2019 COPYRIGHT DEVELOPMENTS

Prepared for the American Bar Association Section of Intellectual Property Law’s Copyright Division by Joshua L. Simmons, Council Liaison
# TABLE OF CONTENTS

I. COPYRIGHT DECISIONS ........................................................................................................1
   Supreme Court ..................................................................................................................1
   D.C. Circuit ....................................................................................................................2
   District Court for the District of Columbia ...............................................................2
   Federal Circuit ...............................................................................................................4
      Court of Appeals for the Federal Circuit ...............................................................4
      Court of Federal Claims .........................................................................................5
   First Circuit ...................................................................................................................6
      District of Massachusetts .......................................................................................6
      District of Puerto Rico .........................................................................................8
      District of Rhode Island ......................................................................................9
   Second Circuit ..............................................................................................................9
      Court of Appeals for the Second Circuit .............................................................9
      District of Connecticut .......................................................................................15
      Eastern District of New York .............................................................................17
      Southern District of New York ...........................................................................21
      Western District of New York ..........................................................................58
   Third Circuit ..............................................................................................................62
      Court of Appeals for the Third Circuit ...............................................................62
      District of Delaware ...........................................................................................64
      District of New Jersey ........................................................................................64
      Eastern District of Pennsylvania ......................................................................68
      Middle District of Pennsylvania ....................................................................73
   Fourth Circuit ..........................................................................................................74
      Court of Appeals for the Fourth Circuit .............................................................74
      District of Maryland ............................................................................................75
      Eastern District of North Carolina .....................................................................77
      Middle District of North Carolina .......................................................................77
      Western District of North Carolina ......................................................................79
      Eastern District of Virginia ...............................................................................81
      Western District of Virginia ..............................................................................82
<table>
<thead>
<tr>
<th>Region</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern District of West Virginia</td>
<td>85</td>
</tr>
<tr>
<td>Fifth Circuit</td>
<td>86</td>
</tr>
<tr>
<td>Court of Appeals for the Fifth Circuit</td>
<td>86</td>
</tr>
<tr>
<td>Eastern District of Louisiana</td>
<td>87</td>
</tr>
<tr>
<td>Northern District of Mississippi</td>
<td>88</td>
</tr>
<tr>
<td>Southern District of Mississippi</td>
<td>89</td>
</tr>
<tr>
<td>Eastern District of Texas</td>
<td>90</td>
</tr>
<tr>
<td>Northern District of Texas</td>
<td>91</td>
</tr>
<tr>
<td>Southern District of Texas</td>
<td>94</td>
</tr>
<tr>
<td>Western District of Texas</td>
<td>95</td>
</tr>
<tr>
<td>Sixth Circuit</td>
<td>100</td>
</tr>
<tr>
<td>Court of Appeals for the Sixth Circuit</td>
<td>100</td>
</tr>
<tr>
<td>Eastern District of Kentucky</td>
<td>102</td>
</tr>
<tr>
<td>Eastern District of Michigan</td>
<td>103</td>
</tr>
<tr>
<td>Northern District of Ohio</td>
<td>106</td>
</tr>
<tr>
<td>Southern District of Ohio</td>
<td>107</td>
</tr>
<tr>
<td>Middle District of Tennessee</td>
<td>114</td>
</tr>
<tr>
<td>Seventh Circuit</td>
<td>116</td>
</tr>
<tr>
<td>Court of Appeals for the Seventh Circuit</td>
<td>116</td>
</tr>
<tr>
<td>Northern District of Illinois</td>
<td>117</td>
</tr>
<tr>
<td>Northern District of Indiana</td>
<td>128</td>
</tr>
<tr>
<td>Southern District of Indiana</td>
<td>130</td>
</tr>
<tr>
<td>District of Minnesota</td>
<td>130</td>
</tr>
<tr>
<td>Eastern District of Wisconsin</td>
<td>137</td>
</tr>
<tr>
<td>Western District of Wisconsin</td>
<td>137</td>
</tr>
<tr>
<td>Eighth Circuit</td>
<td>138</td>
</tr>
<tr>
<td>Eastern District of Missouri</td>
<td>138</td>
</tr>
<tr>
<td>Western District of Missouri</td>
<td>139</td>
</tr>
<tr>
<td>District of Nebraska</td>
<td>142</td>
</tr>
<tr>
<td>Ninth Circuit</td>
<td>143</td>
</tr>
<tr>
<td>Court of Appeals for the Ninth Circuit</td>
<td>143</td>
</tr>
<tr>
<td>District of Arizona</td>
<td>157</td>
</tr>
<tr>
<td>Central District of California</td>
<td>164</td>
</tr>
</tbody>
</table>
Eastern District of California ...............................................................................178
Northern District of California ........................................................................181
Southern District of California .........................................................................199
District of Hawai'i ............................................................................................202
District of Nevada .............................................................................................204
District of Oregon .............................................................................................206
Western District of Washington ........................................................................207

**Tenth Circuit** .................................................................................................210

Court of Appeals for the Tenth Circuit ..............................................................210
District of Colorado ..........................................................................................211
District of Kansas .............................................................................................215
District of New Mexico .....................................................................................219
District of Utah .................................................................................................219

**Eleventh Circuit** ...........................................................................................223

Court of Appeals for the Eleventh Circuit ........................................................223
Northern District of Alabama ............................................................................223
Southern District of Alabama ..........................................................................224
Middle District of Florida ..................................................................................224
Southern District of Florida ..............................................................................229

**II. COPYRIGHT-RELATED LEGISLATION** ....................................................233

**House** ...........................................................................................................233

H.R. 704: Fair Trade With China Enforcement Act .............................................233
H.R. 1006: Open Internet Act of 2019 ...............................................................233
H.R. 1096: Promoting Internet Freedom and Innovation Act of 2019 ..............234
H.R. 1101: To Amend the Communications Act of 1934 To ............................234
H.R. 1644: Save the Internet Act of 2019 ..........................................................234
H.R. 1709: Scientific Integrity Act .................................................................235
H.R. 1793: Artist-Museum Partnership Act of 2019 .........................................236
H.R. 1865: Further Consolidated Appropriations Act, 2020 ............................236
H.R. 2136: Open Internet Preservation Act .....................................................237
H.R. 2426: Copyright Alternative in Small-Claims Enforcement Act of 2019 ......238
H.R. 2779: Legislative Branch Appropriations Act, 2020 ...............................239
H.R. 3002: A bill to provide for the carriage of certain television broadcast stations, and for other purposes. ..........................................................240
H.R. 3230: Defending Each and Every Person from False Appearances by Keeping Exploitation Subject to Accountability Act of 2019 .......................241
H.R. 3994: Modern Television Act of 2019 .......................................................242
H.R. 4471: Back to Basics Job Creation Act of 2019 ..........................................243
H.R. 4476: Financial Transparency Act of 2019 ...............................................244
H.R. 4822: Alice Cogswell and Anne Sullivan Macy Act ..................................245
H.R. 4857: For the 99.8 Percent Act .................................................................246
H.R. 4997: Artistic Recognition for Talented Students Act ..............................247
H.R. 5140: Satellite Television Community Protection and Promotion Act of 2019 .............................................................................................................248
H.R. 5150: Transparency in Government Act of 2019 .......................................248
H.R. 5219: Ask Musicians for Music Act of 2019 .............................................249
H.R. 5430: United States-Mexico-Canada Agreement Implementation Act ......249

Senate ..............................................................................................................................250
S. 2: Fair Trade With China Enforcement Act .....................................................250
S. 309: For the 99.8 Percent Act ...........................................................................251
S. 775: Scientific Integrity Act ...............................................................................252
S. 847: Commercial Facial Recognition Privacy Act of 2019 .............................252
S. 1059: Fund for Innovation and Success in Higher Education Act ............253
S. 1273: Copyright Alternative in Small-Claims Enforcement Act of 2019 ......254
S. 1459: China Technology Transfer Control Act of 2019 ............................255
S. 1655: A bill to provide for the carriage of certain television broadcast stations, and for other purposes. ..........................................................255
S. 2454: Go Pack Go Act of 2019 .......................................................................256
S. 2557: Student Aid Improvement Act of 2019 ...............................................256
S. 2581: Legislative Branch Appropriations Act, 2020 ....................................... 257
S. 2681: Alice Cogswell and Anne Sullivan Macy Act ....................................... 258
S. 2667: FAFSA Simplification Act of 2019 ....................................................... 259
S. 2824: Artistic Recognition for Talented Students Act .................................. 259
S. 2920: A bill to reauthorize the Violence Against Women Act of 1994, and for other purposes ................................................................. 260
S. 2932: Ask Musicians for Music Act of 2019 ................................................... 260

Resolutions........................................................................................................... 261
H. Res. 369: Expressing the Sense of the House of Representatives Supporting the Federal Workforce ................................................................. 261

III. COPYRIGHT OFFICE......................................................................................... 262

Rulemakings ........................................................................................................ 262
Copyright Office Fees Rulemaking ................................................................. 262
Designations of Mechanical Licensing Collective and Digital Licensee Coordinator Rulemaking ................................................................. 262
Freedom of Information Act Regulations Rulemaking ..................................... 262
Group Registration of Newspapers Rulemaking ................................................ 262
Group Registration of Serials Rulemaking ......................................................... 262
Group Registration of Short Online Literary Works Rulemaking ...................... 262
Group Registration of Unpublished Works Rulemaking .................................... 262
Group Registration of Works on an Album of Music Rulemaking .................... 262
Music Modernization Act Blanket License Implementation Rulemaking ........ 262
Noncommercial Use of Pre-1972 Sound Recordings That Are Not Being Commercially Exploited Rulemaking ............................................. 262
Registration Modernization Rulemaking ......................................................... 262
Rules Regarding Schedules of Pre-1972 Sound Recordings and Notices of Contact Information By Transmitting Entities Rulemaking ............. 262
Simplifying Copyright Registration for Architectural Works Rulemaking .......... 262
Technical Amendments to Section 115 Compulsory License Regulations Rulemaking ................................................................. 262

Policy Studies ..................................................................................................... 285
Copyright Protection for Certain Visual Works Study ........................................ 285
Online Publication .............................................................................................. 285
Section 512 Study .............................................................................................. 286
January 2019 ..................................................................................................................315
February 2019 ...............................................................................................................346
March 2019 ....................................................................................................................377
April 2019 .......................................................................................................................410
May 2019 ........................................................................................................................432
June 2019 ........................................................................................................................455
July 2019 ..........................................................................................................................477
August 2019 ....................................................................................................................502
September 2019 ..............................................................................................................521
October 2019 ...................................................................................................................545
November 2019 ...............................................................................................................570
December 2019 ................................................................................................................589

VII. COPYRIGHT BOOKS ..................................................................................................606

VIII. COPYRIGHT LAW JOURNAL ARTICLES: JOURNAL OF THE COPYRIGHT SOCIETY OF THE USA .....................................................................607
      Vol. 65, No. 1 (Winter 2019) ..........................................................................................607
      Vol. 65, No. 2 (Spring 2019) ..........................................................................................610

IX. COPYRIGHT LAW JOURNAL ARTICLES ..................................................................611
**TABLE OF CASES**

<table>
<thead>
<tr>
<th>Case Title</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abdin v. CBS Broad., Inc.</td>
<td>No. 18 CIV. 7543 (LGS), 2019 WL 4572676 (S.D.N.Y. Sep. 20, 2019).........................................45</td>
</tr>
<tr>
<td>Advanced Recovery Sys. v. Am. Agencies</td>
<td>No. 17-4202, 2019 WL 1997603 (10th Cir. May. 7, 2019)................................................................210</td>
</tr>
<tr>
<td>Amanze v. Adeyemi</td>
<td>No. 18 CIV. 8808 (NRB), 2019 WL 6014138 (S.D.N.Y. Nov. 13, 2019)......................................54</td>
</tr>
<tr>
<td>APL Microscopic, LLC v. United States</td>
<td>No. 18-1851 C, 2019 WL 4049155 (Fed. Cl. Aug. 27, 2019).....................................................5</td>
</tr>
<tr>
<td>Apps v. Universal Music Grp., Inc.</td>
<td>No. 17-17122, 2019 WL 1230908 (9th Cir. Mar. 14, 2019)..................................................144</td>
</tr>
</tbody>
</table>
Cancian v. Hannabass and Rowe, Ltd.,

Carrell v. Origami Owl, LLC,
No. 18 Civ. 694 (NRB), 2019 WL 1330941 (S.D.N.Y. Mar. 25, 2019) ................................28

Charles v. Seinfeld,

Charter Sch. Capital, Inc. v. Charter Asset Mgmt. Fund, L.P.,
No. 17-56601, 17-56603, 2019 WL 1873199 (9th Cir. Apr. 26, 2019) .............................152

Chelko v. Does JF Restaurants, LLC,

Clean Crawl, Inc. v. Crawl Space Cleaning Pros, Inc.,

Craft Smith, LLC v. EC Design, LLC,
No. 2:16-CV-01235, 2019 WL 2161560 (D. Utah May. 17, 2019) ....................................219

Craft Smith, LLC v. EC Design, LLC,

Crafty Prods., Inc. v. Michaels Cos.,

Crafty Prods., Inc. v. Michaels Cos.,

Cramer v. Cecil Baker & Partners, Inc.,

Cristo v. Cayabyab,

Day to Day Imps., Inc. v. FH Grp Int’l, Inc.,

DBW Partners, LLC v. Bloomberg, L.P.,

In re Dealer Mgmt. Sys. Antitrust Litig.,

Design Basics, LLC v. Heller & Sons, Inc.,
Design Basics, LLC v. Heller & Sons, Inc.,

Design Basics, LLC v. Kersteins Home & Designs, Inc.,
No. 1:16-CV-00726-TWP-DLP, 2019 WL 4749916 (S.D. Ind. Sep. 30, 2019)....................130

Design Basics, LLC v. Landmark Communities, Inc.,

Design Basics, LLC v. Landmark Communities, Inc.,

Design Basics, LLC v. MTF Assocs., Inc.,

Design Basics, LLC v. WK Olson Architects, Inc.,
No. 17 C 7432, 2019 WL 527535 (N.D. Ill. Feb. 11, 2019)..................................117

DesignWorks Homes, Inc. v. Columbia House of Brokers Realty, Inc.,
No. 2:18-CV-04090-BCW, 2019 WL 5790978 (W.D. Mo. Nov. 6, 2019).........................140

DesignWorks Homes, Inc. v. Thomson Sailors Homes, LLC,

Diamond Collection, LLC v. Underwraps Costume Corp.,

DiamondBack Indus., Inc. v. Repeat Precision, LLC,

Distribuidora de Discos Karen C. Por A. v. Universal Music Grp., Inc.,

Dolezal v. Starr Homes, LLC,

Dolores Press, Inc. v. Robinson,
No. 17-55068, 17-55069, 17-55071, 18-55288, 18-55487, 2019 WL 1224532
(9th Cir. Mar. 15, 2019).................................................................149

Downs v. Oath Inc.,
No. 18-CV-10337 (JSR), 2019 WL 2209206 (S.D.N.Y. May. 22, 2019).....................60

DRK Photo v. McGraw-Hill Global Educ. Holdings, LLC,

Durant v. DuPont Publ’g, Inc.,
No. CV 18-9794 (MAS) (DEA), 2019 WL 1433620 (D.N.J. Mar. 29, 2019)..............64
Edge in College Preparation, LLC v. Peterson’s Nelnet, LLC,
No. 8:16-CV-559, 2019 WL 3754445 (D. Neb. Aug. 8, 2019) .............................................143

Energy Intelligence Grp., Inc. v. CHS McPherson Refinery, Inc.,

Ennio Morricone Music Inc. v. Bixio Music Grp. Ltd.,
No. 17-3595-CV, 2019 WL 3937703 (2d Cir. Aug. 21, 2019) .............................................15

Erickson Prods., Inc. v. Kast,
No. 15-16801, 2019 WL 1605668 (9th Cir. Apr. 16, 2019) ..................................................150

etrailer Corp. v. Automatic Equip. Mfg. Co.,

eTrailer Corp. v. Textrail, Inc.,

Everly v. Everly,

Evoqua Water Techs., LLC v. M.W. Watermark, LLC,

Exner v. First Command Fin Servs., Inc.,

Fair Isaac Corp. v. Fed. Ins. Co.,

Fair Isaac Corp. v. Trans Union, LLC,
No. 17-CV-8318, 2019 WL 1436018 (N.D. Ill. Mar. 30, 2019) ........................................121

FameFlynet, Inc. v. Jasmine Enters. Inc.,
No. 17 C 4749, 2019 WL 3733592 (N.D. Ill. Aug. 8, 2019) ............................................126

Feuer-Goldstein, Inc. v. Michael Hill Franchise Pty. Ltd.,
No. 16-CV-9987 (PKC), 2019 WL 1382341 (S.D.N.Y. Mar. 27, 2019) ...............................29

Flo & Eddie, Inc. v. Pandora Media, LLC,
No. 15-55287, 2019 WL 5268624 (9th Cir. Oct. 17, 2019) ..................................................154

Focal Point Films, LLC v. Sandhu,

Ford Motor Co. v. Versata Software, Inc.,
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geophysical Serv., Inc. v. TGS-Nopec Geophysical Co.,</td>
<td>No. 18-20493, 2019 WL 4410259 (5th Cir. Sep. 13, 2019)</td>
</tr>
<tr>
<td>Greg Young Publ’g, Inc. v. Zazzle, Inc.,</td>
<td>No. 18-55522, 2019 WL 6186057 (9th Cir. Nov. 20, 2019)</td>
</tr>
</tbody>
</table>
Guity v. Santos,
   No. 18-CV-10387 (PKC), 2019 WL 6619217 (S.D.N.Y. Dec. 5, 2019).................................56

Gunther v. Town of Ogden,
   No. 6:19-CV-06199-MAT, 2019 WL 6130710 (W.D.N.Y. Nov. 19, 2019)...............................61

Haas Outdoors, Inc. v. Dryshod Int’l, LLC,

Hacienda Records, LP v. Ramos,

Haddley v. Next Chapter Tech., Inc.,

Hall v. Swift,
   No. 18-55426, 2019 WL 5543864 (9th Cir. Oct. 28, 2019)..................................................155

Hall v. Swift,
   No. 18-55426, 2019 WL 6608746 (9th Cir. Dec. 5, 2019)..................................................156

Harrington v. McGraw-Hill Global Educ. Holdings, LLC,

Hayden v. 2K Games, Inc.,
   No. 1:17CV2635, 2019 WL 1299943 (N.D. Ohio Mar. 21, 2019)........................................106

HealthPlan Servs., Inc. v. Dixit,
   No. 8:18-CV-2608-T-23AAS, 2019 WL 1490230 (M.D. Fla. Apr. 4, 2019).........................226

Ho v. Pinsukanjana,

Horizon Comics Prods. Inc. v. Marvel Entm’t, LLC,
   No. 16-CV-2499 (JPO), 2019 WL 3080847 (S.D.N.Y. Jul. 15, 2019).................................37

Howarth v. Patterson,

Imagize LLC v. Ateknea Solutions Hungary Kft,
   No. 18-CV-01098-RS, 2019 WL 3068345 (N.D. Cal. Jul. 12, 2019).................................191

Int’l Inst. of Mgmt. v. Org. for Econ. Coop. and Dev.,

Izmo, Inc. v. Roadster, Inc.,
   No. 18-CV-06092-NC, 2019 WL 2359228 (N.D. Cal. Jun. 4, 2019).................................185
Krist v. Scholastic, Inc.,
No. CV 16-6251, 2019 WL 6133861 (E.D. Pa. Nov. 18, 2019).........................70

Lanard Toys Ltd. v. Toys “R” Us-Delaware, Inc.,

No. 3:11-CV-01586 (CSH), 2019 WL 3387330 (D. Conn. Jul. 25, 2019)...............15

Lenard E. Schwartz, Chapter 7 Bankruptcy Trustee v. Hansen,

LHF Prods., Inc. v. Kabala,

Life After Hate, Inc. v. Free Radicals Project, Inc.,
No. 18 C 6967, 2019 WL 2644237 (N.D. Ill. Jun. 27, 2019).........................122

Live Face on Web, LLC v. Integrity Solutions Grp., Inc.,
No. 16-CV-01627-CMA-STV, 2019 WL 4751768 (D. Col. Sep. 30, 2019)...........214

Live Face On Web, LLC v. Renters Warehouse, LLC,
No. 17-CV-2127 (WMW/KMM), 2019 WL 1097493 (D. Minn. Mar. 8, 2019)........132

Long v. Dorset,

Louis Vuitton Maletier, S.A. v. My Other Bag, Inc.,
No. 18-293-CV, 2019 WL 1223089 (2d Cir. Mar. 15, 2019).........................10

Magnum Photos Int’l, Inc. v. Houk Gallery, Inc.,
No. 16-CV-7030 (VSB), 2019 WL 4686498 (S.D.N.Y. Sep. 26, 2019)...............51

Mai Larsen Designs v. Wants2Scrap, LLC,

Manhattan Review LLC v. Yun,
No. 17-4046-CV, 2019 WL 1319813 (2d Cir. Mar. 25, 2019).........................11

Manhattan Review LLC v. Yun,
No. 17-4046-CV, 2019 WL 1326528 (2d Cir. Mar. 25, 2019).........................10

Marshall v. Babbs,

Masi v. Moguldom Media Grp. LLC,
No. 18 CIV. 2402 (PAC), 2019 WL 3287819 (S.D.N.Y. Jul. 22, 2019).............40
McGucken v. Displate Corp.,

Media Rights Techs., Inc. v. Microsoft Corp.,
No. 17-16509, 2019 WL 1945119 (9th Cir. May. 2, 2019)...................................................152

Menzel v. Scholastic, Inc.,
No. 17-CV-05499-EMC, 2019 WL 6896145 (N.D. Cal. Dec. 18, 2019).................................196

MerchDirect LLC v. Cloud Warmer, Inc.,
No. 17-CV-4860 (RRM) (ARL), 2019 WL 4918044 (E.D.N.Y. Sep. 30, 2019)....................20

Merola Sales Co. v. Tabarka Studio, Inc.,

Mfg. Automation & Software Sys., Inc. v. Hughes,

Michael Grecco Prods., Inc. v. Alamy, Inc.,
No. 18-CV-3260 (PKC) (SMG), 2019 WL 1129432 (E.D.N.Y. Mar. 12, 2019)...............18

Micro Focus (U.S.), Inc. v. Express Scripts, Inc.,
No. CV PX-16-0971, 2019 WL 557080 (D. Md. Feb. 12, 2019).............................................75

Miller v. 4Internet, LLC,

Moi v. Chihuly Studio, Inc.,

Mourabit v. Klein,
No. 18 CIV. 8313 (AT), 2019 WL 2866846 (S.D.N.Y. Jul. 2, 2019).....................................36

Mtume v. Sony Music Entm’t,
No. 18 CIV. 6037(ER), 2019 WL 4805925 (S.D.N.Y. Sep. 30, 2019).................................51

Music Choice v. Claggett,
No. 18-CV-3739(KMW), 2019 WL 2176178 (S.D.N.Y. May. 20, 2019)..............................60

Myeress v. Buzzfeed, Inc.,
No. 18-CV-2365 (VSB), 2019 WL 1004184 (S.D.N.Y. Mar. 1, 2019).................................26

Narkiewicz-Laine v. Doyle,
No. 18-2535, 2019 WL 3244501 (7th Cir. Jul. 19, 2019)..................................................116

Narrative Ark Entm’t LLC v. Archie Comic Publ’ns, Inc.,
No. 16 CV 6109 (VB), 2019 WL 4142362 (S.D.N.Y. Aug. 29, 2019).................................43
Narrative Ark Entm’t LLC v. Archie Comic Publ’ns, Inc.,
No. 16 CV 6109 (VB), 2019 WL 5157400 (S.D.N.Y. Oct. 15, 2019) ........................................52

Navarro v. Procter & Gamble Co.,

Neman Brothers & Assoc., Inc. v. Burlington Stores, Inc.,
No. 17-56239, 2019 WL 1373223 (9th Cir. Mar. 25, 2019) ..................................................150

Nicassio v. Viacom Int’l, Inc.,
No. 18-2085, 2019 WL 2762343 (3d Cir. Jul. 2, 2019) .........................................................63

Noland v. Janssen,
No. 17-CV-5452 (JPO), 2019 WL 1099805 (S.D.N.Y. Mar. 8, 2019) ....................................26

NSI Nursing Solutions, Inc. v. Volume Recruitment Servs., LLC,

Nucap Indus., Inc. v. Robert Bosch LLC,
No. 15 C 02207, 2019 WL 4242499 (N.D. Ill. Sep. 7, 2019) ................................................127

