue on 4/3/2017
URL: https://www.law360.com/ip/articles/908926

A Brooklyn federal judge on Friday ruled that a group of graffiti artists could proceed to trial in their lawsuit over the 2013 destruction of famed New York City mural space 5Pointz.

CITING HIGH COURT, PUMA SUES FOREVER 21 FOR COPYING SHOES
via Intellectual Property Law360 by Bill Donahue on 4/3/2017
URL: https://www.law360.com/ip/articles/909009

Citing a recent U.S. Supreme Court ruling on copyright protection for apparel, German footwear giant Puma SE hit Forever 21 Inc. with an infringement lawsuit Friday for allegedly copying a line of shoes made in collaboration with pop star Rihanna.

KATY PERRY'S CONCERT REVENUE OFF LIMITS IN RAPPERS' IP SUIT
via Intellectual Property Law360 by Daniel Siegal on 4/3/2017
URL: https://www.law360.com/ip/articles/909279

A California federal judge ruled Monday that a Christian rap group alleging Katy Perry ripped off their song in her hit "Dark Horse" can't seek information about profits from concerts where she performed her song, ruling that Perry would have been entitled to perform the rappers' song under American Society of Composers, Authors and Publishers licensing agreements.
URBAN OUTFITTERS CAN'T SCRAP FABRIC IP LOSS AT 9TH CIRC.
via Intellectual Property Law360 by Cara Bayles on 4/3/2017
URL: https://www.law360.com/ip/articles/909257

In a published decision Monday, a Ninth Circuit panel found Urban Outfitters infringed Unicorns Inc.'s copyrighted fabric designs, ruling a lower court's application of the "intrinsic" copying test was appropriate for determining liability and correctly found that slight variations between the patterns didn't change the fact they were near duplicates.

WIPR SURVEY: SCOTUS MADE RIGHT CALL ON CHEERLEADING UNIFORM COPYRIGHT
via World IP Review on 4/3/2017

The US Supreme Court made the right call when it held that decorative elements of a cheerleading uniform may be protected by copyright law, ...

5POINTZ
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 4/4/2017
URL: http://nysbar.com/blogs/EASL/2017/04/5pointz.html

On Friday March 31st, the Eastern District of New York in Cohen v. G&M Realty issued a decision allowing the plaintiff artists in the high profile 5Pointz graffiti art mural case (filed in 2013) to go to trial, finding that the artists demonstrated they were harmed by the building's demolition under the Visual Artists Rights Act (VARA). In particular, Judge Block found that the question of "recognized stature" under VARA was clearly a factual one for the jury, which would assess the plaintiffs' expert's report and testimony at trial. The court also dismissed the defendants' counterclaim for abuse of process. The plaintiffs' separate claims for conversion, property damage, and intentional infliction of emotional distress were also dismissed:

HBO WANTS 'BALLERS' COPYRIGHT SUIT SACKED FOR GOOD
via Intellectual Property Law360 by Bill Donahue on 4/4/2017
URL: https://www.law360.com/ip/articles/909911

HBO, Mark Wahlberg and Dwayne "The Rock" Johnson are asking the Ninth Circuit to permanently put to rest a copyright lawsuit that claims their "Ballers" series ripped off an unproduced television project, saying the two share nothing more than "a few generic similarities."
DIGIMARC HIGHLIGHTS HOW WATERMARKING CAN IMPROVE RIGHTS AND ROYALTY MANAGEMENT FOR THE ...
via Yahoo! Finance on 4/4/2017

As the white paper highlights, digital watermarking enables blockchain applications to reach their full potential for music copyright management.

WEB-HOSTING FIRM SUES CONTRACTORS OVER COPYRIGHT INFRINGEMENT
via St. Louis Record by Noddy A. Fernandez on 4/4/2017
URL: http://stlrecord.com/stories/511100930-web-hosting-firm-sues-contractors-over-copyright-infringement

Inc. and employees Timothy Millsap, Matthew Timme and Daniel Benninger for alleged use of copyright materials while hosting to a website.

DLA PIPER NAMES TM AND COPYRIGHT CHAIR IN CALIFORNIA
via World IP Review on 4/5/2017

Law firm DLA Piper has promoted Gina Durham to chair of the firm's trademark, copyright and media practice in California. Durham has worked at the ...

WHEN COPYRIGHT CRITICISM IS SOMETHING ELSE
via The Illusion of More by David Newhoff on 4/5/2017
URL: http://illusionofmore.com/when-copyright-criticism-is-something-else/

A couple weeks ago, a comment on the Illusion of More Facebook page proposed that the Walt Disney Company was able to get its start in the 1930s because the story for the studio's first animated feature film ...

CURBING COPYRIGHT PROTECTION ON EU'S MORAL GROUNDS
via IPLJ by Sophia Murashkovsky on 4/5/2017
URL: http://www.fordhamiplj.org/2017/04/05/curbing-copyright-protection-eus-moral-grounds/

Moral rights were enumerated in the Berne Convention of 1928, which has since been signed by most nations, including the United States.
PIRACY IS NOT A GREY AREA. IT'S A CRIME.
via CreativeFuture by Adam Leipzig on 4/5/2017
URL: http://www.creativefuture.org/piracy-is-not-a-grey-area-its-a-crime/

Many of the films I have produced dramatize crimes and heists - Reservoir Dogs, Pulp Fiction, and The Bourne Identity, among others.

COLLEGE ATHLETES DEALT NEW SETBACK IN BID TO BE COMPENSATED FOR VISUAL MEDIA
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 4/5/2017

A federal appellate circuit rules that a lawsuit alleging misappropriation of athletes' likenesses is just a "thinly disguised copyright claim."

CRITICS BUILD HOUSE OF CANARDS TO TRASH USCO BILL
via The Illusion of More by David Newhoff on 4/5/2017

Well, here we go. The network of copyright critics seems to be working out their main talking points for hating on H.R. 1695, which proposes to make the Register of Copyrights a presidential appointee (with Senate approval) rather ...

9TH CIRC. WON'T REVIVE EX-NCAA CHAMPS' LIKENESS DISPUTE
via Intellectual Property Law360 by Matthew Guarnaccia on 4/5/2017
URL: https://www.law360.com/ip/articles/910242

The Ninth Circuit on Wednesday upheld the dismissal of a lawsuit two former Division III college basketball players brought against a website that sold official NCAA photos, saying the players' publicity right claims are preempted by the website's rights under federal copyright law.

IP-INTENSIVE INDUSTRIES BEYOND THE RED CARPET
via Global Intellectual Property Center by Courtney Paul on 4/5/2017

What does an IP-intensive industry look like?
WEB STREAMER ASKS FULL 9TH CIRC. TO RETHINK LICENSE DENIAL
via Intellectual Property Law360 by Suevon Lee on 4/5/2017
URL: https://www.law360.com/ip/articles/910091

FilmOn X urged an en banc Ninth Circuit on Tuesday to review a ruling that online streaming services can't use the same copyright license used by cable companies to broadcast content, arguing the panel erroneously deferred to the U.S. Copyright Office's position on the issue.

COPYRIGHT OFFICE DITCHED FAULTY IT SYSTEM AFTER $11.6M SPENT
URL: https://www.law360.com/ip/articles/910209

A flawed development process caused the U.S. Copyright Office to spend $11.6 million trying to get a system for tracking royalty payments up and running, well above the initial estimate, before abandoning the project entirely, according to recent watchdog report.

KNOCK-OFFS BEWARE: SCOTUS MAKES A FASHION FORWARD DECISION
via IPWatchdog.com | Patents & Patent Law by Jack Hicks on 4/6/2017
URL: http://www.ipwatchdog.com/2017/04/06/knock-offs-beware-scotus-makes-fashion-forward-decision/id=80707/

The ruling has wide implications for both the fashion apparel and home furnishings industry, both of which rely on distinctive, eye-catching designs to sell products. The upshot for clothing and furniture companies is that the Varsity Brands ruling gives product manufacturers an additional tool to combat knock-off designs. With that in mind, manufacturers should review their product line to ensure their copyright-eligible products are protected under this new standard. The post Knock-Offs...

U.S. SUPREME COURT CLARIFIES SEPARABILITY ANALYSIS IN ITS RULING ON STAR ATHLETICA, LLC V. VARSITY BRANDS, INC.
via Copyright: Creativity at Work by Rachel E. Fertig on 4/6/2017

The Supreme Court's March 22 opinion in Star Athletica, LLC v. Varsity Brands, Inc. answered a question that has perplexed courts across the nation for decades: When is an artistic feature incorporated into the design of a useful article eligible for copyright protection?
PRODUCERS OF 'THE BIG BANG THEORY' WIN DISMISSAL OF COPYRIGHT SUIT OVER 'SOFT KITTY' LYRICS
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 4/6/2017

The original lawsuit filed in December 2015 targeted The Big Bang Theory's use of the song Soft Kitty, a song which the character Sheldon Cooper asks people to sing whenever he's sick or needs mothering. The lyrics to that song were written in the 1930s by Edith Newlin, a published children's author and mother of the two plaintiffs listed in the case. The lyrics were published by Willis Music Company in 1937 in a compilation where the song was titled Warm Kitty. Willis renewed the copyright...

ANNOUNCING THE RELEASE OF OVER 2,000 PAGES OF LOST PRE-1870 COPYRIGHT RECORDS
via Mostly IP History by Zvi S. Rosen on 4/6/2017

This post is fairly long, and I don't want to bury the lede, so here it is: I've tracked down and digitized over 2,000 pages of copyright records from before 1870 that had generally been assumed lost.

'STAR TREK' KICKSTARTS CLASH BETWEEN CROWDFUNDING AND IP
via Intellectual Property Law360 by Robert Jimenez on 4/6/2017
URL: https://www.law360.com/ip/articles/904007

The democratization of content creation is impacting what it means to own and control intellectual property. The internet may bring people together to share ideas but it is crowdfunding that can provide the capital that turns those ideas into reality. While this has led to traditional disputes among rights holders and would-be competitors, it has been the war between content owners and their consumers that has been of recent interest. No case is more representative of what is happening than the battle between "Star Trek" and...

'WALK OF SHAME' COPYRIGHT FIGHT STROLLS INTO 9TH CIRC.
via Intellectual Property Law360 by Bonnie Eslinger on 4/6/2017
URL: https://www.law360.com/ip/articles/910767

A screenwriter urged the Ninth Circuit at a hearing Thursday to revive his copyright infringement suit alleging Elizabeth Banks and others stole ideas for their film "Walk of Shame" after he met with the actress, saying their access to his script lessened the obligation to show the works' similarities.
RADIO STATIONS WOULD PAY TO PLAY UNDER REPS' COPYRIGHT BILL
via Intellectual Property Law360 by Kelly Knaub on 4/6/2017
URL: https://www.law360.com/ip/articles/910617

House members floated a new bipartisan bill Wednesday that would require radio stations to pay royalties on recording copyrights for the first time, a move that drew praise from the Recording Industry Association of America and other music trade organizations.

THE TURTLES ARGUE FOR PRE-1972 COPYRIGHTS IN FLA. COURT
via Intellectual Property Law360 by Carolina Bolado on 4/6/2017
URL: https://www.law360.com/ip/articles/886204

The Turtles rock band urged the Florida Supreme Court on Thursday to recognize a right to collect royalties from recordings made before 1972, arguing that the state has adopted broad common law property rights that inherently include ownership of audio works.

3M HITS CHINESE COMPANY WITH PATENT, TM AND COPYRIGHT CLAIM
via World IP Review on 4/6/2017

According to the claim, Phoenix has imported into the US and sold lids and liners that use 3M's technology, and has used copyrighted 3M photos and ...

YOUTUBE PULLS BAD LIP READING 'STAR WARS' PARODY VIDEO OVER 'ERRONEOUS' COPYRIGHT CLAIM
via Variety by Todd Spangler on 4/6/2017

The video, a six-minute spoof of Disney/Lucasfilm's "Force Awakens" blockbuster, featured Mark Hamill doing a spot-on voiceover impression of ...

PRE-1972 SONGS RULING MAY LEAD TO GOOD VIBRATIONS
via Intellectual Property Law360 by Stanton Stein & Diana Sanders on 4/7/2017
URL: https://www.law360.com/ip/articles/911176

The U.S. Supreme Court recently declined to hear Capitol Records LLC's appeal[1] from the recent, closely watched Second Circuit decision that held that Vimeo LLC, an online video service provider, could take advantage of the Copyright's Act's "safe harbor" provisions and
protect itself from infringements of pre-1972 sound recordings on its site, even though pre-1972 sound recordings are not technically covered by the Copyright Act.

MAJOR MUSIC RIGHTS SOCIETIES JOIN UP FOR BLOCKCHAIN COPYRIGHT USING IBM AND HYPERLEDGER
via International Business Times by Ian Allison on 4/7/2017
URL: http://www.ibtimes.co.uk/major-music-rights-societies-join-blockchain-copyrights-using-ibm-hyperledger-1615942

Involved are: the American Society for Composers, Authors and Publishers; the Society of Authors, Composers and Publishers of Music and PRS for ...

COPYRIGHT ROYALTIES OFF THE BLOCKCHAIN
via IP Pro The Internet by Barney Dixon on 4/7/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5409

Three large royalty collection societies have partnered to launch a shared copyright management system using blockchain technology. The new ...

CAN INCOMING RIAA HEAD MAKE US MUSIC BUSINESS GREAT AGAIN?
via Billboard by Rob Levine & Dan Rys on 4/7/2017

The most immediate issue for the RIAA is who will be the next Register of Copyrights. Since October, when Librarian of Congress Carla Hayden ...

APPEALS COURT RULES WEBSITE MODERATORS CAN POTENTIALLY UNDERCUT COPYRIGHT DEFENSE
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 4/7/2017

In its latest big decision on the copyright front, the 9th Circuit revives a paparazzi agency's lawsuit over a photo of Beyonce Knowles showing off her baby bump.
'MODERATORS' COULD COST SITES SAFE HARBOR, 9TH CIRC. SAYS
via Intellectual Property Law360 by Bill Donahue on 4/7/2017
URL: https://www.law360.com/ip/articles/911262

The Ninth Circuit ruled Friday that so-called community moderators on online forums might be "agents" of the websites they police, meaning sites could lose copyright safe harbor immunity if moderators allow infringing content to be posted.

CHEERLEADER UNIFORM DESIGNS PROTECTABLE UNDER COPYRIGHT ACT
via National Law Review by James Anderson on 4/7/2017

Varsity Brands, Inc., Varsity Spirit Corporation, and Varsity Spirit Fashions & Supplies, Inc., plaintiffs below, hold over 200 United States copyrights for ... 

PENNSYLVANIA SOFTWARE COMPANY ALLEGES ZEOBIT, OTHERS FACILITATED COPYRIGHT INFRINGEMENT
via Penn Record by Louie Torres on 4/7/2017

A Southampton software company is suing ZeoBIT LLC, Kromtech Alliance Corp., Kromtech of USA LLC and CloudMcCloud Corp., ...

RULING IN DIGITAL COPYRIGHT CASE PUTS A DENT IN DMCA'S SAFE HARBOR SHIELD
via WSJ.com: Law Blog - WSJ.com by Jacob Gershman on 4/7/2017

A federal appeals court ruling Friday has the potential to raise copyright liability risks for online platforms that allow users to moderate content post by other users. The case decided by the Ninth U.S. Circuit Court of Appeals concerns the "safe harbor" protections of the Digital Millennium Copyright Act of 1998, the law that insulates sites [...]

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Disney battled a Florida writer Friday in a Ninth Circuit hearing over claims that the studio stole copyrighted ideas for its "Pirates of the Caribbean" film franchise, with the writer arguing that he followed the legal notice steps required to sue again following a 2007 settlement with the studio.

The pop artist's estate is suing in an effort to avoid being sued itself.

A New York federal judge on Friday trimmed a lawsuit filed by the producers of a canceled comedic play riffing on a Dr. Seuss classic children's story, saying there was no basis to claims they were injured through cease-and-desist letters sent by the author's estate.

Nearly half a century later, Namatjira's grandchildren and his community, the Aranda people, are hoping to recover the copyright to his work to fund a ...

If you've ever shopped for a used car, you likely know the two popular services, autotrader.ca and CarGurus.
COPYRIGHT PREEMPTION RUN AMOK
via Forbes by Schuyler Moore on 4/8/2017
URL: https://www.forbes.com/sites/schuylermoore/2017/04/08/copyright-preemption-run-amok/

In the recent case of Maloney v. T3Media, Inc., the Ninth Circuit held that a right of publicity claim by college basketball players against a company that ...

WWE SUES BITTORRENT USERS IN COPYRIGHT CLAIM
via World IP Review on 4/10/2017

World Wrestling Entertainment (WWE) Studios Finance has sued a group of BitTorrent users in a copyright infringement claim. WWE filed its suit (pdf) ...

ED SHEERAN SETTLES COPYRIGHT LAWSUIT OVER 'PHOTOGRAPH'
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 4/10/2017

Originally seeking at least $20 million in damages, songwriters Martin Harrington and Thomas Leonard alleged the song derived from their work.

ED SHEERAN SETTLES PHOTOGRAPH COPYRIGHT INFRINGEMENT CLAIM
via BBC on 4/10/2017

He successfully sued Robin Thicke and Pharrell Williams for copyright infringement last year over their single Blurred Lines, winning a $7.4m (£5.1m) ...

PUMA CAN'T GET TRO IN COPYRIGHT FIGHT AGAINST FOREVER 21
via Intellectual Property Law360 by Bill Donahue on 4/10/2017
URL: https://www.law360.com/ip/articles/911689

A Los Angeles federal judge on Friday refused to grant Puma SE a temporary restraining order that would have immediately barred Forever 21 Inc. from selling allegedly infringing footwear.
FOR ONLINE PUBLISHERS, EDITING CAN LEAD TO COPYRIGHT LIABILITY: 9TH CIRCUIT
via Reuters by Alison Frankel on 4/10/2017
URL: http://in.reuters.com/article/us-otc-internet-idINKBN17C291

In 2010, the company that hosts the celebrity gossip forum Oh No They Didn't!, saw an opportunity to capitalize on the site's popularity. ONTD is a ...

BRITISH POP STAR SETTLES COPYRIGHT ROW OVER HIT SONG
via Intellectual Property Law360 by Bill Donahue on 4/10/2017
URL: https://www.law360.com/ip/articles/911735

British pop star Ed Sheeran has reached a settlement to end a copyright lawsuit that claimed his 2014 hit "Photograph" was lifted from a minor hit that had been released three years earlier.

DMCA "SAFE HARBOR" UP IN THE AIR FOR ONLINE SITES THAT USE MODERATORS
via Ars Technica by David Kravets on 4/10/2017
URL: https://arstechnica.com/tech-policy/2017/04/dmca-safe-harbor-up-in-the-air-for-online-sites-that-use-moderators/

The Digital Millennium Copyright Act's so-called "safe harbor" defense to infringement is under fire from a paparazzi photo agency.

COURT RULING ON CELEBRITY PHOTOS RAISES NEW COPYRIGHT RISK FOR WEBSITES
via Fortune by Jeff John Roberts on 4/10/2017
URL: http://fortune.com/2017/04/10/dmca-ruling-livejournal/

When a gossip site posted a photo of a pregnant-looking Beyoncé, it probably didn't anticipate the fallout: A major copyright decision that could imperil ...

OCULUS, EXECS LOOK TO UNDO $500M VR COPYRIGHT VERDICT
via Intellectual Property Law360 by Michelle Casady on 4/10/2017
URL: https://www.law360.com/ip/articles/911678

Facebook Inc. subsidiary Oculus VR LLC in court filings Friday sought to upend findings that it infringed the copyrights of video game developer ZeniMax Media LLC with its virtual reality technology, after a jury in February found Oculus and its executives must pay $500 million in damages.
IMDB FACES COPYRIGHT DISPUTE OVER 'SPIDER-MAN' STAR PHOTO
via Intellectual Property Law360 by Nicole Narea on 4/10/2017
URL: https://www.law360.com/ip/articles/911615

A Brooklyn-based photographer has accused film database IMDb.com of publishing his photo of actor Tom Holland on the set of Marvel's forthcoming "Spider-Man: Homecoming" without permission, filing a copyright infringement suit in New York federal court Sunday.

COPYRIGHT CLAIM AGAINST ED SHEERAN'S 'PHOTOGRAPH' DISMISSED
via World IP Review on 4/10/2017

A district judge has dismissed a copyright claim brought by two US musicians over singer Ed Sheeran's hit "Photograph". Judge James Selna of the ...

WARHOL FOUNDATION SEEKS TO PRE-EMPT COPYRIGHT CLAIMS
via Courthouse News Service by Josh Russell on 4/10/2017
URL: https://www.courthousenews.com/warhol-foundation-seeks-pre-empt-copyright-claims/

It says that Goldsmith's "meritless copyright claims" against the Prince series ... In 1994, the Warhol Foundation took ownership of the copyrights and ...

OCULUS SEEKS TO OVERTURN $500M COPYRIGHT AND TM VERDICT
via World IP Review on 4/10/2017

A Texas jury awarded the damages to ZeniMax in early February after finding copyright and trademark infringement and breach of a non-disclosure ...

LIVEJOURNAL MUST GO TO TRIAL FOR CELEBRITY PHOTOS
via Courthouse News Service by Helen Christophi on 4/10/2017
URL: https://www.courthousenews.com/livejournal-must-go-trial-celebrity-photos/

Social media and blogging community LiveJournal must go to trial over allegations that it broke the law by posting copyrighted celebrity photos ...
ENOUGH WITH THE BACK AND FORTH. H.R. 1695 IS A NO-BRAINER. GET IT DONE. via Hill by Richard Gladstein et al. on 4/11/2017

along with 29 co-sponsors, introduced the Register of Copyrights Selection and Accountability Act (H.R. 1695). Last week, the bill passed the House ...

MICROSOFT ACCUSED OF COPYRIGHT INFRINGEMENT BY MEDIA RIGHTS TECHNOLOGIES
via Northern California Record by Wadi Reformado on 4/11/2017

Media Rights Technologies Inc. filed a complaint on April 6 in the U.S. District Court for the Northern District of California against Microsoft Corp. and ...

PHOTOG HITS NESN WITH SUIT OVER METS PITCHER KISSING PIX
via Intellectual Property Law360 by Zachary Zagger on 4/11/2017
URL: https://www.law360.com/ip/articles/912149

A photojournalist hit the New England Sports Network Inc. with a copyright infringement suit in New York federal court Monday, alleging the network, impermissibly displayed his photographs of New York Mets starting pitcher Matt Harvey kissing Victoria Secret model Adriana Lima at a Miami restaurant.

UNIVERSAL WINS COPYRIGHT CASE OVER SAMPLE IN JUSTIN TIMBERLAKE HIT
via Reuters by Jan Wolfe on 4/11/2017
URL: http://www.reuters.com/article/ip-copyright-umg-idUSL1N1HJ1Z3

The record label Universal Music Group Inc on Monday defeated a lawsuit alleging it owed royalties to members of the 1970s band Sly Slick & Wicked ...

THE CREATOR OF WALL STREET'S 'CHARGING BULL' ACCUSED THE 'FEARLESS GIRL' SCULPTURE OF INFRINGING HIS RIGHTS
via Business Insider by Julien Rath on 4/12/2017

The sculptor of Wall Street's "Charging Bull" is accusing New York City of infringing on the copyright of his sculpture by extending the temporary...
'CHARGING BULL' SCULPTOR SAYS NEW YORK'S 'FEARLESS GIRL' STATUE VIOLATES HIS RIGHTS
via Guardian on 4/12/2017

The Italian-born sculptor Arturo Di Modica said the presence of the girl infringed on his own artistic copyright by changing the creative dynamic to ...

NOTES FROM THE IP, PRIVATE LAW, AND SUPREME COURT CONFERENCE
via New Private Law by Patrick Goold on 4/12/2017


FED. CIRC. UPHOLDS PTAB'S AX OF NOVARTIS MS DRUG PATENT
via Intellectual Property Law360 by Ryan Davis on 4/12/2017
URL: https://www.law360.com/ip/articles/912714

The Federal Circuit on Wednesday affirmed the Patent Trial and Appeal Board's decision invalidating a patent covering Novartis' multiple sclerosis drug Gilenya, which had sales of $3.1 billion last year, in a win for generics makers Apotex, Mylan and Torrent Pharmaceuticals.

DOES STAR ATHLETICA RAISE MORE QUESTIONS THAN IT ANSWERS?
via IPWatchdog.com | Patents & Patent Law by Lee Burgunder on 4/13/2017
URL: http://www.ipwatchdog.com/2017/04/13/star-athletica-raise-questions-answers/id=81977/

The Supreme Court recently issued its decision in Star Athletica v. Varsity Brands, which addressed whether copyright protection can extend to the graphic designs depicted on cheerleading uniforms. The sole inquiry in Star Athletica was the meaning of a provision in the Copyright Act which permits copyright protection for the design of a pictorial, graphic or sculptural work, but only to the extent that the design can be identified separately from, and is capable of existing independently of,...
The World Wide Web today stands at a crossroads, as its standards body, the World Wide Web Consortium (W3C), considers the demand of big content providers to provide them with the facility to be able to control user devices for ensuring that their content is not copied. This facility is called the Encrypted Media Extension (EME), which enables these companies to put digital rights management (DRM) into the user's browser, whether the user wants it or not, and whether such restrictions are as per the user's local national laws or not.

Enfants Riches Deprimes ("Enfants"), Barneys, and The RealReal ("the defendants") have been named in a copyright infringement lawsuit in ...

With a search for the next Register of Copyrights currently underway, a bill introduced in Congress on March 23, 2017, would let President Donald Trump make that appointment, rather than Librarian of Congress Carla Hayden.

Out of "respect and gratitude" for Bruce Springsteen, and in deference to the singer's far left political convictions, a cover band that declined to perform ...
BROADCAST CO. SUES NY COMEDIANS OVER MORNING SHOW STUNT
via Intellectual Property Law360 by Suevon Lee on 4/13/2017
URL: https://www.law360.com/ip/articles/913339

A television broadcast company on Thursday slapped the founders of a website devoted to scavenged video footage with fraud and copyright infringement claims in New York federal court, accusing them of faking their personae on a Wisconsin morning television show to "assuage their boredom" and promote their brand.

DUE PROCESS CHALLENGE, TWO DISCHARGE EXCEPTIONS AND A COPYRIGHT CLAIM
URL: http://www.newyorklawjournal.com/id=1202783672339/Due-Process-Challenge-Two-Discharge-Exceptions-and-a-Copyright-Claim

This column reports on several significant, representative decisions handed down recently in the U.S. District Court for the Eastern District of New York ...

FAIR PLAY FAIR PAY ACT IS NOT WHAT IT SEEMS
via Hill by Gregory Alan Barnes on 4/13/2017

Slightly more than four decades ago, when Congress first decided to extend copyright protection to sound recordings, it made the conscious decision ...

CRAIGSLIST WINS $60.5M JUDGMENT IN RADPAD COPYRIGHT SUIT
via Intellectual Property Law360 by Melissa Daniels on 4/13/2017
URL: https://www.law360.com/ip/articles/913513

A California federal judge on Thursday signed off on an unopposed $60.5 million judgment in favor of Craigslist Inc. against former online real estate rental service RadPad Inc. in a copyright and computer fraud suit alleging unlawful collection of Craigslist user data.

MUDDY GIRL CAMO TOYS AT CENTER OF COPYRIGHT LAWSUIT
via Penn Record by Louie Torres on 4/14/2017

A Pennsylvania design business is suing Nxt Generation LLC and Global Manufacturing Associates Inc., both based in Ohio, citing ...
AS FORMER COPYRIGHT OFFICE LEADERS, WE SUPPORT AN AUTONOMOUS REGISTER OF COPYRIGHTS
via Hill by Ralph Oman & Marybeth Peters on 4/14/2017
URL: http://thehill.com/blogs/congress-blog/politics/328834-as-former-copyright-office-leaders-we-support-an-autonomous

We applaud the introduction of the Register of Copyrights Selection and Accountability Act of 2017, H.R. 1695, which would make the Register of ...

COURT RULING MAKES DMCA 'SAFE HARBOR' LESS SAFE
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 4/14/2017

A federal appeals court reversed a trial court that said an internet publisher was protected from copyright infringement under the safe harbor of the Digital Millennium Copyright Act. The U.S. Ninth Circuit Court of Appeals said common law agency rules apply to copyright violations, and returned the case to......

SYNGENTA LOSES BID TO ENFORCE PESTICIDE LABEL COPYRIGHT
via Intellectual Property Law360 by Dani Kass on 4/14/2017
URL: https://www.law360.com/ip/articles/913501

A North Carolina federal judge has granted pesticide maker Willowood a quick escape from rival Syngenta Crop Protection LLC's copyright infringement claims in a suit over pesticide labels, finding that the parts of pesticide labels that are required under the Federal Insecticide Fungicide and Rodenticide Act are exempt from copyright protection.

AIG UNIT NEEDN'T COVER ZILLOW IN COPYRIGHT SUIT, JUDGE SAYS
via Intellectual Property Law360 by Jeff Sistrunk on 4/14/2017
URL: https://www.law360.com/ip/articles/913679

An American International Group insurer doesn't have to defend or indemnify Zillow Inc. in a lawsuit alleging that it misused digital images on its online real estate database, a Washington federal judge ruled Thursday, holding that the underlying claim was first made prior to the policy period.
DOES COPYRIGHT LAW ACTUALLY PROTECT FASHION DESIGN?
via Inside Counsel by Amanda Ciccatelli on 4/14/2017
URL: http://www.insidecounsel.com/2017/04/14/does-copyright-law-actually-protect-fashion-design

Varsity Brands, Inc. that Varsity Brand's two-dimensional graphic designs on cheerleader uniforms could be eligible for copyright protection as ...

ANDY WARHOL ESTATE SUES PHOTOG OVER PRINCE PHOTO COPYRIGHT FIGHT
via Peta Pixel by Michael Zhang on 4/15/2017
URL: https://petapixel.com/2017/04/15/andy-warhol-estate-sues-photog-prince-photo-copyright-fight/

The New York Daily News reports that the lawsuit is a "preemptive strike" against the photographer before she gets a chance to file a copyright ...

20 YEARS AFTER 'THE CAT NOT IN THE HAT', A LOOK AT DR. SEUSS VS. THE O.J. SIMPSON MURDER TRIAL STORY
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 4/16/2017

On March 27th, 1997, the 9th Cir. decided to affirm a preliminary injunction prohibiting the publication and distribution of The Cat NOT in the Hat!, a parody of the O.J. Simpson murder trial told in the style of Dr. Seuss... Geisel had passed in 1991 but Dr. Seuss Enterprises filed a copyright and trademark infringement suit against Penguin and Dove seeking the injunction before the work was published. Seuss alleged that The Cat NOT in the Hat! misappropriated protected elements of copyrighted...

COPYRIGHT IS NOT ABOUT DEFENDING OLD MODELS
via The Illusion of More by David Newhoff on 4/16/2017
URL: http://illusionofmore.com/copyright-is-not-about-defending-old-models/

Pretty much since Napster (1999), tech pundits have been presumptuously lecturing pro-copyright creators about economist Joseph Schumpeter's principle of "creative destruction." This is the observation that the market will naturally produce innovations which will displace existing products or services, often ...
The debate over the mechanics of how, exactly, the next head of the U.S. copyright system should be picked - via the librarian of Congress, now Carla Hayden? Or by the president, with the Senate's approval? - has been getting increasingly fraught. In an interview with Nancy, Silicon Valley Rep. Zoe Lofgren (D-Calif.) laid out the case she's alluded to in recent weeks. "I have no idea what their reasoning is," she says of advocates on the Hill and off for the commander-in-chief option, "but for the first time in history, an African-American woman is the librarian, and for the first time in history, we're taking away her power to appoint a register of copyrights. That doesn't go to motive. But it does go to fact."

No doubt, that line of thinking gets a strong reaction from the other side. "The arguments being made by Rep. Lofgren have put everyone in a sensitive position," said Keith Kupferschmid, CEO of the Copyright Alliance, whose group has advocated for a more independent Copyright Office, better able, they say, to confront its IT challenges. Said Kupferschmid, "This should be about a policy, not about any one individual and the color of their skin or what sex they are."

On Friday, April 7, 2017, the Ninth Circuit published its opinion in Mavrix Photographs v LiveJournal, a potentially significant decision touching on a number of provisions in Section 512 of the Copyright Act, which was passed as part of the Digital Millennium Copyright Act in 1998 (DMCA) and provides safe harbors for online service providers against claims of copyright infringement under certain circumstances.

A walk-in healthcare clinic is suing SSM Healthcare (owning and operating Good Samaritan Hospital) and SSM Health Express ...
BEYONCÉ CALLS 'FORMATION' VIDEO PROTECTED FAIR USE
via Intellectual Property Law360 by Bill Donahue on 4/17/2017
URL: https://www.law360.com/ip/articles/913892

Beyoncé is pushing a federal judge to toss out a $20 million copyright lawsuit accusing her of illegally sampling YouTube clips in the music video for her song "Formation," saying she is clearly protected by copyright's fair use doctrine.

HAVE NO FEAR, 'FEARLESS GIRL'!
via Washington Post by David Post on 4/17/2017

Hmm. A "violation of its copyright"? In a word - no. Suppose it's true: that "Fearless Girl" was indeed commissioned as a "site-specific work that was ...

BEYONCE ASKS COURT TO SLAY "FORMATION" LAWSUIT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 4/17/2017

Messy Mya's sister has "grossly overstated" the use of his spoken word in "Formation," Beyonce's lawyer writes.

JUDGE BOOTS WINDSTREAM'S COPYRIGHT CASE AGAINST BMG
via Intellectual Property Law360 by Bill Donahue on 4/17/2017
URL: https://www.law360.com/ip/articles/914103

Siding with music publisher BMG Rights Management, a Manhattan federal judge ruled Monday that internet service provider Windstream couldn't file a preemptive lawsuit aimed at proving it was shielded from copyright liability by federal safe harbors.

SONGWRITERS 'MORE HEAVILY REGULATED THAN PHARMACEUTICAL COMPANIES' AND OTHER TAKEAWAYS ...
via Variety by Paula Parisi on 4/17/2017

Efforts to compel the United States Congress to reform the country's "antiquated" music copyright laws were the burning issues at the 2017 edition of ...
DISABLING ACCESS TO LARGE-SCALE PIRATE SITES (SITE BLOCKING)-IT WORKS!
via Hugh Stephens Blog on 4/17/2017
URL: http://hughstephensblog.net/2017/04/18/disabling-access-to-large-scale-pirate-sites-site-blocking-it-works

As I wrote back in August, recent studies conducted by Carnegie Mellon University (CMU) and the Information Technology and Information Foundation (ITIF) have demonstrated convincingly that blocking offshore pirate websites works in terms of changing consumer behaviour (i.e. directing consumers away from infringing content to sources of legitimate content) while at the same time not interfering with normal internet operations. In other words, it does not "break the internet".

FOURTH CIRCUIT COURT FINDS FIFRA PRECLUDES COPYRIGHT PROTECTION FOR THE REQUIRED ELEMENTS OF ...
via National Law Review by Lisa M. Campbell et al. on 4/18/2017

Counts V and VI of Plaintiff's complaint stated that Defendant copied and used substantial portions of Syngenta's copyrighted work, and that this ...

IP RULING AGAINST ADULT SITE SHOULD STAND, 9TH CIRC. TOLD
via Intellectual Property Law360 by Kelcee Griffis on 4/18/2017
URL: https://www.law360.com/ip/articles/914423

A group of online advocacy organizations urged the Ninth Circuit Monday to let stand its previous ruling that an adult content website can't hold an online service provider responsible for copyright-protected images shared through the provider's messaging service.

THE KEY TO WIDESPREAD ARTIST ADOPTION OF BLOCKCHAIN MAY BE VIA AN ESOTERIC COPYRIGHT LAW
via Forbes by George Howard on 4/18/2017

After having written at length over the past several years about blockchain technology, I'm delighted to observe what appears to be growing ...
NEW ANTITRUST LEADERSHIP POISED TO RESET TONE ON IP ISSUES
via Intellectual Property Law360 by Melissa Lipman on 4/18/2017
URL: https://www.law360.com/ip/articles/914132

The new leadership at the U.S. antitrust agencies will likely take a markedly different approach to antitrust enforcement over the use of intellectual property rights, bringing fewer challenges and making fewer pushes for standard-setting organizations to change their policies. And experts say that could have reverberations around the globe.

SCOTUS HOLDS DESIGNS ON CHEERLEADING UNIFORMS ARE COPYRIGHTABLE

Under settled copyright principles, the cheerleader uniforms in Star Athletica certainly qualify as useful articles, but the issue was how to determine ...

RICHARD PRINCE SAYS INSTAGRAM PRINT WAS TRANSFORMATIVE ART
via Intellectual Property Law360 by William Gorta on 4/18/2017
URL: https://www.law360.com/ip/articles/914822

Attorneys for the artist Richard Price asked a New York federal judge Tuesday to dismiss a copyright infringement suit based on photos he pulled from Instagram, saying his "appropriation art" was transformative and therefore permissible fair use, thanks to a previous, similar copyright suit where he prevailed.

UK MUSIC OUTLINES BREXIT BLUEPRINT FOR GROWTH AS PRIME MINISTER CALLS SNAP ELECTION
via Billboard by Richard Smirke on 4/18/2017

Chief among them is tighter regulation around copyright and greater financial investment, including higher tax breaks for music companies. The action ...
CAN "CHARGING BULL" ARTIST HAVE "FEARLESS GIRL" REMOVED?  
via The Illusion of More by David Newhoff on 4/19/2017  
URL: http://illusionofmore.com/can-charging-bull-artist-have-fearless-girl-removed/

When the story first broke about the "Fearless Girl" statue, I didn't pay it much more attention than I had ever given to the "Charging Bull" that the girl now faces in her defiant, wind-blown pose.

ARTIST'S USE OF PHOTO TRANSFORMED WORK, LAWYER STRESSES  
via Law.com by Andrew Denney on 4/19/2017  

An enlarged print of an Instagram post containing a copyrighted photo counts as a transformative use, an attorney for the "appropriation artist" whose ...

MCCARTNEY SAYS SONY SEEKS LEVERAGE WITH THREAT OF SUIT  
via Intellectual Property Law360 by Stewart Bishop on 4/19/2017  
URL: https://www.law360.com/ip/articles/915009

An attorney for Paul McCartney on Wednesday told a Manhattan federal judge that a Sony Corp. unit is holding the prospect of a breach of contract suit in the U.K. as leverage over the Beatles musician, who is seeking court protection if he claws back copyrights Sony's predecessors acquired 50 years ago.

HOT TOPIC IN HOT WATER WITH ARTIST IN COPYRIGHT SUIT  
via World IP Review on 4/19/2017  

US-based retail chain Hot Topic has come under fire in a copyright infringement lawsuit focusing on a dragon design created by an artist. Catherine ...

DEPARTURE OF YOUTUBE FROM RUSSIA COULD RESULT IN GROWTH OF PIRATED CONTENT, GOVERNMENT WARNS  
via Intellectual Property Watch by Eugene Gerden on 4/20/2017  

The use of pirated content in Russia may significantly increase in the event of a decision by leading foreign video-sharing websites and servers to leave the country due to the planned
imposition of restrictions on their ownership by foreigners, which is currently being considered by the Russian government and the local Parliament (State Duma).

ARTIST'S USE OF PHOTO TRANSFORMED WORK, LAWYER STRESSES
via New York Law Journal by Andrew Denney on 4/20/2017

An enlarged print of an Instagram post containing a copyrighted photo counts as a transformative use, an attorney for the "appropriation artist" whose use of other artists' material in his own works has made him no stranger to the courts argued before a federal judge late Tuesday afternoon.

ARTIST RICHARD PRINCE CLAIMS INSTAGRAM ARTWORKS COVERED BY FAIR USE
via Fashion Law on 4/20/2017
URL: http://www.thefashionlaw.com/home/artist-richard-prince-claims-instagram-artworks-covered-by-fair-use

On the heels of Beyonce's legal team claiming fair use in the copyright infringement lawsuit filed against the singer over her hit song "Formation," artist ...

9TH CIRC. RULING GENERATES COPYRIGHT PREEMPTION CONFUSION
via Intellectual Property Law360 by Simon Frankel & Neema Sahni on 4/20/2017
URL: https://www.law360.com/ip/articles/914891

Earlier this month, in Maloney v. T3Media Inc., the Ninth Circuit held that former college athletes could not assert a right of publicity to prevent the NCAA and its licensee, T3Media, from distributing images of the players.

SUPREME COURT ASKED TO SAVE ABBOTT AND COSTELLO "WHO'S ON FIRST?" COPYRIGHT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 4/20/2017

Heirs to the comedic duo present a "critically important" question about a "new rule" robbing contributors to old movies of ownership rights.
ABBOTT & COSTELLO HEIRS TAKE COPYRIGHT CASE TO HIGH COURT
via Intellectual Property Law360 by Bill Donahue on 4/20/2017
URL: https://www.law360.com/ip/articles/915189

The heirs of comedy duo Abbott and Costello are headed to the U.S. Supreme Court, asking the justices to revive their copyright case against the producers of a popular Broadway play that features the famous "Who's on First?" comedy routine.

COPYRIGHT PREEMPTS RIGHT OF PUBLICITY, 9TH CIRCUIT RULES
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 4/20/2017

A federal appeals court ruled that federal copyright law preempts state-based publicity rights, rejecting claims by former student athletes over photos downloaded from the National Collegiate Athletic Association. The U.S. Ninth Circuit Court of Appeals said the Copyright Act protects the photographers' copyrights, which cannot be trumped by state......

CHINA COPYRIGHT MONITORING WEBSITE GOES LIVE
via IP Pro The Internet on 4/20/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5422

The Copyright Monitoring Center's website, www.12426.cn, offers registration services and monitoring of online and offline infringement for ... 

STREET ARTISTS HAVE BEEF WITH MCDONALD'S, THREATEN LEGAL ACTION
via World IP Review on 4/21/2017

Six artists-Don Rimx, Beau Stanton, Virus, NDA, Atomik, and Himbad-intend to sue McDonald's for copyright infringement and false endorsement, ...

AUTONOMOUS REGISTER OF COPYRIGHTS WILL BOOST AMERICAN CREATIVE INDUSTRY JOBS
via Hill by Judy Chu on 4/21/2017

That's also why Congress must pass H.R. 1695, the Register of Copyrights Selection and Accountability Act, which would make the Register of ...
THE FIRMS FILING THE MOST COPYRIGHT CASES
via Intellectual Property Law360 by Bill Donahue on 4/21/2017
URL: https://www.law360.com/ip/articles/915446

The 10 law firms that filed the most copyright suits in the first quarter of 2017 all fit a very
particular bill: small shops that specialize in mass filing new cases over a particular type of work,
like pornography or fabric designs.

NEW RULING IN BEYONCÉ PHOTO CASE POSES POTENTIAL RISKS FOR WEBSITES
via Fashion Law on 4/21/2017

LiveJournal is headed to trial for posting copyright-protected celebrity photos online, according
to a new ruling from a federal court of appeals.

WINDSTREAM CAN'T PREVENT FUTURE COPYRIGHT SUIT
via MediaPost by Wendy Davis on 4/21/2017

"Rather than seeking defined declarations of noninfringement regarding existing or foreseeable
disputes about specific copyrights and instances of ..."

FANSUBBING: DUTCH COURT RULES FAN-MADE SUBTITLES ARE ILLEGAL AND COPYRIGHT INFRINGEMENT
via International Business Times by AJ Dellinger on 4/21/2017

An Amsterdam district court ruled this week that fansubbing, the practice of fan-made subtitles
for TV shows and movies, is illegal. The case was ...

ASCENA RETAIL GROUP ACCUSED OF COPYRIGHT INFRINGEMENT BY UNITED FABRICS INTERNATIONAL
via Northern California Record by Wadi Reformado on 4/21/2017

A New Jersey company is alleged to have unlawfully used a Los Angeles County corporation's
textile design. United Fabrics ...
INTERNATIONAL FASHION TRENDS ACCUSED OF COPYRIGHT INFRINGEMENT OVER ALLEGED USE OF DESIGN
via Northern California Record by Wadi Reformado on 4/21/2017

According to the complaint, the plaintiff alleges that it suffered damages to its business as a result of its copyrighted design being used without ...

VARESE SARABANDE RECORDS SEEKS DECLARATION REGARDING COPYRIGHT ALLEGATIONS
via Northern California Record by Wadi Reformado on 4/21/2017
URL: http://norcalrecord.com/stories/511105235-varese-sarabande-records-seeks-declaration-regarding-copyright-allegations

A Beverly Hills company seeks declaration that it did not infringe a Malibu company's copyright. Varese Sarabande Records LLC ...

RIAA SUES GRANDE COMMUNICATIONS IN NEW DMCA CASE
via Billboard by Robert Levine on 4/21/2017

The RIAA is suing the San Marcos, Texas-based ISP Grande Communications for copyright infringement, in a case that potentially could help define ...

PROTECT INTELLECTUAL PROPERTY RIGHTS ON WORLD IP DAY - AND EVERY DAY
via Hill by Randolph May & Seth Cooper on 4/23/2017
URL: http://thehill.com/blogs/pundits-blog/uncategorized/329906-protect-intellectual-property-rights-on-world-ip-day-and

World Intellectual Property Day is on April 26. So, it's a timely occasion for recognizing the vital role of patents and copyrights in encouraging creativity ...
THE XI-TRUMP "MAR-A-LAGO" SUMMIT: HOW WILL IT IMPACT US COPYRIGHT INDUSTRIES IN CHINA?
via Hugh Stephens Blog on 4/23/2017

The breathlessly awaited Mar-a-Lago, Florida summit between Chinese President Xi Jinping and Donald Trump turned out to be much less dramatic than many expected.

COURT RULING ON IP STRUGGLE BETWEEN MOVIE PRODUCERS SHOWS LEVEL OF COPYRIGHT AWARENESS IN NIGERIA
via Intellectual Property Watch by Jackie Opara on 4/23/2017

A federal high court in Lagos granted an interim order on 24 March, stopping the premiere and release of a movie called the "Okafor's Law" over copyright infringement.

WITH REGISTRAR OF COPYRIGHTS BILL, BIG MEDIA SEEKS ITS OWN IN-HOUSE LOBBYIST
via Hill by Kerry Maeve Sheehan on 4/24/2017

Why are advocates for major media and entertainment companies pushing Congress to rush through a bill that would make the U.S.'s top copyright ...

'Star Trek' Artist Sues Over Destroyed LA Mural
via Intellectual Property Law360 by Bill Donahue on 4/24/2017
URL: https://www.law360.com/ip/articles/916349

An artist known for his work on the "Star Trek" franchise has filed a lawsuit over the destruction of his Los Angeles mural, the latest in a string of disputes over artists' rights to control the fate of their works.

Guitar Co. Sued for Infringing Pantera's 'Dean From Hell'
via Intellectual Property Law360 by Kelcee Griffis on 4/24/2017
URL: https://www.law360.com/ip/articles/916270

An instrument designer who says he helped create the signature guitar of late Pantera frontman "Dimebag Darrell" hit a guitar production company with a copyright infringement suit in
California federal court Friday, saying the company has been wrongly reproducing the lightning design-splashed commemorative editions of his instrument.

A STRONG COPYRIGHT OFFICE PROTECTS INDEPENDENT AND DIVERSE CREATORS
via Huffington Post by Amy Hinojosa on 4/24/2017
URL: http://www.huffingtonpost.com/entry/a-strong-copyright-office-protects-independent-and_us_58fe48e3e4b086ce589813e7

There's a bill working its way through Congress that creators and creatives should know about and support. It's the Register of Copyrights Selection ...

RIAA LASHES OUT AT INTERNET SERVICE PROVIDER
via IP Pro The Internet by Mark Dugdale on 4/25/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5425

The RIAA has accused the ISP of copyright infringement. It lodged the complaint on behalf of its members in district court in Texas on 21 April, alleging ...

SUPREME COURT ASKED TO UMPIRE 'WHO'S ON FIRST' DISPUTE
via Law.com - Newswire by P.J. D'annunzio on 4/25/2017

First the copyright infringement case over use of Abbott and Costello's "Who's on First" routine in a Broadway play was dismissed by a New York federal judge.

H.R. 1695: A VITAL FIRST STEP TOWARDS COPYRIGHT OFFICE MODERNIZATION
via Hill by Dina LaPolt & John Meller on 4/25/2017

This is who is trusted to nominate the person who heads our most sacred institution charged with protecting copyrights? To address this, H.R. 1695 ...
WHY COLBERT CAN'T PLAY 'COLBERT': TONIGHT'S WORD - COPYRIGHT
via Intellectual Property Law360 by Adam Litwin on 4/25/2017
URL: https://www.law360.com/ip/articles/914594

In July of 2016, Viacom Inc., the owner of cable channel Comedy Central, had threatened to sue CBS to stop the broadcast channel from allegedly infringing on its intellectual property - namely, Stephen Colbert. We are, of course, speaking not of the current CBS "The Late Show" host, Stephen Colbert, himself, but the identically named character that Stephen Colbert had portrayed on his Comedy Central show, "The Colbert Report." Viacom took such action as a result of the character making an appearance on "The Late Show"...

WHY GOOGLE BOOKS DESERVES BETTER THAN THESE OBITUARIES
via Fortune by Jeff John Roberts on 4/25/2017
URL: http://fortune.com/2017/04/24/google-books-future/

Unfortunately, the copyright case over Google Books morphed into something larger. It became a vehicle for anxieties over how the digital era has ...

PHARRELL, THICKE TO 9TH CIRC: 'GROOVE' CAN'T BE COPYRIGHTED
via Intellectual Property Law360 by Bill Donahue on 4/25/2017
URL: https://www.law360.com/ip/articles/886910

Pharrell Williams and Robin Thicke fired their parting shot Monday in a closely watched bid to overturn a verdict that their smash hit "Blurred Lines" infringed a Marvin Gaye song, warning the Ninth Circuit that "a groove or feeling cannot be copyrighted."

THE SUN THREATENS LEGAL ACTION AGAINST MAILONLINE OVER COPYRIGHT BREACH
via Guardian by Jane Martinson on 4/25/2017
URL: https://www.theguardian.com/media/2017/apr/25/the-sun-threatens-legal-action-against-mailonline-over-copyright-breach

The Sun threatens legal action against MailOnline over copyright breach ... The Sun is claiming copyright fees of more than £50,000 for the Mail's ...
A U.K.-based photography company filed copyright infringement claims against Khloe Kardashian in California federal court on Tuesday, alleging that she posted one of its photos of her to her Instagram account without consent and without its watermark.

Fox asked a federal judge Tuesday to toss out a lawsuit claiming the network stole its smash hit "Empire" from an unpublished novel, saying the two have "virtually nothing in common."

The owner of a massive collection of amateur photographer Vivian Maier's work can't sell or move his photos while an Illinois federal judge sorts out whether their copyright belongs to her estate, the judge said Tuesday.

The provision would protect these online service providers from legal liability for any copyright infringement taking place via the services they provide ...

H.R. 1695 would amend 17 U.S.C. 701. Currently, the Register of Copyrights is appointed by the Librarian of Congress, and acts under the Librarian's direction and supervision. That would change if and when H.R. 1695 becomes the law of the land. The substantive change would add
The Register of Copyrights shall be a citizen of the United States with a professional background and experience in copyright law and shall be appointed by the President from the individuals...

ROB THOMAS: TREAT SONGWRITERS LIKE OTHER COPYRIGHT OWNERS AND ELIMINATE GOVERNMENT REGULATION OF ...
via QZ by Rob Thomas on 4/26/2017

Think about the most personal, emotional thing you've ever gone through in your life. Heartbreak or joy, sadness or elation, pain or love. Imagine ...

MULTIMEDIA PLAYER SELLERS MAY BE LIABLE FOR COPYRIGHT INFRINGEMENT
via World IP Review on 4/26/2017
URL: http://www.worldipreview.com/news/-13865

Sellers of multimedia players enabling films that are available illegally on the internet to be viewed for free on TV could constitute copyright ...

MUZAK UNDERPAID ARTISTS FOR ROYALTIES - DC CIRCUIT
via Reuters by Jan Wolfe on 4/26/2017
URL: http://www.reuters.com/article/ip-copyright-muzak-idUSL1N1HX2DD

A federal appeals court on Tuesday ruled Mood Media Corp, the parent of the background music company Muzak, gamed the copyright system to ...

KHLOE KARDASHIAN SUED FOR POSTING A PHOTO OF KHLOE KARDASHIAN ON INSTAGRAM
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 4/26/2017

This follows a lawsuit focused on Tom Holland republishing an image of Tom Holland on Instagram.
BIG CONTENT CHEERS AS CONGRESS VOTES ON CHANGES TO US COPYRIGHT OFFICE
via Ars Technica by Joe Mullin on 4/26/2017

The US House of Representatives will vote today on a bill that will make the US Register of Copyrights a presidential appointment, confirmed by the US Senate.

KHLOE KARDASHIAN NAMED IN COPYRIGHT INFRINGEMENT SUIT OVER INSTAGRAM PHOTO
via Fashion Law on 4/26/2017
URL: http://www.thefashionlaw.com/home/khloe-kardashian-named-in-copyright-infringement-suit-over-instagram-photo

Khloe Kardashian has been slapped with a copyright infringement lawsuit after posting a photo of herself on her Instagram account this fall. According ...

EU COURT FINDS COPYRIGHT ISSUES WITH STREAMING PLAYER
via Courthouse News Service by William Dotinga on 4/26/2017
URL: https://www.courthousenews.com/eu-court-finds-copyright-issues-streaming-player/

Netherlands-based copyright watchdog Stichting Brein took Wullems to ... communication of copyrighted work, and Wullems' device is not different.

EUROPEAN COURT RULES PRE-LOADED MEDIA BOXES BREACH COPYRIGHT
via Irish Times by Conor Pope on 4/26/2017

The end could be nigh for multimedia streaming boxes that allow people access premium content at no cost after the European Court of Justice (ECJ) ...

HOUSE PASSES BILL CHANGING COPYRIGHT OFFICE APPOINTMENTS
via Intellectual Property Law360 by Michael Macagnone on 4/26/2017
URL: https://www.law360.com/ip/articles/917606

The House passed a bill to make the nation's copyright register a Senate-confirmable position, over the concern among some Democrats that the administrator would be subject to the whims of the executive.
HAPPY WORLD IP DAY
via Copyright: Creativity at Work by Karyn Temple Claggett on 4/26/2017
URL: http://blogs.loc.gov/copyright/2017/04/happy-world-ip-day/

Today is World IP Day, and as Acting Register of Copyrights, I had the honor and pleasure of hosting a program featuring remarks and a panel discussion focusing on the impact of creative works and performances on the lives of both creators and the public.

JUDGE ADMONISHES IP ATTORNEYS IN DISMISSING COPYRIGHT CASE
via New York Law Journal by Celia Ampel on 4/26/2017
URL: http://www.newyorklawjournal.com/id=1202784653074/Judge-Admonishes-IP-Attorneys-in-Dismissing-Copyright-Case

Judge Admonishes IP Attorneys in Dismissing Copyright Case ... that claimed Spanish Broadcasting System Inc. had willfully infringed copyrights by ...

EU TOP COURT SAYS TV STREAMER IS ILLEGAL
via Intellectual Property Law360 by Bill Donahue on 4/26/2017
URL: https://www.law360.com/ip/articles/917536

The European Union's highest appeals court ruled Wednesday that the sale of devices that make it easy to stream pirated content on a television could violate European copyright law.

"BLURRED LINES" APPEAL BRIEF SAYS ARTISTS CAN'T COPYRIGHT A GROOVE
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 4/26/2017

"A 'groove' or 'feeling' cannot be copyrighted, and inspiration is not copying."

THE COPYRIGHT OFFICE'S AMICUS BRIEF FROM MAZER V. STEIN
via Mostly IP History by Zvi S. Rosen on 4/26/2017
URL: http://www.zvirosen.com/2017/04/26/the-copyright-offices-amicus-brief-from-mazer-v-stein/

A short post for World IP Day, now nearly over.
MUSIC COMMUNITY REGISTERS APPROVAL FOR COPYRIGHT BILL
via Variety by Paula Parisi on 4/26/2017

A chorus of cheers went out from the music community with today's passage of H.R. 1695, "The Register of Copyrights Selection and Accountability Act ..."

US HOUSE OF REPRESENTATIVES APPROVES REGISTER OF COPYRIGHTS SELECTION BILL
via Managing Intellectual Property by Michael Loney on 4/26/2017

The House of Representatives has approved by a vote of 378-48 the Register of Copyrights Selection and Accountability Act (HR 1695). This bill was ...

NON-BAILABLE WARRANT AGAINST RAM GOPAL VARMA FOR COPYRIGHT VIOLATION
via Times of India on 4/27/2017

Non-bailable warrant against Ram Gopal Varma for copyright violation ... Ronnie Screwvala in connection with a copyright violation case of 2009.

U.S. CHAMBER APPLAUDS HOUSE PASSAGE OF COPYRIGHT OFFICE BILL
via Global Intellectual Property Center by Courtney Paul on 4/27/2017

U.S. Chamber of Commerce Executive Vice President of the Global Intellectual Property Center Mark Elliot praised today's House passage of H.R. 1695, the Register of Copyrights Selection and Accountability Act of 2017, by a vote of 378-48:

2ND CIRC. SAYS GOV'T MUST STICK TO BMI APPEAL DEADLINE
via Intellectual Property Law360 by Eric Kroh on 4/27/2017
URL: https://www.law360.com/ip/articles/917919

The Second Circuit stuck to its guns Wednesday and denied the U.S. Department of Justice's second request for more time to file its principal brief in its appeal of a decision siding with
Broadcast Music Inc. over a decades-old antitrust agreement governing the licensing of music performance rights.

KHLOE KARDASHIAN SUED BY PAPARAZZI PHOTO AGENCY FOR $175K FOR SHARING COPYRIGHTED PHOTO ON ...
via Washington Times by Ken Shepherd on 4/27/2017

Promotional graphic for Xposure Photos, a British photographer agency that specializes in selling and licensing snapped photos of celebrities.

KHLOÉ KARDASHIAN TANGLED UP IN INSTAGRAM COPYRIGHT ROW
via World IP Review on 4/28/2017

Khloé Kardashian has become tangled up in a copyright row over a photo she posted on Instagram. UK-based photography company Xposure Photos ...

WITHOUT VOLITIONAL CONDUCT, ESTABLISHING DIRECT COPYRIGHT INFRINGEMENT GETS HAIRY
via National Law Journal by Ulrika E. Mattsson on 4/28/2017

BWP Media sued T & S claiming that a third-party HairTalk user posted images that infringed BWP's copyrights. BWP argued that during the relevant ...

9TH CIRC. WON'T REHEAR WEB STREAMER'S TV COPYRIGHT CASE
via Intellectual Property Law360 by Bill Donahue on 4/28/2017
URL: https://www.law360.com/ip/articles/918596

The full Ninth Circuit said Friday that it would not reconsider a ruling last month that internet streaming services like FilmOn X cannot use the same automatic copyright license that traditional cable companies use.
7) held that use of antenna technology to rebroadcast TV to the internet was a "public performance" in violation of US copyright law, FilmOn made an ...

Health and beauty marketing firm Amway Inc.'s parent company slapped AIG subsidiaries with a suit in Michigan federal court Thursday in a bid to force the insurers to cover the company's settlement of a copyright dispute with several of the world's largest record companies.

A Pennsylvania federal judge on Friday threw out a lawsuit accusing the creator of the Fox television series "Empire" of stealing the idea for the hit drama from actor-turned-writer Clayton Prince Tanksley.

The heirs of Abbott and Costello want a new umpire to decide their lawsuit against Hand to God. Last week, the heirs of the comedians asked the ...

Many practitioners who wish to register copyrights in software find an unexpected challenge when trying to determine what versions of the software should be registered.
KARDASHIAN #COPYRIGHT SAGA
via National Law Review by Jaimie Wolbers on 4/30/2017
URL: http://www.natlawreview.com/article/kardashian-copyright-saga

Is this the right angle? Is this the best filter? Do I have the legal right to post this content? While the first two questions may be at the forefront of the ...

PLEAS WEAK, QUALMS ARE HEAVY: EMINEM COPYRIGHT CASE PLAYS OUT IN NEW ZEALAND COURT
via Guardian by Elle Hunt on 4/30/2017
URL: https://www.theguardian.com/music/2017/may/01/pleas-weak-qualms-are-heavy-eminem-copyright-case-plays-out-in-new-zealand-court

Eminem's publishers are seeking damages for copyright infringement from New Zealand's National Party Photograph: Timothy A. Clary/AFP/Getty ...

REALITY CHECK - H.R. 1695
via The Illusion of More by David Newhoff on 4/30/2017
URL: http://illusionofmore.com/reality-check-h-r-1695/

H.R. 1695, The Register of Copyrights Selection and Accountability Act, passed in the House of Representatives last week with a vote of 378-48. As the bill moves to the Senate, many of the usual suspects in anti-copyright ... Continue reading ?
EMINEM COPYRIGHT TRIAL VERSUS NEW ZEALAND POLITICAL PARTY BEGINS
via Billboard on 5/1/2017

Williams said the emails showed it was "utterly clear" the party knew it was using a copyrighted song. Speaking outside the court, Joel Martin, ...

WIPO COPYRIGHT COMMITTEE THIS WEEK: BROADCASTING, EXCEPTIONS, RESALE RIGHTS, DIGITAL ENVIRONMENT
via Intellectual Property Watch by Catherine Saez on 5/1/2017

A packed week is underway for the World Intellectual Property Organization copyright committee. Delegates are hoping to find agreement on core principles of a treaty protecting broadcasting organisations' rights, and continue work on possible limitations and exceptions to copyright for education, libraries, and research. In addition, they will decide if they want to work on the issue of resale right, and will consider copyright in the digital environment.

TO CELEBRATE WORLD IP DAY-A INTERESTING COPYRIGHT CONVERSATION
via Hugh Stephens Blog on 5/1/2017
URL: http://hughstephensblog.net/2017/05/01/to-celebrate-world-ip-day-a-interesting-copyright-conversation

As most readers of this blog are aware, the World Intellectual Property Organization (WIPO) has declared each April 26 to be "World IP Day".

COURT HEARS EMINEM COPYRIGHT CLAIM AGAINST NEW ZEALAND GOVERNING PARTY
via World IP Review on 5/2/2017

A copyright infringement case involving Eminem and New Zealand's governing party is being heard at the High Court of New Zealand this week.
MUSIC COPYRIGHT
via Courthouse News Service on 5/2/2017
URL: https://www.courthousenews.com/music-copyright-10/

A New Orleans jazz musician seeking his share of profits claims in a federal lawsuit that two songs from the Macklemore and Ryan ...

LAW360'S GRAY MARKET GOODS GUIDEBOOK
via Intellectual Property Law360 by Bill Donahue on 5/2/2017
URL: https://www.law360.com/ip/articles/918007

When Duracell filed a Lanham Act lawsuit in Illinois federal court last week complaining of trademark-infringing versions of its famous copper-top alkaline batteries, it wasn't claiming they were fakes.

DISNEY SURVIVES AN APPEALS COURT SCARE IN 'PIRATES OF THE CARIBBEAN' CASE
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 5/2/2017

In a 2-1 vote, the 9th Circuit rules that an author waited too long to rescind a release of copyright claims.

JUDICIARY COMMITTEE PROMOTES PRIVACY, VISA, PATENT REFORMS
via Intellectual Property Law360 by Kevin Penton on 5/2/2017
URL: https://www.law360.com/ip/articles/918539

The House Judiciary Committee on Tuesday released its "innovation and competitiveness agenda" for the current Congress, which includes efforts to protect email privacy, reform the U.S. Copyright Office, amend work visas and pursue a patent reform bill.

SIDING WITH DISNEY, 9TH CIRC. WON'T REVIVE 'PIRATES' CASE
via Intellectual Property Law360 by Bill Donahue on 5/2/2017
URL: https://www.law360.com/ip/articles/919741

A split Ninth Circuit panel on Tuesday refused to revive a lawsuit claiming Disney owes an author billions from the "Pirates of the Caribbean" franchise, agreeing with a lower court that he waited far too long to bring his case.
If you're an online publisher or other internet service provider ("ISP") that relies on moderators to police or curate user-generated comments or other content, your risk of liability for copyright infringement just increased.

Regardless of the practicalities of enforcing the bill, the Act does mean those using streaming services or torrents to watch copyrighted material are ...

As a teenager during the 1970s, I put on my bell-bottom pants and shiny shirt to groove to the latest disco hits.

A bipartisan group of U.S. senators on Tuesday announced that they have filed a companion bill to legislation that would make the Register of Copyrights a presidentially appointed and Senate-confirmed position, after the House passed its version of the measure at the end of April.

U.S. producers have long complained that rampant piracy makes it difficult to do business in China. But in an interesting twist, a Chinese company has ...
9TH CIRC. SCRAPS 'WALK OF SHAME' IP ROW IN TERSE ORDER
via Intellectual Property Law360 by Kat Greene on 5/3/2017
URL: https://www.law360.com/ip/articles/920291

The Ninth Circuit on Wednesday shut down a screenwriter's appeal of a ruling killing his claims that Elizabeth Banks and the production companies that made "Walk of Shame" infringed his copyright, saying in a short order the lower court had been right.

KODI: OPEN SOURCE TV APP INSPIRES FULL-BLOWN COPYRIGHT PANIC IN THE UK
via Ars Technica on 5/4/2017
URL: https://arstechnica.com/tech-policy/2017/05/kodi-fully-loaded-boxes-are-they-legal/

You know a technology's gone mainstream when the tabloids start yelling about it.

YOUTUBE AND OTHERS HIDE BEHIND SAFE HARBOURS, BIGGER THREAT THAN PIRACY, MUSIC INDUSTRY TELLS WIPO
via Intellectual Property Watch by Catherine Saez on 5/4/2017
URL: https://www.ip-watch.org/2017/05/04/youtube-others-hide-behind-safe-harbours-bigger-threat-piracy-music-industry-says/

If piracy is still very much a concern of the music industry, the growing shadow of free online streaming platforms, in particular YouTube, has now become a bigger stinger, according to speakers from the industry at an event at the World Intellectual Property Organization on 2 May. Hiding behind safe harbour legislations originally designed to protect internet service providers from being responsible for unlawful downloading by users, YouTube and other such platforms are threatening the industry and the artists, they said.

NINTH CIRCUIT BOOTS 'PIRATES OF THE CARIBBEAN' COPYRIGHT CLAIM
via Courthouse News Service by Matt Reynolds on 5/4/2017
URL: https://www.courthousenews.com/ninth-circuit-boots-pirates-caribbean-copyright-claim/

The Ninth Circuit this week buried the copyright claims of an author who said Disney owes him billions of dollars in profits from ...
EARNING A LIVING: HOW TO HELP VISUAL ARTISTS BENEFIT FROM THE RESALE OF THEIR WORKS
via YouTube by WIPO on 5/4/2017
URL: https://www.youtube.com/watch?v=fQ3UIP_IVpc

The April 28, 2017, International Conference on the Artist's Resale Right looked artists' "resale right" - or the right of visual artists to share in the revenues from onward sales of their works among third parties - to increase artists' incomes and follow the success of their work. So far, some 80 countries around the world have enshrined this resale right in their regulations - should they all? Participants in the conference hosted at WIPO share their thoughts. More: http://www.wipo.int/meetings/en/2017/resale_right_conference.html This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivs 3.0 IGO License: https://creativecommons.org/licenses/by-nc-nd/3.0/igo/

NEW CPIP POLICY BRIEF: OPEN-ACCESS MANDATES AND THE SEDUCTIVELY FALSE PROMISE OF "FREE"
via Center for the Protection of Intellectual Property on 5/4/2017
URL: https://cpip.gmu.edu/2017/05/04/new-cpip-policy-brief-open-access-mandates-and-the-seductively-false-promise-of-free/

CPIP has published a new policy brief entitled Open-Access Mandates and the Seductively False Promise of "Free."

COPYRIGHT BILL MOMENTUM HAS MUSIC INDUSTRY TUNING UP FOR A BIG LEGISLATIVE YEAR
via Variety by Paula Parisi on 5/4/2017

The music industry-backed Copyright Accountability Act was introduced in the Senate Judiciary Committee this week with powerful bi-partisan ...

"TURN DOWN FOR WHAT" BECOMES LATEST TARGET FOR "BLURRED LINES" LAWYER

Lil Jon and DJ Snake misappropriated Freddie GZ's song, alleges a lawsuit filed on Thursday.
STREET ARTIST TAKES ON BRITISH AIRWAYS IN MURAL COPYRIGHT DISPUTE
via World IP Review on 5/5/2017

A German-born street artist has taken on British Airways (BA) after the airline posted a billboard in Shoreditch, London featuring street art. Claudia ...

KUNG FU PANDA' COPYRIGHT SUIT ENDS WITH TWO-YEAR PRISON TERM
via World IP Review on 5/5/2017

Jayme Gordon, an amateur cartoonist, has been sentenced to two years in prison for wire fraud and perjury in a case that began as a copyright dispute ...

THE TRUMP ADMIN'S ADVICE TO SUPREME COURT IN COPYRIGHT CASE IS A TRUE MIND-BENDER
via Hollywood Reporter - THR, Esq by Eriq Gardner on 5/5/2017

Although a "significant legal error" has supposedly been made - copyright holders must consider fair use before sending takedown notices - the Acting Solicitor General tells the high court to reject a review of baby-dancing-to-Prince.

FEDS URGE HIGH COURT TO AVOID 'DANCING BABY' COPYRIGHT CASE
via Intellectual Property Law360 by Bill Donahue on 5/5/2017
URL: https://www.law360.com/ip/articles/921012

The acting U.S. solicitor general on Thursday filed a long-awaited brief at the U.S. Supreme Court in the so-called dancing baby case over the Digital Millennium Copyright Act, decrying errors in earlier rulings but urging the justices to pass on the case.

US COPYRIGHT LAW SHAKE-UP: DAYS OF FLINGING STUFF ON THE WEB AND WAITING FOR A DMCA MAY BE OVER
via Register by Kieren McCarthy on 5/5/2017
URL: https://www.theregister.co.uk/2017/05/05/us_copyright_law/

At issue are two cases: one covering copyrighted celebrity pictures posted to an online forum, and the other a YouTube video showing a baby dancing ...
SONY, LIL JOHN STOLE 'TURN DOWN FOR WHAT,' IP SUIT ALLEGES
via Intellectual Property Law360 by Daniel Siegal on 5/5/2017
URL: https://www.law360.com/ip/articles/920905

Lil John, DJ Snake and Sony's Columbia Records were hit with a copyright infringement suit in New York federal court on Thursday, alleging the artists' December 2013 smash hit "Turn Down For What" ripped off a rapper's same-named song that was posted online months earlier.

PRE-1870 COPYRIGHT RECORDS FROM THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS
via Mostly IP History by Zvi S. Rosen on 5/6/2017
URL: http://www.zvirosen.com/2017/05/06/pre-1870-copyright-records-from-the-manuscript-division-of-the-library-of-congress/

The Rare Book Room isn't the only part of the Library of Congress with copyright records from before copyright was entrusted with the Library in 1870.

CALCULATING THE COST OF PIRACY: IT'S IN THE TRILLIONS
via Hugh Stephens Blog on 5/7/2017
URL: http://hughstephensblog.net/2017/05/08/calculating-the-cost-of-piracy-its-in-the-trillions/

Who says that theft-and piracy-don't pay? (at least for some).

SOLICITOR GENERAL WEIGHS IN ON 'DANCING BABY' CASE
via World IP Review on 5/8/2017

The US acting solicitor general has urged the Supreme Court to deny the petition in the 'Dancing baby' copyright case. The court had asked the ...

NET NEUTRALITY FIGHT BREWS
via The Illusion of More by David Newhoff on 5/8/2017
URL: http://illusionofmore.com/net-neutrality-fight-brews/

When the President of the United States disses fundamentals from climate science to the separation of powers, it is admittedly a very difficult time to debate any issue outside the gravitational pull of so much regressive momentum. ...
US SUGGESTS DANCING BABY CASE BE PUT TO BED
via IP Pro The Internet by Barney Dixon on 5/8/2017
URL: http://www.iprotheinternet.com/iprotheinternetnews/article.php?article_id=5446

The acting US solicitor general has advised the US Supreme Court to deny the closely watched 'Dancing Baby' copyright infringement case.

TRUMP ADMINISTRATION TO SUPREME COURT: DON'T HEAR EFF "DANCING BABY" CASE
via Ars Technica by Joe Mullin on 5/8/2017
URL: https://arstechnica.com/tech-policy/2017/05/trump-administration-to-supreme-court-dont-hear-eff-dancing-baby-case/

The Electronic Frontier Foundation's "Dancing Baby" copyright case has been going on for nearly a decade now in one way or another, and its last stop will be the US Supreme Court.

CLOUDFLARE CHANGES ABUSE POLICY BUT REFUSES TO "CENSOR THE INTERNET"
via Ars Technica by Joe Brodkin on 5/8/2017

Network operator Cloudflare came under fire last week from ProPublica, which wrote a lengthy article arguing that the Internet company "helps serve up hate on the Web."

ZENIMAX BLASTS OCULUS' BID TO UNDO $500M COPYRIGHT VERDICT
via Intellectual Property Law360 by Michelle Casady on 5/8/2017
URL: https://www.law360.com/ip/articles/921567

ZeniMax Media Inc. blasted a bid from Oculus VR LLC for a new trial after a jury found it infringed copyrighted virtual reality technology, telling a Texas federal judge on Friday that there was nothing to suggest the jury was biased or that the $500 million damages award was excessive.

MODERATORS' RULING COULD 'RESHAPE' DMCA, 9TH CIRC. WARNED
via Intellectual Property Law360 by Melissa Daniels on 5/8/2017
URL: https://www.law360.com/ip/articles/921458

Blogging platform LiveJournal urged the Ninth Circuit on Friday to reconsider a decision that found the company could be liable for infringing content posted with approval of community
moderators, saying the decision would "dramatically reshape" the Digital Millennium Copyright Act.'

SIRIUS' $73M PRE-1972 SONG DEAL OK'D, BUT APPEALS PENDING
via Intellectual Property Law360 by Bonnie Eslinger on 5/8/2017
URL: https://www.law360.com/ip/articles/921783

A California federal judge on Monday approved Sirius XM's deal paying up to $73 million in royalties to pre-1972 music rights holders, a payout that could drop as low as $25 million if Sirius is as successful in California and Florida appellate courts as it was in the Second Circuit.

SAFE HARBOR FOR SERVICE PROVIDERS IN A STORM OF DMCA DEVELOPMENTS
via Recorder by Erin R. Ranahan & Diana Hughes Leiden on 5/8/2017
URL: http://www.therecorder.com/id=1202785569412/Safe-Harbor-for-Service-Providers-in-a-Storm-of-DMCA-Developments

Since 1998, the "safe harbor" provisions of the Digital Millennium Copyright Act (DMCA) have provided protections to online service providers (OSPs) ...

KHLOE KARDASHIAN ALLEGED TO HAVE UNLAWFULLY POSTED COPYRIGHTED PHOTO ON INSTAGRAM
via Northern California Record by Wadi Reformado on 5/9/2017
URL: http://norcalrecord.com/stories/511109974-khloe-kardashian-alleged-to-have-unlawfully-posted-copyrighted-photo-on-instagram

A United Kingdom-based photographer with a subsidiary in Beverly Hills alleges television personality Khloe Kardashian unlawfully ...

'FEARLESS GIRL' STATUE RAISES MORAL RIGHTS ISSUES
via Intellectual Property Law360 by Will Smith on 5/9/2017
URL: https://www.law360.com/ip/articles/920761

The "Fearless Girl" statue has now been standing on Wall Street, in the heart of New York's financial district, for around two months since she was first put up for International Women's Day as an advertisement for an investment fund comprising gender diverse companies.
EUROPEAN COURT OF JUSTICE TO REVIEW COPYRIGHT INFRINGEMENT CASE INVOLVING GOOGLE
via Fortune on 5/9/2017
URL: http://fortune.com/2017/05/09/google-europe-publishing/

A court in Berlin on Tuesday referred to the European Court of Justice a dispute in which German publishers want search engine providers such as ...

PERFECT 10 ANNOUNCES NINTH CIRCUIT UPENDS COPYRIGHT LAW BY IMMUNIZING AUTOMATED PIRACY
via EconoTimes on 5/9/2017
URL: http://www.econotimes.com/Perfect-10-Announces-Ninth-Circuit-Upends-Copyright-Law-By-Immunizing-Automated-Piracy-689766

"Perfect 10 presented evidence that defendants were copying and selling access to 61,000 unlicensed Perfect 10 copyrighted images, along with ...

MEGAUPLOAD USERS STILL CAN'T GET DATA BACK
via Ars Technica by Joe Mullin on 5/9/2017

The Electronic Frontier Foundation's last-ditch attempt to get back user data from the seized Megaupload servers has been shot down.

EU HIGH COURT ASKED TO WEIGH IN ON PUBLISHERS' GOOGLE SUIT
via Intellectual Property Law360 by Fola Akinnibi on 5/9/2017
URL: https://www.law360.com/ip/articles/921964

A German court asked the European Union's highest court Tuesday to help settle a case in which VG Media and a group of publishers accused Google Inc. of abusing its position to display parts of their articles and content without paying.

RECENT CASES ADDRESS SCOPE OF COPYRIGHT PROTECTION FOR PRE-1972 RECORDINGS
URL: http://www.newyorklawjournal.com/id=1202785670126/Recent-Cases-Address-Scope-of-Copyright-Protection-for-Pre1972-Recordings

The Federal Copyright Act does not protect sound recordings created prior to Feb. 15, 1972, with limited exceptions. Instead, pre-1972 sound ...
ATTORNEYS' FEES OF UP TO $22 MILLION GRANTED IN SIRIUS COPYRIGHT CASE
via Reuters by Jan Wolfe on 5/9/2017
URL: http://www.reuters.com/article/copyright-music-idUSL1N1IB251

Law firms Susman Godfrey and Gradstein & Marzano stand to collect as much as $22 million after a judge ruled on Monday they were entitled to a ...

CAN GOOGLE NEWS USE ARTICLES FOR FREE? COURT WRANGLES TAKE NEW TWIST
via ZDNet by David Meyer on 5/9/2017
URL: http://www.zdnet.com/article/can-google-news-use-articles-for-free-court-wrangles-take-new-twist/

The EU's highest court will have to weigh in on Germany's controversial ancillary-copyright law, which gives press publishers the right to charge ...

THE TECH INDUSTRY IS ERODING COPYRIGHT LAW. HERE'S HOW TO STOP IT
via Los Angeles Times by Jonathan Taplin on 5/10/2017

Suppose a band spends months making an album in expensive recording studios, and the band's record label releases the album on iTunes. Imagine ...

GERMAN COURT REFERS GOOGLE COPYRIGHT CASE TO CJEU
via World IP Review on 5/10/2017

A court in Berlin has referred a dispute between German publishers and search engine Google to the Court of Justice of the European Union (CJEU).

SOLICITOR GENERAL SAYS NO CERT FOR "DANCING BABY" CASE
via The Illusion of More by David Newhoff on 5/10/2017
URL: http://illusionofmore.com/solicitor-general-no-cert-dancing-baby-case/

After ten years and what must be thousands of attorney hours, the "Dancing Baby" case may have to do an about-face at the steps of the Supreme Court and, get this, actually go to trial. On May ...
IN DEFENSE OF AN INCLUSIVE IP CONVERSATION
via Mister Copyright by Kevin Madigan on 5/10/2017

In a recent essay responding to a divisive critique of his book, Justifying Intellectual Property, Robert Merges makes clear from the start that he won't be pulling any punches.

GERMAN PUBLISHERS' LAWSUIT AGAINST GOOGLE THREATENS TO BACKFIRE
via NPR by Colin Dwyer on 5/10/2017
URL: http://www.npr.org/sections/thetwo-way/2017/05/10/527800498/german-publishers-lawsuit-against-google-threatens-to-backfire

The collective of German publishers had sued Google, arguing that the tech giant has infringed on copyright protections by offering snippets of the ...

NO NEW TRIAL ON $460K HORROR FILM INFRINGEMENT AWARD
via Intellectual Property Law360 by Ryan Boysen on 5/10/2017
URL: https://www.law360.com/ip/articles/922619

A film distributor that tried to sell a horror movie spliced together from stolen bits and pieces of a different horror movie is still on the hook for $460,000 after a California federal court on Tuesday squashed PFG Entertainment Inc.'s bid for a new trial.

CONGRESS CREATES A COPYRIGHT OFFICE
via Copyhype by Terry Hart on 5/11/2017
URL: http://www.copyhype.com/2017/05/congress-creates-a-copyright-office/

The United States is somewhat unique among nations in that the US Copyright Office is located within the Library of Congress.