O’Brien v. POPSUGAR Inc.,
No. 18-CV-04405-HSG, 2019 WL 462973 (N.D. Cal. Feb. 6, 2019) ....................................182

Oppenheimer v. Deiss,

Oppenheimer v. Kenney,

Oppenheimer v. Morgan,

Oyewole v. Ora,
No. 18-1311-CV, 2019 WL 4180148 (2d Cir. Sep. 4, 2019) ..................................................15

Pablo Star Ltd. v. Welsh Gov’t,

Patel Burica & Assocs., Inc. v. Lin,

Philpot v. LM Commc’ns II of S.C.,
No. 18-6207, 2019 WL 4256860 (6th Cir. Sep. 9, 2019) ......................................................101

Photographic Illustrators Corp. v. Orgill, Inc.,
Rimini St., Inc. v. Oracle USA, Inc.,  
No. 17-1625, 2019 WL 1005828 (U.S. Mar. 4, 2019) ......................................................1

No. 18-CV-62715, 2019 WL 1059836 (S.D. Fla. Mar. 6, 2019) .........................................229

Rock v. Enfants Riches Deprimes, LLC,  
No. 17-CV-2618 (ALC), 2019 WL 1300091 (S.D.N.Y. Mar. 21, 2019) ..............................27

Rodriguez v. Serna,  

Romex Textiles, Inc. v. HK Worldwide, LLC,  

Ronaldo Designer Jewelry, Inc. v. Cox,  

Roth v. Walsh Co.,  

Saavedra v. Editorial Cultural, Inc.,  
No. CV 15-2436 (MEL), 2019 WL 1096812 (D.P.R. Mar. 8, 2019) ...............................8

Schmidt v. Baldy,  

Sedgewick Homes, LLC v. Stillwater Homes, Inc.,  
No. 5:16CV49, 2019 WL 2881616 (W.D.N.C. Jul. 1, 2019) ............................................80

Sedgewick Homes, LLC v. Stillwater Homes, Inc.,  
No. 5:16CV49, 5:16CV50, 2019 WL 3226929 (W.D.N.C. Jul. 17, 2019) .......................81


Shepard v. Wo Hop City, Inc.,  

Shirman v. WHEC-TV, LLC,  
No. 18-CV-6508-FPG, 2019 WL 2163045 (W.D.N.Y. May. 17, 2019) ...........................58

Siegler v. Sorrento Therapeutics, Inc.,  

Siler v. Lejarza,  
No. 1:19CV403, 2019 WL 6219956 (M.D.N.C. Nov. 21, 2019) ......................................77
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Citation</th>
</tr>
</thead>
</table>
Yang v. Mic Network, Inc.,
No. 18-CV-7628 (AJN), 2019 WL 4640263 (S.D.N.Y. Sep. 24, 2019).................................48

Yellow Pages Photos, Inc. v. Dex Media, Inc.,
No. 8:18-CV-1872-T-36AEP, 2019 WL 2247701 (M.D. Fla. May. 24, 2019).....................227

Yellowpages Photos, Inc. v. YP, LLC,
No. 8:17-CV-764-T-36JSS, 2019 WL 6341018 (M.D. Fla. Nov. 27, 2019).........................228

Zuma Press, Inc. v. Getty Images (US), Inc.,
No. 16 CIV. 6110 (AKH), 17 CIV. 5832 (AKH), 2019 WL 2725680
(S.D.N.Y. Jul. 1, 2019)............................................................................................................32
TABLE OF TOPICS

Circumvention of copyright protection systems
  circumvention .................................................................................................................... 87, 190
  constitutionality ................................................................................................................... 2
  customs seizure .................................................................................................................... 314
  pleading requirements ....................................................................................................... 126
  secondary liability ............................................................................................................. 126
  trafficking .......................................................................................................................... 190

Contributory infringement
  contribution ............................................................................................................................. 162
  direct infringement ...................................................................................................... 64, 68, 140
  extraterritoriality ...................................................................................................................... 193
  inducement ........................................................................................................................ 64, 145
  knowledge ......................................................................................................... 81, 145, 150, 193
  pleading requirements ............................................................................. 20, 25, 79, 99, 186, 229

Copyright Office
  announcement .................................................................................................................. 290, 292, 293, 294, 296, 298
  appropriation ........................................................................................................... 236, 239, 257
  audit ......................................................................................................................................... 289
  Compendium ........................................................................................................................ 289
  event ......................................................................................................................................... 286, 295, 298, 299, 300
  fees .......................................................................................................................................... 247, 262, 270
  fraud on the Copyright Office .......................................................................................... See Defenses
  Freedom of Information Act ................................................................................................. 271
  information request ................................................................................................................. 286
  leadership ................................................................................................................ 290, 291, 292, 293
  letter ......................................................................................................................................... 285
  modernization ........................................................................................................... 280, 293, 295, 296, 297, 298
  recordation ....................................................................................................................... 262, 297
  roundtable ................................................................................................................................ 286
  rulemaking ....................................... 262, 270, 271, 272, 273, 274, 275, 276, 277, 279, 283, 284
  strategic plan ....................................................................................................................... 294
  study ......................................................................................................................................... 285, 286
  written comments ............................................................................ 272, 275, 276, 279, 280, 284

Copyright registration
  application rule .................................................................................................................. 17
  group registration ...................................................................................................................... 71
  litigation requirement ........................................................................................................... 130
  ownership ................................................................................................................ See Ownership
  pleading requirements ........................................................................................................... 97, 157, 180, 188
  presumption of validity .............. 15, 40, 76, 81, 111, 115, 162, 170, 172, 178, 202, 219, 224
  processing time ....................................................................................................................... 288
  publication .......................................................................................................................... 153
### Copyright Royalty Board
- appellate review ................................................................. 60
- audit ........................................................................ 307, 308
- determination ................................................................. 302, 303
- distribution .................................................................. 304, 305, 306
- rulemaking ................................................................. 309

### Copyrightability
- architectural work .......................................................... 140
- blank form ...................................................................... 178, 207
- copyright in restored works ........................................ 288
- creativity ........................................................................ 91, 118, 127, 132, 142, 195, 210, 216, 224
- originality ..................................................................... 21, 31, 107, 155, 156, 162, 195, 202, 223
- pleading requirements ............................................... 8, 118, 188, 221
- publication ..................................................................... 285
- useful article .................................................................. 17, 63, 66, 219, 224
- validity ........................................................................ 68

### Counterclaim
- copyright misuse ........................................................... 215
- invalidity .......................................................................... 216
- non-infringement ............................................................ 216
- unenforceability .............................................................. 216

### Customs and Border Protection
- rulemaking ..................................................................... 314

### Defenses
- abandonment .................................................................. 119, 149, 180
- acquiescence .................................................................. 193
- breach of contract ............................................................. 30
- collateral estoppel ........................................................... 193
- constitutionality ............................................................. 204
- creativity .......................................................................... 204
- de minimis use ................................................................ 175
- equitable estoppel ............................................................ 111, 119, 159, 216
- estoppel ........................................................................ 180, 193
- exemption of certain performances and displays ........ 102, 191
- failure to state a claim ...................................................... 159, 204
- fair use ........................................................................ 8, 15, 32, 48, 58, 62, 74, 77, 80, 82, 98, 145, 159, 175, 180, 186, 202, 204, 207, 216
- First Amendment ........................................................... 159
- fraud on the Copyright Office ........................................ 15, 21, 38, 88, 106, 111, 129, 153, 168, 196
- independent creation ...................................................... 37
- laches ............................................................................ 159

See Copyright Office
license .......................... 6, 13, 32, 41, 68, 70, 86, 111, 130, 156, 159, 180, 196, 204, 211, 216, 228
limitations on exclusive rights of computer programs .......................................................... 13
limitations on exclusive rights of secondary transmissions of broadcast programming by cable
by satellite .......................................................................................................................... 295
limitations on exclusive rights of secondary transmissions of distant television programming
misuse .............................................................................................................................. 242, 287
originality ......................................................................................................................... 73
prior publication ................................................................................................................ 21
sovereign immunity ............................................................................................................. 31
statute of limitations 5, 30, 31, 40, 41, 43, 52, 62, 70, 71, 84, 108, 143, 152, 160, 175, 180, 186,
193, 196, 211
unclean hands ...................................................................................................................... 111, 204, 216
waiver ............................................................................................................................... 159, 180, 193

Infringement
access ............................................................................................................................... 17, 29, 37, 105, 109, 117, 132, 139, 159, 172
direct evidence ............................................................................................................... 202
evidence of access ........................................................................................................... 140, 170, 214
evidence of copying ...................................................................................................... 12, 15, 65, 71, 90, 109, 130, 161
evidence of creation of a derivative work ........................................................................ 185
evidence of distribution .................................................................................................. 193
extraterritoriality ............................................................................................................. 26, 107, 108
joint and several liability ............................................................................................... 97
liability of corporate officers .......................................................................................... 23, 82
notice of action ............................................................................................................... 76
pleading requirements ... 2, 3, 8, 25, 61, 64, 67, 68, 77, 79, 85, 89, 94, 97, 105, 121, 122, 137,
165, 176, 188, 191, 221, 223, 226, 229, 230
server test ....................................................................................................................... 186
striking similarity ............................................................................................................ 17, 29, 37, 105, 139
substantial similarity 9, 15, 23, 28, 35, 37, 44, 45, 53, 54, 56, 63, 66, 68, 90, 96, 104, 110, 115,
117, 128, 143, 144, 150, 152, 161, 170, 172, 181, 195, 213, 224, 230
supersubstantial similarity ............................................................................................ 219
volitional conduct ............................................................................................................ 145, 214

Integrity of Copyright Management Information
alteration ............................................................................................................................ 132
conveyed ......................................................................................................................... 120, 132, 138
copyright registration .................................................................................................... 93
copyrighted work ............................................................................................................ 132
definition of CMI ........................................................................................................... 18, 137, 138, 142, 182
falsity ............................................................................................................................... 84
injury ................................................................................................................................. 120
intent ................................................................................................................................. 124, 127
knowledge ...................................................................................................................... 84, 124
license ............................................................................................................................. See Defenses
pleading requirements ................................................................................................. 18, 79, 84, 137, 186, 227
removal ........................................................................................................................... 117, 120, 124, 132, 182
International law

- Italy ............................................................................................................................................ 15
- Japan ........................................................................................................................................ 118
- Netherlands ................................................................................................................................ 64
- Russia ........................................................................................................................................ 25
- United Kingdom ........................................................................................................................ 64

Internet Policy Task Force

- event ................................................................................................................................ 311, 312

Legislation

- domestic violence .................................................................................................................... 260
- education ................................................................................................................................. 242, 243, 244, 245, 253, 256, 258, 259
- false personation ..................................................................................................................... 241
- federal workforce .................................................................................................................... 261
- government transparency ........................................................................................................ 248
- privacy ..................................................................................................................................... 252
- scientific integrity .................................................................................................................... 235, 252
- securities .................................................................................................................................. 244
- small claims ............................................................................................................................. 238, 254
- social security .......................................................................................................................... 243
- tax .......................................................................................................................................... 236, 246, 251
- telecommunications ............................................................................................................... 233, 234, 237, 240, 248, 255, 256
- trade ....................................................................................................................................... 233, 241, 249, 250, 253, 255

Limitations on liability relating to material online

- control ....................................................................................................................................... 60
- Copyright Office study .............................................................................................................. 286
- expeditiousness ......................................................................................................................... 159, 184
- financial benefit ......................................................................................................................... 60
- knowledge ................................................................................................................................. 60
- misrepresentation ...................................................................................................................... 219
- notification ................................................................................................................................. 159
- pleading requirements ............................................................................................................. 8, 18, 26, 137, 204
- storage at user direction .......................................................................................................... 12, 60

Music

- mechanical license ................................................................................................................... 274, 275, 276, 277
- pre-1972 sound recordings ..................................................................................................... 154, 279, 280, 283

Ownership

- assignment .............................................................................................................................. 30, 62, 111, 143, 152
- copyright registration ............................................................................................................. 15, 75, 152
- joint authorship ....................................................................................................................... 132
- pleading requirements ............................................................................................................ 23, 25, 64, 118, 122, 137, 149, 157, 176, 188, 223, 229
- standing .................................................................................................................................. 43, 64, 69, 93
- termination ............................................................................................................................... 15, 51
- transfer ................................................................................................................................... 8, 101, 118
- work made for hire .................................................................................................................. 14, 15, 62, 111
Patent & Trademark Office

Preemption

breach of contract ........................................................................................................ 13, 77, 132, 221
breach of the covenant of good faith and fair dealing .............................................. 132
civil conspiracy ............................................................................................................. 89
common law copyright infringement ............................................................................ 77
conspiracy ....................................................................................................................... 95
contract interference .................................................................................................... 100, 182
conversion .................................................................................................................... 95, 122, 221
Dastar ............................................................................................................................ 67, 87, 135, 198
decrease acts and practices .......................................................................................... 36
deceptive trade practices .............................................................................................. 122, 135
false advertising ............................................................................................................... 67
fraud ................................................................................................................................ 95
fraud in the inducement ................................................................................................. 95
intentional interference with prospective economic advantage ................................ 100, 200, 201
misappropriation ............................................................................................................ 36, 100
right of publicity ............................................................................................................ 100, 182
tortious interference .................................................................................................... 122, 135, 221
trade secret misappropriation ....................................................................................... 87, 89
unfair and deceptive trade practices ............................................................................. 77
unfair competition ......................................................................................................... 23, 25, 36, 67, 77, 85, 95, 110, 135, 182, 200, 201
unjust enrichment .......................................................................................................... 36, 85, 106, 110, 122, 132, 182, 223

Remedies

actual damages ................................................................................................................. 82, 124, 162
attorneys fees 9, 10, 11, 45, 51, 52, 54, 58, 64, 65, 80, 81, 87, 94, 101, 102, 103, 106, 114, 116, 124, 126, 129, 130, 132, 143, 153, 155, 158, 164, 166, 167, 172, 182, 200, 204, 206, 210, 214, 215, 222, 224
costs ................................................................................................................................. 1, 94, 204, 215
disgorgement of profits ................................................................................................. 136, 162, 228
offer of judgment .......................................................................................................... 215
permanent injunction .................................................................................................... 62, 94, 102
preliminary injunction .................................................................................................. 7
statutory damages .......................................................................................................... 41, 87, 102, 106, 117, 172, 182
willful infringement ....................................................................................................... 41, 117, 145, 150, 155, 196, 202, 216

Scope of protection

efficiency ......................................................................................................................... 103
fact ................................................................................................................................. 207
function ......................................................................................................................... 103, 178
functionality ................................................................................................................ 15
idea ................................................................................................................................. 56, 115, 172, 199, 207, 219, 224
imitation of sound recording ....................................................................................... 144
merger ............................................................................................................................ 62, 132, 162, 178
ordinary phrases ................................................................. 144
originality ........................................................................... 103, 144
procedure ............................................................................... 89
process .................................................................................. 219
regular business practices .................................................. 103
regulatory requirement .......................................................... 4
scenes a faire ........................................................................ 28, 178
words and short phrases ..................................................... 132, 144

Vicarious infringement
control.................................................................................. 102, 109, 145
direct infringement ................................................................. 64, 68, 140
financial interest ................................................................ 82, 102, 150, 162
pleading requirements .......................................................... 79, 94, 99, 137, 184, 188, 230

Visual Artists Rights Act
definition of works of visual art ............................................ 140
# TABLE OF OUTCOMES

**Appeal**
- affirmed ............... 1, 9, 10, 11, 13, 15, 63, 86, 100, 116, 143, 144, 149, 150, 152, 153, 156
- affirmed-in-part .......................................................... 4, 12, 145, 150, 155, 210
- reversed ......................................................... 1, 14, 15, 62, 74, 101, 117, 149, 152, 154, 155, 156, 223

**Bench trial**
- judgment for defendant ............................................................... 164, 172
- judgment for plaintiff ................................................................. 161, 172

**Motion for a more definite statement**
- denied .................................................................................................................. 121

**Motion for a new trial**
- denied .................................................................................................................. 124

**Motion for attorneys fees and costs**
- denied .................................................................................................................. 9, 51, 52, 65, 80, 114, 124, 132, 158, 164, 167, 200, 206, 222
- granted .................................................................................................................. 45, 54, 81, 87, 94, 103, 126, 129, 130, 158, 204, 206, 210, 214, 224
- granted-in-part ....................................................................................................... 215

**Motion for issuance**
- denied .................................................................................................................. 168
- granted .................................................................................................................. 38, 88
- granted-in-part ....................................................................................................... 129

**Motion for judgment as a matter of law**
- denied .................................................................................................................. 8, 65, 124, 214

**Motion for judgment on the pleadings**
- denied .................................................................................................................. 137, 184
- granted .................................................................................................................. 28, 35, 166

**Motion for notice**
- denied .................................................................................................................. 76

**Motion for permanent injunction**
- denied .................................................................................................................. 94
- granted .................................................................................................................. 124

**Motion for preliminary injunction**
- denied .................................................................................................................. 7, 115
- granted .................................................................................................................. 190

**Motion for summary judgment**
- denied .................................................................................................................. 23, 71, 82, 119, 162, 168, 170, 185
- granted 6, 27, 29, 32, 37, 40, 43, 54, 60, 68, 90, 91, 95, 102, 103, 109, 110, 111, 128, 130, 139, 140, 170, 219, 224, 230
- granted-in-part ........................................ 15, 30, 41, 68, 69, 70, 75, 77, 81, 91, 104, 127, 143, 159, 193, 196, 202, 207, 211, 216, 228

**Motion to amend**
denied ........................................................................................................................................ 73
granted-in-part ........................................................................................................................... 89

Motion to dismiss

denied . 2, 8, 17, 18, 21, 23, 26, 31, 51, 61, 66, 67, 79, 80, 93, 94, 96, 97, 98, 99, 105, 108, 118,

granted .... 19, 20, 26, 37, 44, 45, 48, 52, 53, 56, 60, 64, 107, 114, 120, 142, 166, 182, 184, 185,
191, 195, 198, 199, 200, 201, 207, 230

granted-in-part 2, 3, 5, 20, 25, 36, 58, 64, 77, 84, 85, 87, 93, 106, 110, 117, 121, 122, 132, 135,
157, 175, 176, 186, 191, 213, 219, 221, 223, 227

Motion to strike

denied ........................................................................................................................................ 215
granted ..................................................................................................................................... 136

granted-in-part ........................................................................................................................ 137, 159, 180, 204
# TABLE OF WORKS

**Architectural work**
- design .............................................. 73, 80, 81, 109, 117, 128, 129, 139, 140, 162, 215, 229
- drawing ........................................... 104, 229, 284
- photograph ..................................... 284
- plan .................................................. 85, 110, 130

**Audiovisual work**
- documentary ................................... 19
- film .................................................. 63
- motion picture ................................. 198, 206
- recording ......................................... 149
- sports .............................................. 295
- trailer ............................................... 223
- video ............................................... 44, 45, 58, 89, 111, 114, 122, 142

**Literary work**
- advertisement .................................. 165
- article .............................................. 14, 76, 199
- book ............................................... 2, 8, 9, 37, 54, 62, 63, 100, 184, 206, 230
- brochure ......................................... 101, 178
- business plan ................................... 93
- collective work ................................ 132
- comic book ................................. 43, 52, 170, 181
- compilation .................................... 207, 219, 222
- computer program .......................... 1, 9, 13, 20, 23, 64, 65, 75, 90, 103, 120, 121, 126, 130, 132, 136, 152, 167, 190, 193, 195, 210, 214, 221, 226, 313
- curriculum ...................................... 156
- database .......................................... 132
- document ........................................ 68
- flowchart ........................................ 207
- form .................................................. 107, 108, 152
- hymn ............................................... 191
- Internet work ................................. 1, 115, 120, 135, 166, 262, 272
- label .................................................. 4
- magazine ........................................ 215
- newspaper ...................................... 271
- paper ............................................... 52
- pitch deck ........................................ 54
- plan .................................................. 91, 97
- report .............................................. 3, 87, 206
- serial ................................................ 272
- summary sheet ................................ 61
- survey ............................................. 86
- test .................................................... 10, 11, 21, 38, 77, 143
- treatment ....................................... 52
Music

music                  .................................................................................................................................... 45
musical work ...... 15, 23, 30, 53, 56, 81, 102, 103, 111, 114, 143, 144, 155, 156, 166, 262, 270,
                      274, 275, 276, 277, 286, 301, 309
sound recording 51, 60, 81, 87, 94, 144, 154, 166, 175, 249, 260, 262, 270, 278, 279, 280, 283,
                      284, 301, 302, 303, 306, 307, 308, 309

Visual work

car seat covers ................................................................. 66
costume ..................................................................................... 17, 63
design ................................................................. 31, 95, 110, 150, 153, 170, 176, 200, 201
drawing .................................................................................... 77, 127
graphic work........ 7, 10, 28, 37, 96, 106, 116, 117, 124, 129, 157, 172, 184, 204, 228, 285
jewelry ................................................................. 29, 88, 200
lace ....................................................................................... 35
logo .................................................................................. 115, 118, 138
makeup ............................................................... 36
painting ...................................................................................... 32
photograph .. 5, 6, 8, 12, 18, 20, 26, 27, 31, 32, 40, 41, 48, 51, 60, 64, 67, 68, 69, 70, 71, 74, 79,
                      80, 82, 84, 94, 97, 98, 99, 101, 105, 108, 120, 126, 130, 137, 142, 145, 150, 155, 158, 159,
                      160, 180, 182, 185, 186, 191, 196, 202, 204, 206, 211, 216, 219, 223, 224, 227, 230, 285
pool float .................................................................................. 164
sculptural work.............................................................. 26, 188, 210
textile ...................................................................................... 164, 168
toy ................................................................................... 15, 119, 161, 224
I. COPYRIGHT DECISIONS

Supreme Court

FOURTH ESTATE PUBLIC BENEFIT CORP. v. WALL-STREET.COM, LLC
No. 17-571, 2019 WL 1005829 (U.S. Mar. 4, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Literary work - Internet work
Topics: Copyright registration - registration requirement

Impelling prompt registration of copyright claims, 17 U.S.C. § 411(a) states that “no civil action for infringement of the copyright in any United States work shall be instituted until ... registration of the copyright claim has been made in accordance with this title.” The question this case presents: Has “registration ... been made in accordance with [Title 17]” as soon as the claimant delivers the required application, copies of the work, and fee to the Copyright Office; or has “registration ... been made” only after the Copyright Office reviews and registers the copyright? We hold, in accord with the United States Court of Appeals for the Eleventh Circuit, that registration occurs, and a copyright claimant may commence an infringement suit, when the Copyright Office registers a copyright. Upon registration of the copyright, however, a copyright owner can recover for infringement that occurred both before and after registration.

RIMINI ST., INC. v. ORACLE USA, INC.
No. 17-1625, 2019 WL 1005828 (U.S. Mar. 4, 2019)
Outcome: Appeal - reversed
Works of Authorship: Literary work - computer program
Topics: Remedies - costs

The Copyright Act gives federal district courts discretion to award “full costs” to a party in copyright litigation. . . . In the general statute governing awards of costs, Congress has specified six categories of litigation expenses that qualify as “costs.” . . . The question presented in this case is whether the Copyright Act's reference to “full costs” authorizes a court to award litigation expenses beyond the six categories of “costs” specified by Congress in the general costs statute. The statutory text and our precedents establish that the answer is no. The term “full” is a term of quantity or amount; it does not expand the categories or kinds of expenses that may be awarded as “costs” under the general costs statute. In copyright cases, § 505's authorization for the award of “full costs” therefore covers only the six categories specified in the general costs statute, codified at §§ 1821 and 1920. We reverse in relevant part the judgment of the U.S. Court of Appeals for the Ninth Circuit, and we remand the case for further proceedings consistent with this opinion.
D.C. Circuit

District Court for the District of Columbia

GREEN V. U.S. DEP’T OF JUSTICE
Outcome: Motion to dismiss - granted-in-part
Topics: Circumvention of copyright protection systems - constitutionality

Plaintiffs Matthew Green, Andrew Huang, and Alphamax, LLC seek to engage in certain activities for which they fear they will be prosecuted under the “anti-circumvention” provision and one of the “anti-trafficking” provisions of the Digital Millennium Copyright Act (“DMCA”). Accordingly, they have brought a pre-enforcement challenge to those two provisions alleging that they violate the First Amendment to the United States Constitution facially and as applied to their proposed activities. They additionally claim that the Librarian of Congress’s failure to include certain exemptions from the reach of the anti-circumvention provision in a 2015 final rule promulgated under a rulemaking procedure created by the DMCA violated the First Amendment and the Administrative Procedure Act (“APA”). They seek declaratory and injunctive relief.