THE 9TH CIRC.'S SURPRISING, ALARMING DMCA DECISION
via Intellectual Property Law360 by Terry Parker on 5/11/2017
URL: https://www.law360.com/ip/articles/921199

In case you missed it, last month, in Mavrix Photographs LLC v. LiveJournal Inc., 2017 U.S. App. LEXIS 6028 (9th Cir. Cal. April 7, 2017), the Ninth Circuit delivered a notable decision on the immunities provided by the Digital Millennium Copyright Act, surprising a number of lawyers in the copyright community. The Electronic Frontier Foundation called the ruling "an unfortunate turn."
ALSUP THREATENS TO BAR ANY MORE MALIBU MEDIA PORN SUITS
via Intellectual Property Law360 by Bill Donahue on 5/11/2017
URL: https://www.law360.com/ip/articles/923061

U.S. District Judge William Alsup on Wednesday threatened to ban Malibu Media LLP, a pornography studio that has lodged thousands of copyright lawsuits in recent years, from filing any more cases until the accuracy of the technology it uses to identify the location of defendants is "fully vetted."

WINDSTREAM TAKES COPYRIGHT BATTLE WITH ISP TO APPEALS COURT
via MediaPost by Wendy Davis on 5/11/2017

Internet services provider Windstream has appealed a trial judge's decision to dismiss the company's lawsuit against music publisher BMG, which ...

POLITICAL USE OF EMINEM WORK MAKES COPYRIGHT INFRINGEMENT WORSE, ARGUE LAWYERS
via NZ Herald on 5/11/2017
URL: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11854567

Any copyright infringement from the National Party was worse, because it was for political purposes, lawyers for Eight Mile Style have argued.

VILLAGE PEOPLE DUKE IT OUT OVER 'YMCA' IP IN 9TH CIRC.
via Intellectual Property Law360 by Daniel Siegal on 5/11/2017
URL: https://www.law360.com/ip/articles/923241

A producer for disco group The Village People told the Ninth Circuit on Thursday that a lower court erred by letting the group's original singer recapture rights in "YMCA" and other songs, and the singer argued that his victory should have been broader and included additional rights to "In the Navy."

IT'S A RAP: EMINEM LAWSUIT AGAINST NEW ZEALAND PARTY ENDS
via Washington Times by Nick Perry on 5/11/2017

But Eight Mile Style lawyer Garry Williams said it was "utterly clear" the party knew it was infringing upon a copyrighted song. Another unusual moment ...
THE (FIRST) REGISTER OF COPYRIGHTS AND THE DRAFTING OF THE 1909 COPYRIGHT ACT
via Mostly IP History by Zvi S. Rosen on 5/12/2017

This is something I'd like to do as a law-review style article or book chapter at some point. But that could take years and cost millions of lives. In the interim, here are the highlights.

COPYRIGHT LAW NEEDS TO BE STRONG - SO DOES FAIR USE PROTECTION FOR CONTENT USERS
via Los Angeles Times by Kenneth D. Crews on 5/12/2017

To the editor: Copyright law needs to be fixed and changed, but Jonathan Taplin's proposal would erode the essential function of fair use in the ...

IN EMINEM'S COPYRIGHT FIGHT, A TEST OF 'SOUND-ALIKE' RECORDINGS
via Recorder by Todd Cunningham on 5/12/2017
URL: http://www.therecorder.com/home/id=1202786044000/In-Eminem's-Copyright-Fight-a-Test-of-SoundAlike-Recordings

The New Zealand copyright infringement trial pitting Detroit rapper Eminem's ... from the court that their copyrights were violated and a cash settlement.

ATTORNEY GENERAL JEFF SESSIONS SHOULD APPEAL BMI MUSIC CASE
via Washington Times by Bruce Fein on 5/12/2017
URL: http://www.washingtontimes.com/news/2017/may/12/attorney-general-jeff-sessions-should-appeal-bmi-m/

BMI (September 16, 2016). It threatens ready public access to popular copyrighted music at competitive prices. Mr. Sessions has only days to decide.

USHER SONG COPYRIGHT ROW APPEALED TO HIGH COURT
via Intellectual Property Law 360 by Abraham Moussako on 5/12/2017
URL: https://www.law360.com/ip/articles/923543

A songwriter who alleges that Usher and Sony Music, among others, had his ownership of the Usher track "Bad Girl" written out of a contract has asked the U.S. Supreme Court to grant cert after the Third Circuit refused to revive the case in December.
IT'S A RAP: EMINEM LAWSUIT AGAINST NEW ZEALAND PARTY ENDS
via Bloomberg by Nick Perry on 5/11/2017

But Eight Mile Style lawyer Garry Williams said it was "utterly clear" the party knew it was infringing upon a copyrighted song. Another unusual moment ...

PHOTO'S COPYRIGHT SUIT AGAINST BREITBART ON TRACK TO SETTLE
via Intellectual Property Law360 by Pete Brush on 5/15/2017
URL: https://www.law360.com/ip/articles/923913

Photographer Todd Bigelow told a Manhattan federal judge Friday that his copyright infringement suit against Breitbart News over his image of Mexican immigrants crossing the border into the U.S. has been settled.

FILMON DROPS TV COPYRIGHT APPEALS IN 3 CIRCUITS
via Intellectual Property Law360 by Kelcee Griffis on 5/15/2017
URL: https://www.law360.com/ip/articles/923863

Web streaming company FilmOn X LLC on Friday said that it will dismiss its appeal in a suit over whether internet streaming services can use the same automatic copyright license that traditional cable companies use, following a similar Ninth Circuit ruling that said no.

WIPR SURVEY: SCOTUS SHOULDN'T HEAR 'DANCING BABY' DISPUTE
via World IP Review on 5/15/2017

The US Supreme Court should deny the petition in the 'Dancing baby' copyright clash, according to WIPR readers. Last week, WIPR reported that the ...

HIGH COURT WON'T HEAR 'DIFFERENT STROKES' COPYRIGHT CLAIMS
via Intellectual Property Law360 by Hannah Meisel on 5/15/2017
URL: https://www.law360.com/ip/articles/923907

The U.S. Supreme Court on Monday declined to hear soul singer Syl Johnson's appeal challenging the Seventh Circuit's October opinion that he should have included claims in an earlier suit that music's biggest recording labels sampled his song "Different Strokes" without getting his permission or paying him royalties.
CONAN O'BRIEN CAN'T DODGE COPYRIGHT SUIT ON 'STOLEN' JOKES
via Intellectual Property Law360 by Bill Donahue on 5/15/2017
URL: https://www.law360.com/ip/articles/923784

A California federal judge refused Friday to toss a copyright lawsuit that accuses late night TV host Conan O'Brien of stealing jokes about Caitlin Jenner and Tom Brady, sending the case toward trial.

BROADCASTERS SETTLE COPYRIGHT DISPUTE WITH FILMON
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 5/15/2017
URL: http://www.hollywoodreporter.com/thr-esq/broadcasters-settle-copyright-dispute-filmon-1003980

The development occurs after CBS, Fox and NBC score a March victory at one appellate circuit with other decisions loomings.

THE COPYRIGHT ALLIANCE CELEBRATES ITS 10TH ANNIVERSARY: RIGHTS HOLDERS (AND OTHERS) WORLD-WIDE SHOULD REJOICE
via Hugh Stephens Blog on 5/15/2017
URL: http://hughstephensblog.net/2017/05/15/the-copyright-alliance-celebrates-its-10th-anniversary-rights-holders-and-others-world-wide-should-rejoice/

On May 17, the Washington DC, based Copyright Alliance will celebrate its tenth anniversary.

STUDIOS, LABELS TELL 2ND CIRC. TO UPHOLD REDIGI RULING
via Intellectual Property Law360 by Bill Donahue on 5/15/2017
URL: https://www.law360.com/ip/articles/924154

The major film studios and record labels are pushing the Second Circuit to uphold a $3.5 million copyright ruling against digital media re-sale service ReDigi Inc., saying a ruling to the contrary would "flout long-established principles of copyright law."

WASHINGTON INSIDERS ARE CAUTIOUSLY OPTIMISTIC ABOUT TRUMP ADMINISTRATION'S COPYRIGHT POLICIES
via Variety by Chris Talbott on 5/15/2017

Not much is known about President Donald Trump's views of the Byzantine world of copyright law, music royalties and the rights of ...
UNDER TRUMP ADMINISTRATION, COPYRIGHT ISSUES TAKE CENTER STAGE AT MUSIC BIZ 2017 CONFERENCE
via Billboard by Ed Christman on 5/15/2017

While the country watches the daily operations of the Donald Trump administration unfold on cable news and in the pages and websites of ...

PLANT CO. WINS $900K IN WEBSITE COPYRIGHT JURY TRIAL
via Intellectual Property Law360 by Daniel Siegal on 5/15/2017
URL: https://www.law360.com/ip/articles/924043

A Maryland federal jury on Friday found that a garden center in the state had stolen nearly two dozen copyrighted photographs from landscaping plant company Under A Foot's website and marketing materials, and awarded the landscaping company $900,000 in damages.

FEDERAL JURY AWARDS $900K TO PLANT RETAILER IN PHOTO THEFT LAWSUIT
via Peta Pixel by DL Cade on 5/15/2017
URL: https://petapixel.com/2017/05/15/federal-jury-awards-900k-plant-retailer-photo-theft-lawsuit/

According to PDN, the case revolves around the unauthorized use of 24 copyrighted images captured by Under a Foot Plant Co. president Frances ...

IMPORTANT OPEN SOURCE RULING CONFIRMS ENFORCEABILITY OF DUAL-LICENSING AND BREACH OF GPL FOR ...
via National Law Review by Hean L. Koo on 5/15/2017

Second, it alleged Plaintiff's copyright claim must be dismissed in part ... including economic benefits, to the creation and distribution of copyrighted ...

WIKIPEDIA SIDES WITH LIVEJOURNAL IN FIGHT OVER PAPARAZZI PHOTOS
via MediaPost by Wendy Davis on 5/15/2017

The dispute dates to 2012, when Mavrix alleged that LiveJournal's gossip site OhNoTheyDidn't illegally posted copyrighted photos of Katy Perry and ...
CONAN O'BRIEN JOKE COPYRIGHT CLAIM HEADS TO TRIAL
via World IP Review on 5/16/2017

A lawsuit accusing comedian Conan O'Brien of stealing jokes has been given the green light to go to trial. O'Brien had been accused of stealing the ...

FACEBOOK, GOOGLE CALL 9TH CIRC. MODERATOR RULING A 'THREAT'
via Intellectual Property Law360 by Bill Donahue on 5/16/2017
URL: https://www.law360.com/ip/articles/924447

Facebook, Google and other tech giants are urging the full Ninth Circuit to rethink a ruling last month that websites can lose copyright safe harbor immunity if they use "community moderators," warning that the decision has already led to "tremendous uncertainty" online.

BREXIT PROVIDES 'GOOD OPPORTUNITY' FOR HYPERLINKING LAW
via IP Pro The Internet by Barney Dixon on 5/16/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5459

Brexit provides a "good opportunity to put forward a coherent definition of hyperlinking under copyright law", according to UK Music. The music trade ...

PESTICIDE LABELS COPYRIGHTS, CLEAN AIR ACT ABEYANCE, NUTRITION INFORMATION COMPLIANCE: RECENT ...
via National Law Review on 5/16/2017

On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act. The law substantially amends ...

JUDGE ALLOWS SUIT CLAIMING CONAN O'BRIEN AND HIS TEAM STOLE COMEDY WRITER'S JOKES
via ABA Journal by Debra Cassens Weiss on 5/16/2017

A federal judge in San Diego has refused to dismiss a copyright infringement suit filed by a comedy writer who claims talk-show host Conan O'Brien ...
FILMON SETTLES BATTLE WITH BROADCASTERS
via Media Post by Wendy Davis on 5/16/2017

Online video distributor FilmOn has settled its long-running copyright battle with broadcasters, the Web company's attorney confirmed Tuesday.

JUDGE TO DECIDE VEXING QUESTION IN ENTERTAINMENT: LICENSE NEEDED TO SHOW BODY TATTOOS?
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 5/16/2017

A judge lets Take-Two, publisher of 'NBA 2K,' seek declaratory judgment against the owner of a tattoo design featured on LeBron James' body.

ABS V. CBS - WHY THE 9TH CIRCUIT SHOULD CORRECT THE DISTRICT COURT'S MISTAKE REGARDING SOUND RECORDINGS
via Mostly IP History by Zvi S. Rosen on 5/16/2017

Even more than most, this post is my opinion only, and reflects views and opinions that should only be imputed to me.

DIDDY'S RECORD CO. SUED FOR POSTING INSTAGRAM PHOTO OF HIM
via Intellectual Property Law360 by Bill Donahue on 5/16/2017
URL: https://www.law360.com/ip/articles/924524

Puff Daddy's Bad Boy Records was hit with a copyright lawsuit in Manhattan federal court Monday for posting an image of the hip-hop star on his own Instagram account.

OCULUS WANTS ZENIMAX SANCTIONED OVER $500M COPYRIGHT SUIT
via Intellectual Property Law360 by Nicole Narea on 5/16/2017
URL: https://www.law360.com/ip/articles/924724

Facebook subsidiary Oculus VR asked a Texas federal court Tuesday to impose sanctions on video game developer ZeniMax Media for allegedly violating multiple court orders by neglecting to disclose 1,300 pages of documents related to the copyright infringement suit in which ZeniMax won a $500 million judgment earlier this year.
CAN YOU COPYRIGHT YOUR DUMB JOKE? AND HOW CAN YOU PROVE IT'S YOURS?
via NPR by Laurel Wamsley on 5/16/2017
URL: http://www.npr.org/sections/thetwo-way/2017/05/17/528680860/can-you-copyright-your-dumb-joke-and-how-can-you-prove-its-yours

"Joke theft" sounds funny. Unless you're a comedy writer and you see a late-night TV host telling a joke you wrote. Five times. That's what the writer ...

THE KARDASHIANS CAN'T KEEP UP WITH COPYRIGHT LAW
via National Law Review by Rachel Tarko Hudson on 5/17/2017
URL: http://www.natlawreview.com/article/kardashians-can-t-keep-copyright-law

The youngest Kardashian sister was sued by a photographer for copyright infringement in Xposure Photos UK Ltd v Khloe Kardashian et al, ...

JUDGE EXPLORES BOUNDARIES OF AUTHORSHIP WITH NODS TO 'STAR WARS,' SPIKE LEE AND 'LOVE ACTUALLY'
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 5/17/2017

Modded video games get likened to movies in a tour de force of legal writing.

VIDEO GAME COS. CAN'T AX BLIZZARD, VALVE COPYRIGHT SUIT
via Intellectual Property Law360 by Nicole Narea on 5/17/2017
URL: https://www.law360.com/ip/articles/924966

A California federal judge denied mobile app publishers uCool and Lilith Games' bid for a quick win and sanctions in a copyright suit brought by video game giants Blizzard Entertainment and Valve Corp. alleging they infringed on a "World of Warcraft" spinoff, ruling Tuesday that uCool could not come to the defense of the open source developers who originated the game.

US COURT DECISION WILL DESTROY THE INTERNET, ROAR GOOGLE, FACEBOOK ET AL
via Register by Kieren McCarthy on 5/17/2017
URL: https://www.theregister.co.uk/2017/05/17/copyright_infringement_google_facebook/

Due to the impossible task of tracking their copyrighted works across the internet, some companies have resorted to automated software that throws ...
SUMMARY: 34RD SESSION OF WIPO'S COPYRIGHT COMMITTEE (SCCR)
via YouTube by WIPO on 5/17/2017
URL: https://www.youtube.com/watch?v=xCK2VrslEMs

Michele Woods, Director of WIPO's Copyright Law Division, and the Secretary of WIPO's Standing Committee on Copyright and Related Rights (SCCR), gives a brief summary of the Committee's 34rd session, held May 1-5 2017, at WIPO Headquarters in Geneva.

PIRATE BAY'S BIGGEST RIVAL SHUT DOWN PERMANENTLY AS ILLEGAL CONTENT SHARING CRACKDOWN CONTINUES
via Mirror by Jeff Parsons on 5/18/2017
URL: http://www.mirror.co.uk/tech/pirate-bays-biggest-rival-shut-10447307

"Copyright owners are monitoring peer-to-peer (file-sharing) networks to ... "The campaign was initiated by the creators of copyrighted material, and ..."

INITIAL ARTIFEX RULING IS A VICTORY FOR OPEN-SOURCE SOFTWARE
via Intellectual Property Law360 by Heather Meeker et al. on 5/18/2017
URL: https://www.law360.com/ip/articles/922171

The U.S. District Court for the Northern District of California[1] recently issued an opinion that is being hailed as a victory for open-source software. In this case, the court denied a motion to dismiss a lawsuit alleging violation of an open-source software license, paving the way for further action enforcing the conditions of the GNU General Public License ("GPL").

TEXAS A&M SAYS IT'S IMMUNE FROM '12TH MAN' COPYRIGHT SUIT
via Intellectual Property Law360 by Zachary Zagger on 5/18/2017
URL: https://www.law360.com/ip/articles/925704

Texas A&M University on Wednesday urged a Texas federal court to toss copyright claims over a story published on a school website on the origin of the "12th Man" football fan tradition, arguing that the plaintiffs cannot avoid the university's protection from suit as a state entity by going after the athletics department and its employees.

GA. LAWANNOTATION RULING RESTRICTS RIGHTS, 11TH CIRC. TOLD
via Intellectual Property Law360 by Matthew Guarnaccia on 5/18/2017
URL: https://www.law360.com/ip/articles/925485

A transparency group urged the Eleventh Circuit on Wednesday to reverse a Georgia district court's finding that Georgia can copyright annotations made to its official legal code, saying the decision unfairly restricts public citizens' access to state law.
DOJ ASKS 2ND CIRC. TO OVERTURN BMI FRACTIONAL-LICENSE RULING
via Intellectual Property Law360 by Melissa Daniels on 5/18/2017
URL: https://www.law360.com/ip/articles/925904

The U.S. Department of Justice defended its recent interpretation of a 75-year-old antitrust agreement with BMI governing the licensing of music performance rights at the Second Circuit on Thursday, saying a lower court judge incorrectly found the consent decree allows fractional licensing of compositions.

DC CIRC. URGED TO AFFIRM STREAMING ROYALTY RATES
via Intellectual Property Law360 by Melissa Daniels on 5/18/2017
URL: https://www.law360.com/ip/articles/925590

The Copyright Royalty Board on Wednesday urged the D.C. Circuit to sign off on digital streaming music rates in response to a challenge from royalty-collecting company SoundExchange, saying the new rates were properly based off previously reached license agreements pursuant to the Copyright Act.

DMCA 2.0: A POTENTIAL SHIFT IN SAFE HARBOR JURISPRUDENCE
via Intellectual Property Law360 by Scott Sholder on 5/19/2017
URL: https://www.law360.com/ip/articles/923223

The Digital Millennium Copyright Act of 1998 is almost 20 years old, and while the statute hasn't evolved, the internet has, and with it - albeit at a slower pace - the common law interpreting the DMCA. The scope and applicability of the "safe harbor" provision of the DMCA, 17 U.S.C. § 512(c), has been a hot topic in the federal courts for years, but litigants and courts may be shifting their attention toward less scrutinized areas of the safe harbor.

MOVING THE U.S. COPYRIGHT OFFICE INTO THE DIGITAL AGE
via Global Intellectual Property Center by Courtney Paul on 5/19/2017

Advances in technology and the advent of the digital landscape have revolutionized the way we create, publish, and consume content.

PHOTOG FIGHTS TO KEEP BASEBALL FIGHT PHOTO SUIT ALIVE
via Intellectual Property Law360 by Fola Akinnibi on 5/19/2017
URL: https://www.law360.com/ip/articles/926175

A Dallas sports photographer asked a New York federal judge not to toss his copyright suit over unauthorized copies of a widely distributed image of a fight involving two major league baseball
players on Thursday, arguing that discovery will prove the court's jurisdiction over a chain of sports memorabilia shops.

11TH CIRC SAYS COPYRIGHT REGISTRATION NEEDED BEFORE SUIT
via Intellectual Property Law360 by Kat Greene on 5/19/2017
URL: https://www.law360.com/ip/articles/926067

The Eleventh Circuit on Thursday found that a copyright holder can't bring an infringement suit until its application for copyright is approved by the registrar, deepening a circuit split on the issue in a ruling on a case over online financial news articles.

KHLOE KARDASHIAN'S INSTAGRAM COPYRIGHT MISTAKE
via The Illusion of More by David Newhoff on 5/20/2017
URL: http://illusionofmore.com/khloe-kardashians-instagram-copyright-mistake/

For all the attention paid to music and motion picture piracy, the most chronically infringed works via the internet has got to be photographs. The speed and volume with which photos are uploaded and redistributed by both ... 

PHOTOGRAPHER SUES THE REPUBLICAN NATIONAL COMMITTEE FOR COPYRIGHT INFRINGEMENT
via Peta Pixel by Michael Zhang on 5/20/2017
URL: https://petapixel.com/2017/05/20/photographer-sues-republican-national-committee-copyright-infringement/

A Montana-based photographer has filed a lawsuit against the Republican National Committee, accusing the RNC of willfully infringing upon her ...

COPYRIGHT LAW AND NEW TECHNOLOGIES: A LONG AND COMPLEX RELATIONSHIP
via Copyright: Creativity at Work by Brad Greenberg on 5/22/2017

Copyright law and new technologies have a long history, arguably dating back to the Gutenberg Press in the 15th century-more than 200 years before passage of the matriarch of copyright statutes, Britain's Statute of Anne.
NINTH CIRCUIT: USE OF MODERATORS THREATENS DMCA SAFE HARBOR PROTECTION
via IPLJ by Gilad Lindenfeld on 5/22/2017

In a recent decision, the Ninth Circuit held that the use of moderators may cause an online service provider to be ineligible for the safe harbor from copyright infringement liability provided under the DMCA.

JUSTICES DENY ABBOTT & COSTELLO HEIRS' COPYRIGHT APPEAL
via Intellectual Property Law360 by Cara Bayles on 5/22/2017
URL: https://www.law360.com/ip/articles/926682

The U.S. Supreme Court on Monday declined to hear an appeal that would revive a copyright case against the producers of a popular Broadway play that features the famous "Who's on First?" comedy routine pioneered by comedy duo Abbott and Costello.

THE DEEPENING APPELLATE DIVIDE OVER WHEN COPYRIGHT OWNERS CAN SUE
via Reuters by Alison Frankel on 5/22/2017
URL: http://www.reuters.com/article/us-otc-copyright-idUSKBN18I2GQ

Wall-Street.com that copyright holders can't sue for infringement until the U.S. Copyright Office has registered their works, deepening a split in the ... 

11TH CIRCUIT HOLDS THAT COPYRIGHT REGISTRATION (NOT AN APPLICATION) IS NECESSARY TO COMMENCE A COPYRIGHT INFRINGEMENT CLAIM
via The Entertainment, Arts and Sports Law Blog on 5/22/2017
URL: http://nysbar.com/blogs/EASL/2017/05/11th_circuit_holds_that_copyri.html

11th Circuit's opinion summarizes the circuits' split on the question of what "Registration" of a copyright as a precondition to filing suit for copyright infringement means.

STRIKE 3 FOR ABBOTT & COSTELLO HEIRS' 'WHO'S ON FIRST' COPYRIGHT DISPUTE
via New York Law Journal by P.J. D'Annunzio on 5/22/2017
URL: http://www.newyorklawjournal.com/id=1202786872498/Strike-3-for-Abbott--Costello-Heirs-Whos-on-First-Copyright-Dispute

After a swing and a miss at both the trial court and appellate level, a copyright infringement lawsuit over the use of comedy duo Bud Abbott and Lou ...
COURT DENIES ISP DECLARATORY RELIEF ON DMCA PROTECTION
via New York Law Journal by Stephen M. Kramarsky on 5/22/2017
URL: http://www.newyorklawjournal.com/id=1202786850542/Court-Denies-ISP-Declaratory-Relief-on-DMCA-Protection

Windstream is an ISP; BMG owns, administers and licenses copyrights in musical compositions. (You can probably guess where this is going.) Some ...

GOOGLE, FACEBOOK, OTHER TECH COMPANIES WEIGH IN ON BATTLE OVER PAPARAZZI PHOTOS
via MediaPost by Wendy Davis on 5/22/2017
URL: https://www.mediapost.com/publications/article/301611/google-facebook-other-tech-companies-weigh-in-on.html

In 2012, Mavrix alleged that LiveJournal's gossip site OhNoTheyDidn't illegally posted copyrighted photos of Katy Perry and Beyonce.

WIKIPEDIA SAYS AUSTRALIANS 'BREAK THE LAW EVERYDAY' ON COPYRIGHT AND DEMANDS REFORM
via Business Insider on 5/22/2017

Fair use allows copyrighted material to be used freely in "fair" circumstances that don't affect the earning power of the author. Wikipedia, based in the ...

DISNEY SEEKS DISMISSAL OF 'ZOOTOPIA' COPYRIGHT LAWSUIT

The studio tells a judge that its hit animated film is nothing like the one pitched by the writer of "Total Recall.

PRODUCT LABELS AND THE ORIGINS OF COPYRIGHT EXAMINATION
via Mostly IP History by Zvi S. Rosen on 5/23/2017

A foundational story about the development of copyright in America is the question of whether product labels could - or should - be protected by copyright.
DISNEY WANTS 'ZOOTOPIA' COPYRIGHT CASE KILLED
via Intellectual Property Law360 by Bill Donahue on 5/23/2017
URL: https://www.law360.com/ip/articles/927375

The Walt Disney Co. asked a federal judge Monday to toss out a copyright lawsuit claiming the studio stole its smash hit "Zootopia" from a screenwriter's unproduced treatment, calling the case a classic example of "out of the woodwork" accusations after a movie strikes box office gold.

NO COURT HAS EVER NIXED A FAIR USE VERDICT, GOOGLE SAYS
via Intellectual Property Law360 by Bill Donahue on 5/23/2017
URL: https://www.law360.com/ip/articles/910610

Google Inc. urged the Federal Circuit on Monday not to revive an $8.8 billion copyright lawsuit filed against the company by Oracle, warning that "no court" has ever overturned a jury verdict on fair use - and "this is no time to start."

DOES GOOGLE CLAIM SOME INVALID COPYRIGHTS?
via The Illusion of More by David Newhoff on 5/23/2017
URL: http://illusionofmore.com/does-google-claim-some-invalid-copyrights/

I assume it's well understood by now that the biggest, corporate antagonist to intellectual property rights is Google. The company has backed an impressive array of academia, press, lobbying, and activism, all generally evangelizing the message worldwide that ...

DISNEY ASKS JUDGE TO TOSS OUT 'ZOOTOPIA' COPYRIGHT CLAIM
via World IP Review on 5/24/2017

The Walt Disney Company has asked a federal judge to toss out a copyright lawsuit alleging that it infringed a screenwriter's work in its "Zootopia" film.

TIME FOR THE TRUTH TO INTERFERE WITH THE COPYRIGHT BATTLE IN AUSTRALIA
via Business Insider by Kate Haddock on 5/24/2017

Journalists who investigate and reveal facts, and respected commentators whose informed opinions generate discussion, are vital to democracy at a ...
BEST PRACTICES FOR USING THIRD-PARTY CONTENT ON YOUR COMPANY’S WEBSITE
via National Law Review by Orla M. O'Hannaidh on 5/24/2017

Establish and maintain a database of your own copyrighted images and other content (such as if your employees have taken photos or created ...

RAABTA: MAGADHEERA MAKERS MOVE COURT AGAINST FILM OVER COPYRIGHT INFRINGEMENT
via Hindustan Times by Sandeep Acharya on 5/24/2017

Geeta Arts, the makers of Ram Charan starrer Magadheera, have approached the court over copyright infringement by Sushant Singh starrer Raabta.

MAKERS OF MAGADHEERA TO APPROACH COURT AGAINST RAABTA OVER COPYRIGHT INFRINGEMENT
via Times of India by Jayakrishnanl on 5/24/2017

The makers of blockbuster Telugu movie 'Magadheera', have moved to city civil court in Hyderabad on Wednesday against the release of Kirti Sanon ...

CYBERATTACK EFFECT IN CHINA REVEALS FLAW IN PIRACY LOGIC
via The Illusion of More by David Newhoff on 5/25/2017
URL: http://illusionofmore.com/cyberattack-effect-in-china-flaw-piracy-logic/

This month, computers around the world fell victim to what experts have called the largest cyberattack on record. Known by its name "WannaCry," the ransomware* assault went global sending cyber-defense teams into hyperdrive trying to protect systems as vital as ...

THE COPYRIGHT OFFICE IS ON A RULEMAKING ROLL
via Copyright: Creativity at Work by Sarang Damle on 5/25/2017
URL: http://blogs.loc.gov/copyright/2017/05/the-copyright-office-is-on-a-rulemaking-roll/

Those of you who subscribe to our NewsNet service may have noticed that, over the past year, the Copyright Office has gone on a rulemaking tear.
‘TIMELESS' LAWSUIT QUIETLY DISAPPEARS
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 5/25/2017
URL: http://www.hollywoodreporter.com/thr-esq/timeless-lawsuit-quietly-disappears-1007673

A Spanish producer had claimed the series was a copycat.

MUZAK ASKS DC CIRC. TO RETHINK COPYRIGHT ROYALTY RULING
via Intellectual Property Law360 by Bill Donahue on 5/25/2017
URL: https://www.law360.com/ip/articles/928484

Music provider Muzak on Thursday asked the D.C. Circuit to rethink a decision that revived an unusual lawsuit that claims the company is using an obscure grandfather clause to "cheat artists," saying that the ruling was "demonstrably" incorrect.

PEAK GAMES AND HASBRO SETTLE MOBILE GAME COPYRIGHT DISPUTE
via World IP Review on 5/25/2017

Peak Games and Hasbro, the creator of "My Little Pony", have reached an out-of-court settlement over their copyright infringement case surrounding a ...

SOME CURIOSITIES OF THE COPYRIGHT WORLD
via Hugh Stephens Blog on 5/26/2017
URL: http://hughstephensblog.net/2017/05/26/some-curiosities-of-the-copyright-world/

In Lewis Carroll's classic (1865) children's story, Alice in Wonderland, Alice remarked that things got "curious and curioser" as she entered her mysterious world. Curious and curioser is certainly one way to describe some of the things that have been happening in the copyright world lately.

BLOCKAI REBRANDS AS BINDED, RAISES $950K MORE FOR COPYRIGHT PLATFORM
via PetaPixel by Michael Zhang on 5/27/2017
URL: https://petapixel.com/2017/05/27/blockai-rebrands-binded-raises-950k-copyright-platform/

A new copyright protection service called Binded just launched this week. It's actually a rebrand of the company formerly known as Blockai, and the ...
ARE COPYRIGHT AND PATENT OVERLAPPING OR MUTUALLY EXCLUSIVE IN PROTECTING SOFTWARE INNOVATIONS?
via Patent Law Blog (Patently-O) by Pamela Samuelson on 5/27/2017
URL: https://patentlyo.com/patent/2017/05/overlapping-protecting-innovations.html

"Neither the Copyright Statute nor any other says that because a thing is patentable it may not be copyrighted. We should not so hold." So said the Supreme Court in Mazer v. Stein, 347 U.S. 201, 217 (1954).

MORE THAN 60 GROUPS, COMPANIES URGES EU TO STEP UP COPYRIGHT REFORM
via Intellectual Property Watch by William New on 5/29/2017
URL: https://www.ip-watch.org/2017/05/29/60-groups-companies-urge-eu-step-copyright-reform/

A range of civil society groups and companies today urged the European Union to embrace a more ambitious agenda for reform of the Union's copyright law.

SPOTIFY AGREES TO FUND TO SETTLE COPYRIGHT SUITS
via Daily Mail on 5/29/2017
URL: http://www.dailymail.co.uk/wires/afp/article-4553180/Spotify-agrees-fund-settle-copyright-suits.html

... recklessly putting music online without securing mechanical rights -- the permission to reproduce copyrighted material -- from the tracks' composers.

COPYRIGHT COALITION DEMANDS 'AMBITIOUS' EU COPYRIGHT REFORM
via IP Pro The Internet by Barney Dixon on 5/29/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5477

The letter, written by members of the Copyright for Creativity (C4C) initiative and addressed to members of European Parliament, argued that the ...

REDIGI IS NOT ABOUT CONSUMER RIGHTS
via The Illusion of More by David Newhoff on 5/30/2017
URL: http://illusionofmore.com/redigi-is-not-about-consumer-rights/

Source photo by jgroup ReDigi is a business venture whose revenue model is based on brokering online transactions between sellers and buyers of "used" music files. A prospective seller has a collection of legally-purchased digital files of songs purchased from ...
'SULLY' PRODUCERS FACE AIRPLANE CONSULTANT'S COAUTHORSHIP CLAIM
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 5/30/2017

After selling producers a plane, Scott Heger is looking to establish the Clint Eastwood film depended on his creativity.

IRISH MUSIC INDUSTRY SHARES 'SAFE HARBOUR' COPYRIGHT CONCERNS IN BRUSSELS
via Irish Times by Laura Slattery on 5/30/2017

Representatives of the Irish Music Rights Organisation (IMRO) met Irish MEPs in Brussels on Tuesday to discuss the importance to the music industry ...

MICROSOFT OBTAINS INJUNCTION AGAINST IP INFRINGER
via World IP Review on 5/30/2017

Microsoft has obtained a permanent injunction and default judgment against a company accused of infringing its trademarks and copyright. In October ...

SPOTIFY TO PAY $43M TO END SONGWRITER ROYALTIES DISPUTE
via Intellectual Property Law360 by Bill Donahue on 5/30/2017
URL: https://www.law360.com/ip/articles/929219

Spotify has agreed to pay $43 million to settle class action copyright litigation claiming the streaming service failed to pay proper royalties to thousands of songwriters.

GOOGLE, NETFLIX BACK DOJ IN 2ND CIRC. MUSIC LICENSING FIGHT
via Intellectual Property Law360 by Matthew Guarnaccia on 5/30/2017
URL: https://www.law360.com/ip/articles/929585

Google, Netflix and other industry giants threw their support behind the U.S. Department of Justice in a dispute with Broadcast Music Inc. over the use of fractional licenses for music, telling the Second Circuit that allowing this partial ownership would raise prices and create a greater risk for copyright infringement.
DANCING BABY COPYRIGHT CASE 'CANNOT WAIT,' HIGH COURT TOLD
via Intellectual Property Law360 by Bill Donahue on 5/30/2017
URL: https://www.law360.com/ip/articles/929004

The woman behind the so-called dancing baby copyright case is pushing back on arguments from the Trump administration that the U.S. Supreme Court should pass on the case, saying the Digital Millennium Copyright Act questions presented by the case "cannot wait."

COPYRIGHT REGISTRATIONS FOR EMOTICONS AND EMOJIS
via Technology & Marketing Law Blog by Eric Goldman on 5/31/2017
URL: http://blog.ericgoldman.org/archives/2017/05/copyright-registrations-for-emoticons-and-emojis.htm

In my Emojis and the Law paper, I analyzed when individual emojis and emoticons, emoticon and emoji sets and emoji "house styles" may be copyrightable.

DRAKE BEATS LAWSUIT OVER SAMPLING WITH WINNING "FAIR USE" ARGUMENT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 5/31/2017

Drake, along with various associated record labels and music publishers, pulled off an impressive achievement on Tuesday by convincing a judge that his song, "Pound Cake/Paris Morton Music 2," off the 2013 album, Nothing Was the Same, fairly sampled a 1982 spoken-word recording, "Jimmy Smith Rap," and that there is no liability for copyright infringement.

INCREASE IN IP-BASED EXTORTION REVEALS TRUE NATURE OF PIRACY
via Mister Copyright by Kevin Madigan on 5/31/2017

Earlier this month, an unprecedented worldwide cyberattack nicknamed WannaCry debilitated computer systems in over 150 countries, with the virus's architects demanding payments to reinstate victims' access to their own computers and files.

NFL URGES 2ND CIRC. NOT TO REVIVE PHOTOGS' ROYALTIES ROW
via Intellectual Property Law360 by Matthew Perlman on 5/31/2017
URL: https://www.law360.com/ip/articles/929678

The National Football League on Tuesday urged the Second Circuit not to revive a suit brought against the league and the Associated Press over royalty payments for photographs, arguing that the copyright and antitrust claims against it were rightfully dismissed.
KEY IP CONSIDERATIONS FOR THE COMPUTER GAMING INDUSTRY
via Intellectual Property Law360 by Mitchell Feller on 5/31/2017
URL: https://www.law360.com/ip/articles/929862

The computer game industry is a significant and growing market. The 2016 global market exceeded $100 billion and projections show this amount growing significantly in the future.[1] Game companies in this market come in all sizes, from enormous multinational companies, to small indie startups with only a few, or even one, employee. No matter the scale of the company, many aspects of games can be subject to intellectual property protection and copyrights, trademarks and even patents have been important issues that companies in this market have...

DRAKE MADE FAIR USE OF SONG SAMPLE, JUDGE RULES
via Intellectual Property Law360 by Bill Donahue on 5/31/2017
URL: https://www.law360.com/ip/articles/929954

A New York federal judge ruled Wednesday that Drake was protected by copyright's fair use doctrine when he sampled a spoken-word jazz track on his 2013 song "Pound Cake," saying the hip-hop star had transformed the purpose of the clip.

DRAKE KNOCKS OUT JAZZ LEGEND IN COPYRIGHT BATTLE
via Courthouse News Service by Adam Klasfeld on 5/31/2017
URL: https://www.courthousenews.com/drake-knocks-jazz-legend-copyright-battle/

Lashing out against the then-emerging hip-hop genre in a 1982 spoken-word album, the late musician Jimmy Smith sneered ...

MEXICO'S HOTEL CALIFORNIA RESPONDS TO EAGLES' COPYRIGHT LAWSUIT
MEXICAN HOTEL DENIES BAND'S ...
via Rolling Stone by Daniel Kreps on 5/31/2017

The owners of Hotel California, a hotel located in Todos Santos, Mexico, have responded to the Eagles' "meritless" trademark infringement lawsuit.
MAINE LAWMAKERS CONSIDER COPYRIGHTING PUBLIC MEETING AUDIO
via Washington Times by Marina Villeneuve on 5/31/2017

A Legislative Council committee is currently considering adding a copyright or disclaimer to the recordings to keep them from being used out of context ...

'ZORRO' LAWSUIT PARRIES PAST MOTION TO DISMISS
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 5/31/2017

A playwright has another swipe at proving Zorro should be in the public domain.

JUDGE ADVANCES FIGHT OVER 'ZORRO' MUSICAL
via Courthouse News Service by Maria Dinzeo on 5/31/2017
URL: https://www.courthousenews.com/judge-advances-fight-zorro-musical/

Taking these assertions as true, plaintiff has adequately alleged a claim for copyright infringement, and defendants' motion to dismiss is therefore ...
June 2017

WIKIPEDIA CALLS FOR AUSTRALIAN FAIR USE
via IP Pro The Internet by Barney Dixon on 6/1/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5481

Adding its voice to a chorus of groups, including Google and Facebook, which argue that a fair use exception would "future proof the Copyright Act", ...

VIDEO GAME STREAMING BRINGS NEW LEVEL OF COPYRIGHT ISSUES
via Intellectual Property Law360 by Marco Martemucci & Aaron Swerdlow on 6/1/2017
URL: https://www.law360.com/ip/articles/920036

Streaming video game content is big business. User-created gameplay videos, live gameplay streaming, and esports tournament video coverage have become an increasingly prevalent part of the burgeoning gaming ecosphere. Juniper Research recently reported that streaming and esports game content will generate $3.5 billion by 2021, nearly double the 2016 total of $1.8 billion. Multinational brands, consumers, advertisers, investors and esports athletes are flocking to streaming game content, vying for revenue from advertising, digital tickets, subscriptions and game purchases. Amazon.com Inc.'s esports streaming site, Twitch, alone is...

ONTARIO 150 GIANT RUBBER DUCK COMES WITH COPYRIGHT DISPUTE
via Toronto Sun by Antonella Artuso on 6/1/2017

A large rubber duck that's supposed to spread joy in the Canada 150 celebrations is leaving a messy controversy in its wake. An ugly war of words has ...

MOTION TO DISMISS DENIED IN RECENT GNU GPL CASE
via Free Software Foundation - FSF Blogs by Donald Robertson III on 6/1/2017

A case in the United States involving the GNU GPL made headlines recently with a denial of a motion to dismiss.
FOOD NETWORK SUED OVER SNOW GLOBE CUPCAKES HOW-TO VIDEO
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 6/1/2017

Lists of ingredients aren't protected by copyright, but recipe how-to videos might be.

HOW A RIGID FAIR-USE STANDARD WOULD HARM FREE SPEECH AND FUNDAMENTALLY UNDERMINE THE INTERNET
via Los Angeles Times by Art Neill on 6/1/2017

Fair use is copyright law's safety valve, protecting our ability to make social, political and cultural commentary and criticism. It is a societal asset we ...

MOZILLA, OTHERS FILE AMICUS BRIEFS IN GOOGLE, ORACLE SUIT
via Intellectual Property Law360 by Kelcee Griffis on 6/1/2017
URL: https://www.law360.com/ip/articles/930578

The American Antitrust Institute, Mozilla Corp., dozens of computer scientists and other groups filed amicus briefs before the Federal Circuit on Thursday, generally supporting the reign of fair use in Google's $8.8 billion copyright spat with Oracle.

ABSENT COMMERCIAL USE, COPYRIGHT LAW LIKELY PREEMPTS RIGHT OF PUBLICITY CLAIMS
via National Law Review by Lynne Boisineau on 6/1/2017
URL: http://www.natlawreview.com/article/absent-commercial-use-copyright-law-likely-preempts-right-publicity-claims

... claim is to "vindicate misuse of an individual's likeness" rather than attempting to stop the distribution, display or performance of a copyrighted work.

DRAKE BEATS COPYRIGHT CLAIM WITH FAIR USE ARGUMENT
via World IP Review on 6/2/2017

Rapper Drake has won a copyright infringement lawsuit after a federal judge ruled his sampling of a spoken-word jazz track was fair use. In his song ...
CAN WE EVER END LEGALIZED PIRACY?
via The Illusion of More by David Newhoff on 6/2/2017
URL: http://illusionofmore.com/can-we-ever-end-legalized-piracy/

Creators of every stripe must watch Miranda Mulholland's May 24th speech delivered to the Economic Club of Canada.

VIACOM, GOOGLE ON SAME COPYRIGHT PAGE IN APPELLATE FIGHT OVER MUSIC LICENSING
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 6/2/2017
URL: http://www.hollywoodreporter.com/thr-esq/viacom-google-same-copyright-side-appellate-fight-music-licensing-1009785

The 2nd Circuit Court of Appeals hears arguments whether the Justice Department is right to bar BMI from issuing fractional licenses.

COPYRIGHT OFFICE LAUNCHES ONLINE DATABASE OF REVIEW BOARD DECISIONS
via Copyright: Creativity at Work by Abioye Mosheim on 6/2/2017
URL: http://blogs.loc.gov/copyright/2017/06/copyright-office-launches-online-database-of-review-board-decisions/

Today, the Office is pleased to announce the launch of an online database of recent decisions (April 2016 to present) made by the Copyright Office Review Board and will update the database as new decisions are issued.

TIFFANY EMBROİLED İN COPYRIGHT CLAIM WITH PHOTOGRAPHER
via World IP Review on 6/4/2017

Jewellery company Tiffany has become embroiled in a copyright infringement claim brought by a photographer. Peter Gould, based in New York, filed ...
CUPCAKE WARS: BLOGGER SUES FOOD NETWORK OVER SNOW GLOBE RECIPE VIDEO
via Washington Post by Derek Hawkins on 6/5/2017

Because recipes can't (for the most part) be copyrighted, LaBau's lawsuit focuses specifically on the video that helped popularize the snow globe ...

JUST ONE LLC, RUNNERS CLOTHING INTERNATIONAL INC. ACCUSED OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 6/5/2017

A California corporation alleges that one of its fabric designs was unlawfully used. Universal Dyeing & Printing Inc. filed a complaint ...

IHEART RADIO BEATS PRE-1972 SONG SUIT IN ILL.
via Intellectual Property Law360 by Bill Donahue on 6/5/2017
URL: https://www.law360.com/ip/articles/931287

An Illinois federal judge on Monday tossed out a class action aimed at forcing radio giant iHeartMedia Inc. to start paying royalties for pre-1972 sound recordings, ruling that any copyright protection afforded by the state's common law is extinguished when a song is published.

PTB SALES INC. ACCUSED OF COPYRIGHT INFRINGEMENT BY BROOKS AUTOMATION
via Northern California Record by Wadi Reformado on 6/5/2017

Brooks Automation Inc. filed a complaint on May 23 in the U.S. District Court for the Central District of California, Western Division against PTB Sales ...
ELEVENTH CIRCUIT JOINS SPLIT COURT DECISIONS ON REGISTRATION PRECONDITION FOR COPYRIGHT SUITS
via National Law Review by Edwin Komen on 6/5/2017

Section 411(a) of the Copyright Act generally requires copyright registration, or a refusal of registration, before a copyright action may be filed. This has ...

TV CHANNEL SUED OVER SNOW GLOBE CUPCAKE VIDEO
via World IP Review on 6/5/2017

Elizabeth LaBau filed a copyright infringement claim at the US District Court for the Central District of California on Thursday, June 1. LaBau owns a ...

VALENTINO SLAPS STEVE MADDEN WITH COPYRIGHT SUIT, ALLEGING "STRIKING" COPIES
via Fashion Law on 6/6/2017

After being slapped with a copying lawsuit by Dr. Martens, Steve Madden has added another case to its list of pending lawsuits: One from Valentino.

DISTRACTIFY INC. ALLEGED TO HAVE USED COPYRIGHTED MEDIA WITHOUT AUTHORIZATION
via Northern California Record by Wadi Reformado on 6/6/2017
URL: http://norcalrecord.com/stories/511121148-distractify-inc-alleged-to-have-used-copyrighted-media-without-authorization

Distractify Inc. alleged to have used copyrighted media without authorization ... According to the complaint, the plaintiffs are the copyright owners of a ...
'ZOOTOPIA' LAWSUIT: PLOT SIMILARITIES DETAILED BY WRITER SUING DISNEY
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 6/6/2017

Esplanade Pictures sued Disney in March, claiming its film copied the work of writer Gary L. Goldman who had pitched his franchise idea to the animation powerhouse in 2000 and 2009.

PRODUCERS SHOULD GET FEES FOR ‘WHO’S ON FIRST’ CASE: JUDGE
via Intellectual Property Law360 by Bill Donahue on 6/6/2017
URL: https://www.law360.com/ip/articles/931474

A federal magistrate judge on Monday recommended that the heirs of comedy duo Abbott and Costello pay more than $50,000 in attorneys’ fees for filing an unsuccessful copyright lawsuit against the producers of a popular Broadway play that featured the duo’s famous "Who's on First?" comedy routine.

ROYAL PRINTEX INC. FILES COPYRIGHT INFRINGEMENT SUIT AGAINST RAINBOW USA, OTHERS
via Northern California Record by June 6, 2017 on 6/6/2017
URL: http://norcalrecord.com/stories/511121182-royal-printex-inc-files-copyright-infringement-suit-against-rainbow-usa-others

A Los Angeles County corporation alleges one of its textile designs was copied without its permission. Royal Printex Inc. filed a ...

MAGISTRATE JUDGE OKS $50K IN FEES FOR LAWYERS IN 'WHO'S ON FIRST?' CASE
via New York Law Journal by P.J. D'Annunzio on 6/6/2017
URL: http://www.newyorklawjournal.com/id=1202788857395/Magistrate-Judge-OKs-50K-in-Fees-for-Lawyers-in-Whos-on-First-Case

The lawyers who successfully defended the creators of a play that used Abbott and Costello's famous "Who's on First" gag from copyright infringement ...

MACY'S SETTLES COPYRIGHT CLASH WITH CHRISTMAS JUMPER COMPANY
via World IP Review on 6/7/2017

A copyright dispute between holiday-themed apparel company Tipsy Elves and retailer Macy's has been dismissed, after both parties agreed to a ...
HOME DESIGNER LOOKS LIKE A COPYRIGHT TROLL, 7TH CIRC. SAYS
via Intellectual Property Law360 by Bill Donahue on 6/7/2017
URL: https://www.law360.com/ip/articles/932269

The Seventh Circuit on Tuesday booted a copyright lawsuit that architecture firm Design Basics filed against a homebuilder, likening the company’s litigation strategy to that of an “intellectual property troll.”

JUDGE DISMISSES CLAIM THAT WALL-STREET.COM INFRINGED ON COPYRIGHT
via Florida Record by Elizabeth Alt on 6/7/2017
URL: http://flarecord.com/stories/511123279-judge-dismisses-claim-that-wall-street-com-infringed-on-copyright

Fourth Estate licenses articles to websites but retains the copyrights, ... filed an application to register its allegedly infringed copyrighted articles but did ...

MUSIC AGGREGATOR ACCUSES INSURER OF DUCKING IP COVERAGE
via Intellectual Property Law360 by Cara Salvatore on 6/7/2017
URL: https://www.law360.com/ip/articles/932046

Music company INgrooves, which delivers songs to streaming services, sued insurer Westchester Surplus Lines in California federal court on Tuesday for help paying GooglePlay and Zune Marketplace, which went after INgrooves for indemnification in an underlying suit.

DC CIRC. WON'T RETHINK MUZAK COPYRIGHT ROYALTY RULING
via Intellectual Property Law360 by Kelly Knaub on 6/7/2017
URL: https://www.law360.com/ip/articles/932250

The D.C. Circuit will not rethink a decision that revived an unusual lawsuit claiming that music provider Muzak LLC is using an obscure grandfather clause to “cheat artists,” according to an order issued by the appeals court on Wednesday.

‘STEVE HARVEY’ $42.3M IP SUIT MUST GO TO TRIAL: MUSIC CO.
via Intellectual Property Law360 by Nicole Narea on 6/7/2017
URL: https://www.law360.com/ip/articles/932213

Music production company We 3 Kings Inc. told a California federal judge on Wednesday that “The Steve Harvey Show” and other defendants seeking a quick win in a $42.3 million suit alleging the show’s second season used unlicensed copies of its recordings are "shooting buckshot at a flock of birds" with their disorganized defenses, asking the court to take the case to trial.
LED ZEPPELIN ASKS APPEALS COURT TO AWARD FEES FOR "STAIRWAY" TRIAL WIN
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 6/7/2017

"Skidmore continues to advance frivolous arguments and misstate the law," writes the band's attorney in the brief.

INTELLECTUAL PROPERTY 101: WHAT YOUR BUSINESS NEEDS TO KNOW ABOUT COPYRIGHT LAW
via Forbes by Art Neill on 6/8/2017

Co-authored with Teri Karobonik*. Having an understanding of Intellectual Property law (IP) has become an essential skill for starting and growing a ...

DISNEY CAN’T TOSS ‘ZOOTOPIA’ COPYRIGHT SUIT, WRITER SAYS
via Intellectual Property Law360 by Nicole Narea on 6/8/2017
URL: https://www.law360.com/ip/articles/931981

A film production company has told a California federal court that the Walt Disney Co.'s attempt to toss its copyright suit accusing the studio of stealing much of its smash hit “Zootopia” from a prominent screenwriter’s unproduced treatment tried to distract from substantial resemblances among the works by dissecting them piecemeal.

DEFENSE STRATEGIES IN BILLION-DOLLAR SOFTWARE COPYRIGHT CASES
via Intellectual Property Law360 by Mark Schonfeld & Brooke Penrose on 6/8/2017
URL: https://www.law360.com/ip/articles/924098

In recent years, software developers and their attorneys have struggled to determine which form of intellectual property protection is best to protect their software. Patent protection was considered the most effective method of protection until the U.S. Supreme Court issued its 2014 ruling in Alice Corp. Pty. V. CLS Bank International, which substantially limited the patentability of software. Alice excluded from patent eligibility “abstract ideas” that are implemented using a computer. As a result, many software patents have been invalidated because they fail the test prescribed...
DISNEY, VIDANGEL WEIGH FAMILY-FRIENDLY FILTERING AGAINST COPYRIGHT PROTECTION IN THE 9TH CIRCUIT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 6/8/2017

"In the absence of the Family Movie Act, you've got these works that are encrypted and you use what appears to be illegal software ... to decrypt them," said one judge of VidAngel's service.

STARTUP SUES TO KEEP ACCESS TO PUBLIC LINKEDIN USER DATA
via Intellectual Property Law360 by Kat Greene on 6/8/2017
URL: https://www.law360.com/ip/articles/932567

An employment-focused technology startup asked a California federal court to find it wasn’t breaking copyright laws by scraping public data from LinkedIn users, saying Wednesday the established social networking company was threatening the startup with legal action to keep it from becoming a competitor.

DISNEY SUIT SEEKS TO ‘GUT’ FAMILY MOVIE ACT, 9TH CIRC. HEARS
via Intellectual Property Law360 by Bonnie Eslinger on 6/8/2017
URL: https://www.law360.com/ip/articles/932697

VidAngel urged the Ninth Circuit on Thursday to overturn an injunction secured by Disney and three other studios blocking the “family friendly” content-filtering service from streaming their films, arguing the studios’ copyright suit was an attempt to “gut” the 2005 Family Movie Act.

BUZZFEED SAYS JOURNO SHOULD BE 'PLEASED' PHOTO WAS USED
via Intellectual Property Law360 by Pete Brush on 6/9/2017
URL: https://www.law360.com/ip/articles/933077

BuzzFeed told a New York federal judge Friday that an Italian photojournalist suing the site for copyright infringement should have been happy that his photo of child soldiers in Ukraine was used in its October listicle.

PHOTOGS DROP 2ND CIRC. APPEAL OVER NFL ROYALTIES ROW
via Intellectual Property Law360 by Adam Rhodes on 6/9/2017
URL: https://www.law360.com/ip/articles/932918

The Second Circuit on Thursday sent a dispute between photographers and the National Football League and The Associated Press over royalty payments to mediation after the parties agreed last week to toss the appeal.
EX-VILLAGE PEOPLE STAR SETTLES SONG OWNERSHIP SUIT
via Intellectual Property Law360 by Dave Simpson on 6/9/2017
URL: https://www.law360.com/ip/articles/932842

A former lead singer of disco group The Village People settled a $6 million copyright dispute in California federal court Thursday with a French music publisher who, the singer claimed, wrongly stopped A&E from using the group's songs in a TV movie.

WIPO SEMINAR LOOKS AT PROTECTION OF FOLKLORE
via Intellectual Property Watch by Catherine Saez on 6/11/2017
URL: https://www.ip-watch.org/2017/06/12/wipo-seminar-looks-protection-folklore/

The World Intellectual Property Organization committee in charge of seeking solutions to protect traditional cultural expressions (folklore) from misuse meets this week. On the eve of the meeting, a preambular seminar looked at key policy issues of such protection and if current international instruments could provide for such solutions.

EQUUSTEK DECISION TO BE RELEASED SOON BY SUPREME COURT OF CANADA
via Barry Sookman on 6/12/2017

The decision of the Supreme Court of Canada in the Equustek v Google case is likely going to be an important precedent. It will decide whether a Canadian common law court has the jurisdiction to grant de-indexing orders against search engines to aid in enforcing court injunctions, and if it does, the test to apply in making such orders.

YOUTUBE AND THE MUSIC VALUE GAP
via Hugh Stephens Blog on 6/12/2017
URL: http://hughstephensblog.net/2017/06/12/youtube-and-the-music-value-gap/

Canadian musician, songwriter, boutique record label owner and music festival organizer Miranda Mulholland made quite a splash with her cri de coeur address to the Economic Club of Canada in late May about the challenges facing performers in today’s digital world.

VMWARE BEATS PHOENIX’$110M SOFTWARE IP SUIT AT TRIAL
via Intellectual Property Law360 by Cara Bayles on 6/12/2017
URL: https://www.law360.com/ip/articles/933608

Phoenix Technologies urged a California jury during closing arguments Monday to find VMware owes $110 million for infringing its software copyright and breaching their licensing agreement,
saying jurors only need to find VMware flouted a single licensing term to award the full damages amount.

MONKEY SELFIE' CASE SWINGS TO PETA FITNESS TO REP MACAQUE
via Intellectual Property Law360 by Kelcee Griffis on 6/12/2017
URL: https://www.law360.com/ip/articles/933731

The case of whether monkeys can hold copyrights got more bananas Friday, as PETA and the photographer who allegedly infringed a monkey's IP rights argued over whether a former PETA primatologist's arrest for allegedly harassing the organization's general counsel shows the group is unfit to represent the monkey.

ANGELS AND MONKEYS AT APPEALS COURT
via The Illusion of More by David Newhoff on 6/13/2017
URL: http://illusionofmore.com/angels-and-monkeys-at-appeals-court/

Readers can be forgiven for focusing on court news other than copyright stories these days, but lest you think all the fun is emanating from the White House, here are two items of note this week…

'FRIDAY THE 13TH' Scribe, Producer Trade Blows on Copyright
via Intellectual Property Law360 by Bill Donahue on 6/13/2017
URL: https://www.law360.com/ip/articles/933622

The screenwriter and the producer of "Friday the 13th" filed dueling motions for summary judgment over the writer’s effort to claw back control of the copyrights to the script, battling over whether his union membership legally made him an "employee" when he penned the horror classic.

MOFO HELPS VMWARE BEAT $110M COPYRIGHT SUIT
via Recorder by Ross Todd on 6/13/2017
URL: http://www.therecorder.com/id=1202789725404/MoFo-Helps-VMWare-Beat-110M-Copyright-Suit

It looks like Phoenix claimed VMWare's use of copyrighted software in products designed for servers went beyond the limitations of a license granted...
As part of the agreement announced on Tuesday, the two sides will share their copyright data in order to improve the accuracy of those royalty payouts ...

'Game of Thrones' without nudity? There's an app for that.

The Pirate Bay file-sharing website came under attack from judges at the European Union's top court who warned that giving users free access to a ...

The Pirate Bay can be held liable for copyright infringement, which could signal "the end" of the platform, according to a European Court of Justice ...

Tharp noted federal copyright law applies only to recordings made after Feb. 15, 1972. Though the Sheridans claimed they are victims of common law ...
The European Court of Justice has ruled that those who facilitate sharing of copyrighted material may be liable for infringement.

The U.S. Supreme Court has been asked to decide whether to grant review of a dispute concerning what analysis, if any, a copyright owner must conduct concerning fair use before sending a Digital Millennium Copyright Act takedown notice.

The top European court has ruled the Pirate Bay could be held liable for copyright infringement by users illegally sharing films, TV shows and other...

Swedish website Pirate Bay may have to amend its file-sharing practices after Europe's top court said it may be breaking copyright rules by helping...

A New York man alleges a Woodland Hills company unlawfully used his photograph on its website. Andrew Paul Leonard filed a...
ZULILY, MYSTREE ALLEGED TO HAVE INFRINGED COPYRIGHTED TEXTILE DESIGN FOR GARMENTS
via Northern California Record by Wadi Reformado on 6/14/2017
URL: http://norcalrecord.com/stories/51123694-zulily-mystree-alleged-to-have-infringed-copyrighted-textile-design-for-garments

A Los Angeles corporation and a Seattle company are accused of using a textile design in garments without authorization. Unicolors ...

PIRATE BAY COULD BE DOWN FOR GOOD AFTER EU COURT RULES PIRACY SITE LIABLE FOR COPYRIGHT VIOLATIONS
via International Business Times by Eric Chiu on 6/14/2017

The Pirate Bay has been one of the best-known sites for BitTorrent and piracy, but it could soon be getting sunk. The Court of Justice of the European ...

JUDGE OVERTURNS JURY'S VERDICT THAT 'JERSEY BOYS' IS A COPYRIGHT INFRINGEMENT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 6/14/2017
URL: http://www.hollywoodreporter.com/thr-esq/judge-overturns-jurys-verdict-jersey-boys-is-a-copyright-infringement-1013558

The story of The Four Seasons, the 1960s pop group with mob connections and a long string of hits, was incredible enough to power Jersey Boys.

JUDGE WON'T DEFINE DAMAGES WINDOW FOR JUSTIN TIMBERLAKE
via Courthouse News Service by Josh Russell on 6/14/2017
URL: http://www.courthousenews.com/judge-wont-define-damages-window-justin-timberlake/

Joined by Sony Music and BMG Rights Management, the defendants asked the court to put a three-year cap on PK's claim, barring the copyright ...

COMPOSERS CLAIM MARRIOTT THEATER UNIT COPIED THEIR MUSICAL
via Intellectual Property Law360 by Christopher Crosby on 6/14/2017
URL: https://www.law360.com/ip/articles/934251

Composers of a musical based upon a bestselling memoir are accusing Marriott International of ripping off their show in a West Virginia federal copyright suit filed Tuesday, saying a subsidiary of the hotel chain copied their ideas to spin off a rival production.
9TH CIRC. WON'T REHEAR 'PIRATES' COPYRIGHT CASE
via Intellectual Property Law360 by Melissa Daniels on 6/14/2017
URL: https://www.law360.com/ip/articles/934674

The Ninth Circuit on Wednesday declined to reconsider a decision last month that shut down a long-running copyright lawsuit against Disney over the “Pirates of the Caribbean” franchise.

JUDGE WORKS HIS WAY TO OVERTURNING 'JERSEY BOYS' VERDICT
via Intellectual Property Law360 by Cara Salvatore on 6/14/2017
URL: https://www.law360.com/ip/articles/934713

A Nevada federal judge on Tuesday overturned a jury verdict that the creators of “Jersey Boys,” the musical about Frankie Valli and the Four Seasons, had improperly used material from an unpublished book, saying the panel reached the wrong conclusion after a “tedious and complex” trial.

FEDS ARREST CALIFORNIA MAN FOR POSTING 'DEADPOOL' FULL MOVIE ON FACEBOOK
via Variety by Todd Spangler on 6/14/2017

He was busted after a federal grand jury in April returned an indictment alleging he reproduced and distributed a copyrighted work, based on an ...

EUROPEAN COURT OF JUSTICE RULES PIRATE BAY IS INFRINGING COPYRIGHT
via Guardian by Alex Hern on 6/15/2017

European court of justice rules Pirate Bay is infringing copyright ... files – in the Pirate Bay's case, usually, but not exclusively, copyrighted material.

CJEU CONFIRMS THE PIRATE BAY DOES COMMUNICATE TO THE PUBLIC
via IP Pro The Internet by Mark Dugdale on 6/15/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5498

The Pirate Bay, as a peer-to-peer network that indexes infringing content, is engaging in communications to the public under the Copyright Directive ...
END OF PIRATE BAY? EUROPEAN COURT OF JUSTICE RULES TORRENT SITE LIABLE FOR COPYRIGHT INFRINGEMENT
via International Business Times Sarmistha Acharya on 6/15/2017
URL: http://www.ibtimes.co.uk/end-pirate-bay-european-court-justice-rules-torrent-site liable-copyright-infringement-1626441

The European Court of Justice (ECJ) has ruled that The Pirate Bay (TPB) can be held liable for copyright infringement. The ruling is part of a years-old ...

EUROPE-WIDE BITTORRENT INDEXER BLOCKADE LOOMS AFTER PIRATE BAY BLOW
via Register by Kieren McCarthy on 6/15/2017
URL: https://www.theregister.co.uk/2017/06/15/europe_bittorrent_pirate_bay_block/

Even though these files are submitted by its users, and even though the copyrighted material that the torrent files download are not hosted by The ...

ARTISTS MAKING MERCH SHOULD AVOID COPYRIGHT CONFUSION
via The Illusion of More by David Newhoff on 6/15/2017
URL: http://illusionofmore.com/artists-making-merch-should-avoid-copyright-confusion/

Ars Technica posted an article last month about copyright and tee shirt design that, in my view, jumps past the real story and may confuse a few independent artists out there that they’re opening in some new realm of …

'DANCING BABY' COPYRIGHT CASE THROUGH A PROPER LENS: PART 2
via Intellectual Property Law360 by David Leichtman & Sherli Furst on 6/15/2017
URL: https://www.law360.com/ip/articles/934526

The U.S. Supreme Court has been asked to decide whether to grant review of a dispute concerning what analysis, if any, a copyright owner must conduct concerning fair use before sending a Digital Millennium Copyright Act takedown notice.

JUDGE OVERTURNS 'JERSEY BOYS' COPYRIGHT VERDICT
via Courthouse News Service by Kent Lauer on 6/15/2017
URL: http://www.courthousenews.com/judge-overturns-jersey-boys-copyright-verdict/

Citing the fair-use doctrine, a federal judge overturned a jury verdict and ruled that the creators of “Jersey Boys,” the smash ...
DESIGNERS OF FREEDOM TOWER HIT WITH COPYRIGHT ACTION  
via Courthouse News Service by Josh Russell on 6/15/2017  
URL: http://www.courthousenews.com/designers-freedom-tower-hit-copyright-action/

A federal complaint against the designers and contractors behind New York's Freedom Tower says the structure at One World Trade infringes the ...  

PIRATE BAY MAY BE PILLAGING COPYRIGHT RULES, EU COURT SAYS  
via Intellectual Property Law360 by Kelcee Griffis on 6/15/2017  
URL: https://www.law360.com/ip/articles/934484

An infamous file-sharing website, The Pirate Bay, may be directly violating copyright rules by making movies and music available to the public without the creators’ consent, even though the site itself doesn’t host the content, a top European court ruled Wednesday.  

EUROPEAN COURT RULES ISPS CAN BE FORCED TO BLOCK PIRATE BAY  
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 6/15/2017  

The landmark decision paves the road for further legal action over torrent sites.  

'DR. PHIL' PRODUCTION CO. SUES EX-CBS EMPLOYEE OVER VIDEO  
via Intellectual Property Law360 by Emma Cueto on 6/15/2017  
URL: https://www.law360.com/ip/articles/935100

The production company behind the "Dr. Phil" TV show filed suit Thursday in Texas federal court against a former CBS employee who is currently suing the company for wrongful imprisonment, claiming that before leaving CBS the employee stole a copyrighted video clip of Dr. Phil McGraw in order to extort money from the company.  

KIRTSANG V. WILEY: LESSONS FROM YEAR ONE  
via Intellectual Property Law360 by Bill Donahue on 6/15/2017  
URL: https://www.law360.com/ip/articles/886928

A year later, experts say the impact of the U.S. Supreme Court’s Kirtsaeng v. John Wiley ruling on attorneys’ fees in copyright cases has been clarity and consistency, not a huge change in the ways courts are ruling.
PARLIAMENT PASSES DIGITAL FAIR DEALING FOR COPYRIGHT ACT
via ZDNet by Corinne Reichert on 6/16/2017

The Copyright Amendment (Disability Access and Other Measures) Bill 2017, passed by both Houses of Parliament this week, is an effort to bring ...

EU COURT OF JUSTICE RULING – A NEW CHAPTER?
via The Illusion of More by David Newhoff on 6/16/2017
URL: http://illusionofmore.com/eu-court-of-justice-new-chapter/

This week, the Court of Justice of the European Union concluded what any rational observer would conclude about websites that make large volumes of unlicensed copyrighted works available to the public — that their owners know exactly what …

GRANT WRITING USA INC. ACCUSED OF INFRINGING COPYRIGHTED TEXT
via Northern California Record by Wadi Reformado on 6/16/2017

According to the complaint, the plaintiff alleges that copyrighted text it uses in a pamphlet on grant writing is being used by the defendant in materials it ...

SCOTUS SYMPOSIUM: PATENT LAW & LEGAL PROCESS
via PrawfsBlawg by Joe Miller on 6/17/2017

This past Monday (6/12/17), the Supreme Court issued its sixth (!) patent case of the term, Sandoz v. Amgen.

THE IMPACT OF DRAKE’S FAIR USE COPYRIGHT VICTORY ON MUSIC COPYRIGHT INFRINGEMENT

A few weeks ago, a New York federal judge ruled that Hip-Hop Artist Drake was protected by copyright’s fair use doctrine when he sampled a spoken-word jazz track on his 2013 song “Pound Cake,” saying the artist had transformed the purpose of the clip.
REVISED ARTICLES PROTECTING FOLKLORE HEAD TO WIPO GENERAL ASSEMBLY, FOR BETTER OR WORSE
via Intellectual Property Watch by Catherine Saez on 6/19/2017
URL: https://www.ip-watch.org/2017/06/19/revised-articles-protecting-folklore-head-wipo-general-assembly-better-worse/

Delegations this week agreed on a revised set of draft articles aiming to protect traditional cultural expressions (folklore) from misappropriation, typically for commercial interests. However, several proposals made by the United States, some of which were supported by the European Union, were seen by others as defying the purpose of the potential treaty.

SONGWRITERS ARE LOSING OUT FOR SEVERAL REASONS'
via Nashville Post on 6/19/2017
URL: http://www.nashvillepost.com/business/people/article/20865052/songwriters-are-losing-out-for-several-reasons

The proposal uses a technology-agnostic approach that increases financial flows to creators and labels, but reduces the copyright owner's ability to ...

SUPREME COURT TURNS DOWN "DANCING BABY" COPYRIGHT CASE
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 6/19/2017

The justices decide not to review a dispute triggered when Universal Music ordered the takedown of a YouTube video showing a cute baby dancing to Prince's "Let's Go Crazy."

US TOP COURT TURNS AWAY 'DANCING BABY' COPYRIGHT CASE
via Reuters by Lawrence Hurley & Will Dunham on 6/19/2017
URL: https://www.reuters.com/article/usa-court-song-idUSW1N1GY02J

U.S. top court turns away 'dancing baby' copyright case ... Universal Music Group (UMG), the Vivendi SA-owned unit that enforces Prince's copyrights.

GIRL GUIDES OF CANADA OPPOSE COPYRIGHT TERM EXTENSION! WHAT NEXT?
via Hugh Stephens Blog on 6/19/2017
URL: http://hughstephensblog.net/2017/06/19/girl-guides-of-canada-oppose-copyright-term-extension-what-next/

Who among us has not purchased the ubiquitous Girl Guide cookies (aka Girl Scout cookies in the USA), available outside a supermarket or in a mall of your choice every spring.
SUPREME COURT WON'T HEAR COPYRIGHT BATTLE OVER 'DANCING BABY'
via Media Post by Wendy Davis on 6/19/2017

The judges ruled that content owners can't send takedown requests without first considering whether clips make fair use of copyrighted material.

JUSTICES DECLINE TO HEAR 5 INTELLECTUAL PROPERTY CASES
via Intellectual Property Law360 by Kevin Penton on 6/19/2017
URL: https://www.law360.com/ip/articles/935961

As the U.S. Supreme Court nears the end of its term, it performed some legal housecleaning Monday by declining to hear five intellectual property cases involving copyrights, trade secrets and patents for companies in the technology and telecommunications sectors.

SUPREME COURT TURNS DOWN EFF’S “DANCING BABY” FAIR USE CASE
via Ars Technica by Joe Mullin on 6/19/2017

The Supreme Court has decided not to take up the case of Lenz v. Universal, a ten-year-old copyright lawsuit initiated by the Electronic Frontier Foundation that helped determine the boundaries of "fair use."

FUTURE FILED COPYRIGHT CLAIM AGAINST DESIIGNER'S 'PANDA': REPORT
via Billboard by J'na Jefferson on 6/19/2017

Desiigner's "Panda" is a Future ripoff, and everyone knows it. Presumably, Future knows it too, and in a new interview with DJBooth, Menace, the ...

‘WHO’S ON FIRST’ HEIRS SAY FEES NOT WARRANTED IN IP CASE
via Intellectual Property Law360 by Kat Greene on 6/19/2017
URL: https://www.law360.com/ip/articles/936234

The heirs of comedy duo Abbott and Costello on Monday said they shouldn’t owe attorneys’ fees for filing a failed copyright suit over a Broadway play’s use of the famous “Who’s on First?” routine, saying the judge’s analysis of the reasonableness of their case was based on hindsight.
EXAM BOARD SUES STUDY HELP SITE FOR COPYRIGHT INFRINGEMENT
via World IP Review on 6/20/2017

The American Chemical Society's (ACS) exam board has sued an online study help site for copyright violations, alleging "widescale and systemic ..."

THE PROMISE AND PERILS OF PROTECTING SOUND RECORDINGS WITH COMMON LAW COPYRIGHT
via Mostly IP History by Zvi S. Rosen on 6/20/2017

It’s been too long since an update…and I had a couple of interesting old things to share. However, then the Northern District of Illinois granted a motion to dismiss in Sheridan v. iHeartmedia, and I needed to say a bit about it.

9TH CIRCUIT 'DANCING BABY' DECISION WILL STAND
via Law.com - Newswire by Scott Graham on 6/20/2017
URL: http://www.law.com/sites/almstaff/2017/06/20/9th-circuit-dancing-baby-decision-will-stand/

The Electronic Frontier Foundation has lost a Supreme Court bid to lower the standard for proving that the removal of content from YouTube and other platforms was unreasonable.

ENTERTAINMENT INDUSTRY SENDS U.S. TRADE OFFICE A NAFTA NEGOTIATION WISH LIST
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 6/20/2017
URL: http://www.hollywoodreporter.com/thr-esq/entertainment-industry-sends-us-trade-office-a-nafta-negotiation-wish-list-1015056

Lifting foreign equity caps and overhauling safe harbor protections for internet companies is on the agenda for the MPAA and others.
DISNEY, PIXAR ACCUSED OF RIPPING OFF IDEA FOR 'INSIDE OUT'
via Intellectual Property Law360 by Kelly Knaub on 6/20/2017
URL: https://www.law360.com/ip/articles/936438

The Walt Disney Company stole the idea for the film "Inside Out" from the pitches of a woman who created a color-coded character model to help children deal with their emotions, according to a complaint filed in California federal court on Monday.

DISNEY ACCUSED OF STEALING 'INSIDE OUT' PLOT IN NEW LAWSUIT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 6/20/2017

A childhood development expert says Disney based mega-hit 'Inside Out' on her idea, but didn't give her credit or compensation.

KANGAROO MANUFACTURING ALLEGES PINEAPPLE, PIZZA SLICE POOL FLOATS DO NOT INFRINGE COPYRIGHTS
via Northern California Record by Wadi Reformado on 6/20/2017

An Arizona company alleges a Connecticut company falsely implied that its pool floats infringed its copyrights. Kangaroo ...

‘PURGE’ IDEA THEFT SUIT DOESN'T CHILL FREE SPEECH: 9TH CIRC.
via Intellectual Property Law360 by Dave Simpson on 6/20/2017
URL: https://www.law360.com/ip/articles/936619

A Ninth Circuit panel ruled Tuesday that a screenwriter’s lawsuit alleging Universal Studios’ “The Purge” ripped off his script does not chill free speech, affirming the lower court’s rejection of the studio’s anti-SLAPP motion because the writer is seeking payment for his work, not trying to keep movies from being made.

MACY’S COPIED JEWELRY DESIGNS, SUIT SAYS
via Intellectual Property Law360 by Sophia Morris on 6/20/2017
URL: https://www.law360.com/ip/articles/936407

Macy’s Inc. is selling jewelry based on bracelet and necklace designs it copied from jewelry and accessories brand Brighton Collectibles LLC, infringing on Brighton’s copyrights and damaging its brand, the company alleged in a suit filed in California federal court on Monday.
SEVENTH CIRCUIT COURT OF APPEALS' DECISION REINS IN COPYRIGHT INFRINGEMENT CLAIMS RELATING TO...
via National Law Review by Frank W. Kowalkowski on 6/20/2017

Design Basics, LLC ("Design Basics") initiated an action against Lexington Homes, Inc. ("Lexington"), alleging that Lexington wrongfully copied ...

SLANTS TRADEMARK DECISION MAY HAVE OTHER IP IMPLICATIONS
via The Illusion of More by David Newhoff on 6/21/2017
URL: http://illusionofmore.com/slants-trademark-decision-may-have-other-ip-implications/

In 2010, the Oregon-based, Asian-American band had its application for a trademark in the name The Slants rejected by the US Patent and Trademark Office. The denial was based on a statute in the 1946 Lanham Act prohibiting registration of …

HOLLYWOOD STUDIOS ARE SUSPICIOUS OF VIDANGEL'S NEW FILTERING APP
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 6/21/2017

Warner Bros, Disney and 20th Century Fox raise questions and ask a judge to allow an inspection before blessing it.

UNIDISC MUSIC INC. SEEKS DECLARATION REGARDING COPYRIGHTS ON MASTER SOUND RECORDINGS
via Northern California Record by Wadi Reformado on 6/21/2017

A Canadian corporation that distributes and markets sound recordings is seeking declaratory judgment regarding the copyrights on ...

JUDGE RIPS ATTYS OVER FACEBOOK BIRTH COPYRIGHT CASE
via Intellectual Property Law360 by Bill Donahue on 6/21/2017
URL: https://www.law360.com/ip/articles/937176

A man who live-streamed his son’s birth on Facebook has been ordered to pay the attorneys' fees of ABC, NBC and several other media outlets he unsuccessfully sued for using it — lawsuits that
a federal judge says "no reasonable lawyer with any familiarity with the law of copyright" should have filed.

SUPREME COURT BUMPS 'DANCING BABY' FAIR USE CASE
via FindLaw Writ - Recent Articles by William Vogeler on 6/21/2017

If you love dancing babies and the First Amendment, watch this video. The happy toddler is rocking out to "Let's Go Crazy," by Prince. The video has been viewed nearly 2 million times by people looking for a feel-good moment in a sometimes dreary day. What could be wrong......

TEXTBOOK PUBLISHERS BRING INFRINGEMENT SUIT OVER COUNTERFEITS
via Intellectual Property Law360 by Shayna Posses on 6/21/2017
URL: https://www.law360.com/ip/articles/937056

A group of publishers hit educational products provider Follett Corp. and related companies with a copyright and trademark infringement suit in New York federal court Wednesday, alleging that they don't do enough to weed out counterfeit books, leading to them regularly buying and selling fakes.

DESIGN CO. CALLED 'TROLL' BY 7TH CIRC. ASKS FOR REHEARING
via Intellectual Property Law360 by Kat Greene on 6/21/2017
URL: https://www.law360.com/ip/articles/937192

An architecture firm the Seventh Circuit likened to an “intellectual property troll” in a decision shutting down its copyright suit earlier this month asked the court on Tuesday to cut that out of the ruling and also rehear the case en banc, saying the panel made a decision without full analysis.

WHERE THERE IS A WILL THERE IS A WAY: SPEAKERS AT WIPO EVENT DISCUSS INDIGENOUS KNOWLEDGE PROTECTION
via Intellectual Property Watch by Catherine Saez on 6/22/2017
URL: https://www.ip-watch.org/2017/06/22/will-way-speakers-wipo-event-discuss-indigenous-knowledge/

An event held on the side of the World Intellectual Property Organization committee on traditional knowledge meeting last week looked at ways to move discussions forward in the light of the committee’s expected renewed mandate. Speakers explored different perspectives and possible new avenues for indigenous and local communities to protect and manage their knowledge and cultural heritage, without the threat of misappropriation.
WARNER BROS. ASKS COURT TO GHOST $900 MILLION 'CONJURING' LAWSUIT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 6/22/2017

"[I]t is unsurprising that Brittle swore under oath in 2014 that 'The Conjuring' movie and the Book are 'not related,'" writes an attorney for the studio.

THE FILM ARCADE LLC SEEKS DECLARATORY JUDGMENT IN COPYRIGHT DISPUTE
via Northern California Record by Wadi Reformado on 6/22/2017

A company engaged in the investment and production of motion pictures is seeking declaratory relief against a motion picture ...

US COURT GRANTS ELSEVIER MILLIONS IN DAMAGES FROM SCI-HUB
via Nature by Quirin Schiermeier on 6/22/2017

The Dutch publishing giant holds the copyrights for the largest share of the roughly 28 million papers downloaded from Sci-Hub in 2016, followed by ...

JUDGE RIPS LAWYERS IN IP RIFT OVER VIRAL FACEBOOK CHILDBIRTH VIDEO
via Ars Technica by David Kravets on 6/22/2017
URL: https://arstechnica.com/?p=1122739

A year ago, the US Supreme Court announced guidance to lower courts in determining whether the prevailing party in a copyright lawsuit should be awarded attorney fees.

BERTHOLD SAYS VOLVO VIOLATED ITS COPYRIGHT REGARDING TYPEFACE
via Cook County Record by Louie Torres on 6/23/2017

The plaintiffs seek injunction against the defendants from further infringing plaintiffs' copyrights, general, special, actual and statutory damages, court ...
DAILY MAIL REFUSES TO PAY JOURNALIST FOR REPUBLISHING PARTS OF HER WORK
via Guardian by Amanda Meade on 6/23/2017
URL: https://www.theguardian.com/media/2017/jun/23/daily-mail-refuses-to-pay-journalist-for-republishing-her-work

Daily Mail Australia has refused to pay a journalist for republishing parts of her work under its reporters' bylines, telling her: “There is no copyright in an ...

PACKINGHAM RULING LIKELY NOT INSTRUCTIVE TO DMCA
via The Illusion of More by David Newhoff on 6/23/2017
URL: http://illusionofmore.com/packingham-ruling-likely-not-instructive-to-dmca/

Another Supreme Court First Amendment decision this past Monday was a source of excitement for parties who consistently argue that copyright enforcement in cyberspace cannot help but infringe First Amendment rights. I’ll say at the outset that …

COPYRIGHT OFFICE VOICES SUPPORT FOR GIVING CONSUMERS THE 'RIGHT TO REPAIR'
via Hill by Ali Breland on 6/23/2017
URL: http://thehill.com/policy/technology/339147-copyright-office-voices-support-for-legalizing-consumers-right-to-repair

The U.S. Copyright Office says it believes that Congress should pass legislation to stop companies from preventing consumers from repairing products ...