Defendants—the United States Department of Justice, Attorney General William Barr, the Library of Congress, Librarian of Congress Carla Hayden, the United States Copyright Office, and Register of Copyrights Karyn Temple Claggett—have moved to dismiss plaintiffs’ claims for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and, alternatively, for failure to state a claim under Federal Rule 12(b)(6). Upon consideration of defendants’ motion, the response and reply thereto, the applicable law, and the entire record, defendants’ motion to dismiss is GRANTED IN PART and DENIED IN PART.

QUIZINSIGHT.COM P'SHIP V. TABAK
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - book
Topics: Infringement - pleading requirements

Plaintiffs Roy Feinson and two partnerships sue defendant Ross Lee Tabak for, among other things, interfering with the advertising revenue of three websites... Before the Court is Tabaks Motion to Dismiss... for lack of jurisdiction and for failure to state a claim for relief. For the reasons that follow, the Court will grant the motion in part, deny it in part, and stay all surviving claims pending arbitration....

The plaintiffs allege that Feinson has “the exclusive right [to] reproduce the copyrighted works,” to “prepare derivative works based ... upon the copyrighted works,” to “distribute copies of the copyrighted works to the public,” and to “display the copyrighted works publicly.”... They further allege that between May 20 and May 29, 2018, “when ... Tabak had seized control of the
websites before he took the websites offline, ... Tabak was posting ... Feinson’s copyrighted content without ... Feinson’s permission or SUN’s permission.” . . . Again, these allegations, in combination with the factual background provided in the complaint, are both plausible and sufficient to put Tabak on notice of the claims against him.

DBW PARTNERS, LLC v. BLOOMBERG, L.P.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Literary work - report
Topics: Infringement - pleading requirements

The plaintiff, DBW Partners, LLC, doing business as The Capitol Forum (the “Capitol Forum”), brings this civil action against the defendants, Bloomberg, L.P. and Bloomberg Finance, L.P. (collectively, “Bloomberg”), alleging federal claims of direct and contributory copyright infringement pursuant to the Copyright Act of 1976 . . . as well as a common law claim of misappropriation of proprietary information under the “hot news” doctrine. . . . Currently before the Court is the Defendants’ Motion to Dismiss (“Defs.’ Mot.”), which seeks dismissal of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, or pursuant to Federal Rule of Civil Procedure 12(b)(6) for “failure to state a claim upon which relief may be granted.” . . . Upon careful consideration of the parties’ submissions, the Court concludes for the following reasons that it must grant in part and deny as moot in part Bloomberg’s motion to dismiss. . . .

Here, Capitol Forum has failed to allege sufficient facts for the Court to draw a reasonable inference that Bloomberg is liable for copyright infringement. As Bloomberg correctly notes, the Complaint fails to identify not only “the specific works [that] Capitol Forum claims were directly or indirectly infringed by Bloomberg,” . . . but also the “news stories [published by Bloomberg that] purportedly infringed those works,” . . . . Instead, the Complaint simply states that “Bloomberg has ‘infringed [Capitol Forum’s] copyright in its proprietary reports.’ ” . . . Such a conclusory statement is insufficient to allow the Court to determine what materials have allegedly been infringed, and consequently, to draw a reasonable inference that Bloomberg is liable for copyright infringement. . . . Although the Court need not engage in the substantial similarity analysis at this juncture . . . Capitol Forum must nonetheless allege more than conclusory generalizations before the Court can make this determination. Capitol Forum must first identify the copyrighted works that form the basis of its claims, and failure to do this makes it “virtually impossible to determine what materials have allegedly been infringed.” . . . The Court therefore concludes that Capitol Forum has failed to satisfy the basic pleading requirement of “alleg[ing] the existence of specific works subject to the copyright claim[s].” . . .
Syngenta Crop Protection, LLC, sued Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Limited in the U.S. District Court for the Middle District of North Carolina for copyright infringement and patent infringement, asserting four patents directed to a fungicide compound and its manufacturing processes. Prior to trial, the district court dismissed the copyright infringement claims, determining them to be precluded by the Federal Insecticide Fungicide and Rodenticide Act. The district court granted-in-part and denied-in-part Syngenta Crop Protection, LLC’s summary judgment motion with respect to patent infringement. The district court also denied-in-part the defendants’ motion to exclude expert testimony on damages.

After a jury trial, the district court entered judgment in favor of Willowood Limited on all patent infringement claims; in favor of all defendants on infringement of one patent at issue; and against Willowood, LLC, and Willowood USA, LLC, on infringement of the remaining three patents. The district court denied Syngenta Crop Protection, LLC’s motions for judgment as a matter of law. Syngenta Crop Protection, LLC, appeals the district court’s denials of its motions for judgment as a matter of law and its final judgment. Defendants conditionally cross-appeal the district court’s partial denial of their motion to exclude expert testimony on damages. For the reasons explained below, we affirm-in-part, reverse-in-part, vacate-in-part, and remand for further proceedings consistent with this opinion.

Syngenta challenges the district court’s summary judgment order dismissing its copyright claims in their entirety. The dismissal was based on the court’s holding that FIFRA “precludes copyright protection for the required elements of pesticide labels as against the labels of me-too [i.e. generic3] registrants.” . . . We conclude that this determination was premature. Because the text of FIFRA does not, on its face, require a me-too registrant to copy the label of a registered product, the statute only conflicts with the Copyright Act to the extent that some particular element of Syngenta’s label is both protected under existing copyright doctrines and necessary for the expedited approval of Willowood’s generic pesticide product. This determination requires this court to review the merits of Syngenta’s copyright claims, which the district court did not reach. Thus, we remand for the court to do so in the first instance.
Court of Federal Claims

APL MICROSCOPIC, LLC V. UNITED STATES
No. 18-1851 C, 2019 WL 4049155 (Fed. Cl. Aug. 27, 2019)
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Defenses - statute of limitations

On December 3, 2018, Plaintiff, APL Microscopic, LLC (“APL”), filed a complaint in this Court alleging that Defendant, the United States of America (the “Government”), through the National Aeronautics and Space Administration (“NASA”), infringed on APL's rights under the Copyright Act, 17 U.S.C. § 106, by posting APL's copyrighted photograph (the “Work”) on a webpage within NASA's website in 2004. APL sought $150,000 in statutory damages, actual damages, and injunctive relief. . . .

For the reasons set forth below, the Court GRANTS-IN-PART and DENIES-IN-PART the Government's motion to dismiss for lack of subject matter jurisdiction and DENIES the Government's motion to dismiss for failure to state a claim. . . .

As explained below, the Court agrees that APL's claim of infringement as to the right of reproduction is time-barred but finds that APL's claims as to the right of distribution and right of display are timely. . . .

Here, APL alleges that in 2004, “NASA copied the Work and uploaded the Work to a NASA server,” without permission. . . . APL argues that “[w]hen NASA uploaded the Work to the NASA server, NASA reproduced the Work in a copy and thus trespassed upon APL’s exclusive right under [17 U.S.C.] § 106(1).” . . . In addition, APL contends that “since 2004, and within the three years prior to the filing of the complaint in this action, NASA made further copies of the Work without authorization in order to facilitate its display of the Work on NASA websites.” . . . Therefore, although the Court agrees that the Government infringed on APL's right “to reproduce the copyrighted work” in 2004 when NASA uploaded the photograph to its server, there were no additional reproductions of the Work through NASA's subsequent distribution or display that would bring APL's right of reproduction claim within the statute of limitations period. Consequently, APL’s claim regarding infringement of its right of reproduction is barred by the running of the statute of limitations and must be dismissed. . . .

[T]he Court rejects the Government's argument that a distribution occurs when a work is “made available” for distribution, and instead holds that infringement of the right of public distribution under § 106(3) requires “actual dissemination of either copies or phonorecords.” . . . Although NASA did not infringe on APL's right of distribution by uploading the Work to its server, the act of transmitting the webpage—and the Work therein—to a user would infringe on this right. However, until APL has had the benefit of discovery, it will be impossible to prove if and when copies have actually been disseminated. Because the Court must accept as true APL's allegation that the Government distributed copies of the Work within three years of when APL filed its
Here, APL alleges that NASA published the Work on its webpage in 2004, where it has remained until today. Thereafter, each time a user viewed NASA's webpage, APL's copyrighted Work was displayed on the user's computer. Consequently, each of these displays constituted a separate infringement on APL's right of public display under § 106(5), with each infringement starting a new limitations period under 28 U.S.C. § 1498(b). Taking as true APL's allegation that NASA displayed APL's work within three years prior to the filing of the complaint in this action, APL has therefore established subject-matter jurisdiction as to this claim. Accordingly, the Government's motion to dismiss as to APL's claim of infringement of the right of public display is hereby denied.

Based on the pleadings in its SAC, APL has stated a plausible claim for relief sufficient to overcome the Government's motion to dismiss. Specifically, APL's allegations regarding infringement of its right of distribution and right of public display contain sufficient factual matter to state a plausible claim of copyright infringement. Taking as true APL's claim that it has been damaged within the three years prior to the filing of its Complaint, APL has thus pleaded a cognizable claim of copyright infringement that is compensable pursuant to 17 U.S.C. § 504. Although it would be difficult at this stage to quantify the precise measure of damages, APL has provided a method for calculating such relief, should the Court ultimately find NASA liable for copyright infringement. Moreover, under 17 U.S.C. § 504(c), “the copyright owner may elect, at any time before final judgment is rendered to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action.” This means that APL may still elect for statutory damages. Therefore, APL has made a sufficient showing to overcome the Government's motion to dismiss for failure to state a claim.

First Circuit
District of Massachusetts

PHOTOGRAPHIC ILLUSTRATORS CORP. V. ORGILL, INC.
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - photograph
Topics: Defenses - license

This copyright dispute involves photographs of lighting products, like light bulbs. Plaintiff Photographic Illustrators Corporation (“PIC”), a Massachusetts company specializing in commercial photography, licensed photographs to Osram Sylvania, Inc. (“OSI”) of lighting products that OSI manufactures and sells. Defendant Orgill, Inc. is a distributor of OSI products and uses some of these images in its online and print marketing materials. PIC brought claims against Orgill under the Copyright Act, the Digital Millennium Copyright Act (“DMCA”), and the Lanham Act based on Orgill's use of its photographs. In 2015, the Court granted summary judgment to Orgill on the DMCA and Lanham Act claims but denied Orgill's request for summary judgment on the copyright infringement claim. The case was then stayed pending
resolution of an arbitration involving PIC, OSI, and other distributors of OSI products. In November 2017, the arbitrator issued an award resolving all of the claims in the arbitration.

Orgill has now renewed its motion for summary judgment on the copyright infringement claim. Orgill asserts that it received a sublicense that authorized its use of PIC's images and argues that the arbitrator's award precludes PIC from contesting this defense. PIC has also moved for summary judgment, contending that Orgill did not receive a sublicense, its use of approval images falls outside its sublicense, and its sublicense is conditioned on including attribution to PIC on the images, which Orgill did not do.

After hearing, the Court DENIES PIC's motion for summary judgment . . . and ALLOWS Orgill's motion for summary judgment . . . .

In its 2015 ruling, this Court held that Orgill received an implied sublicense from OSI to use PIC's images. PIC's arguments that this holding was erroneous are without merit. Although the Court held that PIC raised a genuine dispute of material fact as to whether Orgill violated the attribution requirement of its sublicense, PIC is estopped by the Partial Final Award from arguing that the PIC-OSI Agreement established the attribution requirement as a condition of Orgill's sublicense, and the Court is not persuaded that the attribution requirement is a condition of the Confirmatory Sublicense. The Court also excludes PIC's theory that Orgill exceeded the scope of its sublicense by using approval images because PIC failed to disclose this theory during discovery. Since Orgill received a sublicense to use PIC's images and did not exceed the scope of the sublicense, Orgill did not commit copyright infringement as a matter of law.

BASSETT V. JENSEN
Outcome: Motion for preliminary injunction - denied
Works of Authorship: Visual work - graphic work
Topics: Remedies - preliminary injunction

In the winter of 2014-2015, Plaintiff Leah Bassett rented her home on Martha’s Vineyard to Defendant Joshua Spafford. Spafford and other individuals -- including Defendants Monica Jensen and April Carter -- then used the home as a location for shooting pornographic films and photographs. The films and photographs were made at the behest of Defendant Mile High Distribution, Inc. (“Mile High”) which produced and distributed them under its marketing labels “Icon Male” and “Transsensual.” In March 2015, after Spafford attempted to sublet the property to Jensen, Bassett discovered the Defendants were using her home to film and shoot pornography. Bassett then terminated the lease . . .

Here, Bassett’s motion must fail because she has not presented any evidence of irreparable harm that will result from the continued distribution of pornographic films and photographs shot in her home. There are multiple reasons why Bassett cannot make the requisite showing. First, she has disavowed any claim to actual damages and is instead pursuing statutory damages against Defendants. Second, all of the copyrighted items were her personal belongings; they were not for
sale nor is there any evidence that she is in the business of selling or marketing similar items. In other words, the types of irreparable harm that are most common in intellectual property cases -- i.e., reputational harm, tarnishment, dilution -- are not present. Third, she delayed three years in filing this lawsuit and then another year and a half in seeking a preliminary injunction. Her delay undercuts any argument she is at risk of suffering irreparable harm. Fourth, only a handful of the screenshots included with her motion feature copyrighted items, and those that do only show de minimis copying. Fifth, Defendants have voluntarily agreed to remove from distribution all films and photographs that were shot at Bassett’s home and are within their control. Although this does not extend to third parties who continue to distribute unauthorized versions of the films and photographs, it is as much as the Court could achieve by entering a preliminary injunction against Defendants.

For the foregoing reasons, Bassett’s motion for a preliminary injunction . . . is DENIED.

ADLER V. HER CAMPUS MEDIA, LLC
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Copyrightability - pleading requirements, Infringement - pleading requirements, Defenses - limitations on liability relating to material online, Defenses - fair use

This is a claim for copyright infringement. Plaintiff Bess Adler is a professional photographer who licenses her photographs for use in news and media publications. Defendant Her Campus Media, LLC operates a website targeted largely at women college students . . .

Here, the complaint asserts plausible facts sufficient to state such a claim. First, it makes out a prima facie case of copyright validity by attaching a certificate of registration made before or within five years of the first publication of the photo at issue . . . Second, the complaint alleges that defendant copied the photo’s original elements by reproducing it in its entirety on defendant’s website . . .

Defendant seeks to dismiss the complaint based on its affirmative defenses . . . The facts as alleged, which are relatively skeletal, do not permit a proper analysis of the two affirmative defenses.

District of Puerto Rico

SAAVEDRA V. EDITORIAL CULTURAL, INC.
No. CV 15-2436 (MEL), 2019 WL 1096812 (D.P.R. Mar. 8, 2019)
Outcome: Motion for judgment as a matter of law - denied
Works of Authorship: Literary work - book
Topics: Ownership - transfer

Pending before the court is Defendant Editorial Cultural, Inc.’s renewed motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(b). . . . In the pending motion,
Defendant argues that judgment as a matter of law should be granted because Plaintiffs failed to prove that they were the owners of the right to publish Roberto Ramos Perea’s theatrical adaptations of the novels La llamarada and La resaca by Enrique Laguerre. . . . Beatriz Laguerre Saavedra, Beatriz Alexia Álvarez Laguerre, Rafael Enrique Álvarez Laguerre, Gabriel Ortiz Laguerre, Fabián Antonio Charrón Álvarez, and Carla Victoria Charrón Álvarez (Plaintiffs) subsequently filed a response in opposition. . . .

As discussed above, Plaintiffs presented no evidence at trial that Mr. Laguerre, either before he passed away or afterwards, through his will, transferred the right to publish the theatrical adaptations of La llamarada and La resaca to them. Thus, no reasonable jury could have found that Mr. Laguerre transferred the right to publish the theatrical adaptations to Plaintiffs.

**District of Rhode Island**

**ALIFAX HOLDING SPA V. ALCOR SCIENTIFIC INC.**  
Outcome: Motion for attorneys fees and costs - denied  
Works of Authorship: Literary work - computer program  
Topics: Remedies - attorneys fees

Before the Court is Defendants’ Motion for Attorney and Expert Fees and Costs as to the Breach of Confidential Relationship, Copyright Infringement and Trade Secret Causes of Action . . . as well as Defendant Alcor Scientific Inc.’s Renewed Motion for Judgment as a Matter of Law . . . as it relates to Count III. For the reasons set forth below, the motion for fees and costs as it pertains to Count II is DENIED AS MOOT because of the Court’s order granting in part Alcor’s Motion for New Trial, or in the Alternative, for Remittitur (“Mot. for New Trial”) . . . . As to Counts III and IV, the Defendants motion for fees and costs is DENIED. Defendant Frappa’s renewed motion for judgment as a matter of law on Count III is also DENIED.

**Second Circuit**

**GREEN V. HARBACH**  
No. 18-2078-CV, 2019 WL 459754 (2d Cir. Feb. 6, 2019)  
Outcome: Appeal - affirmed  
Works of Authorship: Literary work - book  
Topics: Infringement - substantial similarity

Plaintiff-Appellant Charles C. Green (“Green”) appeals from the July 11, 2018 judgment of the District Court dismissing his complaint against Defendant-Appellee Chad D. Harbach (“Harbach”). Green filed a lawsuit against Harbach alleging that Harbach’s novel, The Art of Fielding, misappropriated critical elements of Green’s copyrighted manuscript, Bucky’s 9th, in violation of 17 U.S.C. §§ 106 and 501. He argues that the District Court erred in dismissing his complaint based on its conclusion that the two books are not substantially similar. Green further argues that the District Court erred in denying his motion to amend his complaint. . . .
Upon de novo review of the two works, we agree with the District Court’s well-reasoned decision and conclude that The Art of Fielding is not substantially similar to Bucky’s 9th. . . . Many of the alleged similarities in the works are unprotectible abstract ideas or scènes à faire that do not enjoy copyright protection. Moreover, many of the alleged similarities are similar only at a high level of abstraction; a closer look reveals that they share little in common. In addition, a review of both books reveals that their “total concept and feel” differ quite substantially. Accordingly, the District Court did not err in concluding that these two works are not substantially similar as a matter of law.

LOUIS VUITTON MALLETIER, S.A. V. MY OTHER BAG, INC.
No. 18-293-CV, 2019 WL 1223089 (2d Cir. Mar. 15, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Visual work - graphic work
Topics: Remedies - attorneys fees

Plaintiff-Appellee Louis Vuitton Malletier, S.A. (“Louis Vuitton”) sued Defendant-Appellant My Other Bag, Inc. (“MOB”). Louis Vuitton’s complaint alleged, inter alia, trademark dilution, trademark infringement, and copyright infringement under federal law. The United States District Court for the Southern District of New York (Furman, J.) dismissed all of Louis Vuitton’s claims on summary judgment, and a panel of this Court affirmed. MOB then sought an award of attorneys’ fees pursuant to section 35(a) of the Lanham Act . . . and section 505 of the Copyright Act . . . . The district court declined to award fees under either provision. . . .

Under the circumstances of this case, the district court did not abuse its discretion by engaging in the analysis outlined above or by declining to award fees under the Copyright Act.

MANHATTAN REVIEW LLC V. YUN
No. 17-4046-CV, 2019 WL 1326528 (2d Cir. Mar. 25, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Literary work - test
Topics: Remedies - attorneys fees

Plaintiffs-Appellants Manhattan Review LLC (“Manhattan Review”) and Joern Meissner (“Meissner”) appeal the district court’s judgment granting attorneys’ fees and costs to Defendants-Appellees Manhattan Enterprise Group LLC, d/b/a Manhattan Elite Prep (“Manhattan Enterprise”), and Christopher Kelly (“Kelly”) pursuant to section 505 of the Copyright Act . . . and section 35(a) of the Lanham Act . . . .

The district court did not abuse its discretion in adopting the magistrate judge’s application of this standard to Defendants-Appellees’ claim. First, the magistrate judge considered Plaintiffs-Appellants’ arguments that: (1) the state court order had not resolved the legal effect of the Delaware Certificate of Good Standing; (2) the state court orders left open the possibility that
Manhattan Review could bring a direct claim against Defendants-Appellees; and (3) the Full Faith and Credit Clause of the United States Constitution required the district court to defer to the Delaware Certificate of Good Standing. The magistrate judge thoroughly justified his conclusion that “the positions that the plaintiffs took on the issue of collateral estoppel were both objectively unreasonable and frivolous.” . . . The district court did not abuse its discretion in adopting that conclusion. Second, the magistrate judge considered Plaintiffs-Appellants’ “troubling” litigation conduct, including their failure to mention the state court action in any of their three federal court complaints. . . . The district court did not abuse its discretion in accepting the magistrate judge’s conclusion that “the failure to mention a relevant prior action indicates a lack of candor.” . . . Finally, the district court did not abuse its discretion in accepting the magistrate judge’s conclusion that “the goals of compensation and deterrence are furthered by compensating the defendants for litigating against claims that should not have been brought in the first place because the plaintiffs lacked the capacity to sue.” . . .

Plaintiffs-Appellants focus instead on the purported strength of their intellectual property claims on the merits. But nothing in Fogerty, Kirtsaeng, or any other authority cited by Plaintiffs-Appellants restricts a district court’s fee-shifting analysis under the Copyright Act to the objective unreasonableness or frivolousness of a party’s merits arguments. For the foregoing reasons, the district court did not abuse its discretion in adopting the magistrate judge’s recommendation for an award of fees under the Copyright Act.

MANHATTAN REVIEW LLC V. YUN
Outcome: Appeal - affirmed
Works of Authorship: Literary work - test
Topics: Remedies - attorneys fees

Plaintiffs-Appellants Manhattan Review LLC (“Manhattan Review”) and Joern Meissner (“Meissner”) appeal the judgment of the district court (Kaplan, J.; Francis, M.J.) granting attorneys’ fees and costs to Defendants-Appellees Manhattan Enterprise Group LLC, d/b/a Manhattan Elite Prep (“Manhattan Enterprise”), and Christopher Kelly (“Kelly”) pursuant to section 505 of the Copyright Act . . . and section 35(a) of the Lanham Act . . . . This opinion addresses Plaintiffs-Appellants’ argument that Defendants-Appellees do not meet the definition of a “prevailing party” under section 505 of the Copyright Act or section 35(a) of the Lanham Act. We reject that argument and hold that Defendants-Appellees do meet the definition of a “prevailing party” under those provisions.

Plaintiffs-Appellants argue that Defendants-Appellees do not meet the definition of “prevailing party” because they obtained a dismissal of Plaintiffs-Appellants’ complaint solely on collateral estoppel grounds. . . . We reject that argument. As the magistrate judge properly recognized in considering Defendants-Appellees’ fee request, “Manhattan Review, in its present form, is [now] incapable of maintaining an action” against Defendants-Appellees. Sp. App. 17. That result constitutes a “material alteration of the legal relationship of the parties,” . . . because Defendants-Appellees are no longer suable by Plaintiffs-Appellants. Accordingly, we hold that Defendants-
Appellees qualify as a “prevailing party” under both section 505 of the Copyright Act and section 35(a) of the Lanham Act.

BWP MEDIA USA INC. V. POLYVORE, INC.
No. 16-2825-CV, 16-2992-CV, 2019 WL 1645977 (2d Cir. Apr. 17, 2019)
Outcome: Appeal - affirmed-in-part
Works of Authorship: Visual work - photograph
Topics: Infringement - evidence of copying, Limitations on liability relating to material online - storage at user direction

BWP Media USA Inc., Pacific Coast News, and National Photo Group, LLC (collectively “BWP”) appeal from a memorandum and order of the United States District Court for the Southern District of New York (Ronnie Abrams, J.) that granted summary judgment to Polyvore, Inc. (“Polyvore”) on BWP’s copyright claims for direct and secondary infringement and denied BWP’s cross-motion for summary judgment on direct infringement. The district court also denied Polyvore’s motion for sanctions under 17 U.S.C. § 505.

We conclude that the district court’s grant of summary judgment to Polyvore on the direct infringement claim was error because there is a dispute of material fact regarding whether Polyvore created multiple copies of BWP’s photos that were not requested by Polyvore users. We further conclude that questions of material fact preclude us from holding at this stage that Polyvore satisfied the requirements for the Digital Millennium Copyright Act (DMCA) § 512(c) safe harbor, even though BWP has not shown that Polyvore’s stripping of metadata disqualifies it from safe harbor protection. We agree with the district court, however, that Polyvore is entitled to summary judgment on BWP’s secondary infringement claims of contributory, vicarious, and inducement of infringement because the district court found that BWP abandoned those claims. And we find no error in the district court’s decision not to sanction BWP. We therefore AFFIRM the district court’s grant of summary judgment dismissing BWP’s secondary infringement claims, AFFIRM the denial of attorney’s fees, VACATE the judgment as to direct infringement, and REMAND for further proceedings pursuant to the principles and procedures set out United States v. Jacobson . . . We request that the district court file its response within 60 days from the issuance of this opinion or as soon as practicable thereafter, and that upon such determination, the parties promptly notify the clerk of this court, whereupon jurisdiction will be restored to this court.