PHOTOGRAPHER SUES TIME FOR UNAUTHORISED USE OF PHOTO
via World IP Review on 6/23/2017

A New York based photographer has accused media company Time of copyright infringement, after the Spanish 'People' website allegedly used his ...
ABA Copyright Division
http://apps.americanbar.org/dch/committee.cfm?com=PT030000

REYNOLDS AND REYNOLDS ALLEGES WILLIAMSPORT FIRM INFRINGED ON COPYRIGHTS
via Penn Record by Louie Torres on 6/23/2017

Reynolds and Reynolds alleges Williamsport firm infringed on copyrights ... LLC, a Pennsylvania company, citing alleged copyright infringement.

ELSEVIER AWARDED $15M IN LAWSUIT AGAINST PIRATE SITES
via Publisher's Weekly by Calvin Reid on 6/23/2017

The U.S. District Court for the Southern District of New York has awarded STM publisher Elsevier $15 million in damages in a copyright infringement ...

'ALL EYEZ ON ME' PROMPTS JOURNALIST TO ADMIT HAVING "EMBELLISHED" TUPAC ARTICLES

To sue Lionsgate for copyright infringement, Kevin Powell may have had no choice but to fess up to a journalistic no-no.

SCIENTIFIC RESEARCH PIRACY SITE HIT WITH $15 MILLION FINE
via Ars Technica by David Kravets on 6/23/2017
URL: https://arstechnica.com/?p=1123481

The operator of a searchable piracy site for scientific research papers has been ordered to pay $15 million as fallout from a US copyright infringement lawsuit brought by one of the world's leading scientific publishers, New York-based Elsevier.
TUPAC SHAKUR BIOPIC 'ALL EYEZ ON ME' HIT WITH COPYRIGHT INFRINGEMENT LAWSUIT
via NPR by Andrew Flanagan on 6/23/2017
URL: http://www.npr.org/sections/therecord/2017/06/23/534122055/tupac-shakur-biopic-all-
eyez-on-me-hit-with-copyright-infringement-lawsuit

A week after opening to a tepid critical response and accusations of historical inaccuracies from
actress Jada Pinkett Smith — as well as a ...
CERT. DENIED IN DANCING BABY DMCA CASE
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 6/24/2017
URL: http://nysbar.com/blogs/EASL/2017/06/cert_denied_in_dancing_baby_dm.html

On June 19th, SCOTUS denied cert., refusing to hear the Dancing Baby DMCA case, Stephanie Lenz v. Universal Music Corp, leaving the Ninth Circuit's controversial decision intact.

COPYRIGHT, FOLKLORE AND TRADITIONAL NATIVE CULTURE
via Hugh Stephens Blog on 6/25/2017
URL: http://hughstephensblog.net/2017/06/25/copyright-folklore-and-traditional-native-culture/

I recently came back from a wonderful vacation with my wife in New Mexico.

THE GREAT INTELLECTUAL PROPERTY TRADE-OFF
via BBC by Tim Harford on 6/25/2017
URL: http://www.bbc.co.uk/news/business-40029781

They circulated with impunity because the United States granted no copyright protection to non-citizens. In a bitter letter to a friend, Dickens compared ...

TUPAC SHAKUR FILM HIT WITH COPYRIGHT SUIT BY WRITER
via World IP Review on 6/26/2017

A magazine writer has taken on the creators of “All Eyez on Me”, a biopic about the late rapper Tupac Shakur, in a copyright lawsuit. Writer Kevin ...

ILL-ADVISED COPYRIGHT LAWSUIT OVER FACEBOOK LIVE VIDEO BECOMES COSTLY FOR PLAINTIFF–KONANGATAA V. ABC
via Technology & Marketing Law Blog by Eric Goldman on 6/26/2017

You probably remember the story about a new dad’s Facebook Live broadcast of his baby’s birth.
TRUMP ORGANIZATION SUED BY PHOTOGRAPHER FOR INSTAGRAM POST
via World IP Review on 6/26/2017

The photograph is registered with the US Copyright Office under copyright ... “TO infringed plaintiff's copyright in the photograph by reproducing and ...

ELSEVIER WINS $15 MILLION SETTLEMENT
via IP Pro The Internet by Barney Dixon on 6/26/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5509

Elsevier has received $15 million in damages in its copyright infringement lawsuit against Sci-Hub, the Library Genesis project and a number of other ...

JUDGEMENT AGAINST SCI-HUB IS A WIN FOR AUTHORS AND PUBLISHERS
via Mister Copyright by Kevin Madigan on 6/26/2017
URL: http://mistercopyright.org/judgement-against-sci-hub-is-a-win-for-authors-and-publishers

Last week, the United States Court for the Southern District of New York entered a default judgement against Sci-Hub, the Library Genesis Project (LibGen), and a number of related websites and site operators for the willful infringement of dozens of copyright-protected scholarly articles.

'STEVE HARVEY SHOW' WINS TRIM OF MUSIC CO.'S $42.3M IP SUIT
via Intellectual Property Law360 by Nicole Narea on 6/26/2017
URL: https://www.law360.com/ip/articles/937915

A California federal judge granted “The Steve Harvey Show” a partial win Friday in a music production company’s $42.3 million copyright infringement suit alleging that the television show’s second season used unlicensed copies of its recordings, finding that it could face potential liability only on a single registered compilation of musical works.

“MCMANSION HELL” USED ZILLOW PHOTOS TO MOCK BAD DESIGN—ZILLOW MAY SUE
via Ars Technica by Cyrus Farivar on 6/26/2017
URL: https://arstechnica.com/?p=1124693

An architecture blogger has temporarily disabled her website, McMansionHell.com, after receiving a demand letter from Zillow and posting it on Twitter.
DISNEY DUCKS 'ZOOTOPIA' COPYRIGHT CASE, FOR NOW
via Intellectual Property Law360 by Bonnie Eslinger on 6/26/2017
URL: https://www.law360.com/ip/articles/938389

A California federal judge on Monday tentatively tossed a copyright suit claiming The Walt Disney Co. lifted the smash animated hit “Zootopia” from a successful screenwriter’s unproduced treatment, questioning the writer's decision not to attach the purportedly infringed work to the suit but granting permission to refile a more detailed complaint.

US COPYRIGHT OFFICE SUGGESTS 'RIGHT TO REPAIR' LAWS A GOOD IDEA
via Register by Richard Chirgwin on 6/27/2017
URL: https://www.theregister.co.uk/2017/06/27/us_copyright_office_suggests_right_to_repair/

Last week, to little fanfare, the US Copyright Office took its first baby steps towards stopping auto-makers wrapping their software in copyright rules.

LAWYERS RALLY TO SAVE 'MCMANSION HELL' FROM ZILLOW'S COPYRIGHT CLAIM
via Fortune by Jeff John Roberts on 6/27/2017
URL: http://fortune.com/2017/06/27/mcmansion-hell/

Fans of the website McMansion Hell enjoy it as a way to laugh at garish, overbuilt homes. As you can see from the picture above, the site takes delight ...

LESSONS FROM THIS YEAR’S HIGH COURT IP RULINGS: PART 1
via Intellectual Property Law360 by Ryan Davis, Matthew Bultman & Bill Donahue on 6/27/2017
URL: https://www.law360.com/ip/articles/937744

It was a big year for intellectual property at the U.S. Supreme Court as the justices issued eight decisions on patents, copyrights and trademarks. In the first of a two-part series, Law360 looks at the key takeaways from each case, including decisions that reined in damages in design patent cases and set rules on when apparel can be protected by copyright.
DMCA SAFE HARBOR DOESN’T PROTECT ZAZZLE’S PRINTING OF PHYSICAL ITEMS–GREG YOUNG PUBLISHING V. ZAZZLE
via Technology & Marketing Law Blog by Eric Goldman on 6/28/2017

The court summarizes the key facts: “GYPI alleges that Zazzle has publicly displayed 41 paintings by Westmoreland or Erickson on its website, and that Zazzle has created consumer products bearing these images.”

A BROADER VIEW OF PACKINGHAM SCOTUS DECISION
via The Illusion of More by David Newhoff on 6/28/2017
URL: http://illusionofmore.com/broader-view-of-packingham-scotus-decision/

My last post focused narrowly on responding to assertions that the Supreme Court decision in Packingham casts doubt on the constitutionality of DMCA Sec. 512(i). But as my friend and colleague Mike Katell observes on his blog, …

PROPERTY IMPLICATIONS OF THE SHARING ECONOMY – UNIVERSITY PARK, PA
via Legal Scholarship Blog by Mary Whisner on 6/28/2017


SEARCH RESULTS SUDDENLY MISSING FROM GOOGLE? WELL, BLAME CANADA!
via Register by Shaun Nichols on 6/28/2017
URL: https://www.theregister.co.uk/2017/06/28/canada_can_modify_google_search_results/

Canada's Supreme Court says America's Hat has authority over Google results worldwide in cases where someone's copyright has been stomped on.

THE DISCURSIVE TURN IN COPYRIGHT – IRVINE, CA
via Legal Scholarship Blog by Mary Whisner on 6/28/2017

UC Irvine School of Law presents The Discursive Turn in Copyright Oct. 27, 2017.
'OUT OF DATE' COPYRIGHT REGIME TO GO UNDER THE MICROSCOPE NEXT YEAR
via NZ Herald on 6/28/2017
URL: http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11883687

"Out of date" copyright law won't go under the microscope until early next year as officials try to bridge divisions among opposing stakeholder groups ...

AUSTRALIAN ISPS TO BLOCK 128 DOMAINS LINKED TO ONLINE PIRACY IN FOXTEL CASE
via ZDNet by Tas Bindi on 6/29/2017

Under the Copyright Amendment (Online Infringement) Act 2015, which passed both houses of Parliament in mid-2015, content rights holders can ...

DMCA ANTI-CIRCUMVENTION IS FINE AS IT IS
via IP Pro The Internet by Barney Dixon on 6/29/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5515

Section 1201, which is a part of the Digital Millennium Copyright Act ... of software that restricts access to lawfully purchased copyrighted material.

TAM, THE FIRST AMENDMENT, AND COPYRIGHT
via Mostly IP History by Zvi S. Rosen on 6/29/2017

Last week the Supreme Court decided the case about the Constitutionality of the clause of federal trademark law excluding from registration disparaging, scandalous, or immoral marks, and found this clause to be unconstitutional.

DISTRACTIFY ACCUSES 22 WORDS OF STEALING ITS VIRAL FACEBOOK POSTS
via Variety by Gene Maddaus on 6/29/2017

So when is Distractify's presentation of this content unique enough that it becomes protected under copyright? And can others present the same or ...
SCREENPLAY WRITER ACCUSES BLOOD RED FILMS, IMAGWORKS ENTERTAINMENT OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 6/29/2017

A Los Angeles man is seeking the return of the high-resolution copy of a horror film. Joston Theney filed a complaint on June 17 in ...

TWITTER'S MEME WAR ISN'T ABOUT CIVILITY, IT'S ABOUT MONEY
via Wired by Emma Grey Ellis on 6/29/2017
URL: https://www.wired.com/story/twitter-bet-music-blog-suspensions/

"Viacom and some of these larger companies have a lot of bandwidth to sue, and have put a lot of energy into protecting their copyrights," says Kate ...

MCMANSION HELL RETURNS, DITCHES ALL ZILLOW IMAGES TO PREVENT LEGAL BATTLE
via Ars Technica by Cyrus Farivar on 6/29/2017
URL: https://arstechnica.com/?p=1126603

Zillow and McMansion Hell have buried the hatchet.

BBC FILMS ESCAPES MUSIC PUBLISHER'S IP SUIT OVER ROM-COM
via Intellectual Property Law360 by Kat Greene on 6/29/2017
URL: https://www.law360.com/ip/articles/939938

BBC Films beat a copyright suit over songs used in a Dame Maggie Smith-helmed romantic comedy when a California federal judge ruled Wednesday there weren’t enough Golden State ties to keep the suit there, just a few days after the parties said they were in settlement talks.

GETTY IMAGES CAN'T DUCK SUIT ALLEGING IT STOLE 47K PHOTOS
via Intellectual Property Law360 by Kelly Knaub on 6/29/2017
URL: https://www.law360.com/ip/articles/939980

A New York federal judge on Thursday tossed four claims in a lawsuit accusing photo licensing giant Getty Images Inc. of asserting claims for photos it doesn’t even own, but said that Zuma Press Inc.’s claims for direct copyright infringement and violations of the Digital Millennium Copyright Act could go forward.
PAUL MCCARTNEY REACHES SETTLEMENT WITH SONY/ATV IN BEATLES RIGHTS DISPUTE
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 6/29/2017

The fight that was poised to be a landmark music battle has ended in a draw.

COX FIGHTS $8M IN FEES AT 4TH CIRC. MUSIC PIRATING APPEAL
URL: https://www.law360.com/ip/articles/939634

Cox Communications Inc. told the Fourth Circuit that the company shouldn’t have to fork over $8 million in attorneys’ fees after losing a copyright infringement case, arguing Wednesday that the jury's $25 million award to the music publisher that prevailed was payment enough.

MCCARTNEY, SONY SETTLE COPYRIGHT SUIT OVER BEATLES SONGS
via Intellectual Property Law360 by Bill Donahue on 6/29/2017
URL: https://www.law360.com/ip/articles/940155

Paul McCartney has reached a settlement to resolve his lawsuit against publisher Sony/ATV over the rights to hundreds of Beatles songs, according to a court filing Thursday.

LIBRARY OF AWESOME—WONDER WOMAN, LYNDA CARTER, AND COPYRIGHT
via Copyright: Creativity at Work by Alison Hall on 6/30/2017
URL: http://blogs.loc.gov/copyright/2017/06/lynda-carter-and-copyright/

As a girl in the 1970s, Wonder Woman was my hero.

MALWARE SUGGESTS SEARCH PLAYS A MAJOR ROLE IN PIRACY
via The Illusion of More by David Newhoff on 6/30/2017
URL: http://illusionofmore.com/malware-suggests-search-plays-a-major-role-in-piracy/

Copyright holders have long insisted that search results play a substantial role in driving users toward pirate sites. Google and piracy advocates have generally countered that search does not drive much traffic to illegal sites because the people who …
ZILLOW BACKS DOWN FROM COPYRIGHT THREAT AGAINST MCMANSION HELL BLOGGER
via International Business Times by Eric Chiu on 6/30/2017
URL: http://www.ibtimes.com/zillow-backs-down-copyright-threat-against-mcmansion-hell-blogger-2559616

Real estate listing company Zillow will not sue a blogger behind the satirical site McMansion Hell. The announcement caps off a brief legal dispute ...

PAUL MCCARTNEY SETTLES WITH SONY OVER BEATLES SONGS
via World IP Review on 6/30/2017

Singer-songwriter Sir Paul McCartney and Sony/ATV Publishing have reached a “confidential settlement” over a copyright infringement case brought ...

UNICOLORS INC. ALLEGES INDIVIDUAL UNLAWFULLY USED COPYRIGHTED DESIGN
via Northern California Record by Wadi Reformado on 6/30/2017
URL: http://norcalrecord.com/stories/511131440-unicolors-inc-alleges-individual-unlawfully-used-copyrighted-design

A Los Angeles individual is accused of unlawfully using a textile design for clothing. Unicolors Inc. filed a complaint on June 15 in ...

WINDSTREAM ASKS APPEALS COURT TO REVIVE BATTLE WITH MUSIC PUBLISHER
via MediaPost by Wendy Davis on 6/30/2017

"Despite receiving millions of infringement notices from copyrights holders and their agents, the district court's judgment unjustly forbids an ISP from ...
July 2017

3 UCN DIRECTORS BOOKED FOR COPYRIGHT VIOLATION
via Times of India on 7/1/2017

Nagpur: The Sitabuldi police on Friday booked three directors of Universal Cable Network (UCN) in a case of violation of Copyright Act following the ...

'TOILET EK PREM KATHA' HITS A COPYRIGHT ROADBLOCK, DOCUMENTARY MAKER CLAIMS IT'S HIS STORY!
via India Times by Isha Sharma on 7/2/2017

It's a rather sad coincidence that Akshay Kumar and his films often end up running themselves into legal soup just some days before their official ...

COURT FINDS THAT USE OF UNPUBLISHED TOMMY DEVITO BIO IN ‘JERSEY BOYS’ MUSICAL IS FAIR USE
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 7/2/2017
URL: http://www.ipwatchdog.com/2017/07/02/unpublished-tommy-devito-bio-jersey-boys-musical-fair-use/id=84729/

In mid-June, this case was overturned on appeal after a federal judge in the U.S. District Court for the District of Nevada (D. Nev.), entered a finding of judgement as a matter of law in favor of defendant DeVito’s fair use defense. As the judge noted, at most 145 creative words from the biography, constituting about 0.2 percent of the 68,500 words comprising that work, was the plaintiff’s basis for copyright infringement. “This factor strongly weighs in favor of a finding of fair use, at...

EQUUSTEK DECISION HAS NOTHING TO DO WITH SPEECH
via The Illusion of More by David Newhoff on 7/3/2017
URL: http://illusionofmore.com/equustek-nothing-with-speech/

There. Did you feel that? A tremor in the First Amendment? Somewhere in cyberspace, a website has died, taking with it a tiny Yop of free speech. You can hardly be blamed for missing it against the sound …
CLINT EASTWOOD, WARNER BROS. FACE COPYRIGHT LAWSUIT OVER 'JERSEY BOYS' ADAPTATION
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 7/3/2017

An author's widow files a new complaint in a dispute stretching back a decade.

CHEGG INC. ALLEGED TO HAVE UNLAWFULLY USED COPYRIGHTED EXAM MATERIALS
via Northern California Record by Wadi Reformado on 7/3/2017
URL: http://norcalrecord.com/stories/511132680-chegg-inc-alleged-to-have-unlawfully-used-copyrighted-exam-materials

The plaintiff holds Chegg Inc. responsible because the defendant allegedly infringed the plaintiff's copyrights in its secure examinations and study ...

CONCERT PHOTOGRAPHER ALLEGES MULTIMEDIA GRAPHIC NETWORK INC. USED PHOTOS WITHOUT PERMISSION
via Northern California Record by Noddy A. Fernandez on 7/3/2017

According to the complaint, the plaintiff alleges that he applied a copyright from the United States Copyright Office for four collections of his ...

PHOTOGRAPHER'S ESTATE SUES GALLERIES OVER EXHIBITIONS
via Intellectual Property Law360 by Diana Novak Jones on 7/3/2017
URL: https://www.law360.com/ip/articles/940823

The estate administrator for amateur photographer Vivian Maier sued three art galleries in Illinois federal court Friday, accusing them of holding unauthorized exhibitions of her work with the help of a collector the estate claims doesn't own the rights to the photos.

HOLLYWOOD STUDIOS RIP VIDANGEL'S NEW SERVICE IN FILTERING FIGHT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 7/3/2017

"[B]y telling its users that its new service is lawful, VidAngel threatens to confuse consumers regarding the legitimate streaming market," Disney's attorney Kelly Klaus writes.
PREMIER LEAGUE: THIRD OF FANS SAY THEY WATCH ILLEGAL STREAMS OF MATCHES - SURVEY
via BBC by  on 7/4/2017
URL: http://www.bbc.co.uk/sport/football/40483486

In April, a ruling by the European Court of Justice put pirated streams on the same legal footing as copyright-infringing downloads, making it illegal to ...

WARNER BROS AND TOLKIEN ESTATE RESOLVE $80M COPYRIGHT SUIT
via World IP Review on 7/4/2017

Warner Bros and J.R.R. Tolkien's estate have resolved a five-year dispute over “The Hobbit” and “The Lord of the Rings”. The parties filed a stipulation ...

COUNCIL OF EUROPE REPORT ON COPYRIGHT EXCEPTIONS AND LIMITATIONS
via Intellectual Property Watch by William New on 7/4/2017

The intergovernmental Council of Europe, based in Strasbourg, France, has published a freely available report on exceptions and limitations to copyright. The report comes as a contribution to the ongoing process of reforming European copyright rules.

SCI-HUB 'PIRATE BAY FOR SCIENTISTS' SUED BY AMERICAN CHEMICAL SOCIETY OVER CLONED SITE
via International Business Times by Mary-Ann Russon on 7/5/2017
URL: http://www.ibtimes.co.uk/sci-hub-pirate-bay-scientists-sued-by-american-chemical-society-over-cloned-site-1628782

"Through these pirate sites, Sci-Hub illegally distributes copyrighted scientific journal articles and book content stolen from ACS. The Sci-Hub pirate ...

MPS WORKING ON A COPYRIGHT DEAL FOR POST-BREXIT BRITAIN
via M Magazine on 7/5/2017
URL: http://www.m-magazine.co.uk/news/mps-working-copyright-deal-post-brexit-britain/

Brexit has dominated our political and economic spheres for the last 12 months, raising questions about the opportunities and challenges it poses for ...
THOSE KENDALL + KYLIE “VINTAGE” TEES WERE LIKELY VERY ILLEGAL. NOW WHAT?
via Fashion Law on 7/5/2017

(If faced with a copyright infringement suit, the Jenners' legal team may try to argue that their addition of “KK” graphics and their photos to the tees has ...
Musicians from the folk rock band The Turtles fighting to secure millions of dollars in streaming royalties from Pandora for songs recorded before 1972 urged the Ninth Circuit on Monday to reconsider its decision to ask the California Supreme Court to weigh in, citing new developments in the state's anti-SLAPP case law.

A songwriter has asked the U.S. Supreme Court to consider when the clock should start counting down the three-year statute of limitations for contesting copyright ownership.

One of the great innovations in American property rights is the legal framework of intellectual property. Copyrights and patents allow an inventor, ...

When posting to Instagram, most people don’t think twice about copyright.

The first half of 2017 was filled with important copyright rulings, ranging from attorneys' fees to fair use to safe harbor to "conceptual separability." As we head into the back half of the year, here are the seven big rulings you need to know.
A Ninth Circuit panel agreed with a California federal court in ruling that a screenwriter’s allegation that producers of the 2011 film “Anonymous” copied his own historical Shakespeare drama was much ado about nothing.

He has represented two photographers who have sued Distractify for infringing on their copyrights: Jeffery Werner filed a suit in May, claiming the ...

You say 'tomato,' I say 'tomato.' Wait, that doesn't work. You say 'Internet,' I say 'internet.' Hold on. This only works if you're writing, not talking. And it only seems to matter here if the U.S. Supreme Court has anything to say, er, write about it....... 

A former CBS employee on Wednesday said her use of a video of Dr. Phil McGraw as evidence in a California state court suit alleging he locked employees in a room is fair use, asking a Texas federal judge to toss a separate copyright suit over the video.

Illegal streaming devices and 'stream-rippers' threaten copyright progress, warns the Intellectual Property Office (IPO). The IPO's Online Copyright ...
CASTLE: MASS NOI LOOPHOLE STILL BEING EXPLOITED
via The Illusion of More by David Newhoff on 7/7/2017
URL: http://illusionofmore.com/castle-mass-noi-loophole-still-exploited/

Attorney and blogger Chris Castle continues his reporting on major players like Amazon “innovating” the hell out of a loophole in Section 115 of the ...

SCREENWRITER DEFEATED AT NINTH CIRCUIT IN SHAKESPEARE SUIT
via World IP Review on 7/7/2017

A screenwriter who claimed his copyrighted work on William Shakespeare had been infringed has lost his case at the US Court of Appeals for the ...

INSPIRATION VS. COPYING: WHERE’S THE LINE IN HOLLYWOOD?
via IPWatchdog.com | Patents & Patent Law by Amanda G. Ciccatelli on 7/7/2017

When it comes to television shows, it not always clear what is “copyrightable.” Sometimes, filmmakers and screen writers can get into serious trouble if they don’t follow specific television copyright laws accordingly. Austin-based filmmaker Lex Lybrand watched the June 4th episode of the hit HBO series "Silicon Valley" to shockingly find strong similarities between the episode "The Patent Troll" and his own film "The Trolls." Jed Wakefield of Fenwick & West recently sat down with...

INFRINGERS CROSSING STREAMS, FINDS STUDY
via IP Pro The Internet by Mark Dugdale on 7/7/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5526

The UK Intellectual Property Office (UKIPO)-commissioned Online Copyright Infringement Tracker found that 15 percent of UK internet users, ...

KENDALL, KYLIE JENNER SLAPPED WITH COPYRIGHT INFRINGEMENT LAWSUIT OVER TUPAC TEES
via Fashion Law on 7/7/2017

Michael Miller has filed a copyright infringement lawsuit against Kendall and Kylie Jenner in connection with their ...
RIOT GAMES SAYS APPS INFRINGEMENT LEAGUE OF LEGENDS BRAND
via Intellectual Property Law360 by Kat Greene on 7/7/2017
URL: https://www.law360.com/ip/articles/942184

Riot Games Inc. accused a Chinese mobile game maker of copying its League of Legends format to make a game for phones that’s confusingly similar to the California company’s popular hero game, according to a suit filed Thursday.

KENDALL AND KYLIE JENNER SUED OVER TUPAC T-SHIRTS
via Intellectual Property Law360 by Bill Donahue on 7/7/2017
URL: https://www.law360.com/ip/articles/942331

Kendall and Kylie Jenner have been hit with a copyright suit over T-shirts featuring images of Tupac Shakur, the latest blowback over the controversial apparel line.

PENTHOUSE HITS JARED LETO, OTHERS WITH 'CALIGULA' IP SUIT
via Intellectual Property Law360 by Dave Simpson on 7/7/2017
URL: https://www.law360.com/ip/articles/942158

Penthouse says actor Jared Leto and a digital media holding company are infringing its intellectual property rights through the internet broadcast of the 1979 film “Caligula” and use of its OMNI trademark, according to a lawsuit filed in California federal court Thursday.

DIDDY'S CO. REACHES DEAL IN IP SUIT OVER INSTAGRAM PHOTO
via Intellectual Property Law360 by Bonnie Eslinger on 7/7/2017
URL: https://www.law360.com/ip/articles/942037

A New York federal judge on Friday dismissed a copyright infringement suit against Sean "Diddy" Combs’ record company alleging it illegally used a photographer’s picture of the hip-hop star on Combs’ Instagram account, after the photographer notified the court that a settlement had been reached.

PENTHOUSE SUES JARED LETO ON COPYRIGHT CLAIMS
via Courthouse News Service by Matt Reynolds on 7/7/2017
URL: http://www.courthousenews.com/penthouse-sues-jared-leto-copyright-claims/

Penthouse Magazine has filed a complaint against Oscar-winner Jared Leto for copyright and trademark infringement, claiming ...
I WOULD STREAM 4 U: PRINCE'S ESTATE PUTS VIDEOS ON YOUTUBE DESPITE ANIMOSITY
via Guardian on 7/7/2017
URL: https://www.theguardian.com/music/2017/jul/07/prince-youtube-videos-estate

Prince's estate has uploaded official music videos and live footage to YouTube, the website the artist once threatened to sue over copyright claims in ...

WARNER BROS. SETTLES $80M COPYRIGHT SUIT BROUGHT BY TOLKIEN ESTATE OVER LOTR ONLINE VIDEO AND CASINO GAMBLING GAMES
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 7/8/2017

On July 5th a federal judge entered an order granting the dismissal of a copyright case, which had been filed by the estate of famed English fantasy author J. R. R. Tolkien and American entertainment company Warner Bros. The case arises out of the Tolkien estate’s allegations that Warner Bros. was in breach of contract in using their merchandising rights to The Lord of the Rings and The Hobbit to develop video games based on those properties. The post Warner Bros. settles $80M copyright suit...

WHY THE CANADIAN SUPREME COURT’S EQUUSTEK DECISION IS A GOOD THING FOR FREEDOM — EVEN ON THE INTERNET
via Truth on the Market by Neil Turkewitz on 7/8/2017

In its decision, the Court upheld injunctive relief against Google, directing the company to avoid indexing websites offering the infringing goods in question, regardless of the location of the sites (and even though Google itself was not a party in the case nor in any way held liable for the infringement).

JENNERS RESPOND TO LAWSUIT: ONLY 2 TUPAC T-SHIRTS SOLD
via U.S. News on 7/10/2017

The fashion label for Kendall and Kylie Jenner says in response to a copyright infringement lawsuit that it only sold two "vintage" T-shirts with late ...
GRAFFITI ARTISTS ARE INCREASINGLY LAWYERING UP TO FIGHT FASHION COPYCATS
via Fashion Law on 7/10/2017
URL: http://www.thefashionlaw.com/home/graffiti-artists-are-increasingly-lawyering-up-to-fight-fashion-copycats

Vince Camuto has been slapped with a copyright infringement lawsuit for allegedly making use of a group of well-known street artists' work for its ...

THELIBERAL.IE: COPYRIGHT ACTIONS AGAINST LEO SHERLOCK SETTLED
via Irish Times by Elaine Edwards on 7/10/2017

Two court cases taken against Leo Sherlock of TheLiberal.ie website for multiple breaches of the copyright of two news organisations have been ...

KENDALL + KYLIE DENY COPYRIGHT LIABILITY: "ACTUALLY, WE LICENSED THOSE IMAGES"
via Fashion Law on 7/10/2017
URL: http://www.thefashionlaw.com/home/kendall-kylie-deny-copyright-liability-we-licensed-those-images

A spokesman for reality stars Kendall and Kylie Jenner's label said on Sunday it only sold two “vintage” T-shirts with late rapper Tupac Shakur's image ...

GETTING YOUR GROOVES BACK: UNDERSTANDING COPYRIGHT TERMINATION (GUEST COLUMN)
via Variety by Evan S. Cohen on 7/10/2017

There is a powerful law causing quiet yet uneasy waves in the music industry, and it's something the record companies would rather recording artists ...

VOTES DUE ON DIGITAL SINGLE MARKET'S COPYRIGHT DIRECTIVE
via IP Pro The Internet by Barney Dixon on 7/11/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5531

European Parliament committees will today vote on key amendments to the new copyright directive, specifically dealing with mandatory upload ...
CROWDFUNDED FILM TELLING HISTORY OF THE DALEKS PUT ON HOLD BECAUSE OF COPYRIGHT ISSUES
via RadioTimes by Ben Dowell on 7/11/2017

Filmmaker and TV critic Victor Lewis-Smith has put his plans for a Doctor Who film about the Daleks on hold. The Undiscovered Daleks, as it was to be ...

LESSONS FROM SOUTH AFRICA: PROTECTING NON-EXPRESSIVE USES IN COPYRIGHT REFORM
via Intellectual Property Watch by Matthew Sag & Sean Flynn on 7/11/2017

This week, the South African Parliament began accepting comments on its pending Bill proposing to amend the South African Copyright Act to align it with the digital age. We and other experts and civil society organizations submitted comments praising many of the Bill’s provisions and proposing that it adopt an “open” fair use right. Here we focus on one major reason to adopt an open fair use right – to authorize so-called non-expressive uses of works. We conclude with some reflections on how international law could help in this regard.

SOUTH AFRICA'S RECENTLY TABLED COPYRIGHT AMENDMENT BILL 2017
via World Trademark Review on 7/11/2017
URL: http://www.worldtrademarkreview.com/daily/Detail.aspx?g=cc289065-0f5f-45c1-8a60-e4130146e1f0

Amending the Copyright Act has long been on South Africa's legal reform agenda and now, through the collective effort of stakeholders, a new ...

JONATHAN TAPLIN’S “MOVE FAST AND BREAK THINGS”: A SOMBER WARNING—AND A CALL FOR ACTION
via Hugh Stephens Blog on 7/11/2017

Jonathan Taplin’s new book Move Fast and Break Things, published in April of this year, (the title is based on Facebook’s internal motto, since modified to make the company appear more responsible) has been attracting considerable attention as he embarks on the usual book launch media tour, in this case Down Under in Australia and New Zealand, and in the UK. Taplin’s core message is enshrined in the subtitle to the book, “How Facebook, Google and Amazon Cornered Culture and Undermined Democracy”.

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DISNEY WINS DISMISSAL OF 'ZOOTOPIA' COPYRIGHT LAWSUIT (FOR NOW)
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 7/11/2017

At this point, a judge doesn't see enough similarity in work from Gary L. Goldman, the writer of "Total Recall."

GIGANEWS SAYS ADULT CO. STILL OWES $5.6M IN COPYRIGHT CASE
via Intellectual Property Law360 by Kelly Knaub on 7/11/2017
URL: https://www.law360.com/ip/articles/943053

Giganews and Livewire Services hit Perfect 10 with a suit in California federal court Monday, alleging the adult entertainment company has failed to hand over the more than $5.6 million it was ordered to pay the two companies in 2015 following its failed copyright infringement suit against them.

KODI WILL NOT HELP IF FREE TV BOXES STOP WORKING AND SLAMS THOSE STREAMING ILLEGALLY AS 'SELF ...
via Sun by Margi Murphy on 7/11/2017

The Federation Against Copyright Theft along with the police and companies like Sky are cracking down on Kodi box sellers – some of whom who ...

MUSIC PUBLISHERS IN GERMANY SAY IT'S 'HIGH TIME' THE EU ACTED ON YOUTUBE
via Billboard by Wolfgang Spahr on 7/11/2017

Budde argues that the copyright law reform currently being discussed at the EU will enhance transparency and place the authors and music ...
DID YOU HEAR THE ONE ABOUT A MONKEY SUING A PHOTOGRAPHER FOR INFRINGEMENT?
via Ars Technica by David Kravets on 7/11/2017
URL: https://arstechnica.com/?p=1131349

On Wednesday, a federal appeals court will embark on a legal safari of sorts: animal rights activists, representing an Indonesian monkey named Naruto, are set to argue to the San Francisco-based 9th US Circuit Court of Appeals that their monkey client should be recognized as the lawful owner of property.

THE FIRMS FILING THE MOST COPYRIGHT CASES
via Intellectual Property Law360 by Bill Donahue on 7/11/2017
URL: https://www.law360.com/ip/articles/941812

Once again, the law firms that filed the most copyright suits in the second quarter of 2017 were small, specialized outfits that lodge many infringement cases over a single type of work, such as photography.

COURTS OF APPEALS TO DECIDE BOUNDARIES OF FAIR USE IN THE DIGITAL AGE

The Copyright Act provides a fair use defense that permits an unauthorized use of a copyrighted work in certain circumstances. Following the Google ...

SOMEONE HAS REMOVED DHINCHAK POOJA FROM YOUTUBE AND YES, ALL HER MUSIC VIDEOS ARE GONE ...
via India Times by Isha Sharma on 7/11/2017

According to speculations, Pooja's videos have been taken down due to some copyright claim by a person named 'Kathappa Singh' (No, this is not a ...

IS THE THREAT OF A COPYRIGHT LAWSUIT STIFLING MUSIC?
via BBC by Chi chi Izundu on 7/11/2017

Artists are being advised not to state publicly who they're inspired by on their new music, the Victoria Derbyshire programme has learned. Could this ...
FAIR USE, OR FREE USE? BEHIND THE INTERESTS AND ALLIANCES THAT STAND TO GAIN FROM CHANGES TO ...
via Business Insider by Chris Pash on 7/11/2017

A screenshot from the video 'Creationistas – Australian Copyright Is Broken'. ... He also receives royalties for copyrighted written material he owns.).

NIKE FOULED PHOTOG, STOLE ‘JUMPMAN’ IP, 9TH CIRC. TOLD
via Intellectual Property Law360 by Dorothy Atkins on 7/11/2017
URL: https://www.law360.com/ip/articles/943093

Nike Inc. and a photographer duked it out before a Ninth Circuit panel Tuesday over allegations the apparel giant ripped off its iconic “Jumpman” logo from the photographer’s 1984 image of Michael Jordan, with the photographer arguing that the minor differences in the images can’t overcome their similarities.

DSM COPYRIGHT DIRECTIVE PUSHES ON
via IP Pro The Internet by Mark Dugdale on 7/12/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5532

The publisher's right has moved one step closer to becoming law in the EU after two European Parliament committees signed off on the draft directive ...

COPYRIGHT WATCHDOG FILES LAWSUITS OVER BACKGROUND MUSIC IN STORES
via Japan Today on 7/12/2017
URL: https://japantoday.com/category/crime/copyright-watchdog-files-lawsuits-over-background-music-in-stores

Japan's copyright management organization has filed lawsuits against owners of a barber shop and restaurant over the usage of background music at ...

BATTLE OVER SELFIES TAKEN BY MACAQUE MONKEY BACK TO COURT
via Seattle Times by Linda Wang on 7/12/2017

The U.S. Court of Appeals for the Ninth Circuit in San Francisco on Wednesday will hear arguments on whether an animal can own the copyright to a ...
COPYRIGHT WATCHDOG JASRAC FILES LAWSUITS OVER USE OF BACKGROUND MUSIC IN STORES
via Japan Times on 7/12/2017

“The lawsuits were inevitable to maintain fairness in managing copyrights,” Kenzo Ohashi, managing director of JASRAC, said at a news conference.

LAWSUIT OVER AUTHORSHIP OF DISNEY’S 'ZOOTOPIA' DEALT SETBACK FOR NOW
via Recorder by Todd Cunningham on 7/12/2017
URL: http://www.therecorder.com/id=1202792763861/Lawsuit-Over-Authorship-of-Disneys-Zootopia-Dealt-Setback-for-Now

Disney has prevailed—at least for the moment—in a copyright complaint targeting its animated box-office hit "Zootopia." U.S. District Judge Michael ...

MONKEY SELFIE’ HEADS TO APPEALS COURT AMID LEGAL CIRCUS BETWEEN PETA AND PRIMATE EXPERT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 7/12/2017

Nonhuman copyright ownership issues are swamped by a jungle of legal oddities.

PHOTOGRAPHER TELLS NINTH CIRCUIT THAT NIKE STOLE HIS WORK
via Courthouse News Service by Nick McCann on 7/12/2017

The Ninth Circuit on Tuesday heard arguments on whether Nike ripped off a photographer's copyrighted photo of a ...

AMITABH BACHCHAN SENDS LEGAL NOTICE TO KUMAR VISHVAS FOR COPYRIGHT INFRINGEMENT
via Economic Times on 7/12/2017

Bollywood star Amitab Bachchan today sent a legal notice to AAP leader Kumar Vishvas for copyright infringement of his late father ...

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ARTIST SAYS SNOWBOARD COS. STOLE HIS ILLUSTRATION
via Intellectual Property Law360 by Adam Rhodes on 7/12/2017
URL: https://www.law360.com/ip/articles/943410

Two snowboard makers enlisted a graphic design company to copy an illustration by California artist Tony Hong, claimed they created it, then used it on T-shirts and a website without his permission and in violation of his copyright on the piece, Hong alleged in California federal court Tuesday.

IS STREAMING APP MOBDRO THE NEW KODI? MOVIES, SPORTS AND OTHER CONTENT AVAILABLE AS USERS FLOCK ...
via Mirror by Jeff Parsons on 7/12/2017
URL: http://www.mirror.co.uk/tech/streaming-app-mobdro-new-kodi-10750862

"Should the holder of a copyright consider that her/his right have[sic] been breached, she/he must address the source to request its withdrawal."

KUMAR VISHWAS OFFERS TO PAY RS 32 AFTER AMITABH BACHCHAN SENDS COPYRIGHT INFRINGEMENT NOTICE
via Times of India on 7/12/2017

Actor Amitabh Bachchan sent a legal notice to AAP leader Kumar Vishwas, accusing him of "copyright infringement" for unauthorised use ...

ED SHEERAN HIT WITH 2ND IP SUIT OVER 'LET'S GET IT ON'
via Intellectual Property Law360 by Kelly Knaub on 7/12/2017
URL: https://www.law360.com/ip/articles/943348

The estate of one of the songwriters of the famed Marvin Gaye song "Let's Get It On" again hit Grammy winner Ed Sheeran and his label, Atlantic Records, with a copyright suit in New York federal court Tuesday, alleging Sheeran’s chart-topping song "Thinking Out Loud" illegally samples the 1973 classic.
'ZOOTOPIA' COPYRIGHT SUIT SQUELCHED FOR NOW
via Law.com - Newswire by Todd Cunningham on 7/12/2017
URL: http://www.law.com/sites/almstaff/2017/07/12/zootopia-copyright-suit-squelched-for-now/

Disney has prevailed—at least for the moment—in a copyright complaint targeting its animated box-office hit “Zootopia.”

CANADA’S FEDERAL COURT UPHOLDS INTERIM COPYRIGHT TARIFF IN ACCESS COPYRIGHT RULING
via Managing Intellectual Property by Natalie Rahhal on 7/12/2017

The Canadian Federal Court has ruled in favour of The Canadian Copyright Licensing Agency (Access Copyright) in an action brought against York ...

LEGAL ARGUMENTS IN "MONKEY SELFIE" CASE ARE BANANAS AT HEARING
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 7/12/2017
URL: http://www.hollywoodreporter.com/thr-esq/legal-arguments-monkey-selfie-case-are-bananas-at-hearing-1020376

None of the behind the scenes legal conflict surrounding the infamous monkey selfie case was discussed during a 9th Circuit hearing Wednesday — but that doesn't mean it wasn't entertaining for those watching the livestream or in the San Francisco courtroom.

9TH CIRC. JUDGE RIPS PETA’S 'MONKEY SELFIE' APPEAL
via Intellectual Property Law360 by Dorothy Atkins on 7/12/2017
URL: https://www.law360.com/ip/articles/943495

A Ninth Circuit judge pressed the People for the Ethical Treatment of Animals on Wednesday on how an ape has been harmed by the alleged copyright infringement of a famed "monkey selfie,” saying repeatedly during a hearing the group can’t claim the ape was "injured by the simple infringement of the Copyright Act itself."
YORK UNIVERSITY ORDERED TO PAY UP AFTER LOSING COPYRIGHT BATTLE
via CBCNews on 7/12/2017

The clash led Access Copyright to sue the school, alleging it had been ... Trent Horne, a copyright lawyer in Toronto, said the ruling is likely to affect ...

END OF THE LINE FOR THE 'MONKEY SELFIE' CASE?
via Law.com - Newswire by Scott Graham on 7/12/2017

Persuading a panel of appellate judges that a monkey can hold a copyright is a tough sell. And the U.S. Court of Appeals for the Ninth Circuit didn’t…

IP UNDER ATTACK IN FASHION AND MOVIE INDUSTRIES
via Intellectual Property Law360 by Laura Urquizu on 7/13/2017
URL: https://www.law360.com/ip/articles/939143

Protecting intellectual property may not seem inspiring to every legal mind, but consider this: In a pop-culture world driven by the allure of acquiring the latest thing, the annual value of counterfeited and pirated goods has reached a startling $1.7 trillion — and is expected to hit $2.8 trillion by 2022. Those are painful numbers, and the pain is shared across every industry, everywhere in the world. An estimated 10 percent of companies are potential victims of IP abuse and product infringement, from small brands that...

CANADIAN COURT TEACHES UNIVERSITY A THING OR TWO ABOUT FAIR DEALING
via IP Pro The Internet by Mark Dugdale on 7/13/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5534

The Federal Court of Canada ruled this week that York University's efforts to guide its faculty around copyright protection so that mandatory licensing ...

IS GOOGLE BUYING POLICY THROUGH ACADEMIA?
via The Illusion of More by David Newhoff on 7/13/2017
URL: http://illusionofmore.com/google-buying-policy-academia/

This week, the Wall Street Journal reports that Google has been funding academic research papers worldwide and, unsurprisingly, the conclusions in these papers [...]

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INTERMEDIARIES COULD BE MADE LIABLE IN EU COPYRIGHT LEGISLATION
via Intellectual Property Watch by Monika Ermert on 7/13/2017
URL: https://www.ip-watch.org/2017/07/14/intermediaries-made-liable-eu-copyright-legislation/

Positions on the new draft European Union Copyright Directive lie so far apart in the European Parliament that compromise before an expected October vote seems nearly impossible. Critics of a new special copyright for press publishers - and of a radical change towards holding internet intermediaries liable for what their users upload - were highly alarmed by this week’s developments in Brussels.

FEATURE FILM SPENDING IS ON THE RISE
via CreativeFuture by Adam Leipzig on 7/14/2017
URL: https://www.creativefuture.org/feature-film-spending-rise/

Filming a realistic version of the “Miracle on the Hudson” in Sully was no easy or cheap feat for Warner Bros.

NEW CHANCE TO BYPASS DMCA COPYRIGHT CIRCUMVENTION BAN
via Intellectual Property Law360 by Jacqueline Charlesworth & Michelle Choe on 7/14/2017
URL: https://www.law360.com/ip/articles/943630

On June 30, 2017, the U.S. Copyright Office initiated the seventh triennial rulemaking proceeding under Section 1201 of the Copyright Act. Section 1201, adopted by Congress in 1998 as a part of the Digital Millennium Copyright Act, prohibits the circumvention of technological controls that protect copyrighted works, such as encryption and password protocols, so that copyright owners can be more secure in disseminating their works in the digital world. In enacting the statute, however, Congress recognized that in some cases, an exception to the general prohibition...

4 COPYRIGHT AND TRADEMARK FIGHTS TO WATCH IN 2ND HALF
via Intellectual Property Law360 by Bill Donahue on 7/14/2017
URL: https://www.law360.com/ip/articles/944282

From Google and Oracle's epic battle over software copyrights to Converse and Walmart's showdown over shoe design trade dress, there are plenty of major copyright and trademark cases set to unfold in the months ahead. Here are four big ones to watch.
Hollywood has a great distaste for the sharing of their copyrighted material. In 2011, Nu Image filed a lawsuit against 23,000 people who allegedly ...

Since then, the parties have attempted to settle the matter – which M2Malletier's claims is primarily copyright infringement, per Fashionista – out of ...

In October 2015, the company was fined $50m for improperly downloading and using Oracle's copyrighted software, as well as a further $46.2m in ...

Southern District Judge John Koeltl, who is presiding over DAddio's copyright-based lawsuit against Kerik, adopted Ellis' recommendation on ...

This is a story about how people with self-righteous and futile agendas end up harming creators for absolutely no reason—and even [...]
ANIMAL RIGHTS? MONKEY SELFIE CASE MAY UNDO EVOLUTION OF THE INTERNET
via Ars Technica by David Kravets on 7/15/2017
URL: https://arstechnica.com/?p=1132963

Going on two years now, an Indonesian macaque monkey named Naruto, represented by his self-appointed lawyers from the People for the Ethical Treatment of Animals, has been trying to claim ownership of the selfies he took of himself with a camera he swiped from a British nature photographer in the jungle of the Tangkoko reserve.

HUE AND CRY OVER COPYRIGHT OF ST TERESA'S BLUE-RIM SARI
via Times by Paul Anthony McDermott on 7/15/2017
URL: https://www.thetimes.co.uk/article/hue-and-cry-over-copyright-of-st-teresas-blue-rim-sari-bk7c7pms3

Pope Francis has announced that, if you plan to die a martyr, you no longer need to perform a miracle to become a saint. However, you will need the ...

"THEY'VE GOT THE WRONG MONKEY": PHOTOGRAPHER OF FAMOUS 'MONKEY SELFIE' BEING SUED FOR COPYRIGHT ...
via Mirror by Vicki Newman on 7/17/2017
URL: http://www.mirror.co.uk/tv/tv-news/theyve-wrong-monkey-photographer-famous-10813811

Photographer David Slater - the man behind the famous 'monkey selfie' - is being sued for copyright. The wildlife snapper appeared on today's This ...

A PHOTOGRAPHER IS BROKE BECAUSE A MONKEY TOOK A SELFIE WITH HIS CAMERA AND IS SUING HIM FOR IT
via Business Insider by Lindsay Dodgson on 7/17/2017

The site said Slater owned no copyright due to the monkey pressing the shutter itself. Slater told BBC News in 2014 that he lost out on a huge amount ...
Copyright claims based on alleged similarities between video games ("clones") are as old as the industry itself. While video games, like other creative works, may receive some level of protection, not all elements of a game are protectable. Abstract ideas, including game mechanics and rules, as well as functional and scenes a faire elements, are not entitled to copyright protection under current United States law. Only expressive elements are protectable. For courts, this distinction can sometimes be only skin deep, and whether or not a clone...

River City Ransom Underground was removed from Steam late last week, part of an unfolding legal drama surrounding a composer who has been directing DMCA copyright-infringement takedowns at games she says don't have the rights to her music.

Although York's dealings with copyrighted material met one part of the test—in that they fell within the named activities in section 29 (education, ...
DISNEY FACING VFX FIRM'S INJUNCTION BID ON THREE BLOCKBUSTER FILMS
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 7/17/2017

"Guardians of the Galaxy," "Avengers: Age of Ultron," and "Beauty and the Beast" are now under the microscope for use of facial capture technology.

EMOJIS ARE PROVING A HOT TOPIC IN AND OUT OF THE COURTROOM ;)
via Fashion Law on 7/17/2017
URL: http://www.thefashionlaw.com/home/emojis-are-proving-a-hot-topic-in-the-law

There are some lawyers that have held that, “Emojis, like other types of visual art, can be protected by copyright.” Others are less convinced, namely ...

DISNEY'S 'BEAUTY AND THE BEAST' GETS ENTANGLED IN VISUAL-EFFECTS LAWSUIT
via WSJ.com: Technology by Ben Fritz on 7/17/2017

A lawsuit against Walt Disney Co. has roped the entertainment giant into a long-running legal dispute over ownership rights to a visual-effects technology, potentially threatening the company’s ability to profit from the top-grossing movie so far this year.

HOLLYWOOD DOCKET: VIDANGEL CLAIMS HOLLYWOOD STUDIOS WANT TO "KILL FILTERING"
via Hollywood Reporter - THR, Esq. by Ashley Cullina on 7/17/2017

Later this month, a California federal judge will consider whether to clarify the injunction that stopped VidAngel's disc purchase-based filtering service in light of the company's new platform, which piggybacks on users' other streaming accounts.
DISNEY SUED OVER VISUAL EFFECTS ON 'BEAUTY AND THE BEAST,' 2 MARVEL BLOCKBUSTERS
via Law.com - Newswire by Todd Cunningham on 7/17/2017

Disney has become entangled in the long-running legal battle over rights to an Oscar-winning visual effects technology, and its profits on "Beauty…

DRAKE INFRINGEMENT CASE: FAIR USE AS A MATTER OF LAW
via New York Law Journal by Stephen M. Kramarsky on 7/17/2017

There, the court again addressed the question of when an artist is protected even though he indisputably uses portions of a copyrighted work.

THE ACCESS COPYRIGHT V YORK UNIVERSITY DECISION: RESTORING SOME BALANCE TO COPYRIGHT IN CANADA
via Hugh Stephens Blog on 7/17/2017
URL: http://hughstephensblog.net/2017/07/18/the-access-copyright-v-york-university-decision-restoring-some-balance-to-copyright-in-canada/

The decision issued by the Federal Court of Canada on July 12 regarding the dispute between the copyright collective Access Copyright and one of Canada’s largest universities, York University (Toronto), marks an important step in swinging the pendulum of copyright back into greater balance.

DISNEY ACCUSED OF USING STOLEN CGI TECH FOR HIT MOVIES
via Intellectual Property Law360 by Nicole Narea on 7/17/2017
URL: https://www.law360.com/ip/articles/944948

A computer-generated imagery company accused The Walt Disney Co. in California federal court Monday of using its intellectual property without permission to animate characters in some of its highest-grossing recent films, including the live-action remake of “Beauty and the Beast,” “Avengers: Age of Ultron” and “Guardians of the Galaxy.”
PHOTOGRAPHER SUES PROCTER & GAMBLE OVER COPYRIGHT ISSUES
via Seattle Times on 7/18/2017
URL: http://www.seattletimes.com/business/photographer-sues-procter-gamble-over-copyright-issues/

A Cincinnati-area photographer is suing Procter & Gamble, saying the consumer products company didn't pay her for photos that ...

PENNSYLVANIA FIRM SUES HONG KONG COMPANY OVER COPYRIGHT
via Penn Record by Louie Torres on 7/18/2017

A Pennsylvania corporation is suing Vinnie's International Hong Kong Custom Tailors, citing alleged copyright infringement.

COPYRIGHT PREEMPTION IN THE SMART PHONE SOCIETY: THE NINTH CIRCUIT CLOUDS THE PICTURE IN T3MEDIA
via IPWatchdog.com | Patents & Patent Law by Lee Burgunder on 7/18/2017
URL: http://www.ipwatchdog.com/2017/07/18/copyright-preemption-smart-phone-society-t3media/id=85807/

There is no question that smart phones have transformed the social and economic structure of society, and the integration of increasingly effective cameras has helped spark the revolution. It is now the norm for people to document their lives through images of themselves and those around them, and to share those images through social media, where others then copy, edit, and reuse them within the blink of an eye. Just imagine all the ways that photos are now taken, posted and virally spread...

MONKEY CAN'T GET MONEY FROM SELFIES
via FindLaw Writ - Recent Articles by William Vogeler on 7/18/2017

It's hard to report this story with a straight face. I mean, even the monkey was smiling.

PHOTOGRAPHERS, REGISTER YOUR D*MN COPYRIGHT
via PetaPixel by Allen Murabayashi on 7/18/2017
URL: https://petapixel.com/2017/07/18/photographers-register-dmn-copyright/

Photographer Max Dubler struck a nerve last week with an article documenting the theft of one of his downhill skateboarding images. After finding a ...
VIMEO CALLS CAPITOL UNFAIR COMPETITION CLAIMS ‘AN OLD RECORD’
via Intellectual Property Law360 by Bill Donahue on 7/18/2017
URL: https://www.law360.com/ip/articles/945111

After losing a key ruling on so-called pre-1972 recordings at the Second Circuit, Capitol Records is now aiming to hold Vimeo liable for the same songs under a theory of unfair competition — a claim the video-sharing website on Monday called “a re-release of an old record with a new album cover.”

RICHARD PRINCE CAN’T DODGE INSTAGRAM ART COPYRIGHT FIGHT
via Intellectual Property Law360 by Bill Donahue on 7/18/2017
URL: https://www.law360.com/ip/articles/945434

A New York federal judge on Tuesday refused to toss a copyright lawsuit filed against artist Richard Prince over an exhibit of photos he pulled from Instagram without permission, saying it was too early to decide if the works are protected by the fair use doctrine.

SPOTIFY HIT WITH TWO LAWSUITS CLAIMING "STAGGERING" COPYRIGHT INFRINGEMENT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 7/18/2017

Plaintiffs, including a founding member of the group Frankie Valli and the Four Seasons, call the streaming giant's $43 million settlement for publishers and songwriters an "empty gesture."

INTERNATIONAL TRADE ADMINISTRATION REPORT HIGHLIGHTS STRONG MARKETS, PERSISTENT PIRACY
via Center for the Protection of Intellectual Property by Kevin Madigan on 7/18/2017
URL: https://cpip.gmu.edu/2017/07/18/international-trade-administration-report-highlights-strong-markets-persistent-piracy/

Last month, the International Trade Administration (ITA)—an agency in the US Department of Congress that measures and promotes the export of nonagricultural services and goods—released its 2017 Top Markets Report, Media and Entertainment Sector Snapshot.
SPOTIFY'S WHOLE BIZ BUILT ON COPYRIGHT INFRINGEMENT: SUITS
via Intellectual Property Law360 by Kat Greene on 7/19/2017
URL: https://www.law360.com/ip/articles/945661

A songwriter for The Four Seasons and another song owner each sued Spotify Tuesday alleging its business model blindly infringes copyrights and seeking a combined $367 million, raising new copyright allegations just months after the company reached a $43 million class action deal on similar claims.

SPOTIFY SUED BY NASHVILLE PUBLISHERS FOR NOT PROPERLY LICENSING SONGS
via Tennessean by Nate Rau on 7/19/2017

More: Nashville copyright lawyer patents landmark victories. The NMPA settlement with Spotify was for $30 million, and Lowery's class-action suit ...

INFRINGEMENT SUIT OVER 'RASTAFARIAN' PHOTO CLEARS HURDLE
via New York Law Journal by Andrew Denney on 7/19/2017
URL: http://www.newyorklawjournal.com/home/id=1202793319948/Infringement-Suit-Over-Rastafarian-Photo-Clears-Hurdle

Graham sued Prince and the Gagosian for copyright infringement. Prince moved for dismissal, arguing that the work constituted fair use. But Southern ...

KOREA AND CHINA HOLD JOINT COPYRIGHT FORUM
via Korea Times on 7/19/2017
URL: http://www.koreatimes.co.kr/www/culture/2017/07/148_233297.html

Consultation meetings on copyright protection will follow, where government officials will discuss joint measures to cut down copyright infringement as ...

FORMER COPYRIGHT OFFICE HEAD PALLANTE GETS IP CHAMPION AWARD
via Bloomberg BNA by Anandashankar Mazumdar on 7/19/2017
URL: https://www.bna.com/former-copyright-office-b73014461916/

Pallante, who has served as president and CEO of the AAP since January, served as the register of copyrights from 2011-2016. The leadership of the ...
GETTING AWAY WITH INFRINGEMENT DOESN’T MEAN IT’S COOL.
via The Illusion of More by David Newhoff on 7/19/2017
URL: http://illusionofmore.com/getting-away-with-infringement-doesnt-mean-its-cool/

Last week, while I was writing my last post about photographer David Slater, a story on PetaPixel was [...] 

BENSALEM WOMAN SUED IN VIDEO GAME COPYRIGHT DISPUTE
via Penn record by Louie Torres on 7/19/2017

A Washington company is suing a Bensalem women over alleged copyright infringement related to the development of a video ...

THE BLURRED LINES OF COPYRIGHT INFRINGEMENT
via Cato Institute by Brink Lindsey on 7/19/2017
URL: https://www.cato.org/blog/blurred-lines-copyright-infringement

This unfortunate case demonstrates how copyright's expansive coverage of “derivative works” is antithetical to the stated purposes of the law.

JUDGE WON'T TOSS COPYRIGHT FIGHT OVER RICHARD PRINCE'S INSTAGRAM ART
via Reuters by Jan Wolfe on 7/19/2017
URL: https://www.reuters.com/article/copyright-artist-idUSL1N1KA1M1

The artist who incorporates other people's photographs into his works lost his bid in federal court in New York on Tuesday to have a copyright lawsuit ...

U2 WANTS 'ACHTUNG BABY' COPYRIGHT CASE BOOTED
via Intellectual Property Law360 by Bill Donahue on 7/19/2017
URL: https://www.law360.com/ip/articles/945725

Rock band U2 asked a New York federal judge Tuesday to toss out a copyright lawsuit claiming a hit off the group’s 1991 “Achtung Baby” borrowed heavily from a little-known 1989 song, saying the two tunes “sound nothing alike.”
NETFLIX COPIED AUTHOR'S WORK FOR 'BURNING SANDS,' SUIT SAYS
via Intellectual Property Law360 by Steven Trader on 7/19/2017
URL: https://www.law360.com/ip/articles/946039

The author of a two-part book series titled “Burning Sands,” a fictional tale of six fraternity pledges at a historically black college, accused Netflix and director Gerard McMurray on Tuesday of infringing his copyright by making a movie released earlier this year with the same title and a similar premise.

USPS MUST FACE TRIAL FOR LADY LIBERTY STAMP MIX-UP
via Intellectual Property Law360 by Bill Donahue on 7/19/2017
URL: https://www.law360.com/ip/articles/945911

The U.S. Postal Service is headed to trial on copyright claims for accidently depicting a Las Vegas replica of the Statue of Liberty on billions of stamps, after the U.S. Court of Federal Claims refused to end the case Tuesday.

SPOTIFY MAY HAVE TO PAY SONGWRITERS $345 MILLION
via Forbes by Erin M. Jacobson on 7/19/2017
URL: https://www.forbes.com/sites/legalentertainment/2017/07/19/spotify-may-have-to-pay-songwriters-345-million/

Ms. Jacobson also serves on the boards of the California Copyright Conference (CCC) and Association of Independent Music Publishers (AIMP).

ALLEGED COPYCAT VIDEO GAME STUDIO THREATENS LAWSUITS OVER “UNREAL INFORMATION”
via Ars Technica by Cyrus Farivar on 7/20/2017
URL: https://arstechnica.com/?p=1135239

A Chinese video game studio accused of making a very similar version of League of Legends has recently fired back in a statement, saying that "some media and competitors who have spread the unreal information and rumors against us, [and] we reserve the right to protect ourselves and pursue legal actions."
'GREAT STEP FORWARD': INDUSTRY REACTS AS CONGRESS SEEKS TO FIX COPYRIGHT LAW BENEFITING SIRIUSXM
via Billboard by Steve Knopper on 7/20/2017

For the last several years, the music business has been unified over one thing: SiriusXM and other digital-radio services must pay royalties for ...

COPYRIGHT CASE OVER RICHARD PRINCE INSTAGRAM SHOW TO GO FORWARD
via New York Times by Andrew R. Chow on 7/20/2017
URL: https://www.nytimes.com/2017/07/20/arts/design/richard-prince-instagram-copyright-lawsuit.html

The artist Richard Prince in 2014. His show at the Gagosian Gallery that year, “New Portraits,” has led to several lawsuits. Credit Gian ...

BILL WOULD SET COPYRIGHT SYSTEM FOR PRE-1972 SONGS
via Intellectual Property Law360 by Kelly Knaub on 7/20/2017
URL: https://www.law360.com/ip/articles/946168

Reps. Darrell Issa, R-Calif., and Jerrold Nadler, D-N.Y., on Wednesday introduced bipartisan legislation that would grant copyright protection to recordings created prior to 1972, with Issa calling the bill “an important and overdue fix to the law.”

JUDGE TOSSES 'UNREASONABLE' COPYRIGHT SUIT OVER AFRICAN COOKBOOK
via New York Law Journal by Jason Grant on 7/20/2017
URL: http://www.newyorklawjournal.com/id=1202793522429/Judge-Tosses-Unreasonable-Copyright-Suit-Over-African-Cookbook

A copyright infringement case brought by an Ethiopian cookbook author was thrown out Wednesday by a federal judge who criticized the ...

RECORD INDUSTRY PRESSES BATTLE WITH VIMEO OVER OLD MUSIC
via MediaPost by Wendy Davis on 7/20/2017
URL: https://www.mediapost.com/publications/article/304664/record-industry-pressexes-battle-with-vimeo-over-old.html

After initially suing Vimeo for infringing copyright to the tracks, Capitol ... people lip-synching to famous songs -- that incorporated copyrighted music.
3 BIG QUESTIONS FOR THE STATUE OF LIBERTY COPYRIGHT FIGHT
via Intellectual Property Law360 by Bill Donahue on 7/20/2017
URL: https://www.law360.com/ip/articles/946462

The U.S. Postal Service has found itself in a strange copyright fight over the mistaken use of a Las Vegas replica of the Statue of Liberty on billions of stamps, highlighted by a big ruling this week at the U.S. Court of Federal Claims.

LAWMAKERS INTRODUCE BILL TO EXTEND COPYRIGHT TO PRE-1972 RECORDINGS
via Variety by Ted Johnson on 7/20/2017

Legislation was introduced this week to close a long-standing quirk in copyright law: Sound-recordings made before 1972 do ...

20 MINUTES OF RESEARCH COULD'VE ENDED BOOK ROW: JUDGE
via Intellectual Property Law360 by Kat Greene on 7/20/2017
URL: https://www.law360.com/ip/articles/946492

A Brooklyn federal judge on Wednesday slammed the attorneys behind a copyright suit over an Ethiopian cookbook, hitting them with sanctions and levying attorneys’ fees on their client after finding the case could have been avoided with 20 minutes of legal research.

SONY USING COPYRIGHT LAW TO STOP SPREAD OF LEAKED PS4 DEV KIT
via PC Magazine by Matthew Humphries on 7/21/2017

A few weeks ago a copy of version 4.5 of Sony's PS4 software development kit (SDK) leaked on to the Internet. This shouldn't happen as Sony only ...

DISH GETS COUNTERCLAIMS TOSSED IN COPYRIGHT SUIT
via Intellectual Property Law360 by Carolina Bolado on 7/21/2017
URL: https://www.law360.com/ip/articles/946922

A Florida judge on Friday dismissed counterclaims by the owner of an Arabic pay-TV company facing a copyright infringement suit claiming the service steals signals from Dish Network LLC, but gave the company time to fix the problems with its pleadings.
LOUIS VUITTON SEEKS SUPREME COURT REVIEW OF PARODY CASE  
via World IP Review on 7/21/2017  

In March this year, the court ruled in Star Athletica v Varsity Brands that decorative elements of a cheerleading uniform may be protected by copyright ...

THE ACCESS COPYRIGHT V YORK UNIVERSITY FEDERAL COURT DECISION: RESTORING SOME BALANCE TO COPYRIGHT IN CANADA  
via Hugh Stephens Blog on 7/21/2017  
URL: http://hughstephensblog.net/2017/07/22/566/ 

The decision issued by the Federal Court of Canada on July 12 regarding the dispute between the copyright collective Access Copyright and one of Canada’s largest universities, York University (Toronto), marks an important step in swinging the pendulum of copyright back into greater balance.

DOES WATERMARKING ACTUALLY CUT DOWN ON E-BOOK PIRACY?  
via Publishers Weekly by Laura Dawson on 7/22/2017  

She presented her paper at [Rosenblatt's] copyright and technology conference this past January. The study showed a 14% increase in e-book sales ...

SPOTIFY SUED, YET AGAIN, OVER COMPOSITIONS  
via NPR by Andrew Flanagan on 7/22/2017  
URL: http://www.npr.org/sections/therecord/2017/07/21/538501163/spotify-sued-yet-again-over-compositions

Both Bluewater Music, an independent publisher and copyright administration company, and Robert Gaudio, a founding member of Frankie Valli and ...
PHOTOGRAPHER SUES PROCTOR & GAMBLE OVER COPYRIGHT IN $75 MILLION+ CASE
via PetaPixel by Michael Zhang on 7/22/2017
URL: https://petapixel.com/2017/07/21/photographer-sues-proctor-gamble-copyright-75-million-case/

A photographer is suing consumer products giant Procter & Gamble, accusing the corporation and the world's largest advertiser of not paying her for ...

IN THE ERA OF SPOTIFY AND PANDORA WHERE DO ASCAP AND BMI FIT?
via IPWatchdog.com | Patents & Patent Law by Derek Handova on 7/23/2017

In traditional music recording, artists have had to choose to license their music through major music industry organizations like ASCAP and BMI. In the age of streaming music through Spotify, Pandora and other services what is the purpose of these organizations? The licensing groups have served as clearinghouses for smaller players in the music industry who cannot feasibly deal with multitudes of licensees on their own. But with Taylor Swift and other “major” artists choosing to deal—or not...

CASTLE: NEW MUSIC LICENSING BILL IS CRONY CAPITALISM
via The Illusion of More by David Newhoff on 7/24/2017
URL: http://illusionofmore.com/castle-new-registration-bill-crony-capitalism/

Not only musicians, but authors of all works should be deeply concerned about Rep. Sensenbrenner’s proposed “Transparency in Music Licensing and Ownership Act,” says attorney [...]

COPYRIGHT CREATIVITY, THEN AND NOW
via Copyright: Creativity at Work by George Thuronyi on 7/24/2017
URL: http://blogs.loc.gov/copyright/2017/07/copyright-creativity-then-and-now/

You never know what you’re going to find digging through the archives of Copyright deposits—it could be a little piece of history, a beautifully handwritten letter, or even the beginnings of a popular product.
FOX, PARAMOUNT ACCUSED OF USING STOLEN COMPUTER GRAPHIC TECHNOLOGY FOR HIT FILMS
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 7/24/2017

A VFX firm demands an injunction on "Deadpool" and three other blockbusters plus one huge video game.

VISUAL-EFFECTS COMPANY SUES ANOTHER TWO MOVIE STUDIOS
via WSJ.com: Technology by Ben Fritz on 7/24/2017
URL: https://www.wsj.com/articles/visual-effects-company-sues-another-two-movie-studios-1500936768

A visual-effects company has filed suit against two Hollywood studios and a videogame company, alleging unauthorized use of its technology.

PUBLISHER SAYS KIDS' GUIDES 'FAIR USE' OF MODERN CLASSICS
via Intellectual Property Law360 by William Gorta on 7/24/2017
URL: https://www.law360.com/ip/articles/947695

The publishers of children’s versions of classics such as ‘The Old Man and the Sea” told a New York federal judge that their version of the books are not copyright violations because the novels were transformed when they “sanitized” the books for kids and put in sections that identified key words and main characters.

FOX, PARAMOUNT PULLED INTO IP WAR OVER CGI TECH
via Intellectual Property Law360 by Kat Greene on 7/24/2017
URL: https://www.law360.com/ip/articles/947589

A visual effects company embroiled in litigation over whether it owns five patents covering Academy Award-winning movement capture technology sued three more companies including Fox and Paramount Pictures on Monday, alleging they infringed the patents by working with a thief who stole the technology.
50 CENT WANTS 'POWER' COPYRIGHT SUIT TOSED
via Intellectual Property Law360 by Bill Donahue on 7/24/2017
URL: https://www.law360.com/ip/articles/947525

Rapper 50 Cent asked a California federal judge Monday to toss out a lawsuit claiming he ripped off the idea for his Starz drama “Power” from an unpublished manuscript, saying the two share nothing other than that both “involve an African-American protagonist.”

PROPERTY IN COPYRIGHT – EXAMINING THE INGERSOLL COPYRIGHT BILL OF 1844
via Mostly IP History by Zvi S. Rosen on 7/25/2017

I’m not pushing a normative argument with this post, I just think it’s useful to understand how some of the debates over copyright have evolved – or not – over 200 years.

GOOGLE HAS A BIG CANADIAN PROBLEM — AND IT'S GETTING DESPERATE
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 7/25/2017
URL: http://www.hollywoodreporter.com/thr-esq/google-has-a-big-canadian-problem-getting-desperate-1024149

After losing up north, Google takes the battle over a worldwide injunction to an American court. But it's unlikely to be the tech giant's last stop.

COPYRIGHT ROYALTY BOARD LAUNCHES E-FILING, CASE MANAGEMENT SYSTEM
via Corporate Counsel by Rhys Lipshan on 7/25/2017
URL: http://www.corpcounsel.com/id=1202793859236/Copyright-Royalty-Board-Launches-EFiling-Case-Management-System

Designed by solution provider NIC, the new system will seek to automate the cumbersome and manual process of filing claims and tracking case ...
LEVI STRAUSS & CO. ACCUSES COMPANIES OF COPYRIGHT INFRINGEMENT
via Cook County Record by Louie Torres on 7/26/2017
URL: http://cookcountyrecord.com/stories/511141268-levi-strauss-co-accuses-companies-of-copyright-infringement

Clothing maker Levi Strauss & Co. is suing a list of partnerships and unincorporated associations for alleged copyright infringement.

€150000 AWARD OVER BREACH OF SINGER TOMMY FLEMING'S COPYRIGHT
via Irish Times by Aodhan O'Faolain on 7/26/2017

Singer Tommy Fleming suffered “a serious setback” following illegal broadcasts of his Voice of Hope DVD on an Irish television station and is entitled ...

VEGETARIAN ETHIOPIAN COOKBOOK COPYRIGHT LAWSUIT TURNS SOUR–SCHLEIFER V. BERNS
via Technology & Marketing Law Blog by Eric Goldman on 7/26/2017

Law professors love to riff on the copyrightability of cookbooks because it raises several subtle issues.

PREMIER LEAGUE WINS ANTI-PIRACY COURT ORDER
via BBC by Bill Wilson on 7/26/2017

"The protection of our copyright, and the investment made by our broadcast partners, is hugely important to the Premier League and the future health ...

KYLIE JENNER SLAPPED WITH COPYRIGHT INFRINGEMENT LAWSUIT OVER COPIED LIPS DESIGN
via Fashion Law on 7/26/2017
URL: http://www.thefashionlaw.com/home/kylie-jenner-slapped-with-copyright-infringement-lawsuit-over-copied-lips-design

Artist Sara Pope is taking copyright action against Kylie Jenner over the bright neon lips seen in a trailer for the star's new reality series, which ...

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IS THE US SUPREME COURT DECISION REGARDING UNIFORMS WORTH CHEERING FOR?
via Tech Crunch by Roy S. Kaufman on 7/26/2017
URL: http://www.thefashionlaw.com/home/kylie-jenner-slapped-with-copyright-infringement-lawsuit-over-copied-lips-design

Star appealed to the Supreme Court, which had previously considered copyrights in useful articles in the context of statuettes on lamp bases during ...

BEYONCÉ CAN'T SHAKE COPYRIGHT SUIT OVER 'FORMATION'
via Intellectual Property Law360 by Bill Donahue on 7/26/2017
URL: https://www.law360.com/ip/articles/948291

A Louisiana federal judge on Wednesday refused to toss out a copyright lawsuit claiming that Beyoncé illegally sampled YouTube clips in the music video for her song "Formation," denying a request that she declare the video a protected fair use.

'DEAN FROM HELL' GUITAR INFRINGEMENT SUIT MOVING TO FLA.
via Intellectual Property Law360 by Sophia Morris on 7/26/2017
URL: https://www.law360.com/ip/articles/948474

A California federal judge on Wednesday transferred a copyright suit against a guitar production company and the estate of late Pantera frontman “Dimebag” Darrell Abbott to the Middle District of Florida, finding that Florida is the more convenient venue for the case despite objections raised by the instrument designer who brought the suit.

BEATLES CO. ESCAPES PROMOTER'S SUIT OVER CONCERT FOOTAGE
via Intellectual Property Law360 by Dave Simpson on 7/26/2017
URL: https://www.law360.com/ip/articles/948569

A New York federal judge on Wednesday dismissed a copyright suit against The Beatles’ Apple Corps Ltd. over footage of the band’s iconic 1965 concert at Shea Stadium, ruling that contracts from the time show that the late rock ’n’ roll promoter Sid Bernstein, whose holding company brought the claims, did not have rights to the work.

BEYONCE CAN'T DODGE "FORMATION" COPYRIGHT LAWSUIT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 7/27/2017

It's premature to rule that Messy Mya's heir doesn't have a plausible claim, the court held.
THE BEATLES TRIUMPH IN OWNERSHIP FIGHT OVER FOOTAGE FROM FAMOUS CONCERT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 7/27/2017


HIGH COURT WON'T TAKE ON LENZ DMCA CASE — WHAT NOW?
via Intellectual Property Law360 by Jose Sariego on 7/27/2017
URL: https://www.law360.com/ip/articles/945889

Lost among the U.S. Supreme Court's recent intellectual property decisions such as The Slants trademark case is a case the court declined to review. The so-called "dancing baby" case, in which the Ninth Circuit held that a copyright owner must undertake a fair use analysis before sending a takedown notice under the Digital Millennium Copyright Act, didn't make the cut for high court review.

HARVARD PROF. TRIBE ARGUES LINKEDIN VIOLATED 1ST AMEND.
via Intellectual Property Law360 by Dorothy Atkins on 7/27/2017
URL: https://www.law360.com/ip/articles/948711

Harvard Law professor Laurence Tribe, arguing on behalf of a job-search start-up, told a California federal judge Thursday that LinkedIn has violated the company's First Amendment rights by prohibiting it from accessing public user data, arguing that letting LinkedIn choose who can access the site will have grave constitutional consequences.

NY MAN AGREES TO PAY $21.3M OVER STOLEN GETTY PICS SCHEME
via Intellectual Property Law360 by Dorothy Atkins on 7/28/2017
URL: https://www.law360.com/ip/articles/948993

A New York man has agreed to pay Getty Images Inc. $21.3 million to end allegations he sold stolen login database credentials to a co-conspirator who then downloaded thousands of copyrighted images and used them to run an illegitimate business on Facebook, according to court documents filed in Ohio federal court on Thursday.
China is the biggest photo copyright abusing country, study finds
via PetaPixel by Jayphen Simpson on 7/28/2017
URL: https://petapixel.com/2017/07/28/china-biggest-photo-copyright-abusing-country-study-finds/

China is the country that ranks highest in the world for copyright infringement of digital photos. That's according to a new study by image theft detection ...

Justices asked to hear if Aereo killed 'volitional' rule
via Intellectual Property Law360 by Kelly Knaub on 7/28/2017
URL: https://www.law360.com/ip/articles/949318

BWP Media has urged the U.S. Supreme Court to review a Fifth Circuit decision rejecting the argument that the high court’s 2014 Aereo ruling eliminated the “volitional conduct” requirement for copyright claims, saying the circuit's interpretation of Aereo contradicts the plain reading of the high court’s decision.

EU gearing up to fight Silicon Valley over news copyrights
via Taipei Times on 7/31/2017
URL: http://www.taipeitimes.com/News/biz/archives/2017/07/31/2003675622

A major battle is brewing in Brussels over an EU reform plan that would force Internet aggregators such as Google News to pay newspapers for ...

Ep. 198: Richard is no prince – and more
via PetaPixel by Sharky James on 7/31/2017
URL: https://petapixel.com/2017/07/30/ep-198-richard-no-prince/

The copyright infringement lawsuit against “photographer” Richard Prince goes forward. (#). Copytrack with surprising data on worldwide copyright ...

State attorneys general team up to scare you from “content theft sites”
via Ars Technica by David Kravets on 7/31/2017
URL: https://arstechnica.com/?p=1140381

Fifteen state attorneys general have teamed up with a pro-Hollywood group to launch a campaign aimed at dissuading the public from visiting file sharing sites.
The estate of Dr. Seuss is urging a New York federal judge to shoot down arguments that an unauthorized “Grinch” play is protected by the fair use doctrine, calling the play “a blatant infringement.”
August 2017

RICHARD PRINCE AND THE INCREASINGLY PERMISSIVE TREATMENT OF INFRINGEMENT
via Mister Copyright by Kevin Madigan on 8/1/2017
URL: http://mistercopyright.org/the-inappropriate-appropriation-of-richard-prince

Earlier this month, a federal judge in New York denied a motion to dismiss a copyright infringement suit against notorious “Instagram artist” Richard Prince, setting the stage for another transformative fair use showdown.

WRITER FIGHTS 50 CENT'S BID TO TOSS 'POWER' COPYRIGHT SUIT
via Intellectual Property Law360 by Steven Trader on 8/1/2017
URL: https://www.law360.com/ip/articles/950231

The author who claims rapper 50 Cent stole ideas from his unpublished manuscript to create the Starz drama “Power” on Monday urged a California judge to deny a motion for immediate judgment that he contended was procedurally defective and didn’t overcome his plausible copyright claim.

VIDANGEL LOSES BID TO HAVE NEW SERVICE CLEARED BY COURT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 8/2/2017

The filtering company is in a legal battle with several Hollywood studios.

GOOGLE SEEKS TO INVALIDATE CANADIAN SUPREME COURT DECISION THROUGH US COURTS: COULD GOOGLE BE SURPRISED?
via Hugh Stephens Blog on 8/2/2017
URL: http://hughstephensblog.net/2017/08/02/google-seeks-to-invalidate-canadian-supreme-court-decision-through-us-courts-could-google-be-surprised/

“Ha, told you so”, seems to be the reaction from anti-copyright circles to Google’s decision to seek a US court ruling to block enforcement (in the US) of a British Columbia court order, upheld on appeal to the Supreme Court of Canada (SCC), that requires Google to de-index from its search engines world-wide listings for a Canadian company that has been found guilty of intellectual property infringement by stealing trade secrets from a Canadian competitor and then passing off the copycat products as originals.
I have said a few times on this blog that contemporary politics in the United States is increasingly reminiscent of the turbulent 19th century. We [...] 

There can be little question that the dynamic for protecting software using intellectual property is changing. For years, commentators treated technology companies as the sole source of software innovation and patent law as the primary means of protecting against unfair competition. Neither proposition was true then, and it is becoming increasingly clear to the IP community that neither proposition is true now.

After beating a copyright lawsuit that a federal judge said could have been avoided with 20 minutes of legal research by the accuser, the author of an Ethiopian cookbook is asking to be reimbursed the $30,000 in legal fees she spent fighting the case.

The plaintiff is the son of T.Rex frontman Marc Bolan.

While I was a student at the University of Southern California, the film studio Columbia Pictures took a gamble on me and financed my film “Boyz n the ...
A SIGHT FOR SORE EYES: PENGUIN AND SIMON & SCHUSTER SECURE PICTURE BOOKS COPYRIGHT WIN
via World IP Review on 8/3/2017

The novels were written by Truman Capote, Hemingway, Kerouac and Arthur Clarke, respectively, and the copyright of the novels is owned by the ...

RICHARD PRINCE’S LOSS OVER APPROPRIATED ART GIVES COPYRIGHT LAW A CHANCE
via Federalist by Robin Ridless on 8/3/2017

Appropriation art is often billed as democratizing, as striking a blow against the commodified art object and the copyright regime that supports it.

THE STAR WARS VIDEO THAT BAFFLED YOUTUBE'S COPYRIGHT COPS
via Wired by Jeremy Hsu on 8/3/2017
URL: https://www.wired.com/story/the-star-wars-video-that-baffled-youtubes-copyright-cops/

Every director knows that the score can make the scene. Anyone who's ever watched a rough cut without soundtrack music can confirm this. Case in ...

CAN AN AI ALGORITHM COPYRIGHT WHAT IT CREATES?
via Forbes by Kalev Leetaru on 8/3/2017

The notion of just what constitutes a “person” and who and what can claim copyright over materials they produce has been in the news over the last ...

SONY STOLE T. REX SONG FOR ‘BABY DRIVER,’ HEIR SAYS
via Intellectual Property Law360 by Cara Bayles on 8/3/2017
URL: https://www.law360.com/ip/articles/951231

The son of rocker Marc Bolan filed a copyright infringement lawsuit in California federal court Thursday against Sony Pictures Entertainment Inc. and several film distributors over the use of a
T. Rex song in the movie “Baby Driver,” saying the studio “inexplicably” didn’t seek permission.