The facts are set forth in Judge Walker’s separate concurring opinion, which also specifies the questions of material fact that remain for determination by the district court. Judge Newman concurs in the result with a separate opinion. Judge Pooler concurs in the result with a separate opinion.
UNIVERSAL INSTRUMENTS CORP. V. MICRO SYS. ENG'G, INC.
No. 17-2748-CV, 2019 WL 2017575 (2d Cir. May. 8, 2019)

Outcome: Appeal - affirmed
Works of Authorship: Literary work - computer program
Topics: Defenses - license, Defenses - limitations on exclusive rights of computer programs, Preemption - breach of contract

Plaintiff-counter-defendant-appellant Universal Instruments Corporation (“Universal”) developed and sold an automated assembly system to defendant-counter-plaintiff-appellee Micro Systems Engineering, Inc. (“MSEI”) in 2007 pursuant to a purchase agreement. MSEI developed a multi-phase plan to build a system to automate the handling of medical devices during its quality testing process, and Universal won the bid to provide the equipment for the first phase. MSEI awarded the second and third phases of the project not to Universal, but to Universal’s competitor, defendant-counter-plaintiff-appellee Missouri Tooling & Automation, Inc. (“MTA”). In implementing phases two and three, MSEI and MTA used intellectual property, including computer source code, that Universal had provided for phase one.

Universal brought this action below alleging, inter alia, that MSEI and MTA had infringed Universal’s copyright in its source code, breached the terms of the purchase agreement, and misappropriated Universal’s trade secrets. Certain claims were dismissed on defendants’ motion for judgment on the pleadings, and, after discovery, the parties proceeded to a jury trial on the remaining claims. At the close of the evidence, however, the district court granted defendants’ motion for judgment as a matter of law. Universal appeals.

For the reasons set forth below, we affirm the judgment of the district court.

1. Section 8.2(d) of the EPA Unambiguously Permitted MSEI and MTA to Reproduce Universal’s Pre-Existing Source Code . . . Here, the license expressly provided that the rights extended to MSEI’s suppliers, which surely included MTA. Hence, MSEI and MTA’s reproduction of the source code for MSEI’s internal use did not, as a matter of law, exceed the scope of the license. Because there is nothing in the record to suggest that the source code was used for anything other than for MSEI in subsequent phases of its THS, MSEI’s provision of the source code to MTA and MTA’s use of the source code for MSEI’S benefit did not exceed the scope of the license, and thus was non-infringing.

2. Modification of the Source Code was Authorized by 17 U.S.C. § 117(a) . . . [W]e conclude as a matter of law that it was not an infringement for MSEI as the “owner of a copy of a computer program,” or MTA as MSEI’s supplier, to “make or have made [an] adaptation,” where “such adaptation was created as an essential step in the utilization of the computer program in conjunction with a machine and ... in no other manner.” . . .

What remains of Universal breach of contract claim is that MSEI’s modification of the source code exceeded the scope of the license contained in the EPA. This claim does not include an “extra element” that is different from those of its copyright infringement claim. The prohibition against modification is not explicit in the EPA; it is, instead, arguably implied because copyright
licenses are assumed to permit those uses not expressly authorized. . . . Universal therefore necessarily seeks to vindicate its exclusive rights under 17 U.S.C. § 106. That Universal and MSEI are in contractual privity does nothing to change the fact that vindication of an exclusive right under the Copyright Act, read into a license by negative implication, is preempted by the Copyright Act. . . . Because this portion of Universal’s breach of contract claim seeks solely to vindicate an exclusive right under the Copyright Act, it is preempted. It thus fails as a matter of law because . . . the affirmative defense of § 117(a) bars recovery to Universal on the theory that MSEI or MTA’s modifications to the server source code infringed Universal’s copyright.

ESTATE OF KAUFFMANN V. ROCHESTER INST. OF TECH.
No. 18-2404-CV, 2019 WL 3482596 (2d Cir. Aug. 1, 2019)
Outcome: Appeal - reversed
Works of Authorship: Literary work - article
Topics: Ownership - work made for hire

This appeal concerns the ownership of copyrights in 44 articles written by the film critic Stanley Kauffmann, which first appeared in The New Republic magazine (“TNR” or “the magazine”) and have now been republished in an anthology of Kauffmann’s reviews. The issue is whether each article is a “work made for hire” within the meaning of the definition section of the Copyright Act of 1976 . . . . Because the parties in this litigation, a purported licensee and Kauffmann’s estate, agree that Kauffmann was not an employee of the magazine, the more precise issue is whether a letter agreement, signed by Kauffmann and the magazine’s literary editor five years after the year in which the articles were written, satisfies the definition’s alternate criterion that “the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.” . . .

This issue arises on an appeal by Kauffmann’s estate (“the Estate”), Kauffmann’s successor in interest, from the August 7, 2018, judgment of the Western District of New York (Charles J. Siragusa, District Judge), dismissing, on motion for summary judgment, the Estate’s complaint against the Rochester Institute of Technology (“RIT”) for copyright infringement based on RIT’s publication of an anthology of Kauffmann’s articles. RIT, asserting the defense that the Estate does not own the copyrights, contends that Kauffmann’s articles were works for hire and that TNR for that reason was the “author” of the works . . . and therefore had “[o]wnership” of the copyrights in them . . . absent any transfer.

We conclude that Kauffmann’s articles were not works for hire because the letter agreement was signed long after the works were created, and no special circumstances even arguably warrant applying the written agreement. Accordingly, we reverse the judgment of the District Court and remand for further proceedings.
ENNIO MORRICONE MUSIC INC. V. BIXIO MUSIC GRP. LTD.
No. 17-3595-CV, 2019 WL 3937703 (2d Cir. Aug. 21, 2019)
Outcome: Appeal - reversed
Works of Authorship: Music - musical work
Topics: Ownership - work made for hire, Ownership - termination, International law - Italy

Italian composer Ennio Morricone was commissioned by Edizioni Musicali Bixio, an affiliate of the defendant Bixio Music Group Ltd. (together, “Bixio”), to compose the scores for six Italian films in the late 1970s and early 1980s. In exchange for an upfront payment and limited royalties, Mr. Morricone assigned his rights in the scores to Bixio. In this declaratory judgment action, Mr. Morricone’s assignee, Ennio Morricone Music Inc. (“Morricone Music”), asserts a right to terminate the assignment of the copyrights to Bixio under 17 U.S.C. § 203, which provides that an assignment may be terminated after 35 years, such that Morricone would regain all rights in the scores except for Bixio’s right to use them in the existing films. The United States District Court for the Southern District of New York (Forrest, J.) granted summary judgment to Bixio, concluding that the scores were excepted from the termination right because they were the Italian equivalent of “works made for hire.” . . . Because we conclude that the scores are not “works made for hire” under Italian law, we reverse.

OYEWOLE V. ORA
No. 18-1311-CV, 2019 WL 4180148 (2d Cir. Sep. 4, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Music - musical work
Topics: Defenses - fair use

Abiodun Oyewole appeals from the March 8, 2018 judgment of the United States District Court for the Southern District of New York (Nathan, J.) dismissing Oyewole’s copyright infringement lawsuit pursuant to Fed. R. Civ. P. 12(b)(5) as to some defendants and pursuant to Fed. R. Civ. P. 12(b)(6) as to other defendants. We assume the parties’ familiarity with the facts, record of prior proceedings, and arguments on appeal, which we reference only as necessary to explain our decision to affirm.

District of Connecticut

LEGOS A/S v. BEST-LOCK CONSTR. TOYS, INC.
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Visual work - toy
Topics: Copyright registration - presumption of validity, Defenses - fraud on the Copyright Office, Scope of protection - functionality, Ownership - copyright registration, Infringement - evidence of copying, Infringement - substantial similarity

Plaintiffs LEGO A/S and Lego Systems, Inc. (collectively, “Lego” or “Plaintiffs”) brought this action against Defendants Best-Lock Construction Toys, Inc. and Best-Lock Limited, Hong Kong (collectively, “Best-Lock” or “Defendants”), principally alleging that Best-Lock is
producing and selling figurines that infringe on Lego’s copyrighted minifigure design. Before the Court are cross-motions for summary judgment: Plaintiffs’ motion for summary judgment on their claim for copyright infringement as well as several of Defendants’ affirmative defenses and counterclaims, and Defendants’ cross-motion for summary judgment on Plaintiffs’ claim of copyright infringement.

For the reasons discussed below, Plaintiffs’ motion for summary judgment is granted in part but denied as to Defendants’ affirmative defense of equitable estoppel. Defendants’ motion for summary judgment is denied . . .

1. Presumption of Validity . . . Lego’s Asserted Copyrights were not registered within five years of first publication of the underlying minifigures. Defendants are therefore correct that Lego is not entitled to a statutory presumption of validity. . . . Best-Lock has not offered any evidence tending to show that the certificates of registration provided by Lego are invalid or otherwise unreliable, nor does it proffer evidence challenging Lego’s ownership of the copyrights in the minifigures covered by those registrations. The Court therefore, in its discretion, holds that these registrations give rise to a rebuttable presumption that Lego owns valid copyrights in the Lego minifigures. That presumption of validity is grounded in the clear weight of authority. . . .

2. Invalidity Due to Patents on the Same Subject Matter . . . Best-Lock presents no evidence that Lego withheld or misstated information about its patents on the minifigures. To the contrary, the Asserted Copyright applications appear thorough, complete, and consistent with the undisputed facts on record. The brief, two-page copyright application did not ask whether Lego had sought or obtained patents or other intellectual property. Nor did it provide any catchall space in which to disclose other relevant information. Consequently, Lego had no obligation to disclose its existing patents on the application, and its failure to do so was neither “misleading” nor an “omission.” . . .

3. Invalidity Due to Functionality . . . As I have previously held in this case, certain elements of the Lego minifigures are, indeed, functional. . . . But the mere fact that some elements of the Lego Minifigures are functional does not render the entire sculptural work uncopyrightable. . . .

4. Invalidity of Copyright Registration as a Collection . . . Even assuming that Lego erroneously registered the ’104 Copyright as a published collection, which Lego appears to dispute, absent any evidence of knowing misstatements or misrepresentations in the application, Lego’s certificates of registration for the Asserted Copyrights satisfy the registration requirement, “regardless of whether the certificate contain[ed] any inaccurate information.” . . . Nor does Best-Lock’s argument raise any triable issue of material fact, as Best-Lock has offered only speculation that the registered works may not have been published concurrently. The Court declines to invalidate Lego’s copyright on this basis.

5. Ownership . . . In the totality of these circumstances, the Court concludes that there are no issues of material fact with respect to Lego’s ownership of valid copyrights. Lego is entitled to summary judgment on those issues because no reasonable juror could find that Lego did not own valid copyrights in the minifigures in suit. . . .
B. Illegal Copying of Original Protectable Work . . . Having considered the extensive record in the case, I conclude that a reasonable trier of fact, properly instructed on the law, would be bound to find that Best-Lock copied the Lego copyrighted minifigures in suit, and that substantial similarities exist between the Best-Lock minifigures and the protectable elements of Lego’s minifigures.

Eastern District of New York

DIAMOND COLLECTION, LLC V. UNDERWRAPS COSTUME CORP.  
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - costume
Topics: Copyright registration - application rule, Copyrightability - useful article, Infringement - access, Infringement - striking similarity

Before the Court is a motion by Plaintiff the Diamond Collection, LLC (“Plaintiff” or “Diamond”) to dismiss counterclaims . . . in the Amended Answer of Defendant Underwraps Costume Corporation (“Defendant” or “Underwraps”) . . . . For the following reasons, Plaintiff’s motion is GRANTED IN PART and DENIED IN PART . . . .

1. Valid Copyright; Registration and Pending Application . . . This Court agrees that “[g]iven that the claimant who has submitted an application that has yet to be acted upon at that juncture has done all that she can do, and will ultimately be allowed to proceed regardless of how the Copyright Office treats her application, it makes little sense to create a period of “legal limbo” in which suit is barred.” . . . Underwraps may proceed on its counterclaims for the pending applications.

2. Separability . . . Both parties appear to agree . . . that the costumes are “ ‘useful article[s]’ ” that have “ ‘an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.’ ” . . . Applying the two-part Star Athletica test, this Court finds that the Underwraps costumes have design elements separable from their utilitarian bases. At the first step, which is “not onerous,” the Court can “spot some two– or three-dimensional element[s] that appear[ ] to have pictorial, graphic, or sculptural qualities.” . . . For example, there are ruffles and bowties on the Dia de los Muertos costumes with clear graphic and artistic qualities. . . . There are graphic skeleton patterns on the lace poncho. . . . The Evil Harlequin has a pattern of nefarious looking jesters interposed with diamonds. . . . Underworld has the graphic of a skeleton rising out of burning flames. . . . At the second step, all of these features could be removed from the costumes. . . . The Amended Answer “pleads separability in including... picture[s] of the [costumes], which allows the Court to determine that a pictorial, graphic, or sculptural feature can be identified separately from and exist independently of the utilitarian aspects.” . . . Thus, these elements are protectable, and the Court turns to whether they were copied.

3. Access and Substantial Similarity . . . The Court finds that while the pleadings may not have sufficiently alleged access by simply stating that Underwraps distributed its catalogs (with the
implication being that Diamond saw the catalogs before it came out with the works at issue), “[v]iewed in the light most favorable to [Underwraps], it is ... plausible that [Diamond’s] designs are strikingly similar to the protected elements of [Underwraps’] works.” . . . Here, in viewing the photos, the Court finds that most of the costumes at issue are not merely substantially similar, but strikingly similar.

For example, Underwraps’ Lace Poncho Skeleton . . . is nearly identical to Diamond’s White Skeleton Poncho . . . . Both are sheer white ponchos designed to be worn over an undergarment (the catalogs both depict the poncho worn over a black shirt). They each have the image of a skeletal torso down the front. Additionally, both are edged in a design that alternates a skull and crossbones to form a chain around the entire hem. They have nearly identical necklines and are the same length. Next, Underwraps’ Dia de los Muertos Material Pattern . . . is difficult to distinguish from Diamond’s Senor Muerto and Queen Corpse . . . . The female costumes have a black top imprinted with a skeletal torso. The skirts are black with two ruffles. The material of the ruffles has red roses and skulls and is positioned on the skirts in the same manner, hitched up on the side with what appears to be a slit over the thigh. The material from the ruffles appears on the male costume, as both a cummerbund and necktie. Underwraps’ Jester/Evil Harlequin . . . closely resembles Diamond’s Wicked . . . . Both feature a short top coat with two buttons, wide black lapels, and tails. The coat has vertical black and white stripes down the right side. The left side is covered in a diamond pattern that includes jesters in the black diamonds. The pants each alternate the vertical stripes with the diamond pattern--stripes down the left leg, diamonds down the right. Underwraps’ Underworld . . . is almost impossible to distinguish from Diamond’s Flaming Demon . . . . Both are loose hooded garments that come down to the wearer’s feet. Each is imprinted with a skeleton that appears to be rising from, or walking through, flames. The flames are placed similarly near the bottom of the garment, the hems of the draped sleeves, and the hood. The Court would be hard pressed to conclude the Diamond designers envisioned and created these works independently of and with no reference to Underwraps’ designs.

Because “where the works in question are so strikingly similar as to preclude the possibility of independent creation, copying may be proved without a showing of access,” . . . the Court finds that Underwraps has plausibly pleaded its counterclaim for copyright infringement.

MICHAEL GRECCO PRODS., INC. V. ALAMY, INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Integrity of Copyright Management Information - definition of CMI, Integrity of Copyright Management Information - pleading requirements, Limitations on liability relating to material online - pleading requirements

On June 4, 2018, Plaintiff Michael Grecco Productions, Inc. (“Plaintiff” or “Grecco Productions”) commenced this action for copyright infringement and violations of Section 1202(a) of the Digital Millennium Copyright Act (“DMCA”) with respect to 27 copyrighted photographic images (“the Copyrighted Works”). . . . On September 27, 2018, Defendant Alamy,
Inc. ("Defendant" or "Alamy") filed a motion to dismiss the complaint for failure to state a claim, arguing, inter alia, that Alamy was an improper defendant in this action and that the complaint failed to plausibly allege any copyright infringement or violation of the DMCA. . . . For the reasons stated herein, Defendant’s motion is denied in its entirety. . . .

The Court agrees with this more expansive view of CMI. Because a watermarked corporate name or symbol may refer to the author or copyright owner when displayed on a copyrighted work in connection with the marketing of that work for sale or license, such watermarks do constitute CMI for the purpose of stating a violation of § 1202(a). . . . Accordingly, the Court finds that Plaintiff has alleged sufficient facts from which the Court can plausibly infer that the watermarks described in the complaint and shown in Exhibit C constitute CMI for the purpose of the alleged § 1202(a) violation. . . .

To the extent that Defendant challenges the adequacy of Plaintiff’s pleading of the scienter elements of a § 1202(a) claim, the Court finds that Plaintiff has plausibly pleaded that Defendant acted with knowledge and intent in placing watermarks on the Copyrighted Works in order to conceal copyright infringement. . . . Here, Plaintiff has alleged that Defendant was informed by Superstock that the Survival Term had expired, and that Defendant knew the expiration deprived it of the authority to further license and display the Copyrighted Works without further permission from Plaintiff. . . . Additionally, Plaintiff alleges that Defendant placed watermarks on the Copyrighted Works in order to facilitate its continued marketing and sale of licenses. . . . While the truth of these allegations must be ascertained at a later stage of litigation, they are sufficient as stated to survive a motion to dismiss. . . .

Without addressing the merits of Defendant’s claim that it is entitled to the protection of the DMCA’s safe harbor provision for Internet service providers, the Court finds that Defendant’s entitlement is not apparent on the face of the complaint or its attachments, even as to the Marley photograph. Defendant bases its motion to dismiss on a screenshot attached as part of Exhibit C to the complaint. . . . Yet the complaint expressly characterizes this exhibit as containing “exemplary screenshots or printouts,” rather than detailing each instance of alleged copyright infringement. . . . While the screenshot referenced by Defendant does appear to show a user-generated post featuring the Marley photograph, this fact would not preclude liability for alleged instances where Defendant, rather than a user of the Alamy website, displayed the Marley photograph and offered copies for prospective license.

WHISTLEBLOWER PRODS., LLC V. ST8CKED MEDIA LLC
No. 18-CV-5258 (PKC) (CLP), 2019 WL 3082482 (E.D.N.Y. Jul. 15, 2019)
Outcome: Motion to dismiss - granted
Works of Authorship: Audiovisual work - documentary
Topics: Copyright registration - registration requirement

Plaintiffs Whistleblower Productions, LLC, Kathleen Cole, Frank Vetro, Jeffrey Monsour, Michael Carey, Mary Ellen Belding, and Walter Wenger (collectively, “Plaintiffs”) bring this action against Defendants St8cked Media LLC, Michael Reichenberg, and Sola Adenekan
(collectively, “Defendants”), advancing claims for declaratory relief, copyright infringement, and various causes of action under state law. Pending before the Court is Defendants’ motion to dismiss, which the Court grants for the reasons set forth below.

As an initial matter, this Court is not bound by Lost Boys or Olan Mills. Furthermore, in light of the plain language of 17 U.S.C. § 411(a) and the precedent in this Circuit dismissing infringement claims based on unregistered copyrights, the Court declines to follow Olan Mills. Lastly, even if the Court were to adopt the reasoning of Olan Mills, it would nonetheless find that it does not dictate a different result in this case. In that regard, the Court respectfully disagrees with the district court’s application of Olan Mills in Lost Boys, where, as here, the plaintiffs neither presented evidence of a prior determination of the defendants’ infringement liability nor established a history of continuing infringement. Accordingly, the Court dismisses Plaintiffs' copyright infringement claim without prejudice.

XCLUSIVE-LEE, INC. V. HADID
Outcome: Motion to dismiss - granted
Works of Authorship: Visual work - photograph
Topics: Copyright registration - registration requirement

On January 28, 2019, Plaintiff Xclusive-Lee, Inc. (“Plaintiff”) commenced this action against Defendant Jelena Noura “Gigi” Hadid (“Defendant”). Before the Court is Defendant’s motion to dismiss, which the Court grants for the reasons set forth below.

Here, Plaintiff does not allege that it had been formally granted registration of a copyright in the Photograph from the Copyright Office at the time it filed the complaint in this case. At most, the complaint alleges—and, indeed, Plaintiff appears to concede—that, at the time it commenced this action, it had only applied for a copyright in the Photograph. Although Fourth Estate post-dated Plaintiff’s filing of its complaint, it is nevertheless binding on all lower federal courts unless and until the Supreme Court decides to revisit it. For this reason, Plaintiff’s observation that the Second Circuit may have provided for a different result prior to Fourth Estate is of no moment.

MERCHDIRECT LLC V. CLOUD WARMER, INC.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Literary work - computer program
Topics: Contributory infringement - pleading requirements, Copyright registration - registration requirement

Plaintiff MerchDirect LLC (“MerchDirect”) brings this action against Cloud Warmer, Inc. (“Cloud Warmer”), and its owners, brothers Nicholas and Thomas Mango (“the Mangos”), alleging, among other things, that defendants violated copyright law and breached a contract
which allegedly required Cloud Warmer to create an exclusive and proprietary e-commerce platform for MerchDirect. Cloud Warmer has filed a counterclaim alleging that it was MerchDirect who breached the contract and violated its copyright in the software underlying the platform. Now before the Court are two motions pursuant to Fed. R. Civ. P. 12(b)(6): the Mangos' motion to dismiss the four causes of action alleged against them in the First Amended Complaint (“FAC”) and MerchDirect’s motion to dismiss the copyright infringement counterclaim. . . . For the reasons set forth below, the Mangos' motion is granted in part and denied in part and MerchDirect’s motion is granted in its entirety. . . .

In this case, MerchDirect has adequately alleged infringement by Cloud Warmer. . . . MerchDirect has done so, alleging that it has owned the copyright in the Code since the termination of the Agreement in June 2016 and that Cloud Warmer violated its exclusive rights in the Code by using the Code thereafter. In addition, the FAC adequately alleges contributory copyright infringement by the Mangos, alleging that they materially contributed to the infringing conduct because they, as owners and/or agents of Cloud Warmer, caused the corporation to use a copy of the Code despite knowing that, under the terms of the Agreement they had personally negotiated, the exclusive rights in the Code had passed to MerchDirect. . . .

Although Cloud Warmer alleges that it is the author and owner of the Code, Cloud Warmer does not allege that it registered the Code before filing its counterclaim. It also does not argue that any of the limited exceptions to the requirement that a copyright owner register their copyright before filing an infringement action apply in this case. Rather, Cloud Warmer alleges that it is the “beneficial owner of the ... copyright registration” because MerchDirect filed a fraudulent copyright registration application. . . . If, as Cloud Warmer alleges, MerchDirect knowingly submitted a fraudulent application for registration, the certificate of registration would not satisfy the registration requirements, and would not support either party’s copyright infringement claims. Accordingly, Cloud Warmer’s counterclaim is dismissed without prejudice for lack of a copyright registration.

Southern District of New York

KING-DEVICK TEST INC. V. NYU LANGONE HOSPITALS
Outcome: Motion to dismiss - denied
Works: Literary work - test
Topics: Copyrightability - originality, Defenses - prior publication, Defenses - fraud on the Copyright Office

Plaintiff and Counterclaim-Defendant King-Devick Test Inc. (“King-Devick”) has filed the instant lawsuit against Defendants and Counter Claimants New York University, NYU Langone Hospitals, Steven L. Galetta, and Laura J. Balcer (collectively, “Defendants”), claiming among other things that Defendants have infringed its registered copyright in an eye-movement test that can aid in detecting concussions. . . . Defendants, in turn, have asserted several counterclaims, one of which seeks a declaration that King-Devick’s copyright is invalid. . . . King-Devick now moves to dismiss that counterclaim for failure to state a claim. . . . For the following reasons, the motion is denied. . . .
1. Originality . . . Here, Defendants have plausibly alleged that the K-D Test is a “mere copy” of the Pierce Saccade and Gilbert Tests, and that its deviations from these predecessors are insufficiently creative to “embody any additional copyrightable authorship of King or Devick.” . . . As explained above, both the K-D Test and the Pierce Saccade Test consist of four cards that contain rows of single-digit numerals. . . . And the visual layout of at least the K-D Test’s demonstration and first test cards bears a strong resemblance to the layout of the Pierce Saccade Test’s counterparts. . . . To be sure, King-Devick correctly points out that the K-D Test differs from the Pierce Saccade Test, most notably in that the numerals displayed in its second and third test cards appear at sporadic intervals within each row and are not lined up exclusively along the far edges, as in the Pierce Saccade Test. . . . But to the extent that this innovation evinces the “minimal degree of creativity” necessary to establish originality, Defendants have plausibly alleged that it was not “independently created” by King and Devick . . . but was instead lifted from the Gilbert Test . . . .

2. Prior Publication . . . Here, Defendants have alleged that King and Devick allowed the Illinois College of Optometry Press to publish the K-D Test without a copyright notice in 1976 as an appendix to King and Devick’s senior paper, and that at least four copies of the paper—with test attached—were put in the school library. . . . Thus, Defendants argue, they have plausibly alleged that the K-D Test entered the public domain prior to January 1, 1978, and so enjoys neither statutory nor common-law protection. . . . The Court agrees that Defendants' allegations regarding the K-D Test’s 1976 publication are thin. But at the motion-to-dismiss stage, the Court is constrained to “draw[ ] all reasonable inferences in favor of” Defendants. . . . While the Court doubts that the deposit of four copies of a student paper in a school library would under most circumstances constitute general publication capable of divesting that paper of copyright protection, Defendants here have alleged that a group of out-of-state researchers accessed, utilized, distributed, and reproduced the K-D Test without objection from King or Devick soon after its alleged publication. . . . It is thus at least plausible that discovery could, by shedding light on the “access ... scholars [have]” to the K-D Test and the “use [to which] those scholars [have]” put the test . . . provide evidence that the 1976 publication was effected in such a way as to make the K-D Test “available to members of the public regardless of who they [were] or what they [would] do with it,” . . . .

3. Fraud . . . Here, Defendants allege that King and Devick’s 1983 application for copyright registration deliberately failed to mention either the K-D Test’s relationship to the Pierce Saccade and Gilbert Tests, or the test’s prior publication without notice of copyright in 1976. . . . Defendants further allege that these omissions would have influenced the Copyright Office’s ultimate decision to issue a registration. . . . As the Court has already concluded, Defendants have alleged facts that plausibly suggest that the K-D Test was insufficiently original to merit copyright protection. It is therefore necessarily plausible to infer that knowledge of those facts would have caused the Copyright Office to consider rejecting King and Devick’s application for a registered copyright or, put another way, that King and Devick’s failure to disclose those facts was material. . . . Until the record is developed further on the question of the K-D Test’s
originality, there is simply no basis for assessing the materiality of the omissions King and Devick are alleged to have made.

GRiffin v. SHEERAN
Outcome: Motion for summary judgment - denied
Works: Music - musical work
Topics: Infringement - substantial similarity

Plaintiffs, claiming to own a partial interest in the copyright of the musical composition “Let’s Get It On” (“LGO”) as heirs of Edward B. Townsend, brought this action for copyright infringement. They allege that a musical composition “Thinking Out Loud” (“TOL”), co-written by defendant Edward Christopher Sheeran and non-party Amy Wadge, infringes their copyright in LGO. Defendants maintain that the deposit copy (not the sound recording) of LGO defines the scope of the copyright, that the two works are not substantially similar, that any alleged similarities concern unprotectable and commonplace elements, and that plaintiff Kathryn Townsend Griffin lacks standing to bring suit. They move for summary judgment dismissing the complaint on those grounds. The parties have submitted reports by expert musicologists, who dispute whether substantial similarities exist between the two works and whether those alleged similarities were commonplace prior to LGO.

Regardless of whether the deposit copy or sound recording of LGO defines the scope of the composition’s copyright, material facts are in dispute: whether the harmony and harmonic rhythm were commonplace prior to LGO, and whether numerous musical elements in the two works are substantially similar and so uncommon that an ordinary observer would recognize TOL as having been appropriated from LGO. Accordingly, defendants' motion for summary judgment . . . is denied.

Automated Mgmt. Sys., Inc. v. Rappaport Hertz Cherson Rosenthal, P.C.
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - computer program
Topics: Ownership - pleading requirements, Infringement - liability of corporate officers, Preemption - unfair competition

Plaintiff Automated Management Systems, Inc. (“AMSI”) brings 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 (the “Individual Defendants,” and together with RHCR, the “RHCR Defendants”), and Defendant Branko Rakamar (collectively, “Defendants”) for copyright infringement, breach of contract, and unfair competition. On August 30, 2017, this Court granted Defendants’ motion to dismiss Plaintiff’s Amended Complaint in its entirety. . . . On July 12, 2018, the Court granted AMSI’s motion for leave to file a Second Amended Complaint . . . Before the Court is the RHCR
Defendants’ motion to dismiss the SAC . . . and AMSI’s motion for sanctions . . . . The Court has carefully considered the parties’ submissions and, for the following reasons, the RHCR Defendants’ motion to dismiss the Second Amended Complaint is denied and AMSI’s motion for sanctions is denied. . . .

The RHCR Defendants raise three principal arguments in support of their motion to dismiss the SAC. First, the RHCR Defendants argue that the SAC does not plausibly allege a claim for copyright infringement because AMSI does not allege that it has a valid copyright registration for “the software in question.” . . . The RHCR Defendants contend that “the Landlord-Tenant System that was installed and is the subject of [the Agreement] is not registered” because the software registered with the U.S. Copyright Office under registration number TX 7-232-319 was first published on November 1, 2007, ten months before the Agreement was signed on January 2, 2007. . . . As the Court explained in the July Opinion, however, the RHCR Defendants’ argument misreads the SAC and conflates the publication date of the new software with the date on which the Agreement was signed. . . . In doing so, the RHCR Defendants misidentify “the software in question” and assume that the software upon which AMSI’s copyright infringement claim is based is the same as the LTLS software that is the subject of the Agreement. As the Court explained in the July Opinion, the SAC adequately pleads a copyright infringement claim as to the software installed in 2007, even though the SAC contains no specific allegations connecting the software installed in 2007 to the LTLS software that is the subject of the parties’ Agreement. . . .

Next, the RHCR Defendants argue that all claims against the Individual Defendants must be dismissed because the SAC does not allege a plausible theory of personal liability. As the RHCR Defendants acknowledge, however, corporate officers can be held vicariously liable for copyright infringement . . . . The SAC alleges that the Individual Defendants were personally involved in the management of RHCR’s information technology systems . . . that the Individual Defendants were involved and participated in the decision to hire Rakamaric to copy the software installed in 2007 . . . that the Individual Defendants each agreed to copy the software installed in 2007 to a separate server . . . and that the Individual Defendants had a direct financial interest in copying the software installed in 2007 insofar as they sought to avoid making further payments to AMSI for use of the software . . . . The Court finds that these allegations are sufficient to allege plausibly that the Individual Defendants are vicariously liable for copyright infringement . . .

Finally, the RHCR Defendants argue that AMSI’s common law unfair competition claim is duplicative of, and therefore preempted by, its federal copyright infringement claim. Unfair competition claims “grounded solely in the copying of a plaintiff’s protected expression are preempted by section 301 [of the Copyright Act].” . . . AMSI’s unfair competition claim appears to be asserted under the misappropriation branch of New York’s unfair competition law, which generally “protects against a defendant’s competing use of a valuable product or idea created by the plaintiff through investment of time, effort, money and expertise.” . . . The SAC alleges that the RHCR Defendants engaged in unfair competition by hiring and granting Rakamaric, who allegedly “has a side business as an information technology services provider,” access to the software installed in 2007, in violation of RHCR’s Agreement with AMSI. . . . Because this
claim is predicated upon facts that are distinct from Defendants’ alleged copying of the software installed in 2007 and is thus “qualitatively different” from AMSI’s copyright infringement claim, the Court finds that AMSI’s unfair competition claim is not preempted by federal copyright law, and denies the RCHR Defendants’ motion to dismiss that claim.

JOINT STOCK CO. "CHANNEL ONE RUSSIA WORLDWIDE" V. RUSSIAN TV CO. No. 18 CIV. 2318 (LGS), 2019 WL 804506 (S.D.N.Y. Feb. 21, 2019)
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Audiovisual work - television series
Topics: International law - Russia, Ownership - pleading requirements, Infringement - pleading requirements, Contributory infringement - pleading requirements, Preemption - unfair competition

Plaintiff Joint Stock Company “Channel One Russia World Wide” (“Channel One”) brings this action against Russian TV Company (“Russian TV”), its owner, Steven Rudik and TechStudio, alleging violations of the Federal Communications Act (Counts I–II), the Digital Millennium Copyright Act (the “DMCA”) (Counts III–IV), the Lanham Act (Counts V–VI), the Copyright Act (Counts VII–VIII), the New York General Business Law (Count IX) and unfair competition and copyright infringement under New York law (Count X). Defendants move to dismiss Counts IV to VIII and X against Russian TV and to dismiss all claims against Defendants Rudik and TechStudio. Plaintiff opposes Defendants' motion and, in the alternative, seeks leave to amend the Complaint. For the reasons that follow, Defendants' partial motion to dismiss is granted as to Counts IV, V, VI and X and denied as to Count VII and VIII. Defendants' motion to dismiss Rudik and TechStudio is granted. Plaintiff’s motion to amend the complaint is denied without prejudice to renewal.

1. Statutory Standing and Ownership . . . The Complaint pleads facts sufficient to show that, under Russian law, Plaintiff owns an exclusive right as is necessary for standing, and owns a valid copyright sufficient to state an infringement claim.

2. Copyright Infringement . . . a. Direct Infringement . . . The motion to dismiss Count VII is denied because the Complaint plausibly alleges that Russian TV directly infringed Plaintiff’s exclusive right to reproduce the Programming “in copies” by intercepting and storing it on a CDN for Defendants' subscribers to access.

b. Secondary Infringement . . . The motion to dismiss the claim of secondary copyright infringement (Count VIII) is denied. The Complaint states a claim for contributory liability.

E. State Law Claim of “Unfair Competition and Common Law Infringement” . . . The Complaint’s state law claim for “unfair competition and common law infringement” (Count X) is dismissed as preempted by the Copyright Act.
MYERESS V. BUZZFEED INC.
No. 18-CV-2365 (VSB), 2019 WL 1004184 (S.D.N.Y. Mar. 1, 2019)
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Limitations on liability relating to material online - pleading requirements

Plaintiff Joe Myeress brings this action against Defendant Buzzfeed Inc. (“Buzzfeed”), alleging copyright infringement pursuant to 17 U.S.C. §§ 101 et seq. Currently pending before me is Defendants’ motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). . . . Because I find that the amended complaint plausibly alleges a claim for copyright infringement, and the amended complaint on its face does not support Defendant’s affirmative defense that it is protected by The Digital Millennium Copyright Act, Defendant’s motion is DENIED. . . .

Because the Amended Complaint does not demonstrate that Defendant lacked the requisite knowledge, that Defendant expeditiously removed the alleged infringing material upon obtaining such knowledge, that Defendant did not receive a financial benefit from the material, or that Defendant has designated an agent to receive notifications of claimed infringement, I find that Defendant is not, at this stage, entitled to DMCA protection under Section 512(c). . . . Indeed, any one of those bases alone would be sufficient to deny Defendant’s motion to dismiss. Accordingly, Defendant’s motion to dismiss, (Doc. 12), is DENIED.

NOLAND V. JANSSEN
No. 17-CV-5452 (JPO), 2019 WL 1099805 (S.D.N.Y. Mar. 8, 2019)
Outcome: Motion to dismiss - granted
Works of Authorship: Visual work - sculptural work
Topics: Infringement - extraterritoriality

Plaintiff Cady Noland, an artist, initiated this copyright action in connection with the display and attempted sale of what she alleges to have been an unauthorized copy of one of her wooden sculptures. Defendants are two German art galleries, the owner of one of the galleries, and a German art collector. Noland’s allegations are largely based on Defendants' replacement of the sculpture’s wooden parts after years of outdoor exposure had caused the sculpture to begin to rot. . . . Before the Court now is Defendants' motion to dismiss the operative Second Amended Complaint. . . . For the reasons that follow, Defendants' motion is granted. . . .

All of the conduct underlying the Copyright Act violations alleged by Noland—including Defendants' “destruction” of her original work, their “copying” of that work by replacing all of its wooden logs, their continued display of the “copied” work, and their efforts at effectuating a sale of the “copied” work—are alleged to have been performed by Defendants exclusively in Germany. . . . First, Noland asserts that Defendants' act of purchasing the wood used to refurbish her artwork from a Montana company constitutes a predicate act sufficient to trigger the applicability of U.S. copyright law. . . . But buying wood is clearly not an act of copyright infringement; if anything, it was only Defendants' subsequent use of that wood to reconstruct
Noland’s artwork that could qualify as “an act of infringement in violation of the copyright laws.” . . . Defendants' purchase of wood from the United States is thus like the dance arrangements and shipment of a model that were rejected as predicate acts in prior cases. . . . Because the act of purchasing wood from Montana also did not by “itself violate[ ] the Copyright Act, there is no cause of action under the U.S. Copyright Act for foreign copyright infringement” on this basis. . . .

Second, Noland argues that Defendants' failed attempts to sell the artwork to a U.S. buyer might also satisfy the exception, because “[i]nternational actions that potentially result in the distribution of works in the U.S. are also predicate acts of infringement.” . . . Here, Noland does not allege any—let alone any significant—activities by Defendants within the United States, nor she does allege that Defendants actually delivered any infringing work to the United States. . . . Unlike in Update Art, however, here Noland does not allege any domestic act of infringement, because she does not allege that an infringing work was ever “reproduce[d],” “display[ed],” or “distribute[d]” in the United States. . . . Moreover, because Update Art’s holding was premised on the conclusion that there was in fact a domestic act of infringement, it in no way supports her broad assertion that an infringement that occurs abroad that could potentially lead to a domestic distribution of an infringing work may constitute a predicate act. . . .

The remaining facts alleged by Noland alleges—namely that the German Defendants signed a contract with an American buyer that included a New York choice-of-law provision and that called for eventual delivery of the work to the United States—are by themselves insufficient to establish that a “distribution” occurred within the United States. If Noland had alleged that Defendants' conduct in fact touched the United States—such as through marketing of the work from within the United States or through reaching out to potential buyers when present in the United States—this might present a closer question. There is a developing doctrine in copyright law, not yet addressed by the Second Circuit, regarding whether an unconsummated offer to distribute a copy of a work for sale can by itself constitute a “distribution” of an unauthorized copy in violation of 17 U.S.C. § 106(3). However, because Noland has not alleged that any conduct in relation to the offered sale of the Log Cabin occurred within the United States, she has not plausibly pleaded a qualifying “domestic predicate act [that] was itself an act of infringement in violation of the copyright laws.” . . . Accordingly, her claims brought under the U.S. Copyright Act must be dismissed.

ROCK V. ENFANTS RICHES DEPRIMES, LLC
No. 17-CV-2618 (ALC), 2019 WL 1300091 (S.D.N.Y. Mar. 21, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - photograph
Topics: Copyright registration - registration required

Plaintiff Mick Rock (hereinafter, “Plaintiff” or “Mr. Rock”) brings this action against Defendants Enfants Riches Deprimes, LLC (“Enfants”) and Barneys New York, Inc. (“Barneys”) (collectively, “Defendants”) for violations of the Copyright Act . . .
Here, Plaintiff has failed to carry that burden. Plaintiff has produced no evidence that the Photograph itself was registered or that a proper application was made out and refused by the Register. It is undisputed that Plaintiff did not register the Photograph itself with the Copyright Office. . . . The only registration produced in this case is for the work “Mick Rock Exposed”. . . . It is undisputed that “Mick Rock Exposed” is “a book containing photographs, text, and photo art created by Rock, as well as text from other contributors.” . . . While Plaintiff cites the 990 Registration as the source of Plaintiff’s copyright claim, the 990 Registration explicitly outlines the two limitations of the “Mick Rock Exposed” copyright: (1) “text from other sources,” and (2) “previously published works.” . . . In his deposition testimony, Mr. Rock admits that the Photograph was a previously published work that had been published numerous times dating back to the 1970s. . . . Thus, the Photograph is explicitly excluded from the 990 Registration. . . .

In sum, Plaintiff failed to produce any evidence indicating a proper registration for the Photograph or a proper application resulting in a refusal by the Register, both of which operate as prerequisites to filing a claim under the Act. Thus, Plaintiff cannot sustain a claim for copyright infringement under the Act. Plaintiff’s claims are dismissed.

CARRELL V. ORIGAMI OWL, LLC
No. 18 CIV. 694 (NRB), 2019 WL 1330941 (S.D.N.Y. Mar. 25, 2019)
Outcome: Motion for judgment on the pleadings - granted
Works of Authorship: Visual work - graphic work
Topics: Scope of protection - scenes a faire, Infringement - substantial similarity

Sam Carrell, who owns a dog of some purported repute, brought this intellectual property suit against jewelry company Origami Owl, LLC (“Origami”), alleging that Origami engaged in copyright infringement by using, in connection with a promotional campaign for a line of pet accessories, an artist’s original rendering of a dog, which rendering Carrell claims mimics a photograph of her dog for which she is the exclusive rights holder. Carrell now moves for leave to amend her complaint in order to add a claim of contributory copyright infringement, which also alleges that Origami’s image mimics Carrell’s dog photograph, as well as claims of trademark infringement, contributory trademark infringement, and false designation of origin, which allege that Origami’s image mimics a so-called logo purportedly used by Carrell in connection with the promotion of her dog. Origami opposes the proposed amendments and cross-moves for judgment on the pleadings, arguing that Carrell’s complaint -- whether or not amended -- fails to plausibly allege claims for relief. For the reasons set forth below, Origami’s motion for judgment on the pleadings is granted, while Carrell’s motion for leave to amend is denied. . . .

To an overwhelming (and dispositive) extent, the common elements of the images at issue “fall [squarely] within the scènes à faire doctrine,” which renders “unprotectible elements [of a work] that follow naturally from [the] work’s theme rather than from [the] author’s creativity.” . . . According to Carrell, the original elements of her work include Tinkerbelle’s “gaze and expression,” “pose,” and “grooming.” . . . Carrell is correct that such elements of a dog’s appearance are not necessarily physiologically mandated. But the manner in which those
elements are expressed in the Tinkerbell picture is far from distinctive. For example, by Carrell’s own description, Tinkerbell’s “gaze and expression” simply amounts to her “looking directly at the viewer … with [a] closed mouth[ ] and calm expression[ ].” . . . Depicting the subject of an image as facing the viewer involves little (if any) creativity, and Tinkerbell’s calm and closed-mouth expression hardly qualifies as an expression at all. As for Tinkerbell’s pose -- which Carrell describes as “sitting, with [her] head[ ] cocked slightly to the right and [her] neck[ ] … outstretched slightly,” . . . “an artist may not use copyright law to prevent others from depicting [an] idea[ ] first expressed by nature,” and “no one would argue that the position of a dog sitting [i]s not [such] an idea,” . . . Finally, while Tinkerbell is shown groomed, with “her fur [ ] cropped closely by her ears, [and] some fur made to stick out at the top and sides of [her] head,” her appearance is far from uncommon among dogs of the paitese or shih tzu breeds, to name a few. . . . Though Carrell insists that that manner of grooming “is not the way that a dog looks in nature,” her claim is nearly too clever by half, as dogs, like humans, do not typically appear in their “natural” state, per se; much in the way that a generically-depicted man would be clean-shaven, a generically-depicted dog would be groomed. . . .

Given the low order of originality thus embodied in the Tinkerbell picture, that picture is “protect[ed] against only virtually identical copying.” . . . In view of the many differences between the works at issue, even assuming arguendo Origami’s appropriation of the three elements Carrell deems key, the Court finds as a matter of law that substantial similarity does not exist here. Accordingly, Carrell’s claim for copyright infringement fails, and her proposed claim for contributory infringement would necessarily fail as well.

FEUER-GOLDSTEIN, INC. V. MICHAEL HILL FRANCHISE PTY. LTD.
No. 16-CV-9987 (PKC), 2019 WL 1382341 (S.D.N.Y. Mar. 27, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - jewelry
Topics: Infringement - access, Infringement - striking similarity

Plaintiff Feuer-Goldstein, Inc. (“F&G”) and Defendants Michael Hill Franchise Pty. Ltd. and Michael Hill, LLC. (collectively, “Hill”) are jewelry manufacturers. F&G brought suit against Hill alleging copyright infringement, trademark infringement, unfair competition, false description, and common law injury to business reputation. Its claims are based on Hill’s jewelry designs, which F&G argues infringes on its copyrighted “Infinity Heart” design, and on Hill’s alleged unlawful use of F&G’s trademark. Both designs contain a common symbol of a heart (a valentine shape) and a common symbol for the concept of infinity (a figure eight).

F&G has withdrawn its claims for trademark infringement and unfair competition, claims two and three of its Complaint. . . . The Court accordingly dismisses those claims. With respect to plaintiff’s remaining claims for copyright infringement, false description, and common law injury to business reputation, Hill has moved for summary judgment. For the reasons that follow, Hill’s motion will be granted. . . .
Taking all of F&G’s evidence on all theories as a whole, no reasonable jury could infer access either through “wide dissemination” or a “chain of events” theory or copying based on “striking similarity.” The Court will grant summary judgment dismissing the copyright infringement claim.

DISTRIBUTIDORA DE DISCOS KAREN C. POR A. V. UNIVERSAL MUSIC GRP., INC.  
Outcome: Motion for summary judgment - granted-in-part  
Works of Authorship: Music - musical work  
Topics: Ownership - assignment, Defenses - statute of limitations, Defenses - breach of contract, Copyright registration - registration requirement

This action involves a dispute between a recording artist and his former music label and publisher over the ownership of copyrights in the compositions of a number of Latin pop songs. The artist and his new publisher now move for summary judgment on the copyright infringement and declaratory judgment claims asserted against them by his old label and publisher, as well as some of their counterclaims. . . . For the reasons that follow, the motion is granted in part and denied in part. . . .

1. Ownership in Wake of the 2006 Release Agreement . . . Accordingly, the Court determines that the “Whereas No. 11” paragraph, as translated by the Karen Parties, unambiguously did not cause ownership of rights in the compositions at issue to revert back to Guerra. Holding this provision to be unambiguous, the Court will not consider the extrinsic evidence of the parties' intent offered by Movants. . . . Movants have thus failed to adequately demonstrate at this stage of the litigation that this particular paragraph of the 2006 Release Agreement terminated whatever rights Karen Publishing holds in the musical compositions at issue. . . .

2. Subset of Compositions Not Identified in Agreements . . . Given the state of the record, the Court concludes that no reasonable jury could find in favor of the Karen Parties as to the ownership of the copyrights in these 20 compositions. Accordingly, the motion for summary judgment on the Karen Parties' infringement claims is granted as to these 20 compositions. . . .

3. Rights in Internet Exploitation . . . Overall, the Karen Parties have demonstrated a genuine dispute of fact as to whether they communicated to Guerra their intent to exploit the compositions at issue in digital format as required by paragraph fourteen of the 1992 Agreement. Therefore, Movants' motion for partial summary judgment on the Karen Parties' claims, to the extent those claims are premised on the exploitation of compositions in digital format over the internet, is denied. . . .

1. Statute of Limitations . . . Accordingly, the Court concludes that Guerra’s ownership claims over the compositions at issue did not accrue with the filing of their respective copyright registrations. Guerra’s ownership claims—and the related infringement claims—are thus not time-barred on this basis.
2. Breach of 2006 Release Agreement . . . Accordingly, substantially for the reasons discussed in the Opinion of March 15, 2017 . . . the Karen Parties' breach of contract defense is rejected as time-barred.

3. Registration Requirement . . . Accordingly, reaffirming that section 411(a) is satisfied by the registration of copyrights by parties other than the infringement plaintiffs, the Court rejects the Karen Parties' request to dismiss Guerra and UMU’s infringement claims for lack of proper registration.

PABLO STAR LTD. V. WELSH GOV’T
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Defenses - sovereign immunity

Plaintiffs Pablo Star Ltd. and Pablo Star Media Ltd., two related companies organized and registered under the laws of Ireland and the United Kingdom, own the copyrights to two photographs depicting the poet Dylan Thomas. Plaintiffs have sued Defendants the Welsh Government, Tribune Content Agency, LLC (“TCA”), and certain John Does for having allegedly infringed their copyrights in these two photographs in violation of the Copyright Act . . . Before the Court now is the Welsh Government’s motion to dismiss Plaintiffs’ claims asserted against it in the operative Second Amended Complaint. . . . For the reasons that follow, the motion is denied. . . .