SENATE CONFIRMS TRUMP’S PICK FOR IP CZAR
via Intellectual Property Law360 by Kevin Penton on 8/3/2017
URL: https://www.law360.com/ip/articles/951162

The U.S. Senate on Thursday confirmed Vishal Amin, a veteran Capitol Hill and White House staffer, as the nation’s next intellectual property enforcement coordinator.

TOMMY HILFIGER ACCUSES ONLINE STORES OF COPYRIGHT INFRINGEMENT
via Cook County Record by Louie Torres on 8/4/2017
URL: http://cookcountyrecord.com/stories/511145884-tommy-hilfiger-accuses-online-stores-of-copyright-infringement

Clothing maker Tommy Hilfiger is suing several online stores listed in a court filing, citing alleged copyright infringement and unfair ...

T.REX ATTACKS BABY DRIVER
via IP Pro The Internet by Barney Dixon on 8/4/2017
URL: http://www.iprotheinternet.com/iprotheinternetnews/article.php?article_id=5569

Rolan Feld, son of T.Rex frontman Marc Bolan, has filed a copyright infringement lawsuit against Sony Pictures for its failure to authorise the use of the ...

U.S. CHAMBER APPLAUDS APPROVAL OF WHITE HOUSE INTELLECTUAL PROPERTY ADVISOR
via Global Intellectual Property Center by Courtney Paul on 8/4/2017

U.S. Chamber President and CEO of the Global Intellectual Property Center David Hirschmann today applauded Senate approval of Vishal J. Amin, President Trump’s nominee for White House Intellectual Property Enforcement Coordinator (IPEC):
HOW THE GRINCH STOLE FAIR USE
URL: https://www.law360.com/ip/articles/951374

Since the U.S. Supreme Court’s 1994 Campbell v. Acuff-Rose Music landmark decision, courts have expanded fair use protection. While not a license to take liberally from another work, the fair use test has often tilted in favor of the parodic or transformative second work.

JUDGE RULES KICKASTORRENTS FOUNDER PROPERLY CHARGED WITH CRIMINAL COPYRIGHT CONSPIRACY
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 8/4/2017

For years, there's been ample debate and scholarly literature over whether there really exists a crime for secondary copyright infringement.

ESPN SAYS NO COPYRIGHT BREACH FROM FOOTBALL DOCUMENTARY
via Intellectual Property Law360 by Matthew Guarnaccia on 8/4/2017
URL: https://www.law360.com/ip/articles/951324

ESPN and a documentary producer urged a Mississippi federal judge Thursday to throw out a copyright suit by the creator of a 2004 documentary about a paralyzed college football player, saying there is no evidence to support his claim that the companies unlawfully used footage from his film.

'ZOOTOPIA' COPYRIGHT SUIT SEES NEW CHARACTER, ART DETAILS
via Intellectual Property Law360 by Melissa Daniels on 8/4/2017
URL: https://www.law360.com/ip/articles/951323

A screenwriter accusing The Walt Disney Co. of copyright infringement over the animated hit "Zootopia" detailed a host of new similarities between the film and his own works on Thursday after a California federal judge gave him a chance to add specificity to his claims.

AND THE NEXT BIG FAIR USE CASE IS ...
via Intellectual Property Law360 by Bill Donahue on 8/4/2017
URL: https://www.law360.com/ip/articles/951558

Every copyright lawyer knows Oracle v. Google and Fox v. TVEyes, but what about the next crop of cases to test the fair use doctrine? Here are three cases that could turn out big.
VANITY FAIR HIT WITH SUIT OVER USE OF MARILYN MONROE PHOTO
via Intellectual Property Law360 by Bill Donahue on 8/4/2017
URL: https://www.law360.com/ip/articles/951348

Vanity Fair was hit with a copyright lawsuit in a California federal court Thursday over its use of a photo of the famous incident in which Marilyn Monroe sang a sultry "Happy Birthday" to President John F. Kennedy.

MONKEY SEE, MONKEY SETTLE: DEAL IN THE WORKS TO RESOLVE FAMOUS SELFIE CASE
via Law.com - Newswire by Scott Graham on 8/4/2017

A new monkey may have to bring a test case to get a definitive answer on whether animals can be “authors” under copyright law. Naruto, the…

SEEGER MADE ‘WE SHALL OVERCOME’ AN ANTHEM, OWNERS SAY
via Intellectual Property Law360 by Kyle Jahner on 8/4/2017
URL: https://www.law360.com/ip/articles/951432

The owners of Pete Seeger copyrights urged a New York federal judge on Friday not to usher the iconic 1960s civil rights song "We Shall Overcome" into the public domain without a trial, arguing that the filmmakers suing to do so have failed to refute that changes to a similar anonymous spiritual are nontrivial and copyrightable.

FOR SECOND TIME, APPEALS COURT HEARS GSU E-RESERVES CASE
via Publishers Weekly by Andrew Albanese on 8/4/2017

... a three-judge panel of the 11th Circuit in Atlanta, once again pressed attorneys for the fault lines in the decade-old copyright case case, with much of ...

THE TANGLED WEB OF COMMUNICATION TO THE PUBLIC
via Managing Intellectual Property on 8/4/2017
URL: http://www.managingip.com/Article/3739117/Managing-Copyright-Archive/The-tangled-web-of-communication-to-the-public.html

The communication to the public right has led to confusion and uncertainty in European copyright law. Elisabeth Dehareng, Lukas Feiler, Rachel …
MONKEY SEE, MONKEY SETTLE: DEAL REACHED IN FAMOUS SELFIE CASE
via Recorder by Scott Graham on 8/4/2017
URL: http://www.therecorder.com/id=1202794781140/Monkey-See-Monkey-Settle-Deal-Reached-in-Famous-Selfie-Case?slreturn=20170706224550

A new monkey may have to bring a test case to get a definitive answer on whether animals can be “authors” under copyright law. Naruto, the crested ...

VOLTAGE PICTURES LAWYER RENOUNCES 'UNETHICAL' BITTORRENT COPYRIGHT SUITS
via Variety by Gene Maddaus on 8/4/2017

An attorney who filed dozens of BitTorrent copyright cases on behalf of Voltage Pictures and Millennium Films has renounced the practice, saying he ...

MONKEY SELFIE ANIMAL RIGHTS BROUHAHA DEVOLVES INTO A SETTLEMENT
via Ars Technica by David Kravets on 8/5/2017
URL: https://arstechnica.com/?p=1143259

It appears that another animal will have to take over the fight being waged by Naruto, an Indonesian macaque monkey who is the named plaintiff in a lawsuit weighing whether animals have a right to own property. In this instance, it's about whether animals can own US copyrights.

SAN FRANCISCO THEATRE UNDER FIRE FOR WILLFULLY PRODUCING UNSANCTIONED ADAPTATION OF PLAY
via BroadwayWorld.com by Julie Musbach on 8/6/2017

These edits were made without permission, against the wishes of the playwright, and in violation of Federal Copyright Law." Guirgis's request was ...
UPDATE: SHELTON THEATRE'S UNSANCTIONED ADAPTATION IS SHUT DOWN DUE TO COPYRIGHT INFRINGEMENT
via BroadwayWorld.com by Julie Musbach on 8/6/2017
URL: http://www.broadwayworld.com/article/UPDATE-Shelton-Theatres-Unsanctioned-Adaptation-is-Shut-Down-Due-to-Copyright-Infringement-20170806

Arts Integrity Initiative reported yesterday that Shelton Theatre has been running a production of THE LAST DAYS OF JUDAS ISCARIOT that openly ...

LEVERAGING COPYRIGHT PROTECTION FOR DESIGN ASPECTS OF USEFUL PRODUCTS
via IPWatchdog.com | Patents & Patent Law by Amanda G. Ciccatelli on 8/7/2017
URL: http://www.ipwatchdog.com/2017/08/07/leveraging-copyright-protection-design-aspects-useful-products/id=86327/

Instead of using claims of trademark infringement and more expensive design patent infringement (if a design patent is even obtained), one can expect manufacturers of useful articles such as apparel manufacturers and designers to rely more often upon copyright to enforce their rights against knock-offs, and to seek more copyright registrations for design features on useful articles.

KICKASS PROPERLY CHARGED WITH COPYRIGHT INFRINGEMENT, SAYS US JUDGE
via World IP Review on 8/7/2017

The alleged founder of streaming website KickAss Torrents (KAT) has been properly charged with criminal copyright infringement, a US judge has ...

POST-AXANAR, CBS UNVEILS FIRST OFFICIAL FAN FILMMAKING INITIATIVE IN TREK HISTORY
via Ars Technica by Nathan Mattise on 8/7/2017
URL: https://arstechnica.com/?p=1143623

After pushing a nearly year-and-a-half copyright battle with fan filmmakers toward a settlement earlier this year, CBS and Star Trek New Voyages Producer James Cawley announced the creation of a Star Trek Film Academy equipped to train interested creators and produce future fan films.
EFFORT TO FREE CIVIL RIGHTS ANTHEM MAY HINGE ON DIFFERENCE BETWEEN "WILL" AND "SHALL"
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 8/7/2017
URL: http://www.hollywoodreporter.com/thr-esq/effort-free-civil-rights-anthem-may-hinge-difference-between-will-1027137

Is the official narrative on the origins of "We Shall Overcome" one big lie? A judge will soon decide.

MONKEY SELFIE' CASE NEARS CONCLUSION
via World IP Review on 8/7/2017

The copyright infringement case brought by the People for the Ethical ... Wikipedia refused, stating that the picture cannot be copyrighted as Slater did ...

PHOTOGRAPHER COULD GET MONKEY OFF HIS BACK
via IP Pro The Internet by Barney Dixon on 8/7/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5571

PETA disputed this and launched a legal battle against Slater, arguing that Naruto is the “author” of the photo and therefore entitled to the copyright.

SOUTH AFRICAN COPYRIGHT CHANGES DRAW CRITICISM
via IP Pro The Internet by Barney Dixon on 8/7/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5572

The bill could also make instances of fair use “blurry”, Migogo said, as it essentially says “you can use [a copyrighted work] for free as long as a court of ...

VANITY FAIR SLAPPED WITH $1 MILLION LAWSUIT OVER COPIED MARILYN MONROE PHOTO
via Fashion Law on 8/7/2017

Vanity Fair has been slapped with a $1 million copyright infringement lawsuit over an iconic photo of Marilyn Monroe. According to historical photo ...
YORK UNIVERSITY’S APPEAL OF THE ACCESS COPYRIGHT CASE: A FURTHER WASTE OF PUBLIC FUNDS
via Hugh Stephens Blog on 8/7/2017
URL: http://hughstephensblog.net/2017/08/07/york-universitys-appeal-of-the-access-copyright-case-a-further-waste-of-public-funds/

On July 31 York University announced that it would appeal the Federal Court decision that had handed the university a legal rebuff and stern reprimand over its appropriation, without payment, of content from the repertoire of copyright collective Access Copyright.

'READING RAINBOW' OWNER ACCUSES LEVAR BURTON OF "THEFT AND EXTORTION" IN LAWSUIT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 8/7/2017

Eight years after LeVar Burton tweeted his intention to revive Reading Rainbow, he's now being personally sued for essentially hijacking the long-running PBS show that encourages people to read.

REP. DARRELL ISSA: IT'S TIME TO BRING PRE-1972 COPYRIGHTS OUT OF THE DARK AGES (GUEST COLUMN)
via Variety by Darrell Issa on 8/7/2017

When Sly Stone and Charley Pride received the Lifetime Achievement Award at this year's Grammy Awards in my home state of California, their place ...

COPYRIGHT SMALL CLAIMS PROPOSALS ADDRESS A REAL NEED
via The Illusion of More by David Newhoff on 8/8/2017
URL: http://illusionofmore.com/copyright-small-claims-proposals-address-a-real-need/

It’s far easier to disagree with strident antagonists of copyright than it is to disagree with collegial defenders of the law. […]

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CAN CAKE DESIGNS RESULT IN INTELLECTUAL PROPERTY PROTECTION?
URL: http://www.ipwatchdog.com/2017/08/08/cake-designs-intellectual-property/id=86558/

Excluding any questions regarding the rare patentability of a cake recipe, cake designs, under certain circumstances, may be protected under the laws of copyright and trademark. Specifically, for copyright, 17 USC 101 provides the relevant definition of a “pictorial, graphic, or sculptural work,” which may include two-dimensional and three-dimensional works relevant to cake designs. For example, if a cake design includes works of artistic craftsmanship insofar as their form but not their...

'ALL EYEZ ON ME' PRODUCERS SAY SUING JOURNALIST LACKED COPYRIGHT REGISTRATION
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 8/8/2017

Lionsgate and Morgan Creek demand dismissal of Kevin Powell's copyright lawsuit targeting their Tupac Shakur biopic.

US RIGHT TO INDICT KICKASS TORRENTS FOUNDER
via IP Pro The Internet by Barney Dixon on 8/8/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5573

Vaulin was arrested in Poland in July last year and charged with committing several acts of criminal copyright infringement and conspiring to launder...

SHAVING AD ALLEGEDLY RIPPED OFF 'MISSION: IMPOSSIBLE' THEME
via Variety by Gene Maddaus on 8/8/2017

The owners of the copyright to the “Mission: Impossible” theme filed suit on Tuesday against the makers of the Sonic Groom shaver, alleging the...
BINDED UNVEILS ONE CLICK US COPYRIGHT REGISTRATION FOR PHOTOS AT NO EXTRA FEE
via PetaPixel by Michael Zhang on 8/8/2017
URL: https://petapixel.com/2017/08/08/binded-unveils-one-click-us-copyright-registration-photos-no-extra-fee/

The blockchain-based copyright platform Binded (formerly known as Blockai) just launched a new service that may be a godsend for ...

LEVAR BURTON IS SUED IN READING RAINBOW COPYRIGHT DISPUTE — BUT YOU DON'T HAVE TO TAKE OUR ...
via People by Stephanie Petit on 8/8/2017
URL: http://people.com/tv/levar-burton-reading-rainbow-lawsuit/

LeVar Burton, the actor who hosted PBS's Reading Rainbow from 1983 to 2006, is being sued in a wide-ranging lawsuit that claims he is attempting to ...

GERMAN ACCUSES CLAIRE'S STORES OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/8/2017
URL: http://norcalrecord.com/stories/511148899-german-accuses-claire-s-stores-of-copyright-infringement

Angelika Parker filed a complaint July 10 in U.S. District Court for the Central District of California against Claire's Stores, Inc., and Does 1 through 10, ...

A TEE, A TWEET AND FRANK OCEAN: SOME COPYRIGHT LESSONS
via Intellectual Property Law360 by Timothy Buckley on 8/8/2017
URL: https://www.law360.com/ip/articles/952506

During his July 28, 2017, performance at Panorama Music Festival in New York City, Frank Ocean wore a T-shirt that read "Why be racist, sexist, homophobic or transphobic when you could just be quiet?" The shirt was produced and sold by 18-year-old Kayla Robinson on her Green Box Shop online store, but the words were reportedly copied without permission from a 2015 tweet posted by another teenager, Brandon Male, via his Twitter handle @avogaydro. Sales of the shirt soared after Ocean’s performance, raising questions about attribution and...
SHOWTIME, FUGEES MEMBER SETTLE DOCUMENTARY COPYRIGHT SUIT
via Intellectual Property Law360 by Nicole Narea on 8/8/2017
URL: https://www.law360.com/ip/articles/952100

Showtime and a film production company owned by Pras Michel, a founding member of hip-hop group The Fugees, reached a settlement in a copyright infringement suit, dropping allegations in California federal court that the network aired his documentary without paying him for it.

LEVAR BURTON'S USE OF 'READING RAINBOW' MARKS PUT ON HOLD
via Intellectual Property Law360 by Kat Greene on 8/8/2017
URL: https://www.law360.com/ip/articles/952231

Actor LeVar Burton, host of "Reading Rainbow," must turn over control of the website for the beloved children’s literacy show to the public broadcaster that claims he’s infringing copyrights by holding them, at least until a hearing in the dispute next month, according to a New York court order Tuesday that also keeps him from using his longtime catchphrase from the show.

9TH CIRC. WEB MODERATOR RULING SHOULD STAND, PHOTO CO. SAYS
via Intellectual Property Law360 by Bill Donahue on 8/8/2017
URL: https://www.law360.com/ip/articles/952413

A photo licensing company pushed back Tuesday on calls for the full Ninth Circuit to reconsider a copyright ruling that Google and Facebook have characterized as a “threat” to the internet, saying the tech giants are serving "their narrow, sectarian interests."

HOLLYWOOD DOCKET: WRITER TRIES TO REANIMATE 'ZOOTOPIA' LAWSUIT AGAINST DISNEY
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 8/9/2017

Plus, Walmart ends its insurance fight over the crash that killed comedian James McNair and left actor Tracy Morgan in critical condition.

KAJAL AGGARWAL LOSES COPYRIGHT SUIT AGAINST VVD & SONS
via Times of India on 8/9/2017

Justice T Ravindran dismissed Aggarwal's suit and made it clear that an absolute owner of the copyright of a commercial film has every right to exploit ...
THEATER CONCEDES VIOLATING COPYRIGHT, CLOSES 'JUDAS' PLAY
via San Francisco Chronicle by Lily Janiak on 8/9/2017

Matt Shelton (left), Benita Ward Jarrett, Daryl Harper and Natasha LaGrone in the Shelton Theater's “The Last Days of Judas Iscariot,” which closed ...

TUPAC SHAKUR FILM PRODUCERS TRY TO DISMISS COPYRIGHT SUIT
via World IP Review on 8/10/2017

The producers of “All Eyez on Me”, a biopic about the late rapper Tupac Shakur, have attempted to kick a copyright suit brought by a journalist out of ...

TAKE-TWO ARGUES TATTOOS IN 'NBA 2K' ARE FAIR USE
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 8/10/2017
URL: http://www.hollywoodreporter.com/thr-esq/take-two-argues-tattoos-nba-2k-are-fair-use-1028357

The videogame publisher tells a judge that tattoos originally created for self-expression now serve the purpose of authenticity.

NBA 2K MOVES TO KILL 'TROUBLING' TATTOO COPYRIGHT SUIT
via Intellectual Property Law360 by Bill Donahue on 8/10/2017
URL: https://www.law360.com/ip/articles/953053

Take-Two Interactive is moving to shut down a lawsuit filed over copyrighted tattoos on Lebron James and other players who appear in its popular "NBA 2K" video game franchise, saying the “troubling” case must be “halted in its tracks.”

CHEERLEADER UNIFORM IP CASE ENDS WITH UNUSUAL SETTLEMENT
via Intellectual Property Law360 by Bill Donahue on 8/10/2017
URL: https://www.law360.com/ip/articles/953048

Five months after the U.S. Supreme Court ruled on a long-running copyright fight between two cheerleading uniform companies, the case came to a conclusion Thursday with an unusual settlement reached without one party's consent.
PAPARAZZI AGENCY URGES COURT TO REJECT LIVEJOURNAL'S APPEAL OVER CELEBRITY PHOTOS
via Media Post by Wendy Davis on 8/10/2017

Mavrix didn't alert LiveJournal to the alleged copyright infringement before filing suit, according to the court papers. A trial judge dismissed the lawsuit ...

CHEERLEADER COPYRIGHT CASE ENDS IN SETTLEMENT
via World IP Review on 8/11/2017

In March this year, the US Supreme Court, in a 6-2 decision, held that decorative elements of a cheerleading uniform may be protected by copyright ...

THE COPYRIGHT FIGHT IS NOT ABOUT RED CARPETS – IT’S ABOUT HARDWORKING AMERICANS
via CreativeFuture by Adam Leipzig on 8/11/2017
URL: https://www.creativefuture.org/the-copyright-fight-is-not-about-red-carpets-its-about-hardworking-americans/

I recently traveled to Capitol Hill with CreativeFuture and my team from the FX show Snowfall to speak with Members of Congress. As a film and television editor, I’d hoped to give our elected officials a more complete picture of the growing constituency working in entertainment—one whose employment depends on sensible policy decisions and the strength of copyright laws.

DONALD TRUMP CAN LEARN FROM BARACK OBAMA'S TPP MISTAKES
via Washington Times by Matt Schlapp on 8/11/2017

And it would have exported a convoluted version of the broken “notice and takedown” system of the Digital Millennium Copyright Act—a feeble tool ...
MISS CLEO-'GRAND THEFT AUTO' LAWSUIT IN THE CARDS
via Law.com - Newswire by Richard Binder on 8/11/2017

Remember Miss Cleo, the Jamaican-accented spokesperson for Psychic Readers Network in the late '90s? Her estate is trying to ensure the makers of "Grand Theft Auto: Vice City" remember her, and pay up.

FEDERAL 'TRANSPARENCY' BILL ENDANGERS SONGWriters' LEVERAGE FOR GETTING PAID
via Billboard by Robert Levine on 8/11/2017

And the “Transparency in Music Licensing Ownership Act” takes that weapon away. Under the bill, copyright owners that fail to “provide or maintain the ...

UNIVERSAL INSTRUMENTS CORP. V. MICRO SYSTEM ENGINEERING, INC.
via New York Law Journal on 8/11/2017

Breach of contract, misappropriation of trade secrets, and copyright infringement claims remained against MSEI. Against MTA unjust enrichment, unfair ...

ZAZZLE HIT WITH $460K VERDICT OVER COPYRIGHT INFRINGEMENT
via Intellectual Property Law360 by Kat Greene on 8/11/2017
URL: https://www.law360.com/ip/articles/953723

Zazzle Inc. was hit with a $460,000 verdict in California federal court after a jury found it had infringed a publisher's copyrights for nearly 40 paintings by allowing users to have the works printed on blank mugs, canvas and other items, according to a Thursday order.
CARDS AGAINST HUMANITY GRANTED INJUNCTION IN COPYRIGHT AND TM CLAIM
via World IP Review on 8/14/2017

A US judge has granted the owners of card game Cards Against Humanity an injunction against Skkye Enterprises, a company accused of selling ...

LIKE IT OR LOVE IT: HOW NOT TO GET PINNED (LEGALLY) WHEN USING SOCIAL MEDIA TO PROMOTE YOUR BRAND
via IPWatchdog.com | Patents & Patent Law by Phillip Nulud on 8/14/2017
URL: http://www.ipwatchdog.com/2017/08/14/using-social-media-promote-your-brand/id=86669/

Twitter®, Instagram®, Facebook®, Pinterest® and other social media websites and apps are great avenues for advertising and promotion of one’s business and brand. However, in using social media to promote one’s business, there are a number of pitfalls that one must avoid. Using social media in relation to a business is not the same as using social media for personal, non-commercial use... The issues with using someone else’s copyrights, right of publicity and trademark in social media to promote...

TAKE-TWO SCORES SLAM DUNK IN NBA CASE
via IP Pro The Internet by Barney Dixon on 8/14/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5582

The maker of the NBA 2K video game series, Take-Two, has won the dismissal of statutory damages of as much as $150,000 per copyright ...

UNCERTAIN FUTURE FOR SOUTHAMPTON'S HOBBIT PUB
via BBC on 8/14/2017
URL: http://www.bbc.co.uk/news/uk-england-hampshire-40924842

A pub at the centre of a copyright row is in danger of closing due to the cost of repairs and business rates, its landlady has said. Stephen Fry and Sir ...
TAKE-TWO DEFENDS USE OF TATTOOS AS FAIR USE
via Cinema Blend by William Usher on 8/14/2017

The Hollywood Reporter managed to do a report on the latest happenings involving the lawsuit, where tattoo parlor Solid Oak sued Take-Two over its ...

MUNGER TOLLES & OLSON TO DEFEND STUDIOS IN MOVA TECHNOLOGY LAWSUIT
via Recorder by Todd Cunningham on 8/14/2017
URL: http://www.therecorder.com/id=1202795452930/Munger-Tolles-amp- Olson-to-Defend-Studios-in-MOVA- Technology-Lawsuit

... Century Fox Film and Paramount Pictures infringed upon his copyrights and patents in licensing the technology from effects house Digital Domain.

THE CHALLENGES FACING PRINT MEDIA: IS COPYRIGHT REFORM PART OF THE ANSWER?
via Hugh Stephens Blog on 8/15/2017
URL: http://hughstephensblog.net/2017/08/15/the-challenges-facing-print-media-is-copyright-reform-part-of-the-answer/

This year Canada is required to review and potentially update its copyright legislation.

HIGH COURT ASKED TO EYE 9TH CIRC. ‘WALK OF SHAME’ RULING
via Intellectual Property Law360 by Kelly Knaub on 8/15/2017
URL: https://www.law360.com/ip/articles/953623

A screenwriter who couldn’t persuade the Ninth Circuit to revive his claims that Elizabeth Banks and the production companies that made the movie “Walk of Shame” infringed his copyright has asked the U.S. Supreme Court to hear the case, saying the decision contravenes high court precedent.

LOS ANGELES FABRIC BUSINESS ACCUSES GARMENT VENDORS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/15/2017

Star Fabric Inc. filed a complaint Aug. 8 in U.S. District Court for the Central District of California against G Stage Love.com Inc., Papermoon Inc., doing ...
SHOWTIME SUES TO STOP PIRATING OF MAYWEATHER-MCGREGOR FIGHT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 8/15/2017

The Aug. 26 fight will be shown live on Pay-Per-View but dozens of websites are already promoting unauthorized streams.

OF FAIR USE, RASTAFARIAN PHOTOS, AND RULE 12(B)(6)
via New York Law Journal by Robert W. Clarida & Robert J. Bernstein on 8/15/2017
URL: http://www.newyorklawjournal.com/id=1202795560283/Of-Fair-Use-Rastafarian-Photos-and-Rule-12b6

Appropriation artist Richard Prince is back in court this summer for alleged copyright infringement, and the initial proceedings do not augur well for his ...

COPYRIGHT AND THE HISTORICAL RECORD
via Copyhype by Terry Hart on 8/16/2017
URL: http://www.copyhype.com/2017/08/copyright-and-the-historical-record/

On August 18, 1787, James Madison proposed to the Constitutional Convention what would become Article 1, Section 8, Clause 8 of the Constitution, granting Congress the authority to make copyright (and patent) laws.

HART: COPYRIGHT AND THE HISTORICAL RECORD
via The Illusion of More by David Newhoff on 8/16/2017
URL: http://illusionofmore.com/hart-copyright-historical-record/

In a new post on Copyhype, Terry Hart responds to the general assumption that the Founders would be “appalled” by the state of copyright today. […]

65TH ANNIVERSARY OF THE FIRST COPYRIGHTED CHOREOGRAPHY—ALTHOUGH NOT COPYRIGHTED AS CHOREOGRAPHY
via Copyright: Creativity at Work by Alison Hall on 8/16/2017
URL: http://blogs.loc.gov/copyright/2017/08/copyrightchoreography/

I taught group fitness classes for many years, and I choreographed hundreds of complex step routines.

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SOUTH KOREAN GARMENT BUSINESS ACCUSES TEXAS COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/16/2017

A South Korean garment business is suing a Texas competitor, alleging copyright infringement. C&SM International filed a ...

SYL JOHNSON ASKS 7TH CIRC. TO RETHINK 'DIFFERENT STROKES' SUIT
via Intellectual Property Law360 by Hannah Meisel on 8/16/2017
URL: https://www.law360.com/ip/articles/955075

Soul singer Syl Johnson asked the Seventh Circuit on Wednesday to rehear en banc a ruling dismissing his suit claiming that music's biggest recording labels sampled his song "Different Strokes" without getting his permission or paying him royalties.

TORONTO REAL ESTATE BOARD DISPUTE SHOWS AWKWARDNESS OF COPYRIGHT PROTECTION FOR DATABASES
via IPWatchdog.com | Patents & Patent Law by Robert Tremblay on 8/17/2017

Legal protection for databases in Canada is, perhaps surprisingly, a little convoluted. In some jurisdictions, unique database rights have been legislated (e.g. the EU). This is not yet the case in Canada where protection instead comes from a patchwork of rights provided by different regimes. Traditional intellectual property ("IP") rights provide some protection, but with sufficient gaps to make exclusive reliance on IP inadvisable... In the decision, the Competition Tribunal found that the...

COURT CONFIRMS THE OBVIOUS: AIDING AND ABETTING CRIMINAL COPYRIGHT INFRINGEMENT IS A CRIME
via Center for the Protection of Intellectual Property by Devlin Hartline on 8/17/2017

In July of 2016, a criminal complaint was filed in the Northern District of Illinois alleging that Artem Vaulin of the Ukraine was the mastermind behind the popular torrent site, Kickass Torrents (KAT).
SONGWRITERS WRITE OPEN LETTER TO RIAA CRITICIZING 'MORAL RIGHTS' STANCE, CALL IT 'IRRESPONSIBLE' AND A ...
via Billboard by Richard Smirke on 8/17/2017

To date, 172 countries have signed up to the copyright mandate as outlined in Berne Convention, including the U.S., which joined in 1989. However ...

'ENGLAND HATH NEED OF THEE': APPEAL TO SAVE MILTON'S PARADISE LOST COTTAGE
via Guardian by Alison Flood on 8/17/2017

As the 350th anniversary of the publication of Paradise Lost approaches (Milton's publisher, Samuel Simmons, registered the copyright for the epic ...

AMERICAN IDENTITY IS IN THE MUSIC
via The Illusion of More by David Newhoff on 8/17/2017
URL: http://illusionofmore.com/american-identity-is-in-the-music/

My generation was raised on Schoolhouse Rock!. As such, we were not only told that America is a Melting Pot but were reminded of this [...] 

'ONCE UPON A TIME IN VENICE' COPYRIGHT HOLDERS CLAIM FILM WAS UNLAWFULLY DISTRIBUTED ONLINE
via Penn Record by Louie Torres on 8/17/2017
URL: http://pennrecord.com/stories/511170518-once-upon-a-time-in-venice-copyright-holders-claim-film-was-unlawfully-distributed-online

Venice PI LLC filed a complaint on July 26 in the U.S. District Court for the Eastern District of Pennsylvania against John Does 1-10 alleging copyright ...

TECH GROUP WANTS FORWARD-LOOKING NAFTA ON IP, DIGITAL
via Intellectual Property Law360 by Alex Lawson on 8/17/2017
URL: https://www.law360.com/ip/articles/955006

As the Trump administration forges ahead with the first round of negotiations to revamp the North American Free Trade Agreement this week, a leading tech industry organization has called
on officials to make sure they tackle modern trade challenges in areas such as intellectual property and digital trade flows.

PENCE LAUDS CHILE FTA BUT NUDGES FOR BETTER IP COMPLIANCE  
via Intellectual Property Law360 by Alex Lawson on 8/17/2017  
URL: https://www.law360.com/ip/articles/955189

Vice President Mike Pence offered mostly kind words for the U.S. free trade agreement with Chile on Wednesday but also said that Santiago could improve its compliance with the pact’s intellectual property provisions.

YOUTUBE EXEC LYOR COHEN: WE PAY MORE IN THE US THAN OTHER AD-SUPPORTED MUSIC SERVICES  
via Variety by Janko Roettgers on 8/17/2017  

Under the DMCA, YouTube only has to remove copyrighted works after being notified to do so. The service has gone one step further and automated ...

KOREAN BUSINESS ACCUSES CALIFORNIA COMPETITOR OF COPYRIGHT INFRINGEMENT  
via Northern California Record by Wadi Reformado on 8/17/2017  

Wongab Corporation filed a complaint Aug. 10 in U.S. District Court for the Central District of California against Arcadia Group Ltd., individually and ...

SHOWTIME SUES TO STOP MAYWEATHER-MCGREGOR FIGHT STREAMS  
via Intellectual Property Law360 by Zachary Zagger on 8/17/2017  
URL: https://www.law360.com/ip/articles/955322

Showtime on Tuesday filed a lawsuit to stop more than 40 websites from pirating the much-hyped bout later this month pitting undefeated boxer Floyd Mayweather Jr. against Ultimate Fighting Championship lightweight champion Conor McGregor.
BMI BATTLES DEPARTMENT OF JUSTICE OVER SONG LICENSING
via Variety by Paula Parisi on 8/17/2017

There is a reason the Copyright Office and federal judge overseeing the BMI consent decree have agreed with us — forced 100% licensing has no ...

STILL NO OPINION, BUT JUDGE’S ORDER BANS DISTRIBUTION OF 'INFRINGING' KINDERGUIDES
via Publishers Weekly by Andrew Albanese on 8/18/2017

... Jack Kerouac, Arthur C. Clarke, and Ernest Hemingway sued upstart Moppet Books for copyright infringement, alleging that its KinderGuide editions ...

COURT ORDERS TELSTRA AND OTHER INTERNET SERVICE PROVIDERS TO BLOCK PIRACY SITES
via Guardian on 8/18/2017

“In respect of all the online locations, the evidence establishes that each of those locations has facilitated infringement of copyright in one or more of ...

KITKAT MAKER NESTLÉ ACCUSED OF COPYING ATARI BREAKOUT GAME IN ADVERT
via Guardian on 8/18/2017
URL: https://www.theguardian.com/business/2017/aug/18/kitkat-nestle-atari-breakout-advert-copyright

Games company launches lawsuit accusing food giant of 'plain and blatant' breach of its copyright in classic video game. KitKat chocolate bar made …
TATTOO COPYRIGHT INFRINGEMENT SUIT DRIBBLES ON
via At last ... the 1709 Copyright Blog by MarieAndree Weiss on 8/18/2017
URL: http://the1709blog.blogspot.com/2017/08/tattoo-copyright-infringement-suit.html

Readers of this blog may remember that Solid Oaks Sketches filed a copyright infringement suit against Take-2 Software, the maker of the NBA 2K video game, claiming that its reproduction of several tattoos worn by famous basketball players was copyright infringement.

BMI ASKS 2ND CIRC. TO UPHOLD FRACTIONAL LICENSING WIN
via Intellectual Property Law360 by Eric Kroh on 8/18/2017
URL: https://www.law360.com/ip/articles/955554

There is no support for the government's position that a decades-old antitrust consent decree prohibits Broadcast Music Inc. from issuing fractional licenses for music performance rights and a lower court's rejection of that interpretation should be upheld, BMI told the Second Circuit on Thursday.

FABRICS BUSINESS ACCUSES GARMENT VENDORS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/18/2017

Star Fabrics Inc. filed a complaint Aug. 8 in U.S. District Court for the Central District of California against Masoi Jeans Inc., Top Fashion, Touch Me ...

LOS ANGELES JEWELRY BUSINESS ACCUSES COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/18/2017

A Los Angeles jewelry and accessories business is suing a California competitor, alleging copyright infringement and unfair ...
EMINEM'S LEGAL BATTLE AGAINST NEW ZEALAND POLITICAL PARTY SPILLS INTO U.S. COURT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 8/18/2017

A track known as "Eminem esque," used in political ads, allegedly sources to a California company.

ATARI SUES NESTLE OVER 'BREAKOUT' KIT KAT AD
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 8/18/2017
URL: http://www.hollywoodreporter.com/thr-esq/atari-sues-nestle-breakout-kit-kat-ad-1030763

The vintage gamer says the unauthorized use will likely prevent it from legitimately partnering with other candy brands.

ON 'BLURRED LINES' AND 'STAIRWAY,' WHAT CAN JURORS HEAR?
via Intellectual Property Law360 by Bill Donahue on 8/18/2017
URL: https://www.law360.com/ip/articles/944861

Two closely watched copyright cases over the songs “Blurred Lines” and “Stairway to Heaven,” both set for rulings next year by the Ninth Circuit, are quietly linked by a common question: What music can jurors actually hear?

RIAA RESPONDS TO LYOR COHEN'S YOUTUBE BLOG POST: 'WE'VE HEARD THESE ARGUMENTS BEFORE'
via Billboard by Andy Gensler on 8/19/2017

Sherman first claimed that YouTube's use of the "safe harbor" provision of 1998's Digital Millennium Copyright Act -- designed to limit the liability for ...

ATARI SUES NESTLE, SAYS KIT KAT VIDEO GAME AD VIOLATES BREAKOUT COPYRIGHT
via Ars Technica by Joe Mullin on 8/21/2017
URL: https://arstechnica.com/?p=1149131

Atari claims that a commercial for Nestle's Kit Kat candy bars violates the copyright and trademark rights of Breakout, Atari's iconic 1975 video game.
MPA WINS COPYRIGHT CASE AGAINST CHINA'S XUNLEI
via Variety by Patrick Frater on 8/21/2017

A Chinese court has found Xunlei Networking Technologies guilty of copyright infringement. The civil law case was brought by the Hollywood studios ...

HOLLYWOOD STUDIOS PREVAIL IN CHINA COPYRIGHT INFRINGEMENT CASE
via Deadline by Nancy Tartaglione on 8/22/2017

The Hollywood studios scored a piracy victory in China on Monday when the Shenzhen Nanshan District People's Court found Shenzhen Xunlei ...

PIRACY, COPYRIGHT VIOLATION SOURCES OF TERROR FUNDING: RAJNATH SINGH
via Economic Times on 8/22/2017

Piracy and copyright violations are sources of terror financing and money laundering, Home Minister Rajnath Singh said today while ...

ATARI FILES SUIT AGAINST NESTLÉ FOR KIT KAT AD CAMPAIGN THAT INFRINGED ON BREAKOUT VIDEO GAME
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 8/22/2017

Atari Interactive Inc. filed a lawsuit alleging trademark and copyright infringement claims against Swiss food and drink company Nestlé SA (VTX:NESN). The suit targets a worldwide and multi-platform advertising campaign produced by Nestlé for the company’s Kit Kat candy bars, which uses elements of Atari’s Breakout video game. The suit is filed in the Northern District of California. Atari’s suit alleges that Nestlé leveraged the look of Breakout for its Kit Kat ad campaign 40 years after Steve...
PHOTOGRAPHER SUES BROADCASTER OVER IMAGE OF FIVE BILLION DOLLAR MAN
via World IP Review on 8/22/2017

In a copyright infringement claim filed at the US District Court for the ... Thomas is seeking statutory damages of up to $150,000 per copyrighted work ...

ARTIST IN COPYRIGHT ROW OVER 'TROUBLING' RAPE ACCUSATION SCENE
via World IP Review on 8/22/2017

An artist at the centre of a copyright infringement dispute with the producers of the UK crime drama “Broadchurch” has rescinded her acceptance of a ...

MPAA SECURES $200000 PAYOUT IN CHINA
via IP Pro The Internet by Barney Dixon on 8/22/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5596

The Shenzhen Nanshan District People's Court awarded the damages after finding Xunlei guilty of infringing the copyright of MPA member studios.

LEGAL INKLINGS ON INK: ARE TATTOOS REPRODUCED IN VIDEO GAMES FAIR USE?
via Forbes by Joseph Rothberg on 8/22/2017

The current intersection of sports, IP, and videogames is a lawsuit for copyright infringement, filed in Federal Court in the Southern District of New York, ...
DIGITAL RECORDS COMPANY ACCUSES COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/22/2017

The plaintiff alleges Olivares illegally reproduced and publicly displayed GoDigital's copyrighted works. GoDigital Records seeks to enjoin the ...

REDIGI TELLS 2ND CIRC. DIGITAL FILES CAN BE RESOLD LIKE CDS
via Intellectual Property Law360 by William Gorta on 8/22/2017
URL: https://www.law360.com/ip/articles/956713

Online music service ReDigi Inc. asked the Second Circuit on Tuesday to reverse a New York federal court’s finding that its digital music resale platform infringed the copyrights of Vivendi SA’s Capitol Records, saying the service does not create a reproduction of the music file.

LANCASTER COUNTY WOMAN ACCUSED OF UNLAWFULLY SHARING 'CRIMINAL' VIA BITTORRENT
via Penn Record by Louie Torres on 8/22/2017

According to the complaint, the plaintiff is the registered copyright holder of the film "Criminal." The plaintiff holds Rodriguez responsible because the ...

SELLER OF 'USED' ITUNES TRACKS TAKES BATTLE WITH CAPITOL RECORDS TO APPELLATE COURT
via MediaPost by Wendy Davis on 8/22/2017

That model is illegal, Capitol said, because only the copyright owner has the right to make copies. Capitol added that even if the tracks are removed ...
As I’ve mentioned a few times on this blog, and will mention many more times, I currently have an article going through the editing process at the University of Cincinnati Law Review, which attempts to be a systematic study of common-law copyright, both generally and as applied to sound recordings, with a specific focus on performance rights.

A year ago, when I wrote about Dalian Wanda Chairman Wang Jianlin’s boast that he would “devour” Disney’s theme parks in China (“Mickey’s Adventures in China: Theme Park Wars and Copyright”), Wanda was riding high. From humble beginnings as a property developer in the Chinese city of Dalian, Wang had become China’s wealthiest man through building mega shopping centres, many of them anchored by large cinema complexes, and had gone on to expand abroad, buying AMC Cinemas for $2.6 billion in 2012 and Legendary Pictures for $3.5 billion in 2016.

Intellectual Property Watch recently conducted an interview with Ben Sobel, law and technology researcher, teacher, and fellow at Harvard University’s Berkman Klein Center for Internet and Society. Sobel has focused his research on copyright and the fair use doctrine, in particular in the context of artificial intelligence (AI). Below, he shares his views on expressive machine learning, “the fair use dilemma” and “Big Content versus Little Users”. The most pressing copyright question has to do with AI readers, not AI authors, according to Sobel.
HOW DOES AN INDEPENDENT FILMMAKER SUPPORT HIMSELF? A CONVERSATION WITH KERN SAXTON
via CreativeFuture by Adam Leipzig on 8/23/2017
URL: https://www.creativefuture.org/how-does-an-independent-filmmaker-support-himself-a-conversation-with-kern-saxton/

The best film trailers often serve as the audience’s ideal window into a movie’s narrative soul. In mere moments, they must introduce the primary characters and convey a sense of the story’s arc — all while getting filmgoers excited enough to think, “I can’t wait to see that!”

LA COUNTY FABRICS BUSINESS ACCUSES COMPETITORS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/23/2017

Standard Fabrics International Inc. filed a complaint Aug. 16 in U.S. District Court for the Central District of California against Dese Enterprises Inc., ... 

MAYWEATHER V. MCGREGOR WARRANTS PREEMPTIVE ANTI-PIRACY EFFORTS
via Center for the Protection of Intellectual Property by Kevin Madigan on 8/23/2017
URL: https://cipip.gmu.edu/2017/08/23/mayweather-v-mcgregor-warrants-preemptive-anti-piracy-efforts/

This Saturday, the world will be treated to one of the most hyped events in the history of sports when “The Notorious “ Conor McGregor and Floyd “Money” Mayweather Jr. meet in Las Vegas to become (even more) rich while ostensibly also participating in a boxing match.

DYE, PRINT BUSINESS ACCUSES GARMENT VENDORS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/23/2017

A Los Angeles dye and print business is suing garment vendors, alleging copyright infringement. Universal Dyeing & Printing Inc.
CALIFORNIA PUBLISHING BUSINESS ACCUSED OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/23/2017

According to the complaint, George suffered damages from having his copyrighted photographs used without his consent. The plaintiff alleges the ...

MISSOURI INSURANCE AGENT ACCUSED OF COPYRIGHT INFRINGEMENT
via St. Louis Record by Noddy A. Fernandez on 8/23/2017

Despite having an affiliation agreement to serve as an agent, the plaintiff claims its confidential database of documents and copyrighted works, ...

LOS ANGELES TEXTILE CORPORATION ACCUSES GARMENT VENDORS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/23/2017

Couture Textile Inc. filed a complaint Aug. 16 in U.S. District Court for the Central District of California against Cupshe, LLC and Does 1-10, alleging ...

YOUTUBE STARS SUED OVER LAMPOON VIDEO WIN CASE
via Hill by Ali Breland on 8/23/2017

Hosseinzadeh's sued, arguing that the Kleins had committed copyright ... often sue artists and content creators over portions of copyrighted content.

THE PROMISE AND POTENTIAL OF FAN FICTION
via New Yorker by Stephen Burt on 8/23/2017
URL: http://www.newyorker.com/books/page-turner/the-promise-and-potential-of-fan-fiction

They might have lost, if they did, on fair-use grounds, but the threats were the point; many copyright holders sought to control the way their properties ...
A photographer has sued sports news website Bleacher Report for allegedly using a photograph of two former National Football League (NFL) players...

The YouTube 'reaction video' duo behind H3H3 Productions have won a landmark copyright case that could provide future precedent for fair use...

After more than a year of battling in court, Ethan and Hila Klein, the YouTubers behind the H3H3 Productions channel, won a lawsuit filed against them by another YouTuber.

"Star Wars is still Star Wars, even without Princess Leia’s bikini scene," states the opinion.

Siding with Walt Disney and other Hollywood studios, the Ninth Circuit on Thursday affirmed an injunction that shut down movie filtering service VidAngel Inc., saying a ruling to the contrary would “create a giant loophole in copyright law.”
SOFTWARE SERVICE PROVIDER ACCUSES COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/24/2017

AutoOpt Networks Inc. filed a complaint Aug. 15 in U.S. District Court for the Northern District of California against Vijay Karani, Mobile Terrace, Inc., ...

COALITION FORMS TO FIGHT COPYRIGHT OFFICE RULE
via Politico by David Beavers & Aubree Eliza Weaver on 8/24/2017

A group of nonprofit certification organizations and for-profit testing companies has ...

YOUTUBE VIDEO DID NOT INFRINGE, COVERED BY FAIR USE: JUDGE
via Intellectual Property Law360 by Kevin Penton on 8/24/2017
URL: https://www.law360.com/ip/articles/957296

A New York federal judge Wednesday tossed a copyright infringement and defamation lawsuit filed by a YouTube video personality against two other filmmakers who develop programming on the website, determining that fair use laws cover the disputed content.

NINTH CIRCUIT SAYS VIDANGEL’S WINGS MADE OF WAX
via The Illusion of More by David Newhoff on 8/24/2017

“Drat! Phooey! Shucks!” must be what the folks at VidAngel are saying after this morning’s opinion was handed down by the Ninth Circuit Court of [...] 

COMMON MISCONCEPTION OF OWNERSHIP UNDER THE WORK FOR HIRE DOCTRINE
via Corporate Counsel by Daniel Ovenezian & Andre Gibbs on 8/25/2017

Software copyrights continue to be an important intellectual property for many companies. Such prominence can be seen by several recent cases ...
GOVERNMENT SKIPS GEOBLOCKING AND FAIR USE IN COPYRIGHT REFORM
via ZDNet by Corinne Reichert on 8/25/2017

The Australian government has finally tabled its response to the Productivity Commission's report into intellectual property, but did not lend its full ...

MUSICIAN CONTINUES COPYRIGHT CRUSADE AGAINST CHURCHES
via World IP Review on 8/25/2017

Filed at the US District Court for the Eastern District of New York, Emmanuelle's case(pdf) accused BLUMC of featuring his copyrighted work on a ...

COPYRIGHT BOSSES BRACED FOR KODI ONSLAUGHT AS MAYWEATHER VS MCGREGOR LIKELY TO CREATE SURGE OF ...
via Mirror by Jeff Parsons on 8/25/2017
URL: http://www.mirror.co.uk/tech/copyright-bosses-braced-kodi-onslaught-11046421

When Conor McGregor and Floyd Mayweather touch gloves on Saturday night, it's expected to draw 50 million viewers in the US alone. Promoters are ...

CAN AN AI OWN A COPYRIGHT?
via The Illusion of More by David Newhoff on 8/25/2017
URL: http://illusionofmore.com/can-an-ai-own-a-copyright/

Remember Clippy? He was the animated paper-clip assistant, who lived several years ago amid the code of Microsoft Office. He would pop […]

‘REACTION’ VIDEO PROTECTED BY FAIR USE–HOSSEINZADEH V. KLEIN
via Technology & Marketing Law Blog by Venkat Balasubramani on 8/25/2017

AERIAL PHOTOGRAPHER ACCUSES CALIFORNIA BUSINESS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/25/2017

According to the complaint, Schmitman suffered damages from having his copyrighted works copied without his consent between Feb. 7, 2015, and...

ARCHIE MD, INC. V. ELSEVIER, INC.
via New York Law Journal on 8/25/2017
URL: http://www.newyorklawjournal.com/id=1202796446929/Archie-MD-Inc-v-Elsevier-Inc

The Copyright Office registered Archie's collection, effective as of Aug. 15, 2015, with the so-called '274 Registration number. Archie claimed Elsevier ...

COPYRIGHT BOARD MAKING AVAILABLE RIGHT DECISION RELEASED
via Barry Sookman on 8/25/2017
URL: http://www.barrysookman.com/2017/08/25/copyright-board-making-available-right-decision-released/

The Copyright Board just released its long awaited decision on the scope of the making available right under the Copyright Act.

SHOWTIME FILES COPYRIGHT SUIT AGAINST MAYWEATHER-MCGREGOR LIVESTREAMING SITES
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 8/25/2017

There are major concerns that websites enabling consumers to access streaming video illegally without paying, in violation of copyright, could hamper the fortunes of those broadcasting the event. On August 15th, New York City-based television channel operator Showtime Networks Inc., the exclusive producer of the live transmission of the Mayweather-McGregor fight, filed a copyright infringement suit in the Central District of California. The suit is a preemptive strike against a series of John...
5 REAL WAYS YOUTUBE CAN FIX ITS PROBLEMS WITH THE MUSIC INDUSTRY (GUEST COLUMN)
via Variety by David Israelite on 8/26/2017

It is time for YouTube to step out from behind the protections of the DMCA and work with the music industry to ensure that where copyright owners ...

MAYWEATHER-MCGREGOR PIRACY SITES ON THE ROPES: ARE THEY DOWN FOR THE COUNT?
via Ars Technica by David Kravets on 8/26/2017
URL: https://arstechnica.com/?p=1154201

The Mayweather-McGregor fight is almost here.

THE FIGHT OUTSIDE THE MAYWEATHER-MCGREGOR FIGHT MAY COST THEM BOTH MILLIONS
via Forbes by Roger Groves on 8/26/2017

It filed a copyright infringement suit in the Central District of California. Unlike the real fight in the ring, we will not know who wins until several months if ...

THE COPYKAT - PART DEUX
via At last ... the 1709 Copyright Blog by Ben Challis on 8/28/2017
URL: http://the1709blog.blogspot.com/2017/08/the-copykat-part-deux.html

It's not often we report on the Pagan community, but the Wild Hunt tells us of concerns about Pagans violating copyright protections of Pagan books which have "resurfaced in a big way, with thousands of volumes being uploaded by the owner of one popular Facebook group".

KODI CONTINUES TO PLAGUE COPYRIGHT OWNERS AS 3 MILLION PEOPLE WATCH MAYWEATHER VS MCGREGOR ...
via Mirror by Sophie Curtis on 8/28/2017
URL: http://www.mirror.co.uk/tech/kodi-continues-plague-copyright-owners-11070208

Demand for pirate streams of sporting events shows no sign of abating, after new data revealed that nearly 3 million people watched the Floyd ...
VIDANGEL, VIDANGEL, APPEAL DENIED
via Copyhype by Terry Hart on 8/28/2017
URL: http://www.copyhype.com/2017/08/vidangel-vidangel-appeal-denied/

On Thursday, the Ninth Circuit issued its decision in Disney Enterprises v VidAngel, affirming the district court’s order enjoining VidAngel after it was sued by several studios alleging copyright infringement.

TEXAS A&M ATHLETIC DEPT. FIGHTS INFO BID IN '12TH MAN' IP SUIT
via Intellectual Property Law360 by Matthew Guarnaccia on 8/28/2017
URL: https://www.law360.com/ip/articles/958160

The Texas A&M University athletic department told a Texas federal court Friday that information sought by an author and publisher in a copyright lawsuit over the university’s publication of a story about the origin of a football fan tradition is irrelevant to a dispute over the department’s sovereign immunity.

WARNER BROS FACING TRIAL NEXT YEAR OVER $1B 'CONJURING' COPYRIGHT SUIT
via Deadline by Dominic Patten on 8/28/2017

Warner Bros may be very happy with the big bucks success they have had with The Conjuring franchise but the studio can't be pleased that a federal ...

PHOTOGRAPHER ACCUSES CLOTHING OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/28/2017
URL: http://norcalrecord.com/stories/511198608-photographer-accuses-clothing-of-copyright-infringement

Estevan Oriol filed a complaint Aug. 25 in U.S. District Court for the Central District of California against Ross Stores Inc. and Occasion USA Corp., ...
WASHINGTON DC COMPANY ACCUSES COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/28/2017

Hahaas Comedy LLC filed a complaint Aug. 22 in U.S. District Court for the Central District of California against Anthony Girgis, alleging the defendant ...

SONGWRITERS ASK 2ND CIRC. TO UPHOLD FRACTIONAL LICENSING
via Intellectual Property Law360 by Nicole Narea on 8/28/2017
URL: https://www.law360.com/ip/articles/957836

A songwriters association has urged the Second Circuit to uphold a New York federal court’s finding that a new interpretation of World War II-era antitrust consent decrees does not force Broadcast Music Inc. to change the way it licenses artists’ works.

TOM CLANCY’S WIDOW SUES OVER JACK RYAN CHARACTER RIGHTS
via Intellectual Property Law360 by Bonnie Eslinger on 8/28/2017
URL: https://www.law360.com/ip/articles/958532

Novelist Tom Clancy’s widow sued the attorney overseeing the late author’s estate and others Friday in Maryland state court over the profits and ownership rights connected to the character Jack Ryan, who first appeared as the protagonist of Clancy’s debut novel, “The Hunt For Red October.”

PEPE THE FROG ARTIST ASSERTS IP, SHUTS DOWN CHILDREN'S BOOK
via Intellectual Property Law360 by Melissa Daniels on 8/28/2017
URL: https://www.law360.com/ip/articles/958414

The creator of Pepe the Frog successfully stopped the distribution of an allegedly hate-mongering children’s book featuring the character on Monday, but his WilmerHale attorneys say it won’t be the last time the artist seeks to assert his intellectual property rights over the character that’s become a symbol associated with white supremacists.
NINTH CIRCUIT UPHOLDS PRELIMINARY INJUNCTION AGAINST VIDANGEL'S DVD "FILTERING" SERVICE
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 8/29/2017

In a decision issued in Disney Enterprises, Inc., et al. v. VidAngel, Inc. on August 24, 2017 [Disney v. VidAngel.pdf], the Ninth Circuit affirmed the grant of a preliminary injunction to stop VidAngel's ripping of DVDs, decrypting and copying them to its servers, and then filtering out objectionable content at the request of end users who could then stream the filtered content from VidAngel's cloud servers for $20.

LEVAR BURTON SETTLES 'READING RAINBOW' COPYRIGHT DISPUTE
via Intellectual Property Law360 by Dorothy Atkins on 8/29/2017
URL: https://www.law360.com/ip/articles/958604

"Reading Rainbow" host LeVar Burton and a New York public broadcaster have cut a deal to resolve a contentious legal battle over the copyrights to the beloved children's literacy show, according to documents filed in federal court Monday.

WARNER BROS. CAN'T DITCH $800M 'CONJURING' COPYRIGHT SUIT
via Intellectual Property Law360 by Bill Donahue on 8/29/2017
URL: https://www.law360.com/ip/articles/958427

A Virginia federal judge on Monday refused to toss out an $800 million copyright lawsuit against Warner Bros. over 2013 horror hit “The Conjuring,” saying he won’t wade into the truth of “paranormal escapades” at such an early stage.

DISNEY SEEKS OUT OF 'ZOOTOPIA' COPYRIGHT SUIT AGAIN
via Intellectual Property Law360 by Dorothy Atkins on 8/29/2017
URL: https://www.law360.com/ip/articles/958798

The Walt Disney Co. urged a California federal judge on Monday to toss a screenwriter’s suit alleging that the entertainment giant ripped off his show to create the animated film "Zootopia," arguing that the plot and characters in the screenwriter's work aren’t remotely similar to Disney's hit flick.
WILMER HELPS 'PEPE THE FROG' CREATOR BEAT BACK ALT-RIGHT TIES
via Law.com - Newswire by Scott Flaherty on 8/29/2017

"Feels good, man," was the original catchphrase of Pepe the Frog, a comic strip character that grew into an internet meme and was later co-opted…

CITING STAR ATHLETICA, COURT SAYS LIGHTS CAN BE COPYRIGHTED
via Intellectual Property Law360 by Bill Donahue on 8/29/2017
URL: https://www.law360.com/ip/articles/958318

Relying on the U.S. Supreme Court’s recent ruling on cheerleading uniforms, a New York federal judge ruled Monday that decorative lights could be protected by copyright law.

JOHN STEINBECK'S RELATIVES BY MARRIAGE IN COPYRIGHT DISPUTE
via SFGate by Brian Melley on 8/29/2017

Film remakes of "The Grapes of Wrath" and "East of Eden" fell apart because John Steinbeck's late son and widow impeded …

LOS ANGELES FABRICS BUSINESS ACCUSES GARMENT VENDORS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/29/2017

Star Fabrics Inc. filed a complaint Aug. 25 in U.S. District Court for the Central District of California against Royal Concepts Inc., Francesca's …

DISNEY ACCUSED OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/29/2017
URL: http://norcalrecord.com/stories/511198589-disney-accused-of-copyright-infringement

Donald P. Bochers filed a complaint Aug. 24 in U.S. District Court for the Central District of California against The Weinstein Company LLC, doing …
AUSTRALIAN GOVERNMENT TO REVIEW FAIR USE
via IP Pro The Internet by Barney Dixon on 8/29/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5604

The Australian government will consult on more flexible copyright exceptions, including fair use, as part of its goal to create a modernised framework.

WILMER HELPS 'PEPE THE FROG' CREATOR BEAT BACK ALT-RIGHT TIES
via American Lawyer by Scott Flaherty on 8/30/2017

Under the settlement, Hauser admitted to infringing Furie's copyright on the Pepe the Frog character and agreed to destroy all copies of the children's ...

SECTION 512(F) COMPLAINT SURVIVES MOTION TO DISMISS–JOHNSON V. NEW DESTINY CHURCH
via Technology & Marketing Law Blog by Eric Goldman on 8/30/2017

Section 512(f) litigation has resulted in so much futility that it’s big news when a 512(f) complaint even survives a motion to dismiss.

SCHOLAR TAKES ON EMPIRICIST VIEW OF IP
via The Illusion of More by David Newhoff on 8/30/2017
URL: http://illusionofmore.com/scholar-takes-on-empiricist-view-of-ip/

Empirical evidence tells us that all human existence is a sand castle. At best, if no other cataclysm comes first (and one probably [...]

FED. REGS CAN'T BE COPYRIGHTED, NONPROFIT TELLS DC CIRC.
via Intellectual Property Law360 by Steven Trader on 8/30/2017
URL: https://www.law360.com/ip/articles/958995

A nonprofit whose goal is to publicize industry rules written by private standards-setting groups that are later turned into law has appealed to the D.C. Circuit a lower court's February ruling that those regulations are protected by copyright law and must be removed from its website.
KIM DOTCOM DEMOS MICRO-PAYMENT SERVICE TO HELP STOP PIRACY
via BBC by Mary-Ann Russon on 8/31/2017

Mr Dotcom is currently fighting extradition to the US to stand trial for copyright infringement and fraud. He said the platform will reduce online piracy by ...

MUSICFIRST TARGETS YOUTUBE, IHEART, SIRIUS OVER FAIR PAY IN NEW AD CAMPAIGN
via Billboard by Dan Rys on 8/31/2017
URL: http://www.billboard.com/articles/business/7949093/musicfirst-targets-youtube-iheart-sirus-new-ad-campaign

In January, musicFIRST penned an open letter to Congress arguing for copyright and radio royalty rate reform ahead of the inauguration of the new ...

KMART ACCUSED OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/31/2017

Paul Benavidez filed a complaint Aug. 23 in U.S. District Court for the Central District of California against Kmart Corporation, Home Products ...

PEPE THE FROG'S CREATOR HAS SHUT DOWN AN ISLAMOPHOBIC CHILDREN'S BOOK BASED ON HIS CHARACTER
via Quartz by Thu-Huong Ha on 8/31/2017

Now, after Matt Furie, the creator of the book's star character, accused the author of copyright infringement, Hauser has agreed not to continue with the ...

SOUTHERN DISTRICT JUDGE WIELDS NEW SCOTUS COPYRIGHT STANDARD
via New York Law Journal by Jason Grant on 8/31/2017
URL: http://www.newyorklawjournal.com/id=1202796865018/Southern-District-Judge-Wields-New-SCOTUS-Copyright-Standard

Citing a recent U.S. Supreme Court decision on copyright protection for artistic elements of everyday products, a Southern District judge has ruled that ...
SONY/ATV COPYRIGHTS DRIVE VOLKSWAGEN TIGUAN'S NEW AD CAMPAIGN
via Billboard by Melinda Newman on 8/31/2017
URL: http://www.billboard.com/articles/business/7949139/sonyatv-copyrights-drive-volkswagen-tiguans-new-ad-campaign

Sony/ATV Music Publishing has pulled off a hat trick. In a rare move, the publishing company has 100 percent share of all the songs used in the three ...

CALIFORNIA BUSINESS ACCUSED OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 8/31/2017

Jeffrey R. Werner filed a complaint Aug. 21 in U.S. District Court for the Central District of California against Penske Media Corporation, ...

COURT REJECTS LIVEJOURNAL'S BID FOR NEW HEARING IN BATTLE OVER CELEBRITY PHOTOS
via MediaPost by Wendy Davis on 8/31/2017

If so, and if they also knew that posts infringed copyright, LiveJournal may not be eligible for the safe harbors, the judges wrote. The panel ordered the ...

THE 512(F) STANDARD: AN EQUAL AND OPPOSITE REACTION
via Copyhype by Terry Hart on 8/31/2017
URL: http://www.copyhype.com/2017/08/the-512f-standard-an-equal-and-opposite-reaction/

The Southern District Court of New York ruled in favor of a YouTube duo (Ethan and Hila Klein, who release videos under the moniker H3H3) facing a claim of copyright infringement for a “reaction video” on August 23, holding that their use of clips from plaintiff’s video constituted fair use.
NEW GUIDE SHOWS HOW BEST TO IMPLEMENT MARRAKESH TREATY SO BOOKS ARE ACCESSIBLE TO VISUALLY IMPAIRED
via Intellectual Property Watch by Catherine Saez on 8/31/2017

The World Blind Union (WBU) has recently issued a guide to the World Intellectual Property Organization treaty providing copyright exceptions for visually impaired people.

APP PIRACY STIFLES INNOVATION, HARMS CONSUMERS
via CreativeFuture by Adam Leipzig on 8/31/2017
URL: https://www.creativefuture.org/app-piracy-stifles-innovation-harms-consumers/

Mobile applications – the fun, useful programs that tell you how to get home, give you awesome bunny ears, introduce you to the love of your life, and let you text your friends across the world, and are cheap (maybe 99 cents) or even free – are being pirated like crazy.

SPOTIFY: DON'T COMPARE US TO NAPSTER
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 8/31/2017
URL: http://www.hollywoodreporter.com/thr-esq/spotify-dont-compare-us-napster-1034247

The company has responded to a copyright lawsuit by challenging what rights are truly implicated by streaming.

HARD ROCK CAFE SUED OVER USE OF ICONIC PIC OF DAVID BOWIE
via Intellectual Property Law360 by Darcy Reddan on 8/31/2017
URL: https://www.law360.com/ip/articles/959475

Hard Rock Cafe used a famous image of David Bowie from a 1973 album cover throughout its Palm Springs, California, hotel and on its website without consent, the photographer’s estate alleged in a lawsuit filed in New York federal court Wednesday.

TBS RIPPED OFF B&B SITCOM IDEA, COUPLE SAYS
via Intellectual Property Law360 by Rick Archer on 8/31/2017
URL: https://www.law360.com/ip/articles/959699

An Illinois couple told a federal court Thursday that Turner Broadcasting System Inc. ripped off their bed-and-breakfast television show idea.
'COSMOS' HOST NEIL DEGRASSE TYSON SUED OVER PORTRAIT USE, 'STARTALK' PROFITS
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 8/31/2017

Renowned astrophysicist Neil deGrasse Tyson is being sued by a photographer who says the scientist has been using his photos without permission and surreptitiously forced him out of a company he co-founded.

EX-PARTNER SUES NEIL DEGRASSE TYSON FOR INFRINGEMENT, FRAUD
via Intellectual Property Law360 by Cara Bayles on 8/31/2017
URL: https://www.law360.com/ip/articles/959793

Photographer David Gamble sued astrophysicist Neil deGrasse Tyson and their business partner in New York federal court Thursday, saying he’d been tricked into selling his ownership interest of a production company they co-founded for “a fraction of its value” and that Tyson made hundreds of prints of a copyrighted portrait without permission.

VIDEO IN DR. PHIL IMPRISONMENT SUIT NOT FAIR USE: GILSTRAP
via Intellectual Property Law360 by Dave Simpson on 8/31/2017
URL: https://www.law360.com/ip/articles/959414

A Texas federal judge ruled Wednesday that the submission of a video of Dr. Phil McGraw by a former CBS employee in a California state court lawsuit alleging the talk show host locked his staff in a room does not constitute fair use.

"MICKEY" SINGER SUES DISNEY, VIACOM, 'SOUTH PARK,' OTHERS FOR UNAUTHORIZED USE OF SONG
via Hollywood Reporter - THR, Esq. by Patrick Shanley on 8/31/2017

Toni Basil filed a lengthy claim against a number of other companies and productions over the use of her 1982 hit.
'ALT-RIGHT' CHILDREN'S BOOK SHELVED FOR BLATANTLY COPYING PEPE THE FROG
via Huffington Post by Priscilla Frank on 9/1/2017
URL: http://www.huffingtonpost.com/entry/pepe-the-frog-childrens-book_us_59a5e781e4b063ae34d9c1b8

Matt Furie, the artist behind the viral amphibian Pepe the Frog, brought copyright infringement charges against a former Texas assistant principal ... 

DIGITAL PROPERTY RIGHTS DEBATE HEATS UP IN NAFTA RENEGOTIATION
via Reuters by Chris Arsenault on 9/1/2017

Canada allows educational institutions to use copyrighted text books without having to compensate the book's publishers and makes another ...

SHARES IN DRUG MAKER INDIVIOR TANKED ALMOST 40% AFTER LOSING ITS HEROIN TREATMENT COPYRIGHT CASE
via Business Insider by Oscar Williams-Grut on 9/1/2017
URL: http://www.businessinsider.com/indivior-share-price-down-over-30-on-us-generic-ruling-2017-9

Shares in UK-listed drug maker Indivior are tanking on Friday morning after the company warned that the loss of a court case in the US ...

VIDANGEL SEEKS SALVATION FOR FILTERING SERVICE IN UTAH FEDERAL COURT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 9/1/2017

The company sues affiliates of Disney, Warner Bros., and Fox.
STREAM RIPPING EMERGES AS THE NEW FACE OF MUSIC PIRACY
via Mister Copyright by Kevin Madigan on 9/1/2017

As formats change and advances in technology continue to transform the way we listen to music, new methods of pirating content are never far behind.

FOOTAGE OF DR. PHIL ALLEGEDLY IMPRISONING WOMAN LEADS TO NOVEL COPYRIGHT DECISION
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 9/1/2017

Leah Rothman, a former director on his show, used her iPhone to record nine seconds of outtakes to aid herself in a legal battle.

INTERNET FIRMS DESCRIBE THEMSELVES AS 'NEW FACES' OF CONTENT INDUSTRY IN TRADE LETTER
via Variety by Ted Johnson on 9/1/2017

That sounds like the mission of the MPAA and the Recording Industry Association of America, as well as other groups focused on copyright and ...

BRIAN DUFFY'S ESTATE SUES HARD ROCK CAFE OVER DAVID BOWIE IMAGE
via World IP Review on 9/1/2017

The estate of late photographer Brian Duffy is suing Hard Rock Cafe for copyright infringement for using a photograph of British singer David Bowie, ...

'PEPE THE FROG' CREATOR WINS COPYRIGHT LAWSUIT AGAINST AUTHOR OF CONSERVATIVE CHILDREN'S BOOK
via ABA Journal by Lorelei Laird on 9/1/2017

Cartoonist Matt Furie intended his Pepe the Frog character to be “blissfully stoned” and a “peaceful frog-dude.” But that was in 2005. Today, Pepe is ...
DR. PHIL WINS COPYRIGHT CASE AGAINST WOMAN WHO ACCUSES HIM OF IMPRISONMENT
via Forbes on 9/1/2017

Dr. Phil McGraw speaks onstage at Zimmer Children's Museum Discovery Award Dinner at Skirball Cultural ...

PETRA MOSER AND COPYRIGHT EMPIRICS
via Written Description by Lisa Ouellette on 9/2/2017

I thought this short Twitter thread was such a helpful, concise summary of some of NYU economist Petra Moser's excellent work—and the incentive/access tradeoff of IP laws—that it was worth memorializing in a blog post.

RANA SARKAR FILES COMPLAINT OVER COPYRIGHTED FILM NAME
via Times of India on 9/4/2017

Ranjana Ami Ar Ashbona won three national film awards in 2011 including best music direction and best feature film in Bengali. Now, Dutt ...

STREAM RIPPING EMERGES AS THE NEW FACE OF MUSIC PIRACY
via Center for the Protection of Intellectual Property by Kevin Madigan on 9/5/2017
URL: https://cpip.gmu.edu/2017/09/05/stream-ripping-emerges-as-the-new-face-of-music-piracy/

As formats change and advances in technology continue to transform the way we listen to music, new methods of pirating content are never far behind.

EX-NFLERS FIGHT EA’S BID TO ESCAPE MADDEN SUIT
via Intellectual Property Law360 by Matthew Perlman on 9/5/2017
URL: https://www.law360.com/ip/articles/960446

A proposed class of former NFL players urged a California federal court Friday not to toss their suit against game maker Electronic Arts over the alleged use of their likenesses in Madden video games, saying that their claims are not preempted by the Copyright Act.
BREITBART SUED FOR COPYRIGHT INFRINGEMENT
via Hill by Joe Concha on 9/5/2017
URL: http://thehill.com/homenews/media/349262-breitbart-sued-for-copyright-infringement

Sylvester claims Breitbart News then intentionally "copied and posted the copyrighted photograph" to Breitbart.com to "accompany a number of articles ..."

POPULAR YOUTUBE STREAM RIPPING SITE TO SHUT DOWN
via Billboard by Marc Schneider on 9/5/2017
URL: http://www.billboard.com/articles/business/7950158/youtube-mp3-shut-down-stream-ripping-site

Filed in September 2016, the original lawsuit asserted a straight copyright infringement claim as well as claims for contributory copyright infringement, ...

PHOTOGRAPHER SUES BREITBART FOR COPYRIGHT INFRINGEMENT
via Courthouse News Service by Britain Eakin on 9/5/2017
URL: https://www.courthousenews.com/photographer-sues-breitbart-copyright-infringement/

A photojournalist sued Breitbart News Network Tuesday, accusing the far-right media company of repeatedly using a ...

MUSIC CREATORS STUCK IN SAFE HARBOUR TRAP, SAYS MUSICFIRST
via IP Pro The Internet by Barney Dixon on 9/5/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5616

He added: “Our goal is to rally the people and organisations who make and love music to ask Congress to address obvious flaws in our copyright ..."

SPOTIFY, BLUEWATER & MECHANICAL LICENSING: WHAT'S REALLY DRIVING THE STREAMING GIANT'S LATEST ...
via Billboard by Ed Christman on 9/5/2017

Its memo notes, for example, that the Bluewater copyright infringement allegations "are purposefully vague," using words like reproduce and distribute, ...
Joshua L. Simmons  
joshua.simmons@kirkland.com

JOHN STEINBECK'S STEPDAUGHTER AWARDED $13M BY JURY IN HEIRS' FIGHT  
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 9/5/2017  

Given the family's history of litigation, it remains to be seen if this verdict finally closes the book on Steinbeck courtroom battles.

HERE’S HOW GOOGLE’S MONEY REALLY INFLUENCES RESEARCH  
via Fast Company by Robert Levine on 9/6/2017  
URL: https://www.fastcompany.com/40461615/when-feeding-the-hand-makes-it-less-likely-youll-get-bit

Yesterday, the New York Times reported that the New America Foundation—which over the course of years has received $21 million in funding from Google and its executive chairman, Eric Schmidt—terminated a program run by the prominent antitrust scholar Barry Lynn after he praised the European Commission’s decision to fine Google for abuse of market dominance.

BEYOND TC HEARTLAND: VENUE IN OTHER TYPES OF IP CASES  
via Intellectual Property Law360 by Mark Schonfeld on 9/6/2017  
URL: https://www.law360.com/ip/articles/959176

The U.S. Supreme Court’s recent TC Heartland decision has radically changed the law regarding venue of patent lawsuits. Until July 2017, about 40 percent of patent cases were brought in the Eastern District of Texas. In Heartland, however, the Supreme Court ruled that defendants in patent cases could be sued only where they are incorporated or where they have a regular or established place of business. This has led to a substantial reduction in the number of patent cases filed in Texas.

WILL BLOCKCHAIN DISRUPT ENTERTAINMENT AND COPYRIGHT LAW?  
via FindLaw Writ - Recent Articles by George Khoury, Esq. on 9/6/2017  

The increasing adoption of blockchain technology may soon have a significant impact for entertainment and copyright lawyers.
A California federal judge on Tuesday ordered a popular Germany-based website to stop ripping audio from YouTube music videos to create free downloadable MP3s after the website cut a confidential deal to end a copyright infringement suit against it brought by three major record companies.

It's pretty clear that a monkey can't sue for infringement, but many other copyright issues are far less black-and-white. Here, Law360 looks at three of the biggest open questions that courts and lawmakers have yet to definitively answer.

With the video-focused Watch tab and the rights to copyrighted content secured, Facebook could grow into the top online destination for online media.

The four types of IP are among a startup's most valuable business assets: trademarks, copyrights, patents, and trade secrets. As we covered in a prior ...

Infringing MP3 ripping site YouTube-MP3 has agreed to settle with multiple record labels in a combined copyright infringement lawsuit. Sony Music ...
BUZZFEED AT CENTRE OF ANOTHER COPYRIGHT DISPUTE
via World IP Review on 9/7/2017

Internet media company Buzzfeed has found itself at the centre of another copyright dispute with a photographer. New-York based photographer ...

DEFAULT JUDGEMENT COULD COST SCI-HUB $4.8 MILLION
via IP Pro The Internet by Barney Dixon on 9/7/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5619

ACS said that Sci-Hub’s “unabashed flouting of US copyright laws merits a ... In June, Elsevier was granted $15 million in damages from a copyright ...

APPLE STRIKES DEAL WITH WARNER MUSIC, LOOKS TO PAY LABELS LOWER RATES
via Ars Technica by Valentina Palladino on 9/7/2017
URL: https://arstechnica.com/?p=1160297

A catalog of music from high-profile artists including Bruno Mars, Ed Sheeran, the Red Hot Chili Peppers, and others will populate Apple Music. According to a Bloomberg report, Apple has struck a deal with Warner Music Group to offer its songs on its music streaming service, as well as iTunes.

YOUTUBE STREAM-RIPPING SITE FOR THE MASSES DEAD IN WAKE OF RIAA SUIT
via Ars Technica by David Kravets on 9/7/2017
URL: https://arstechnica.com/?p=1160435

The Recording Industry Association of America, the British Recorded Music Industry, and other industry lobbyists have sent piracy site Youtube-mp3.org down the memory hole.

WHO OWNS TOM CLANCY’S FICTIONAL CHARACTER JACK RYAN?
via Forbes by Oliver Herzfeld on 9/7/2017
URL: https://www.forbes.com/sites/oliverherzfeld/2017/09/07/who-owns-tom-clancy’s-fictional-character-jack-ryan/#76e9ca0f161f

As part of the publishing agreement for Hunt, Clancy granted and assigned to his publisher the exclusive worldwide copyrights to Hunt and agreed ...
RECORDING ARTIST ACCUSES LOS ANGELES BUSINESS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/7/2017

According to the complaint, Basil suffered damages from having her copyrighted work used without her consent. The plaintiff alleges the defendants ...

SANTA MONICA PHOTOGRAPHER ACCUSES COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/7/2017

According to the complaint, Michael Grecco Photography suffered damages from having its copyrighted photograph of Julia Child used without its ...

WORLD'S LARGEST YOUTUBE RIPPING SITE ORDERED TO SHUT DOWN
via Variety by Paula Parisi on 9/8/2017

... is now the most prevalent form of online music copyright infringement, according to the International Federation of the Phonographic Industry (IFPI).

ANIMATORS FILE COPYRIGHT SUIT AGAINST 'IRON SKY' PRODUCERS
via Hollywood Reporter by Scott Roxborough on 9/8/2017

Animators and visual effects technicians who worked on the first film claiming the producers are using their work for upcoming sequels without ...

A CLOSER LOOK AT 9TH CIRC. VIDEO FILTERING COPYRIGHT RULING
URL: https://www.law360.com/ip/articles/960830

Some have cast the Disney Enterprises Inc. v. VidAngel Inc. proceeding, decided Aug. 24 by the Ninth Circuit, as the “big studios” versus the “little guy”: the movie studios’ collective effort to
kill filtering. This is far from the truth. Instead, copyright law served to vindicate a small Utah company that pioneered filtering and adhered to the law.

**SPOTIFY IN SONGWRITERS’ CROSSHAIRS AGAIN**
via The Illusion of More by David Newhoff on 9/8/2017
URL: http://illusionofmore.com/spotify-songwriters-crosshairs/

In July, two new lawsuits were filed against the streaming service Spotify, alleging willful copyright infringement on a “staggering scale.”

**MOVIE PRODUCTION COMPANY ACCUSED OF COPYRIGHT INFRINGEMENT**
via Northern California Record by Wadi Reformado on 9/8/2017

A Los Angeles County business is suing a Connecticut movie production company, alleging copyright infringement. Sleeping Giant ...

**SOFTWARE COMPANY ACCUSES CALIFORNIA COMPETITOR OF COPYRIGHT INFRINGEMENT**
via Northern California Record by Wadi Reformado on 9/8/2017

A San Francisco software company is suing a California business, alleging copyright infringement. Silicon Valley Software Group ...

**SHAREBEAST OWNER PLEADS GUILTY TO COPYRIGHT INFRINGEMENT**
via Variety by Gene Maddaus on 9/8/2017

Artur Sargsyan, the owner of the massive song-sharing site ShareBeast, has pleaded guilty to copyright infringement, the U.S. Attorney's Office ...
CALIFORNIA TEXTILE CONVERTER ACCUSES NEW YORK COMPETITORS OF COPYRIGHT INFRINGEMENT

A Los Angeles textile converter is suing New York competitors, alleging copyright infringement. Neman Brothers & Associates Inc.

COMPOSERS ACCUSE COMPETITOR OF COPYRIGHT INFRINGEMENT

28 in U.S. District Court for the Central District of California against Lilith Murphy, alleging she infringed upon their copyrights for her musical ...

OWNER OF MUSIC-SHARING SERVICE SHAREBEAST PLEADS GUILTY IN COPYRIGHT CASE

The U.S. Attorney's Office for the Northern District of Georgia said Artur Sargsyan, 29, pleaded guilty to one felony count of criminal copyright ...

JUDGE RULES "WE SHALL OVERCOME" VERSE NOT UNDER VALID COPYRIGHT

The win goes to the legal team that prevailed over "Happy Birthday to You."

SHAREBEAST.COM OWNER PLEADS GUILTY TO FELONY INFRINGEMENT

The 29-year-old owner of file sharing website Sharebeast.com pled guilty to a felony count of criminal copyright infringement for pirating more than a billion copies of copyrighted works, according to a statement by the U.S. Department of Justice on Friday.
WE SHALL OVERCOME’ VERSE NOT UNDER COPYRIGHT, JUDGE RULES
via NYT > Media & Advertising by Ben Sisario on 9/8/2017
URL: https://www.nytimes.com/2017/09/08/business/media/we-shall-overcome-copyrigh.html

A federal judge said that the song’s adaptation from an older work, including changing “will” to “shall,” was not original enough for protection.

DR. PHIL WINS COPYRIGHT CASE AGAINST FORMER SEGMENT DIRECTOR WHO HAD ALLEGED FALSE IMPRISONMENT
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 9/9/2017

It’s not everyday that a copyright case involves claims of false imprisonment but an order granting summary judgment entered on August 30th in the Eastern District of Texas granted a legal win to American TV personality and psychologist Dr. Phil and his production studio in just such a case. Judge Rodney Gilstrap decided to grant summary judgment sua sponte to Dr. Phil and Peteski Productions in a case against a former segment director for The Dr. Phil Show after the director recorded an iPhone...

WE SHALL OVERCOME’ NOT COPYRIGHT PROTECTED, JUDGE SAYS
via Intellectual Property Law360 by Dave Simpson on 9/9/2017
URL: https://www.law360.com/ip/articles/962281

A New York federal judge ruled Friday that the lyrics and melody to the first verse of Pete Seeger’s classic civil rights song “We Shall Overcome” aren’t protected by copyright, finding the first verse of the 1960s Seeger version doesn’t differ sufficiently from a 1948 public domain version to warrant protection.

FACEBOOK GOES AFTER YOUTUBE WITH THE MONEY CARD
via Forbes by Bobby Owsinski on 9/9/2017

The video service has been intransigent about its 55/45 split (the copyright holder gets 55% of ad revenue), and since the revenue is based on paid ...
SCIENTISTS, FREE SOFTWARE BODS STILL WORRIED ABOUT EU COPYRIGHT PROPOSALS
via Register by Richard Chirgwin on 9/11/2017
URL: https://www.theregister.co.uk/2017/09/11/scientists_free_software_bods_still_worried_about_eu_copyright_proposals/

At issue is a proposal, which first landed last year, to stop people uploading copyrighted material by applying a YouTube-like filter against content ... 

GIGI HADID, IMG MODELS SLAPPED WITH COPYRIGHT INFRINGEMENT LAWSUIT OVER INSTAGRAM POST
via Fashion Law on 9/11/2017

Gigi Hadid has been slapped with a copyright infringement lawsuit after posting a photo of herself on her Instagram and Twitter accounts last summer.

TRENDS IN COPYRIGHT LITIGATION FOR TATTOOS

An increasing trend in copyright infringement suits filed in the United States has tattoo artists bringing suit against entertainment entities, and in some cases against the tattoo bearer themselves, for the reproduction or recreation of tattoos they created. Most commentators would likely conclude that tattoos are eligible for copyright protection under the Copyright Act. However, it is important to note that a distinction can be made between the copyright in the design of the tattoo and the...

FIREWATCH DEV USES DMCA AGAINST PEWDIEPIE AFTER STREAMED RACIAL SLUR
via Ars Technica by Kyle Orland on 9/11/2017
URL: https://arstechnica.com/?p=1162193

Campo Santo, the developer behind forest exploration game Firewatch, is using DMCA requests to take down videos of its game streamed by popular YouTube personality Felix "PewDiePie" Kjellberg. The move comes after PewDiePie called another player a "n-----r" (NSFW video) during a live stream of PlayerUnknown's Battlegrounds yesterday.
THIS ADMIN HELPED MUSIC PIRATES PILFER 1 BILLION COPYRIGHTED TRACKS
via Ars Technica by David Kravets on 9/11/2017
URL: https://arstechnica.com/?p=1162239

The admin for a prolific file-sharing site that helped pirates score more than 1 billion tracks now faces five years in prison after pleading guilty to a single count of criminal copyright infringement.

RAKOFF SAYS KID-FRIENDLY CLASSIC NOVELS NOT FAIR USE
via Intellectual Property Law360 by Bill Donahue on 9/11/2017
URL: https://www.law360.com/ip/articles/962282

U.S. District Judge Jed Rakoff issued a written opinion Friday explaining his copyright ruling earlier this summer against the author of "children's versions" of classic books like "The Old Man and the Sea," saying the fair use doctrine is not "a jacket to be worn over an otherwise infringing outfit."

BREXIT AND COPYRIGHT: WHAT HAPPENS NEXT?
via Hugh Stephens Blog on 9/11/2017

When British Prime Minister Theresa May introduced her new government's proposed legislative agenda in Westminster on June 21, (through what is known as the “Queen’s Speech) after her disastrous gamble of calling a general election in which she failed to win a majority, one of the key items announced was her intention to introduce what has colloquially been called the “Great Repeal Bill”, legally the “European Union (Withdrawal) Bill”.

PERFECT 10 TAKES GIGANEWS COPYRIGHT CASE TO SUPREME COURT
via Intellectual Property Law360 by Bill Donahue on 9/11/2017
URL: https://www.law360.com/ip/articles/962644

Adult website operator Perfect 10 Inc. is taking its copyright case against Giganews Inc. to the U.S. Supreme Court, warning the justices that a Ninth Circuit ruling on the case greenlighted “the largest black market for copyrighted works in human history.”

JUDGE THROWS OUT 57-YEAR-OLD COPYRIGHT ON “WE SHALL OVERCOME”
via Ars Technica by Joe Mullin on 9/11/2017
URL: https://arstechnica.com/?p=1162227

A federal judge ruled (PDF) on Friday that the most famous verse of the civil rights anthem "We Shall Overcome" is not copyrighted.
"WE SHALL OVERCOME" IN THE PUBLIC DOMAIN
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 9/11/2017
URL: http://nysbar.com/blogs/EASL/2017/09/we_shall_overcome_in_the_publi.html

In a significant decision issued on Friday (We Shall Overcome opinion.pdf), Judge Denise Cote granted summary judgment in favor of the class action plaintiff organizations against the owners of the publishing rights to Pete Seeger's iconic civil rights song "We Shall Overcome," finding that the original 1948 copyrighted version of the sheet music (with lyrics), which was owned by Seeger's company, People's Songs, Inc. ("PSI") and had fallen into the public domain in 1976, was not sufficiently different from the core portions of later versions recorded in 1960 and 1963, in which derivative copyrights were claimed by the defendant music publishers.

'MONKEY SELFIE' COPYRIGHT SUIT ENDS IN SETTLEMENT
via Intellectual Property Law360 by Bill Donahue on 9/11/2017
URL: https://www.law360.com/ip/articles/962819

People for the Ethical Treatment of Animals on Monday announced a settlement to end a highly publicized copyright lawsuit it filed over the famous “monkey selfie,” saying a nature photographer agreed to donate to charity to end the unusual case.

PETA DROPS LAWSUIT DEMANDING ANIMALS THE RIGHT TO OWN PROPERTY
via Ars Technica by David Kravets on 9/11/2017
URL: https://arstechnica.com/?p=1162775

We brought word last month that People for the Ethical Treatment of Animals was in the works of dropping its federal lawsuit that sought to win the right for animals to own property.

MONKEY AUTHORS WILL HAVE TO WAIT ANOTHER DAY FOR COPYRIGHTS
via Law.com - Newswire by Scott Graham on 9/11/2017
URL: http://www.law.com/sites/almstaff/2017/09/11/monkey-authors-will-have-to-wait-another-day-for-copyrights/

Aspiring monkey photographers will not be entitled to copyrights, at least for the foreseeable future. People for the Ethical Treatment of...
PEWDIEPIE STREAMS RACIST SLUR, PROMPTS DMCA THREAT FROM GAMEMAKER
via Rolling Stone by Blake Hester on 9/11/2017

The DMCA protects digital copyrighted work from infringement. ... be used to shut down streamed video game content for copyright infringement.

SANTA MONICA SOFTWARE COMPANY ALLEGES COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/11/2017

VBConversions LLC filed a complaint Aug. 14 in U.S. District Court for the Central District of California against Does 1-10, alleging they used the ...

PICTURE BOOKS OF FAMOUS NOVELS NOT FAIR USE, HOLDS JUDGE
via World IP Review on 9/12/2017

Last month, Rakoff held that the picture books infringed copyright, granting summary judgment to the publishers on nine counts of copyright ...

THE MONKEY SELFIE "SETTLEMENT" DOESN'T ACTUALLY SETTLE MUCH
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 9/12/2017
URL: http://www.hollywoodreporter.com/thr-esq/monkey-selfie-settlement-doesnt-actually-settle-1037930

The case isn't quite over, and the real controversy is just beginning.

YELP ACCUSES GOOGLE OF BREAKING SEARCH BIAS VOWS TO FTC
via Intellectual Property Law360 by Melissa Lipman on 9/12/2017
URL: https://www.law360.com/ip/articles/962892

Yelp urged the Federal Trade Commission on Monday to investigate whether Google had violated promises it made to the watchdog not to scrape content from some websites, estimating that the search giant displays the business review site's images thousands of times a minute.
PHOTO AGENCY CAN'T SUE MCGRAW-HILL FOR INFRINGEMENT: 9TH CIRC.  
via Intellectual Property Law360 by Bill Donahue on 9/12/2017  
URL: https://www.law360.com/ip/articles/963142  

The Ninth Circuit ruled Tuesday that a stock image agency couldn’t sue McGraw-Hill for using images without permission in textbooks, saying the group’s agreements with its photographers didn’t actually give it standing to sue.

CHANCE THE RAPPER SUED FOR COPYRIGHT INFRINGEMENT  
via Chicago Tribune by Nereida Moreno on 9/12/2017  

Chance the Rapper is being sued for copyright infringement by a New York lawyer and jazz musician who claims the Chicago rapper sampled a ...

CHANCE THE RAPPER STOLE JAZZ SAMPLE, SUIT SAYS  
via Intellectual Property Law360 by Dave Simpson on 9/12/2017  
URL: https://www.law360.com/ip/articles/963207  

A jazz musician accused Chance the Rapper of ripping off a large portion of one of his songs for a sample that was used on one of Chance's tracks in a suit filed Tuesday in Illinois federal court.

HOW TO PARTICIPATE IN OPEN SOURCE WHILE MAINTAINING IP INTEGRITY  
via IPWatchdog.com | Patents & Patent Law by Gideon Myles on 9/13/2017  

The key idea is to think strategically about the software, the value it can provide to the company, and whether the technology should be developed in-house. In some cases, software can provide more value to the company when it includes open source components. Here at Dropbox, for example, we use open source software in our products and we use it to help with development... Even here there are a few ground rules: We evaluate the code on the way in so we know what has been incorporated in our...

GOOGLE IGNORES THE LAW, YET NO ONE IN WASHINGTON SEEMS TO CARE  
via Vox Indie by Ellen Seidler on 9/13/2017  
URL: http://voxindie.org/google-operates-above-the-law/  

Google looks the other way as piracy repeat offenders continue to flourish on Google Drive I wrote a piece last May about Google’s failure to punish “repeat offenders” on its Google Drive
platform so I thought I’d give you another update. Despite having sent DMCA notices for 64 pirated titles (and having them all approved […]

CAN A TATTOO ON HUMAN FLESH BE COPYRIGHTED? WE’LL SOON FIND OUT
via Ars Technica by David Kravets on 9/13/2017
URL: https://arstechnica.com/?p=1163707

There's a tattoo as a design, and then there's that same tattoo after it's inked on the human body.

SOFTWARE PAID FOR WITH PUBLIC MONEY SHOULD BE OPEN SOURCE, GROUPS SAY
via Intellectual Property Watch by Cartherine Saez on 9/13/2017

Publicly financed software should be open source, more than 30 signatories of an open letter are proclaiming, calling for others to sign the letter.

EU COPYRIGHT REFORM MEETS RESISTANCE FROM STAKEHOLDERS, SOME GOVERNMENTS
via Intellectual Property Watch by Dugie Standeford on 9/13/2017

With a vote in the lead European Parliament committee imminent on European Commission plans to revamp copyright rules, industry stakeholders, digital rights activists and even some EU member states are troubled by various legislative amendments and EU Presidency compromise proposals.

ARCHITECT SLAPS FIVE GUYS WITH COPYRIGHT SUIT OVER DESIGNS
via Intellectual Property Law360 by Joyce Hanson on 9/13/2017
URL: https://www.law360.com/ip/articles/963302

Architectural firm Soos & Associates Inc. hit Five Guys with a lawsuit Tuesday in Illinois federal court, alleging the fast food chain has violated its copyright by switching to different architects for new store designs while using Soos’ original plans without its approval.
'UPTOWN FUNK' STOLE SOUND FROM '80S FUNK HIT, SUIT SAYS
via Intellectual Property Law360 by Dorothy Atkins on 9/13/2017
URL: https://www.law360.com/ip/articles/963322

A family-owned music publishing house on Tuesday sued music producer Mark Ronson and a group of songwriters and music distributors, including Sony Entertainment, Spotify and Apple, claiming in New York federal court that the songwriters ripped off the 1980 funk hit "More Bounce to the Ounce" to create Bruno Mars' hit single "Uptown Funk."

A LEGAL CAMPAIGN AGAINST SPOTIFY INTENSIFIES AHEAD OF THE COMPANY'S PLAN TO GO PUBLIC
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 9/13/2017

At a critical moment for Spotify, a legal battle is escalating manifold against the the digital music service that has led the charge on the subscription streaming front.

HUNDREDS OF MUSICIANS OBJECT TO $43M SPOTIFY COPYRIGHT DEAL
via Intellectual Property Law360 by Melissa Daniels on 9/13/2017
URL: https://www.law360.com/ip/articles/963345

Tom Petty, Dan Auerbach and Gillian Welch were among more than 500 musicians and song copyright owners who objected to a $43 million proposed class settlement in a copyright suit against Spotify in New York federal court Tuesday, calling the proposed deal “grossly insufficient.”

'SELFIE MONKEY' SETTLES COPYRIGHT CASE
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 9/13/2017

There's a problem with the settlement in the selfie-monkey case: the monkey did not consent to it.

UPDATE ON THE "MONKEY SELFIE" LITIGATION
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 9/13/2017

A settlement was reached and the parties filed a joint motion to dismiss the pending a Ninth Circuit appeal.
CALIFORNIA SOFTWARE CORPORATION ACCUSES CONNECTICUT COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/13/2017
URL: http://norcalrecord.com/stories/511213089-california-software-corporation-accuses-connecticut-competitor-of-copyright-infringement

A Long Beach software business is suing a Connecticut competitor, alleging copyright infringement. Mieco Inc., filed a complaint ...

HOW SPOTIFY'S ARGUMENT IN COPYRIGHT LAWSUIT COULD UPEND THE MUSIC INDUSTRY'S NEWFOUND RECOVERY
via Billboard by Robert Levine on 9/13/2017

In financial terms, Spotify is like a high-end mall that was just built on an earthquake fault line. Like other subscription streaming services, it's driving ...

LA FABRIC BUSINESS ACCUSES CALIFORNIA COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/13/2017

A Los Angeles fabrics business is suing Anaheim garment vendors, alleging copyright infringement. A Plus Fabric Inc. filed a ...

SONGWRITER ACCUSES NEW YORK COMPANY OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/13/2017

Amir Shaheed-Edwards, (professionally known as Bravo, Bravo's Partnership and doing business as MIA Branding Bravo, and Mr. Edwards, filed a ...
GEM DESIGN BUSINESS ACCUSES JEWELRY COMPANY OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/13/2017

A Los Angeles gem design business is suing California competitors, alleging copyright infringement. L.A. Gem & Jewelry Design ...

'NBA 2K' TATTOOS A "PLOY" TO DRAW CONSUMERS IN, NOT FAIR USE, FILING ARGUES
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 9/13/2017

Solid Oak says if licensing tattoo images is "opportunism" then it's "guilty as charged."

GOVERNMENT URGES INDUSTRY PIRACY CODE UNDER NEW REGULATIONS
via ZDNet by Corinne Reichert on 9/14/2017

The draft Copyright Regulations have also come up with a series of ... If an owner finds that copyright material is being hosted, it can notify the CSP ...

MARK RONSON SUED OVER 'UPTOWN FUNK' SIMILARITIES TO ZAPP'S 'MORE BOUNCE TO THE OUNCE'
via Billboard by Gil Kaufman on 9/14/2017

... Lastrada Entertainment Company, Ltd., the music publishing house that holds the copyright to Zapp's 1980 funk classic "More Bounce to the Ounce.

MINI-POST: 1947 COPYRIGHT OFFICE REPORT ON EDITING MUSIC
via Mostly IP History by Zvi S. Rosen on 9/14/2017

It’s been too long since I made a proper post – I’ve been busy putting together a piece I’m calling An Empirical Study of 225 Years of American Copyright Registrations (title subject to
change, natch), which I fully expect to be the bees knees, all while being no bigger than a breadbox.

KENDALL JENNER CLOTHING RANGE AT CENTRE OF COPYRIGHT LAWSUIT
via World IP Review on 9/14/2017

Pereira claimed he had taken a photograph of the three rappers, which is registered with the US Copyright Office and was given registration number ...

KINDERGUIDES & COPYRIGHT: A TALE OF WISHFUL THINKING
via The Illusion of More by David Newhoff on 9/14/2017
URL: http://illusionofmore.com/kinderguides-copyright-tale-wishful-thinking/

An important and instructive decision was handed down this week by New York District Court in the KinderGuides case. KinderGuides is a series of children’s books that include adaptations of classic works with some commentary about the authors and the stories.

TATTOO COPYRIGHT HOLDER SAYS 'NBA 2K' IMAGES NOT FAIR USE
via Intellectual Property Law360 by Dave Simpson on 9/14/2017
URL: https://www.law360.com/ip/articles/963977

The company that holds copyrights to tattoos sported by basketball stars like LeBron James urged a New York federal judge to keep alive its suit against the maker of “NBA 2K,” arguing the video games' depiction of players' tattoos is significant and not fair use.

KENDALL, KYLIE SUED - YET AGAIN - OVER VINTAGE-INSPIRED BAND TEES
via Fashion Law on 9/14/2017

Yet another photographer has filed a copyright infringement lawsuit against Kendall and Kylie Jenner in connection with their uber-controversial ...
COURTS SHOULD PUNISH PETA
via National Review by Wesley J. Smith on 9/14/2017
URL: http://www.nationalreview.com/corner/451396/courts-should-punish-peta

Slater properly sought to make money off the copyrighted photograph. But PETA decided the monkey should own the copyright, and sued. Two years ...

TOM BRADY MVP JOKE GETS COPYRIGHT PROTECTION AFTER RECONSIDERATION
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 9/15/2017

The man behind the quip is Robert "Alex" Kaseberg, who's currently suing Conan O'Brien for allegedly stealing the joke.

RAUNCHY 'GRINCH' PLAY IS A FAIR USE PARODY, JUDGE FINDS
via Intellectual Property Law360 by Cara Bayles on 9/15/2017
URL: https://www.law360.com/ip/articles/964701

A New York federal judge on Friday ruled the play "Who’s Holiday!" is protected by fair use, finding the one-woman show's adult take on the aftermath of Dr. Seuss' children's book "The Grinch Who Stole Christmas" is a "transformative" parody.

BARTON BEEBE: BLEISTEIN AND THE PROBLEM OF AESTHETIC PROGRESS IN AMERICAN COPYRIGHT LAW
via Written Description by Shyamkrishna Balganesh on 9/18/2017

Bleistein v. Donaldson Lithographing Co., is a well-known early twentieth century copyright decision of the U.S. Supreme Court.

HOLLYWOOD'S USE OF "STOLEN" COMPUTER TECHNOLOGY TESTS OWNERSHIP THEORIES
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 9/18/2017
URL: http://www.hollywoodreporter.com/thr-esq/hollywoods-use-stolen-computer-technology-tests-limits-ownership-1040572

This story was first composed as a Word document.
HTML5 DRM FINALLY MAKES IT AS AN OFFICIAL W3C RECOMMENDATION
via Ars Technica by Peter Bright on 9/18/2017
URL: https://arstechnica.com/?p=1168873

The World Wide Web Consortium (W3C), the industry body that oversees development of HTML and related Web standards, has today published the Encrypted Media Extensions (EME) specification as a Recommendation, marking its final blessing as an official Web standard.

CONAN O'BRIEN TO PROBE WHETHER COPYRIGHT OFFICE WAS DUPED BY TOM BRADY JOKE
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 9/18/2017
URL: http://www.hollywoodreporter.com/thr-esq/conan-obrien-probe-copyright-office-was-duped-by-tom-brady-joke-1040834

Or at least the comedian's lawyers will in the midst of a copyright case.

TATTOOS, ARCHITECTURE, AND COPYRIGHT
via Written Description by Michael Risch on 9/18/2017
URL: http://writtendescription.blogspot.com/2017/09/tattoos-architecture-and-copyright.html

In my IP seminar, I ask students to pick an article to present in class for a critical style and substance review.

IMAGERIGHTS ANNOUNCES US COPYRIGHT OFFICE INTEGRATION
via IP Pro The Internet by Jenna Lornax on 9/18/2017
URL: http://www.iprotheinternet.com/ipprotheinternetnews/article.php?article_id=5634

Boston-based copyright enforcement service ImageRights International has introduced a dedicated copyright registration service with the US ...

CREATIVEFUTURE PUSHES BACK ON INTERNET INDUSTRY'S CLAIM THAT THEY ARE 'NEW FACES' OF CONTENT
via Variety by Ted Johnson on 9/18/2017

When it comes to NAFTA, the internet and tech groups want “safe harbor” provisions akin to those in the Digital Millennium Copyright Act. That ...
OFF-BROADWAY 'GRINCH' PARODY DEFEATS COPYRIGHT CLAIMS
via Courthouse News Service by Josh Russell on 9/18/2017
URL: https://www.courthousenews.com/off-broadway-grinch-parody-defeats-copyright-claims/

Leaving coal in the stocking of Dr. Seuss Enterprises, a federal judge found no copyright infringement in a ribald off-Broadway ...

CALIFORNIA PHOTOGRAPHER ACCUSES ALASKA PUBLISHER OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/18/2017

Erickson Productions Inc. of Petaluma, California, filed a complaint Sept. 6 in U.S. District Court for the Northern District of California against Beacon ...

WINDSTREAM DROPS APPEAL FOR COPYRIGHT SHIELD AGAINST BMG
via Intellectual Property Law360 by Kyle Jahner on 9/18/2017
URL: https://www.law360.com/ip/articles/964659

Internet service provider Windstream dropped its Second Circuit appeal Monday, ending a bid for a preemptive ruling that the ISP remained protected from copyright litigation initiated by music publisher BMG Rights Management LLC for failing to end the subscriptions of users who download pirated music.

ELIZABETH BANKS WANTS ATTY FEES AFFIRMED IN COPYRIGHT SUIT
via Intellectual Property Law360 by Steven Trader on 9/18/2017
URL: https://www.law360.com/ip/articles/965194

Actress Elizabeth Banks has asked the Ninth Circuit to affirm a California judge’s award of $319,000 in attorneys' fees after she successfully fought off a copyright infringement lawsuit over the 2014 comedy “Walk of Shame” that a lower court found shared only “isolated similarities” with an unproduced screenplay.

PEPE THE FROG ARTIST EXPANDS COPYRIGHT FIGHT
via Intellectual Property Law360 by Dorothy Atkins on 9/18/2017
URL: https://www.law360.com/ip/articles/965258

The creator of Pepe the Frog has followed up on his promises to assert his intellectual property rights since he stopped the distribution of an allegedly hate-mongering children’s book featuring
his cartoon frog, taking legal action against multiple websites and social media personalities, his
pro bono legal team at WilmerHale announced Monday.

CONTENT-MAKERS CALL FOR STRONGER COPYRIGHT RULES IN NAFTA
via Intellectual Property Law360 by Kyle Jahner on 9/18/2017
URL: https://www.law360.com/ip/articles/964925

An association of creative content producers has argued that the "overly-broad, outdated" safe
harbor provisions of the Digital Millennium Copyright Act should not factor prominently into a
reworked North American Free Trade Agreement, saying the trade groups that stumped for the
provisions to the U.S. Trade Representative represented not content producers as claimed but
technology giants.

THE STORY BEHIND THAT VIRAL 'DISTRACTED BOYFRIEND' MEME PHOTO
via Peta Pixel by Michael Zhang on 9/18/2017
URL: https://petapixel.com/2017/09/18/story-behind-viral-distracted-boyfriend-meme-photo/

Regarding the copyright issues surrounding the use of his photo, Guillem says his position is
clear. Although copyright infringement of his photo is ...

DISTRICT COURT APPLIES NEW SUPREME COURT PRODUCT DESIGN STANDARD
TO LIGHT BULBS
via IPWatchdog.com | Patents & Patent Law by Lee Burgunder on 9/19/2017
URL: http://www.ipwatchdog.com/2017/09/19/district-court-applies-new-product-design-
standard-light-bulbs/id=87667/

My intuition is that the judge came to the correct conclusion, but that the Supreme Court test
ultimately did little to guide her thinking. As I mentioned in my previous IPWatchdog article,
determining the contours of the useful article is a metaphysical exercise that likely will require
other “tests” to resolve. Why, for instance, does the useful article not consist of the lighting
elements, sockets, wires and covers, which the judge admits also serve important utilitarian
functions? What...

CARRIE UNDERWOOD TANGLED UP IN COPYRIGHT CLAIM
via World IP Review on 9/19/2017
URL: http://www.worldipreview.com/news/carrie-underwood-tangled-up-in-copyright-claim-
14622

Georgia Lyons and Ronald McNeill filed a copyright infringement lawsuit at the US District
Court for the Middle District of Tennessee, Nashville ...
TAYLOR SWIFT SUED OVER "SHAKE IT OFF" LYRICS
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 9/19/2017
URL: http://www.hollywoodreporter.com/thr-esq/taylor-swift-sued-shake-it-lyrics-1041121

It's no secret players are gonna play and haters are gonna hate — but are lyrics about said playing and hating copyrightable?

MAN WHO MADE “PEPE” WANTS HIS FROG BACK, AND HE’LL USE COPYRIGHT TO GET IT
via Ars Technica by Joe Mullin on 9/19/2017
URL: https://arstechnica.com/?p=1170007

Matt Furie created the cartoon character Pepe the Frog in 2005 as a kind of peaceful stoner animal for his comic "Boys Club."

INTERNET ASSOCIATION WANTS TO ENCODE SAFE HARBORS IN NEW NAFTA
via The Illusion of More by David Newhoff on 9/19/2017

As debate over renegotiating NAFTA heats up, the copyright interests will be duking it out with the internet industry over the inclusion, or not, of [...] 

THE ART OF FIELDING' AUTHOR ACCUSED OF STEALING BOOK IDEA
via Intellectual Property Law360 by Matthew Guarnaccia on 9/19/2017
URL: https://www.law360.com/ip/articles/965418

The author of the 2011 baseball novel “The Art of Fielding” has been hit with a copyright lawsuit in New York federal court alleging that he took significant portions of another author’s work and incorporated it in the book.

WHOOMP! (THERE IT IS)': A DEAL TO END SONG RIGHTS ROW
via Intellectual Property Law360 by Nathan Hale on 9/19/2017
URL: https://www.law360.com/ip/articles/950481

The Chapter 7 trustee for a music publisher that went bankrupt after a $2.2 million judgment over the rights to the song “Whoomp! (There It Is)” gained approval Tuesday from a Florida federal judge for a deal to settle the case and several related disputes.
HOW A NAUGHTY 'GRINCH' PLAY IS FAIR USE
via Intellectual Property Law360 by Bill Donahue on 9/19/2017
URL: https://www.law360.com/ip/articles/965769

A New York federal judge ruled last week that "Who’s Holiday,” a raunchy stage play riffing on the Dr. Seuss classic "How the Grinch Stole Christmas," was protected by the fair use doctrine.

TAYLOR SWIFT HIT WITH FRESH SUIT OVER 'SHAKE IT OFF'
via Intellectual Property Law360 by Kat Greene on 9/19/2017
URL: https://www.law360.com/ip/articles/965354

A pair of songwriters accused Taylor Swift, Sony ATV and Universal Music Group of ripping off lyrics from a 2001 hit song they’d penned, saying Monday that even though “Shake It Off’s” use of the lyrics wasn’t exactly the same, they still violated the songwriters’ copyright.

CHINA’S COPYRIGHT REGULATOR TELLS FOREIGN AND DOMESTIC MUSIC COMPANIES TO IMPROVE COPYRIGHT LICENSING, REDUCING PIRACY
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 9/20/2017

In mid-September, the federal government of the People’s Republic of China issued statements which indicate that the country is looking to expand upon recent rhetoric over increased protections for intellectual property. According to state-controlled media outlet Xinhua, China’s National Copyright Administration (NCAC) informed a group of more than 20 domestic and foreign music companies that they must adhere to both market rules and international practices in order to widen licensing and...

MEL GIBSON FILM'S DIRECTOR CLAIMS MOVIE CO. INFRINGED HIS IP
via Intellectual Property Law360 by Dorothy Atkins on 9/20/2017
URL: https://www.law360.com/ip/articles/965977

The screenwriter and director of "The Professor and the Madman," starring Mel Gibson and Sean Penn, sued a Hollywood production company in California federal court Tuesday, claiming the Academy Award-winning company willfully infringed his copyrights to the film's screenplay and defamed him.
NEW GROUP AIMS TO PROTECT AMERICAN IP IN TRADE DEALS
via Intellectual Property Law360 by Nicole Narea on 9/20/2017
URL: https://www.law360.com/ip/articles/965719

Trade associations from the entertainment, art, medical and technology industries announced a new partnership Tuesday with a mission to advance creativity and innovation while facing the challenge of enforcing their intellectual property internationally.

KINDERGUIDES COPYRIGHT CASE ENDS, APPEAL UNLIKELY
via Publishers Weekly by Andrew Albanese on 9/21/2017

Federal judge Jed Rakoff this week officially closed the book on the KinderGuides copyright infringement case, dismissing it with prejudice after the ...

MOD THAT ADDS ONLINE PLAY TO SUPER MARIO 64 DRAWS NINTENDO’S IRE
via Ars Technica by Kyle Orland on 9/21/2017
URL: https://arstechnica.com/?p=1171425

Nintendo has issued a number of DMCA copyright takedown notices aimed at hindering a popular mod that adds online play to a PC-emulated version of Super Mario 64, letting up to 24 players run around the game's world together as a number of different characters.

WHY IS “COPYING” SO RAMPANT IN FASHION?
via Fashion Law on 9/21/2017
URL: http://www.thefashionlaw.com/home/why-is-copying-so-rampant-in-fashion

Since copyright law, the type of intellectual property law that protects "original works of authorship," such as books, paintings, sculptures, and songs, ...

GERMAN COURT: THUMBNAIL IMAGES IN SEARCH ENGINES NOT A COPYRIGHT VIOLATION
via Intellectual Property Watch by Monika Ermert on 9/21/2017

In a noteworthy ruling, the German Federal Court of Justice in Karlsruhe today decided that the use of picture search engines and the publishing of the resulting thumbnails and reference links does not violate German copyright law (I ZR 11/16 - Vorschaubilder III). The case that had been
brought by US adult content provider Perfect 10 against AOL Germany turned out favourable to Google in the end, whose picture search engine had been the tool in question.

MEL GIBSON MOVIE PRODUCER MOVES TO STOP DIRECTOR'S 'BOGUS' BID TO HALT DISTRIBUTION
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 9/21/2017

Nicolas Chartier's Voltage hit back at Farhad Safinia, saying he's misleading a court and the Copyright Office by omitting a "Certificate of Authorship" and co-writers.

US COPYRIGHT AGENDA STALLING IN CONGRESS
via Intellectual Property Watch by Emmanuel Legrand on 9/22/2017

The music community in the United States has a wide copyright agenda covering various business issues and stakeholders. While it had entertained the notion that a new President with its new administration and Congress would be more sympathetic to the complex needs of the industry, it is still waiting for the Trump administration to act on copyright issues, judging from comments made by various stakeholders in the legislative process during an industry panel in New York this week.

NEW COLLABORATION TO DELIVER OPEN-SOURCE SUBMISSION AND PEER-REVIEW PLATFORM
via Intellectual Property Watch by William New on 9/22/2017
URL: https://www.ip-watch.org/2017/09/22/new-collaboration-deliver-open-source-submission-peer-review-platform/

This week, eLife and Collaborative Knowledge Foundation announced a partnership "to build a user-driven, open-source submission and peer-review platform" aimed at improving on existing industry models.

NEW CIRCULARS LAUNCHED
via Copyright: Creativity at Work by Whitney Levandusky on 9/22/2017
URL: http://blogs.loc.gov/copyright/2017/09/new-circulars-launched/

On September 21, the Copyright Office released a fresh batch of circulars. Circulare are publications intended to provide a general audience with up-to-date and authoritative copyright information.
ROUND HILL TO BUY CARLIN AMERICA, HOME TO ELVIS PRESLEY & AC/DC CATALOGS, IN $245 MILLION DEAL
via Billboard by Ed Christman on 9/22/2017

U.S. Copyright law allows creators to terminate copyright assignment and reclaim copyright ownership after 35 years for works created after 1978; and ...

STARZ BEATS 'POWER' COPYRIGHT LAWSUIT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 9/22/2017
URL: http://www.hollywoodreporter.com/thr-esq/starz-beats-power-copyright-lawsuit-1042500

A writer had claimed the series infringes on his rights in 'Tribulation of a Ghetto Kid.'

BEYONCE DENIES INFRINGEMENT ALLEGATIONS IN 'FORMATION' LAWSUIT
via Rolling Stone by Jon Blistein on 9/23/2017

Beyoncé denied copyright infringement allegations in a new response to a ... The filing also claimed the copyrights on the Messy Mya videos "were ..."

PETA, PHOTOGRAPHER SETTLE COPYRIGHT OWNERSHIP OF MONKEY SELFIE

A complaint was filed in the Northern District of California on behalf of Naruto, at the time a six-year-old crested macaque residing in the Tangkoko Reserve located on the Indonesian island of Sulawesi... The plaintiffs argued that Naruto is the author of the monkey selfie and has the right to own and benefit from the copyright to that photo. “Had the Monkey Selfies been made by a human using Slater’s unattended camera, that human would be declared the photographs’ author and copyright owner,”...

NEW REPORT HIGHLIGHTS DANGER OF STREAM-BASED INFRINGEMENT
via Mister Copyright by Kevin Madigan on 9/23/2017

Published this week by the International Federation of Phonographic Industry (IFPI), a new report on the way music is being consumed confirms what’s become apparent in recent years:
Streaming is king when it comes to how people listen to music, and stream-based piracy has taken over as the most popular way to steal music.

**IS THE ALT-RIGHT’S USE OF PEPE THE FROG “FAIR USE?”**
via Ars Technica by Joe Mullin on 9/24/2017
URL: https://arstechnica.com/?p=1170091

When Matt Furie drew Pepe the Frog for a short-lived magazine in 2005, he had no way of knowing the character would become a mascot for the so-called "alt-right," a loose coalition of far-right groups that veer towards white nationalism.

**MEME CREATOR SUES ALT-RIGHT FOR COPYRIGHT INFRINGEMENT**
via IP Pro The Internet by Barney Dixon on 9/25/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5641

Creator of the Pepe the Frog meme Matt Furie has successfully shut down the distribution of a controversial children's book that enlisted the use of ...

**THE MONKEY SELFIE CASE: WILL IT HAVE BROADER REPERCUSSIONS FOR AI AND COPYRIGHT?**
via Hugh Stephens Blog on 9/25/2017
URL: http://hughstephensblog.net/2017/09/25/the-monkey-selfie-case-will-it-have-broader-repercussions-for-ai-and-copyright/

I am sure that British wildlife photographer David Slater rues the day that he ever laid eyes on Naruto, the Indonesian macaque, whose “monkey selfie” photo made Slater famous, but also brought him no end of grief and financial hardship.

**INFOJUSTICE: OTTAWA NAFTA ROUND TURNS TO COPYRIGHT**
via Intellectual Property Watch by William New on 9/25/2017

Infojustice writes: It was being reported among various observers of NAFTA over the weekend that the talks in the IP chapter are progressing toward Copyright. The US appears poised to table the first set of its demands for that portion of the IP chapter. But it is also rumored that that the US demand may exclude the issue of copyright balance.
JUDGE DISMISSES COPYRIGHT SUIT AGAINST 50 CENT
via World IP Review on 9/25/2017

A US district judge has dismissed a copyright infringement suit brought against rapper Curtis Jackson, also known as 50 Cent. In October last year ...

WEIBO CRACKDOWN TAKES AIM AT WEB SCRAPERS, NOT USERS
via Bloomberg BNA by John Butcher on 9/25/2017
URL: https://www.bna.com/weibo-crackdown-takes-n73014464391/

Weibo didn't claim copyright of user content, just relaxed exclusive publishing rights by allowing users to give permission for third-party use of their ...

RECORDINGS OWNER ACCUSES FLORIDA COMPANY OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/25/2017

A New York producer of sound recordings is suing a Florida company, alleging copyright infringement. 43 North Broadway LLC ...

BEYONCÉ DENIES INFRINGEMENT IN $20M 'FORMATION' COPYRIGHT CLAIM
via World IP Review on 9/25/2017

Pop star Beyoncé has denied copyright infringement in the latest response to a lawsuit filed by the estate of Anthony Barré, a deceased New Orleans ...

FOOTBALL COACH'S SPORTS PSYCH RETWEET IGNITES IP SUIT
via Intellectual Property Law360 by Steven Trader on 9/25/2017
URL: https://www.law360.com/ip/articles/967523

Pennsylvania-based King’s College and its head football coach were accused Monday of violating federal copyright and trademark law by retweeting a post that included an excerpt from a famed sports psychologist’s book without attribution.
JUDGE RAKOFF’S KINDERGUIDES DECISION
via Copyhype by Terry Hart on 9/26/2017
URL: http://www.copyhype.com/2017/09/judge-rakoffs-kinderguides-decision/

A recent copyright decision articulates in clear and direct language the underlying policies that guide copyright law.

STAR TREK: DISCOVERY IS GETTING PIRATED A LOT
via Ars Technica by Timothy B. Lee on 9/26/2017
URL: https://arstechnica.com/?p=1174171

Almost 10 million people tuned in to CBS on Sunday to watch the premiere of Star Trek: Discovery.

MAVRIX PHOTOGRAPHS V. LIVEJOURNAL: AN IMPORTANT STEP IN FURTHERING THE ANTI-PIRACY MOVEMENT IN THE MILLENNIUM AGE
via IPLJ by Grace Monroy on 9/26/2017

A recent amended opinion to the Mavrix Photographs LLC v. LiveJournal, Inc. case is said to “benefit copyright owners and provide better guidance to internet service providers [to avoid copyright infringement].”

EU STUDY FINDS PIRACY DOESN’T HURT GAME SALES, MAY ACTUALLY HELP
via Ars Technica by Kyle Orland on 9/26/2017
URL: https://arstechnica.com/?p=1174399

For as long as video game piracy has existed, gamers and the industry have argued about whether the practice really hurts sales of legitimate games.

GOOGLE ISN'T VIOLATING COPYRIGHT, SAYS COURT, EVEN IF ITS THUMBNAILS ARE OF PIRATED PHOTOS
via ZDNey by David Meyer on 9/26/2017
URL: http://www.zdnet.com/article/google-isnt-violating-copyright-says-court-even-if-its-thumbnails-are-of-pirated-photos/

Germany's federal court says Google can't be expected to check whether images scraped by its systems are legally posted. Taylor Martin/CNET.
AERIAL PHOTOGRAPHER ACCUSES COMPETITORS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Wadi Reformado on 9/26/2017

According to the complaint, Schmitman suffered damages from having his copyrighted work copied without his consent. The plaintiff alleges the ...

MCGRAW-HILL WANTS PHOTO CO. COUNSEL DQ'D OVER CONSULTANT
via Intellectual Property Law360 by Emma Cueto on 9/26/2017
URL: https://www.law360.com/ip/articles/967677

Textbook publisher McGraw-Hill on Monday urged a Pennsylvania federal court to disqualify the firm representing a stock photo company in a copyright infringement suit against it, saying the firm hired a former McGraw-Hill employee who supervised the company’s discovery as a consultant in order to obtain privileged information.

US FLOATS NAFTA PROPOSAL THAT COULD ERODE COPYRIGHT-LIABILITY PROTECTION
via Wall Street Journal by William Mauldin on 9/26/2017
URL: https://www.wsj.com/articles/u-s-floats-nafta-proposal-that-could-erode-copyright-liability-protection-1506460138

The U.S. has floated copyright language in North American Free Trade Agreement talks that could erode internet companies' liability protections for ...

CALIF. REPS. TELL DC CIRC. GOV’T REGS CAN'T BE COPYRIGHTED
via Intellectual Property Law360 by Bill Donahue on 9/26/2017
URL: https://www.law360.com/ip/articles/968240

Rep. Zoe Lofgren, D-Calif., and Darrell Issa, R-Calif., asked the D.C. Circuit on Monday to overturn a ruling that said copyright law covers private industry standards that are later turned into federal regulations, warning that nobody should be "held liable for publishing the law of the land."
In Canada, copyright holders can sue infringing websites. And some countries, like the U.K., routinely block targeted sites with court approval.

Everybody loves a scandal, even though sometimes where there’s smoke there’s just more smoke. German politician Julia Reda (MEP), the sole member of the Pirate [...]

In late August of this year, the United States District Court for the Southern District of New York issued a landmark ruling in the running debate over what constitutes fair use of internet video content.

Unsplash appears to be a straightforward website – devoted solely to hosting visually striking photos.

According to the complaint, Menzel suffered damages as the result of his copyrighted photographs being used by Scholastic for foreign and ...
MOTION TO QUASH 'PARANOIA'-DRIVEN SUBPOENA FILED BY EXPERT WITNESS IN SPINRILLA CASE
via New York Law Journal by B. Colby Hamilton on 9/27/2017
URL: http://www.newyorklawjournal.com/id=1202799070240/Motion-to-Quash-ParanoiaDriven-Subpoena-Filed-by-Expert-Witness-in-Spinrilla-Case

A subpoena being driven by attorney "paranoia" in a Georgia-based copyright violations case should be quashed, according to a motion filed in the ...

HLS PRIVATE LAW WORKSHOP: SHYAMKRISHNA BALGANESH, COPYRIGHT AS LEGAL PROCESS
via New Private Law by Patrick Goold on 9/27/2017

2017 marks the bicentennial of Harvard Law School. It is fitting, therefore, that the first Private Law Workshop of the semester focused on intellectual legal history and, in part, the influence of some of Harvard’s most prominent law professors.

LAWSUIT ACCUSES KMART OF COPYING HALLOWEEN BANANA COSTUME
via Reuters by Jonathan Stempel on 9/27/2017

... banana costumes in August, saying it had found another vendor to provide “that item,” and in doing so infringed its 2010 “Banana Design” copyright.

BAR-PREP CONSPIRACY SUIT UNRAVELS IN NYC
via Courthouse News Service by Nick Rummell on 9/27/2017
URL: https://www.courthousenews.com/bar-prep-conspiracy-suit-unravels-nyc/

Despite these alleged violations of the federal Copyright Act, however, U.S. District Judge Katherine Polk Failla found Monday that the company ...

SPINRILLA LAWSUIT SPARKS BIZARRE MUSIC EXPERT FIGHT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 9/27/2017

"This matter is the very epitome of litigation paranoia."
A federal judge refused to dismiss a copyright lawsuit ... and overall feel' is substantially similar to plaintiff's copyrighted work.”.

A New Jersey-based costume maker known as Rasta Imposta claims Kmart is infringing its copyright by peddling an imposter banana suit this Halloween season, according to a complaint filed Wednesday.

Kendall and Kylie Jenner have been slapped with at least two recent copyright infringement lawsuits over their controversial “vintage” band tees, but it ...

It was previously established there can be only one copyright society but due to disputes in the industry the body that had been undertaking that task, ...

But giving back copyrights is anathema to the major record companies, which saw catalog grow to 66.2 percent of total consumption last year, ...
NEW EU COMMISSION GUIDELINES ON ILLEGAL CONTENT ONLINE CLARIFY LIABILITY FOR ONLINE PLATFORMS
via Intellectual Property Watch by William New on 9/28/2017

The European Commission today issued guidelines for removing illegal content online, largely following the lines of existing rules and guidance, but hinting at a possible future move to harmonise practices in this area. Technology companies breathed in relief as the communication did not appear to reduce their protection against liability for content carried on their networks and devices, though it did provide extensive clarification on the liability exemption.

PHOTOG SUES VERIZON MEDIA OUTLET OVER PIC OF PUNCHED ATTY
via Intellectual Property Law360 by Nicole Narea on 9/28/2017
URL: https://www.law360.com/ip/articles/968955

A New York-based photographer accused Complex Media Inc., a digital culture news site owned by Verizon Inc. and Hearst Communications Inc., of neglecting to seek his permission before publishing his snapshot of a public defender after he was punched by an administrative law judge, filing a copyright infringement suit in New York federal court Wednesday.

COPYRIGHT SUIT BASED ON PILL JEWELRY FAILS TO PIN DAMIEN HIRST
via Courthouse News Service by Adam Klasfeld on 9/28/2017

Pill-themed jewelry by artists Damien Hirst (left) and by Colleen Wolstenholme (right).
(Composite via Courthouse News Service).

DESIGNATED AGENT DEADLINE RE DMCA SAFE-HARBOR
via The Entertainment, Arts and Sports Law Blog by Barry Skidelsky on 9/28/2017
URL: http://nysbar.com/blogs/EASL/2017/09/designated_agent_deadline_re_d.html

The United States Copyright Office (CO) released a reminder that previous paper filings designating agents for the receipt of take-down notices from copyright owners will only continue to be valid until December 31, 2017 (see https://www.copyright.gov/newsnet/2017/683.html).
CUBAN FILMMAKER DENIED BID FOR NEW TRIAL IN COPYRIGHT SUIT
via Intellectual Property Law360 by Nathan Hale on 9/28/2017
URL: https://www.law360.com/ip/articles/969208

A Cuban filmmaker who sought millions from television station Mega TV for its unauthorized airing of his movie lost his bid for a new trial Thursday as a Florida federal judge found that defense counsel statements he alleged to be improper were “innocuous at best.”

YEARS OF HOWARD STERN’S INTERVIEWS WITH TRUMP NOW GONE AFTER DMCA TAKEDOWN
via Ars Technica by Cyrus Farivar on 9/28/2017
URL: https://arstechnica.com/?p=1176645

A Washington, DC startup that recently posted an audio archive of years’ worth of Howard Stern’s interviews with Donald Trump, all before he was elected president, has been hit with a Digital Millennium Copyright Act takedown notice and a cease-and-desist letter.

UNPUBLISHED EU STUDY CASTS DOUBT ON DISPLACEMENT OF SALES BY ONLINE INFRINGEMENT, BUT THE REALITY ...
via World Trademark Review by Adam Houldsworth on 9/28/2017
URL: http://www.worldtrademarkreview.com/Blog/detail.aspx?g=b1942b95-4454-4b69-8c53-10f06cbeb7be

The report suggests that piracy has little negative effect on sales of copyrighted material, although the findings are a little more nuanced than that ...

NO FAIRYTALE ENDING FOR UNAUTHORIZED MOVIE STREAMING
via National Law Review by Jodi Benassi on 9/28/2017
URL: https://www.natlawreview.com/article/no-fairytale-ending-unauthorized-movie-streaming

VidAngel is a film and television filtering service that essentially cracks encryption on discs, makes full unauthorized copies of the copyrighted ...

COMMON CRAWL AND UNLOCKING WEB ARCHIVES FOR RESEARCH
via Forbes by Kalev Leetaru on 9/29/2017

In particular, she noted “since we [in the US] are beholden to the Copyright Act, while living in a digital age, many well-intentioned organizations ...
KMART FACES COPYRIGHT LAWSUIT FOR SELLING THE WRONG BANANA COSTUME
via Ars Technica by Timothy B. Lee on 9/29/2017
URL: https://arstechnica.com/?p=1176597

A small company called Rasta Imposta has sued Kmart after the retailer stopped carrying the company's banana costume for the 2017 Halloween season.

PGA WILL NOT 'PUTT UP' WITH COPYRIGHT INFRINGEMENT
via World IP Review on 9/29/2017

The Professional Golfers' Association (PGA) has sued a California-based man running a YouTube account allegedly showing copyrighted golf ...

SONGWRITERS ACCUSE TAYLOR SWIFT OF COPYRIGHT INFRINGEMENT
via Northern California Record by Jenie Mallari-Torres on 9/29/2017
URL: http://norcalrecord.com/stories/511232675-songwriters-accuse-taylor-swift-of-copyright-infringement

Sean Hall, doing business as Gimme Some Hot Sauce Music, and Nathan Butler doing business as Faith Force Music, filed a complaint Sept.

LA COUNTY ARTWORK BUSINESS ACCUSES RETAIL STORE, SUPPLIERS OF COPYRIGHT INFRINGEMENT
via Northern California Record by Jenie Mallari-Torres on 9/29/2017

A Los Angeles County artwork design business is suing a retail store and suppliers, alleging copyright infringement. Unicolors Inc.

BEFORE VIDANGEL, THESE 3 STARTUPS TRIED TO DODGE COPYRIGHT
via Intellectual Property Law360 by Bill Donahue on 9/29/2017
URL: https://www.law360.com/ip/articles/968990

Siding with Walt Disney and other Hollywood studios, the Ninth Circuit issued a ruling last month shutting down movie filtering service VidAngel Inc., saying a decision to the contrary would have created “a giant loophole in copyright law.”
AMAZON MAY FACE SUPREME COURT PILLOW FIGHT
via Bloomberg BNA by Alexis Kramer on 9/29/2017
URL: https://www.bna.com/amazon-may-face-n73014470286/

The Federal Circuit held that Amazon wasn't liable under federal copyright law for the allegedly infringing pillowcases because it didn't hold title to the ...

BREAKING: HOUSE REPUBLICANS PROPOSE USPTO AS AN INDEPENDENT AGENCY

This afternoon the House Budget Committee released a non-binding budget blueprint titled Building a Better America: A Plan for Fiscal Responsibility. As a part of this proposed fiscal year 2018 budget the House Budget Committee is proposing that the United States Patent and Trademark Office (USPTO) be made an independent agency. The post BREAKING: House Republicans Propose USPTO as an Independent Agency appeared first on IPWatchdog.com | Patents & Patent Law.

'GRINCH' PLAYWRIGHT DENIED FEES FROM SEUSS, FOR NOW
via Intellectual Property Law360 by Bill Donahue on 9/29/2017
URL: https://www.law360.com/ip/articles/969464

Two weeks after winning a ruling that his raunchy stage play riffing on the Dr. Seuss classic "How the Grinch Stole Christmas" was protected by the fair use doctrine, a New York playwright was denied reimbursement of his attorneys' fees.

IN A DIGITAL WORLD, ARE WE LOSING SIGHT OF OUR UNDIGITIZED PAST?
via Forbes by Kalev Leetaru on 9/30/2017

Yet, it is not technology that forms the greatest challenge to accessing our past, but rather how copyright and fair use are interpreted in the digital era ...
WAITING FOR THE APPROVAL OF THE EU DIRECTIVE ON COPYRIGHT IN THE DIGITAL SINGLE MARKET
via At last ... the 1709 Copyright Blog by Eleonora Rosati on 9/30/2017
URL: http://the1709blog.blogspot.com/2017/09/waiting-for-approval-of-eu-directive-on.html

A little over a year ago the European Commission released its proposal for a Directive on copyright in the Digital Single Market [Katposts here], which is currently being discussed in the European Parliament.

2017 BEIJING INTERNATIONAL BOOK FAIR SEES AN INCREASE IN COPYRIGHT DEALS SINCE LAST YEAR’S EVENT
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 9/30/2017

The Beijing International Book Fair is one of the largest and fastest growing trade shows for the book publishing industry across the globe and 2017 marked the 24th annual version of the event. The year’s version of the Beijing book fair, which ran from August 23rd to the 27th, expected to see 2,500 exhibitors coming from 89 countries and regions, including new exhibitors in the genres of lifestyle, homemaking, health and wellness. The post 2017 Beijing International Book Fair sees an increase...
October 2017

GOOGLE WANTS YOU TO READ E-BOOKS
via Forbes by Ellen Duffer on 10/1/2017
URL: https://www.forbes.com/sites/ellenduffer/2017/09/30/google-wants-you-to-read-e-books/

Google insisted, in an interview for The Atlantic, that the project qualified as an action covered by the "fair use" portion of copyright law. The fight got ...

EFF WEIGHS IN ON KODI PIRACY BATTLES WORLDWIDE
via ZDNet by Charlie Osborne on 10/2/2017
URL: http://www.zdnet.com/article/eff-weighs-in-on-kodi-piracy-battle/

... access to the Internet, torrent software and other services which are wholly legal but could -- in theory -- be used to access copyrighted content.

DID THE WALT DISNEY COMPANY AND PIXAR STEAL THE MOVIE INSIDE OUT?
via IPWatchdog.com | Patents & Patent Law by Amanda G. Ciccatelli on 10/2/2017
URL: http://www.ipwatchdog.com/2017/10/02/disney-pixar-steal-movie-inside-out/id=88559/

Robins Kaplan LLP filed an Amended Complaint detailing allegations that The Walt Disney Company and Pixar misappropriated the central concept and characters behind the animated hit movie Inside Out from a nationally recognized child development expert, Denise Daniels, who had pitched her uniquely original material and characters from her show The Moodsters to top studio executives... Ronald Schutz, partner at Robins Kaplan and lead trial counsel for Daniels and The Moodsters Company, sat down...

NINTENDO NO LONGER WELCOMING YOUTUBE LIVESTREAMS OF ITS GAMES
via Ars Technica by Kyle Orland on 10/2/2017
URL: https://arstechnica.com/?p=1178231

Nintendo's always-rocky relationship with those that create online videos of its games got worse this weekend, as the company is now barring livestreamed gameplay on YouTube Live from channels that take part in revenue sharing through its Nintendo Creators Program.
TICKETMASTER SUES BROKERS FOR USING BOTS TO GAIN ADVANTAGE
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 10/2/2017
URL: http://www.hollywoodreporter.com/thr-esq/ticketmaster-sues-brokers-using-bots-gain-advantage-1044813

The defendants are the same ones who agreed to never use bots in a settlement with New York's attorney general earlier this year.

WORKING IN THE INTERNATIONAL ARENA: THE SPECIAL 301 PROCESS
via Copyright: Creativity at Work by Emily Lanza on 10/2/2017
URL: http://blogs.loc.gov/copyright/2017/10/working-in-the-international-arena-the-special-301-process/

Staff attorneys in the Office of Policy and International Affairs (PIA) here at the U.S. Copyright Office often work with our colleagues in other agencies, providing expert advice on domestic and international copyright issues.

SIRIUS XM TAKEDOWN OF STERN/TRUMP INTERVIEWS IS NOT CENSORSHIP
via The Illusion of More by David Newhoff on 10/2/2017
URL: http://illusionofmore.com/sirius-xm-takedown-sterntrump-interviews-not-censorship/

The implication that copyright is fundamentally a tool of censorship is a favorite theme among its critics. They rarely miss an opportunity to ring this [...]
DISNEY’S ‘ZOOTOPIA’ AND WRITER’S PITCH NOT ALIKE: JUDGE
via Intellectual Property Law360 by Melissa Daniels on 10/2/2017
URL: https://www.law360.com/ip/articles/970276

A California federal judge on Monday said he’s considering permanently tossing a copyright claim against Disney in a screenwriter’s amended suit accusing the studio of ripping off his television pitch with its hit animated film “Zootopia,” saying the works “aren’t very much alike.”

JUSTICES REFUSE SLEW OF COPYRIGHT CASES
via Intellectual Property Law360 by Bill Donahue on 10/2/2017
URL: https://www.law360.com/ip/articles/970193

The U.S. Supreme Court on Monday said it would refuse to hear three different copyright cases, including one that claimed the justices' high-profile Aereo ruling had eliminated the “volitional conduct” requirement for direct infringement claims.

EFF CHIMES IN ON KODI DEBATE
via IP Pro The Internet by Barney Dixon on 10/2/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5653

Legal action against Kodi IPTV box add-on manufacturers are an attempt to expand the scope of secondary copyright infringement, and smear and ...

SUPREME COURT DECLINES TO HEAR MEGAUPLOAD CASE
via Washington Post on 10/2/2017

... filed charges against Dotcom and several colleagues, alleging they conspired to commit copyright infringement, racketeering and money laundering ...

PRODUCER ACCUSES MOVIE PRODUCTION COMPANY OF COPYRIGHT INFRINGEMENT
via Northern California Record by Jenie Mallari-Torres on 10/2/2017

A Los Angeles County man is suing a movie production company, alleging copyright infringement and defamation. Farhad Safinia ...
TICKETMASTER SUES SCALPERS FOR USING BOTS TO MASS-BUY TIX
via Intellectual Property Law360 by Cara Bayles on 10/2/2017
URL: https://www.law360.com/ip/articles/970307

Ticketmaster LLC brought a suit worth an estimated $10 million against several ticket-scalping companies in California federal court Monday, alleging they used bots to buy thousands of tickets, snatching them up before average customers could and selling them at a markup in violation of both Ticketmaster’s terms of use and California and New York state laws.

SEVENTEEN GIVES COLDPLAY & THE CHAINSMOKERS 'DON'T WANNA CRY' CREDIT AMID PLAGIARISM CONCERNS
via Billboard by Tamar Herman on 10/3/2017

K-pop boy band Seventeen has added Coldplay and the Chainsmokers to the copyright for its latest single, reportedly to avoid any issues in court due ...

KOREAN BAND GRANT COLDPLAY COPYRIGHT TO AVOID 'GREAT STRESS'
via World IP Review on 10/3/2017

A Korean band have granted copyright to Coldplay and The Chainsmokers, a DJ production duo, after criticism that the band's “Don't Wanna Cry” ...

COPYRIGHT AND POLITICS: INTERESTING BEDFELLOWS
via Hugh Stephens Blog on 10/3/2017
URL: http://hughstephensblog.net/2017/10/03/copyright-and-politics-interesting-bedfellows/

On June 22 of this year, Christy Clark, Premier of British Columbia, commonly called “BC”– where yours truly happens to live–presented her party policy platform (aka the “Speech from the Throne”) to the BC Legislature.
RASTA IMPOSTA' SUES KMART OVER BANANA COSTUME COPYRIGHT
via FindLaw Writ - Recent Articles by George Khoury, Esq. on 10/3/2017

Rasta Imposta, the makers of a generic banana costume, like the one made popular by the Peanut Butter Jelly Time flash video that took the internet by storm over a decade ago, has sued Kmart over their decision to sell a different generic banana costume.

GERMANY'S SUPREME COURT BACKS GOOGLE OVER THUMBNAIL IMAGES
via World IP Review on 10/3/2017

Germany's Federal Court of Justice has backed search engine Google in a dispute over whether the use of thumbnail images constitutes copyright ...

FACEBOOK CONNECTS VIDEO COPYRIGHT-FLAGGING SYSTEM TO THIRD-PARTY TOOLS
via Variety by Todd Spangler on 10/3/2017

Facebook is promising to make it easier for content owners to police the social platform for unauthorized and pirated videos — and then either monitor ...

ALIBABA HIT WITH CLASS ACTION CLAIMING RAMPANT COPYRIGHT INFRINGEMENT
via Law.com - Newswire by Ross Todd on 10/3/2017

Alibaba.com Inc. has been hit with a class action lawsuit claiming that its network of e-commerce websites is home to rampant...

GOOGLE NOT LIABLE FOR IMAGE SEARCH THUMBNAILS
via IP Pro The Internet by Barney Dixon on 10/4/2017
URL: http://www.iprotheinternet.com/iprotheinternetnews/article.php?article_id=5656

Google's image search does not exploit copyright by showing thumbnails of copyright infringing images, the German Federal Court of Justice has ...
1.2 MILLION PIRATED GOODS SEIZED BY NIGERIAN AUTHORITIES
via World IP Review on 10/4/2017

The Nigerian Copyright Commission (NCC) has announced that it seized more than 1.2 million pirated goods in the first six months of 2017.

ENTERTAINMENT TRADE ASSOCIATIONS LOOKING FOR OPPORTUNITY TO PUSH A FALSE NARRATIVE
via Hill by Joshua Lamel on 10/4/2017

They want to roll back the clock to an era before the internet, when they were free to commandeer the U.S. government to push unbalanced copyright ...

TEXTILE BUSINESS ACCUSES NORDSTROM RACK OF COPYRIGHT INFRINGEMENT
via Northern California Record by Jenie Mallari-Torres on 10/4/2017

Couture Textile seeks trial by jury, enjoin defendants from further infringing the plaintiff's copyrights, all profits, attorney fees, interest, costs of litigation ...

STUDY SHOWS PIRACY LOSING PREMIUM AD REVENUE
via The Illusion of More by David Newhoff on 10/5/2017
URL: http://illusionofmore.com/study-shows-pirac-losing-premium-ad-revenue/

Among the standard responses to any proposal to mitigate online piracy is an insistence that it just cannot be stopped. Perhaps not entirely. But it can be starved.

HOUSE BILL INTRODUCED FOR COPYRIGHT SMALL CLAIMS
via PetaPixel by Michael Zhang on 10/5/2017
URL: https://petapixel.com/2017/10/05/house-bill-introduced-copyright-small-claims/

Photographers in the United States are now one step closer toward seeing a copyright small claims system for pursuing infringements on a smaller ...
FACEBOOK DAD FACES BIG FINE OVER FAILED COPYRIGHT SUITS
via Intellectual Property Law360 by Bill Donahue on 10/5/2017
URL: https://www.law360.com/ip/articles/971650

A New York federal judge on Wednesday ordered a man who live-streamed his son’s birth on Facebook to repay $120,000 in legal bills to several media outlets he sued for using it, saying he likely made enough money from settlements in other suits to pay the fine.

CONGRESSMEN INTRODUCE CASE ACT BILL AIMED AT HELPING INDEPENDENT CREATORS WITH COPYRIGHT ...
via Billboard by Robert Levine on 10/5/2017

Copyright may be one of the few nonpartisan issues left in Congress. As the issue of copyright reform continues to heat up, Congressmen Hakeem ...

MEAT LOAF STOLE 'I'D DO ANYTHING FOR LOVE' SONG, SUIT SAYS
via Intellectual Property Law360 by Bonnie Eslinger on 10/5/2017
URL: https://www.law360.com/ip/articles/971686

Meat Loaf was slapped with a copyright infringement suit in California federal court Wednesday claiming his hit “I’d Do Anything For Love” was stolen more than 24 years ago, likely through the attorney who concurrently represented the rocker’s songwriter and the alleged song composer.

CHICAGO FONT CO. TAKES AIM AT TARGET'S USE OF TYPEFACE
via Intellectual Property Law360 by Hannah Meisel on 10/5/2017
URL: https://www.law360.com/ip/articles/971652

Target is using a font company's most popular typeface in branding and advertising far beyond what is allowed by the firms' licensing agreement, according to an infringement suit filed against the retail giant in Illinois federal court Wednesday.

PHARRELL'S 'BLURRED LINES' APPEAL STARTS TOMORROW
via Forbes on 10/6/2017
URL: https://www.forbes.com/sites/legalentertainment/2017/10/05/pharrells-blurred-lines-appeal-starts-tomorrow/

The lawyers argue that since the music Gaye copyrighted was sheet music, and not the sound recording, the two songs should be compared only on ...
NIGERIA JOINS KEY COPYRIGHT TREATIES
via YouTube by WIPO on 10/6/2017
URL: https://www.youtube.com/watch?v=vQnWiu0TmdA

WIPO Director General Francis Gurry received on October 4, 2017 Nigeria’s instruments of accession and ratification of the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Marrakesh Treaty and the Beijing Treaty from Mr. Audu Ayinla Kadiri, Permanent Representative of Nigeria to the UN and other International Organizations in Geneva and Mr. Afam Ezekude, Director General, Nigerian Copyright Commission.

SOUND ROYALTIES IDENTIFIES $14 MILLION IN UNDISTRIBUTED ROYALTIES FOR ARTISTS
via Billboard by Dan Rys on 10/6/2017
URL: http://www.billboard.com/articles/business/7990073/sound-royalties-identifies-14-million-undistributed-royalties

... investor Alex Heiche in 2014 with the aim of providing songwriters and creators with advances on future royalties without having to sell copyrights, ...

APPEALS COURT SKEPTICAL ABOUT OVERTURNING MARVIN GAYE FAMILY'S "BLURRED LINES" VICTORY
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 10/6/2017

The $5.3 million punishment against Robin Thicke and Pharrell Williams for infringing Marvin Gaye's "Got to Give It Up" to create "Blurred Lines" made quite a loud noise throughout the music industry.

U.S. GOVT, HOLLYWOOD STUDIOS WEIGH IN ON DISPUTE EXPLORING REACH OF U.S. COPYRIGHT LAW
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 10/6/2017

Judging by papers filed with the U.S. Court of Appeals for the D.C. Circuit this week, a dispute over the streaming of a Polish broadcaster's programming is likely to become an important one.
A closely watched copyright case over whether Pharrell Williams and Robin Thicke's 2013 chart-topper “Blurred Lines” infringed Marvin Gaye’s iconic “Got To Give It Up” was argued Friday before the Ninth Circuit, where attorneys for the two sides clashed over what exactly a trial jury was allowed to hear.

Gaye as conflating ordinary artistic inspiration with copyright infringement. Jurors should not have been instructed that Thicke and Pharrell Williams ...

To the Gaye family's chagrin, Kronstadt ruled before the trial that jurors could only rely on the “Got to Give It Up” sheet music deposited for copyright ...

As the US, Canada and Mexico wrestle with the difficult task of “updating” NAFTA (judging by press reports of negotiating demands from the Trump Administration, the US wants to turn a Free Trade Agreement into a Managed Trade Agreement, with management in the hands of the US, but that is another story), among the issues to be looked at is the protection of intellectual property.
PRODUCTION MUSIC CONFERENCE: NMPA'S DAVID ISRAELITE TAKES AIM AT 'COPYRIGHT INFRINGERS'
via Variety by Paula Parisi on 10/7/2017

The Washington-based executive called out a “broken” licensing system that makes copyright infringers of those he said would be happy to obtain ...

IS COPYRIGHT PROTECTION THE NEW BLACK?
via IPLJ by Kaylia Gilphilin on 10/9/2017
URL: http://www.fordhamiplj.org/2017/10/09/copyright-protection-new-black/

The fashion industry is heralded for employing creative means to sell an aesthetic to consumers.

ENNIO MORRICONE LOSES BID TO RECLAIM RIGHTS TO FILM SCORES
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 10/9/2017

A judge rules that under Italian law, his scores were created as works made for hire.

RIGHTSCORP SIGNS CHINA ANTI-PIRACY AGREEMENT
via IP Pro The Internet by Barney Dixon on 10/9/2017
URL: http://www.ippotheinternet.com/ippotheinternetnews/article.php?article_id=5661

Yen will assist Rightscorp with securing an exclusive anti-piracy deal with the media company to “represent Chinese audio and visual copyrights, and ...

A 21ST CENTURY NAFTA MUST PRESERVE COPYRIGHT BALANCE
via Hill by Bill Watson & Sasha Moss on 10/9/2017
URL: http://thehill.com/opinion/white-house/354485-a-21st-century-nafta-must-preserve-copyright-balance

They want to use NAFTA to lengthen Canadian copyrights from their current level (ridiculously long) to the U.S. standard (really, really ridiculously ...
STRONG COPYRIGHT PROTECTIONS IN NAFTA RENEGOTIATIONS ARE NEEDED TO PROTECT RIGHTS OF CREATIVES
via Hill by Gale Anne Hurd on 10/9/2017

I spoke with policymakers about copyright and trade while President Trump's landmark NAFTA renegotiations were underway. There is much at stake ...

NETFLIX DRAMA THE CROWN TO EXPLORE ROYAL RELATIONSHIP WITH NAZIS
via Telegraph by Hannah Furness on 10/10/2017

“That was covered by a publisher and it was so complicated to try and track down who owned the copyright on the letters themselves. So we decided ...

PUBLISHERS SPLIT ON HOW TO HANDLE RESEARCHGATE
via Inside Higher Ed by Lindsay McKenzie on 10/10/2017
URL: https://www.insidehighered.com/quicktakes/2017/10/10/publishers-split-how-handle-researchgate

Additionally, the statement said that the American Chemical Society and Elsevier “are asking the courts to clarify ResearchGate's copyright ...

MAKING BOOKS ACCESSIBLE FOR VISUALLY IMPAIRED PEOPLE IN ARGENTINA
via YouTube by WIPO on 10/10/2017
URL: https://www.youtube.com/watch?v= XDZNzibjWeo

“Digital Library for Change” Tiflolibros, a digital library for the blind in Buenos Aires and the Accessible Books Consortium (ABC) are working tirelessly to bring accessible books to visually impaired people in Argentina. The ABC’s first project in Latin America uses funds provided by WIPO to produce 800 accessible educational books in Spanish by December 2017 for students who are blind or print disabled in primary and secondary schools. Thanks to this cooperation, Tiflolibros can increase its output significantly by obtaining the digital file behind a work from the publisher, which can then be easily converted into an accessible format such as audio or refreshable braille. This is just one example of the work undertaken by the ABC, a multi-stakeholder partnership supporting the goals of the Marrakesh "Books for Blind" Treaty by increasing the number of books around the globe in accessible formats such as braille, audio and large print.
THE FORGOTTEN ORIGINS OF COPYRIGHT FOR PHOTOGRAPHS
via Mostly IP History by Zvi S. Rosen on 10/10/2017
URL: http://www.zvirosen.com/2017/10/10/the-forgotten-origins-of-copyright-for-photographs/

It’s fairly well-known that photographers like Matthew Brady used photographs in unique and important ways during the Civil War to document the conflict like never before.

UPDATED VERSION OF THE COMPODIUM OF U.S. COPYRIGHT OFFICE PRACTICES, THIRD EDITION
via CSUSA on 10/10/2017
URL: http://www.csusa.org/news/369525/


THE FIRMS FILING THE MOST COPYRIGHT SUITS
via Intellectual Property Law360 by Bill Donahue on 10/10/2017
URL: https://www.law360.com/ip/articles/972821

The list of law firms filing the most copyright suits over the third quarter of 2017 was once again lead by the Liebowitz Law Firm, which filed more than 100 new photography cases for the second quarter in a row.

'BLURRED LINES' GETS FOCUSED ATTENTION FROM APPEALS COURT
via FindLaw Writ - Recent Articles by George Khoury, Esq. on 10/10/2017

This past week, a three judge panel for the Ninth Circuit Court of Appeals heard oral arguments for the Blurred Lines appeal filed by Pharrell and Robin Thicke.

ELECTION HACKING REPORT: US 'HAS A LOT TO DO IN A SHORT PERIOD OF TIME'
via Hill by Joe Uchill on 10/10/2017

United States copyright law disallowed hackers from experimenting on voting machines until just the last two years and purchasers of voting machines ...
A report released today by professional services network PwC has revealed that the copyright industry is the third largest sector of the Australian ...

In 2011, ReDigi Inc. introduced technology that effectively attempted to establish a secondary market for “used” digital music files, where owners who had legally downloaded music files from iTunes could sell the music that they no longer wanted. In a nutshell, the system allowed the owner of a digital file to transfer the music to ReDigi’s cloud storage locker, from which ReDigi could then sell it to a willing buyer for a lower price than the cost of an “original” purchase from the iTunes...

A new ruling was issued on September 25th in the ongoing GNU General Public License (GPL) compliance case of Artifex v. Hancom.

Such acts, according to Haute Hippie amount to copyright infringement and “were, and continue to be, willful, intentional and malicious.” Due to its sale ...
MADOFF AND CONCEPTUAL ART MIX IN NONPROFIT COPYRIGHT SUIT
via New York Law Journal on 10/11/2017
URL: http://www.newyorklawjournal.com/this-weeks-news/id=1202800158879/Madoff-and-Conceptual-Art-Mix-in-Nonprofit-Copyright-Suit

After the discovery of Bernard Madoff's multibillion dollar Ponzi scheme in 2008, a variety of investors found themselves ensnared in Irving Picard's ...

LEGO SAYS RIVAL 'GRASPING AT STRAWS' IN COPYRIGHT SUIT
via Intellectual Property Law360 by Shayna Posses on 10/11/2017
URL: https://www.law360.com/ip/articles/973158

Lego told a Connecticut federal court Tuesday that a rival "has resorted to grasping at straws" with its bid for a quick win on the toy giant’s copyright claims, contending that its competitor is trying to avoid taking responsibility for infringing despite admitting to copying its plastic figurines.

FIRST CIRCUIT REJECTS COPYRIGHT WORKAROUND TO SECTION 230–SMALL JUSTICE V. RIFOFF REPORT
via Technology & Marketing Law Blog by Eric Goldman on 10/12/2017

Goren runs a law firm, Small Justice. DuPont, a defendant in a case Goren brought, posted two negative reviews about Goren to Ripoff Report.

FRANKFURT BOOK FAIR 2017: CONCERN THAT CANADIAN COPYRIGHT DISASTER COULD SPREAD
via Publishers Weekly by Andrew Albanese on 10/12/2017

CCC's Michael Healy speaks at a panel at the Frankfurt Book Fair on copyright issues, including the 2012 Copyright Modernization Act in Canada, ...
UPDATE-GOOGLE STILL REFUSES TO TERMINATE REPEAT INFRINGERS
via Vox Indie by Ellen Seidler on 10/12/2017
URL: http://www.voxindie.org/google-doesnt-punish-pirates/

139 DMCA notices later, nothing changes for the Google Drive account. As I wrote last month, Google seems to ignore its own pledge to disable accounts of repeat (piracy) infringers. Today I sent another 31 DMCA takedown requests today (170 over several months) reporting this same account for copyright infringement on behalf of indie film […]

COURT SIDES WITH RIPOFFREPORT IN BATTLE OVER REVIEWS
via MediaPost by Wendy Davis on 10/13/2017

DuPont defaulted in the case, following which Goren successfully asked a Massachusetts state court trial judge for the copyright to DuPont's reviews.

STUDIOS SAY TICKBOX AIDS IP THEFT ‘WITH A WINK AND A NOD’
via Intellectual Property Law360 by Cara Bayles on 10/13/2017
URL: https://www.law360.com/ip/articles/974564

Major movie studios and entertainment newcomers like Netflix and Amazon have banded together to sue TickBox in California federal court Friday, saying the online streaming service infringes their copyrighted content by selling “with a wink and a nod” devices customers can use to watch movies and TV shows for free.

COPYRIGHT RESTORED TO POOR FAMILY OF AUSTRALIAN ABORIGINAL ARTIST
via Reuters by Alison Bevege on 10/14/2017
URL: https://uk.reuters.com/article/uk-australia-aboriginal-art-namatjira/copyright-restored-to-poor-family-of-australian-aboriginal-artist-idUKKBN1CJ05H

The impoverished family of Australia's most famous Aboriginal artist, Albert Namatjira, has been given copyright to his works after …

WHY PHOTOS OF THE EIFFEL TOWER AT NIGHT ARE ILLEGAL
via PetaPixel by Will Nicholls on 10/14/2017
URL: https://petapixel.com/2017/10/14/photos-eiffel-tower-night-illegal/

You can almost never find videos or photos of the Eiffel Tower at night on stock sites. Why is this? Because the Eiffel Tower is copyrighted when those …
DOES VIDEO GAME PIRACY ACTUALLY RESULT IN MORE SALES?
via Big Think by David Ryan Polgar on 10/15/2017
URL: http://bigthink.com/david-ryan-polgar/video-game-piracy-may-actually-result-in-more-sales

A recently-released extensive study by the European Commission, "Estimating displacement rates of copyrighted content in the EU," came to the ...

AIPPI 2017: WARNER BROS EXEC TALKS SAFE HARBOURS AND INFRINGERS
via World IP Review on 10/16/2017

She was speaking in a personal capacity on a panel, “On a different note—copyright and music”, which took place yesterday, October 15, at the 2017 ...

56 GROUPS CALL FOR DELETION OF INTERNET FILTERING PROVISION IN EU COPYRIGHT PROPOSAL
via Intellectual Property Watch by William New on 10/16/2017

Today a range of civil society organisations sent an open letter to European Union policymakers calling for the removal of a provision they say would violate citizens' rights by forcing monitoring and filtering of copyrighted materials.

RENEGOTIATE NAFTA TO MAKE IT THE GOLD STANDARD IN IP PROTECTION
via IPWatchdog.com | Patents & Patent Law by Dr. Kristina Lybecker on 10/16/2017

As President Trump embarks on the renegotiation of NAFTA, it is critical that we seize the opportunity to make it the gold standard in intellectual property rights protections... The stakes are tremendous and cannot be ignored. In total, it is estimated that intellectual-property theft costs the United States approximately $600 billion per year. A recent New York Times article notes that this is the “greatest transfer of wealth in history”. The post Renegotiate NAFTA to Make it the Gold...
SINGAPORE'S PERKS, BUSINESS-FRIENDLY ENVIRONMENT LURE SHOWBIZ GIANTS
via Variety by Vivienne Chow on 10/16/2017

The pay-TV industry association also credited Singapore's efforts in copyright protection by amending the law in 2014, a move generally welcomed by ...

WHY THE FUTURE OF GIFS IS ANYTHING BUT CERTAIN
via Forbes by Paul Armstrong on 10/16/2017

I looked around the room and I saw copyright infringement, art and some creatives messing about. I generally see the place for GIFs with TV clips and ...

DISNEY FIGHTS UNLICENSED 'STAR WARS,' 'FROZEN' CHARACTERS AT CHILDREN'S BIRTHDAY PARTIES
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 10/16/2017

Yes, Hollywood studios tend to be fiercely protective of their intellectual property.

HOW THE DR. SEUSS ESTATE (ALMOST) STOLE CHRISTMAS
via Columbia Journal of Law and the Arts on 10/16/2017
URL: https://lawandarts.org/2017/10/16/dr-seuss-stole-christmas/

In an opinion filed on September 15, 2017, Judge Alvin K. Hellerstein of the Southern District of New York held that a comedic play parodying Dr. Seuss’ “How the Grinch Stole Christmas!” qualifies as fair use.

FOREVER 21 ACCUSED OF COPYING…AGAIN
via Columbia Journal of Law and the Arts on 10/16/2017
URL: https://lawandarts.org/2017/10/16/forever-21-accused-of-copying/

Fashion retail giant Forever 21 is being accused again of copying, this time by Word, a woman-owned branding agency based in Los Angeles.
DOES THE INTERNET ARCHIVE NEED THE COPYRIGHT RHETORIC TO BE USEFUL?
via The Illusion of More by David Newhoff on 10/16/2017

Recently, a tweet caught my eye on the #copyright thread—something about the late Congressman Sonny Bono and a new collection at the Internet [...] 

ELECTRONIC ARTS FIRES BACK AT CODER'S HIGH COURT APPEAL
via Intellectual Property Law360 by Michael Macagnone on 10/16/2017
URL: https://www.law360.com/ip/articles/974922

Video game industry giant Electronic Arts has hit back at a former computer programmer’s Hail Mary attempt to revive copyright claims to “John Madden Football,” telling the Supreme Court that offering expert testimony instead of evidence should remain out of bounds.

SMALL CLAIMS BILL AIMS TO EMPOWER COPYRIGHT OWNERS AND CREATORS
via Mister Copyright by Kevin Madigan on 10/16/2017
URL: http://mistercopyright.org/small-claims-bill-aims-to-empower-copyright-owners-and-creators

This month, Congress introduced a bill that would establish a long-discussed small claims court for copyright disputes.

IT'S HARD TO IMAGINE THE FAMILY OF A WHITE ARTIST BEING TREATED LIKE ALBERT NAMATJIRA'S
via Guardian by Paul Daley on 10/17/2017

But the copyright to Namatjira's works has finally transferred to his grandchildren. It followed a long battle between, on the one side, the family and ...

MAKING BOOKS ACCESSIBLE FOR VISUALLY IMPAIRED PEOPLE IN ARGENTINA
via YouTube by WIPO on 10/17/2017
URL: https://www.youtube.com/watch?v=FXjh0xLJJdY

“Digital Library for Change” Tiflolibros, a digital library for the blind in Buenos Aires and the Accessible Books Consortium (ABC) are working tirelessly to bring accessible books to visually impaired people in Argentina. The ABC’s first project in Latin America uses funds provided by WIPO to produce 800 accessible educational books in Spanish by December 2017 for students
who are blind or print disabled in primary and secondary schools. Thanks to this cooperation, Tiflolibros can increase its output significantly by obtaining the digital file behind a work from the publisher, which can then be easily converted into an accessible format such as audio or refreshable braille. This is just one example of the work undertaken by the ABC, a multi-stakeholder partnership supporting the goals of the Marrakesh "Books for Blind" Treaty by increasing the number of books around the globe in accessible formats such as braille, audio and large print.

ARTICLE 13 OF DSM PROPOSALS SHOULD BE DELETED, SAYS THE EFF
via IP Pro The Internet by Barney Dixon on 10/17/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5670

The EFF explained that a loss in the battle against the use of upload filters for copyright could see a “similar mandate on platforms to filter other types ...

HOLLYWOOD CONFRONTS A COPYRIGHT ARGUMENT WITH POTENTIAL FOR MASS DISRUPTION
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 10/17/2017

Are some of Hollywood's biggest movies from the past decade — Guardians of the Galaxy, Avengers: Age of Ultron, Deadpool, Night at the Museum, among others — all copyright infringements because they were allegedly created with stolen technology?

NETFLIX, AMAZON, MOVIE STUDIOS SUE OVER TICKBOX STREAMING DEVICE
via Ars Technica by Joe Mullin on 10/17/2017
URL: https://arstechnica.com/?p=1187607

Movie studios, Netflix, and Amazon have banded together to file a first-of-its-kind copyright lawsuit against a streaming media player called TickBox TV.

CEIPI OPINION ON COPYRIGHT LIMITATIONS’ REFORM IN THE EUROPEAN DIGITAL SINGLE MARKET
via At last ... the 1709 Copyright Blog by Eleonora Rosati on 10/17/2017
URL: http://the1709blog.blogspot.com/2017/10/ceipi-opinion-on-copyright-limitations.html

STREAM RIPPING: DANGEROUSLY CLOSE TO BECOMING THE NEW NORMAL
via CreativeFuture by Adam Leipzig on 10/17/2017
URL: https://www.creativefuture.org/stream-ripping-dangerously-close-becoming-new-normal/

Recently, Taylor Swift debuted her latest single, “Look What You Made Me Do,” online to great viral fanfare – quickly smashing records in its wake. On YouTube, the song’s official music video racked up 19 million views in its first 24 hours online – making it the site’s most-watched video in a single day.