In summary, the Court concludes that Plaintiffs have produced evidence that establishes that their claims are “based upon a commercial activity carried on in the United States by [a] foreign state,” . . . and that the Welsh Government has not carried its burden of “show[ing] that the alleged [commercial activity] exception does not apply [to its conduct] by a preponderance of the evidence.”

SHEPARD V. WO HOP CITY, INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - design
Topics: Copyrightability - originality, Defenses - statute of limitations

Plaintiffs Shirley Shepard and Andrea Shepard (“the Shepards”) bring this copyright infringement action against Defendant Wo Hop City, Inc. (“Wo Hop”) under the Copyright Act . . . Wo Hop moves pursuant to Federal Rule of Civil Procedure Rule 12(b)(6) to dismiss the operative complaint for failure to state a claim. . . . For the reasons that follow, the motion is denied. . . .
A. Originality . . . Drawing all the inferences in the light most favorable light to the Shepards, the Court concludes that the Alla Prima Dragon possesses a level of creativity sufficient to trigger copyright protection. “[T]here can be no doubt that the original expression of an animal’s appearance may be eligible for copyright protection.” . . . Even though the dragon is a mythic animal that exists only in imaginations, and has seen numerous renditions over the course of history, the Shepards’ interpretation of a dragon embodied in the Alla Prima Dragon still contains sufficient elements of originality. For example, courts have held that “the pose and posture of [an] animal[s]” depictions on t-shirts may constitute “protectable elements of the works.” . . . The Alla Prima Dragon depicts a dragon that is resting on its clawed feet with an arched tail extending towards its mouth, mimicking the shape of a circle. . . . With its wide jaw slightly opened, and sturdy claws reaching out, the Alla Prima Dragon creates an expression of a dragon that appears strong and powerful. . . . In addition, the cloud-shaped patterns around the dragon also add creative context to the depiction of the dragon. . . . The poses and posture of the dragon in the Shepards’ designs may therefore constitute protectable elements of their work. . . .

B. Statute of Limitations . . . Here, the Shepards allege that “they discovered Wo Hop’s infringing activity ... at least as late as November 2017, well within the three year statute of limitations.” . . . Taking the Shepards’ factual allegations as true, the Court cannot conclude that this action was untimely filed on the face of the complaint. . . . Therefore, Wo Hop cannot yet avail itself of the statute-of-limitations defense.

ZUMA PRESS, INC. V. GETTY IMAGES (US), INC.
No. 16 CIV. 6110 (AKH), 17 CIV. 5832 (AKH), 2019 WL 2725680 (S.D.N.Y. Jul. 1, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - photograph
Topics: Defenses - license

Defendant Getty Images (US), Inc. (“Getty” or “Defendant”) renews its motion for summary judgment, arguing that its allegedly infringing use of Plaintiffs’ photographs (the “Accused Images”) was authorized. Plaintiffs, comprised of Zuma Press, Inc. (“Zuma”), several individual photographers, and two photographic licensing agencies, move for partial summary judgment on the ownership and copying elements of their copyright infringement claims. Thus, both sides move for summary judgment. For the reasons stated below, Defendant’s motion is granted and Plaintiffs’ motion is denied.

ANDY WARHOL FOUNDATION FOR THE VISUAL ARTS, INC. V. GOLDSMITH
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - photograph, Visual work - painting
Topics: Defenses - fair use

This case raises the question of whether Andy Warhol's use of a photograph of an iconic singer as the basis for a series of artworks is protected as fair use.
More particularly, the Andy Warhol Foundation for the Visual Arts, Inc. (“AWF”), seeks a declaratory judgment declaring that works created by Andy Warhol based on a photograph of Prince Rogers Nelson, best known as “Prince,” taken by photographer Lynn Goldsmith do not constitute violations of the Copyright Act. Goldsmith has filed a counterclaim against AWF claiming that the Warhol works do constitute copyright infringement. AWF moves for summary judgment granting its request for a declaratory judgment and dismissing Goldsmith's counterclaim; Goldsmith moves for summary judgment denying AWF's request for a declaratory judgment and holding that AWF infringed her copyright. For the reasons discussed below, AWF's motion is granted and Goldsmith's motion is denied.

A . . . Warhol's Prince Series works are commercial in nature. Indeed, twelve of the sixteen works have been auctioned or sold throughout the world, and AWF has made each of the sixteen works available for licensing to third parties for use in books, magazines, newspapers, and for other merchandizing purposes. However, AWF gave four of the works to the Andy Warhol Museum in Pittsburgh, and some of the other works have been exhibited at other galleries and museums. . . . Moreover, AWF is a not-for-profit entity that was created for the purpose of advancing visual art, and profits derived from licensing Warhol's works help fund AWF's programs. Thus, although the Prince Series works are commercial in nature, they also add value to the broader public interest.

In any event, the Prince Series works are transformative, and therefore the import of their (limited) commercial nature is diluted. . . . Each of the Prince Series works may reasonably be perceived to be transformative of the Goldsmith Prince Photograph. As Goldsmith has confirmed, her photographic work centers on helping others formulate their identities, which she aims to capture and reveal through her photography. Her photoshoot illustrated that Prince is “not a comfortable person” and that he is a “vulnerable human being.” . . . The Goldsmith Prince Photograph reflects these qualities.

Warhol's Prince Series, in contrast, can reasonably be perceived to reflect the opposite. In all but one of the works, Prince's torso is removed and his face and a small portion of his neckline are brought to the forefront. The details of Prince's bone structure that appear crisply in the photograph, which Goldsmith sought to emphasize, are softened in several of the Prince Series works and outlined or shaded in the others. Prince appears as a flat, two-dimensional figure in Warhol's works, rather than the detailed, three-dimensional being in Goldsmith's photograph. Moreover, many of Warhol's Prince Series works contain loud, unnatural colors, in stark contrast with the black-and-white original photograph. And Warhol's few colorless works appear as rough sketches in which Prince's expression is almost entirely lost from the original.

These alterations result in an aesthetic and character different from the original. The Prince Series works can reasonably be perceived to have transformed Prince from a vulnerable, uncomfortable person to an iconic, larger-than-life figure. The humanity Prince embodies in Goldsmith's photograph is gone. Moreover, each Prince Series work is immediately recognizable as a “Warhol” rather than as a photograph of Prince – in the same way that Warhol's famous
representations of Marilyn Monroe and Mao are recognizable as “Warhols,” not as realistic photographs of those persons. In sum, the Prince Series works are transformative.

B . . . AWF does not dispute that the Goldsmith Prince Photograph is a creative work, and photographs are generally found to be creative works. . . . The photograph is also unpublished, which would ordinarily weigh in Goldsmith's favor. However, the reasons unpublished works enjoy additional protection against fair use – including respect for the author's choices of when to make a work public and whether to withhold a work to shore up demand – carry little force in this case, where Goldsmith's photography agency licensed the photograph for use as an artist's reference. Moreover, this factor is of limited importance because the Prince Series works are transformative works. Therefore, the second fair use factor favors neither party.

C . . . [A]lthough Warhol initially used Prince's head and neckline as they appear in the Goldsmith Prince Photograph, Warhol removed nearly all the photograph's protectible elements in creating the Prince Series. In doing so, Warhol transformed Goldsmith's work “into something new and different and, as a result, this factor weighs heavily” in AWF's favor. . . .

D . . . Goldsmith wisely does not contend that Warhol's work has usurped her market for direct sales of the Goldsmith Prince Photograph. It is plain that the markets for a Warhol and for a Goldsmith fine-art or other type of print are different. Rather, Goldsmith argues that the Prince Series has harmed her licensing markets. She maintains that “[h]er licensing markets overlap the same markets into which AWF has licensed Warhol's imagery for editorial and commercial uses, including magazines ... [and] music album covers.” . . . Even though Goldsmith has not editioned or licensed any of the Prince photographs from her December 3, 1981 shoot apart from the 1984 Vanity Fair artist's reference, she claims that “she has reserved” those rights “for the future when she expects the value of th[ose] photograph[s] to increase.” . . .

Goldsmith's evidence and arguments do not show that the Prince Series works are market substitutes for her photograph. She provides no reason to conclude that potential licensees will view Warhol's Prince Series, consisting of stylized works manifesting a uniquely Warhol aesthetic, as a substitute for her intimate and realistic photograph of Prince. Although Goldsmith points out that her photographs and Warhol's works have both appeared in magazines and on album covers, this does not suggest that a magazine or record company would license a transformative Warhol work in lieu of a realistic Goldsmith photograph. Moreover, Goldsmith does not specify the types of magazines and album covers on which she and Warhol appear, and whether they are similar. Put simply, the licensing market for Warhol prints is for “Warhols.” This market is distinct from the licensing market for photographs like Goldsmith's – a market which Goldsmith has not even attempted to enter into with her Prince photographs.

The evidence shows that the Prince Series works are not market substitutes that have harmed – or have the potential to harm – Goldsmith. The final fair use factor accordingly favors AWF.
KLAUBER BROTHERS, INC. V. WW, LLC
Outcome: Motion for judgment on the pleadings - granted
Works of Authorship: Visual work - lace
Topics: Infringement - substantial similarity

Plaintiff Klauber Brothers, Inc. (“Klauber”) brings this action against Defendants WW, LLC
d/b/a Walter Baker (“WW”) and Yoox Net-a-Porter Group d/b/a The Outnet (“Yoox”), asserting
claims for copyright infringement in violation of the Copyright Act of 1976 . . . . WW now
moves for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c), asking
the Court to dismiss Klauber’s claims with prejudice. . . . For the reasons that follow, Klauber’s
motion is granted and WW’s motion is denied. . . .

Even applying the “more discerning” ordinary observer standard, according to Klauber, produces
“at least a triable issue as to similarity” between the two designs. . . . The Court agrees.

Design Number 682 . . . depicts slightly curved branches and leaves on a mesh background,
surrounded by a fringed border. Specifically, the design features a repeating pattern of two
branches; the first protrudes inward from the bottom of the design and is shaped in a slight
concave-downward curve. The second branch protrudes inward from the top of the design and is
shaped in a slight concave-upward curve. Each branch has three veined leaves sprouting from its
inner-bend side, and four veined leaves from the outer-bend side. On the inner-bend side, each
branch has two nubs protruding from it, from which sprout two of the leaves. Both the leaves and
the branches have a thicker concentration of lace—and are thus darker in appearance—than the
mesh background behind the leaves.

The border surrounding the pattern in Design Number 682 also has a thicker concentration of
lace than the mesh background. This border is multi-tiered and curved. It begins closest to the
center, touching the end of a branch on the bottom side, and the first leaf of the branch on the top
side. The border curves outward on top and bottom until the middle of the branch, where the
border contacts a leaf on both sides. The border then curves inward again until the start of the
next branch. . . .

The leaves on the Gwen Design do appear to have less-well-defined borders and fewer veins. But
their arrangement is far from random; rather, when viewed after a 180-degree rotation, the leaves
appear in the same number and directional orientation on each side of the center branches as the
leaves in Design Number 682. Furthermore, the leaves appear in substantially the same size,
shape, and relative position as those in Design Number 682.

As to the border, WW is correct that the outward curve of the Gwen Design is less prominent
than that of Design Number 682, and Design Number 682 has a much clearer scalloped pattern. .
. .

With respect to color . . . Design Number 682 is presented entirely in black, whereas the Gwen
Design is entirely in a shade of pink. And Klauber’s creative decision to use black lace in
relation to the other elements of Design Number 682 is thus different from the way the shade of pink relates to the other elements in the Gwen Design. But both designs have in common that they incorporate a single color of lace, as opposed to depicting various elements in different colors.

MOURABIT V. KLEIN
No. 18 CIV. 8313 (AT), 2019 WL 2866846 (S.D.N.Y. Jul. 2, 2019)
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Visual work - makeup
Topics: Preemption - unjust enrichment, Preemption - unfair competition, Preemption - misappropriation, Preemption - deceptive acts and practices

Plaintiff, Sammy Mourabit, brings this action against Defendants, Francois Nars, Shiseido America, Inc., Shiseido International (the “Shiseido Defendants”); Steven Klein, Steven Klein Studio, Inc., and Steven Klein Studio, LLC (the “Klein Defendants”); and John Does 1-10 . . . . Plaintiff asserts a claim for copyright infringement under the Copyright Act of 1976 . . . . Plaintiff also asserts causes of action for unjust enrichment, unfair competition and misappropriation, and a violation of New York General Business Law § 349. . . . The Shiseido Defendants and the Klein Defendants move separately to dismiss the complaint under Rule 12(b)(6) . . . . For the reasons stated below, the motions are GRANTED in part, DENIED in part. . . .

a. Unjust Enrichment . . . Here, the crux of Plaintiff’s unjust enrichment claim is that Defendants were unjustly “enriched by their use of [Plaintiff’s] artistry upon all of the packaging, and in all of the promotional materials and advertising materials.” . . . Further, Plaintiff alleges that Defendants “palmed [his] artistry off as their own” and that they stole his work. . . . This claim is not qualitatively different from a copyright infringement claim for preemption purposes. . . . Accordingly, Plaintiff’s unjust enrichment claim is preempted by the Copyright Act and DISMISSED.

b. Unfair Competition and Misappropriation Claims . . . Here, Plaintiff’s claim is squarely predicated on the idea that Defendants “used the very work that they incontrovertibly knew was not [Defendants’] to promote their own new make up line.” . . . Accordingly, Plaintiff’s unfair competition and misappropriation claims are preempted and are DISMISSED.

c. General Business Law § 349 . . . Here, Plaintiff alleges that “Defendants’ conduct was materially and deceptively misleading” in part because it incorrectly led consumers to believe that the makeup being sold was the same makeup depicted in the photographs advertising the Collection. . . . This is qualitatively different from a claim of copyright infringement because the alleged harms do not arise from Defendants’ copying Plaintiff’s makeup artistry. . . . Accordingly, Defendants’ motion to dismiss Plaintiff’s GBL § 349 on preemption grounds is DENIED.
AMANZE V. ADEYEMI
No. 18 CIV. 8808 (NRB), 2019 WL 2866071 (S.D.N.Y. Jul. 3, 2019)
Outcome: Motion to dismiss - granted
Works of Authorship: Literary work - book
Topics: Infringement - substantial similarity

Plaintiff Stella Amanze brings this copyright infringement action against author Tomi Adeyemi, her publisher Macmillan Publishing Group LLC (“Macmillan”), bookseller/publisher Lola Shoneyin, and John Does 1 through 10 for Adeyemi’s work Banished: A Novel (hereinafter “Banished”) in Adeyemi’s work Children of Blood and Bone (hereinafter “Children”). Adeyemi and Macmillan now move to dismiss the operative pleading pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, arguing that the two works are wholly dissimilar. Because we agree that, as a matter of law, Banished and Children are not substantially similar, defendants’ motion is granted in its entirety. . . .

After a careful examination of the aforementioned aspects of Children and Banished, as well each work’s total concept and overall feel, we conclude that, at anything but the most abstract levels of generality, the two works are nothing alike, let alone substantially similar.

HORIZON COMICS PRODS. INC. V. MARVEL ENTMT, LLC
No. 16-CV-2499 (JPO), 2019 WL 3080847 (S.D.N.Y. Jul. 15, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - graphic work
Topics: Infringement - access, Infringement - striking similarity, Defenses - independent creation

Plaintiff Horizon Comics Productions, Inc. (“Horizon”) initiated this action against Defendants Marvel Entertainment, LLC; MVL Film Finance, LLC; Marvel Worldwide, Inc.; Marvel Studios, LLC; DMG Entertainment, LLC; and Walt Disney Studios Motion Pictures, Inc. (collectively, “Marvel”), alleging copyright infringement under the Copyright Act . . . . Marvel has moved for summary judgment pursuant to Federal Rule of Civil Procedure Rule 56, on the grounds that Marvel did not have access to Horizon’s work at issue and that Marvel’s Iron Man 3 poster was independently created. . . . For the reasons that follow, the motion is granted. . . .

A. Access . . . To sum up, Horizon’s attempt to show a genuine dispute of fact as to access fails because Horizon does not introduce any “significant, affirmative and probative evidence,” . . . of a “a particular chain of events,” . . . sufficient to permit a reasonable jury to infer that the creators of the Iron Man 3 Poster had reasonable possibility of seeing the Caliban Drawing. . . .

B. Striking Similarity . . . First, the Westwood Report fails to offer an “unequivocal opinion” about the striking similarity of the two works. . . . Indeed, nowhere does the Westwood Report state that the “two works are so strikingly similar as to preclude the possibility of independent creation.” . . . At most, the report states that the similarities in the anatomical structures of the two figures render it “highly unlikely ... approaching impossible” for the Iron Man 3 Poster to be independently created. . . . But when examining the specifics of the drawings, the Westwood
report is more equivocating. For example, in describing the faces and heads of the two figures, the Westwood Report points out their “noteworthy similarities,” but does not identity any “striking similarities” between the two works. . . . In addition, the Westwood Report admits that the similarities with respect to the images' camera views are not readily apparent at first sight, but would require “careful viewing of the two images” to discern. . . . In sum, because the Westwood Report—on which Horizon relies exclusively—never concludes that the similarities between the two works would preclude any reasonable possibility of independent creation, Horizon fails to meet the stringent standard of “strikingly similar.”

Second, even crediting Horizon’s reliance on the Westwood Report’s characterizations, there remain enough differences between the two works to “foreclose a finding of striking similarity.” . . . For example, as Marvel correctly points out, there are apparent “differences in pose, differing placement of blue lights, and significantly different overall coloring” between the two works. . . . Additionally, the Iron Man 3 Poster depicts a battle scene with Iron Man crouching “on a piece of debris floating in the ocean,” whereas the Caliban Drawing shows an armored figure appearing “in a void, with no background or context whatsoever.” . . . In light of these differences between the two works, the Court concludes “that no reasonable juror could find the two works so strikingly similar as to justify an inference of copying and preclude the possibility of independent creation.” . . .

C. Independent Creation . . . Finally, even if the Court assumes that Horizon could have established a prima facie case of infringement, Marvel would be entitled to summary judgment on the basis of its evidence of independent creation of the Iron Man 3 Poster. In contrast to Horizon’s virtually non-existent evidence of copying, Marvel has introduced unrebutted evidence showing its independent creation of the Iron Man 3 Poster.

As established by Marvel, the work on the Iron Man 3 Poster began in 2012 when Sabel and Nuchols at the Walt Disney Studios Motion Pictures (“Walt Disney”) retained Warren Nung of BLT Communications to create posters for Iron Man 3. . . . The creative team for the Iron Man 3 Poster then developed inspiration boards and sketches with images sourced from prior Iron Man movies and comics. . . . More importantly, Marvel arranged a photo shoot featuring RDJ to produce photographs for poster design. . . . And it was photos from this shoot featuring RDJ kneeling and crouching that were ultimately used to create the Iron Man 3 Poster. . . . The creative teams also utilized battle scenes from Iron Man 3 trailers to create the background in the Iron Man 3 Poster.

KING-DEVICK TEST INC. V. NYU LANGONE HOSPITALS
Outcome: Motion for issuance - granted
Works of Authorship: Literary work - test
Topics: Defenses - fraud on the Copyright Office

Plaintiff and Counterclaim-Defendant King-Devick Test Inc. (“King-Devick”) alleges in this suit that Defendants and Counter Claimants New York University (“NYU”), NYU Langone
Hospitals, Steven L. Galetta, and Laura J. Balcer (collectively, “Defendants”) have, among other things, infringed King-Devick’s registered copyright in the King-Devick Test (the “K-D Test”), a reading test that can be used to detect eye-movement impairments linked to dyslexia and other disabilities. . . . Defendants respond, in relevant part, that King-Devick’s copyright registration is invalid because it was granted on the basis of an application that “intentionally withh[eld] material information from the Copyright Office.” . . . The parties have now completed fact discovery and non-expert depositions . . . and are preparing to file motions for summary judgment . . . .

Presently before the Court are . . . Defendants' motion for this Court to ask the Register of Copyrights (the “Register”) to advise the Court as to whether the supposed misstatements and omissions in the copyright application for the K-D Test would have been material to the Copyright Office’s decision to grant the application . . . . For the reasons that follow . . . Defendants' motion for the issuance of a request to the Register is granted . . . .

Here, though, the Court will exercise its discretion to seek the Register’s views on the question of materiality on the existing record. The Court views its present task as determining whether the delay that referral might occasion is outweighed by the utility that an opinion from the Register might serve in clarifying the issues in this litigation. While the Court declines at this stage to make any definitive rulings on the weight of the evidence, Defendants have put forward meaningful “factual support” for their theories of invalidity. . . . And the majority of the parties' disputes over whether those theories will ultimately carry the day turn not on questions about what occurred as a matter of objective fact in the 1976–1983 period relevant here, but rather on questions about what facts an applicant for copyright registration during that period was expected to disclose. Given the Copyright Office’s view that the “prudent practice” is for a court to issue a referral where the contested issues “depend[ ] even in part on interpretation or understanding of the Copyright Office’s registration practices,” . . . this is the sort of case in which referral at this stage of the litigation is likely to do more good than harm.

After all, an understanding of the Copyright Office’s registration practices will be of assistance in resolving the disputed issues in this case. On the issue of publication, Defendants have presented evidence that the K-D Test was distributed to third parties on several instances prior to Devick’s registration application and that Devick, despite knowing of these instances, disclaimed any prior publication. Devick’s principal response, in essence, is that the Court need not infer fraudulent intent because these instances of supposed publication would not have influenced the Copyright Office’s treatment of the application—a response that, in large part, presupposes an answer to the very materiality question that referral is designed to address.8 And on the issue of the K-D Test’s relationship with earlier eye tests, Defendants have presented evidence that Devick stated on the registration application that the K-D Test was not based on any preexisting material despite knowing that it derived from the Pierce Saccade Test. While King-Devick argues that the application did not require disclosure of these influences, this response, too, calls for an “interpretation or understanding of the Copyright Office’s registration practices,” such that referral represents the “prudent practice.” . . .
In sum, the Court concludes that “a [sufficient] factual record has been developed” to make referral to the Register fruitful at this stage. . . . And although the Court is mindful of “the risk that parties [c]ould use [referral] as a delay tactic,” . . . the Copyright Act does not “require courts to stay proceedings while a court’s request for an advisory opinion is pending.” . . . . The Court will therefore seek the parties' input as to what aspects of this case might proceed while the Court and the parties await the Register’s input.

MASI V. MOGULDOM MEDIA GRP. LLC
No. 18 CIV. 2402 (PAC), 2019 WL 3287819 (S.D.N.Y. Jul. 22, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - photograph
Topics: Copyright registration - presumption of validity, Copyright registration - registration requirement, Defenses - statute of limitations

Plaintiff Alessandro Masi, a photojournalist, claims that Defendant Moguldom Media Group LLC infringed on a valid copyright for photographs he took in 2010 of a luxury maximum-security prison in Norway. After a mass murderer was ordered to be held at the luxury prison in 2011, interest spiked in the prison, and a number of news outlets published Masi’s photographs, some with his permission and some without. In reporting on the murder, Moguldom’s site, Bossip.com, published eight of Masi’s photographs without obtaining Masi’s authorization. In 2015, Masi registered his photographs of the prison with the U.S. Copyright Office, and in 2018, he sued Moguldum for displaying his photographs without obtaining proper authorization. Moguldom questions the scope of Masi’s copyright registration, and asserts that Masi’s claim is untimely because Masi should have been aware of potential infringement when interest spiked in his photographs following the mass murder. For the reasons that follow, the Court GRANTS Plaintiff’s motion for summary judgment. . . .

A. Copyright Infringement . . . Plaintiff submitted a copy of a certificate of registration from the United States Copyright Office to prove that he owns a valid copyright for the Photographs. . . . This Certificate of Registration lists: Alessandro Masi as the Copyright Claimant; “Halden Luxury Prison – Norway” as the Title of Work; VA 1-996-957 as the Registration Number; October 1, 2010 as the Date of 1st Publication; and December 14, 2015 as the Effective Date of Registration. . . . Plaintiff concedes that the Registration was obtained more than five years after first publication of the work. . . . Courts in this District, however, accord weight to a certificate of registration obtained beyond the five-year period where plaintiff has submitted additional evidence to prove validity of the copyright and such evidence stands uncontradicted by defendant on summary judgment. . . . Defendant has not challenged the copyright on the basis of the timeliness of the Registration, and Plaintiff has supplied testimony to support the Registration. Plaintiff has established a valid copyright over the Photographs. . . .

Given Plaintiff’s sworn declaration . . . and deposition testimony that he included all 45 of the high resolution photos that appeared in his gallery with his registration application . . . Defendant’s speculative statements regarding the scope of the copyright do not create a triable issue of fact as to whether the Registration covers the photographs at issue. . . . Discovery has
concluded, and Defendant could have filed a motion to compel if it felt that document production was insufficient or requested a certified deposit copy from the U.S. Copyright Office to support its position on summary judgment.