TAKE DOWN OR STAY DOWN: DIGITAL PIRACY AND TRADE NEGOTIATION
via Intellectual Property Law360 by Dean Pinkert on 10/17/2017
URL: https://www.law360.com/ip/articles/975293

As the renegotiation of the North American Free Trade Agreement reaches a critical juncture, difficult trade-offs are being considered. An area of discussion that involves exceptionally difficult trade-offs concerns measures to combat digital piracy. The difficulties arise because there are legitimate interests and objectives on all sides. In this article, I will discuss the fault line between the policies advocated by internet industry/consumer technology groups and those advocated by content industries. My goal is simply to convince the reader that there is a need for creative...

DR. SEUSS 'TRANSFORMED': FAIR USE OR ABUSE OR BOTH?
URL: http://www.law.com/newyorklawjournal/almID/1202800654005/

Dr. Seuss Enterprises (DSE) filed counterclaims for copyright infringement, trademark infringement, trademark dilution and unfair competition.

DECISIONS HIGHLIGHT NEED TO RETHINK IP PROTECTION STRATEGIES FOR PRODUCT DESIGNS
via New York Law Journal by Milton Springut on 10/17/2017
URL: http://www.law.com/newyorklawjournal/almID/1202800650087/

Counsel are now well advised to consider carefully whether copyright protection might be used to cover decorative elements of such designs, either ...
Linux kernel maintainer Greg Kroah-Hartman and several other senior Linux figures have published a “Linux Kernel Community Enforcement ..." 

This is an update to my post from last week. Google has now removed the 31 additional pirate URLs I reported. The total removed (since April) is 170. Some of the titles removed include re-uploaded versions of pirated films reported earlier. Despite all this, the Google Drive account, as of now, remains online. Hundreds of [...] 

It said: “What TickBox actually sells is nothing less than illegal access to Plaintiffs' copyrighted content. It works like this: TickBox distributes and ..." 

A Connecticut bankruptcy judge granted minor sanctions Tuesday against a music producer and manager who tried to pursue copyright litigation against rapper 50 Cent over a hit song even as he was under the protection of bankruptcy, saying the violation was knowing and purposeful. 

Fighting a legal war with deep-pocketed Hollywood studios isn't cheap.
RECORDING ACADEMY’S DISTRICT ADVOCATE DAY RALLIES OVER 1000 CREATORS IN ALL 50 STATES
via Billboard by Cherie Hu on 10/18/2017
URL: http://www.billboard.com/articles/business/8005850/recording-academy-district-advocate-day-congress

Key issues will include fixing outdated laws around performance royalties, modernizing copyright law to account for music producers and advocating ...

VIDANGEL DECLARES BANKRUPTCY TO PUT COPYRIGHT FIGHT ON HOLD
via Variety by Gene Maddaus on 10/18/2017

The filing is designed to put its copyright battle with three major studios on hold, as it seeks to expand its new filtering service. “We have millions in the ...

COPYRIGHT QUIZ: IS THE PICTORIAL PROTECTABLE?
via National Law Review by Annie Dike on 10/18/2017
URL: https://www.natlawreview.com/article/copyright-quiz-pictorial-protectable

Here's a bright idea: protecting not only the utilitarian aspect of your design but the unique aesthetic element as well. Think of the original LED light ...

STEVE WINWOOD BEATS COPYRIGHT SUIT OVER 50-YEAR-OLD SONG
via Intellectual Property Law360 by Bill Donahue on 10/18/2017
URL: https://www.law360.com/ip/articles/975776

More than five decades after The Spencer Davis Group and Steve Winwood released their iconic “Gimme Some Lovin’” in 1966, a federal judge on Tuesday shot down copyright infringement accusations over the song.

VIDANGEL FILES FOR CH. 11 AFTER 9TH CIRC. COPYRIGHT LOSS
via Intellectual Property Law360 by Dave Simpson on 10/18/2017
URL: https://www.law360.com/ip/articles/976054

Movie filtering service VidAngel Inc. filed for bankruptcy in Utah Wednesday saying that it owes its current and former subscribers $4.7 million in credit after a preliminary injunction was issued in a infringement suit brought by Walt Disney and other Hollywood studios.
SONGTRUST EXPANDS BUSINESS OPERATIONS TO EUROPE, NAMES MANDY AUBRY DIRECTOR OF GLOBAL ...
via Billboard by Cherie Hu on 10/18/2017

"Songtrust allows any songwriter, publisher, or copyright owner to get their foot on the collection ladder. It takes the complexity of the process out of the ...

PIRACY’S SCOFLAWS – ALL ROADS LEAD THROUGH CLOUDFLARE?
via Vox Indie by Ellen Seidler on 10/19/2017
URL: http://www.voxindie.org/piracy-scofflaws-all-roads-lead-to-cloudflare/

The DMCA (Digital Millennium Copyright Act) was signed into law nearly 20 years ago....yet here we are today, same old tired law but with an online ecosystem vastly different from what existed 2 decades ago.

CCIA REPORT: DIGITAL MUSIC INDUSTRY SEES STRONG REVENUE GROWTH, CREATIVITY, CHOICE
via Intellectual Property Watch by William New on 10/19/2017

A technology association-backed report released this week shows strong growth in revenues for the music industry over the past 5 to 10 years, driven by digital music. The data counters the current European copyright reform concern over a "value gap" for the music industry, the Computer & Communications Industry Association (CCIA) said.

YES, USING A COPYRIGHTED PHOTO WITHOUT PERMISSION CAN GET YOU SUED…
via PetaPixel by Michael Zhang on 10/19/2017
URL: https://petapixel.com/2017/10/19/yes-using-copyright-photo-without-permission-can-get-sued/

Here's a basic fact everyone should know: just because a photo appears in a Google search doesn't mean it's a free photo that you can use for any ...
NMPA CHIEF DAVID ISRAELITE ON MUSIC LICENSING ISSUES: 'THE VALUE OF THE SONG IS MORE IMPORTANT ...
via Billboard by Ed Christman on 10/19/2017

For one, it would fix how mechanical rates are set at the Copyright Royalty Board. "Today, the 801 B standard, which consists of a four-part test, is how ...

'SPINAL TAP' LAWSUIT NOW SEEKS CONFIRMATION THAT CREATORS RECLAIMED RIGHTS
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 10/19/2017

Is Vivendi sticking Harry Shearer with the bill for defending a profit participation lawsuit?

'SPINAL TAP' ACTORS FILE AMENDED COMPLAINT, SEEK ABILITY TO RECLAIM COPYRIGHTS
via Variety by Jem Aswad on 10/20/2017

Harry Shearer, Christopher Guest, Michael McKean and Rob Reiner, the four co-creators of the band at the center of the 1984 “mockumentary” film ...

MICROSOFT CONTINUES BATTLE IN COURTS OVER PIRATED SOFTWARE
via World IP Review on 10/20/2017

Microsoft added that it owns a number of copyright registrations with the US Copyright Office, as well as several US registered trademarks including ...

FAIR USE WITH DR. SEUSS
via Intellectual Property Law360 by Tal Dickstein on 10/20/2017
URL: https://www.law360.com/ip/articles/976329

A client calls in a panic and sweat
It’s a copyright problem, I bet!
I’ve borrowed from an existing work, they say
A book, a film and even a Broadway play!
But I’m not stealing their market share
No, I’ve created a new message out of nowhere.
And to avoid being tagged as an infringer
I’ve called a lawyer I know is a ringer.
Is there a defense that might get me off the hook?
Surely you read about one in your law book?
Aha, you...

MIDDLESBROUGH MODIFIED KODI BOX TRADER GETS SUSPENDED JAIL TERM
via BBC on 10/20/2017

But he added: "If they are designed, produced or adapted for gaining unauthorised access to copyright content or subscription services - such as Sky ...

JUSTICES ASKED TO DECIDE WHEN COPYRIGHT OWNERS CAN SUE
via Intellectual Property Law360 by Carolina Bolado on 10/20/2017
URL: https://www.law360.com/ip/articles/976841

A journalism collective involved in a dispute over online financial news articles has asked the U.S. Supreme Court to take up an Eleventh Circuit decision finding that a copyright holder can't bring an infringement suit until its application is approved by the registrar, arguing that the issue is a common one that has not been settled by circuit courts.

TRADER WHO SOLD TV KODI BOXES ENABLING FREE STREAMING OF PAID CONTENT AVOIDS JAIL
via Guardian on 10/21/2017

He said: “If, however, they are designed, produced or adapted for the purpose of gaining unauthorised access to copyright content or subscription ...

COURT SENTENCE ANSWERS QUESTION OF FULLY LOADED KODI BOX LEGALITY IN THE UK
via ZDNet by Charlie Osborne on 10/23/2017
URL: http://www.zdnet.com/article/uk-seller-of-loaded-kodi-boxes-sentenced/

A seller of "fully loaded" Kodi boxes in the United Kingdom has avoided jail -- for now -- in a landmark case which muddied the waters of copyright law.
CLASSIXX ARE SUING H&M FOR COPYRIGHT INFRINGEMENT
via Billboard by Rob Arcand on 10/23/2017
URL: http://www.billboard.com/biz/articles/8006970/classixx-are-suing-hm-for-copyright-infringement

L.A. house duo Classixx are suing H&M for copyright infringement. The international retailer has reportedly been selling sweaters with the word ...

COMMUNISM'S ANSWER TO MICKEY MOUSE IS THRUST INTO A VERY CAPITALIST DISPUTE
via New York Times by Philip J. Heijmans on 10/23/2017

Ms. Milerova says Mr. Miler handed her full control of all copyright, in writing, while on his deathbed. Soon after, she established a new company with ...

IS A TECH COMPANY REALLY CLAIMING OWNERSHIP OF MARVEL CHARACTERS?
via The Illusion of More by David Newhoff on 10/23/2017
URL: http://illusionofmore.com/is-a-tech-company-really-claiming-ownership-of-marvel-characters/

You may have read recently that some of the major studios, most prominently Disney, are alleged to have infringed the patent rights in a certain [...] 

EPIC GAMES SAYS 'NOBODY LIKES A CHEATER,' SUES YOUTUBER
via Intellectual Property Law360 by Dave Simpson on 10/23/2017
URL: https://www.law360.com/ip/articles/977334

Epic Games slammed an online gamer in a copyright infringement suit in North Carolina federal court Monday, repeatedly calling him a cheater and accusing him of modifying the code for its hit game “Fortnite” to give himself an unfair advantage, while streaming the unfair gameplay on his YouTube channel.

THE SOUTHERN DISTRICT OF NEW YORK FINDS “WORK MADE FOR HIRE” UNDER ITALIAN COPYRIGHT LAW
via National Law Review by Edwin Komen on 10/23/2017

Musical scores incorporated into films are usually produced with the specific film in mind. In the U.S., we call such works “works made for hire,” ...
ARTIST'S ESTATE SUES TO STOP PLANNED BOOK BY SCHOLASTIC
via Courthouse News Service by Nick McCann on 10/23/2017

Castle's archive says the book violates the late artist's copyrights. Billed as fiction, Say's book depicts Castle as autistic and dyslexic, neither of which ...

THE LONG ROAD TO MODERNIZING COPYRIGHT IN THE US
via Managing Intellectual Property by Eileen McDermott on 10/24/2017

Karyn Temple Claggett, acting register of copyrights for the US Copyright Office, told AIPLA members that the Office is on a "rulemaking roll." The Office ...

PORTUGUESE LAW BANS DRM FOR PUBLIC DOMAIN WORKS
via IP Pro The Internet by Barney Dixon on 10/24/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5677

It will also allow users to circumvent DRM on copyrighted works to exercise normal copyright exceptions, such as news reporting, teaching and ...

COSTAR BARS RIVAL FROM USING ALLEGEDLY STOLEN PICS, LISTINGS
via Intellectual Property Law360 by Nicole Narea on 10/24/2017
URL: https://www.law360.com/ip/articles/977543

A Pennsylvania federal judge on Monday granted commercial real estate information giant CoStar Group Inc.'s request for a permanent injunction barring a contractor for its rival Xceligent Inc. from violating its copyrights after the contractor allegedly stole photos and real estate listings from CoStar's website.

TEXAS A&M MUST SHOW PROOF OF IMMUNITY IN '12TH MAN' IP CASE
via Intellectual Property Law360 by Derek Major on 10/24/2017
URL: https://www.law360.com/ip/articles/977437

A Texas federal judge ruled Monday that Texas A&M University's athletic department must release a set of documents it says absolves the department from an author's suit accusing it of publishing without permission a story he wrote on the origin of the football team's famous "12th man" tradition.
HERE ARE SOME OF THE LEGAL IMPLICATIONS OF VIRTUAL REALITY IN ESPORTS
via Forbes by Brianna Howard on 10/24/2017

The collaboration could lead to issues in both copyright law and patent law as the competition for the best content and technology breeds copycats ...

MUSIC GROUP’S COPYRIGHT SUIT AGAINST FORD, GM ON THE ROCKS
via Intellectual Property Law360 by Jimmy Hoover on 10/24/2017
URL: https://www.law360.com/ip/articles/977666

A copyright lawsuit from a music industry group against General Motors LLC, Ford Motor Corp. and others over in-car entertainment systems appeared to be in trouble Tuesday after a D.C. federal judge hammered away at the group’s contention that the systems qualify as digital recording devices under the law.

COX, BMG BATTLE OVER DMCA: EVERYTHING YOU NEED TO KNOW
via Intellectual Property Law360 by Bill Donahue on 10/24/2017
URL: https://www.law360.com/ip/articles/977414

The Fourth Circuit is set to hear oral arguments Wednesday in a closely watched case filed by BMG Rights Management against Cox Communications that could have a big impact on how piracy is policed on the internet. Here’s everything you need to know.

MCGRAW-HILL USING LAW FIRM DQ BID AS WEAPON, COURT TOLD
via Intellectual Property Law360 by Emma Cueto on 10/24/2017
URL: https://www.law360.com/ip/articles/977947

Attorneys representing a stock photo company in a copyright suit hit back Tuesday at McGraw-Hill’s attempt to disqualify them from the case, saying their law firm had never sought or received privileged information from a former employee of the textbook publisher as the company alleged.
YOU OWN IT: EMINEM WINS DAMAGES AFTER NEW ZEALAND POLITICAL PARTY BREACHED HIS COPYRIGHT
via Billboard on 10/25/2017

A New Zealand judge said Eminem's lyrics “You own it, you better never let it go” turned out to be prophetic after ruling a political party breached ...

NETFLIX IN CANADA: LET NO GOOD DEED GO UNPUNISHED
via Hugh Stephens Blog on 10/25/2017

Let’s say you are Netflix and you have been very successful in promoting your content subscription service, and have succeeded in signing up roughly half the households of a given country.

NEW ZEALAND NATIONAL PARTY ORDERED TO PAY FOR INFRINGING EMINEM'S "LOSE YOURSELF"
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 10/25/2017

On Wednesday, the Eminem publishing outfit of Eight Mile Style LLC took victory in a copyright lawsuit against the New Zealand National Party for infringing Eminem's "Lose Yourself" in campaign advertisements.

EMINEM’S PUBLISHER TRIUMPHS IN NEW ZEALAND COPYRIGHT BATTLE
via NYT > Media & Advertising by Reggie Ugwu on 10/25/2017
URL: https://www.nytimes.com/2017/10/25/arts/design/eminem-new-zealand-copyright.html

The National Party of New Zealand was ordered to pay $413,000 in damages for a political ad that evoked the rapper’s hit “Lose Yourself.”
4TH CIRC. HAMMERS COX, BMG ATTYS OVER ONLINE PIRACY
via Intellectual Property Law360 by Bill Donahue on 10/25/2017
URL: https://www.law360.com/ip/articles/944775

The Fourth Circuit held a contentious argument Wednesday morning in a closely watched copyright case filed by BMG Rights Management against Cox Communications, silencing one attorney and telling another not to “dance around” facts.

DEADLINE APPROACHING: ACTION REQUIRED BY DECEMBER 31 TO AVOID LOSING DMCA SAFE HARBOR ...
via National Law Review by Brian D. Anderson on 10/26/2017

The U.S. Copyright Office is making changes to the Digital Millennium Copyright Act (DMCA) safe harbor agent registration process. The changes ...

THE TURTLES LOSE PRE-1972 COPYRIGHT BATTLE IN FLA.
via Intellectual Property Law360 by Carolina Bolado on 10/26/2017
URL: https://www.law360.com/ip/articles/978711

The Turtles rock band lost their copyright battle in Florida on Thursday, as the state's Supreme Court ruled Florida common law does not recognize a right to collect royalties from recordings made before 1972.

PENDULUM MAY BE SWINGING AWAY FROM FAIR USE
via Intellectual Property Law360 by Meaghan Kent et al. on 10/26/2017
URL: https://www.law360.com/ip/articles/977759

“Fair use ... is not a jacket to be worn over an otherwise infringing outfit,” explained Judge Jed Rakoff in the latest decision that seems to indicate that courts are tempering the fair use defense to copyright infringement.

FLORIDA’S TOP COURT STOPS 1960S BAND FROM EARNING PRE-1972 COPYRIGHT ROYALTIES
via Ars Technica by Joe Mullin on 10/26/2017
URL: https://arstechnica.com/?p=1194437

Members of 1960s rock band The Turtles have lost a major legal battle in their quest to collect copyright royalties from their old hit songs.
SIRIUSXM WINS APPEAL OVER PRE-1972 SOUND RECORDINGS IN FLORIDA
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 10/26/2017

According to the Florida Supreme Court, the state has never recognized an exclusive right of public performance in sound recordings.

DISNEY AND PIXAR MULL OPPOSITION TO SANDISK TRADEMARK
via World IP Review on 10/26/2017

Disney and Pixar found themselves at the centre of a copyright complaint earlier this year, when a child development expert accused the companies of ...

ANOTHER SEASON, ANOTHER COMMON-LAW COPYRIGHT OPINION
via Mostly IP History by Zvi S. Rosen on 10/26/2017
URL: http://www.zvirosen.com/2017/10/26/another-season-another-common-law-copyright-opinion/

To be clear, this is my opinion only, and the views expressed in this post, and indeed this blog, should not be imputed or otherwise associated with anyone else.

SPORTS PHOTOGS SAY PRIOR DEAL DOESN'T NIX COPYRIGHT CLAIMS
via Intellectual Property Law360 by Matthew Guarnaccia on 10/26/2017
URL: https://www.law360.com/ip/articles/978560

A pair of sports photographers urged a Wisconsin federal judge Wednesday to rethink his decision to throw out a number of infringement claims against retailers in a lawsuit over the alleged sale and distribution of their copyrighted works without permission, saying the court incorrectly found the retailers to be protected by a prior settlement.

FRANKIE VALLI SAYS EMI IS HOLDING MUSIC RIGHTS 'HOSTAGE'
via Intellectual Property Law360 by Dave Simpson on 10/26/2017
URL: https://www.law360.com/ip/articles/978702

Four Seasons crooner Frankie Valli said in a lawsuit filed in California federal court Wednesday that EMI Music Publishing Ltd. is holding the rights to his music “hostage” even though he terminated the rights agreement with them.
ON PRE-1972 RECORDS, IT'S ALL DOWN TO CALIFORNIA
via Intellectual Property Law360 by Bill Donahue on 10/26/2017
URL: https://www.law360.com/ip/articles/979036

With the tricky issue of pre-1972 records now settled in New York and Florida, all eyes turn to California’s Supreme Court, which could either put the yearslong debate to bed or throw the music law landscape into chaos.

SIRIUS XM DEFEATS TURTLES IN FLORIDA SUPREME COURT
via Daily Business Review by Celia Ampel on 10/26/2017

The Florida Supreme Court examined the history of copyright law, which has long required broadcasters to license songs from the owner of a musical ...

YOUTUBERS LOSING VIEWERS. WHAT GIVES?
via The Illusion of More by David Newhoff on 10/27/2017
URL: http://illusionofmore.com/youtubers-losing-viewers-what-gives/

For years, “old model” artists have been told to quit whining. Every time some well-known and well-established creator has spoken out about the issue of mass […]

NEW ZEALAND POLITICAL PARTY INFRINGED EMINEM COPYRIGHT, MUST PAY $412K
via Ars Technica by Joe Mullin on 10/27/2017
URL: https://arstechnica.com/?p=1195041

A company that owns some of rapper Eminem's early work has won a copyright case against an unusual defendant: a New Zealand political party.

THE LITTLE BLACK BOX THAT TOOK OVER PIRACY
via Wired by Brian Barrett on 10/27/2017
URL: https://www.wired.com/story/kodi-box-piracy/

"TickBox distributes and promotes TickBox TV as a tool for the mass infringement of copyrighted motion pictures and television shows," says Zoe ...
Since 2014, a group of volunteers going by the name Revive Network have been working to keep online game servers running for Battlefield 2, Battlefield 2142, and Battlefield Heroes.

This month, Congress introduced a bill that would establish a long-discussed small claims court for copyright disputes.

Even the Digital Millennium Copyright Act (DMCA), adopted in 1998 to help creators control the use of their work in the digital music age, is already...

The Zillow Group on Thursday asked the Ninth Circuit to undo a $4 million award to real estate photography company VHT Inc. for copyright infringement, arguing that the jury should not have awarded damages on a per-photo basis because VHT registered the photos as one compilation.

Characters for Hire also argued that the trademark infringement claims lacked the essential element of confusion. Citing to Naked Cowboy v. CBS, a case decided in Southern New York in
2012 involving trademark infringement claims asserted by a Times Square street performer against the use of his likeness in the soap opera The Bold and the Beautiful, Characters for Hire argue that the use of the names of fictional persons are merely descriptive of the entertainment services provided by the...

FRANCES LOWE OBITUARY
via Guardian by Michael Orchard on 10/29/2017
URL: https://www.theguardian.com/law/2017/oct/29/frances-lowe-obituary

Copyright law was changing, the EU was developing its copyright directive, and the UK government was working on implementing it. Frances ensured ...

A HALLOWEEN COURT BATTLE OVER WHO GETS TO BE TOP BANANA
via WNYC by Shumita Basu on 10/30/2017

Kmart Corporation is being sued by Rasta Imposta, a New Jersey-based costume manufacturing company, for unfair competition and copyright ...

PULITZER PRIZE-WINNING AUTHOR T.J. STILES MAKES THE CASE FOR COPYRIGHT
via Center for the Protection of Intellectual Property by Kevin Madigan on 10/30/2017
URL: https://cpip.gmu.edu/2017/10/30/pulitzer-prize-winning-author-t-j-stiles-makes-the-case-for-copyright/

On October 12th and 13th, the Center for the Intellectual Property (CPIP) hosted its Fifth Annual Fall Conference at Antonin Scalia Law School in Arlington, Virginia.

A FEW FACTS ABOUT HALLOWEEN COSTUMES AND COPYRIGHT
via Intellectual Property Law360 by David Kluft on 10/30/2017
URL: https://www.law360.com/ip/articles/979137

This is a tough time of year if you are an intellectual property lawyer who likes to dress up. Anyone who knows about your job will be unable to resist lame and legally incorrect jokes about your Halloween costume. If you wear a Mohawk wig, they will quip that you are infringing Mr. T’s copyright. If you wield a sword and don a fur coat, they will ask if you had permission to use the “patent” from "Game of Thrones."
ZAZZLE'S $460K VERDICT TRIMMED TO $350K IN COPYRIGHT SUIT
via Intellectual Property Law360 by Cara Bayles on 10/30/2017
URL: https://www.law360.com/ip/articles/979423

A California federal judge reduced a $460,000 verdict to $350,300 for claims Zazzle Inc. infringed copyrights for 35 paintings by allowing users to have their likeness printed on mugs and other items, finding Friday that the damages were statutorily limited because the infringement wasn’t willful.

USING EXPERTS TO PROVE SOFTWARE COPYRIGHT INFRINGEMENT
via Written Description by Michael Risch on 10/31/2017

I ran across an interesting cert. petition today that I thought I would share and discuss.

NINE ARRESTED FOR OPERATING WEBSITE LINKED TO PIRATED JAPANESE-LANGUAGE COMICS
via Japan Times by Kyodo on 10/31/2017
URL: https://www.japantimes.co.jp/news/2017/10/31/national/crime-legal/nine-arrested-operating-website-linked-pirated-japanese-language-comics/

Police arrested nine people on suspicion of copyright law violations Tuesday in connection with a website containing links to other sites that ...

KOMCA TO FOLLOW GLOBAL TREND OF 'TRANSFER OF VALUE'
via Korea Times by Kim Jae-heun on 10/31/2017
URL: http://www.koreatimes.co.kr/www/art/2017/10/682_238571.html

Dealing with the issue of music copyright has come to the fore today in the global ... and the achievements it has reached to secure music copyrights.

ESPN, PRODUCER CAN'T END COPYRIGHT ROW OVER DOCUMENTARY
via Intellectual Property Law360 by Dorothy Atkins on 10/31/2017
URL: https://www.law360.com/ip/articles/979914

A Mississippi federal judge on Monday refused to toss a filmmaker’s copyright claims against ESPN and a producer alleging that they ripped off his 2004 documentary about a paralyzed college football player to make their own film, finding that a jury should decide if the filmmaker owns the copyrights to the story and third-party footage that he digitized.
ESPN MUST FACE COPYRIGHT TRIAL OVER FOOTBALL DOCUMENTARY
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 10/31/2017

The dispute centers on two films about the life of college football player Chucky Mullins.

CITING FAIR USE, JUDGE WON'T BLOCK SCHOLASTIC BOOK LAUNCH
via Intellectual Property Law360 by Bill Donahue on 10/31/2017
URL: https://www.law360.com/ip/articles/980175

An Idaho federal judge on Tuesday refused to block Scholastic Inc. from publishing an “imagined biography” of James Castle, ruling that a copyright lawsuit from the late artist’s estate would likely be defeated by the fair use doctrine.

CBS SUES MAN FOR COPYRIGHT OVER SCREENSHOTS OF 59-YEAR-OLD TV SHOW
via Ars Technica by Joe Mullin on 10/31/2017
URL: https://arstechnica.com/?p=1197463

CBS has sued a photographer for copyright infringement for doing something that's practically ubiquitous in the news and entertainment business—publishing still images from a television show.

THE NEXT REMBRANDT: ORIGINALITY AND AUTHORSHIP OF AI GENERATED WORKS
via Columbia Science and Technology Law Review by Christina Campbell on 10/31/2017
URL: http://stlr.org/2017/10/31/the-next-rembrandt-originality-and-authorship-of-ai-generated-works/

In recent years, the news has been flooded by innovations in artificial intelligence and its ability to create a diverse range of creative content.

A DIFFERENT "TYPE" OF LAWSUIT: ENSURING PROPER USE OF LICENSED FONT PROGRAMS
via National Law Review by Dana Justus on 10/31/2017
URL: https://www.natlawreview.com/article/different-type-lawsuit-ensuring-proper-use-licensed-font-programs

... Corporation (together, “Berthold”) filed an action for copyright infringement and breach of contract against Target Corporation (N.D. Ill., Case No.
November 2017

THE UNSUNG HEROES OF THE SPOTIFY GENERATION
via Forbes by Danny Ross on 11/1/2017

Casey Robison: A publisher's job is to sign composers who are writing songs and to exploit those copyrights — whether it's working music into film and ...

NEW DMCA REGULATIONS - JANUARY 1, 2018
via National Law Review by Monica Riva Talley on 11/1/2017
URL: https://www.natlawreview.com/article/new-dmca-regulations-january-1-2018

Under Digital Millennium Copyright Act (DMCA) safe harbor provisions, online service providers must designate an agent with the Copyright Office to ...

'MINUTE WINNER' LOSES OUT IN TV FORMAT COPYRIGHT CLAIM
via National Law Review by Gillian M. Dennis & Carl A. Rohsler on 11/1/2017

Until recently, the only judicial decision on this question was back in 1989 in a case concerning the well-known talent show 'Opportunity Knocks'.

RESTORING THE 'GOLD STANDARD' TO COPYRIGHT TRADE NEGOTIATIONS
via Forbes by Teddy Schwarzman on 11/1/2017

One area in which NAFTA should be improved is copyright. In the two decades since the original NAFTA, U.S. trade agreements are now the gold ...

FLORIDA SUPREME COURT RESPONDS TO QUESTIONS ABOUT FLORIDA COPYRIGHT LAW
via Florida Record by Sara McCleary on 11/1/2017

In its original filing, Flo & Eddie alleged four causes of action under Florida law: common law copyright infringement, common law misappropriation ...
PIJIP’s Copyright User Rights Database tracks changes to copyright user rights (aka limitations and exceptions) over time in a sample of 21 countries of different development levels. The data assesses the degree to which other countries have adopted exceptions that are […]

The copyright-protected materials include more than two dozen videos such as “Antz,” “Cars” and other animated films, the role-playing game “Final …

COPYRIGHT REGISTRATION DEBATE MAY HEAD TO HIGH COURT
via Intellectual Property Law360 by Alexander Kaplan on 11/2/2017
URL: https://www.law360.com/ip/articles/980641

While circuit splits are relatively rare in copyright law, the divide is deepening over the prerequisite for every lawsuit alleging infringement of a United States work — registration of the work with the United States Copyright Office.

PHOTOGRAPHER SUES CBS FOR COPYRIGHT INFRINGEMENT, CBS SUES BACK
via PetaPixel by Michael Zhang on 11/2/2017
URL: https://petapixel.com/2017/11/02/photographer-sues-cbs-copyright-infringement-cbs-sues-back/

There's a strange legal battle going on right now between a photographer and a giant online media company. After being sued by the photographer …
ESPN MUST FACE COPYRIGHT CASE OVER AMERICAN FOOTBALL DOCUMENTARY
via World IP Review on 11/2/2017

Sports broadcaster ESPN has been told it cannot be excused from a jury trial following accusations of copyright infringement over a documentary it ...

IBM LOSES APPEAL IN ANCIENT LINUX CASE
via FindLaw Writ - Recent Articles by George Khoury, Esq. on 11/2/2017

In a case that's proving eerily spooky to the tech community, the claims of Caldera International, now Santa Cruz Operation Inc. (a.k.a. SCO) against IBM over a 2001 software release have been brought back to life thanks to an order of the Tenth Circuit Court of Appeals issued on October 30, 2017. The nearly fifteen year old case has just been revived and sent back down to the federal district court to proceed as to one rather big claim against the industry titan: misappropriation.

TEXTILE COMPANY ACCUSES SAN DIEGO COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Jenie Mallari-Torres on 11/2/2017

The suit says the defendant distributed and/or sold fabric and/or garments featuring a design that is substantially similar to the plaintiff's copyrighted ...

GOOGLE CONvinces U.S. COURT THAT CANADIAN RULING THREATENS FREE SPEECH GLOBALLY
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 11/3/2017
URL: http://www.hollywoodreporter.com/thr-esq/google-convinces-us-court-canadian-ruling-threatens-free-speech-globally-1054608

The tech giant gets injunctive relief in the latest round of the Equustek dispute, but does the latest ruling mean anything?
OLDIES COPYRIGHT CASE ON TAP IN STATE SUPREME COURT
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 11/3/2017

Before 1972, they were so 'Happy Together.'

CANADA JUDGE TOSSES INJUNCTION OF DOCUMENTARY ABOUT CULT FILM THE ROOM
via BBC on 11/3/2017

Tommy Wiseau argued Room Full of Spoons "mocks, derides and disparages him" and his film and infringes copyright. But Ontario Superior Court...

PGA SUCCESSFUL IN BID TO CLAMP DOWN ON YOUTUBER
via World IP Review on 11/3/2017

“Defendants have infringed and continue to infringe plaintiff's copyrighted PGA Tour content and continues to cause significant injuries, damages and ...”

THE INTERNET IS NOT A VCR
via The Illusion of More by David Newhoff on 11/4/2017
URL: http://illusionofmore.com/internet-not-vcr/

That may seem obvious, but if you’re an internet service provider who fails to uphold your end of the DMCA bargain, you’d sure like the [...] 

'COSBY SHOW' PRODUCER SUES BBC FOR USING CLIPS IN BILL COSBY DOC
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 11/6/2017

In a copyright lawsuit, Carsey-Werner Company alleges the network sought to capitalize on The Cosby Show’s popularity.
If you are fundamentally opposed to any consideration of extending the term of copyright protection to benefit authors and creators, and if you are sufficiently creative in twisting logic, then you can find justification for your position just about anywhere.

Sci-Hub has been hit with a string of adversity, including a copyright lawsuit from Elsevier in June, which resulted in a $15 million damages award for ...

It launched in 2011 and has spent over $350 million on music copyrights to date, including back catalogs for Steve Winwood, Lindsey Buckingham, ...

I can’t say I was surprised when the Internet Association announced on Friday that the major internet companies would be halting their lobbying efforts against [...]
KIM DOTCOM ANNOUNCES POLICE SETTLEMENT OVER 'MILITARY-STYLE' RAID
via World IP Review on 11/6/2017

In January 2012, US officials shut down file-sharing site Megaupload and arrested its owners, including Dotcom, based on charges including copyright ...

THIS LAWSUIT AGAINST A COSBY RAPE DOCUMENTARY IS WHY FAIR USE EXISTS
via Ars Technica by Joe Mullin on 11/6/2017
URL: https://arstechnica.com/?p=1200361

The production company that made The Cosby Show has sued the BBC (.pdf) over a documentary the British network aired about the rape allegations against Bill Cosby. Carsey-Werner, the production company that is the plaintiff in the case, says that the documentary is infringing its copyright because it uses eight audiovisual clips and two musical cues from The Cosby Show.

PIRACY SITE FOR SCIENCE RESEARCH DINGED AGAIN IN COURT—THIS TIME FOR $4.8M
via Ars Technica by David Kravets on 11/6/2017
URL: https://arstechnica.com/?p=1200289

Now on Friday, a Virginia federal judge dinged the site for another $4.8 million for the same infringing behavior, this time from a lawsuit brought by the American Chemical Society.

‘COSBY SHOW’ PRODUCTION CO. SUES BBC OVER USE OF CLIPS
URL: https://www.law360.com/ip/articles/982138

The television company that produced "The Cosby Show" on Friday sued the British Broadcasting Corp. and the makers of a Bill Cosby documentary that aired on the network, telling a California federal judge the film infringed its copyrights by using clips from the show without permission.
The newest parts of copyright law are the most antiquated, and they are choking creativity and innovation. But that hasn't stopped some internet ...

... which Defendant Sci-Hub engages in unlawful access to, use, reproduction and distribution of the ACS [trade] marks or ACS's copyrighted works”.

“Defendants wilfully, deliberately and knowingly infringed copyrights that they knew to be the property of Carsey-Werner,” the company claimed.

U. S. District Court Judge Leonie Brinkema has issued a default judgment against Sci-Hub, a website that advertises that it "provides free access to research articles and latest research information without any barrier to scientific community [sic]" after the American...

When computers develop the potential to produce works that rivals human expression, the difference between human-generated content and computer-generated content may be indistinguishable.
COURTS BEGIN APPLYING TWO-PART TEST FOR COPYRIGHT ELIGIBILITY OF DESIGN OF A USEFUL ARTICLE
via New York Law Journal by Lewis R. Clayton & Eric Alan Stone on 11/7/2017

In their Intellectual Property Litigation column, Lewis R. Clayton and Eric Alan Stone write: In 'Star Athletica', the U.S. Supreme Court articulated a ...

'MARC JACOBS' RESORT 2017 COLLECTION WAS "NOT ORIGINAL" PER NEW LAWSUIT
via Fashion Law on 11/7/2017
URL: http://www.thefashionlaw.com/home/marc-jacobs-resort-2017-collection-was-not-original-per-new-lawsuit

The LVMH-owned brand was just slapped with a copyright infringement lawsuit, which claims the brand “intentionally and knowingly” copied the ...

SPOTIFY, DEEZER & SOUNDCLOUD TEAM UP TO FORM DIGITAL LOBBYING GROUP
via Billboard by Richard Smirke on 11/8/2017

Last September also saw the EC unveil new draft proposals around its revised copyright framework that will require user-generated services like ...

DESTRUCTION OF '5POINTZ' GRAFFITI VIOLATED LAW, JURY SAYS
via Intellectual Property Law360 by Bill Donahue on 11/8/2017
URL: https://www.law360.com/ip/articles/983171

A Brooklyn jury found Tuesday that a real estate developer violated an obscure federal statute when he demolished the famous New York City graffiti space known as 5Pointz, issuing an advisory opinion that sets the stage for a final ruling in the closely watched case.
A California federal judge on Wednesday tossed a copyright feud over The Walt Disney Co.'s film "Zootopia," nixing a screenwriter’s claims that the studio ripped off his television pitch and declining to let him amend them.

Playboy Entertainment Group Inc. hit the owner of BoingBoing, a website that has advocated for more open use of online content, with a copyright suit in California on Tuesday over the site’s reference to a slideshow of every centerfold photo the magazine ever published.

A New York federal judge spent several pages discussing expanding tongues and gemstones that get stuck to an acerbic superhero’s forehead Wednesday before dismissing a lawsuit brought against Cartoon Network by a comic book author who claims the show “Steven Universe” ripped off his series “Amphoman.”

This is a copyright lawsuit by owners of celebrity photos against a gossip and entertainment website. It’s noteworthy because it went to trial and the plaintiffs prevailed, but the damage award is modest.

Earlier today Congressman Bob Goodlatte (R-VA), who has been Chair of the House Judiciary Committee and a strong proponent for patent reform, announced that he would be leaving
Congress at the end of his current term and not standing for reelection in 2018... With Goodlatte exiting the fate of further patent reform efforts in the House will largely depend upon who ultimately is tapped to wield the Chair's gavel. Congressman Darrell Issa (R-CA) can be expected to make an internal push for the...

THE HISTORY AND PHILOSOPHY OF COPYRIGHT
via PetaPixel by Will Nicholls on 11/9/2017
URL: https://petapixel.com/2017/11/09/history-philosophy-copyright/

Want to know the origins of the concept of copyright? Here's a 25-minute video from Filmmaker IQ that looks at the history and philosophy behind ...

ARTISTS PIN COPYRIGHT CLAIM ON MARC JACOBS
via World IP Review on 11/9/2017
URL: https://www.worldipreview.com/news/artists-pin-copyright-claim-on-marc-jacobs-14896

Fashion brand Marc Jacobs has been accused of copying pins designed by independent artists in the Marc Jacobs “Resort 2017 collection”.

BOB GOODLATTE, KEY REPUBLICAN ON COPYRIGHT ISSUES, TO RETIRE
via Variety by Ted Johnson on 11/9/2017

the chairman of the House Judiciary Committee who has been leading a series of hearings on reforms to copyright laws, announced on Thursday that ...

HOW “STRIKINGLY SIMILAR” WORKS CAN LOSE YOURSELF A COPYRIGHT CASE IN NEW ZEALAND
via Managing Intellectual Property by Karry Lai on 11/9/2017

In a copyright case between Eminem and the National Party of New Zealand, the High Court of New Zealand found in favour of Eminem, ruling on ...
CBS told a Ninth Circuit panel on Thursday that remastered versions of songs recorded before 1972 are fundamentally different enough from the originals to qualify for federal copyright protection in an appeal from ABS Entertainment and others seeking to revive a class action claiming the media giant owes them royalties for radio broadcasts.

“You have the Mona Lisa, let's assume it's copyrighted for some reason and it's very dirty,” and someone basically restores it through a skilled process.

McKool Smith and Allen, a former legal affairs chief for Universal Music Publishing Group, represents a class that holds copyrights in the music of Al ...
DON EVERLY SUES BROTHER PHIL'S FAMILY OVER 'CATHY'S CLOWN'
via Reuters by Jonathan Stempel on 11/10/2017
URL: http://www.reuters.com/article/us-music-everlybrothers-lawsuit/don-everly-sues-brother-phils-family-over-cathys-clown-idUSKBN1DA2NT

Don Everly, the surviving member of the Everly Brothers, has sued the family of his late brother Phil to reclaim his copyright interests in the ...

PLAYBOY SUES BOINGBOING OVER LINK TO CENTERFOLDS
via MediaPost by Wendy Davis on 11/10/2017
URL: https://www.mediapost.com/publications/article/310071/playboy-sues-boingboing-over-link-to-centerfolds.html

Playboy has accused the website BoingBoing of infringing copyright by posting a link to an outside site that allegedly displayed photos of centerfolds.

ONLINE PIRACY IN JAPAN: HOW BIG IS THE PROBLEM—AND WHAT’S AN EFFECTIVE SOLUTION?
via Hugh Stephens Blog on 11/12/2017

Japanese people are rightly noted for their honesty. We have all heard the stories of wallets left on park benches being returned or just left for the owner to find.

SHIFTING LIABILITY TO THE ISPS OF ABSENTEE DEFENDANTS
via Columbia Journal of Law and the Arts on 11/12/2017

On October 12, 2017, the Computer and Communications Industry Association (CCIA) filed a brief as amicus curiae in a trademark and copyright infringement case, American Chemical Society v. Sci-Hub. Sci-Hub is a website that hosts research papers and make them available for free, and ACS holds the copyright to some of the research papers available on Sci-Hub.
NEW DRAFT ACTION PLANS ON COPYRIGHT LIMITATIONS AND EXCEPTIONS AT WIPO
via Intellectual Property Watch by Catherine Saez on 11/13/2017

The World Intellectual Property Organization has grasped the nettle after years of discussion on the issue of limitations and exceptions to copyright, and provided draft action plans, one each for libraries, archives, museums, educational research institutions, and persons with other disabilities than sight impairment. The plans, being discussed in this week's committee meeting, include brainstorming sessions, studies, and regional seminars, and conferences to advance understanding and issues related to copyright for those particular actors.

REALLY, DON’T BELIEVE ANYTHING YOU SEE ON THE INTERNET
via The Illusion of More by David Newhoff on 11/13/2017
URL: http://illusionofmore.com/really-dont-believe-anything-you-see-on-the-internet/

When that cliché first entered our consciousness, it wasn’t really fair. The internet between the mid-90s and the mid-aughts wasn’t what it is today. It […]

IS IT LEGAL TO LINK? PLAYBOY IS TAKING BOINGBOING TO COURT OVER IT
via Fashion Law on 11/13/2017
URL: http://www.thefashionlaw.com/home/is-it-legal-to-link-playboy-certainly-does-not-think-so

Can simply linking to copyright-protected imagery land you in court? Yes, it can. Just ask BoingBoing, whose parent company Happy Mutants, LLC …

YOU CAN NOW REGISTER AS A DMCA AGENT WITHOUT USING NONFREE JAVASCRIPT
via Free Software Foundation - FSF Blogs on 11/13/2017
URL: http://www.fsf.org/blogs/licensing/you-can-now-register-as-a-dmca-agent-without-using-nonfree-javascript

Users shouldn't be forced to use nonfree software when interacting with their own government.
FAKE REMEMBRANCE MERCHANDISE SEIZED BY UK BORDER FORCE
via IP Pro The Internet by Jenna Lomax on 11/13/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5697

The jewellery was branded with the words 'Lest we Forget' and infringed the Royal British Legion's 'two-petal poppy' copyright. The Border Force ...

ROCK LEGEND BRIAN MAY SLAMS PHOTOG FOR PROTECTING HER COPYRIGHT
via PetaPixel by Michael Zhang on 11/14/2017
URL: https://petapixel.com/2017/11/14/rock-legend-brian-may-slams-photog-protecting-copyright/

Queen lead guitarist Brian May is lashing out at a photographer after she reported his copyright infringement to Instagram and got his account ...

DIGITAL-AGE COPYRIGHT: PHOTOGRAPHS AND THE NEWS
via The Illusion of More by David Newhoff on 11/14/2017

You might think that among the most straightforward relationships between a user and a creator of a copyrighted work would be that of a news [...]
BRIAN MAY SNAP AT PHOTOGRAPHER WHO REPORTED HIM FOR COPYRIGHT INFRINGEMENT
via World IP Review on 11/15/2017

Lead guitarist of rock band Queen has slammed a photographer who reported him to Instagram for copyright infringement after posting a picture of...

TECH PUSHES FOR FOCUS ON COPYRIGHT IN NAFTA RENEGOTIATIONS
via Hill by Ali Breland on 11/15/2017
URL: http://thehill.com/policy/technology/360438-tech-pushes-for-focus-on-copyright-in-nafta-negotiations

The technology industry is mobilizing to push the Trump administration over concerns on copyright matters in discussions to renegotiate the North...

COPYRIGHT SMALL CLAIMS: A SOLUTION FOR MANY CREATORS
via The Illusion of More by David Newhoff on 11/15/2017
URL: http://illusionofmore.com/copyright-small-claims-a-solution-for-many-creators/

In my experience, the number-one complaint about contemporary copyright is that it is unenforceable in the digital age. Independent creators take one look at the scope of infringement relative to the cost of a single litigation and give up on the idea that they have any control. Many infringers—from casual to corporate—are either unaware that they’re infringing or they know how unlikely enforcement is for small creators; and this breeds the kind of smug responses we read about all the time. You know the ones. Where even a major brand uses a photograph for its marketing and then tells the photographer he has a lot of nerve to ask for money and should actually be grateful for the “exposure.”

DISNEY ACCUSED OF PILLAGING 'PIRATES OF THE CARIBBEAN' CONCEPTS IN NEW COPYRIGHT SUIT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 11/16/2017

The writers claim they created the first "funny" pirate and Disney copied the character for Johnny Depp's Jack Sparrow.
JOHN LEWIS 'HELPED THEMSELVES TO MY PICTURE BOOK', SAYS CARTOONIST
via World IP Review on 11/17/2017

Jerry Bridge-Butler, partner at Baron Warren Redfern, told WIPR that it would be very difficult for Riddell to follow up with a copyright claim. “It's difficult to see any valid copyright infringement claim being brought, as copyright doesn't protect ideas; it does exactly what it says on the tin and stops people ...

STATES OF MUSIC’S PRE-1972 RIGHTS IN A DIGITAL ERA
via IPLJ by Nicole Rallis on 11/17/2017

The debate on the protection of pre-1972 sound recordings is nothing new, but on October 26, 2017, the Florida Supreme Court decided in Flo & Eddie, Inc. v. Sirius XM Radio, Inc. that the public still has the right to play “older music.”

HOW AN ATLANTA POWER COUPLE'S BUSINESS HAS HEIGHTENED HOLLYWOOD AND SILICON VALLEY'S PIRACY ...
via Los Angeles Times by Ryan Faughnder on 11/17/2017

“What TickBox actually sells is nothing less than illegal access to plaintiffs' copyrighted content.” The suit is the first legal action by Alliance ...

PHOTO OF SUSPECT IN NYC TRUCK ATTACK LIKELY FAIR USE
via Courthouse News Service by Adam Klasfeld on 11/18/2017
URL: https://www.courthousenews.com/photo-suspect-nyc-truck-attack-likely-fair-use/

Weeks after eight pedestrians and bicyclists were mowed down in a New York City truck attack, a federal judge found Friday that a photographer who was at the scene is unlikely to prevail on copyright claims. The complaint against ABC takes issue with reporting by the network on...
WHY AL FRANKEN'S SPEECH AIMED AT TECH COMPANIES COULD SIGNAL GOOD NEWS FOR THE MUSIC...
via Billboard by Robert Levine on 11/18/2017

This shift in the political winds could help the music business, which is now excited about a copyright reform process that it once regarded with some dread. To get a sense of the potential consequences, think of Franken's speech and do a Google search for “music.” The first result is YouTube, which is a ...

CALIFORNIA COURT TO DECIDE IF FILMON CAN SUE DOUBLEVERIFY OVER REPORTS
via MediaPost by Wendy Davis on 11/20/2017

One reason why the lower court sided with DoubleVerify was that questions about copyright infringement and adult content online have garnered a ...

SITE BLOCKING IN JAPAN—A CALL FOR ACTION
via Hugh Stephens Blog on 11/20/2017
URL: http://hughstephensblog.net/2017/11/20/site-blocking-in-japan-a-call-for-action/

In my last blog I discussed the growing problem of online piracy in Japan, and the importance of site blocking as a potential remedy.

DISNEY SAYS 'INSIDE OUT' COPYRIGHT ACCUSER IS NO BATMAN
via Intellectual Property Law360 by Bill Donahue on 11/20/2017
URL: https://www.law360.com/ip/articles/987130

The Walt Disney Co. on Friday hit back hard at a copyright lawsuit filed over the animated hit “Inside Out,” saying it “strains credulity” that characters in a little-known TV pilot would be afforded the same protections as James Bond or Batman.

GOOGLE, NETFLIX SAY DOJ FUZZY ON BMI MUSIC INTEREST SALES
via Intellectual Property Law360 by Matthew Perlman on 11/20/2017
URL: https://www.law360.com/ip/articles/986965

Google, Netflix and several other media industry players asked the Second Circuit on Friday for permission to appear at oral arguments in the U.S. Department of Justice's dispute with
Broadcast Music Inc., saying the DOJ has left open a possibility for BMI to sell partial interests in music, despite previously arguing against the practice.

GAME CO. WANTS ALLEGED 'WOW' SPINOFF OUT OF BLIZZARD SUIT
via Intellectual Property Law360 by Cara Bayles on 11/20/2017
URL: https://www.law360.com/ip/articles/987096

Game developer Lilith Games asked a California federal judge Friday to trim one of its alleged "World of Warcraft" spinoffs from Blizzard Entertainment and Valve Corp.’s copyright infringement suit, saying the addition of its "Soul Hunters" game came two years too late and the complaint failed to show what copyrighted material had been infringed.

COLLECTOR CAN'T DODGE IP SUIT OVER LATE PHOTOGRAPHER'S WORK
via Intellectual Property Law360 by Hannah Meisel on 11/20/2017
URL: https://www.law360.com/ip/articles/987210

An Illinois federal judge on Monday declined to nix a lawsuit brought by the estate of Chicago amateur photographer Vivian Maier, which says a collector infringed on Maier’s copyright when he set up a company based on the display and publication of her photos.

DEBUNKING CRITICISM OF THE COPYRIGHT SMALL CLAIMS ACT
via Mister Copyright by Kevin Madigan on 11/21/2017
URL: http://mistercopyright.org/debunking-criticism-of-the-copyright-small-claims-act

It’s been six weeks since the Copyright Alternative in Small Claims Enforcement (CASE) Act (H.R.3945) was introduced to Congress by a bipartisan coalition of Representatives, and while there’s an abundance of support among politicians, creators, artists’ rights organizations, and the Copyright Office, some have been critical of the legislation. Although much of the pushback can be chalked up to certain groups who seemingly resist any effort to hold infringers accountable for misappropriation, it’s worth addressing some of the criticisms to show that they’re largely baseless.

WIPO COMMITTEE DEBATES FUTURE OF COPYRIGHT EXCEPTIONS, WILL KEEP WORKING ON BROADCASTING TEXT
via Intellectual Property Watch by Catherine Saez on 11/21/2017

The World Intellectual Property Organization copyright committee last week sent back to the drawing board draft action plans provided by the secretariat on exceptions and limitations to copyright for specific actors such as educational institutions and libraries.
ARTIST RESALE RIGHT DOES NOT SEEM TO AFFECT ART MARKET, ECONOMIC STUDY AT WIPO SAYS
via Intellectual Property Watch by Catherine Saez on 11/21/2017

A few days after a Leonardo da Vinci painting shattered the record for the most expensive artwork ever sold at Christie’s auction house in New York, the question of resale right for visual artists was discussed at the World Intellectual Property Organization.

COPYRIGHT DISPUTE OVER DAVID BOWIE IMAGE ENDS
via World IP Review on 11/21/2017
URL: https://www.worldipreview.com/news/copyright-dispute-over-david-bowie-image-settled-14951

A copyright dispute between the estate of late photographer Brian Duffy and Hard Rock Café over an image of British singer David Bowie, who died in ...

SMITHSONIAN, CHRISTO STOLE CREDIT FROM TOP PHOTOGRAPHER, LAWSUIT Says
via Reuters by Jonathan Stempel on 11/21/2017

Gianfranco Gorgoni said he never gave permission to use his copyrighted photos of the 24-mile (39 km) nylon-and-steel installation for a 2010 book, ...

CREATIVE SECTOR SCORES WIN IN EU PARLIAMENT COPYRIGHT VOTE
via Reuters by Julia Fioretti on 11/21/2017

EU lawmakers voted to restrict the scope of the copyright proposal to just news and current affairs, meaning broadcasters will be able to show their ...

ROMANCE WRITER, AMAZON BEAT CLAIMS THAT THEY STOLE PLOT
via Intellectual Property Law360 by Hannah Meisel on 11/21/2017
URL: https://www.law360.com/ip/articles/987755

An Illinois federal judge granted romance novelist Donna Fasano and Amazon.com Inc. an early win Tuesday in a copyright infringement suit brought by an author alleging Fasano copied the
plot of the book "Reclaim My Heart" from her own unpublished book, "The Promise of a Virgin."

EU AGREES TO END COUNTRY-SPECIFIC LIMITS FOR ONLINE RETAILERS
via Reuters on 11/22/2017
URL: https://www.reuters.com/article/us-eu-digital-geoblocking/eu-agrees-to-end-country-specific-limits-for-online-retailers-idUSKBN1DL248

The proposal does not extend to copyright-protected content, which includes music streaming services such as Spotify and Apple's iTunes, electronic books, television series and movies. The Parliament had hoped to include these services, but music industries successfully argued this could lead to price ...

WU-TANG CLAN SUE DOG-WALKING OUTFIT WOOF-TANG CLAN FOR COPYRIGHT BREACH
via Guardian by Ben Beaumont-Thomas on 11/22/2017
URL: https://www.theguardian.com/music/2017/nov/22/wu-tang-clan-sue-dog-walking-outfit-woof-tang-clan-for-copyright-breach

Dog fight … US rap group Wu-Tang Clan are in a trademark fight with a New York dog-walking company. Photograph: Daniel Maurer/AFP/Getty ...

GOOGLE, NETFLIX 'IRRELEVANT' TO DOJ 2ND CIRC. APPEAL, BMI SAYS
via Intellectual Property Law360 by Nicole Narea on 11/22/2017
URL: https://www.law360.com/ip/articles/988007

Broadcast Music Inc. asked the Second Circuit on Wednesday to bar Google, Netflix and media industry players from opposing its right to sell partial interests in music in the U.S. Department of Justice’s suit against the performance rights organization, saying their arguments are irrelevant.

PHOTOGRAPHER TAKES ON CHRISTO OVER 'RUNNING FENCE' BOOK
via Courthouse News Service by Josh Russell on 11/23/2017

Noting that Christo had no creative input on his work, Gorgoni says the photos do not qualify as “works made for hire” under federal copyright law. Indeed, when a publishing house obtained a license to use the photos in the 1978 book “Christo: Running Fence,” Gorgoni says his ownership of the photos ...
THE ART OF THE STEAL: WHEN DOES A COPYRIGHT GO TOO FAR?
via CNN by Robert Shore on 11/23/2017

If you use a photograph of the "Mona Lisa" as a basis for your art experiments and then try to sell the results, though, be aware that that photographic image may be separately copyrighted material. (photographers have rights, too.) And it should go without saying that if you make an exact oil-on-board ...

SCI-HUB DOMAINS INACTIVE FOLLOWING COURT ORDER
via Register by Andrew Silver on 11/23/2017
URL: https://www.theregister.co.uk/2017/11/23/scihubs_become_inactive_following_court_order/

... illegally distributed ACS' copyrighted content. In addition, the Virginia judge basically told everybody around the world to help block Sci-Hub (PDF).

THE SUSPENSION OF IP PROVISIONS IN THE TPP NEGOTIATIONS AND NAFTA: WHAT’S THE CONNECTION?
via Hugh Stephens Blog on 11/26/2017

The image above poses the classic riddle; is the glass half full (i.e. positive and moving toward fulfilment) or the opposite, half empty.

MUSICIAN REFUSES TO LET IT GO IN COPYRIGHT SUIT AGAINST DISNEY
via World IP Review on 11/27/2017

A California-based musician has taken on Disney, claiming the media multinational ripped off one of his songs for “Let it Go”, a hit number in the film ...

'BIG FOUR' LINUX COMPANIES SHIFT OPEN-SOURCE LICENSING POLICIES
via ZDNet by Steven J. Vaughan-Nichols on 11/27/2017
URL: http://www.zdnet.com/article/big-four-linux-tech-firms-shift-open-source-licensing-policies/

However, if you cease all violation of this License, then your license from a particular copyright holder is reinstated (a) provisionally, unless and until the copyright holder explicitly and finally
terminates your license, and (b) permanently, if the copyright holder fails to notify you of the violation by some ...

ZAZZLE LOSES COPYRIGHT JURY VERDICT, AND THAT’S BAD NEWS FOR PRINT-ON-DEMAND PUBLISHERS–GREG YOUNG PUBLISHING V. ZAZZLE
via Technology & Marketing Law Blog by Eric Goldman on 11/27/2017

Greg Young Publishing licenses images for posters, many of which are beach- or surfing-themed. Zazzle users posted item listings that included the copyrighted images.

THE JUSTICE DEPARTMENT QUIETLY BACKS AWAY FROM A HARD LINE ON MUSIC LICENSING
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 11/27/2017

In the past week, the antitrust division of the Department of Justice has drawn great scrutiny thanks to its bold lawsuit seeking to block AT&T’s proposed acquisition of Time Warner.

ENTERTAINMENT AGENCY ACCUSES CLOTHING COMPANY OF COPYRIGHT INFRINGEMENT
via Northern California Record by Noddy A. Fernandez on 11/27/2017

A Los Angeles entertainment news agency is suing the owner of Unravel clothing company, alleging copyright infringement. Splash News and Picture Agency, LLC filed a complaint Nov. 15 in U.S. District Court for the Central District of California against Ben Taverniti and and Does 1 ...

PHOTO AGENCY ALLEGES MODEL USED COPYRIGHTED PHOTO WITHOUT CONSENT
via Northern California Record by Noddy A. Fernandez on 11/27/2017
URL: https://norcalrecord.com/stories/511277266-photo-agency-alleges-model-used-copyrighted-photo-without-consent

A Beverly Hills photo agency is suing a female celebrity, alleging copyright infringement. FameFlynet, Inc. filed a complaint Nov. 15 in U.S. District Court for the Central District of
California against Angela Renée White, professionally known as Blac Chyna, and Does 1 through 10, ...

2ND CIRC. NIXES GOOGLE, NETFLIX APPEARANCE IN BMI APPEAL
via Intellectual Property Law360 by Kelly Knaub on 11/27/2017
URL: https://www.law360.com/ip/articles/988363

The Second Circuit has denied a request from Google, Netflix and other media industry heavyweights to appear at oral arguments in the U.S. Department of Justice's dispute with Broadcast Music Inc., saying the companies could offer feedback to the court by letter instead.

DEMI LOVATO, IDINA MENZEL NAMED IN ‘LET IT GO’ IP SUIT
URL: https://www.law360.com/ip/articles/988267

A Chilean singer on Thursday sued The Walt Disney Co. and several associated companies — as well as performers Idina Menzel and Demi Lovato — over the song “Let It Go” from the movie “Frozen,” claiming the tune infringes one of his own Spanish-language songs.

AUTOMATED NOTICES FOR COPYRIGHT INFRINGEMENT: PITFALLS AND REMEDIES
via Columbia Science and Technology Law Review by James Pedersen on 11/28/2017

Since the birth of the internet, online service providers (OSPs) have butted heads with copyright holders over whether OSPs should be responsible for copyright-infringing material posted by their users.

MUSIC STREAMING ROYALTY RATES GOING UP SLIGHTLY IN 2018
via Billboard by Ed Christman on 11/28/2017

Outside the music industry, the Copyright Royalty Board yesterday also set a 2 percent cost of living adjustment for the royalty that satellite carriers, acting as television re-transmitters, pay under the compulsory license. Consequently, the 27 cents per subscriber per month rate now will be 28 cent per ...
EPIC SUES 14-YEAR-OLD FOR COPYRIGHT INFRINGEMENT, AND IT'S MOM TO THE RESCUE
via Law.com - Newswire by Richard Binder on 11/28/2017

When video game developers Epic Games sued two individuals for allegedly providing code that allowed other gamers to cheat their way through one of their games, the company probably didn't know that one of those individuals was a minor. That minor is getting a fairly high-powered defense from an unlikely source: His mother.

6TH CIRC. SAYS INFRINGERS SHOULD OFTEN BE UNMASKED
via Intellectual Property Law360 by Bill Donahue on 11/28/2017
URL: https://www.law360.com/ip/articles/988942

The Sixth Circuit ruled Tuesday that judges should often unmask anonymous internet users when they’ve already been found liable for copyright infringement, issuing a first-ever ruling that those users are entitled to less First Amendment protection than those who are merely accused.

PLAINTIFF GETS INJUNCTION AGAINST ANONYMOUS SPEAKER — SHOULD THE COURT UNMASK THE SPEAKER?
via Washington Post by Eugene Volokh on 11/28/2017

The question of whether such a “John Doe” defendant should be unmasked usually arises before judgment, while the case is pending; here, it arose after defendant was found liable for copyright infringement, and an injunction was issued. The district court concluded the defendant needn't be unmasked ...

US PERSPECTIVES: MUST ALL FOREIGNERS ONLINE COMPLY WITH US COPYRIGHT LAW? (PART 1 OF 2)
via Intellectual Property Watch by Steven Seidenberg on 11/29/2017

US copyright law is supposed to apply only within US borders, not to actions done in Poland. But when a company in Poland streamed copyrighted TV shows into the US, that infringed US copyrights, according to a US trial court. This decision will be upheld on appeal, experts widely expect. Such an appellate decision, however, could expand the reach of US copyright law to a problematic extent. It will be tricky to find infringement in this case without also extending US copyright law to any online content posted anywhere on the globe.
EUROPEAN COMMISSION ANNOUNCES GUIDANCE ON COPYRIGHT ENFORCEMENT, SEP LICENSING
via Intellectual Property Watch by Dugie Standeford on 11/29/2017

The European Commission today announced plans to ratchet up the fight against counterfeiting and piracy, and to introduce more clarity in licensing standard-essential patents (SEPs). The first involves guidance on the 2004 EU directive on the enforcement of intellectual property rights (IPRED); the second recommendations for making the relationship between patent owners and technology users more “balanced and efficient.”

CLOUD-BASED RECORDINGS REQUIRE RIGHTSHOLDER CONSENT, SAYS CJEU
via IP Pro The Internet by Barney Dixon on 11/29/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/copyrightarticle.php?article_id=5711

Copies of TV programmes saved in the cloud must be authorised by the copyright holder, the Court of Justice of the EU (CJEU) has ruled. The court ruled in the case between video broadcasting company VCAST and Italian TV broadcaster Reti Televisive Italiane (RTI). VCAST allows users to select a ...

EPIC SUES 14-YEAR-OLD FOR COPYRIGHT INFRINGEMENT, AND IT'S MOM TO THE RESCUE
via Law.com - Newswire by Richard Binder on 11/29/2017

When video game developers Epic Games sued two individuals for allegedly providing code that allowed other gamers to cheat their way through one of their games, the company probably didn't know that one of those individuals was a minor. That minor is getting a fairly high-powered defense from an unlikely source: His mother.

CJEU RULES ON PRIVATE COPYING IN THE CLOUD
via World IP Review on 11/29/2017

... that provides a remote recording service in the cloud, containing private copies of copyrighted works, without the authorisation of the rights holder.
STEINBECK KIN WON'T SILENCE WRATH OVER $13M COPYRIGHT LOSS
via Intellectual Property Law360 by Tiffany Hu on 11/29/2017
URL: https://www.law360.com/ip/articles/988930

The widow of John Steinbeck’s son fired back at a bid to keep her from talking to the press after a jury awarded Steinbeck’s late wife's daughter $13.15 million in a copyright infringement dispute over movie deals for “The Grapes of Wrath” and "East of Eden."

SIXTH CIRCUIT CREATES 'PRESUMPTION' OF UNMASKING COPYRIGHT INFRINGERS
via The Entertainment, Arts and Sports Law Blog by Elissa D. Hecker on 11/29/2017

In what it called an "issue of first impression," the Sixth Circuit yesterday, by a 2-1 vote, created a "presumption in favor of unmasking" adjudicated copyright infringers -- and other "anonymous defendants".

CLOUD-BASED TV SERVICE NEEDS CONSENT TO RECORD, EU COURT SAYS
via Courthouse News Service by William Dotinga on 11/29/2017

The company based its argument on the private copying exception in EU copyright law, which allows copies to be made by “a natural person for ...

GOPRO GETS QUICK COPYRIGHT WINS IN BATTLE WITH VR CO.
via Intellectual Property Law360 by Dave Simpson on 11/29/2017
URL: https://www.law360.com/ip/articles/989243

Virtual reality and camera company 360Heros Inc. infringed several of GoPro Inc. ’s copyrighted photos, a California federal judge ruled Tuesday, finding that GoPro’s works were original and 360Heros made near-identical copies.

SUMMARY: 34RD SESSION OF WIPO'S COPYRIGHT COMMITTEE (SCCR)
via YouTube by WIPO on 11/30/2017
URL: https://www.youtube.com/watch?v=5nAREz5-Zh0

Michele Woods, Director of WIPO's Copyright Law Division, and the Secretary of WIPO's Standing Committee on Copyright and Related Rights (SCCR), gives a brief summary of the Committee’s 35rd session, held November 13-17 2017, at WIPO Headquarters in Geneva.
RETRANSMISSIONS OF TV SHOWS FROM CLOUD SERVICES NEED COPYRIGHT OWNER’S CONSENT, EU HIGH COURT RULES
via Intellectual Property Watch by Dugie Standeford on 11/30/2017

VCAST, a UK company that makes available to its customers internet retransmissions of Italian television programmes stored in the cloud, must obtain right holders’ consent first, the Court of Justice of European Union (CJEU) ruled on 29 November.

A QUICK UPDATE ON THE DISPLAY RIGHT
via The Illusion of More by David Newhoff on 11/30/2017
URL: http://illusionofmore.com/quick-update-display-right/

In a recent post, I described how the “server test,” established in the Perfect 10 case, obliterates the display right for visual artists on the […]

A NEW NAFTA MUST PROTECT THE RIGHTS OF COPYRIGHT OWNERS AND CREATORS
via Mister Copyright by Kevin Madigan on 11/30/2017

Last week, the fifth round of the North American Free Trade Agreement (NAFTA) negotiations closed in Mexico City with tensions high and little progress made towards a modernized trade deal.

ESPN, PRODUCER SETTLE COPYRIGHT ROW OVER DOCUMENTARY
via Intellectual Property Law360 by Dave Simpson on 11/30/2017
URL: https://www.law360.com/ip/articles/989915

A filmmaker is settling his copyright suit against ESPN and a producer alleging that they ripped off his 2004 documentary about a paralyzed college football player to make their own film, according to an order of dismissal signed off on by a Mississippi federal judge on Thursday.
HOW A YOUTUBE VIDEO SPARKED A DECADES-OLD MUSIC COPYRIGHT DEBATE THAT REFUSES TO BE ...  
via Billboard by Cherie Hu on 11/30/2017  

Like many other DIY creators, 20-year-old Canadian Alessia enjoys using YouTube to express herself. Through her eponymous channel, she uploads self-made videos to her more than 7,400 subscribers, discussing topics ranging from the latest memes to her favorite K-pop groups. The venture seems ...

DISNEY CLAIMS REDBOX ILLEGALLY SOLD DIGITAL MOVIE CODES  
via Intellectual Property Law360 by Dave Simpson on 11/30/2017  
URL: https://www.law360.com/ip/articles/990297

Disney Enterprises Inc. filed a complaint in California federal court against Redbox Automated Retail LLC Thursday, alleging the rental kiosk illegally sells Disney’s digital movie codes to its customers in “blatant disregard” of clear prohibitions against doing so and in violation of copyrights.
December 2017

JUDGE HACON’S 10 (+ 1) COMMANDMENTS ON JOINT AUTHORSHIP UNDER UK COPYRIGHT LAW
via At last ... the 1709 Copyright Blog by Richard Hacon on 12/1/2017
URL: http://the1709blog.blogspot.com/2017/12/judge-hacons-10-1-commandments-on-joint.html

In the Florence Foster Jenkins decision, as discussed here, Hacon J gave a useful summary of UK copyright law on the issue of joint authorship.

DISNEY SUES REDBOX OVER SALE OF MOVIE DOWNLOAD CODES
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 12/1/2017
URL: https://www.hollywoodreporter.com/thr-esq/disney-sues-redbox-sale-movie-download-codes-1063361

The DVD kiosk rental company allegedly disassembles a product package and then sells codes separately in what Disney asserts is a violation of copyright law.

EU PIRACY GUIDANCE PROVIDES “NO SOLUTIONS”, SAYS IFPI
via IP Pro The Internet by Barney Dixon on 12/1/2017
URL: http://www.ipprotheinternet.com/ipprotheinternetnews/article.php?article_id=5716

Moore concluded: “We remain in a successful single market for consumption, but a fragmented European market for copyright enforcement. We urge the Commission to use this package as a stepping stone to a fully revised and updated IPRED to be provided in the near future and give European right ...”

SCOTT RUDIN DRAGGED INTO PLAGIARISM BATTLE OVER FILM HE’S NOT MAKING
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 12/1/2017

A 79-page complaint was filed on Wednesday in California federal court.
SEX, PLAGIARISM AND SPYWARE. THIS IS NOT YOUR AVERAGE COPYRIGHT COMPLAINT.
via New York Times by Alexandra Alter on 12/1/2017
URL: https://www.nytimes.com/2017/12/01/books/emme-cline-lawsuit-boies.html

Emma Cline's 2016 novel “The Girls” was, by any measure, a triumphant debut. The novel, which takes place in California in the 1960s and centers on a teenage girl who falls into a Charles Manson-like cult, sold to Random House for seven figures in a three-book deal, and spent three months on the ...

SPOTIFY ATTORNEY ESTIMATES THE SERVICE INFRINGED 300000 SONGS IN SETTLEMENT HEARING
via Billboard by Robert Levine on 12/2/2017
URL: https://www.billboard.com/articles/business/8054915/spotify-attorney-estimates-infringed-300000-songs-settlement-hearing

Spotify is said to be preparing an initial public offering -- perhaps a “direct listing” that would take place next year. It still faces one significant obstacle, however: Copyright issues around compositions it didn't license. In May, the company announced a $43.4 million settlement of a putative class-action ...

DISNEY SUES TO STOP REDBOX'S SALE OF DOWNLOAD CODES
via Courthouse News Service by Nathan Solis on 12/2/2017

In a 19-page complaint, Disney says Redbox Automated Retail recently began illegally selling digital codes to customers in “blatant disregard of clear prohibitions against doing so and in violation of plaintiffs' copyrights.” The codes come as part of a combo package that includes a Blu-ray Disc and a ...

BRUNO MARS, WARNER MUSIC NAMED DEFENDANTS IN A COPYRIGHT LAWSUIT OVER SOCIAL MEDIA PHOTO
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 12/2/2017
URL: http://www.ipwatchdog.com/2017/12/02/bruno-mars-warner-music-defendants-copyright-lawsuit/id=90568/

On November 20th, both Peter Gene Hernandez, the American singer-songwriter-producer who goes by the professional name Bruno Mars, and New York City-based Warner Music Inc. were named as defendants in a copyright case filed in the Southern District of New York by Burbank, CA-based photographer Catherine McGann. The lawsuit targets Mars’ social media use of a photograph of himself taken by McGann when Mars was performing as an Elvis impersonator as a child. The post Bruno Mars, Warner Music...
HAVING THE X FACTOR: TV FORMATS CAN BE PROTECTED BY COPYRIGHT IF THEY HAVE CLEARLY IDENTIFIED FEATURES DISTINGUISHING THEM FROM SIMILAR TYPES OF SHOWS
via At last ... the 1709 Copyright Blog by Paul Musa on 12/2/2017
URL: http://the1709blog.blogspot.com/2017/12/having-x-factor-tv-formats-can-be.html

A few weeks ago the High Court of England and Wales issued an important decision [discussed on IPKat here] which, after a long time of uncertainty, has confirmed that TV formats are in principle eligible for copyright protection under UK law.

SUPPLYING LEGAL NOTICES FOR FREE SOFTWARE IN YOUR PRODUCTS
via IPWatchdog.com | Patents & Patent Law by Fredrik Ohrstrom on 12/2/2017
URL: http://www.ipwatchdog.com/2017/12/02/supplying-legal-notices-free-software/id=90395/

This license, like many other Free Software licenses, require a legal notice to be given to the recipient when the software is distributed. Alas, it seems like Intel has not done so and as a result the distribution of Minix 3 inside the recent Intel CPUs could be copyright infringement... How can you pirate Free Software? Simple, if you do not comply with the terms and conditions of a Free Software license, then you have no right to distribute the software... Even though people who create Free...

DISNEY SUES REDBOX OVER SALES OF DIGITAL DOWNLOAD CODES
via MediaPost by Wendy Davis on 12/2/2017

Disney has sued video rental company Redbox for infringing copyright by selling codes that allow consumers to download movies like "Finding Dory," "Guardians of the Galaxy," and "Star Wars." "Redbox markets its offering of the Codes as 'cheap,' a 'Smart buy,' and a low-price alternative to authorized ..."

DISNEY TACKLES DVD KIOSK COMPANY OVER ILLEGAL FILM CODES
via World IP Review on 12/4/2017

The alleged sale is in “blatant disregard of clear prohibitions against doing so” and in violation of Disney's copyright, according to a lawsuit. Disney ...
HIGH COURT WON'T HEAR PERFECT 10 COPYRIGHT CASE
via Intellectual Property Law360 by Bill Donahue on 12/4/2017
URL: https://www.law360.com/ip/articles/990925
The U.S. Supreme Court on Monday refused to take up a copyright case filed by adult website operator Perfect 10 Inc. against Giganews Inc., leaving in place a Ninth Circuit ruling that the service couldn’t be held liable for infringing images shared by its users.

ON CAKE, CREATIVITY, & RELIGION IN AMERICA
via The Illusion of More by David Newhoff on 12/5/2017
URL: http://illusionofmore.com/cake-creativity-religion-america/
Today, the Supreme Court will hear oral arguments in the case Masterpiece Cakeshop v. Colorado Civil Rights Commission, a.k.a. “the wedding cake case.” In 2012,...

DISNEY SLAMS CHARACTERS FOR HIRE FOR TARNISHING THE DISNEY IMAGE
URL: http://www.ipwatchdog.com/2017/12/05/disney-slams-characters-for-hire-tarnishing-image/id=90649/
One of the interesting theories posed by the case is Character for Hire’s claimed right to use Disney characters, which derive from Norse mythology or centuries-old fairy tales. In its response to Disney’s motion for summary judgment, Characters for Hire argues that many of the Plaintiffs’ copyrights are based on prior works that have been in the public domain for hundreds of years such as Cinderella, Snow White, Rapunzel, Sleeping Beauty, Aladdin, Princess Aurora, Beauty and the Beast, the...

US PERSPECTIVES: MUST ALL FOREIGNERS ONLINE COMPLY WITH US COPYRIGHT LAW? (PART 2 OF 2)
via Intellectual Property Watch by Steven Seidenberg on 12/5/2017
URL: https://www.ip-watch.org/2017/12/05/must-foreigners-online-comply-us-copyright-law-part-2-2/
A case now before the DC Circuit Court of Appeals, Spanski Enterprises v. Telewizja Polska, creates a legal dilemma. The court needs to find Telewizja liable for copyright infringement, or else the court will create a roadmap for pirates, enabling them to stream copyrighted works into the US with impunity. But if the court finds Telewizja committed infringement simply because the Polish company put online works that could be accessed in the US, the court will apply US copyright law in an extraterritorial manner that will create problems around the globe.
COPYRIGHT DIRECTIVE TALKS ON VERGE OF CAUSING 'IRREPARABLE DAMAGE'
via World IP Review on 12/5/2017

Negotiations on the EU copyright directive for the Digital Single Market are on the verge of “causing irreparable damage” to Europe, more than 80 organisations have claimed. The organisations, including the Computer & Communications Industry Association (CCIA) and the Electronic Frontier ...

EPIC GAMES SETTLES LAWSUIT AGAINST ACCUSED 'FORTNITE' CHEATER,
RESPONDS TO MOM
via Rolling Stone by Blake Hester on 12/5/2017

According to the complaint, Epic claims the players reverse-engineered the game's code to do this, thus violating the company's Copyright Act. As Rock, Paper, Shotgun points out, Epic games also claimed the players could "see through solid objects, teleport [and] impersonate another player.”.

COMPOSER ACCUSES DISNEY OF COPYRIGHT INFRINGEMENT
via Northern California Record by Jenie Mallari-Torres on 12/5/2017
URL: https://norcalrecord.com/stories/511285219-composer-accuses-disney-of-copyright-infringement

Jaime Ciero filed a complaint Nov. 23 in U.S. District Court for the Central District of California against The Walt Disney Company, Walt Disney Pictures ...

DOES YOUR RULE 12 MOTION BASED ON FAIR USE HAVE A CHANCE?
via Intellectual Property Law360 by Amelia Brankov & Azita Iskandar on 12/5/2017
URL: https://www.law360.com/ip/articles/990230

In July 2017, a New York federal court denied as premature artist Richard Prince’s motion to dismiss photographer Donald Graham’s copyright infringement lawsuit on fair use grounds.[1] In doing so, the court found that, due to the fact-sensitive nature of the inquiry, courts generally do not address the fair use defense until at least the summary judgment phase.[2] But two months later, another federal judge in New York had no problem granting a motion for judgment on the pleadings on the ground of fair use, finding...
IS COPYING EVER OK? SOFTWARE PRACTICES ON LINE IN COPYRIGHT CASE
via BNA by Anandashankar Mazumdar on 12/5/2017
URL: https://www.bna.com/copying-ever-ok-n73014472749/

Java programming language by Alphabet Inc.'s Google was a fair use under copyright law, or whether it infringed Oracle's copyright to the tune of $9 billion. Fair use allows limited copying from protected works that would otherwise be infringing. Following a Dec. 7 oral argument, a ruling is likely in the ...

H&M, UNICOLORS FACE OFF ON DAY 1 OF FABRIC COPYRIGHT TRIAL
via Intellectual Property Law360 by Melissa Daniels on 12/5/2017
URL: https://www.law360.com/ip/articles/991852

Fabric-maker Unicorns Inc. told a California federal jury on the opening day of a copyright trial Tuesday that H&M ripped off one of its patterns for a jacket and skirt, while the clothing retailer countered that it never even saw the design.

WHEN IS A COPYRIGHT “REGISTERED” FOR PURPOSES OF FILING SUIT?
URL: https://www.natlawreview.com/article/when-copyright-registered-purposes-filing-suit

On May 18, 2017, the Eleventh Circuit Court of Appeals dismissed a copyright infringement complaint and added further to a circuit split on when copyright “registration” occurs for purpose of filing a copyright infringement complaint. “Registration” of a copyright is required of US copyright owners prior to ...

ORACLE TO ASK COURT TO REVIVE COPYRIGHT CASE AGAINST GOOGLE
via Reuters by Jan Wolfe on 12/6/2017
URL: https://www.reuters.com/article/ip-copyright-oracle/oracle-to-ask-court-to-revive-copyright-case-against-google-idUSL1N1O703Q

Oracle Corp on Thursday will ask a federal appeals court to resurrect its long-running copyright case alleging Google Inc improperly used Oracle's Java development platform to create the Android operating system. The U.S. Court of Appeals for the Federal Circuit will hear oral arguments in Oracle's ...
LEGO WINS ITS FIRST COPYRIGHT COURT CASE IN CHINA AGAINST BELA
via Bloomberg by Christian Wienberg on 12/7/2017
URL: https://www.bloomberg.com/news/articles/2017-12-07/lego-wins-its-first-copyrig...
EU PARLIAMENT JUSTICE COMMITTEE PONDERS REGULATION OF COPYRIGHT AND LIABILITY IN 3D PRINTING
via Intellectual Property Watch by Monika Ermert on 12/7/2017

Should the European Parliament consider regulation on 3D printing with regard to intellectual property protection and civil liability? Members of the Justice Committee (JURI) today at their session in Brussels were divided with representatives from the Green Party group as well as the conservatives and liberals cautioning against erecting barriers to the technology.

CARTOON NETWORK DUCKS $50M 'BLACK JESUS' COPYRIGHT SUIT
via Intellectual Property Law360 by RJ Vogt on 12/7/2017
URL: https://www.law360.com/ip/articles/992405

Time Warner Inc. and the Cartoon Network on Wednesday escaped copyright infringement allegations that the channel’s “Black Jesus” show stole its premise from a short story called “Thank You, Jesus,” as a New York federal judge ruled the two Jesuses weren’t very similar and tossed the $50 million suit.

WRITER SAYS 'GONE GIRL' INFRINGES HER SCREENPLAY
via Intellectual Property Law360 by Rick Archer on 12/7/2017
URL: https://www.law360.com/ip/articles/992469

A Nevada writer on Wednesday filed suit in Illinois federal court against the writer of the bestselling thriller "Gone Girl" and the producers of the 2014 hit movie, saying the novel was ripped off of her own unproduced screenplay.

ARCHIVAL ADVENTURES: THE FIRST LOUISIANA COPYRIGHT
via Mostly IP History by Zvi S. Rosen on 12/7/2017

As folks to this blog likely noticed, I engaged in a project to bring together all pre-1870 copyright records, which culminated in a post earlier this year.