Plaintiff’s Registration is prima facie evidence of copyright ownership, and, when taken into consideration with Plaintiff’s sworn declaration and deposition testimony, leaves no triable issue of fact regarding the validity or scope of the copyright to cover the photographs that Defendant admits to having published without Plaintiff’s permission.

B. Statute of Limitations . . . Defendant provides no other evidence to show that Plaintiff was on notice of infringement before he says he was. Plaintiff’s suit was filed within the three year statute of limitations under 17 U.S.C. § 507(b), which runs from March 20, 2015 to March 20, 2018. Plaintiff filed the lawsuit on March 20, 2018, less than three years after discovering the infringement on September 26, 2016. At the earliest, Plaintiff might arguably have been on inquiry notice of infringement in late 2015—which would still be within the limitations period—when he started searching the internet for infringements of his works generally and then began registering his works.

The Court rejects Defendant’s argument, raised in its reply brief in support of its motion for summary judgment, that the Supreme Court’s decision in Petrella v. Metro-Goldwyn-Mayer, Inc. . . . precludes a claim of infringement based on conduct that occurred more than three years prior to suit. Courts in this district have recognized that Petrella did not overrule the Second Circuit’s decision in Psihoyos . . . : The discovery rule still applies in the Second Circuit.

JOSE LUIS PELAEZ, INC. V. MCGRAW-HILL GLOBAL EDUC. HOLDINGS LLC
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Defenses - license, Remedies - statutory damages, Defenses - statute of limitations, Remedies - willful infringement

Plaintiffs Jose Luis Pelaez, Inc. and Jose Pelaez (collectively, “Pelaez”) bring this action for copyright infringement against Defendants McGraw-Hill Global Education Holdings LLC and McGraw-Hill School Education Holdings LLC (collectively, “McGraw-Hill”). McGraw-Hill moves for summary judgment on all of Pelaez’s claims. Pelaez moves for summary judgment on 129 of his 573 infringement claims and requests a ruling that the infringement he alleges was willful. For the reasons below, both parties’ motions are GRANTED in part and DENIED in part.

The agreements entered into by McGraw-Hill and Corbis restricted the scope of the licenses granted to McGraw-Hill by limiting, among other things, the number of copies McGraw-Hill was authorized to make and the time period in which it could make those copies. To the extent McGraw-Hill exceeded these limitations and thereby violated a right granted to Pelaez under the copyright laws, Pelaez properly claims infringement.
McGraw-Hill argues that, with respect to 477 of his 573 claims, Pelaez has failed to identify when McGraw-Hill’s alleged infringement “commenced” and therefore cannot carry his burden to show his entitlement to statutory damages. . . . McGraw-Hill has “point[ed] to a lack of evidence” regarding Pelaez’s eligibility for statutory damages. In response, Pelaez has not come forward with any evidence. Instead, Pelaez contends only that “there is not sufficient evidence in the record to determine whether [the] infringements occurred before the applicable registrations were issued.” . . . This assertion is not sufficient to raise a genuine issue of fact for trial. . . .

McGraw-Hill next argues that the copyright registrations applicable to Pelaez’s remaining ninety-seven claims (the “Corbis Registrations”) are invalid for failure to comply with 17 U.S.C. § 409, and therefore those claims must be dismissed. . . . The Corbis Registrations were obtained beginning in 2002 as part of a program in which Pelaez transferred his copyright in the photographs to Corbis for the express purpose of allowing Corbis to register the photographs’ copyrights. . . . Corbis then submitted a single application to the Register of Copyrights, purporting to register a database that included the work of multiple photographers, including that of Pelaez. Once this “bulk registration” was complete, Corbis then assigned ownership of the copyrights back to Pelaez. It is undisputed that Pelaez is not named, and the titles of the Pelaez’s photographs are not listed, on the face of the Corbis Registrations. . . . The Court finds Sohm’s reasoning persuasive, and therefore holds that the Corbis Registrations are valid. The Court further holds that the Corbis Registrations extend to Pelaez’s photographs, for the reasons explained in Alaska Stock. . . .

McGraw-Hill next moves for summary judgment in its favor on the issue of whether Pelaez may recover damages for infringement that occurred prior to July 7, 2013, three years before he filed the initial complaint in this case. . . . This Court agrees with those courts that have held that a plaintiff may not reach back to recover damages for infringement that occurred more than three years before filing suit. . . .

McGraw-Hill next contends that Pelaez is not entitled to summary judgment on any of his claims because he knew, or had reason to know, of McGraw-Hill’s unauthorized use of his photographs, if any, prior to July 6, 2013. . . . Pelaez’s understanding of the stock photography industry, without more, does not demonstrate that a reasonable person exercising due diligence would have discovered the infringement alleged. . . . The record here demonstrates that the scope of Corbis’s agency was limited to representing Pelaez in the sublicensing of his photographs. . . . McGraw-Hill does not offer any evidence to show that Corbis was authorized to represent Pelaez in connection with the legal claims now before the Court. . . .

McGraw-Hill lastly contends that Pelaez is not entitled to summary judgment on the claims at issue because it had permission, either express or implied, from Corbis to use Pelaez’s photographs in the manner alleged in the TAC. . . . For the reasons that follow, the Court agrees with Pelaez that McGraw-Hill has failed to show that there is a dispute of material fact as to whether it had an express license to use Pelaez’s photographs. . . . The PPAs and the invoices unambiguously limit the licenses granted to McGraw-Hill. Each PPA must be considered together with the relevant invoices, and there are not any terms in the PPAs that purport to
abrogate the limitations contained in the invoices. Because the PPAs and the invoices are “straightforward and unambiguous, [their] interpretation presents a question of law for the court to be made without resort to extrinsic evidence.” . . . McGraw-Hill thus may not rely on the Spelman and Beacher Declarations, or any other extrinsic evidence, to create a dispute of fact as to the meaning of these documents. McGraw-Hill’s express license argument must be rejected. . . .

McGraw-Hill also argues that, even if it did not have an express license to exploit Pelaez’s photographs beyond the usage specified in the invoices, it had an implied license to do so. . . . McGraw-Hill has not raised a triable issue of fact as to whether it was granted a license—express or implied—to use Pelaez’s photographs. Because Pelaez has demonstrated that there is no material issue of fact as to McGraw-Hill’s liability on any of the claims identified in Exhibit 1 to the Kerr Declaration, Pelaez’s motion for summary judgment is GRANTED as to these claims. As explained supra in Section III.D, however, Pelaez cannot recover actual or statutory damages on many of these claims. . . .

Drawing all reasonable inferences in favor of McGraw-Hill, a jury could conclude that McGraw-Hill did not believe it was engaging in copyright infringement when it used Pelaez’s photographs in quantities beyond those provided for by the Corbis Invoices. For this reason, Pelaez’s motion for summary judgment on willfulness is DENIED.

NARRATIVE ARK ENTMT LLC V. ARCHIE COMIC PUBL'NS, INC.
No. 16 CV 6109 (VB), 2019 WL 4142362 (S.D.N.Y. Aug. 29, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Literary work - comic book
Topics: Defenses - statute of limitations, Ownership - standing

Plaintiff Narrative Ark Entertainment, LLC (“Narrative Ark”), brings this action under the Copyright Act against defendant Archie Comic Publications, Inc. (“Archie”), asserting Archie has infringed Narrative Ark’s copyrights in certain materials appearing in comic books published by Archie. Archie believes it, not Narrative Ark, owns the copyrights in question; it has pleaded a counterclaim against Narrative Ark for declaratory relief, and a claim for slander of title against Narrative Ark’s principal, third-party defendant Scott Fulop.

Now pending are (i) Archie’s motion for summary judgment on Narrative Ark’s claims . . . ; (ii) Narrative Ark and Fulop’s cross-motion for summary judgment on Archie’s counterclaim and third-party claim . . . ; and (iii) Archie’s motion to strike portions of Narrative Ark and Fulop’s joint statement of undisputed material facts . . . .

For the reasons set forth below, Archie’s motion for summary judgment is GRANTED, Narrative Ark and Fulop’s cross-motion for summary judgment is GRANTED, and Archie’s motion to strike is DENIED. . . .
Joshua L. Simmons  
joshua.simmons@kirkland.com

Viewing the circumstances in their totality, the information Fulop possessed more than three years before commencing this action—including that Archie was disseminating the registered works without compensating Fulop, and that Archie had filed a copyright lawsuit against Fulop’s collaborator, the scope of which included works Fulop created or co-created for the series—would have placed “a reasonably diligent plaintiff” on notice of Archie’s claim to own the registered works. . . . Accordingly, the three-year limitations period expired before Narrative Ark filed this lawsuit. . . .

Archie transferred to Sega Archie’s rights to and interest in the registered works, if any, several years earlier, no later than 2012. In the contract effecting that transaction, Archie explicitly and “irrevocably transfer[red] and assign[ed]” to Sega “all right, title and interest in and to ...; and all causes of action, either in law or in equity for past, present, or future infringement based [on],” the rights to intellectual property including the registered works. . . . This provision transferred from Archie to Sega any cause of action for infringement of the registered works that accrued while Archie ostensibly owned the copyrights to the registered works. . . . Thus, Archie (i) does not currently own the copyrights; (ii) did not own the copyrights at any time when Narrative Ark claims to have owned them; and (iii) transferred to Sega Archie’s rights to sue Narrative Ark for infringing Archie’s purported ownership of the registered works.

VACCHI V. E*TRADE FIN. CORP.
Outcome: Motion to dismiss - granted
Works of Authorship: Audiovisual work - video
Topics: Infringement - substantial similarity

Defendant E*TRADE Financial Corporation (“E*Trade”) has moved pursuant to Rule 12(b)(6), Fed. R. Civ. P., to dismiss Gianluca Vacchi’s (“Vacchi”) copyright, trademark, and privacy law claims against it. E*Trade’s motion to dismiss is granted. . . .

Vacchi argues that these elements render the Registered Videos substantially similar to both E*Trade commercials because they all “take place around the same event: a DJ-style dancing party in a marine-themed environment.” He also argues that the “structure and style” of the Registered Videos and E*Trade commercials are the same, in that they are “relatively short and the characters interact solely through dancing and demonstrating their intents, feelings, and motions through their body language.” . . .

Vacchi concedes that these elements are each “unprotected.” He argues, however, that the “[t]he totality of the specifically arranged unprotected elements” are “protectable.” But, viewed from this vantage point as well, there is no substantial similarity in the arrangement of the unprotected elements. The similarity amounts to little more than their joint reliance on a scène à faire to create an ambiance. . . . Assuming Vacchi has a valid copyright in his character, E*Trade has not infringed this right through the depiction of a dancing, bare-torsoed older man in its commercials.
JOHNSON V. MAGNOLIA PICTURES LLC
No. 18 CV 9337 (VB), 2019 WL 4412483 (S.D.N.Y. Sep. 16, 2019)
Outcome: Motion to dismiss - granted, Motion for attorneys fees and costs - granted
Works of Authorship: Music - interview
Topics: Copyright registration - registration requirement, Remedies - attorneys fees

Plaintiff Hillary Johnson brings this action under the Copyright Act against defendants Magnolia Pictures LLC, 3 Faces Films LLC, Motto Pictures, and CNN Films (collectively, the “moving defendants”), as well as Michael Radner. Plaintiff claims defendants have infringed her copyrights by using in a commercial film audiotapes of interviews plaintiff conducted of the late actress and comedian Gilda Radner. Plaintiff also purports to bring a claim for a declaratory judgment.

Now pending is the moving defendants’ motion to dismiss plaintiff’s claims against them pursuant to Rule 12(b)(6), and to award the moving defendants costs and attorney’s fees pursuant to 17 U.S.C. § 505. . . . For the following reasons, the motion is GRANTED. . . .

Plaintiff concedes she has not registered a copyright in any audiotape of a recorded interview. Indeed, both the amended complaint and plaintiff’s opposition to the instant motion acknowledge that plaintiff’s “inability to register her [alleged] copyrights deprives her of any right to sue for infringement.” . . . Accordingly, plaintiff’s copyright infringement claim is dismissed. . . .

For all these reasons, exercising its discretion and assessing all the relevant factors, the Court grants the moving defendants’ motion for an award of costs and a reasonable attorney’s fee pursuant to Section 505.

ABDIN V. CBS BROAD., INC.
No. 18 CIV. 7543 (LGS), 2019 WL 4572676 (S.D.N.Y. Sep. 20, 2019)
Outcome: Motion to dismiss- granted
Works of Authorship: Audiovisual work - video game, Audiovisual work - television series
Topics: Infringement - substantial similarity

Plaintiff Anas Osama Ibrahim Abdin filed the Third Amended Complaint (“TAC”) on January 15, 2019, against CBS Broadcasting, Inc. and/or CBS Corp. and/or CBS Interactive Netflix, Inc. The TAC alleges that Defendants violated the Copyright Act . . . by copying Plaintiff’s concept for an unreleased science fiction videogame Tardigrades in their Star Trek: Discovery television series (the “Television Series”). Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants move to dismiss the TAC on the ground that Star Trek: Discovery is not substantially similar to Plaintiff’s videogame as a matter of law. As discussed below, Defendants' motion is granted. . . .

B. Concept and Plot . . . Both the Videogame and Television Series employ concepts that are associated in popular culture with the tardigrade and not original to Plaintiff’s work. The Videogame is set in space, at a time where space travel is common, and supernatural forces are
present. The game’s purpose is to guide Carter and others so that “they might be able to witness their civilization shifting into a higher type.” The Television Series is also set in space, at a time when space travel is common. Through the first season, the U.S.S. Discovery’s goal is to protect the Federation and defeat the Klingon opposition in the war. As is common in Star Trek productions, many of the main characters in the Television Series also seek to explore and better understand the universe. Supernatural forces, war games, and space exploration are all scènes-à-faire in science fiction dramatizations about space and not protectable.

Both the Videogame and the Television Series include a large tardigrade that can fly through space and interacts with the characters. These concepts are not original to the Videogame. Since at least 2007, Tardigrades have been identified as the first known animal to survive unprotected in outer space.5 A 2010 children’s fantasy novel titled The Search for WondLa includes a “gargantuan” tardigrade that interacts with the characters and can fly. A YouTube video from May 7, 2015, Captain Tardigrade, depicts a humanoid tardigrade that flies in a spaceship, and calls tardigrades “virtually indestructible.” Episodes from March and April 2014 of the non-fiction television series Cosmos: A Spacetime Odyssey feature discussions of tardigrades' unique ability to survive in space. These conceptual similarities of tardigrades flying in space are thus non-copyrightable elements of the Videogame and cannot constitute the basis for a copyright infringement.

The tardigrade in both the Video Compilation and the Television Series assists humans with space flight, but in completely different ways. The Video Compilation’s thirteen-second clip of the tardigrade shows the tardigrade enveloping Carter in something like a bear hug before floating off into space. In the Television Series, Stamets gains the tardigrade’s power to travel through the mycelial network by injecting himself with the tardigrade’s DNA. The injection gives Stamets supernatural powers, but also causes him serious physical harm. These clips are small pieces of each work and do not alone represent each work’s concept and plot. But more importantly, there is no similarity between how the Videogame tardigrade envelops Carter and how Stamets injects himself with tardigrade DNA.

The plots of both works are similar solely to the extent that the characters go on adventures in space, and some of the adventures involve alien tardigrades. This common storyline of adventuring through space and discovering aliens is a scènes-à-faire common to works that involve space travel. Just as “cowboys, bank robbers, and shootouts in stories of the American West ... get no protection,” alien contact in fictional stories about space adventures gets no protection. Moreover, the Television Series' plot also involves subjects that are not part of the Videogame: the war between the Federation and Klingons, and the personal struggles of individual characters that involve redemption, growth, and fitting in as an outsider.

C. Characters . . . The tardigrade in the Videogame and the Television Series share many of the same characteristics as the real-life microscopic tardigrade. All three have eight short legs that run in pairs along a rounded body, all three have an O-shaped mouth in the center of the “face” and all three are capable of surviving in space without protection. These are non-protectable facts about the tardigrade and cannot provide the basis for copyright infringement.
Beyond the unprotectable physical attributes of actual tardigrades, the differences between Plaintiff’s and Defendants’ tardigrades defeat any finding of substantial similarity. The Videogame tardigrade is large and deep blue. The logo directly links the tardigrade to a scarab beetle, a figure in ancient Egyptian culture associated with immortality, transformation and protection. The tardigrade’s power to envelope Carter and thereby transform and protect him in space suggests that it is a powerful creature that characters in the Videogame venerate.

The Television Series tardigrade is also a large space traveler, but the similarities end there. Although this tardigrade is lit with a blue light, it is brownish greenish. More importantly, the tardigrade in the Television Series does not capture the “total concept and feel” of the Videogame’s tardigrade. . . . This tardigrade is a creature kept on the U.S.S. Discovery against its will that the human characters name and initially seek to exploit for personal gain, and then -- upon learning that it feels pain -- protect and liberate. It has no god-like attributes and is not venerated, but instead is treated almost like a pet: to be protected and not harmed, but not deified. Where the Videogame tardigrade is best associated with the spiritual symbolism of the scarab beetle, the Television Series tardigrade is best associated with a beloved, but poorly behaved, pet dog. “The bar for substantial similarity in a character is set quite high,” and the similarity between the two tardigrades falls short of this standard. . . .

The alleged similarities between other characters in the two works also fails to support a claim, as they are mostly generalized non-protectable descriptions. Yolanda and Burnham are both black women, Natasha and Tilly both have red hair, Aziz and Culber are both gay and have black hair and facial hair, Stamets and Carter are blond men who work in a field of biology. Courts have denied claims of substantial similarity when comparing characters who are far more similar than these. . . .

The settings of the Videogame and Television Series are similar, but the similarity is not actionable. The Videogame is set in a spacecraft orbiting a planet that has the capacity to house large crew. The main set for the Television Series is also a spaceship -- the U.S.S. Discovery -- that has the capacity to house a large crew. The characters in both works leave these main settings to explore outer space and planets. However, these similarities are scènes-à-faire for science fiction set in outer space. . . .

D. Overall Feel . . . The difference between the two works is also notable at the macro level. The Television Series is not substantially similar to the Videogame after holistically comparing the works' “overall feel ... as instructed by ... good eyes and common sense.” . . .

The Television Series builds on over five decades of Star Trek movies and television shows to represent Star Fleet adventures in a new era. Characters use similar terminology and technology and wear similar badges. Overarching themes from prior renditions, such as multiculturalism, the importance of loyalty and the struggle to balance reason and emotion, are prevalent here. And the Television Series consistently alludes to characters and events from prior Star Trek shows -- for example, there is a reoccurring reference in the show to the “U.S.S. Defiant,” a spaceship from the Star Trek television show, Deep Space Nine, and one episode references the popular Vulcan character Spock. The conflict at the very center of the Television Series -- the war
between the Federation and Klingons -- makes little sense without background knowledge about
the Star Trek universe.

The Videogame lacks this overall feel. The disparate videos and images do not easily evince a
single coherent plotline. Nevertheless, there is no suggestion that this story follows a war
between dueling world orders or that the characters engage with the themes prevalent in Star
Trek. It is at least clear that the Videogame follows Carter, who solves mysteries to uncover
information about the universe and fellow characters. And the story also seems to “deal[ ] with
slavery, secrecy[ and] espionage.” This is not enough to conclude that the overall feel of the
Videogame is substantially similar to that of the Television Series.

E. Other Purported Similarities . . . The Complaint includes a list of eleven purported similarities
between the two works. Most of these are discussed above. The remaining similarities are
disparate and not essential to the overall feel or understanding of the Television Series. The
Videogame features Egyptian cultural influences and supernaturalism. Episode one of the
Television Series includes Egyptian iconography on one of the space ships, but nothing further.
In the Videogame, Carter is sometimes immersed in glowing blue light, and at least once walks
through an “astro-plain” environment. Stamets also is sometimes immersed in a glowing blue
light, and Burnham once walks through an “astro-plain.” In both works, the characters' uniforms
delineate status and rank and their space suits have a large head piece. These similarities do not
change the calculus; they do not provide a sufficient basis to find substantial similarity between
the works' “total concept and feel.”
Post Article presents Rochkind, and Rochkind himself. One of the embedded tweets, commenting on the Photograph, writes “[s]orry ladies but you just lost your chance with Mr. February from my Passably Hot Substitute Teachers calendar.” . . . This not only pokes fun at Rochkind as he is depicted in the Photograph, but also the idea that his opinions on “hot women” would be reported seriously in the way that the Post has done. Another tweet, commenting on a different photo from the Post Article, states that the photo’s “caption is so savagely written[,] this has to be a piece of satire.” . . . In this context, the Photograph is used “to illustrate what all the fuss is about,” . . . namely the Post Article and its depiction of Rochkind. This is a different use of the Photograph than the Post’s, which was “news reporting on [Rochkind].” . . . To the extent that the Photograph was used as part of the composite Screenshot to identify the Post Article itself, it indisputably constitutes a different use than its original purpose.

Second, it is clear from the face of the Mic Article that it does more than just comment on the controversy; it uses the Screenshot as part of its own criticism of the Post Article. In a recent case in which a blog used a composite screenshot of a news article—as here, the composite included the headline of the article, the author byline, and the photograph at issue—to criticize the original article, Judge Marrero held as a matter of law that this use was transformative as the photograph “is no longer just a depiction of a [the original subject] but a sly barb at the [original article’s] sloppy journalism.” . . . Similarly, the Mic Article mocks the Post’s presentation of the subject, using the Screenshot to both identify the target of its criticism and as a basis for criticism. The Screenshot juxtaposes the photograph of an individual whose appearance the article mocks with a headline sincerely proclaiming that this man “won’t date hot women,” . . . as an attempt to “emphasize[ ] the humorous incongruity of the Post’s decision to run the Photograph” in the way it did. . . . The Mic Article goes on to criticize the Post Article in a number of other ways, mocking the way the Post refers to Rochkind’s fiancée as “merely beautiful” rather than “hot,” . . . and launching jabs at the Post for transmitting Rochkind’s self-presentation at face value . . . . Accordingly, “the Photograph is no longer just a depiction of [the subject],” but a vehicle for criticizing the Post Article and identifying it as the target of this criticism. . . .

Third, on its face, the Mic Article uses the Photograph to place Rochkind in a harshly negative light, while the original use of the Photograph placed him in a positive, or at least neutral light. . . . A reasonable viewer would interpret the Photograph in this context as placing Rochkind in a flattering, or at least the very least neutral, light. In sharp contrast, the Screenshot in the Mic Article shrinks the Photograph considerably, and places it alongside text in which this “insufferable private equity executive” is mocked for everything from his appearance to his personality. . . . This use alters the original message of the Photograph, dramatically altering the light in which it is framed and the message it conveys. . . .

2. Defendant Used the Photograph for Commercial Benefit . . . Plaintiff alleges that Defendant is “a for-profit media organization that derives substantial revenues from advertising on [its website]” and that Defendant used the Photograph to generate revenue by driving page views and clicks. . . . Accordingly, this sub-factor counts against finding fair use. However, when the use of the work was transformative, this factor is of “less significance.” . . .
3. Drawing All Reasonable Inferences in Plaintiff’s Favor, it is Plausible that Defendant Acted in Bad Faith . . . Because fair use is an affirmative defense, it is Defendant’s burden to show that it did not act in bad faith. At this stage, absence of bad faith must therefore be “evident on the face of the complaint.” . . . This is not so here, as viewing Plaintiff’s allegations in the light most favorable to Plaintiff, Defendant cut off part of the Photograph, removing the label crediting the work to Plaintiff. . . . The intentional removal of a copyright mark can “suggest[ ] bad faith in defendant’s use of plaintiff’s work, and militate[ ] against a finding of fair use.” . . . However, the Second Circuit has cautioned that bad faith is not “itself conclusive of the fair use question, or even of the first factor.” . . . This sub-factor thus counts somewhat in Plaintiff’s favor.

B. Nature of the Work . . . Even drawing all available inferences in Plaintiff’s favor, the second factor, the nature of the work, does not point strongly in either direction. . . . As to the first sub-factor, the Court agrees with Plaintiff that, while the Photograph is a relatively straightforward depiction of Rochkind, as a posed portrait it “evinces at least a modicum of artfulness, sufficient to designate it a ‘creative’ (rather than ‘factual’) work for the purposes of fair use analysis.” . . . However, while “[t]his classification cuts against a finding of fair use ... this factor ‘has rarely played a significant role in the determination of a fair use dispute.’ ” . . . For the second sub-factor, it is evident from the face of the First Amended Complaint that the Photograph was previously published when Defendant used it. Accordingly, the second sub-factor counts in Defendant’s favor. . . . Given the above, even drawing all available inferences in his favor, the second factor counts only slightly in Plaintiff’s favor, if at all.