INT’L TM ASSOCIATION SAYS GOV’T REGS ARE COPYRIGHTED
via Intellectual Property Law360 by Tiffany Hu on 12/7/2017
URL: https://www.law360.com/ip/articles/992515

The International Trademark Association on Wednesday threw its support behind a technical standards group in an appeal of a lower court ruling that said copyright law covers private
industry standards later turned into federal regulations, arguing that two cases a nonprofit relied on in its appeal were either inapplicable or never raised until now.

COPYRIGHT SKIRMISHES FROM THE EUROPEAN SNIPPET WAR
via Intellectual Property Watch by Monika Ermert on 12/7/2017
URL: https://www.ip-watch.org/2017/12/08/copyright-skirmishes-european-snippet-war/

A new European Union ancillary copyright provision for news publishers will help them against news aggregators and platform providers, promised proponents and two panellists favouring the addition of the EU Copyright Reform at a workshop of the Justice Committee (JURI) of the European Parliament in Brussels today (7 December). But it’s a promise that cannot be kept according to a study commissioned by the Parliament and also presented during a feisty discussion at the workshop.

WHEN RECORDING ALSO MEANS COMMUNICATION TO THE PUBLIC – INTERACTION BETWEEN COPYRIGHT AND ...
via National Law Review by Arthur Artinian & Oliver G. Bates on 12/7/2017
URL: https://www.natlawreview.com/article/when-recording-also-means-communication-to-public-interaction-between-copyright-and

This decision was given in light of an opinion provided by AG Szpunar that concluded that the exception would only apply where the customer had lawful access to the copyrighted material in question. Although the CJEU affirmed AG Szpunar's opinion, it refocused the reference away from the exception.

RESEWITHERSPOON, DAVID FINCHER SLAPPED WITH MULTI-MILLION DOLLAR SUIT FOR "COPYING" GONE GIRL
via Fashion Law on 12/7/2017

Now the actress/producer is among a group being sued by a writer who claims the "Gone Girl" novel and screenplay is a blatant rip-off that consists of "striking and substantial similarities" to a copyright-protected novel she wrote 7 years earlier and shopped around to literary agents for publication.
GOOGLE'S ANDROID-JAVA "FAIR USE" TRIAL WIN OVER ORACLE IS VIRTUALLY CERTAIN TO BE OVERTURNED
via FOSS Patents by Florian Mueller on 12/8/2017

I haven't blogged about this case in a long time and won't spend much time now, but I wish to be of service to my readers here since there doesn't seem to be any reporting in the IT press about how yesterday's Oracle v. Google Federal Circuit hearing went.

DMCA AGENT RE-REGISTRATION DEADLINE IS DECEMBER 31, 2017
via Copyright: Creativity at Work by Jason Sloan on 12/8/2017
URL: https://blogs.loc.gov/copyright/2017/12/dmca-agent-re-registration-deadline-is-december-31-2017/

The December 31 deadline is soon approaching for online service providers to re-register their previous DMCA agent designations with the U.S. Copyright Office.

BOLDLY GOING WITH DR. SEUSS MAY NOT BE FAIR USE, JUDGE SAYS
via Intellectual Property Law360 by Bryan Koenig on 12/8/2017
URL: https://www.law360.com/ip/articles/992882

A mashup of “Star Trek” and Dr. Seuss cannot yet live long and prosper, a California federal judge declared Thursday as she refused to beam the parody’s creators out of a trademark and copyright infringement lawsuit brought by the owner of the rights to the beloved children’s books.

PRINCE’S ESTATE SUES YOUTUBER WHO POSTED SONGS
via Intellectual Property Law360 by Rachel Graf on 12/8/2017
URL: https://www.law360.com/ip/articles/992834

The estate of the late artist Prince claimed Thursday in Massachusetts federal court that video recordings of six songs by Prince were posted to YouTube without the estate’s permission, infringing their copyrights.
AMAZON, NETFLIX AND HOLLYWOOD STUDIOS PRESS JUDGE TO SHUT DOWN TICKBOX
via MediaPost by Wendy Davis on 12/8/2017

TickBox TV is powered by Kodi -- open-source software that enables people to play video; TickBox also uses add-ons that allegedly "scour the Internet for illegal sources of copyrighted content and return links that enable TickBox TV customers to view unauthorized streams of popular motion pictures and ...'

9TH CIRC. MULLS 'MORAL RIGHT' IN ‘BIG PIMPIN’ SUIT
via Intellectual Property Law360 by Melissa Daniels on 12/8/2017
URL: https://www.law360.com/ip/articles/992930

A Ninth Circuit panel on Friday pressed an Egyptian composer's nephew who claims the Jay-Z song "Big Pimpin" illegally sampled a 1957 ballad by his late uncle to explain why foreign copyright ownership gives him the right to economic damages in the United States.

LAWSUIT OVER MASHUP OF 'STAR TREK' AND DR. SEUSS GETS PAST ALPHA QUADRANT
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 12/8/2017

A federal judge won't dismiss copyright or trademark claims being asserted by Dr. Seuss Enterprises.

JAY-Z DEFENDS 'BIG PIMPIN' AGAINST COPYRIGHT CLAIMS IN 9TH CIRCUIT
via Courthouse News Service by Matt Reynolds on 12/8/2017
URL: https://www.courthousenews.com/jay-z-defends-big-pimpin-against-copyright-claims-in-9th-circuit/

It's a music copyright case that set rapper Jay-Z against the relative of an Egyptian composer virtually unheard of in the United States and entangled him, or least his lawyers, in an obscure foreign law that protects artists who object to alterations of their work. On Friday, the Ninth ...
H&M INFRINGED UNICOLORS' PATTERN COPYRIGHT, JURY FINDS
via Intellectual Property Law360 by Melissa Daniels on 12/8/2017
URL: https://www.law360.com/ip/articles/993104

A California federal jury awarded about $845,000 to Los Angeles-based textile company
Unicolors Inc. in its copyright suit against H&M on Thursday after finding that the fashion
retailer willfully infringed a copyright on a Unicolors fabric pattern, according to the plaintiffs'
counsel.

JUDGE ADVANCES SUIT OVER SEUSS-STAR TREK MASHUP COMIC
via Courthouse News Service by Bianca Bruno on 12/9/2017
URL: https://www.courthousenews.com/judge-advances-suit-over-seuss-star-trek-mashup-
comic/

A federal judge has ruled a comic website can't dodge copyright infringement claims for its
reimagining of Dr. Seuss' “Oh, the Places You'll Go” which incorporates “Star Trek” into the
children's classic. In a 24-page order issued Thursday, U.S. District Judge Janis Sammartino
found ...

ARTIFICIAL INTELLIGENCE AND COPYRIGHT: A HAPPY (OR EVEN POSSIBLE)
RELATIONSHIP?
via At last ... the 1709 Copyright Blog by Eleonora Rosati on 12/11/2017
URL: http://the1709blog.blogspot.com/2017/12/artificial-intelligence-and-copyright.html

After years spent discussing the IP implications of 3D printing [which the the European
Parliament - JURI Committee has also tackled in this recent working paper] it seems that now
the new 'hot' topic is Artificial Intelligence (AI) and its potential.

THE UNIMAGINED CONSEQUENCES OF STAR ATHLETICA’S ‘IMAGINATIVE
SEPARABILITY’ TEST
URL: http://www.ipwatchdog.com/2017/12/11/unimagined-consequences-imaginative-
separability/id=90829/

Like other opinions in the IP arena, the Supreme Court’s decision in Star Athletica v. Varsity
Brands has created a new legal rule with limited practical guidance that will inevitably lead to
less predictability in an already-murky area of copyright law. Its new “imaginative separability”
test for copyright eligibility for useful articles, such as footwear, clothing, and furniture, may be
so easy that few designs will fail to qualify. Yet, ultimately, Star Athletica may have the
unimagined...
JUDGE REFUSES TO THROW OUT DR SEUSS ESTATE'S BATTLE WITH STAR TREK WRITER
via World IP Review on 12/11/2017

A US judge has refused to dismiss a copyright and trademark infringement case brought against David Gerrold, a Star Trek writer, by the estate of late children's author Theodor Seuss Geisel, better known by his pseudonym Dr Seuss. District Judge Janis Sammartino at the US District Court for the ...
SOME GOOD COPYRIGHT NEWS FROM DOWN UNDER
via The Illusion of More by David Newhoff on 12/13/2017
URL: http://illusionofmore.com/some-good-copyright-news-from-down-under/

G’Day! Since there’s so much gloomy news here in the States, I thought I’d take a moment to note that Australia did a couple of […]

JURISDICTION OF FRENCH COURTS IN MATTERS OF COPYRIGHT INFRINGEMENT ON THE INTERNET
via At last ... the 1709 Copyright Blog by FrenchKat on 12/13/2017
URL: http://the1709blog.blogspot.com/2017/12/jurisdiction-of-french-courts-in.html

A recent ruling by the Paris Court of Appeals highlights French courts' approach to jurisdiction in matters of copyright infringement on the internet.

DEMI LOVATO, INDIE BAND SETTLE COPYRIGHT SUIT OVER 'STARS'
via Intellectual Property Law360 by Cara Bayles on 12/13/2017
URL: https://www.law360.com/ip/articles/994243

New York City-based indie rock duo Sleigh Bells has settled its copyright infringement suit alleging pop singer Demi Lovato’s 2015 song “Stars” improperly sampled their 2010 song “Infinity Guitars,” and the presiding California federal judge tossed the case at their request Tuesday.

NETFLIX CAN'T CALL CUT ON 'BURNING SANDS' COPYRIGHT SUIT
via Intellectual Property Law360 by Tiffany Hu on 12/13/2017
URL: https://www.law360.com/ip/articles/994196

A Pennsylvania federal judge refused on Tuesday to let Netflix toss a suit brought by an author accusing the streaming giant of ripping off his series about six fraternity pledges at a historically black college, finding that the author had shown valid copyright on his works and “enough similarities” between both works to warrant further discovery.

WARNER BROS. SETTLES $900M LAWSUIT OVER 'THE CONJURING'
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 12/13/2017
URL: https://www.hollywoodreporter.com/thr-esq/warner-bros-settles-900m-lawsuit-conjuring-1067445

The settlement resolves an author's claims that he had exclusive rights to tell the stories of the real-life ghost hunters whose cases inspired the franchise.
JUDGE LETS "BURNING SANDS" COPYRIGHT CASE AGAINST NETFLIX PROCEED
via Reuters by Jan Wolfe on 12/13/2017
URL: https://www.reuters.com/article/ip-copyright-netflix/judge-lets-burning-sands-copyright-case-against-netflix-proceed-idUSL1N1OE00Q

A federal judge in Pennsylvania on Tuesday declined to dismiss a copyright suit alleging the Netflix Inc movie “Burning Sands” ripped off a book of the same name. U.S. District Judge J. Curtis Joyner in Philadelphia denied Netflix's motion to dismiss a copyright infringement case brought by author Al ...

NEW NAFTA PITS SILICON VALLEY AGAINST HOLLYWOOD OVER COPYRIGHT
via Bloomberg by Andrew Mayeda on 12/14/2017
URL: https://www.bloomberg.com/news/articles/2017-12-14/new-nafta-pits-silicon-valley-against-hollywood-over-copyright

Industry insiders say haggling over copyright could go down to the wire. While Nafta negotiators meeting this week in Washington are scheduled to discuss digital trade issues, intellectual property isn't on the agenda, according to a copy seen by Bloomberg News. Negotiators are punting decisions on ...

INDIE BAND AND DEMI LOVATO SIGN TRUCE IN SONG DISPUTE
via World IP Review on 12/14/2017

Lovato is still embroiled in another copyright suit, though. In November, a California-based musician took on Disney, Lovato and actor Idina Menzel over the song “Let it Go”. Lovato sang a pop version of the song, which is a hit number in the Disney film “Frozen”. WIPR has reported on numerous cases of ...

FEDERAL COURTS NOT EMPOWERED TO CANCEL COPYRIGHT REGISTRATIONS
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 12/14/2017
URL: http://nysbar.com/blogs/EASL/2017/12/federal_courts_not_empowered_t.html

A new December 5, 2017, Southern District of New York (SDNY) decision by Judge Oetken holds that federal courts are not empowered by the Copyright Act or any other federal statute to cancel or nullify a copyright registration issued by the Copyright Office.
SEARCHING FOR UNCLAIMED ROYALTIES IS ABOUT TO GET EASIER FOR MUSIC PUBLISHERS WITH NEW SXWORKS ...
via Billboard by Dan Rys on 12/14/2017

All told, according to SoundExchange's recently-formed SXWorks organization, there are now 57 million Notices of Intent filed with the Copyright Office, all of which represent royalties that are being held in escrow until a publisher can search through the data, identify the works it owns, and apply to ...

SONGWRITERS AND PUBLISHERS ENDORSE PATH TO STRENGTHEN COPYRIGHT PROTECTIONS IN CANADA
via Billboard by Karen Bliss on 12/14/2017
URL: https://www.billboard.com/articles/business/8070604/socan-canadian-copyright-law-review-2018

"In a sector in turmoil, especially with the arrival of new ways to consume and listen to music, more than ever we need strong copyright protection to ensure that music creators and publishers are fairly compensated for their work." SOCAN connects more than 4 million music creators worldwide and more ...

PEARSON SAYS FLASH CARD SITE 'THUMBS NOSE AT COPYRIGHT LAW'
via Intellectual Property Law360 by Tiffany Hu on 12/14/2017
URL: https://www.law360.com/ip/articles/994725

Pearson Education filed suit Wednesday in Indiana federal court against the owner of an interactive flash card-sharing site, alleging that the owner "thumb[ed] his nose at copyright law" by exploiting pirated test banks from the publishing company for personal profit.

FABRICS BUSINESS ACCUSES COMPETITOR OF COPYRIGHT INFRINGEMENT
via Northern California Record by Jenie Mallari-Torres on 12/14/2017
URL: https://norcalrecord.com/stories/511297362-fabrics-business-accuses-competitor-of-copyright-infringement

5 in U.S. District Court for the Central District of California against K&L Wholesales Corp. doing business as Iris Basic USA, Rainbow Apparel and Does 1-10, alleging the defendants violated laws through unauthorized distribution of a copyrighted design. According to the complaint, Standard Fabrics has ...
PHOTO SHARING ON SOCIAL MEDIA & COPYRIGHT INFRINGEMENT: WHAT YOU NEED TO KNOW
URL: http://www.ipwatchdog.com/2017/12/15/photo-sharing-social-media-copyright-infringement/id=91022/

With new social media platforms and photo sharing apps becoming more and more popular, the risk of copyright infringement through the sharing of photos is more present now than ever before. Not to mention, many social media platforms give the ability to re-post, save or share other people's content. When so many options are available, allowing you to share someone's photo at the click of a button, it is easy to forget about the possible legal implications of what you do on social media. The...

COPYRIGHT ROYALTY BOARD RAISES RATE FOR SIRIUSXM, LOWERS IT FOR MUSIC CHOICE
via Billboard by Ed Christman on 12/15/2017
URL: https://www.billboard.com/articles/business/8070762/sirius-xm-copyright-royalty-board-crb-rate-increase

The Copyright Royalty Board has determined that Satellite Audio Radio Services, i.e. SiriusXM will pay 15.5 percent of revenue for the next five years beginning in 2018 to 2022, although the full determination has yet to be posted on the CRB's website while the participants scrutinize the document to...

SPORTS SECTOR WINS REPRIEVE IN EU COPYRIGHT REFORM
via Reuters by Julia Fioretti on 12/15/2017

Soccer leagues such as England's Premier League and Germany's Bundesliga won a reprieve on Friday when EU ambassadors agreed to exclude them from the scope of a copyright reform that would help make content more easily available online. The entertainment and sports ...

HOW A CONSERVATIVE FROM RURAL GEORGIA BECAME CAPITOL HILL'S TOP SONGWRITER ADVOCATE
via Billboard by Robert Levine on 12/15/2017

Collins, who worked as a lawyer, didn't have any formal background in copyright law before coming to Congress, but an appointment to the Judiciary Committee and a lifelong interest in
music made him seek out executives and creators who shared their frustrations. As a conservative, he was ...

**DISNEY FILES LAWSUIT AGAINST REDBOX CLAIMING COPYRIGHT INFRINGEMENT**

via Corporate Counsel by Amanda Ciccatelli on 12/15/2017

Recently, The Walt Disney Co. filed a lawsuit against Redbox claiming copyright infringement in an attempt to stop the company from selling digital versions of its movies. The lawsuit was filed in reaction to Redbox offering codes to consumers that they can use to download a digital copy, claiming that ...

**PROFESSIONAL PHOTOGRAPHER ACCUSES LAW FIRM OF COPYRIGHT INFRINGEMENT**

via Northern California Record by Noddy A. Fernandez on 12/15/2017
URL: https://norcalrecord.com/stories/511297587-professional-photographer-accuses-law-firm-of-copyright-infringement

According to the complaint, in August, Durant discovered that Lerner & Weiss prominently displayed his copyright image on their website page advertising its San Diego office. Durant says the law firm had no purchasing license to use the image and he had not given any consent to authorize, permit or ...

**11TH CIRC. GIVES RICK ROSS SUIT ANOTHER DAY FOR HUSTLIN’**

URL: https://www.law360.com/ip/articles/995680

Rick Ross can renew his long-running copyright infringement case against LMFAO over their song “Party Rock Anthem,” which he says rips off his own "Hustlin’", as an Eleventh Circuit panel on Friday reversed a lower court’s ruling that registration mistakes the rapper made invalidated his song’s copyright.

**SIRIUSXM HIT WITH BIG RATE HIKE BY COPYRIGHT ROYALTY BOARD**

via Variety by Paula Parisi on 12/16/2017

In a victory for SoundExchange, satellite radio service SiriusXM will be increasing by 40% its royalty payments to artists and labels for the period beginning Jan. 1 and extending through
2022. The decision issued Thursday by the Copyright Royalty Board caps a 24-month litigation process that saw ...

DR. SEUSS AND STAR TREK MASHUP COMIC ISN’T FAIR USE AFTER ALL, JUDGE SAYS
via Ars Technica by Cyrus Farivar on 12/17/2017
URL: https://arstechnica.com/?p=1233045

A judge has allowed a lawsuit to proceed against the creators of Oh, the Places You’ll Boldly Go!—a nearly page-for-page remix of the Dr. Seuss classic Oh, the Places You’ll Go! and Star Trek. This decision reverses an earlier ruling.

THAT WAS THE YEAR THAT WAS: LOOKING BACK AT SOME INTERNATIONAL COPYRIGHT ISSUES IN 2017
via Hugh Stephens Blog on 12/17/2017
URL: http://hughstephensblog.net/2017/12/18/that-was-the-year-that-was-looking-back-at-some-international-copyright-issues-in-2017/

2017 was quite a year on the trade policy front. It saw Britain triggering the Brexit exit clause and then trying to work out with the EU the modalities for UK-EU relations after British withdrawal.

MONKEYS, TURTLES, AND CHEERLEADERS: COPYRIGHT IN 2017 AND BEYOND
via Mister Copyright by Kevin Madigan on 12/18/2017

2017 has come and (almost) gone, and with it, another year of noteworthy copyright developments…sort of.

CAUCUS VOTE OF INTEREST TO ARTISTS THIS WEEK
via The Illusion of More by David Newhoff on 12/18/2017
URL: http://illusionofmore.com/caucus-vote-interest-artists-week/

On Wednesday this week, the Democratic Caucus will vote to choose the new ranking member of the House Judiciary Committee in order to fill the […]
WHY DEMOCRATS NEED TO PICK THE RIGHT LEADER FOR COPYRIGHT (GUEST COLUMN)
via Variety by Ruth Vitale on 12/18/2017

Some lawmakers, while they make decisions every day that affect our lives, often profoundly misunderstand our needs. Many of these decisions happen behind the scenes and might not seem on the surface that they are critical to American creativity. The most current and pressing example is the vote ...

FACEBOOK REVEALS DATA ON COPYRIGHT AND TRADEMARK COMPLAINTS
via Reuters by Paresh Dave on 12/18/2017

Facebook reveals data on copyright and trademark complaints. Paresh Dave. 3 Min Read ... The company removed user uploads in response to 81 percent of filings for counterfeiting, 68 percent for copyrights and 47 percent for trademarks, according to its report. The percentages were roughly similar for ...

SINGLE APPLICATION UPDATED
via Copyright: Creativity at Work by Whitney Levandusky on 12/18/2017
URL: https://blogs.loc.gov/copyright/2017/12/single-application-updated/

Greetings, copyright applicants! When you visit the U.S. Copyright Office’s online registration on December 18, you may notice a few differences. We’re updating our software!

THIS IS HOW YOU APOLOGIZE FOR USING A PHOTO WITHOUT PERMISSION AS A BRAND
via PetaPixel by Michael Zhang on 12/18/2017
URL: https://petapixel.com/2017/12/18/apologize-using-photo-without-permission-brand/

The camera accessory brand Tether Tools just earned a great deal of goodwill from photographers by taking a copyright infringement mistake seriously. After discovering that they had accidentally used a photographer's image without permission, the company posted a lengthy apology and explanation ...
SONGWRITER DOESN'T OWN TUNE SAMPLED BY NWA, JUDGE SAYS
via Intellectual Property Law360 by Tiffany Hu on 12/18/2017
URL: https://www.law360.com/ip/articles/996113

A Kentucky federal judge said Monday that a man alleging that Dr. Dre illegally sampled a 1977 tune for “If It Ain’t Ruff” — a song from N.W.A.’s iconic “Straight Outta Compton” album — doesn’t own the copyright for that song, awarding Dr. Dre and Capitol Records partial summary judgment.

APPLE HIT WITH CLASS ACTION LAWSUIT OVER UNPAID INDEPENDENT ARTIST ROYALTIES
via Billboard by Robert Levine on 12/19/2017

In such cases, under U.S. copyright law, distributors can file Notices of Intent (NOIs) with the Copyright Office, but the lawsuit says Apple didn't do that for Eich's songs. (The lawsuit says that names and addresses of publishing rights holders are "readily ascertained from the third party aggregator who ..."

THE TOP 10 COPYRIGHT RULINGS OF 2017
via Intellectual Property Law360 by Bill Donahue on 12/19/2017
URL: https://www.law360.com/ip/articles/989350

From Dr. Suess to the Digital Millennium Copyright Act to a U.S. Supreme Court ruling on cheerleading uniforms, 2017 saw a slew of important rulings for the world of copyright law. Here are 10 you need to remember.

APPEALS COURT UPHOLDS DECISION ALLOWING FRACTIONAL LICENSING OF SONGS
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 12/19/2017

BMI scores a legal win over the Justice Department.
2ND CIRC. STRIKES DOWN DOJ BAN ON 'FRACTIONAL' LICENSING
via Intellectual Property Law360 by Bill Donahue on 12/19/2017
URL: https://www.law360.com/ip/articles/996442

The Second Circuit on Tuesday shot down a U.S. Department of Justice rule barring music licensing groups BMI and ASCAP from so-called fractional licensing, saying the agency must formally modify long-standing antitrust settlements if it wants to ban the practice.

JURY WIN FOR NYC GRAFFITI ARTISTS 'ERRONEOUS,' COURT TOLD
via Intellectual Property Law360 by Tiffany Hu on 12/19/2017
URL: https://www.law360.com/ip/articles/996226

A real estate developer urged a New York federal court on Monday to reject a jury's finding that he violated an obscure federal statute when he demolished the famous New York City graffiti space known as 5Pointz, saying the court wrongly instructed the jury that whitewashing was a form of mutilation.

US COPYRIGHT OFFICE REQUIRES REREgistRATIoN OF DMCA AGENTS BY DECEMBER 31, 2017 RETAIL DID ...
via National Law Review by Ezra D. Church on 12/19/2017

Retailers that allow website users to generate and post content on their websites are required to reregister their Digital Millennium Copyright Act (DMCA) agents with the US Copyright Office by the end of the year in order to continue receiving protection under the DMCA's safe harbor provision.

YOUTUBE, MUSIC LABELS END STANDOFF, MOVE TOWARD PAID SERVICE
via Bloomberg by Lucas Shaw on 12/19/2017

Universal, owned by Vivendi SA, got control for the first time over what appears on ad-supported channels and persuaded YouTube to improve scanning for user uploads that include copyrighted content, a person familiar with the matter said, asking not to be identified discussing private information.
UNIVISION SEEKS SANCTIONS FROM FILM CO., ATTYS IN IP ROW
via Intellectual Property Law360 by Emma Cueto on 12/19/2017
URL: https://www.law360.com/ip/articles/996485

Univision Television Group Inc. moved Monday for sanctions against a film company and its lawyers, saying in Utah federal court that they had been unable to provide any evidence that Univision ever broadcast a movie that the company claimed was a rip-off of one of its films.

RUSSIAN-LANGUAGE VIDEO SERVICE ETVNET SUED FOR ALLEGEDLY STREAMING STOLEN CONTENT
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 12/19/2017

The suit claims the service is harming competitors, customers and copyright owners.

PHOTOGRAPHER FILES COPYRIGHT INFRINGEMENT SUIT AGAINST LUXE HOME AND DESIGN OVER INSTAGRAM POST
via PennRecord by Louie Torres on 12/19/2017
URL: https://pennrecord.com/stories/511297456-photographer-files-copyright-infringement-suit-against-luxe-home-and-design-over-instagram-post

The plaintiff holds Luxe Home and Design LLC responsible because the defendant allegedly published an infringing copy of plaintiff's copyrighted image on its Instagram page without license and on its home page. The plaintiff requests a trial by jury and seeks actual damages, disgorgement, statutory ...
FACEBOOK SENDS ARS TAKEDOWN NOTICE FROM PINK FLOYD OVER NASA AUDIO
via Ars Technica by Cyrus Farivar on 12/20/2017
URL: https://arstechnica.com/?p=1235703

Most Americans know that those words were spoken by Neil Armstrong just before his famous 1969 walk on the Moon during the Apollo 11 mission.

REP. JERROLD NADLER, FRIEND OF MUSIC BUSINESS, NAMED RANKING MEMBER OF HOUSE JUDICIARY ...
via Billboard by Robert Levine on 12/20/2017
URL: https://www.billboard.com/articles/business/8077777/jerrold-nadler-house-judiciary-committee-ranking-member

Rep. Jerrold Nadler (D-N.Y.) this morning won a contested race to become the ranking member of the House Judiciary Committee, which has jurisdiction over copyright. This is an especially important position now, since Committee Chairman Bob Goodlatte (R-Va.) is trying to pass some significant ...

ABC EXPLAINS: A DIGITAL FILE IS NOT NECESSARILY ACCESSIBLE.
via YouTube by WIPO on 12/21/2017
URL: https://www.youtube.com/watch?v=5kejy1z8x3I

POKÉMON WINS A$1 IN AUSTRALIAN COPYRIGHT DISPUTE
via World IP Review on 12/21/2017

Pokémon Company International, the US-based entity which manages the brand's IP, has won a copyright infringement lawsuit against online marketplace Redbubble. Pokémon sued Redbubble in April last year, alleging that the online marketplace was infringing its copyright by using Pikachu, one of ...

5 WAYS COMPANIES CAN STAY IN COMPLIANCE WITH DMCA
via IPWatchdog.com | Patents & Patent Law by Heather Smith-Carra on 12/21/2017
URL: http://www.ipwatchdog.com/2017/12/21/5-ways-companies-compliance-dmca/id=91332/

Understanding the Digital Millennium Copyright Act (DMCA) has become increasingly important for companies that want to protect their digital content. The DMCA was created primarily as a solution for service providers such as YouTube that host content uploaded by third parties rather than create their own original content. Service providers benefit from the DMCA
because it protects them from liability in the event content uploaded to their site infringes another’s copyrights. While the DMCA...

GENERAL MILLS SETTLES ALTERCATION OVER FRUIT AND NUT BARS
via World IP Review on 12/21/2017

Consumer goods company General Mills has settled a trade dress and copyright infringement dispute over fruit and nut bars. US District Judge John Tunheim signed a final consent judgment on Monday, December 18, after General Mills settled its dispute with Rawbite. Rawbite, headquartered in ...

SONGWRITERS, STREAMING COMPANIES STRIKE LANDMARK DEAL ON MUSIC LICENSING
via Tennessean by Nate Rau on 12/21/2017

After years of battling, the songwriting industry and music streaming companies have partnered together on groundbreaking federal legislation aimed at simplifying digital licensing and improving royalty payouts to copyright owners. Songwriters and music publishers have fought with streaming ...

LAWMAKERS INTRODUCE MUSIC MODERNIZATION ACT, WHICH SIMPLIFIES DIGITAL LICENSING AND INCREASES ...
via Variety by Jem Aswad on 12/21/2017

The bill reforms Section 115 of the U.S. Copyright Act to create a single licensing entity that administers the mechanical reproduction rights for all digital uses of musical compositions, such those used in interactive streaming models offered by Apple, Spotify, Amazon, Pandora, Google and others, ...
MUSIC MODERNIZATION ACT INTRODUCED IN THE HOUSE OF REPRESENTATIVES, WITH MAJOR MUSIC LICENSING...
via Billboard by Ed Christman on 12/21/2017

Pete Sessions (R-Texas), also incorporate some other ingredient long sought by music publishers, like including amending Section 115 of the U.S. Copyright Act to change the way the Copyright Royalty Board determines rates from using a legal standard to one that reflects market value by trying to...

WHO IS @DIET_PRADA? THE COPYRIGHT CRUSADERS EVERYONE IN FASHION IS FOLLOWING ON INSTAGRAM
via Vogue by Julia Frank on 12/21/2017
URL: http://www.vogue.com.au/fashion/news/who+is+diet+pradar+the+copyright+crusaders+everyone+in+fashion+is+following+on+instagram

Instagram account @diet_prada launched in December 2014 as a series of side-by-side comparisons calling out brands and designers for referencing (a little too heavily) other brands and designers. For almost three years, @diet_prada remained anonymous and relatively under the radar.

NO WALLFLOWER: PAPER GOODS COMPANY SUES WAL-MART OVER SPANISH ROSE DESIGN
via At last ... the 1709 Copyright Blog by Marie-Andree Weiss on 12/22/2017
URL: http://the1709blog.blogspot.com/2017/12/lflower-paper-goods-company-sues-wal.html

A paper goods company from Florida, Rifle Paper, filed a copyright infringement suit against Walmart in the U.S. Middle District of Florida Court. Hat Tip to Sarah Burstein who posted the complaint online.

DISNEY PUSHES FOR INJUNCTION AGAINST REDBOX OVER MOVIE DOWNLOAD CODES
via Hollywood Reporter - THR, Esq. by Eriq Gardner on 12/22/2017
URL: https://www.hollywoodreporter.com/thr-esq/disney-pushes-injunction-redbox-movie-download-codes-1070123

The entertainment giant says Redbox is harming relationships with customers' perceptions of a legitimate digital market.
PUBLIC KNOWLEDGE RESPONDS TO INFRINGEMENT CLAIM IN AJIT PAI VIDEO
via The Illusion of More by David Newhoff on 12/22/2017

Well, this is interesting. Ordinarily, Public Knowledge is an organization that sows a lot of confusion—and sometimes outright falsehoods—about copyright law. As a rule, I […]

'STAR WARS' CARD GAME SABACC SPARKS LAWSUIT FROM LUCASFILM
via Hollywood Reporter - THR, Esq. by Ashley Cullins on 12/22/2017
URL: https://www.hollywoodreporter.com/thr-esq/star-wars-card-game-sabacc-sparks-lawsuit-lucasfilm-1070157

The fictional game plays an important role in franchise canon and Lucasfilm says a video game app maker is unfairly capitalizing on its fame.

PRESUMPTION IN FAVOR OF UNMASKING COPYRIGHT INFRINGERS
via National Law Review by Matthew M. Girgenti on 12/22/2017
URL: https://www.natlawreview.com/article/presumption-favor-unmasking-copyright-infringers

The US Court of Appeals for the Sixth Circuit recognized “a presumption in favor of unmasking anonymous defendants when judgment has been entered for a plaintiff.” Signature Management Team v. Doe, Case No. 16-2188 (6th Cir., Nov. 28, 2017) (White, J) (Suhrheinrich, J, dissenting). The split panel …

IT’S A WONDERFUL LIFE
via Copyright: Creativity at Work by Samantha Kosarzycki on 12/22/2017
URL: https://blogs.loc.gov/copyright/2017/12/its-a-wonderful-life/

It just wouldn’t feel like the holidays in our house without the annual showing of It’s a Wonderful Life, Holiday Inn, Scrooged, and National Lampoon’s Christmas Vacation.

TWO FEDERAL PREEMPTION CASES, ONE CONSISTENT OUTCOME
via National Law Review by Sarah Bro on 12/22/2017
URL: https://www.natlawreview.com/article/two-federal-preemption-cases-one-consistent-outcome

Just one day after the Fourth Circuit's OpenRisk decision, the US Court of Appeals for the Fifth Circuit granted judgment as a matter of law in favor of a defendant, finding the plaintiff's unfair competition claim under Texas state law to be preempted by the federal Copyright and Patent Acts. Motion Medical …
IMATAG USES INVISIBLE WATERMARKS TO PROTECT YOUR PHOTOS
via Peta Pixel by Will Nicholls on 12/22/2017
URL: https://petapixel.com/2017/12/22/imatag-uses-invisible-watermarks-protect-photos/

Imatag is a new service that uses invisible watermarks to protect photographs from copyright infringement. With the development of AI technology that can easily remove physical watermarks, more covert solutions could be a solution for photographers looking to identify and prove ownership of copied ...

NEWSLETTER SENT TO US CUSTOMERS INSUFFICIENT TO ESTABLISH PERSONAL JURISDICTION
via National Law Review by Eleanor B Atkins on 12/23/2017
URL: https://www.natlawreview.com/article/newsletter-sent-to-us-customers-insufficient-to-establish-personal-jurisdiction

Axiom argued that its connections to California, and Acerchem UK's knowledge of those connections and of Axiom's ownership of the copyrights, were sufficient to show that Acerchem UK's actions were expressly aimed at the forum state. Referencing Walden v. Fiore (2014), in which the Supreme Court ...

STUDY ON EXPANDED “USER RIGHTS” FAILS ECONOMETRIC SCRUTINY
via Mister Copyright by Kevin Madigan on 12/23/2017
URL: http://mistercopyright.org/study-on-expanded-user-rights-fails-econometric-scrutiny

In November, scholars at the American University Washington College of Law’s Program on Information Justice and Intellectual Property (PIJIP) published a paper concluding that governments around the world should consider weakening copyright protection in favor of expanded “user rights.”

OOH, THE PEOPLE YOU'LL SU, PART TWO: THE RETURN OF ATTORNEY-POET J. MICHAEL KEYES
via Law.com - Newswire by Richard Binder on 12/24/2017

An ongoing suit involving a Star Trek-themed Dr. Seuss parody has provided plenty of inspiration for Dorsey & Whitney intellectual property attorney J. Michael Keyes.
INNOCENCE OF COPYRIGHT: AN INQUIRY INTO THE PUBLIC INTEREST
by David Nimmer

In 2014, the Ninth Circuit Court of Appeals issued a secret injunction to take down material underlying one of the principal news stories of the era. Construing "the public interest" to require suppression of expression, the court extended its authority to electronic domains that previously had been considered immune from news censorship. The circumstances are so unique, the doctrinal gyrations so bizarre, the relief so unprecedented as to defy belief - yet it happened.

In brief, worldwide riots broke out over a video entitled Innocence of Muslims, produced by a Coptic Christian for the very purpose of inciting those riots. One of the bit players enlisted in the film was duped into thinking it was a desert romance; when the full story broke and all the participants found themselves the subject of an Egyptian fatwa, she started receiving death threats. She therefore tried to have her performance scrubbed from the Internet, and filed a copyright infringement case for that purpose. Although the district court refused to enjoin Google to take down that material, a divided Ninth Circuit panel reached the opposite conclusion. Its secret injunction was expressly designed to suppress access to speech to the maximum extent possible.

This examination starts a half-century earlier, tracking some of the signal developments that should underlie any sound application of copyright law. With those considerations cemented in our minds, we can appreciate how dangerous that 2014 ruling is - and hopefully ensure that nothing like it will ever be repeated.

RECONCEPTUALIZING COPYRIGHT'S MERGER DOCTRINE
by Pamela Samuelson

Under the merger doctrine of U.S. copyright law, courts sometimes find original expression in a work of authorship to be "merged" with the idea expressed, when that idea is incapable of being expressed, as a practical matter, in more than one or a small number of ways. To be true to the principle that copyright law does not extend its protection to ideas, courts have held in numerous cases that the merged expression is unprotectable by copyright law.

This Article, which memorializes the 2015 Brace Lecture, identifies and dispels eight myths about the merger doctrine, including the myth that the doctrine was borne in the Supreme Court's Baker v. Selden decision. It also discusses merger in relation to other copyright doctrines, such as scenes a faire, originality, and the exclusion of processes embodied in copyrighted works. Finally, it considers various functions of the merger doctrine, such as averting unwarranted monopolies, policing the boundaries between copyright and patent law, and enabling the ongoing progress of knowledge.
CANADA'S COPYRIGHT TARIFF-SETTING PROCESS: AN EMPIRICAL REVIEW
by Jeremy De Beer

This article empirically analyzes the process of setting copyright tariffs in Canada. It explains the national importance and international relevance of Canada's tariff setting system, putting administrative issues in the context of broader legal, economic and copyright policy matters. It reviews relevant literature, synthesizing what research exists about this process. It schematically maps key statutory and administrative milestones. Based on a robust, empirical research method, empirical data was collected in respect of a fifteen-year period between and including 1999-2013, during which major legal reforms were implemented and the economic significance of copyright tariffs increased. The article reports statistical figures and trends related to copyright tariffs within the study period, especially regarding the time involved in Canada's tariff-setting process. Eight-hundred-fifty-two different tariffs were certified by the Copyright Board during the study period. There are 209 pending tariffs that were proposed for that period that have not yet been certified. The certified tariffs took an average of 3.5 years to certify after filing. The average pending tariff has been outstanding for 5.3 years since filing (as of March 31, 2015). On average, tariffs are certified 2.2 years after the beginning of the year in which they become applicable, which is in effect a period of retroactivity. The standard deviation in the time from proposal filing to tariff certification is two years. A hearing was held in 28% of tariff proceedings. The average time from proposal filing to a hearing in those proceedings was just over three years. The average time from a hearing to tariff certification was almost 1.3 years. These empirical research findings deliver a unique understanding of Canada's tariff-setting procedures, enabling policymakers as well as the Board to better respond to the needs and concerns of copyright stakeholders.

DISTINGUISHING 'COMMON CARRIERS' FROM 'COMMON THIEVES': REQUIRING NOTICE AND STAY DOWN FOR 'STRUCTURALLY INFRINGEMENT' HOST SITES THAT DISCOURAGE LEGITIMATE ELECTRONIC STORAGE, INCENTIVIZE COPYRIGHT INFRINGEMENT, AND EXPLOIT THE DMCA 512(C) SAFE HARBOUR
by Paul Doda

There is a loophole in § 512 of the U.S. Digital Millennium Copyright Act ("DMCA") that allows certain content hosting web sites to claim entitlement to "safe harbor" protection from liability even while incentivizing copyright infringement on a massive scale. The sites in question - part of the host site category commonly called "cyberlockers" - reap substantial profits from the content they exploit without having to invest a single dollar to develop, create, or publish it. They are aptly called "structural infringers" because, while their technology is "content neutral" and they generally comply with DMCA takedown notices to claim refuge in the § 512(c) safe harbor, their businesses are blatantly structured to encourage an ongoing supply of infringing music, movies, books and other copyrighted content. Infringements are the lifeblood of their business models.
German courts, applying German law, EU law and cases decided by the Court of Justice of the European Union (CJEU), have looked beyond the structural infringers' veneer of neutrality. They require the sites to prevent recurring infringements regardless of whether they might qualify for an exemption from monetary liability under the EU safe harbor for host sites contained in Article 14 of the E-Commerce Directive, which is nearly identical to the DMCA § 512(c) safe harbor. The E-Commerce Directive permits member state courts to issue injunctions meant to prevent future infringements in addition to stopping existing infringements. The sensible rationale for the relief is that sites employing business practices that substantially increase the risk of infringements should be required to take reasonable steps to prevent the activity. Simply responding to repeated takedown notices for the same material is not enough; reasonable efforts must be made to ensure that the content stays down. To date, no U.S. rights holders appear to have litigated requests for injunctive relief under DMCA § 512(j) to conclusion, even though the provision likewise allows for injunctive relief where the § 512(c) host site might be exempt from monetary liability.

The article discusses the business models and practices of certain host sites that expose them as structural infringers and contrasts them with responsible cloud storage and user-generated content sites. While the latter sites of course have some infringing content on their platforms, unlike structural infringers they do not specifically organize their businesses to attract infringements and they make good faith efforts to address the activity. The article then discusses how the structural infringers' practices undermine the core consideration (takedowns) that they are supposed to provide to earn "common carrier" treatment and safe harbor protection in the first place, effectively denying rights holders the benefit of the bargain that was struck under the DMCA. The article next considers the injunctive relief remedies provided under the EU and U.S. safe harbor regimes. It contends that developing law in the EU presents a common sense approach to address structural infringers and that U.S. courts can likewise follow a sensible path to address the problem under DMCA § 512(j). Last, the article explains why appropriately tailored injunctive relief will not preclude fair use or stifle free speech.

BRAVE NEW WORLD: ISSUES AND IMPLICATIONS OF THE NEW FAIR USE CLAUSE IN THE KOREAN COPYRIGHT ACT
by Jee Young Hahn & Byoung Kyu Lee

On November 22, 2011, the National Assembly of the Republic of Korea ("Korea") passed a bill for the revision of the Korean Copyright Act along with the ratification of the Korea-U.S. Free Trade Agreement ("KORUS"). This revision, which entered into force on March 15, 2012, mainly aimed to implement the items of KORUS.

Most importantly, it marked an historic milestone that will lead to a new chapter in the Korean copyright system. It contains a new fair use clause in Article 35ter, which is almost equivalent to § 107 of the U.S. Copyright Act of 1976. Even though the Korean Copyright Act provides that one of its purposes is to promote "fair use" of authors' works, prior to the revision, there was neither any specific provision nor case law doctrine for fair use in the Korean legal system. As a
As a result, there has been a longstanding controversy among academics and practitioners for decades as to whether to introduce a U.S.-style fair use provision.

While some scholars and lawyers have hailed the advent of fair use as the beginning of a new era in Korean copyright history, others still doubt its compatibility with our legal system, which is based on Germany's civil law. The ambiguity and vagueness of the language on fair use might cause serious confusion and uncertainty to Korean copyright practitioners, since attorneys and courts are totally unfamiliar with the doctrine of fair use and there is no reliable case law or guidelines. Nevertheless, the new fair use clause will exert a strong influence on the Korean copyright world and change the legal landscape of infringement practice substantially.

This article will explore the issues and implications of the new fair use clause on Korean copyright practice. First, we will examine the background of the introduction of fair use to Korea, particularly in relation to KORUS. Then we will discuss the main issues raised in its interpretation and application to real cases. Finally, we will demonstrate the impact of fair use on Korean copyright practice from each stakeholder's perspective: copyright holders (plaintiffs), users (defendants), attorneys and courts.

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**COPYRIGHT AND POSITIVE FREEDOM: KANTIAN AND JEWISH THOUGHT ON AUTHORIAL RIGHTS AND DUTIES**
by Dr. Kim Treiger-Bar-Am

What can Kantian philosophy and Jewish thought contribute to our understanding of authorial rights and duties? I have shown in earlier essays Kant's call for protection of the autonomy of expression of authors and Judaism's support for the creative freedom of authors, as well as the support for specific copyright principles in the two theoretical systems. In this essay I explore the underlying nature of that freedom as positive freedom, and hence as obligation. Authorial obligations and duties of respect are in view.

Positive freedom is, in both Kantian and Jewish thought, the capacity for morality. Hence in essence, positive freedom means obligation. From it ensure one's right of respect, and also the duty to respect others. Positive freedom for authors underscores authorial rights as well as authorial duties of respect. While rights have been widely discussed in copyright doctrine, duties have only recently come forward expressly. I submit that authorial freedom in copyright should be understood as duties of respect.

In the discussion below, the nature of positive freedom is developed. Part II explores freedom and obligation, which give rise to duties of respect. The freedom of and respect due to authors and speakers are discussed in Part III, within the framework of the ethics of communication that the two philosophical systems embrace. Part IV delves into the particular rights and duties of respect in current copyright doctrine, which can be seen as reflecting a notion of authorial positive freedom. Examples of legal requirements mandating such respect are brought from U.S. and Israeli law. It is seen that when copyright is understood as positive freedom it is both deontological and with a telos of respect, thus bridging elements in the discord presumed
between the deontological Continental droit d'auteur system and the instrumental Anglo-American copyright model. Part V offers concluding remarks.

SIMILAR FACTS, DIFFERENT OUTCOMES: A COMPARATIVE STUDY OF THE GOOGLE BOOKS PROJECT CASE IN CHINA AND THE UNITED STATES
by Yong Wan

On April 18, 2016, the U.S. Supreme Court denied the Authors Guild's petition for certiorari without explanation. This means that the Second Circuit's decisions that affirmed the judgment of the Southern District of New York ("SDNY") stands, that the Google Books Library Project's ("Google Books") copyright was highly transformative and satisfied the fair use test provided by § 107 of the U.S. Copyright Law's test.

Despite Google's victory in the United States, the Chinese courts ruled otherwise. The First Intermediate Court of Beijing ruled that Google's unauthorized scanning of a copyrighted book did not qualify as a free use, but the making snippets of the book available to the public was, and Google was ordered to cease acts of copyright infringement by removing the plaintiff's work from Google's server and to pay damages. It was interesting that the court in Beijing introduced the concept of "transformative use" from U.S. law, and regarded it dispositive in determining the making snippets available conduct as a free use.

The First Intermediate Court's judgment was affirmed in part and reversed in part on other grounds by the Beijing Higher Court, which took into account the scanning and making snippets available activities of Google as a whole, and adopted a different approach to determine whether an act is a free use or not: an open, factor-based mechanism was introduced, which is a mixture of the U.S. fair use doctrine and a three-step test. The appeal court held that Google lost since it did not provide sufficient evidence to demonstrate that its activities constituted free use.

Why did Google win the case in the United States, but lose in China? The goals of this article are to show the differences in the copyright exceptions system between China and the United States, and to highlight how China may learn from the U.S.'s flexible fair use doctrine.

STATUTORY DAMAGES FOR COPYRIGHT INFRINGEMENT IN CHINA: 'ALIENATION' AND 'REDEMPTION'
by Guangliang Zhang

Statutory damages as remedies for copyright infringement originated with the United States copyright act. The initial purpose for prescribing statutory damages in the U.S. was to reduce the burden of proof for damages of the right holders and to enhance the efficiency of the proceedings. Statutory damages for intellectual property infringement in China have been established step by step, starting with court decisions and judicial interpretations. A lack of clear understanding leads to the "alienation" of the application by Chinese courts of statutory damages, which have deviated from their original function and purpose. For instance, the ceilings of
statutory damages have been increased in amendments of intellectual property laws; statutory damages have been given such function that it should not undertake, such as punishing infringers and have become a major method of awarding damages. Such deviation in the use of statutory damages, on a microcosmic level, has affected the functions of damages for intellectual property infringement, while on a macrocosmic level it has a direct impact on the realization of the legislative objectives of intellectual property law. Therefore, the system of statutory damages for intellectual property should be "redeemed," i.e., redesigned in China to the extent that it can fully serve its original function.

This article will explore current issues regarding statutory damages for copyright infringement in China by analyzing the current manifestations and consequences of the deviation in its use, and will propose to redesign a system with a solution that properly computes the amount of compensation for copyright infringement by way of statutory damages. Part I introduces the origins and function of statutory damages for copyright infringement and criticisms thereof. Part II analyzes the evolution of statutory damages for copyright infringement, the deviation from its original function and the consequence thereof. Part III proposes a solution to redesign copyright law in China in respect to statutory damages.

A CANADIAN PERSPECTIVE ON FLETCHER V. DOIG
by Andrea Rush

When famous artist Peter Doig denied authorship of a painting which had been created in Canada and was offered for sale in the U.S., he was sued under U.S. law. Plaintiffs alleged tortious interference with prospective economic advantage by falsely telling Leslie Hindman Auctioneers that Doig did not paint the work, with the knowledge that this would lead Hindman to decline to auction it. The plaintiffs also sought a declaratory judgment that Doig painted the work. The oral decision of District Judge Gary Scott Feinerman has been widely reported in the media.

The artist enjoys an international reputation, and the market for his work is international. The painting was created in Canada. Could an alternative analysis under Canadian law, produce the same consequences?

Identification of authorship is a necessary pre-requisite to determine eligibility for protection under the copyright laws of Canada, as a member of the Berne Union. Moral rights are also tied to first authorship pursuant to the Canadian Copyright Act.

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COPYRIGHT COURT: A NEW APPROACH TO RECAPTURING REVENUE LOST TO INFRINGEMENT: HOW EXISTING COURT RULES, TACTICS FROM THE “TROLLS,” AND INNOVATIVE LAWYERING CAN IMMEDIATELY CREATE A COPYRIGHT SMALL CLAIMS PROCEDURE THAT SOLVES BITTORRENT AND PHOTO PIRACY
by Morgan E. Pietz
When it comes to enforcement of copyright, there is one thing upon which most can agree: the current system in the United States is not very good. Or, to put it perhaps more accurately, the Copyright Act of 1976, which was largely negotiated in the 1950s and 1960s, was never designed for an Internet-connected world. Thus, when the U.S. Congress gave us much of the key legal framework that currently governs the modern information economy, the telegraph was still on the cusp of being replaced by the fax machine and most music was sold on vinyl records. Little wonder, then, that Maria Pallante, the former Register of Copyrights, testified to Congress in 2013 that our copyright law “is showing the strain of its age and requires your attention.” Sadly, if predictably, Congress has yet to heed the former Register’s clarion call.

The notion of the “Billion Dollar iPod” starkly illustrates the trouble with having analog legal rules govern a digital reality. Suppose a nineteen-year-old has packed his or her iPod to capacity with music obtained via BitTorrent, all of which is infringing. These days, an iPod or other device might hold up to 40,000 songs, depending on the exact model. If the infringement is assumed to be willful, such that the cap on statutory damages increases to $150,000 per work, then the teenage menace wielding this illicit iPod is potentially liable to rights holders to the tune of $6 billion. This example merely shows the logic of the current law taken to an extreme that is now as technologically feasible as it is absurd.

On the other hand, copyright owners are rightly frustrated that infringement is widespread and hard to stop. The Digital Millennium Copyright Act (“DMCA”) largely let Internet intermediaries off the hook, as long as they comply with the DMCA’s “notice and takedown” procedures. Thus, the onus for policing Internet infringement was largely shifted onto rights holders. Making matters worse, the DMCA takedown procedure is seen by content owners as an ineffective and expensive game of whack-a-mole that seldom succeeds in permanently removing infringing content, once such content is disseminated online.

Moreover, the traditional federal litigation is so prohibitively expensive that, for many copyright owners, relief from the courts is not a practical solution. According to the American Intellectual Property Law Association’s annual survey in 2015, the median litigation cost to take a copyright infringement case where “less than 1 million” is at stake through to the close of discovery was $250,000. Given that kind of potential expense, suing average people and small businesses one at a time, who likely “cannot pay anywhere near the amounts awarded,” even if they were found liable, is something most content owners see as futile. Moreover, the idea of hitting people who might be the rights holders’ biggest fans with hundred-thousand-dollar-plus judgments is problematic from a publicity perspective.

Against the foregoing backdrop, the concept of a small claims court for copyright infringement has been picking up steam in Washington, D.C. This idea, in its most basic form, is that there needs to be a more streamlined and cost-effective way for content owners to use the courts to curb infringement, in exchange for which content owners would substantially limit the amount of statutory damages they might seek to recover from defendants.

Such an approach solves a key problem for both sides. The defendants avoid the prolonged uncertainty and potential life-altering financial ruin associated with defending themselves in
federal litigation and the threat of astronomical statutory damage awards; and in return for agreeing in advance to limit potential damagers they might recover, the plaintiffs receive a much-needed, more cost-effective way to aggregate and pursue claims, as compared to full-scale federal litigation.

This article argues that an opt-in copyright small claim procedure can — and should — be implemented right now using existing Federal Rules of Civil Procedure. There is no need to wait for Congress to act. Copyright owners who are already tracking how their works are infringed could execute on this concept immediately.

How can existing rules be used to put a copyright small claims procedure into effect? After filing a complaint for infringement, a plaintiff moves under Rule 21 to join multiple defendants “on just terms.” Simultaneously, the plaintiff also moves under Rules 53(a)(1)(A) to have the case referred to a “Special Master,” by consent of the parties, to oversee proceedings for all purposes. The “just terms” that support discretionary joinder consist of a set of ground rules for the proceeding before the Special Master that are mutually agreed by the parties, and which include a limitation on liability for the defendants, a set formula for calculating settlements, and highly streamlined procedures. Discovery could, in many cases, be reduced to a single questionnaire, with the Special Master making any necessary factual or legal determinations on the papers, via phone, or by video conference. The Special Master’s mandate would include adjudicating challenges to the plaintiff’s registrations and evidence, as well as the validity of defenses such as fair use. If necessary to identify defendants (e.g., if the defendants are identified only by the IP address they allegedly used to “share” a file using BitTorrent, or if the infringer issuing a website hiding behind a privacy proxy service), the plaintiff also moves under Rule 26(d)(1) for leave to conduct early discovery. In short, a series of somewhat novel and interrelated motions, if granted, would create an opt-in small claims procedure, to be overseen by a Special Master, according to certain pre-approved rules (the “Copyright Small Claims Court” or “CSCC”).

Section II, which follows, covers the basics of how the Copyright Office has suggested that a copyright small claim system could succeed, explains why many think such a system is a good idea, and also discusses recent proposed legislation. In July of 2016, Representative Hakeem Jeffries (D-NY-8) introduced the “Copyright Alternative in Small-Claims Enforcement ("CASE") Act of 2016,” which largely builds off the extensive work already done in this area by the Copyright Office and the Internet Policy Task Force of the Department of Commerce (the “Task Force”). Both the Copyright Office and Department of Commerce Task Force, which came out in favor of a copyright small claim procedure, conducted public hearings around the country and prepared detailed reports summarizing why it appears that an emerging consensus of different stakeholders support a CSCC concept. Section III explains how a copyright small claims procedure can be implemented now, within the confines of existing court rules, with reference to relevant case law that has arisen in “copyright-troll” type litigation. Finally, Section IV goes into greater detail as to what possible rules would be for the CSCC procedure itself, and attempts to anticipate and address certain issues and concerns that would be likely to arise if and when the plan proposed here is actually implemented.
EXPANDING FAIR USE: THE TROUBLE WITH PARODY, THE CASE FOR SATIRE
by Roger L. Zissu

In selecting the topic, I decided to speak on some substantive, bread and butter aspect of the law of copyright that did not focus on advances in technology or the Internet. What I finally came up with is a revisit to fair use. I say “revisit,” because in my counting, since the first Brace Lecture in 1970, at least one fourth of our prior lecturers have selected the fair use doctrine or some aspect of its application as their topic.

My reasons for returning to fair use are, first, that this defense goes to the intersection of the limited monopoly of copyright with the core of our basic constitutional free speech rights, the foundation underlying free thought, and the consent of the governed to achieve representative, democratic government. Much more than commercial interests are affected by the existence of a constitutionally-based limited copyright monopoly in an author’s expression. The other side of the coin is the liberty to read, hear and see what we wish for our entertainment and amusement, as well as for our thoughts and the necessary social comment essential to daily life in our society.

Second, my choice of fair use also stems from my experience with the fair use limitation on copyright in both my litigation and counseling practice and in the contribution I made to the festschrift for Professor Benjamin Kaplan in Mathew Bender’s 2005 republication of his classic 1967 Carpentier Lectures, entitled “An Unhurried View of Copyright” — my piece explored a fair use exception for humorous uses.

I have in mind addressing tonight a specific kind of unauthorized use that I believe deserves encouragement and merits positive weight in fair use evaluation, but that the courts have been reluctant to consistently embrace, at least, in their enunciation of the governing standard. That is, borrowing for satire.

In this evening’s presentation, I will assume your familiarity with the nature of the fair use defense, including its historical underpinning and purpose, as well as the four statutory fair use factors listed in § 107 of the 1976 Copyright Act. While critical of the imprecision and on occasion particular case results, or of the remedy of injunction for unauthorized derivative works, our earlier lecturers, along with others who have written or spoken on fair use, have all accepted or resigned themselves to the fact that in the absence of any clarifying amendments to the stature itself, there are no bright-line rules, and the decisions in litigated cases and controversies will inform and fill out the meaning of fair use for some time to come. My own view is the same as that expressed by the Congress in 1976: that “no generally applicable definition is possible and each case must be decided on its own facts.”
Conceptual and video artworks generally resist reduction to a single, material object. Nevertheless, there remains a robust market for them. Buyers of conceptual pieces will often acquire plans and certificates of authenticity, essentially instructions for realizing the work, rather than a particular physical article. Collectors of video art, for their part, generally attain a copy of the video embedded in a disc or file of some sort. In other words, they attain digital information. Because these artworks lack a core tangible object, however, they depend heavily on copyright licenses to be realized, performed or shown. This, in turn, makes them uniquely vulnerable to the Copyright Act’s termination provisions. In particular, artists and their statutory successors may use their inalienable termination rights years later to deny collectors and museums the ability to recreate or publicly show the works. The issue is particularly acute given the importance of fair market tax valuations to the contemporary art market and museums that benefit from charitable donations, and the potential impact termination rights could (and should) be having on the value of fundamentally conceptual pieces. This piece accordingly explores the threat that copyright termination rights pose to the museums and private individuals who collect artworks lacking a tangible art object.

COPYRIGHT PROTECTION OF SPORTS PROGRAMS IN CHINA
by Wei Liu and Jiarui Liu

While the increasing importance of the Chinese sports industry calls for effective legal enforcement against online sports piracy, courts are currently divided over potential legal mechanisms to protect sports programs, between copyrights, neighboring rights, and anti-unfair competition laws. This article argues that copyrights are clearly superior for three reasons: First, sports programs fit squarely into the definition of cinematographic works, and may be original without regard to screenwriting, directing, and acting. Second, only copyright protection may provide rightholders with sufficient legal remedies against digital sports piracy covering both non-interactive streaming and interactive on-demand transmission. Most importantly, rightholders who strive to explore overseas markets or import foreign programs into the Chinese market would receive national treatment and other legal protections from international copyright treaties such as the Berne Convention and the TRIPs Agreement.

BROWSEWRAPS, FAIR DEALING AND BLACKLOCK’S REPORT V. CANADA: A CRITICAL COMMENTARY
by Barry Sookman

Blacklock’s Reporter is a small Canadian online news agency. Like many publishers it has challenges in enforcing its copyrights against unauthorized digital copying. To protect its rights it uses a subscription model to license content. It attempts to keep materials from unauthorized access and distribution by using a paywall. Recently the Federal Court in 1395804 Ontario Ltd. (Blacklock’s Reporter) v. Canada (Attorney General), 2016 FC 1255 concluded that the copyright in Blacklock’s news articles was not infringed when copies of articles lawfully obtained under a subscription by one subscriber were emailed to the Department of Finance and
were then forwarded to others within the department. The court found the copying was a fair dealing, an exception from infringement under the Copyright Act.

The decision is important as it addresses both the enforceability of (online) browsewrap agreements and the scope of the fair dealing copyright exception for research. The decision contains many troubling findings and statements about the law which leaves one questioning whether the decision was correctly decided.

The facts in the case were not really in dispute. Blacklock’s published two articles on the subject of a “Sugar Tax”. The articles were only made available pursuant to a paid subscription. The articles were otherwise protected by use of a password protected paywall that prevented access. Blacklock’s posted Terms and Conditions on its site (the “terms”) that set out the authorized and prohibited uses of its content. To enforce its rights it relied on both its copyrights and a browsewrap online contracting process.

The two articles were downloaded by the president of the Canadian Sugar Institute, one Sandra Marsden. She was concerned about the accuracy of the first article and subscribed to Blacklock’s so she could legally access it. She was worried that the article could damage her reputation with the Department of Finance (the Department) so she emailed a copy of the article and a second one she also obtained access to under her subscription on the same topic to Mr Halley of the Department. The articles were then forwarded by email to others within the Department. In total each article was emailed to four other individuals for a total of six individuals who received copies of articles allegedly not licensed by Blacklock’s.

There were two central issues in the case. First, whether Blacklock’s terms permitted or prohibited the copying and distribution in issue. Second, whether the copying and distribution of the articles within the Department was a fair dealing for copyright purposes. The court found the terms unenforceable and the copying to be fair dealings.

SHAPE SHIFTERS: SEARCHING FOR THE COPYRIGHT WORK IN KINETIC LIVING ART
by Jani McCutcheon

In Kelley v. Chicago Park District, the Seventh Circuit held that the changeable nature of a living wildflower garden meant it lacked sufficient “stable fixation” to be a copyright work. This article challenges that conclusion, explaining how the court incorrectly distorted the statutory definition of fixation. It argues that a more persuasive explanation for Kelley is an assumption that gardens are fundamentally precluded from being a copyright “work.” This article interrogates that assumption. It closely probes the meaning, boundaries, and importance of the “work” in copyright, and the difficulties in defining it. In doing so, the article expands nascent, but growing, scholarship on the copyright work itself as a discrete area of enquiry. The definition of the copyright work is elusive, and it is suggested that it may only be possible to define it as the intellectual conception of an author that emerges from copyright’s exclusionary filtration process. However, the article identifies other pressures that contain the copyright work.
It argues that works must also be identifiable, a condition problematized by kinetic creations, and it notes that a persistence in conflating the work and copyright’s enumerated subject matter has the practical effect of binding the work to those listed items. The article then considers the broader implications of Kelley for copyright in kinetic contemporary art, particularly when that kinesis is generated by living elements. The article argues that copyright works can be kinetic, and that kinetic works can be fixed, provided the work is identifiable in the changeable creation. It then investigates some of the broader practical and policy ramifications flowing from conferring copyright on gardens and other creations incorporating elements of living kinesis, and explains how the theoretical possibility of copyright (and moral rights) in gardens is probably eclipsed by a number of practical obstacles, all of which are ultimately founded on an anxiety about enclosing and maintaining certainty in subject matter.

NOTICE AND TAKEDOWN: ONLINE SERVICE PROVIDER AND RIGHTSHOLDER ACCOUNTS OF EVERYDAY PRACTICE
by Jennifer M. Urban et al.

Section 512 of the Digital Millennium Copyright Act established both “safe harbors” from liability for online service providers and the well-known “notice and takedown” process for removing online infringements of copyrighted material. In the ensuing two decades, the notice and takedown process has become a primary tool for raising and resolving copyright disputes in the United States.

But despite its influence, there is little empirical research describing § 512’s operation or its effectiveness. This article digests findings from a qualitative study, reported fully in the three-study report, Notice and Takedown in Everyday Practice, that helps fill this gap. Through detailed surveys and interviews with nearly three dozen respondents, we provide the first detailed account of how § 512 is implemented and experienced by online service providers and large rightsholders. All respondents agreed that the § 512 safe harbors and the ability to take down infringing material remain fundamental. But the online copyright enforcement ecosystem is also highly diverse, and all participants face challenges. The findings suggest that the notice and takedown system is important, under strain, and that there is no “one size fits all” approach to improving it. Based on the findings, we suggest a variety of best practices and limited legal reforms.

COPYRIGHT AND RELATED RIGHTS IN CANADA AND ABROAD: A VIEW TOWARDS A MORE GLOBALLY UNIFIED SYSTEM OF NEIGHBOURING RIGHTS
by James A. Hayes

Although the Rome Convention sets an international standard for the protection of music makers’ neighbouring rights, performers from different countries or jurisdictions are afforded differing compensatory schemes for the public performance of their sound recordings. 2017 is mandated per section 92 of the Canadian Copyright Act as the year in which “a committee of the Senate, of the House of Commons, or of both Houses of Parliament is to be designated or
established for the purpose of reviewing this Act.” The challenge motivating this article is to identify areas of legal disparity, to suggest suitable approaches to institutional change, and to attempt to balance international differences to envisage a more coherent cross-border neighbouring rights framework. The article starts with an original overview of Canadian, American, and European neighbouring rights law. It proceeds to examine sources of differentiation between international neighbouring rights frameworks from a Canadian perspective. It then proposes some modest reform to Canadian copyright law based on the previously enumerated data and analysis. The article concludes by suggesting future research directives.
VIII. COPYRIGHT LAW JOURNAL ARTICLES

January 2017

COPYRIGHT LAW & THE DRUMMER
by Ronojoy Rasu on 4/21/16
URL: https://ssrn.com/abstract=2888267

Recent relevant judicial decisions in the US suggest that the question of subsistence of originality in drum beats remains a subject of debate. Unbeknownst to the non-musical world, this question continues to gather momentum and poses some rather interesting questions about degree and threshold of creativity and applicability of Copyright law. This paper explores the copyright-ability of drum patterns, the position of US and Canadian laws on the subject and under what circumstances may such beats be accorded copyright protection.

RISE OF THE API COPYRIGHT DEAD?: AN UPDATED EPITAPH FOR COPYRIGHT PROTECTION OF NETWORK AND FUNCTIONAL FEATURES OF COMPUTER SOFTWARE
by Peter S. Menell on 1/3/2017
URL: http://ssrn.com/abstract=2893192

After a decade of bruising legal battles, the courts and software industry norms largely resolved the costly war over the scope of copyright protection for computer software. By the late 1990s, freedom to develop interoperable devices, systems, and software triumphed over broad copyright protection for network features of computer software. Copyright peace prevailed throughout the software industry for the next 15 years. But in 2010, Oracle reignited the smoldering embers of that war when it brought suit alleging that Google infringed copyright in the Java application program interface packages (APIs)...

This article updates and expands upon an earlier “epitaph” for copyright protection of network features of computer software to address the second API copyright wave. As background, Part I reviews the first wave of API copyright legislation and litigation. Part II examines the Oracle v. Google litigation, tracing the development of Java and Android and the subsequent (and still ongoing) battle over the scope of copyright protection for APIs. Part III critically analyzes the Oracle v. Google decisions. It explains that copyright law’s fundamental exclusion of protection for functional features dictates that the labeling conventions and packaging of functions within interface specifications generally fall outside of the scope of copyright protection even as implementing code garners thin copyright protection. This interpretation of copyright law comports with fundamental principles channeling protection among the modes of intellectual property. It also serves the larger goals of intellectual property law and competition policy.
3D printing is a field of technology, which enabled the manufacturing of physical objects from three-dimensional digital models.

The discipline of copyright law has been challenged and disrupted by the emergence of 3D printing and additive manufacturing. 3D Printing poses questions about the subject matter protected under copyright law. Copyright law provides for exclusive economic and moral rights in respect of cultural works – such as literary works, artistic works, musical works, dramatic works, as well as other subject matter like radio and television broadcasts, sound recordings, and published editions. Copyright law demands a threshold requirement of originality. There have been sometimes issues about the interaction between copyright law and designs law in respect of works of artistic craftsmanship. In addition, 3D printing has raised larger questions about copyright infringement. There has been significant debate over the scope of copyright exceptions – such as the defence of fair dealing, and exceptions for cultural institutions. Moreover, there has been debate over the operation of digital copyright measures in respect of 3D printing. The takedown and notice system has affected services and sites, which enable the sharing of 3D printing designs. Technological protection measures – digital locks – have also raised challenges for 3D printing. The long duration of copyright protection in Australia and the United States has also raised issues in respect of 3D printing.

There has been great public policy interest into how copyright law will address and accommodate the disruptive technologies of 3D Printing. As a public policy expert at Public Knowledge, and as a lawyer working for Shapeways, Michael Weinberg has written a number of public policy papers on intellectual property and 3D Printing. Associate Professor Dinusha Mendis and her colleagues have undertaken legal and empirical research on intellectual property and 3D printing. In 2015, Professor Mark Lemley from Stanford Law School wrote about intellectual property and 3D printing in the context of work on the economics of abundance. As a practising lawyer, John Hornick has examined the topic of intellectual property and 3D printing. Comparative legal scholar Dr Angela Daly has written on the socio-legal aspects of 3D printing in 2016. The World Intellectual Property Organization in 2015 highlighted 3D printing.

3D printing has provided new opportunities for cultural institutions to redefine their activities and purposes, and engage with a variety of new constituencies. 3D printing has also highlighted deficiencies in copyright law in respect of cultural institutions. Culturally and technologically specific exceptions for libraries, archives, and cultural institutions have proven to be ill-adapted for an age of 3D printing and makerspaces. The Australian Law Reform Commission has highlighted the need to modernise Australia’s copyright laws for the digital age. Likewise, the Productivity Commission has considered the question of copyright exceptions in its study of intellectual property arrangements in 2016. The Turnbull Government has contemplated somewhat more modest copyright reforms, with the draft legislation in the Copyright Amendment (Disability Access and Other Measures) Bill 2016 (Cth). Libraries, galleries,
museums, and archives would all benefit from flexible copyright exceptions for cultural institutions to take full advantage of the possibilities of digitisation and 3D printing.

**INTELLECTUAL PROPERTY IN CREATIVE INDUSTRIES: THE ECONOMIC PERSPECTIVE**
in Research Handbook on Intellectual Property and Creative Industries by Christian Handke on 12/28/16
URL: https://ssrn.com/abstract=2893066

This chapter discusses essential elements of an economic analysis regarding the socio-economic implications of intellectual property (IP). The aim is to help scholars from various disciplines interested in the economic reasoning behind IP for creative industries to recognize logically consistent and well-rounded assessments or to develop them themselves. The chapter covers: (1) a general introduction to the economic perspective on IP; (2) the application of economic theory to address the implications of unauthorized use and copyright protection; (3) empirical evidence on the effects of copyright protection on rights holder revenues and innovation as well as alternatives to copyright to help finance creativity; (4) key topics in the relatively extensive economic literature on patents and how it may inform research on IP in creative industries. It also (5) points out new issues regarding IP in creative industries in the context of digitization.

**VESTED USE-PRIVILEGES IN PROPERTY AND COPYRIGHT**
in Harvard Journal of Law and Technology by Christopher M. Newman on 1/10/17
URL: https://ssrn.com/abstract=2897083

The notion that, “If it’s mine, I can do whatever I want with it” continues to have strong popular appeal as describing one of the implications of property ownership. Indeed, this notion is coming to be pressed into service as a source of normative objection to the scope of certain intellectual property laws which have the effect of limiting what consumers can do with chattels they otherwise own. Yet in property theory the status of use-privileges has long been dubious, with the right to exclude instead taking center stage. This essay considers the nature of a “vested use-privilege” from both analytical and positive law perspectives, offering both a formal account of what it would mean for such an entitlement to exist or be infringed and a discussion of both the extent to which such an entitlement actually exists in extant property law and the extent to which copyright law should be regarded as conflicting with it.

**MEET THE NEW MEDIA, SAME AS THE OLD MEDIA: REAL LESSONS FROM CHINA'S DIGITAL COPYRIGHT INDUSTRIES**
in George Mason Law Review by Eric A. Priest on 1/20/2017
URL: http://ssrn.com/abstract=2901073

Some commentators argue that China, with its piracy-beleaguered content industries, is ideally positioned to leapfrog the West in “post-scarcity, post-copyright” business models. This short
essay puts those claims to the test by examining a decade of developments in China’s video/film, music, and book publishing industries. Those developments suggest Chinese content producers and even online intermediaries increasingly embrace monetization models based on copyright and exclusion.

A DEVELOPMENT OF HUNGARIAN COPYRIGHT LAW UNTIL THE CREATION OF THE FIRST COPYRIGHT ACT (1793-1884)
by Peter Mezei on 12/27/16
URL: https://ssrn.com/abstract=2890496

The study attempts to outline the development of Hungarian copyright law from 1793 until the enactment of Act XVI of 1884. This study primarily focuses on Hungarian events; however, it is inevitable to set our sight beyond borders at points and evoke especially German, Austrian and French events which the Hungarians were paying undivided attention to as well. The chapters of the paper introduces the emergence of the concept of copyright law in the early 19th century, as well as the legislative proposals from the middle of the 19th century. Finally, the most important elements of the first copyright act of Hungary are also outlined.

INCIDENTAL INTELLECTUAL PROPERTY
in Entertainment and Sports Lawyer by Brian L. Frye on Winter 2017

As Mark Twain apocryphally observed, “History doesn’t repeat itself, but it often rhymes.”

STRATEGIES FOR DISCERNING THE BOUNDARIES OF COPYRIGHT AND PATENT PROTECTIONS
in Notre Dame Law Review by Pamela Samuelson on 12/22/16
URL: https://ssrn.com/abstract=2908496

Copyright and utility patent laws have historically regulated different types of intellectual creations. Copyright protection has been available for original works of authorship, and utility patent protection for inventive technologies. Overlaps in these two types of intellectual property (IP) rights have largely been avoided through the very different statutory subject matters of each law’s protection, as well as through channeling doctrines that courts have developed to manage the boundaries when statutory subject matter differences alone have not sufficed.

The copyright and utility patent regimes differ not only in their subject matters, but also in the starkly distinctive mechanisms by which protection arises and the duration for which protections last. Courts have long recognized that creators might be tempted to bypass the rigorous requirements for patenting if they could more easily and cheaply get much longer-lasting exclusive rights in their innovative products by asserting copyright in them.
Notwithstanding this temptation, it has been relatively rare for creators to assert both copyright and utility patent protections in the same intellectual creations. Yet it has happened on occasion. One such claim arose in Baker v. Selden whose plaintiff contended that copyright protected the novel bookkeeping system disclosed in the author’s book, a system for which Selden had sought, but apparently had not obtained, a utility patent. In Baker, the Supreme Court rejected Selden’s claim and seemingly endorsed a categorical exclusivity approach under which intellectual creations should be understood to be eligible for either copyright or utility patent protection, but not for both. The principal authority that has regarded overlapping copyright and utility patent protections to be unproblematic has been the Nimmer copyright treatise. The treatise’s treatment of the copyright/utility patent overlap issue is, however, deeply flawed. Those flaws notwithstanding, the Supreme Court has been skeptical of categorical exclusivity arguments in some intellectual property (IP) cases. This skepticism suggests the need for more nuanced strategies when attempting to discern the proper boundaries of copyright and utility patent protections than the one-or-the-other-but-not-both approach endorsed in Baker or the overlaps-are-fine approach endorsed in the Nimmer treatise.

When presented with copyright claims as to seemingly ambiguous subject matters, such as toys, puzzles, and computer programs, courts and the Copyright Office have developed several different responses. The most common has been a layering or segmentation approach under which courts treat some aspects of an intellectual creation as protectable by copyright law (e.g., an original drawing of a parachute), while other aspects may be protectable, if at all, by utility patents (e.g., design of a parachute). But five other strategies for determining copyright and utility patent boundaries are evident in the literature, each of which has sought to preserve separate and distinct domains for copyright and utility patent protections.

February 2017

COPYRIGHT TO THE RESCUE: SHOULD COPYRIGHT PROTECT PRIVACY?
in UCLA Journal of Law and Technology by Deidre A. Keller on Spring 2016
URL: https://ssrn.com/abstract=2906094

In the summer of 2015 the news of the leak of data associated with Ashley Madison hit. Many may have missed the copyright angle to that news story - Ashley Madison sought to use the Digital Millennium Copyright Act's takedown provisions to secure its customer's data. This piece considers the normative question of whether copyright ought to protect privacy by first considering the extent to which the normative bases for protection of copyright and privacy are complementary or in conflict and the history of the relationship between copyright and privacy. The piece notes the recent use of copyright in various cases to protect against incursions upon privacy and considers the benefits and problems associated with those uses; specifically, I argue that whatever role copyright has to play in protecting privacy, treating any such privacy right as one with constitutional dimensions is out of line with both copyright's constitutional basis and right to privacy theory and jurisprudence. Thirty years ago in Harper & Row Publishers, Inc. v. Nation Enterprises, 471 U.S. 539 (1985) the Supreme Court blurred the line between the tort of the right to privacy and the constitutionally protected right to privacy in the context of copyright. This piece argues that rather than continue down that convoluted road, we ought to return to the
principles embodied by the common law right of first publication by statutorily adopting the moral right of first disclosure. Finally, the piece suggests that any federal privacy legislation aimed at protecting against invasions of privacy on the internet utilize, as a starting place, the DMCA's remedial provisions.

UK COPYRIGHT AND THE LIMITS OF MUSIC SAMPLING
by Julie Ewald & Paul G. Oliver on 1/13/2017
URL: https://ssrn.com/abstract=2898820

Music sampling is the act of taking a piece of an existing sound recording (the sample) and then using it in a new track. Sampling an original work without permission can infringe its copyright and therefore lead to lawsuits. There has still not been settled a single lawsuit regarding music sampling in the UK courts. It is therefore unclear to what extent music sampling can be used without infringing copyright. The overall aim of this paper is to establish the limits of music sampling and thereby determine whether music sampling could be used without infringing copyright laws.

The literature review establishes the history and development of music sampling and determines the applicable laws. It also determines that there are two main exceptions to copyright; fair dealings and de minimis, which will be considered in the analysis.

The methods used to analyse these two exceptions to copyright are the critical legal doctrine and the black letter analysis, which means that the analysis is based upon the statutes and case law. Due to the lack of UK case law, it is necessary to focus primarily upon case law from the US. Additionally, a survey was conducted to gather quantitative data regarding the use and perception of music sampling and its legality.

In the analysis the two exceptions to copyright are considered. It is found that the fair dealings exception cannot be applied upon music sampling, while the de minimis exception can be applied, if the sample is not substantially similar to the original work. This meant that a sample could only be considered as "de minimis" in some very limited circumstances. Finally, it is showed how musicians believe that this current legal situation regarding music sampling can have a limiting effect upon their creativity.

Overall, it is determined throughout this paper that the current copyright laws do not reflect the technological changes that has enabled musicians to unfold their creativity through "new" methods such as music sampling. It is therefore necessary that both the current law and their interpretation in courts are more relaxed in order not to damage the creative expression.

WALTER V. LANE (1900)
in Lanmark Cases in Intellectual Property Law by Barbara Lauriat on 2/6/17
URL: https://ssrn.com/abstract=2912615
Originality is a cornerstone of contemporary copyright law; in order to receive protection, works must be 'original'. One of the persistent challenges for the courts has been identifying when a copy of a work can itself be an original work. This question of protecting copies of other works arose before originality was even a statutory requirement. In the seminal case of Walter v. Lane (1900), the House of Lords decided that verbatim reports in The Times of speeches given by the politician Lord Rosebery were protected under the existing copyright legislation. Walter v. Lane is a seminal copyright case still cited in 21st-century judgments. But it was also a principled personal conflict, with the Bodley Head publisher John Lane (1854-1925) and Liberal editor Charles Geake (1867-1919) on one side and Charles Frederic Moberly Bell (1847-1911), the Managing Director of The Times, on the other. This feud caused embarrassment and upset to Lord Rosebery himself, a friend to both Moberly Bell and Geake, who found himself caught in the middle. This chapter examines the legal and personal context of Walter v. Lane and challenges other interpretations of its holding. It argues that the primary legacy of the case comes from the principle that the law should protect works that are products of editing, re-creation, preservation, conservation, or reconstruction where they are the result of intellectual skill and labour and there exists a public interest in the relevant acts of copying.

A 'THIRD WAY' OUT OF THE COPYRIGHT THICKET?
in Intellectual Property Journal by Lili Levi on 2/24/2017
URL: https://ssrn.com/abstract=2921523

This Essay is an invited submission, reviewing Abraham Drassinower's book "What's Wrong With Copying?"

NOTICE AND TAKEDOWN IN THE DOMAIN NAME SYSTEM: ICANN'S AMBITIVALENT DRIFT INTO ONLINE CONTENT REGULATION
URL: https://ssrn.com/abstract=2920805

This article maps ICANN's ambivalent drift into online content regulation through its contractual facilitation of a "trusted notifier" copyright enforcement program between the Motion Picture Association of America (MPAA) and two registry operators for new gTLDs, Seattle-based Donuts and Abu Dhabi-based Radix. The trusted notifier program is among a growing number of privately negotiated voluntary enforcement agreements between corporate copyright holders and Internet intermediaries. It is the first of its kind, however, to rely on stewards of the Internet's core technical functions. And that makes it different from the others in a way that implicates Internet infrastructure and governance.

After discussing ICANN's history, mission, and circumscribed role in the resolution of disputes over trademarks in domain names, this article reckons both descriptively and normatively with the fact that registry operators are now acting - without precedent but with ICANN's blessing - as private copyright enforcers. No matter how vehemently ICANN officials insist that they are minding the limits of their mission, the truth of the matter is that ICANN knowingly created a
contractual architecture for the new gTLDs that supports a program of private, DNS-based content regulation on behalf of copyright holders and, potentially, other "trusted" parties. Moreover, in creating that architecture, ICANN did nothing to secure any procedural protections or uniform substantive standards for domain name registrants who find themselves subject to this new form of DNS regulation. That omission should be a red flag for those who worry that ICANN's newly minted independence from the U.S. government will make its internal governance more susceptible to capture by powerful commercial and governmental interests.

For now, "trusted notifier" takedowns in the DNS are limited; however, demands on intermediaries for stronger online content regulation across the board are only growing. It is easy to imagine programs like the MPAA's expanding in the near future to serve a much wider universe of notifiers - including private and governmental actors targeting what they will identify as fake news, hate speech, and terrorist propaganda. Lack of transparency and due process in such programs will make them inherently vulnerable to inconsistency, mistake, and abuse and could transform the DNS into a potent tool for suppressing disfavored speech.

A 'THIRD WAY' OUT OF THE COPYRIGHT THICKET?
in Intellectual Property Journal by Lili Levi on 2/21/2017
URL: https://ssrn.com/abstract=2921523

This Essay is an invited submission, reviewing Abraham Drassinower's book "What's Wrong With Copying?"

March 2017

COPYRIGHT SURVIVES: RETHINKING THE COPYRIGHT-CONTRACTS CONFLICT
URL: https://ssrn.com/abstract=2926253

Twenty years ago, copyright died. More accurately, it was murdered. In 1996, in ProCD v. Zeidenberg, Judge Easterbrook, writing for the Seventh Circuit, held that a contract that restricted the use of factual information was not preempted by the Copyright Act and therefore enforceable. The reaction among copyright scholars was swift and passionate. In dozens of articles and books, spreading over two decades, scholars cautioned that if the ProCD approach is broadly adopted, the results would be dire. Through contracts, the rights of copyright owners would run amok, expand, and in doing so they would invade, shrink, and possibly destroy the public domain. Contracts, we were repeatedly warned throughout the years, would kill copyright law.

This Article challenges this scholarly consensus by studying the 288 court opinions that have dealt with the copyright-contract conflict over the past four decades. This examination reveals surprising facts: Notwithstanding the scholars' warnings, ProCD's approach won the day and was embraced by most federal circuit courts. However, the doomsday scenarios scholars warned against did not materialize. The overall effect of contracts on the size and scope of the public domain, or over copyright law as a whole, seems minimal. The Article explains this discrepancy
and shows that contracts are an ineffective tool to control information because they are too weak of a device to threaten or replace copyright law. Indeed, to paraphrase Mark Twain, the reports of the death of copyright were greatly exaggerated.

The Article concludes by placing this analysis in context, as part of a broader ongoing discussion on the desirability and enforceability of standard-form agreements.

HOW PLAYBOY PHOTOS COMPROMISED EU COPYRIGHT LAW: THE GS MEDIA JUDGMENT
in Journal of Internet Law by Tito Rendas on 2/22/2017
URL: https://ssrn.com/abstract=2920677

Startling at it may sound in the second decade of the 21st century, hyperlinking has lately been at the forefront of the copyright and technology debate in the EU. The latest installment in the hyperlinking saga was the CJEU's preliminary ruling in the GS Media case. The fundamental question in this reference was whether the act of hyperlinking to a freely accessible website where a copyright-protected work was made available without the rightholder's authorization should be considered an infringement of the right of communication to the public laid down in Article 3(1) of the Information Society Directive. In other words, the CJEU was asked whether the foregoing behaviour falls within the scope of the broad exclusive right of communication to the public, which includes the right of making available online.

This article aims at briefly examining the GS Media judgment. Though it raises a series of new questions - which the CJEU is likely to be prompted to answer in future references - the ruling's ultimate result is a net cast too wide. This net is likely to catch uses of works that, besides not causing any discernible harm to rightholders, are essential for the normal functioning of the Internet. Under the guise of a Solomonic judgment, GS Media will have negative effects for the access and dissemination of information in the online world.

COPYRIGHT PROTECTION OF SPORT MOVES
by Peter Mezei on 2/28/2017
URL: https://ssrn.com/abstract=2925195

Creativity is the backbone of sports. Athletes might win the competitions, if they present brand new routines or exercises. In adversarial sports unexpected moves might guarantee some form of advantage of the field that might lead to success in the games. Creativity is the backbone of copyright law as well. Original works of expressions deserve economic and - where available - moral rights protection. These two types of creativity are of different nature. Nonetheless, the question arises: are sports moves and their choreographies capable to be creative and thus protectable as an author's unique artistic expression? Should Krisztián Berki receive copyright protection for the move named after him in pommel horse, Bob Cousy for his behind-the-back pass in basketball, Antonín Panenka for his penalty kick in football, Werner Rittberger for his loop jump in ice skating, Dick Fosbury for his flop in high jump or the Yawgoons for their
snowboard features? Some might argue that "the idea of a quarterback spinning in ballet slippers to the sound of Beethoven seems more ripe for a comedy than a football game". The relevance of copyright protection is, however, significant. As sports have grown to a global multi-billion-dollar business, it is not irrelevant, whether these forms of expression shall be protected for long decades even after the death of the original athletes. The chapter analyses whether sports moves and choreographies fit into the concept of originality and thus whether they are copyrightable.

UNBUNDLING THE 'TORT' OF COPYRIGHT INFRINGEMENT
in Virginia Law Review by Patrcik Russell Goold on 11/14/2016
URL: https://ssrn.com/abstract=2809957

Judges and jurists view copyright infringement as a singular legal wrong, a.k.a. the tort of copyright infringement. In recent years, commentators have expressed mounting concern about the judicial test for this tort. Courts have no unified method for determining whether two works are substantially similar. The fair use doctrine is so unpredictable that some find it nothing more than the "right to hire a lawyer." And while some judges treat infringement as a property tort, like trespass or conversion, others think of it as an economic tort, like unfair competition. Scholars therefore find the test for infringement - copyright's "infringement analysis" - to be inconsistent and incoherent.

This Article provides a revised positive theory of copyright that clarifies the infringement test. The Article argues that copyright infringement is not one singular tort, but a group of torts. Using an analytic jurisprudential method, the Article "unbundles" infringement into five "copy-torts" called consumer copying, competitor copying, expressive privacy invasion, artistic reputation injury, and breach of creative control. Because copyright infringement is not one tort there cannot be one single infringement test. Instead, copyright's basic infringement analysis mutates doctrinally and theoretically to provide a unique legal test for each of the copy-torts. The variation in the infringement analysis is not necessarily inconsistent or incoherent, but enables courts to test for the different copy-torts. Understanding the different copy-torts will therefore make the infringement analysis more predictable. Not only will practitioners better foresee how courts will apply the test to their cases, but also judges are provided with a guide to applying the correct legal standards in infringement actions. To make the analysis even more predictable, the Article proposes a method of adjudicating hard cases that will help courts conceptually separate the copy-torts, thus ensuring they apply the correct legal tests in the future.

MUSIC AS A MATTER OF LAW
in Harvard Law Review by Joseph Fishman on 3/10/2017
URL: https://ssrn.com/abstract=2931091

What is a musical work? Philosophers debate it, but for judges the answer has long been simple: music means melody. Though few recognize it today, that answer goes all the way back to the birth of music copyright litigation in the nineteenth century. Courts adopted the era's dominant aesthetic view identifying melody as the site of originality and, consequently, the litmus test for
similarity. Surprisingly, music's single-element test has persisted as an anomaly within the modern copyright system, where typically multiple features of eligible subject matter are eligible for protection.

Yet things are now changing. Recent judicial decisions are beginning to break down the old definitional wall around melody, looking elsewhere within the work to find protected expression. Many have called this increasing scope problematic. This Article agrees—but not for the reason that most people think. The problem is not, as is commonly alleged, that these decisions are unfaithful to bedrock copyright doctrine. A closer inspection reveals that, if anything, they are in fact more faithful than their predecessors. The problem, rather, is that the bedrock doctrine itself is misguided. Copyright law, unlike patent law, has never shown any interest in trying to increase the predictability of its infringement test, leaving second comers to speculate as to what might or might not be allowed. But the history of music copyright offers a valuable look at a path not taken, an accidental experiment where predictability was unwittingly achieved by consistently emphasizing a single element out of a multi-element work. As a factual matter, the notion that melody is the primary locus of music's value is a fiction. As a policy matter, however, that fiction has turned out to be useful. While its original, culturally-myopic rationale should be discarded, music's unidimensional test still offers underappreciated advantages over the "everything counts" analysis that the rest of the copyright system long ago chose.

THE GREAT GAME AND THE COPYRIGHT VILLAIN
in Transformative Works and Cultures by Elizabeth Rosenblatt on 3/15/2017
URL: https://ssrn.com/abstract=2941958

This essay explores the reactions of Sherlock Holmes fans and enthusiasts to assertions of intellectual property ownership and infringement by putative rights holders in two eras of Sherlockian history. In both the 1946-47 and 2013-15 eras, Sherlock Holmes devotees villainized the entities claiming ownership of intellectual property in Holmes, distancing those entities from Sir Arthur Conan Doyle and casting them as greedy and morally bankrupt. Throughout each era, Sherlockians did not shy away from creating transformative works based on the Holmes canon over the objections of putative rights holders. This complicates the usual expectation that copyright assertions against fans are likely to chill fan production. The essay explores possible reasons why Sherlockian fandom might differ from other fandoms in this respect, including the role of the Great Game form of Sherlockian fandom in shaping fan attitudes toward their subject.

SHAPE SHIFTERS: SEARCHING FOR THE COPYRIGHT WORK IN KINETIC LIVING ART
in Journal of the Copyright Society of the USA by Jani McCutcheon on 3/16/2017
URL: https://ssrn.com/abstract=2934699

In Kelley v Chicago Park District, the Seventh Circuit held that the changeable nature of a living wildflower garden meant it lacked sufficient "stable fixation" to be a copyright work. This article challenges that conclusion, explaining how the court incorrectly distorted the statutory definition
of fixation. It argues that a more persuasive explanation for Kelley is an assumption that gardens are fundamentally precluded from being a copyright "work". This article interrogates that assumption. It closely probes the meaning, boundaries, and importance of the "work" in copyright, and the difficulties in defining it. In doing so, the article expands nascent, but growing, scholarship on the copyright work itself as a discrete area of enquiry. The definition of the copyright work is elusive, and it is suggested that it may only be possible to define it as the intellectual conception of an author that emerges from copyright's exclusionary filtration process. However, the article identifies other pressures that contain the copyright work. It argues that works must also be identifiable, a condition problematized by kinetic creations, and it notes that a persistence in conflating the work and copyright's enumerated subject matter has the practical effect of binding the work to those listed items. The article then considers the broader implications of Kelley for copyright in kinetic contemporary art, particularly when that kinesis is generated by living elements. The article argues that copyright works can be kinetic, and that kinetic works can be fixed, provided the work is identifiable in the changeable creation. It then investigates some of the broader practical and policy ramifications flowing from conferring copyright on gardens and other creations incorporating elements of living kinesis, and explains how the theoretical possibility of copyright (and moral rights) in gardens is probably eclipsed by a number of practical obstacles, all of which are ultimately founded on an anxiety about enclosing and maintaining certainty in subject matter.

COPYRIGHT PROTECTION OF STREET ART AND GRAFFITI UNDER UK LAW
in Intellectual Property Quarterly by Enrico Bonadio on 4/4/2017
URL: https://ssrn.com/abstract=2946360

This article aims at analyzing to what extent UK copyright law is capable of regulating various forms of art placed in the streets. "Graffiti" and "street art" are the main terms used to define these artistic movements.

Particular attention is paid to whether the law is able to accommodate the needs of street and graffiti artists, and give them the right tool to protect their interests (for example, against corporations trying to commercially exploit their artworks).

The focus is on selected copyright-related aspects which are relevant to street and graffiti art, namely: (a) requirements for protection; (b) authorship and ownership; (c) tangible embodiment of the work; (d) moral rights (with emphasis on whether the integrity right could be invoked by street and graffiti artists to oppose the destruction and removal of their pieces); (e) freedom of panorama exception; (f) illegal works. The article eventually includes some reflections on whether copyright regimes might be considered unsuitable to govern street and graffiti art because of their sharing-based nature.

BLEISTEIN, THE PROBLEM OF AESTHETIC PROGRESS, AND THE MAKING OF AMERICAN COPYRIGHT LAW
in Columbia Law Review by Barton Beebe on 3/1/2017
This Article presents a revisionist account of the 1903 Supreme Court case Bleistein v. Donaldson Lithographic Co. and the altogether decisive and damaging influence it has exerted on the making of modern American copyright law. Courts and commentators have long misunderstood Justice Holmes's celebrated opinion for the majority in Bleistein in two fundamental ways. First, we have misunderstood Holmes's oft-cited declaration that a work need merely express its author's "personality" to satisfy copyright law's originality requirement. Scholars have cited Bleistein's - and our current law's - nominal originality requirement as conclusive evidence that literary romanticism did not significantly influence American copyright law. In fact, when understood in its specifically American cultural context, Bleistein's reliance on "personality" shows the profound influence that specifically American literary romanticism has had on the law. Second, we have misunderstood Holmes's equally oft-cited declaration in Bleistein that judges should refrain from judging aesthetic merit. We have read Holmes's call for judicial aesthetic neutrality as addressed, like his invocation of "personality," to copyright law's originality requirement. It was not. It was a direct response to Justice Harlan's dissenting view (and the Sixth Circuit Court of Appeals' ruling below) that the aesthetic works at issue were unprotected because they failed to satisfy the constitutional requirement, as then understood, that the works must "promote Progress" to qualify for protection under the Intellectual Property Clause.

Our misreading of these two crucial moments in Bleistein and, more importantly, of how they interrelate has had significant historiographical and practical consequences. As a historiographical matter, we have failed to appreciate the degree to which the opinion formed the principal turning point in the development of U.S. copyright law. The effect of Bleistein was to substantially advance the rise of "commercial value" as both the basis and purpose of copyright rights and to quicken the decline and eventual erasure of "personality" as a significant factor in the law. Perhaps more importantly, as a doctrinal and policy matter, our century-long misreading of Bleistein, particularly by courts, has only intensified both of these culturally regressive trends.

Drawing upon the tradition of American pragmatist aesthetic philosophy, this Article urges doctrinal reforms that may help to repair the damage that Bleistein has done. It advocates concrete reforms in functionality, transformativeness, and moral rights doctrine. The need for these reforms has grown more urgent. The technological and cultural conditions that originally underlay Bleistein have fundamentally changed. The pragmatist vision of aesthetic progress calls for reforms that seek to promote the progress of, rather than suppress, our current condition of massively distributed authorship, user-generated content, and, at least as an aesthetic matter, post-scarcity.

FAIR USE, NOTICE FAILURE, AND THE LIMITS OF COPYRIGHT AS PROPERTY
in Boston University Law Review by Joseph P. Liu on 3/31/2017
URL: https://ssrn.com/abstract=2942985
If we start with the assumption that copyright law creates a system of property rights, to what extent does this system give adequate notice to third parties regarding the scope of such rights, particularly given the prominent role played by the fair use doctrine? This essay argues that, although the fair use doctrine may provide adequate notice to sophisticated third parties, it fails to provide adequate notice to less sophisticated parties. Specifically, the fair use doctrine imposes nearly insuperable informational burdens upon the general public regarding the scope of the property entitlement and the corresponding duty to avoid infringement. Moreover, these burdens have only increased with changes in technology that enable more, and more varied, uses of copyrighted works. The traditional response to uncertainty in fair use has been to suggest ways of curing the notice failure by providing clearer rules about what is and is not permitted. This essay suggests, however, that these efforts to reinforce the property framework feel increasingly strained and fail to reflect how copyright law is actually experienced by the general public. Indeed, the extent of the notice failure is such that it may be time to stop treating copyright like a property right, at least for certain classes of users. The essay ends by suggesting a number of alternative frameworks that would seek to regulate public behavior regarding copyrighted works without imposing the unrealistic informational burdens required by a system of property rights.

BORN POLITICAL: A DISPOSITIVE ANALYSIS OF GOOGLE AND COPYRIGHT
in Business & Society by Glen Whelen on 4/5/2017
URL: https://ssrn.com/abstract=2947150

Google is a complex and complicated political beast with a significant, and often confusing, interest, in copyright matters. On the one hand, for example, Google is widely accused of profiting from piracy. On the other, Google routinely complies with what is rapidly approaching a billion copyright takedown requests annually. In the present article, Foucault, neo-Gramscians, and Deleuze and Guattari, are utilized to help construct a 3^2 dispositive analysis framework that overlaps three dispositive modalities (law, ethical, utilitarian) and perspectives (apparatus, articulation, assemblage). In applying the framework to the Google-copyright relationship, the article shows how Google was 'born political': in that it was, and still is, disposed, by an apparatus comprised of copyright laws, Silicon Valley culture, and broad advances in digitization. Moreover, the article shows how Google continuously acts where 'politics is born': as it significantly shapes copyright considerations by disposing of (non-)human and organizational phenomena through articulations and assemblages.

May 2017

COURTESY PARATEXTS: INFORMAL PUBLISHING NORMS AND THE COPYRIGHT VACUUM IN NINETEENTH-CENTURY AMERICA
in Stan. L. Rev. by Robert E. Spoo on 5/2/2017
URL: https://ssrn.com/abstract=2962022

In response to the failure of U.S. copyright law to protect foreign authors, nineteenth-century American publishers evolved an informal practice called the "courtesy of the trade" as a way to mitigate the public goods problem posed by a large and ever-growing commons of foreign
works. Trade courtesy was a shared strategy for regulating potentially destructive competition for these free resources, an informal arrangement among publishers to recognize each other's wholly synthetic exclusive rights in otherwise unprotected writings and to pay foreign authors legally uncompelled remuneration for the resulting American editions. Courtesy was, in effect, a makeshift copyright regime grounded on unashamed trade collusion and community-based norms.

This Article examines a particular feature of this informal system: the courtesy paratext. Typically appearing in the form of letters or statements by foreign authors, courtesy paratexts preaced numerous American editions of foreign works published from the 1850s to the 1890s. These paratexts - supplements to the text proper - played a prohibitory role (not unlike the standard copyright notice) and also extolled the regulating and remunerating virtues of the courtesy system. Authorial paratexts continued to accompany texts well into the twentieth century - including, notably, American editions of James Joyce's and J.R.R. Tolkien's works - and enable us to observe the principles of courtesy as they operated less overtly to govern American publishers' treatment of unprotected foreign works. A little-examined source for understanding the history of copyright law and informal publishing norms, courtesy paratexts offer insight into a form of private ordering that rendered the American public domain a paying commons.

HOW PHOTOGRAPHS INFRINGE
in Vanderbilt Journal of Entertainment & Technology Law by Terry S. Kogan on 5/4/2017
URL: https://ssrn.com/abstract=2963353

Courts and commentators have lavished attention on the question of what makes a photograph original and entitled to copyright protection. Far less attention has been devoted to the issue of how photographs infringe. This is the first Article to systematically explore the different ways in which a photograph can steal intellectual property. Photographs can infringe in two ways: by replication and by imitation. A photograph infringes by replication when, without permission, a photographer points her camera directly at a copyright-protected work - a sculpture, a painting, another photograph - and clicks the shutter. A photograph can also infringe by imitation. In such cases, the plaintiff's claim is that the infringing photograph imitates the creative expression in her own picture.

One type of photographic infringement by imitation has confounded courts, instances in which the plaintiff photographer stages a tableau before clicking the shutter - e.g., poses a person for a portrait or assembles fruit on a table for a still life - and the defendant imitates that tableau. Copyright law is clear that a photographer has a protected interest against others copying the tableau she staged for a picture. Nonetheless, many courts simply refuse to find infringement in such cases, even when the defendant admits to having imitated that tableau. Looking at the idea-expression dichotomy, these courts excise from consideration the staged tableau as the unprotected "idea" of the plaintiff's photograph. Having cut the heart out of that image, they inevitably find the defendant's photograph not to be infringing.
This Article argues that looking to the idea/expression dichotomy to ignore a plaintiff's staged tableau not only renders a nullity of an entire category of protected photographs, but profoundly misunderstands where to locate a photograph's "idea." That idea exists not on the face of the image. Rather, it is the mental vision that a photographer hopes to capture in taking a picture. If she shares that vision with other photographers, they are free to try their hand at embodying that idea in a photograph with no fear of infringement. Once a photographer clicks the shutter, however, the resulting image is expression - entirely expression.

Courts and commentators have justified applying the idea/expression dichotomy to eviscerate photographs out of a concern for protecting the scope of creativity for downstream photographers. This Article proposes that the "thin copyright doctrine" can offer a much better approach to providing such protection. It proposes a "silver platter" principle for determining when a photograph should be entitled only to thin protection.

WHAT KIND OF RIGHTS ARE INTELLECTUAL PROPERTY RIGHTS?
in Oxford Handbook of IP Law by Robert P. Merges on 3/17/2017
URL: https://ssrn.com/abstract=2959073

Are intellectual property rights (IPRs) really rights? And if so, what kind of rights? Most importantly, what difference does it make that they are rights - what practical import does this carry? These are the questions I take up in this Chapter, which is forthcoming as part of The Oxford Handbook of Intellectual Property Law (Rochelle C. Dreyfuss & Justine Pila, eds., forthcoming 2017).

I begin by clearing up some misunderstandings about legal rights. The primary one is that rights are absolute. A secondary one is that one need do nothing to obtain or exercise a right, and that therefore any legal entitlement that requires affirmative steps to secure cannot be a right. Next I consider a prominent critique of the idea that IP rights are property rights, which holds that they are more akin to government regulation. After that I turn to an enumeration of the details of IP rights, described in the terms laid down by the prominent theorist of legal relations, Wesley Newcomb Hohfeld.

From this I distill the key attributes of property as it applies to IP rights:

1. It is 'good against the world' - no prior contract or other legal relationship is required to create a duty on the part of third parties to respect the right;
2. It defines uses of an asset that are under control of the owner; it demarcates what is 'in' and 'out' of the owner's ambit of authority;
3. It is broadly transferable; yet the owner retains residual rights over those aspects of the right that are not transferred. In addition, it includes a special form of quasi-transfer power, in that it permits the owner alone to decide whether and when to enforce the right.
Taking up the theme of IP as a (non-absolute) form of property, I then consider three key limits. IPRs are:

1. Contingent; they are subject to government processes to acquire or enforce, such as perfection, approval, maintenance, and the like;
2. Time-limited; most IP rights have specified terms, and even those that do not will usually lapse at some time;
3. Bounded in scope; the class of assets the IP rights cover is subject to boundaries drawn with more or less precision.

None of these limits is enough to disqualify IP from being property. But altogether they impose significant restrictions on the strength or power of an IP right.

After these general points, two special problems then draw my attention: injunctions in IP law and constitutional takings of IP rights. Finally, I conclude with some observations about why, when properly framed, engaging in ‘rights talk’ about IP does not inexorably point to absolutist views. Throughout I emphasize two highly consistent thoughts: IP rights are real rights; but they are limited rights. They dominate some interests but not all, and they are subject to restrictions and limitations that third parties sometimes hold as rights also.

SURVEYING THE LAW OF EMOJIS
by Eric Goldman on 5/1/2017
URL: https://ssrn.com/abstract=2961060

Everyone loves emojis! It's easy to see why. Historically, most online communications have emphasized text, and emojis add much-needed emotional content to text-driven communications—and often help people express themselves more precisely. Due to the enthusiastic embrace of emojis, we are witnessing a historic change in how we communicate online.

This article surveys three significant ways the emoji revolution will impact the law.

First, questions about what emojis mean will arise in a wide range of legal doctrines, from criminal law to contracts. Our standard interpretative tools generally can handle new communicative technologies, but several aspects of emojis will require careful consideration. Most significantly, senders and receivers will unexpectedly see different versions of an emoji due to technological intermediation, leading them to make reasonable-but different-interpretations of the same communication, with potentially adverse consequences for one or both parties. The article will explore some steps that would reduce the risks of these misunderstandings.

Second, emojis will often qualify for copyright and trademark protection. However, IP protection encourages platforms to differentiate their emoji implementations, which exacerbates the risks of
miscommunications and misunderstandings. To mitigate this outcome, IP protections for emojis should be interpreted narrowly.

Third, emojis create some issues for judicial operations, including if and how judges will display emojis in their opinions, if emojis in court opinions will be searchable, and how best to present emojis as evidence to fact-finders.

TRANSFORMATIVE USE IN SOFTWARE
in Stanford Law Review by Clark D. Asay on 5/2017
URL: https://www.stanfordlawreview.org/online/transformative-use-in-software/

Fair use is copyright law's most important defense against claims of copyright infringement. Major corporations depend on it to pursue a variety of technological innovations; universities rely on it for a number of educational purposes; and innovative parties frequently resort to it in creating works that build upon the creativity of others. In short, fair use is an essential limitation on the rights of copyright holders that helps copyright fulfill its constitutional purpose of "promot[ing] the Progress of Science and useful Arts."

SEEING IS BELIEVING: THE ONGOING SIGNIFICANCE OF SYMBOLIC REPRESENTATIONS OF MUSICAL WORKS IN COPYRIGHT INFRINGEMENT DISPUTES
by Charles Patrick Desmond Cronin on 5/12/2017
URL: https://ssrn.com/abstract=2967590

Since the mid-twentieth Century the development of audio recording and synthesized sound technologies has radically altered how popular songs are created, fixed, disseminated, and consumed. Courts adjudicating copyright infringement claims involving musical works whose content and creation depend on these technologies, still emphasize melody, harmony, rhythm, and words - all recordable in visible symbols - as the protectable core of these works. This emphasis has been criticized as obsolete, and inapt when applied to musical works created and documented by performers only in audible formats, in which sonic and stylistic attributes may contribute more than fundamental musical elements to the popular appeal of a song.

The legitimacy of this criticism depends upon our understanding of both what constitutes a copyrightable musical work, and also notation's efficacy to represent it. This article argues that the judiciary's traditional view of protectable expression of musical works as limited to a combination of melody, harmony, rhythm, and words, continues to be valid today despite changes in how popular songs are typically created and fixed.

Timbre, dynamics, and other stylistic sonic - and, increasingly, visual - attributes closely associated with performance may significantly affect the appeal and marketability of the audio/video recording of a popular song. Yet they may contribute little to the underlying copyrightable work of music. Consider that while a documented meaningful combination of
melodic, harmonic, and rhythmic elements alone may constitute a musical work, a similar combination of information about instrumentation, dynamics, tempo, etc. - i.e., elements more closely associated with the performance of a musical work - does not.

Melody, harmony, rhythm, and words can be precisely recorded in graphical symbols. This article argues that given that sight is our most developed sense, visual documentation should be the medium by which courts and juries evaluate allegations of substantial similarity between two musical works. If courts permit litigants to present audible renditions of musical works, these renditions should be limited to MIDI-produced sound based on transcriptions of the melodic, harmonic, and rhythmic content of the works in question by a neutral party appointed by the court.

If the judiciary were to broaden copyright protection for musical works to incorporate sonic and stylistic elements closely associated with their performance, this expansion could generate paralyzing uncertainty among popular musicians about the scope of protection for extant works. It could also lead to monopolization of musical ideas, which would inhibit the very production of original musical expression that copyright is supposed to promote.

RAW MATERIALS AND THE CREATIVE PROCESS
in Georgetown Law Journal by Andrew Gilden on 2016
URL: https://georgetownlawjournal.org/articles/24/raw-materials-creative-process

Visitors to the Whitney Museum in Manhattan during the summer of 2014 encountered a tremendous range of iconic pop-culture imagery: a granite statue of Popeye, an Incredible Hulk piano organ, Jayne Mansfield embracing the Pink Panther, the Trix Rabbit ogling a spoonful of whipped cream, a Cabbage Patch Kid in a bear costume, and a porcelain sculpture of Michael Jackson with his pet chimpanzee. This imagery formed a substantial component of the Whitney's largest-ever retrospective, dedicated to the controversial and wildly successful artist Jeff Koons. The Whitney's 128-piece, three-and-a-half decade journey through Koons's career gave visitors a kitschy, colorful, and astronomically expensive insight into the characters and imagery that form the "raw material" for much contemporary creative expression. And in doing so, the exhibition also provides a window into the recent history of fair use, intellectual property, and creative expression. . . .

NORMS-SHIFTING ON COPYRIGHT AND FAIR USE IN THE VISUAL ARTS COMMUNITY
in Visual Arts Review by Patricia Aufderheide on Winter 2018
URL: https://ssrn.com/abstract=2970811

This study tracks changes in behavior and attitude among visual arts professionals after the development of a code of best practices in the copyright doctrine of fair use. A survey of 2,400 professionals fielded only months after its publication demonstrated broad awareness of the code, informing practice and inspiring efforts to spread awareness. The greatest degree of
awareness and change was among editors, several of whose publications altered their copyright policies. Professional and social networks were critical to spreading awareness. Despite a continuing lack of confidence in interpreting the law among individual professionals, the existence of a code contributed to significant change in norms and practices via institutional adoption. This study demonstrates that codes of best practices can affect field behavior, but that change depends on publicity, formal education, continuing support for early adopters, and institutional policy changes.

June 2017

COPYRIGHT AND POSITIVE FREEDOM: KANTIAN AND JEWISH THOUGHT ON AUTHORIAL RIGHTS AND DUTIES
in Journal Copyright Soc'y U.S.A. by Kim Treiger-Bar-Am on 6/2/2017
URL: https://ssrn.com/abstract=2977143

What can Kantian philosophy and Jewish thought contribute to our understanding of authorial rights and duties? Kant's support for protection of the autonomy of expression of authors and Judaism's for the creative freedom of authors – so-called primary and subsequent authors who make transformative use of prior works. The freedom put forth in those theoretical systems is a positive freedom. Positive freedom is, in both Kantian and Jewish thought, the capacity for morality, from which ensue one's right of respect, and also the duty to respect others. Positive freedom for authors underscores authorial rights as well as authorial duties of respect. When copyright is understood as positive freedom it is both deontological and with a telos of respect, thus bridging elements in the discord presumed between the instrumental Anglo-American copyright model and the deontological Continental droit d'auteur system.

MUSIC AS A MATTER OF LAW
in Harvard Law Review by Joseph Fishman on 3/10/2017
URL: https://ssrn.com/abstract=2931091

What is a musical work? Philosophers debate it, but for judges the answer has long been simple: music means melody. Though few recognize it today, that answer goes all the way back to the birth of music copyright litigation in the nineteenth century. Courts adopted the era’s dominant aesthetic view identifying melody as the site of originality and, consequently, the litmus test for similarity. Surprisingly, music’s single-element test has persisted as an anomaly within the modern copyright system, where typically multiple features of eligible subject matter are eligible for protection.

Yet things are now changing. Recent judicial decisions are beginning to break down the old definitional wall around melody, looking elsewhere within the work to find protected expression. Many have called this increasing scope problematic. This Article agrees—but not for the reason that most people think. The problem is not, as is commonly alleged, that these decisions are unfaithful to bedrock copyright doctrine. A closer inspection reveals that, if anything, they are in fact more faithful than their predecessors. The problem, rather, is that the bedrock doctrine itself is misguided. Copyright law, unlike patent law, has never shown any interest in trying to increase
the predictability of its infringement test, leaving second comers to speculate as to what might or might not be allowed. But the history of music copyright offers a valuable look at a path not taken, an accidental experiment where predictability was unwittingly achieved by consistently emphasizing a single element out of a multi-element work. As a factual matter, the notion that melody is the primary locus of music’s value is a fiction. As a policy matter, however, that fiction has turned out to be useful. While its original, culturally-myopic rationale should be discarded, music’s unidimensional test still offers underappreciated advantages over the “everything counts” analysis that the rest of the copyright system long ago chose.

**July 2017**

THREE QUASI-FALLACIES IN THE CONVENTIONAL UNDERSTANDING OF INTELLECTUAL PROPERTY
URL: https://ssrn.com/abstract=2656368

In recent years the Supreme Court, Congress and the White House have taken actions designed to weaken patent rights. These actions track widely expressed views among legal and some economics scholars that cast doubt on the social value of robust intellectual property rights. These views rely on some combination of three core propositions: (i) IP rights raise entry barriers and increase costs to users; (ii) innovation often proceeds without IP rights; and (iii) IP rights usually or often entrench large incumbent firms. Using theoretical argument and empirical evidence, I show that each of these propositions is unlikely to be true in a significant set of commercially relevant circumstances. IP rights can reduce entry barriers and users’ costs relative to the organizational and transactional structures that markets would adopt without those rights. Environments that support innovation without IP rights typically rely on alternative mechanisms for securing exclusivity at some point in the relevant bundle of products and services, potentially imposing access costs that would not exist under a robust IP regime. With the exception of the pharmaceutical industry, large integrated incumbents in technology markets usually or often oppose expanding IP rights while the opposite is often true of unintegrated, R&D-intensive (and often smaller) firms that have difficulty funding the innovation and commercialization process without IP rights. These revised propositions cast doubt on the IP-skeptical presumptions that tend to dominate scholarly, policy and popular discussions of IP rights and drive support for legislative and judicial reforms to weaken IP rights.

ADAPTING FAIR USE TO REFLECT SOCIAL MEDIA NORMS: A JOINT PROPOSAL
in UCLA L. Rev. by Lauren Levinson on 2017
URL: http://www.uclalawreview.org/adapting-fair-use-to-reflect-social-media-norms-a-joint-proposal/

Within the past decade, the Internet has played an increasingly central role in social dialogue and popular culture. Through the promulgation of “like” and “heart” features on online platforms such as Facebook and Instagram, individuals are encouraged to affirmatively engage with content posted by other users to share and debate their opinions in a public forum. Consequently, many consumers assume that content posted on the Internet is inherently free for the taking. This
perceived free culture, however, materially conflicts with content creators’ interests in maintaining control over the reproduction and distribution of their works. Not surprisingly, a direct result of the increased popularity and relevance of social media websites has been an uptick in copyright infringement lawsuits brought by professional content creators against the downstream users of their copyrighted content. In response to such copyright infringement suits, several downstream users have asserted the fair use affirmative defense under § 107 of the Copyright Act.

In the face of this changing social media landscape, this Comment proposes that when analyzing the first factor of a fair use affirmative defense in a copyright infringement action, courts should broaden the conceptualization of transformative purpose in the digital environment. Specifically, courts should recognize social commentary as a presumptively transformative purpose. Additionally, this Comment proposes that courts should consider attribution when assessing market harm to the copyright owner, the fourth factor considered by courts in a fair use analysis. By including attribution as a factor weighing in favor of fair use, secondary users will be incentivized to follow best practices on the Internet. Furthermore, copyright holders will be better able to mitigate the financial exploitation of their works on social media, while simultaneously allowing the general public (who most often share content for noncommercial purposes) to engage in social dialogue on the web.

INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE: 2017 - CHAPTERS 1 AND 2
in Intellectual Property in the New Technological Age 2017 by Peter S. Menell et al. on July 18, 2017
URL: https://ssrn.com/abstract=2999038

Rapid advances in digital and life sciences technology continue to spur the evolution of intellectual property law. As professors and practitioners in this field know all too well, Congress and the courts continue to develop intellectual property law and jurisprudence at a rapid pace. For that reason, we have significantly augmented and revised "Intellectual Property in the New Technological Age.

The 2017 Edition reflects the following principal developments:

- Trade Secrets: Congress passed the Defend Trade Secrets Act of 2016, one of the most momentous changes in the history of trade secret protection. The new law opens up the federal courts to trade secret cases, provides for ex parte seizures of misappropriated trade secrets in “extraordinary circumstances,” and establishes immunity for whistleblowers.

- Patents: The past several years have witnessed some of the most significant developments in U.S. patent history — from the establishment of the new administrative review proceedings at the Patent Office to important shifts in patent-eligibility, claim definiteness, enhanced damages, and equitable remedies at the Supreme Court and
means-plus-function claim interpretation and infringement doctrine at the Federal Circuit. We have restructured the patent chapter to illuminate these areas. We have also significantly expanded coverage of design patents in response to the growing importance of this form of protection.

- Copyrights: The Supreme Court issued important decisions addressing the useful article doctrine, public performance right and the first sale doctrine. The past few years also witnessed important developments in the Online Service Provider safe harbor, fair use, and state protection for pre-1972 sound recordings. We have also integrated the digital copyright materials into a unified treatment of copyright law and substantially revamped the fair use section to reflect the broadening landscape of this important doctrine.

- Trademarks: We have integrated important cases on federal registrability of disparaging marks, merchandising rights, likelihood of confusion on the Internet, and remedies.

- Other State Protections: We have updated material on the right of publicity, an active and growing area. We have also reorganized the chapter and focused it on IP regimes.

FANDOM AND CREATIVITY, INCLUDING FAN ART, FAN FICTION, AND COSPLAY
by Jon M. Garon on 7/23/2017
URL: https://ssrn.com/abstract=3007404

Fandom has grown into a sufficiently important cultural phenomenon that it has engendered a number of scholarly journals, books, and conferences. As with any academic discipline, there are a multitude of theories and schools of thought on the cultural significance and motivating structure of these communities. These studies tend to focus on the complex relationship between the fan community and the producers of the creative works. While the theoretical understanding of this dynamic tension is worthy of study, the focus of this chapter is primarily on the practical implications of these phenomena and the Con organizer’s ability to foster these relationships.

POP CULTURE BUSINESS HANDBOOK FOR CONS AND FESTIVALS
by Jon M. Garon on 7/23/2017
URL: http://www.ssrn.com/abstract=3007372

The Pop Culture Business Handbook for Cons and Festivals provides a real-world guide and reference for these exhilarating experiences, providing rules, strategies, and insights for the people who attend, work, and develop these fantastical worlds. This book highlights a strategic approach to the science fiction convention, comic convention, film festival, book fair, and music festival worlds, providing a player’s manual, map, rulebook, and strategy guide to the user experience and promoter toolbox. Many of the strategies should also extend well past the Con itself into entrepreneurial business practices and social engagement for members of the Con community. With few exceptions, the book chapters apply equally to all public events whether they are film festivals, gaming conventions, art shows, or music festivals. For convenience,
therefore, the term “Con” includes the entire range of interactive, open public programs. The
applicable laws and regulations are largely the same for all ...

PATENT LAW’S AUTHORSHIP SCREEN
in University of Chicago Law Review by Kevin Emerson Collins on 2/23/2017
URL: https://ssrn.com/abstract=2922669

Intellectual property regimes frequently employ boundary screens. By preventing the goods
whose protectability should be determined by one regime from infiltrating into another regime,
boundary screens protect the different balances of competition and protection that Congress has
struck in the different regimes.

Prior scholarship on boundary screens offers in-depth analyses of the functionality screens in
non-patent intellectual property that avoid upsetting patent law’s competition/protection balance
for functional innovation. This Article turns the table, asking a previously unasked question
about how patent’s authorship screen — that is, its boundary screen that prevents infiltration by
the authorial innovation that is the proper domain of copyright — does and should work.
Shortcomings in patent’s authorship screen upset copyright’s competition/protection balance,
allowing patents to function as abnormally thick, backdoor copyrights, just as shortcomings in
copyright’s functionality screen allow copyrights to function as abnormally long and easy to
obtain, backdoor patents.

In addition to its normative assessment of the authorship screen’s importance as a barrier to
backdoor copyrights and its descriptive analysis of the statutorily diffuse set of patent doctrines
that collectively enforce the authorship screen, this Article presents case studies focusing on
architectural innovation, an unstudied zone of overlap on the copyright/patent boundary, that
illustrate and evaluate the authorship screen in action.

THE PERFECT MATCH – CIVIL LAW JUDGES AND OPEN-ENDED FAIR USE
PROVISIONS
in American University International Law Review by Martin Senftleben on 6/1/2017
URL: https://ssrn.com/abstract=3002275

In the debate on the introduction of open-ended fair use provisions in the copyright legislation of
civil law countries, it is often argued that judges with a civil law background do not have the
experience necessary to apply open-ended norms in an appropriate way. The argument poses an
obstacle to a meaningful debate about fair use because of its destabilizing effect. Policy makers
are concerned that the adoption of fair use provisions could cause legal uncertainty and erode the
traditional civil law culture in the field of copyright. The situation in the EU can serve as an
example. Despite strong pleas for the introduction of an opening clause and the emergence of
more and more fair use legislation in other regions, the current reform proposals of the European
Commission do not include the adoption of an open-ended fair use norm. While the 2013/2014
Public Consultation on the Review of the EU Copyright Rules explicitly addressed the need for more flexibility, the proposed new copyright legislation is silent on the issue.

Against this background, the following analysis seeks to dispel unfounded concerns about overstrained judges. It aims to pave the way for new initiatives to arrive at fair use legislation in the EU by showing that there is no reason to believe that civil law judges are incapable of applying open-ended fair use norms adequately and consistently. To lay groundwork for this analysis, the legislative traditions underlying copyright limitations in civil law countries (the majority of EU member states) and common law countries (such as the U.S.) will be outlined before emphasizing the need for the introduction of open-ended fair use legislation in civil law systems, in particular in EU copyright law. On this basis, strategies for translating lessons to be learned from the U.S. fair use approach into the EU system will be discussed. In this context, it will be demonstrated that the introduction of a flexible copyright limitation is unlikely to fail because of an inability or reluctance of civil law judges to apply open-ended norms. The example of the existing defence of “due cause” in EU trademark law shows that the opposite is true. Moreover, a flexible copyright limitation in civil law jurisdictions need not be a verbatim copy of the U.S. fair use doctrine. It seems preferable to apply traditional limitation prototypes by analogy in situations that require new use privileges. To establish a system that allows this analogous application, the role of the international three-step test in EU copyright law would have to be recalibrated.

CONTROL OR PROMOTE? CHINA'S CULTURAL CENSORSHIP SYSTEM AND ITS INFLUENCE ON COPYRIGHT PROTECTION

in Queen Mary Journal of Intellectual Property by Tianxiang He on 2/2/2017
URL: https://ssrn.com/abstract=2999032

China is famous for its strict censorship system regarding cultural goods. China is not, of course, the only country which advocates censorship, but its uniqueness lies in the political purposes that its censorship system serves. This article explores China’s censorship system in the cultural sector in detail. It examines the ex ante and ex post censorship system in three major areas – publications, traditional broadcasting channels and online publishing – as well as the interplay between related legislations, regulations and national enforcement campaigns. This article explains how China uses these legal instruments and utilizes enforcement campaigns to strategically live up to its international obligations and serve the political needs of content control and market domination, rather than merely the outward purposes of these regulatory instruments and campaigns such as copyright protection.

SEX, DRONES & VIDEOTAPE: RETHINKING COPYRIGHT'S AUTHORSHIP-FIXATION CONFLATION IN THE AGE OF PERFORMANCE

in Hastings Law Journal by John Tehranian on 5/16/2017
URL: https://ssrn.com/abstract=2969170
For more than two centuries, the Copyright Act has eschewed the task of defining authorship. However, with the decoupling of the act of creation from the act of fixation and the dramatic advance of technology, the issue of authorship has gained renewed relevance in recent years, as questions of authorship have permeated numerous high-profile legal controversies. To cite a few examples, the metaphysics of authorship lay at the heart of copyright squabbles involving Naruto (the crested macaque who famously took a selfie), Cindy Lee Garcia (the actress who received death threats for her appearance in the controversial movie The Innocence of Muslims), and, less obviously, Terry Bollea (the wrestler professionally known as Hulk Hogan who bankrupted Gawker Media with a sex-tape lawsuit).

With its exegesis of the Garcia v. Google decisions (both Judge Kozinski’s original opinion and the Ninth Circuit’s resounding reversal en banc), its reconsideration of the Supreme Court’s seminal decision in Burrow-Giles Lithographic Co. v. Sarony, and its analysis of authorial inquiries raised by interviews, drone and surveillance footage, bootleg recordings, paparazzi photographs and classroom note-taking, this Article identifies and critiques the problematic juridical conflation of copyright’s authorship and fixation requirements. As the Article argues, copyright’s authorship-as-fixation regime rests on a faulty premise, betrays copyright law’s role in recognizing and rewarding creativity and denies copyright interests to the very individuals who have provided significant, if not the most important, original contributions to works within copyright’s traditional subject matter. As a result, the Article calls for a fundamental reconsideration of the concept of authorship, including the issue of performer copyrights, in order to better align copyright law with its utilitarian goals, the realities of the creative process and broader public policy.

August 2017

PARODIES, PHOTOCOPIES, RECUSALS, AND ALTERNATE COPYRIGHT HISTORIES: THE TWO DEADLOCKED SUPREME COURT FAIR USE CASES
by Robert Brauneis on 8/4/2017
URL: https://ssrn.com/abstract=3013947

Before any of the Supreme Court’s trio of fair use decisions – Sony v. Universal City Studios, Harper & Row v. Nation, and Campbell v. Acuff-Rose – there were the 1958 case of CBS v. Loew’s and the 1974 case of Williams & Wilkins v. United States: two copyright infringement suits that had turned on fair use in the lower courts, and that the Supreme Court had decided to review and had heard argument in. In both of those cases, however, one of the Justices recused himself, and the others deadlocked 4-4, leading to summary affirmance of the lower court judgments. How would the Court have decided those cases without the recusals? How would the decisions have affected the development of copyright and fair use doctrine? And were the recusals justified?

The papers of a number of Justices, combined with other historical materials, provide surprisingly good answers to those questions. In CBS v. Loew’s, a case in which the Ninth Circuit had held that a Jack Benny parody of the movie Gaslight infringed copyright in that work, the Supreme Court voted to reverse. Justice Douglas started to draft an opinion for the Court, only to recuse himself to pursue a business opportunity with CBS that never materialized.
In Williams & Wilkins, a case in which the Court of Claims had held the photocopying practices
of two government libraries to fall within the scope of fair use, the Court would also most likely
have reversed, with Justice Blackmun providing the fifth vote to decide that the practices were
infringing. However, Blackmun recused himself because the Mayo Clinic, whose employment he
had left fifteen years previously, took the position that the photocopying was fair use, and was
one of thirteen parties signing on to one of many amicus briefs in the court below. Justice
Douglas’s recusal, I argue, was unjustified, and Justice Blackmun’s dubious at best.

In a world in Douglas and Blackmun had not recused themselves and the Court had decided CBS
and Williams & Wilkins, how could copyright law look different than it now does? I explore that
question at three different moments in time. First, I argue that immediately after a CBS v.
Loew’s decision in 1958, there might not have been a fair use doctrine separate from a general
inquiry into copyright infringement. Second, I contend that just after a Williams & Wilkins
decision in 1974, fair use doctrine would likely have focused entirely on what have become
known as “productive” or “transformative” uses, while excluding “non-productive” uses and
eschewing any distinction between commercial and noncommercial uses. Finally, I consider the
present moment, and consider the possible continuing impact of hypothetical decisions in CBS
and Williams & Wilkins. Ultimately, however, my goal is not to prove exactly how CBS or
Williams & Wilkins would have come out, or would have diverted the path of fair use doctrine
or copyright infringement analysis. Rather, I am interested in using the materials that are
available about those cases, and the realization that the Supreme Court came very close to
deciding them, to free up my imagination, and yours, about how copyright law and the fair use
doctrine could be different than they are.

LEX MACHINA NON EST: A RESPONSE TO MARK LEMLEY’S 'FAITH-BASED
INTELLECTUAL PROPERTY'
by David W. Opderbeck on 8/18/2017
URL: https://ssrn.com/abstract=3022065

This essay responds to Mark Lemley’s controversial article Faith-Based Intellectual Property.
The essay argues that intellectual property requires a far richer concept of human cultural
flourishing than positivism and utilitarianism can provide. It argues that Lemley’s understanding
of the “laws of nature” and of the relationship between science and religion are based in
perspectives that have long been rejected by mainstream scholarship. Finally, the essay offers
insights from the creation narratives and the Tower of Babel story in the Hebrew Scriptures to
suggest that Lemley’s vision ultimately requires technocratic social control: an ancient and
enduring threat to authentic human creative endeavor.

THE COURT OF JUSTICE OF THE EUROPEAN UNION CREATES AN EU LAW OF
LIABILITY FOR FACILITATION OF COPYRIGHT INFRINGEMENT: OBSERVATIONS
in 2016/5-6 Auteurs et Médias 401 (Belgium) by Jane Ginsburg on 8/22/2017
URL: http://www.ssrn.com/abstract=3024302
After a series of decisions in which the Court of Justice of the European Union appeared to be cutting back on the application of the right of communication to the public with respect to the provision of hyperlinks, the Court’s most recent decisions in Brein v. Filmspeler (C-527/15) and Brein v. Ziggo (C-610/15) concerning, respectively, sale of a device pre-loaded with hyperlinks to illegal streaming sites, and The Pirate Bay BitTorrent platform, indicate instead that the Court’s prior caselaw was in fact gradually advancing toward a European harmonization of the law on derivative liability (i.e., liability in the second degree) for violation of the right of communication to the public. These two most recent decisions have now achieved that harmonization. Moreover, harmonization was necessary given both the lack of uniformity regarding secondary liability across the national laws of the member states, and the growing economic importance of furnishing the means to access infringing sources (without serving as the initial source of the infringing communication).

This article will first briefly review of the facts of the cases. It then will examine how the Court’s reasoning results in a European law of communication to the public that reaches actors who do not originate illicit communications, but who knowingly facilitate them (I). Next, the analysis will show that the harmonized law of derivative liability can be considered the flip side of the law of non-liability for “the storage of information provided by a recipient of the service,... for the information stored at the request of a recipient of the service” already harmonized by art. 14 of the eCommerce directive 2000/31 (II).

The article concludes with a brief postscript evoking some comparisons with U.S. copyright law.

AUTHORS’ HUMAN RIGHTS AND COPYRIGHT POLICY
in Columbia Journal of Law & the Arts by Graeme W. Austin on 4/14/2017
URL: https://ssrn.com/abstract=3018950

This article discusses opportunities for taking account of authors’ human rights guarantees in domestic copyright policy, arguing that human rights law should be regarded as one of the sources of international law making that should influence domestic policy issues. Using these ideas as a springboard, it discusses a recent UK copyright case involving the exercise of the copyright termination right (provided under US law) by former members of the pop group Duran Duran.

COPYRIGHT EASEMENTS
in Akron Law Review by Jason Mazzone on 8/21/2017
URL: https://ssrn.com/abstract=3023425

When authors assign the copyright in their work to publishers, some productive uses of the work are impeded. The author loses opportunities to use or to authorize others to use the work unless the publisher consents; the publisher does not permit all uses of the work that the author would like or that would benefit a consuming audience. Copyright easements can solve the problem.
Under a system of copyright easements, an easement holder would have designated rights in a creative work that would permit uses of the work that would ordinarily require permission of the copyright owner. If the author later assigns the copyright to a publisher, the copyright is held subject to the rights of the easement holder. The easement thus ties the author’s own hands: the author can no longer assign an unfettered copyright — and the publisher can no longer ask for it — because of the existence of the easement holder’s interests in the work. Copyright easements can protect the ability of authors, after they assign the copyright, and of others, to make productive uses of works in ways that are unlikely to affect the publisher’s economic interests. Copyright easements can also ensure that uses of works that do not require a copyright owner’s permission but which publishers frequently seek to prevent, such as fair uses, could occur more easily. Copyright easements thus benefit authors and the public alike. These benefits can be easily and immediately produced without any change to the Copyright Act.

DE MINIMIS AND ARTISTIC FREEDOM: SAMPLING ON THE RIGHT TRACK?
by Peter Mezei on 08/27/2017
URL: https://ssrn.com/abstract=3027809

For many years, U.S. and European case law has offered a negative and restrictive interpretation on the sampling of sound recordings. Courts have traditionally deemed sampling as an infringement on the copyrighted material (and in Europe the related rights), even if the sample lasted for less than 2 seconds. Several notable precedents have been published in the wake of the first ruling on sampling, published in 1989 in the U.S., all of which have confirmed this interpretation. However, more recently, four decisions have been published, two in the United States and two in Germany, which deviate from this line of jurisprudence. It is these decisions which will form the crux of the analysis within the present article. To outline them briefly, the TufAmerica and the VMG Salsoul rulings highlighted that the de minimis test applies to the sampling of trivial portions and thus liability is excluded in such situations. The German Goldrapper ruling of the Federal Supreme Court (BGH) and the Metall auf Metall III decision of the German Federal Constitutional Court (BVerfG) have also opened the doors for sampling in Continental European legal systems. The Goldrapper ruling focused on the length of the sample, whilst the BVerfG in Metall auf Metall III introduced a novel discourse based on fundamental rights, concluding that sampling functions as a practical example of artistic freedom. Nevertheless, it remains unclear whether the ECJ will accept such an interpretation. However, this may become clearer in the not too distant future with a preliminary ruling being initiated by the BGH in June 2017. This article will analyze these four cases, as well as offering a view on the possible outcome of the preliminary ruling.

PUBLIC CHOICE THEORY, THE CONSTITUTION, AND PUBLIC UNDERSTANDING OF THE COPYRIGHT SYSTEM
in UC Davis Law Review by W. Michael Schuster II on 8/25/2017
URL: https://ssrn.com/abstract=3026394
The U.S. Constitution commands that copyright laws must benefit society by promoting the progress of science and the useful arts. Building on past research in public choice theory, this Article posits that Congress has deviated from this utilitarian goal, and the only means to correct the state of affairs is via pressure from the electorate. However, reform is unlikely if the citizenry lacks sufficient knowledge to recognize that copyright laws should be, but are currently not, designed to maximize public benefit. The following study uses novel survey data to establish that the U.S. electorate poorly understands the copyright regime and is thus unlikely to exert the necessary influence to effect reform. This Article then discusses the implications of these findings and proposes means to return copyright to its Constitutional moorings.

IN THE SHADOW OF THE LAW: THE ROLE OF CUSTOM IN INTELLECTUAL PROPERTY
URL: https://ssrn.com/abstract=3028185

Custom, including industry practices and social norms, has a tremendous influence on intellectual property (“IP”) law, from affecting what happens outside of the courts in the trenches of the creative, technology, and science-based industries, to influencing how courts analyze infringement and defenses in IP cases. For decades, many scholars overlooked or dismissed the impact of custom on IP law in large part because of a belief that the dominant statutory frameworks that govern IP left little room for custom to play a role. In the last ten years, however, the landscape has shifted and more attention has been given to considering how custom affects IP entitlements both outside and inside the courtroom. This book chapter in the Research Handbook on the Economics of Intellectual Property Law focuses on the theoretical frames that inform the incorporation of custom into the law, and documents some of the practices and norms of various communities that use IP. I criticize the frequent and unreflected reliance on custom to determine the scope of IP rights, suggesting guidelines for when it can nevertheless be a sometimes useful tool for providing insights about IP laws. This analysis is partially informed by traditional common law limits on the incorporation of custom into the law. The chapter concludes with some recommendations for future areas of research for scholars based on my framework for thinking about custom in the context of IP laws.

September 2017

THE WHOLE IS MORE PUBLIC DOMAIN THAN THE PARTS?: US COPYRIGHT PROTECTION FOR WORKS OF APPLIED ART UNDER STAR ATHLETICA'S IMAGINATION TEST
in University of Pennslyvania Law Review by Jane Ginsburg on 9/15/2017
URL: http://ssrn.com/abstract=3036142

In Star Athletica v. Varsity Brands, the Supreme Court granted certiorari to resolve confusion in the lower courts regarding the “separability” predicate to copyright protection of decorative features of useful articles. The case involved the “surface decorations” of stripes, chevrons, and color blocks applied to cheerleader uniforms. While the Supreme Court clarified the meaning
and application of the “separability” standard for the kinds of decorative elements there at issue, the fate of other artistic “features” of useful articles, particularly their three dimensional forms, remains murky. Much of the Court’s analysis points toward a prophylactic rule excluding the entire shape of a useful article, but some aspects of the majority opinion indicate that the Court has yet to devise a coherent application of the statutory standard.

STAR ATHLETICA'S FISSURE IN THE INTELLECTUAL PROPERTY FUNCTIONALITY LANDSCAPE
in University of Pennsylvania Law Review by Peter S. Menell on 9/15/2017
URL: http://ssrn.com/abstract=3036254

This article comments on the Supreme Court’s 2017 Star Athletica v. Varsity Brands decision addressing copyright’s useful article doctrine. It shows that the majority’s analysis mistakenly lends credence to the notion that copyright protection can extend to functional elements of useful articles so long as pictorial, graphic, or sculptural features can be fixed in some other tangible medium. Of perhaps greater concern, Justice Breyer’s dissenting opinion confuses the intellectual property landscape by suggesting, erroneously, that design patents can protect functional features of articles of manufacture. The article advises lower courts to disregard the unsubstantiated dicta in Star Athletica and instead look to statutory requirements and limitations, legislative guidance, and the foundational principles undergirding the intellectual property system so as to avoid creating “mutant species” of intellectual property: protection for functional features of useful articles outside the auspices of the utility patent system.

REGULATING ONLINE CONTENT MODERATION
in Georgetown Law Journal by Kyle Langvardt on 8/1/2017
URL: https://ssrn.com/abstract=3024739

The Supreme Court held in 2017 that “the vast democratic forums of the Internet in general, and social media in particular,” are “the most important places…for the exchange of views.” Yet within these forums, speakers are subject to the closest and swiftest regime of censorship the world has ever known. This censorship comes not from the government, but from a small number of private corporations – Facebook, Twitter, Google – and a vast corps of human and algorithmic content moderators. The content moderators’ work is indispensable; without it, social media users would drown in spam and disturbing imagery. At the same time, content moderation practices correspond only loosely to First Amendment values. Recently-leaked internal training manuals from Facebook reveal that its content moderation practices are rushed, ad-hoc, and at times incoherent.

The time has come to consider legislation that would guarantee meaningful speech rights in online spaces. This Article evaluates a range of possible approaches to the problem. These include 1) an administrative monitoring and compliance regime to ensure that content moderation policies hew close to First Amendment principles; 2) a “personal accountability” regime handing control over content moderation to users; and 3) a relatively simple requirement...
that companies disclose their moderation policies. Each carries serious pitfalls, but none is as dangerous as option 4): continuing to entrust online speech rights to the private sector.

ARTIFICIAL INTELLIGENCE’S FAIR USE CRISIS
in Columbia Journal of Law & the Arts by Benjamin L. W. Sobel on 9/4/2017
URL: https://ssrn.com/abstract=3032076

As automation supplants more forms of labor, creative expression still seems like a distinctly human enterprise. This may someday change: by ingesting works of authorship as “training data,” computer programs can teach themselves to write natural prose, compose music, and generate movies. Machine learning is an artificial intelligence (AI) technology with immense potential and a commensurate appetite for copyrighted works. In the United States, the copyright law mechanism most likely to facilitate machine learning’s uses of protected data is the fair use doctrine. However, current fair use doctrine threatens either to derail the progress of machine learning or to disenfranchise the human creators whose work makes it possible.

This Article addresses the problem in three parts: using popular machine learning datasets and research as case studies, Part I describes how programs “learn” from corpora of copyrighted works and catalogs the legal risks of this practice. It concludes that fair use may not protect expressive machine learning applications, including the burgeoning field of natural language generation. Part II explains that applying today’s fair use doctrine to expressive machine learning will yield one of two undesirable outcomes: if US courts reject the fair use defense for machine learning, valuable innovation may move to another jurisdiction or halt entirely; alternatively, if courts find the technology to be fair use, sophisticated software may divert rightful earnings from the authors of input data. This dilemma shows that fair use may no longer serve its historical purpose. Traditionally, fair use is understood to benefit the public by fostering expressive activity. Today, the doctrine increasingly serves the economic interests of powerful firms at the expense of disempowered individual rightsholders. Finally, in Part III, this Article contemplates changes in doctrine and policy that could address these problems. It concludes that the United States’ interest in avoiding both prongs of AI’s fair use dilemma offers a novel justification for redistributive measures that could promote social equity alongside technological progress.

MELVILLE B. NIMMER MEMORIAL LECTURE: FAIR USE BY DESIGN
in UCLA Law Review by Niva Elkin-Koren
URL: https://www.uclalawreview.org/melville-b-nimmer-memorial-lecture-fair-use-by-design/

Each year, the UCLA School of Law hosts the Melville B. Nimmer Memorial Lecture. Since 1986, the lecture series has served as a forum for leading scholars in the fields of copyright and First Amendment law. In recent years, the lecture has been presented by many distinguished scholars. The UCLA Law Review has published these lectures and proudly continues that tradition by publishing an Article by this year’s presenter, Professor Niva Elkin-Koren.
COPYRIGHT'S FRAMING PROBLEM
in UCLA Law Review by Margot E. Kaminski & Guy A. Rub
URL: https://www.uclalawreview.org/copyrights-framing-problem/#bio

Copyright law has a framing problem. The problem is pervasive, unresolved, and often unnoticed, and it significantly impacts the nature and scope of copyright protection. Copyrighted works are complex: Books consist of chapters, newspapers consist of articles, and so on. Courts often need to decide whether to frame the work as one comprehensive whole, an approach we call “zooming out,” or to frame it as a combination of many small parts, an approach we call “zooming in.” This framing move occurs across many copyright doctrines: fair use, infringement analysis, statutory damages calculations, separability determination, and more.

This Article focuses on decisions heavily affected by a court’s framing choice. The results are troubling. The study of those decisions suggests that in the majority of cases, courts frame the work without noticing their framing move. When courts do explicitly provide reasoning for their framing choices, they use factors that are normatively questionable and increasingly less effective in today’s digital world. Consequently, copyrighted works are framed in an inconsistent way both across copyright law doctrines and within each doctrine. In fact, there is almost no area of copyright law in which courts consistently frame copyrighted works.

These variations in framing choices have costs. While these costs need to be acknowledged and addressed, we reject one intuitively appealing approach to addressing them. Copyright law, we show, should not provide a unified framing test, or unified definition of the “work,” across all its doctrines. Different areas of copyright law face different policy considerations. Sometimes the framing of the work itself may need to change, so that the policy balance behind copyright law can remain constant.

October 2017

SOME REALISM ABOUT COPYRIGHT SKEPTICISM
in IDEA: The IP Law Review by Guy Pessach on 9/26/2017
URL: https://ssrn.com/abstract=3043565

The frame “Beyond IP” is gradually becoming a key term in the political economy of intellectual property. It captures the social costs of legal ordering through intellectual property and offers alternative institutions and regulatory options. “Beyond IP” is not just a frame for mobilization but also a descriptive term that summarizes a growing number of contemporary information and cultural institutions, which rest upon concepts of free content and free access as their building blocks. The purpose of this essay is to question the conventional wisdom of critical copyright scholarship which tends to pair proprietary intellectual property protection with informational capitalism and the commodification of culture. I argue that tensions and dichotomies that we are accustomed to attribute to “IP-centric” regimes are tensions and dichotomies which may appear, or even be stimulated, also by copyright’s negative spaces and certain beyond IP legal regimes. Beyond IP market realms tend to conflict with the values of cultural democracy, informational privacy and creative diversity. This essay offers the first novel critical examination of the political economy of information markets that operate beyond the boundaries of IP. This analysis
bears significant normative implications on the desirability of contemporary approaches, which support mobilization towards beyond IP legal regimes.

FAIRNESS IN COPYRIGHT LAW: AN ANGLO-AMERICAN COMPARISON
in Santa Clara Computer and High Technology Law Review by Ilanah Simon Fhima on 9/27/2017
URL: https://ssrn.com/abstract=3044047

Fairness stands at the crossroads of copyright law. The concept is present in the exceptions to copyright in both the U.S. and the U.K., seeking to balance the interests of copyright owners and users, as well as the needs of the public in receiving information. The U.S. and U.K. adopt different approaches to how the defenses should be structured, with the U.S. having an open list of which types of use can benefit, leaving this for judges to develop in response to specific fact patterns and changing conditions before them. On the other hand, the U.K. has a list, pre-determined by the legislator, of which uses can benefit. Both use the notion of fairness to moderate between different interests at stake, and much of this piece is devoted to documenting how the factors used to determine whether use is fair are in fact very similar. However, it is argued that the open versus closed list approach does make a big difference to the likely outcomes in the jurisdictions, by giving U.S. courts the license to privilege the type of use over the countervailing interests of the copyright owner in a way that is just not open to U.K. judges.

FREEDOM OF ARTISTIC CREATIVITY AND COPYRIGHT LAW: A COMPATIBLE COMBINATION?
in UC Irvine Law Review by Christophe Geiger on 9/26/2017
URL: https://ssrn.com/abstract=3053980

Copyright was originally intended to serve creators as an engine of free expression, protecting them from the interference of others and from all risk of censorship. To this end, a balance was conceived between exclusive control and freedom and in order to enable future creativity, some uses were kept outside the control of the right owner through limitations to the exclusive right. However, none of the existing systems of limitations in the various jurisdictions was specifically designed to address the creative reuse of copyright protected material in the context of derivative works. On the contrary, when an author in his creative process needs to use the expression of a previous copyrighted work, he will have to get the authorization of the copyright owner of the original work. This situation can be quite cumbersome, as right owners are not always easy to trace, but most of all it can lead to a situation private censorship, as private entities or individuals have the potential to decide what can be created or not and block the dissemination of new works. It might thus be questionable how this situation can be reconciled with either the copyright’s rationale of incentivizing creativity or the obligations imposed on States by international and regionally protected human rights such as freedom of expression and freedom of artistic creation. In this article, the different options available for legislators and courts to secure creative uses in the context of derivative works will be assessed in order to develop a satisfying legal mechanism de lege ferenda, discussing in particular the possible objections that
could result from the international and regional framework for both intellectual property and human rights protection.

BLURRED JUSTICE
URL: https://ssrn.com/abstract=3047567

This paper discusses a current controversial copyright case involving inspiration. Marvin Gaye’s family, who owns the copyright to “Got to Give It Up,” claims that “Blurred Lines,” made famous by Robin Thicke, infringes on the family’s copyright. The Gaye family prevailed at trial. At summary judgment, the Federal District Court permitted the case to go to trial without determining whether there were elements to “Got to Give It Up” that were unprotected as unoriginal, commonplace musical ideas, or musical building blocks. Had the court made such a determination, the case should not have gone to trial. The summary judgment phase of litigation is supposed to weed out obviously unmeritorious cases such as this one. This article analyzes the two songs in detail from a music theory perspective and concludes that the similarities between the two songs were unprotected and that the protected elements were not similar. Accordingly, summary judgment should have been granted holding that there was no infringement. Further, the Gaye family should not have succeeded at trial. In our view, the summary judgment process failed, and we make some recommendations on how to improve the courts review at summary judgment for music copyright cases.

VIRTUAL COPYRIGHT
in The Law of Virtual and Augmented Reality by Jack Russo & Michael Risch on 10/12/2017
URL: https://ssrn.com/abstract=3051871

This book chapter explores the development of virtual reality technology from its rudimentary roots toward its realistic depiction of the world. It then traces the history of copyright protection for computer software user interfaces (a law that only predates virtual reality by a few years), highlighting competing approaches toward protection and infringement. While the focus is on virtual reality, this chapter contains an exhaustive examination of the state of "look and feel" protection for software interfaces.

The chapter then considers how these competing approaches -- each of which is still holds some sway in the courts -- will apply to virtual reality objects, application, worlds, and interfaces. We posit that as VR becomes more realistic, courts will find their way to allow more reuse.

We do not expect to see traditional characters and animation treated any differently in virtual reality. Mickey Mouse is still Mickey Mouse, and Pikachu lives in trading cards, cartoons, augmented reality, and virtual reality. It is whether and how realistic depiction, gesture control, modularization and sharing fit within copyright's limiting doctrines that will create important and difficult questions for future developers, judges, juries, and appellate courts.
Four decades ago, the Ninth Circuit ruled that expert testimony was inadmissible to determine whether Mayor McCheese and the merry band of McDonaldland characters infringed copyright protection for Wilhelmina W. Witchiepoo and the other imaginative H.R. Pufnstuf costumed characters. Since the emergence of software copyright infringement cases in the 1980s, substantially all software copyright cases have employed expert witnesses to aid juries in understanding software code. As the Second Circuit wisely recognized in Computer Associates Int’l, Inc. v. Altai, Inc., 982 F.2d 693, 713 (2d Cir. 1992), the ordinary observer standard “may well have served its purpose when the material under scrutiny was limited to art forms readily comprehensible and generally familiar to the average lay person,” but as to computer programs, district courts must have “discretion . . . to decide to what extent, if any, expert opinion, regarding the highly technical nature of computer programs, is warranted in a given case.”

Yet in a shocking departure from the decisions of every other circuit that has confronted software copyright infringement litigation, the Ninth Circuit reaffirmed and applied an anachronistic bar on expert testimony — originating in Krofft Television Prods., Inc. v. McDonald’s Corp., 562 F.2d 1157, 1164 (9th Cir. 1977) — to all copyright disputes, including those involving highly technical works. Antonick v. Electronic Arts, Inc., 841 F.3d 1061 (9th Cir. 2016), holds that lay juries must decipher and analyze software code — in this case, hexadecimal assembly code for different processors — without the assistance of expert witnesses. The author of the Ninth Circuit’s Antonick decision called the rule that he was following “nutty.” This paper argues that Supreme Court intervention is required to crack open that nutty rule.

This paper contends that unless the Supreme Court grants certiorari in Antonick v. Electronic Arts, the Ninth Circuit’s bar on admissibility of expert testimony in software copyright cases will result in absurd trial procedures in the most significant region for software development and litigation. In a shocking departure from the decisions of every other circuit that has confronted software copyright infringement litigation, the Ninth Circuit reaffirmed and applied an anachronistic bar on expert testimony—originating in Krofft Television Prods., Inc. v. McDonald’s Corp., 562 F.2d 1157, 1164 (9th Cir. 1977)—to all copyright disputes, including those involving highly technical works. As the Oracle v. Google and Cisco v. Arista Networks
litigations demonstrate, intellectual property disputes relating to computer software often involve both patent and copyright infringement claims. Therefore, the Ninth Circuit’s Antonick ruling creates a case management nightmare. Patent case management appropriately allows jurors to learn the technology with the aid of expert witnesses. But under the Ninth Circuit’s Antonick holding, the district judge will need to empanel separate juries to hear the copyright issues lest they be “tainted” by hearing competent testimony from qualified experts about the contents of the computer code. Software intellectual property litigation will only increase as the digital revolution unfolds. The Antonick case provides an ideal vehicle to correct the Ninth Circuit’s “nutty,” anachronistic, and illogical interpretation of copyright law.

November 2017

ARTIFICIAL INTELLIGENCE, BIG DATA AND INTELLECTUAL PROPERTY: PROTECTING COMPUTER-GENERATED WORKS IN THE UNITED KINGDOM
in Research Handbook on Intellectual Property and Digital Technologies by Ryan Abbott on 11/2/2017
URL: https://ssrn.com/abstract=3064213

Big data and its use by artificial intelligence (AI) is changing the way intellectual property is developed and granted. For decades, machines have been autonomously generating works which have traditionally been eligible for copyright and patent protection. Now, the growing sophistication of AI and the prevalence of big data is positioned to transform computer-generated works (CGWs) into major contributors to the creative and inventive economies. However, intellectual property law is poorly prepared for this eventuality. The UK is one of the few nations, and perhaps the only EU member state, to explicitly provide copyright protection for CGWs. It is silent on patent protection for CGWs.

This chapter makes several contributions to the literature. First, it provides an up-to-date review of UK, EU and international law. Second, it argues that patentability of CGWs is a matter of first impression in the UK, but that CGWs should be eligible for patent protection as a matter of policy. Finally, it argues that the definition of CGWs should be amended to reflect the fact that a computer can be an author or inventor in a joint work with a person.

LIABILITY FOR PROVIDING HYPERLINKS TO COPYRIGHT-INFRINGEMENT CONTENT: INTERNATIONAL AND COMPARATIVE LAW PERSPECTIVES
by Jane Ginsburg and Luke Budiardjo on 11/13/2017
URL: http://ssrn.com/abstract=3068786

Hyperlinking, at once an essential means of navigating the Internet, but also a frequent means to enable infringement of copyright, challenges courts to articulate the legal norms that underpin domestic and international copyright law, in order to ensure effective enforcement of exclusive rights on the one hand, while preserving open communication on the Internet on the other. Several recent cases, primarily in the European Union, demonstrate the difficulties of enforcing the right of communication to the public (or, in US copyright parlance, the right of public performance by transmission) against those who provide hyperlinks that effectively deliver
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infringing content to Internet users. This article will first address the international norms that domestic laws of states member to the multilateral copyright agreements must implement. It next will explore how two of the most significant regional or national copyright regimes, the EU and the US, have coped with the question of linking, and then will consider the relationship of the emerging approaches to copyright infringement with national and regional laws instituting limited immunity for copyright infringements committed by internet service providers. We will conclude with an assessment of the extent to which the outcomes under US and EU regimes, despite their apparently different approaches, in fact diverge.

EXTENDED COLLECTIVE LICENSES IN INTERNATIONAL TREATY PERSPECTIVE: ISSUES AND STATUTORY IMPLEMENTATION
by Jane Ginsburg on 11/13/2017
URL: http://www.ssrn.com/abstract=3068997

National legislation establishing extended collective licenses (ECLs) “authoriz[es] a collective organization to license all works within a category, such as literary works, for particular, limited uses, regardless of whether copyright owners belong to the organization or not. The collective then negotiates agreements with user groups, and the terms of those agreements are binding upon all copyright owners by operation of law.” Albeit authorized under national laws, collective coverage of non-members’ works may pose issues of compatibility with international norms. For example, if non-members must opt-out in order to preserve the individual management of their rights, is the opt-out a “formality” prohibited by art. 5(2) of the Berne Convention? Without an opt-out, does the collective’s exercise of nonmember rights operate like an exception or limitation whose contours the Berne Convention, the TRIPS Accord, and the WIPO Copyright Treaty “three-step test” constrain? This essay will analyze the extent to which international norms apply to ECLs and then will propose a treaty-compatible approach to opting-out.

ECL systems are a pragmatic response to the growing demand for bulk use of works of authorship, particularly in the digital environment. They can enhance access for users and remuneration to authors, and often may furnish the best means of achieving these ends. Provided, however, that authors' consent is properly presumed, or that the covered uses are defined to avoid conflict with normal exploitations, including emerging exploitations. An opt-out can enable the CMO to license uses that might otherwise encroach on normal exploitations, but for that reason, the more the ECL treads on transactionally-licensable exploitations, the higher the burden to justify the extension effect to non members through a rigorously-administered opt-out program that effectively notifies and clearly explains the consequences to non CMO member authors of their right to opt-out.

INTELLECTUAL PROPERTY AS SEEN BY BARBIE AND MICKEY: THE RECIPROCAL RELATIONSHIP OF COPYRIGHT AND TRADEMARK LAW
in Journal of the Copyright Society of the USA by Jane C. Ginsburg on 11/13/2017
URL: http://ssrn.com/abstract=3078944
Some years ago, caselaw on trademark parodies and similar unauthorized “speech” uses of trademarks could have led one to conclude that the law had no sense of humor. Over time, however, courts in the US and elsewhere began to leaven likelihood of confusion analyses with healthy skepticism regarding consumers’ alleged inability to perceive a joke. These decisions did not always expressly cite the copyright fair use defense, but the considerations underlying the copyright doctrine seemed to inform trademark analysis as well. The spillover effect may indeed have been inevitable, as several of the cases in which the fair use defense prevailed coupled copyright and trademark claims.

Just as copyright law has influenced the development of trademark doctrine in the US, so has trademark law evolved a reciprocal relationship with copyright, potentially extending the protection of certain copyrighted works, notably cartoon characters, beyond the copyright term.

This essay will first address how the US copyright fair use doctrine has allowed US federal judges in trademarks cases to connect with their inner comic impulses. Second, I will consider the conflict between trademark law’s potentially eternal duration and copyright’s constitutionally mandated limited times, particularly in the context of visual characters such as Mickey Mouse. Looking to EU law, I will also offer some additional considerations regarding the use of expired copyrighted works as trademarks.

While those analyses address trademarks and copyright as potential antagonists where exercise of trademark rights threatens to frustrate copyright policies, there is another side of the coin. To an increasing extent, we are seeing trademark symbols become characters and acquire value not only as source-indicators, but also as artistic (or audiovisual) works. I will conclude by considering the value that copyright protection might add to registered trademarks.

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**COPYRIGHT PRINCIPLES AND PRIORITIES TO FOSTER A CREATIVE DIGITAL MARKETPLACE**

in George Mason Law Review by Sandra Aistars et al. on 12/5/2017

URL: http://ssrn.com/abstract=3081057

Over the course of the last two years, Congress has engaged in a comprehensive review of the Copyright Act. This is the first such review in nearly two generations, and it lays the groundwork for further inquiries and proposals regarding how the law might be amended and how the institution responsible for its administration, the U.S. Copyright Office, might be modernized and restructured to better support a thriving digital marketplace of unprecedented creativity and innovation. A robust, well-functioning, and up-to-date Copyright Act, along with a modern, appropriately resourced Copyright Office, are important to all stakeholders, especially the general public, which is the ultimate beneficiary of the copyright system.

We propose the following organizing principles for any further work reviewing or revising the Copyright Act:

(1) Stay True to Technology-Neutral Principles and Take the Long View
(2) Strengthen the Ability of Authors to Create and to Disseminate Works  
(3) Value the Input of Creative Upstarts  
(4) Ensure that Copyright Continues to Nurture Free Speech and Creative Freedom  
(5) Rely on the Marketplace and Private Ordering Absent Clear Market Failures  
(6) Value the Entire Body of Copyright Law  

These principles in turn suggest that Congress prioritize the following areas for action:  

(1) Copyright Office Modernization  
(2) Registration and Recordation  
(3) Mass Digitization and Orphan Works  
(4) Small Claims  
(5) Notice and Takedown  
(6) Streaming Harmonization  

A focus on and respect for authorship and creativity reflects the values our country was built on, rooted in our Constitution. The public benefits from the resulting intellectual and cultural diversity, from the innovation that is possible through collaboration with the technology industries, as well as from the promotion of a sustainable and innovative economy.  

DIGITAL COPYRIGHT IN THE TPP  
URL: https://ssrn.com/abstract=3078371  

This chapter focuses on key copyright issues in TPP’s IP Chapter, especially those related to the Internet and digital technologies. Those issues include copyright term extension, safe harbor for Internet service providers (ISPs), technological protection measures, criminal liability, and limitations and exceptions. This chapter analyzes whether private and public interests represented by various stakeholders in the copyright ecology are taken into full account and kept balanced under TPP. This chapter also evaluates member states’ diverse considerations for implementing those copyright provisions. Furthermore, this chapter uses the IP Chapter as a lens to illustrate the international expansion of copyright facilitated by trade negotiations.  

AUTHORSHIP, DISRUPTED: AI AUTHORS IN COPYRIGHT AND FIRST AMENDMENT LAW  
in UC Davis Law Review by Margot E. Kaminski on 12/12/2017  
URL: https://ssrn.com/abstract=3086912  

Technology is often characterized as an outside force, with essential qualities, acting on the law. But the law, through both doctrine and theory, constructs the meaning of the technology it encounters. A particular feature of a particular technology disrupts the law only because the law has been structured in a way that makes that feature relevant. The law, in other words, plays a
significant role in shaping its own disruption. This Essay is a study of how a particular
technology, artificial intelligence, is framed by both copyright law and the First Amendment.
How the algorithmic author is framed by these two areas illustrates the importance of legal
context and legal construction to the disruption story.

EU COPYRIGHT REFORM: THE CASE FOR A NEW PUBLISHER'S RIGHT
in Intellectual Property Quarterly on 12/3/2017
URL: https://ssrn.com/abstract=3081733

This paper investigates the merits of a new related right press publisher. To this end, the paper
investigates the economic and technical background and outlines the potential effects of the
European Commission’s current proposal for a publisher’s right. The paper comes to the
conclusion that the proposed publisher’s right is both justified and proportionate to address
pressing market failures in the area of the online press.

COPYRIGHT REVERSION TO AUTHORS (AND THE ROSETTA EFFECT): AN
EMPIRICAL STUDY OF REAPPEARING BOOKS
by Paul J. Heald on 12/8/2017
URL: https://ssrn.com/abstract=3084920

Copyright keeps out-of-print books unavailable to the public, and commentators speculate that
statutes transferring rights back to authors would provide incentives for the republication of
books from unexploited back catalogs. This study compares the availability of books whose
copyrights are eligible for statutory reversion under US law with books whose copyrights are still
exercised by the original publisher. It finds that 17 USC § 203, which permits reversion to
authors in year 35 after publication, and 17 USC § 304, which permits reversion 56 years after
publication, significantly increase in-print status for important classes of books. Several reasons
are offered as to why the § 203 effect seems stronger. The 2002 decision in Random House v.
Rosetta Books, which worked a one-time de facto reversion of ebook rights to authors, has an
even greater effect on in-print status than the statutory schemes.

THE 1593 ANTONIO TEMPESTA MAP OF ROME
in A History of IP in 50 Objects by Jane Ginsburg on 12/19/2017
URL: http://ssrn.com/abstract=3090507

This Essay examines Florentine painter and engraver Antonio Tempesta’s 1593 petition for a
Papal printing privilege on his great bird’s-eye view Map of Rome. The arguments Tempesta
made in support of his request for the exclusive rights to print, sell and control variations on his
map evoke justifications spanning the full range of modern intellectual property rhetoric, from
fear of unscrupulous competitors, to author-centric rationales. Invocations of labor and
investment and unfair competition-based justifications were familiar – indeed ubiquitous – in
Tempesta’s time, and still echo today. Long before the 1710 British Statute of Anne (vesting
exclusive rights in authors), the precursor regime of printing privileges had well understood printing monopolies to be incentives to intellectual and financial investment. The pre-copyright system thus firmly established one of the philosophical pillars of modern copyright law. Tempesta’s petition, however, goes further than its antecedents with respect to the second pillar of modern copyright law, the natural rights of the author, a rationale that roots exclusive rights in personal creativity. Tempesta focused the rights on the creator, and equated creativity with his personal honor, thus foreshadowing a moral rights conception of copyright.