C. Amount and Substantiality . . . The third factor points towards a finding of fair use even when drawing all available inferences in Plaintiff’s favor. . . . Here, Defendant used a significantly cropped version of the Photograph as part of a Screenshot including the Post Article’s headline. . . . Even drawing all available inferences in Plaintiff’s favor, it is implausible that this was not a reasonable use of the Photograph to achieve the purpose of both identifying the object of controversy and satirizing the Post Article and Rochkind. . . .

D. Potential Effect of the Use on the Market or Value . . . Finally, even drawing all available inferences in Plaintiff’s favor, the fourth factor counts in Defendant’s favor as well. . . . Here, even assuming there were a market in licensing the Photograph and drawing all available inferences in Plaintiff’s favor, it is implausible that such a market would be supplanted by Defendant’s use. As noted above, the Photograph does not appear on its own in the Mic Article, but as part of a composite Screenshot including the Post Article’s headline, the author’s byline, and the date and time. In light of the cropped and composite manner in which the Mic Article presents the Photograph, it is implausible that potential purchasers would opt to use the Screenshot rather than license the original Photograph. As in Clark, a screenshot of this kind “does not function as an illustration of” Rochkind, “because it also contains the Post Article’s headline [and] author byline.” . . . Thus, “the Screenshot does not compete against the Photograph in the enterprise of depicting [Rochkind]—there is little risk that someone looking to license or purchase an image of [Rochkind] would select the Screenshot instead of the Photograph, thereby potentially diverting revenue to [Mic] that would have otherwise gone to [Yang]. . . . Indeed, the argument here is even stronger than in Clark. Here the Photograph was cropped significantly in size, while in Clark the entire original was used. . . . Accordingly, even
drawing all available inferences in Plaintiff’s favor, it is not plausible the Screenshot would supplant the market—if any—for licensing the Photograph.

E. The Totality of the Factors . . . In light of the above factors, even drawing all reasonable inferences in Plaintiff’s favor, it is evident on the face of the First Amended Complaint that Defendant’s use was fair as a matter of law. Defendant’s use was transformative, its use was reasonable in light of that end, the work was already published, and there is no plausible risk to any market for licensing of the original work. This is sufficient to make out an affirmative defense of fair use at the motion to dismiss stage. Because Defendant prevails on the issue of fair use, it is unnecessary to reach the question of whether Plaintiff adequately alleged willfulness.

MAGNUM PHOTOS INT'L, INC. V. HOUK GALLERY, INC.
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Visual work - photograph
Topics: Remedies - attorneys fees

In this copyright action, Plaintiff Magnum Photos International, Inc. brought claims against Defendants Houk Gallery, Inc. and Edwynn Houk Gallery for direct and indirect infringement pursuant to the Copyright Act . . . alleging that without authorization or consent, Defendants reproduced, distributed, distributed, and transmitted certain photographs created by French humanist photographer Henri Cartier-Bresson. On September 21, 2018, I issued an Opinion & Order granting Defendants’ motion for summary judgment on the ground that Defendants’ use of the Cartier-Bresson photographs constituted fair use. Defendants now move for attorney’s fees pursuant to 17 U.S.C. § 505. For the reasons that follow, Defendants’ motion is DENIED.

MTUME V. SONY MUSIC ENTMT'
No. 18 CIV. 6037(ER), 2019 WL 4805925 (S.D.N.Y. Sep. 30, 2019)
Outcome: Motion to dismiss - denied
Works of Authorship: Music - sound recording
Topics: Ownership - termination

James Mtume (“Mtume”) brings this action against Sony Music Entertainment (“Sony”) for declaratory judgment, copyright infringement, and accounting. Pending before the Court is Sony's motion to dismiss all claims. . . . For the reasons discussed below, the motion is DENIED. . . .

Sony argues that the Termination Notice is invalid because Mtume failed to follow the specific instructions promulgated by the Copyright Office. . . . Specifically, Sony argues that Mtume failed to list the correct date of execution for the works as required by statute. Therefore, it follows that Mtume's remaining claims for accounting and copyright infringement must also be dismissed. . . . The Court disagrees.
CHARLES V. SEINFELD
Outcome: Motion to dismiss - granted
Works of Authorship: Literary work - treatment
Topics: Defenses - statute of limitations

This litigation concerns allegations that Plaintiff is the author of intellectual property related to the talk show Comedians in Cars Getting Coffee, produced and distributed by Defendants. Now before the Court is Defendants’ motion to dismiss . . . . For the reasons set forth below, the Court GRANTS the motion. The copyright claims are time-barred, and the Court declines supplemental jurisdiction over Plaintiff’s remaining state law claims.

NARRATIVE ARK ENTMT LLC V. ARCHIE COMIC PUBL'NS, INC.
No. 16 CV 6109 (VB), 2019 WL 5157400 (S.D.N.Y. Oct. 15, 2019)
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Literary work - comic book
Topics: Remedies - attorneys fees

Plaintiff Narrative Ark Entertainment, LLC (“Narrative Ark”), brought this action under the Copyright Act against defendant Archie Comic Publications, Inc. (“Archie”). In response, Archie pleaded a counterclaim against Narrative Ark for declaratory relief under the Copyright Act, and brought a claim for slander of title against Narrative Ark’s principal, third-party defendant Scott D. Fulop. By Opinion and Order dated August 29, 2019, the Court granted the parties’ cross-motions for summary judgment and directed the Clerk to close the case . . . .

Now before the Court are Narrative Ark and Fulop’s joint motion for attorney’s fees and costs . . . and Archie’s cross-motion for attorney’s fees and costs . . . . Both motions seek fees and costs pursuant to Section 505 of the Copyright Act . . . and Fed. R. Civ. P. 54. For the reasons set forth below, both motions are DENIED.

BISWAS V. ROUEN
Outcome: Motion to dismiss - granted
Works of Authorship: Literary work - paper
Topics: Copyright registration - registration requirement

Plaintiff Tuhin Kumar Biswas, proceeding pro se, has filed this action against Defendants Ethan Rouen, Suresh Nallareddy, Urooj Khan, Fabrizio Ferri, Doron Nissim, and Columbia University (collectively, “Defendants”) for committing an “intellectual property violation under oath in the form of plagiarism,” breach of trust, destroying evidence, and fraud. Defendants now move to dismiss Plaintiff’s complaint. For the reasons that follow, Defendants’ motion is granted . . .
Biswa concedes that he did not register his paper with the copyright office, and that a copyright infringement claim would thus not be “legally enforceable by [ ][him] in the United States.”. . . Plaintiff is correct. . . . Accordingly, Plaintiff’s plagiarism claims, whether brought as a free-standing cause of action or based in copyright law, do not succeed.

PICKETT V. MIGOS TOURING, INC.
No. 18 CIV. 9775 (AT), 2019 WL 5887742 (S.D.N.Y. Nov. 12, 2019)
Outcome: Motion to dismiss - granted
Works of Authorship: Music - musical work
Topics: Copyright registration - registration requirement, Infringement - substantial similarity

Plaintiff, Leander C. Pickett, a musical artist, songwriter, and producer, brings this copyright infringement action against Defendants, Migos Touring, Inc. (“Migos”), Capitol Records, LLC (“Capitol”), Quality Control Music, LLC (“Quality Control”), Quavius Marshall p/k/a Quavo, Kiari Cephus p/k/a Offset, Kirsnick Ball p/k/a Takeoff, Joshua Parker p/k/a OG Parker, and Grant Decouto p/k/a Deko. In the second amended complaint, Plaintiff alleges that Defendant Migos’ musical composition “Walk It Talk It,” infringes on Plaintiff’s musical composition “Walk It Like I Talk It.”. . . All Defendants move to dismiss for failure to state a claim under Rule 12(b)(6). . . . For the reasons stated below, Quality Control’s motion is DENIED, and Defendants’ motion is GRANTED . . .

1. Copyright Registration . . . Plaintiff alleges that he obtained a certificate of copyright registration for his “[m]usical [c]omposition, ‘Walk It Like I Talk It.’” . . . Plaintiff contends that he registered his musical composition and sound recording “in a single application.” . . . Although the Court must accept the allegations in the pleadings as true and draw all reasonable inferences in favor of the non-movant . . . when a document relied on in the complaint contradicts allegations in the complaint, the document, not the allegations, controls . . .

Here, Plaintiff’s complaint is not that Defendants incorporated “the physical embodiment,” or sound recording of Plaintiff’s Work. Rather, Plaintiff argues that Defendants infringed on his “[m]usical [c]omposition,” . . . in other words, the “music and lyrics,” . . . of Plaintiff’s Work. As is clear from the Certificate, Plaintiff did not obtain a certificate of registration for his musical composition. . . . As such, Plaintiff has failed to satisfy the requirement that he register his musical composition prior to initiating this action. . . .

2. Substantial Similarity . . . As in Apps, the term “walk it like I talk it,” and slight variations of it, has been regularly used in several contexts. . . . The Court takes judicial notice of these 32 instances as they can be obtained from widely available and reliable sources, the accuracy of which cannot reasonably be questioned. . . .

Plaintiff alleges that he recorded Plaintiff’s Work in 2007. . . . But there are multiple instances of the term “walk it like I talk it”, or variations of it, being used prior to 2007, including by other rap and hip-hop artists. These include rap artist Paul Wall’s 2005 song titled “March ‘n’ Step” featuring the repeated lyrics “walk it how you talk it / [y]ou gotta walk it like you talk it,” . . . rap
artist Young Jeezy’s 2006 song “3 A.M.” featuring the lyric “I walk it how I talk it,” . . . and rap artist Wiz Khalifa’s 2007 song “Be Easy,” featuring the lyric “walk it how I talk it so I talk it how I live it,” . . . among many others.

The only similarity between the two works at issue, the lyrics “walk it like I talk it,” is not original to the author and is, therefore, not protected by the copyright laws. . . . Plaintiff has not plausibly alleged facts that demonstrate that Defendants copied “original elements of plaintiff’s copyrighted work.” . . . Accordingly, Defendants’ motion to dismiss for failure to state a claim is GRANTED.

AMANZE V. ADEYEMI
No. 18 CIV. 8808 (NRB), 2019 WL 6014138 (S.D.N.Y. Nov. 13, 2019)
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Literary work - book
Topics: Remedies - attorneys fees

Plaintiff Stella Amanze commenced this action, alleging that defendants Tomi Adeyemi and Macmillan Publishing Group LLC used copyrighted material from plaintiff’s work Banished: A Novel in defendant Adeyemi’s work Children of Blood and Bone without authorization. The Court previously granted the defendants’ motion to dismiss the amended complaint based on the conclusion that the parties’ works are not substantially similar as a matter of law. Contemporaneously with granting the motion to dismiss, the Court also granted the defendants’ request for the attorneys’ fees and costs. Before the Court is the defendants’ application for the attorneys’ fees and costs in the amount of $93,804.47.

BETTY, INC. V. PEPSICO, INC.
No. 16 CV 4215 (VB), 2019 WL 5964807 (S.D.N.Y. Nov. 13, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Literary work - pitch deck
Topics: Infringement - substantial similarity

Plaintiff Betty, Inc. (“Betty”), brings this action asserting copyright infringement and breach of contract against defendant PepsiCo, Inc. (“Pepsi”). Now pending is Pepsi’s motion for summary judgment. . . . For the reasons set forth below, the motion for summary judgment is GRANTED. . . .

Here, undisputed evidence demonstrates that the overall concept, feel, setting, themes, characters, pace, and sequence of Betty’s written presentation are not substantially similar to Pepsi’s halftime commercial.

The concept and feel of Betty’s pitch and Pepsi’s halftime commercial are not substantially similar: Betty’s presentation is darker than the actual halftime commercial. Between the acoustic music, the warehouse, and the ending on a group gathered around a trash can fire, these images
 evoke a darker and moodier concept and feel. Betty’s concept is further darkened by the genres of music Betty selected—acoustic guitar, metal, rock, classical, and doo wop/acapella. Whereas Pepsi’s halftime commercial takes place in three bright rooms featuring pop music of different eras, and a pop version of “The Joy of Pepsi.”

The settings are also meaningfully different. The setting for Betty’s proposed commercial “takes place in a Brooklyn(like) warehouse” and outside the warehouse with musicians standing around a trash can fire. The Pepsi halftime commercial begins set in a brightly-lit 1950s-era diner with a red dance floor, transitions to a brightly-lit white room with a Pepsi logo on the floor, and ends in a room with a blue floor, blue walls, and blue lighting.

Likewise, the themes are different. The theme of Betty’s “All Kinds/Living Jukebox” pitch is different artists or a single artist singing “The Joy of Pepsi” with “fashion, clothes, and vibe” changes to reflect the changing genres. The theme of Pepsi’s commercial is dance through three different eras. Although both Betty’s pitch and the Pepsi halftime commercial feature changes in fashion and vibe connected to the room, these changes arise from different stimuli: for Betty it’s the musical genre; for Pepsi it’s the decade. Moreover, the concept of changing clothing and dance moves to match the genre or decade employed in both Betty’s pitch and Pepsi’s commercial is itself not protectible—it follows naturally from their themes. . . . Thus, Betty’s proposed thematic device, of changing wardrobe and dance moves to reflect the genre, is not protected.

In addition, the characters are different. The characters identified in Betty’s copyrighted materials are an acoustic guitar singer, a lone singer with an Adele-like quality, and a doo wop/acapella crew. In the “considerables” section of its written presentation, Betty suggests, instead of those characters, either a celebrity or non-celebrity could perform the “The Joy of Pepsi” in all different genres. The Pepsi halftime commercial, however, features one singer/dancer—Janelle Monáe—throughout. Although Betty’s suggestion of a celebrity could encompass Monáe, that is too broad and too generalized to be substantially similar. Moreover, the photographs in Betty’s pitch—which are excluded from copyright protection—do not include images of Monáe.

The pacing and sequencing of the two works differ meaningfully as well. Betty’s written pitch proposes changing between sets through “clean cuts” and magician-like outfit changes, whereas the Pepsi halftime commercial changes with “clean cuts” through doorways. As Monáe crosses the threshold, her outfit changes, as do the outfits of the background dancers. However, Betty does not offer a particularized expression or example of a clean cut in its pitch. Thus, here, a “clean cut” is an idea rather than an expression of an idea, and ideas are not protected. . . . Based on the protectible elements of Betty’s pitch, neither the pacing nor sequencing between the two works is substantially similar.

Betty argues there is substantial similarity because its written materials propose a jukebox and the Pepsi halftime commercial opens on a jukebox. The Court is not persuaded. Betty’s sole reference to a jukebox in its written materials is the title “Living Jukebox.” But the title is merely an idea, rather than an expression of an idea, and therefore it does not enjoy copyright protection.
Moreover, Pepsi’s prior ad “Diner” featured a jukebox, and thus no inference of copying can be drawn.

In sum, there are few, if any similarities, between Betty’s protected pitch materials and Pepsi’s halftime commercial. To the extent there are any similarities, those similarities arise from non-protected elements such as ideas, scènes à faire, and Pepsi’s prior work.

GUITY V. SANTOS
Outcome: Motion to dismiss - granted
Works of Authorship: Music - musical work
Topics: Infringement - substantial similarity, Scope of protection - idea

Plaintiff Nazim I. Guity (“Guity”) brings this action against Anthony Santos, professionally known as Romeo Santos, (“Santos”), Sony Music Entertainment, Inc., Sony Music Holdings, Inc., and Sony Corporation of America (collectively, “Sony”), Milton “Alcover” Restituyo (“Alcover”), and We Loud, LLC, doing business as We Loud Studios, LLC and formerly known as Los Mejores Studios (“We Loud”). Guity alleges that defendants recorded, released, and profited from a song by Santos that infringed Guity’s copyrighted work. Santos and Sony (“Movants”) move to dismiss the case under Rule 12(b)(6) for failure to state a claim. For the reasons below, Movants’ motion to dismiss will be granted.

A. The Alleged Protected Elements of the Guity Song Are Either Not Protected or Insufficiently Pled, so Cannot Support a Claim of Copyright Infringement.

First, some of the listed protectible elements do not qualify as such on the facts here. For instance, plaintiff alleges that the Guity Song’s “unique lyrical themes” and “substantially similar concept behind the song’s theme” are protected. However, the themes at issue in the Guity Song, love and desire, are the exact type of broad themes that lie beyond copyright’s protection. Similarly, plaintiff identifies the Guity Song’s “unique song title,” “Eres Mia,” as a protectible element and then points to the Santos Song’s use of the same title as evidence of defendants’ infringement. Yet, this phrase, which translates as “You’re Mine” in English, is too short and generic to meet the required threshold for creativity and thereby qualify for copyright protection. As such, the shared titles of the Guity and Santos Songs cannot serve as the basis for a copyright infringement claim.

Second, for the remaining listed protectible elements of the Guity Song, plaintiff fails to plausibly allege which, if any, of these elements have actually been infringed by the Santos Song. Specifically, while several of plaintiff’s alleged protectible elements could qualify as such, including the “unique lyrical hook,” “unique lyrical content,” “substantially similar melody,” and “substantially similar guitar arrangements,” plaintiff only actually alleges that “[c]ertain of the copyrightable elements contained in plaintiff’s [Guity] Song were incorporated into defendant’s song.” Without a specific identification of the protected elements actually infringed upon by the Santos Song, plaintiff’s complaint fails to plead substantial similarity.
concerning a protected element of the Guity Song and therefore fails “state a claim to relief that is plausible on its face.”

Plaintiff fails to plausibly allege that specific protectible elements of the Guity Song were infringed by the Santos Song and therefore cannot maintain claims of copyright infringement on this theory.

B. The Guity Song and the Santos Song Taken in Their Entireties Are Not Substantially Similar. . . . Plaintiff also alleges that the Santos Song “is so substantially similar to” the copyrighted Guity Song as to constitute copyright infringement. . . . Upon examination, the Court finds that the Guity Song and the Santos Song are not substantially similar and plaintiff therefore cannot support a claim of copyright infringement.

Though plaintiff has failed to adequately allege infringement of specific protectible elements of the Guity Song, copyright extends protection to non-protected elements organized and arranged into an original work. . . . As such, plaintiff can still maintain a claim for copyright infringement if he can adequately plead that the Santos Song has taken “from plaintiff’s works so much of what is pleasing to the ears of lay listeners.” . . . Here, plaintiff cannot do so.

[T]he Guity Song and the Santos Song respectively are so distinct as to prevent a finding of substantial similarity. Specifically, though plaintiff argues that the songs’ lyrics contribute to their alleged substantial similarity . . . , the only commonalities apparent between the songs’ lyrics are the use of the phrase “eres mia” and some individual words, such as “love,” “mine,” “night,” and “baby” (as a term of affection). However, “eres mia” appears only three times in the Guity Song and does not play a unique or important role in the composition. The infrequent use of such a short generic phrase is insufficient to support a finding that the total concept and overall feel of the songs’ lyrics are substantially similar. . . . The shared usage of single everyday words also fails to show substantial similarity between the two songs. . . . This is especially true when, as here, the single words are employed differently in the two relevant works.

Musically, plaintiff alleges that there are “various substantial similarities” between the Guity Song and the Santos Song, pointing to the songs’ respective choruses and hooks. . . . Plaintiff also argues, despite explicit case law to the contrary, that “an ordinary observer with no musical background may very well be incapable of applying the ‘total concept and feel test’ to determine substantial similarity.” . . . Disregarding plaintiff’s flatly incorrect characterization of the relevant standard, the Court has listened to both the Guity Song and Santo Song, with a particular focus on the highlighted chorus and hook, to determine if the “total concept and overall feel” of both songs would suggest to the ordinary listener that the Santos Song has appropriated from the Guity Song.

The Court concludes that, upon listening to the Santos Song, the average listener could find little in common with the Guity Song and, as such, no reasonable jury could find the two works to be substantially similar. Overall, the two songs have little to nothing in common other than their title. The Guity Song is a straightforwardly brooding hard rock song, containing extended guitar riffs. In contrast, the Santos Song is a light but complex bachata, containing varying rhythms
and a bongo accompaniment. The lyrical narratives, tempos, and melodies of the two songs are distinct, and plaintiff himself admits that the bachata Santos Song is stylistically distinct from the rock-and-roll Guity Song. (Doc. 60 at 5). As the average listener would not recognize the Santos Song as having appropriated from the Guity Song “what is pleasing to the ears,” the Court concludes plaintiff’s claim fails the ordinary observer test and, as a matter of law, cannot show substantial similarity between the two songs taken in their entireties.

Focusing closely on the potentially protectible elements of the Guity Song, including the chorus and hook, does not aid plaintiff’s cause. The complaint fails to allege that any specifically protectible portion of the Guity Song, such as song structure, chord progression, or lyrical rhythms, was appropriated by the Santos Song. Evaluating the total concept and overall feel of the Santos Song in light of Guity Song, the Court concludes plaintiff’s claim fails the more discerning observer test and, as a matter of law, cannot support a finding of substantial similarity. As such, plaintiff cannot maintain a claim for copyright infringement.

Western District of New York

SHIRMAN V. WHEC-TV, LLC
No. 18-CV-6508-FPG, 2019 WL 2163045 (W.D.N.Y. May. 17, 2019)
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Audiovisual work - video
Topics: Defenses - fair use, Remedies - attorneys fees

Plaintiff Boris Shirman brings this copyright infringement action against Defendant WHEC-TV, LLC (“WHEC”), alleging that WHEC used a video he created in one of its evening news broadcasts. . . . Before the Court is WHEC’s motion to dismiss the amended complaint under Federal Rule of Civil Procedure 12(b)(6). . . . WHEC argues that Shirman’s action fails as a matter of law because its use of his video constituted fair use. WHEC also argues that Shirman is not entitled to statutory attorney’s fees. . . . For the reasons that follow, WHEC’s motion to dismiss is GRANTED IN PART and DENIED IN PART.

First Factor: Purpose and Character of the Use . . . As an initial matter, the mere fact that WHEC’s broadcast may constitute “news reporting” is not dispositive. . . . In this case, the Court cannot conclude as a matter of law that WHEC’s use was transformative. . . . WHEC’s broadcast plays a portion of Shirman’s video—wherein the students identify the political issues important to them—and the anchor then summarizes other information the students share in Shirman’s video—that they are having a mock election and a debate. Thus, WHEC’s broadcast arguably uses Shirman’s video for the same purposes as the original: reporting on how these students prepared for the election and what issues they care about. The modifications WHEC made to Shirman’s video, like using only a portion of it and inserting a voice-over, did not change its purpose.

The Court is similarly not convinced by WHEC’s alternative claim that the purpose of its video was to report on “the creation of the Video itself.” . . . A reasonable viewer would not necessarily conclude that the purpose of WHEC’s broadcast was to report on the fact that Shirman was making a video. To the contrary, there is evidence that the purpose of the broadcast was to share
the contents of the video, not the making of the video. First, the ribbon at the bottom of the broadcast states “FIRST TIME VOTERS PREPARE FOR THE ELECTION,” which does not suggest that the purpose of the story is to report on the fact that Shirman made a video. Second, the contents of the story—both the audio taken from Shirman’s video as well as the anchor’s voice-over—focus on the students’ preparation for the election, not Shirman’s creation of the video. Indeed, the anchor only once refers to the fact that Shirman produced the video. WHEC has not established as a matter of law that its use was transformative.

Finally, the Court notes that WHEC used Shirman’s video in a commercial context, which weighs against it for purposes of the first factor.

Second Factor: Nature of the Copyrighted Work . . . At this stage, the Court need not definitively determine this factor. For purposes of WHEC’s motion, it suffices to say that WHEC makes a persuasive claim that this factor weighs in its favor. Shirman’s video was published prior to WHEC’s use. Furthermore, while Shirman’s video incorporates creative elements—chiefly in the organization and layout of the students’ photographs—it primarily conveys factual information about the students.

Third Factor: Amount and Substantiality of the Portion Used . . . As with the second factor, the Court need not definitively determine the weight of the third factor. On the one hand, WHEC makes a strong argument that it used only a small portion of Shirman’s video. On the other hand, segments of Shirman’s video make up a large part of WHEC’s broadcast: of the 30-second story, approximately 26% (8 seconds) is simply the audio and video of Shirman’s video, and another 50% (15 seconds) includes video segments of Shirman’s video. That is, a substantial portion of WHEC’s broadcast was simply repackaged segments of Shirman’s video. This consideration weighs against fair use. In any case, it is difficult to fully assess this factor given the disputes over the purpose of WHEC’s broadcast. To the extent that WHEC used Shirman’s video for its original purpose, this factor may weigh against it.

Fourth Factor: Effect upon the Potential Market . . . By simply using Shirman’s video in an arguably non-transformative manner, WHEC adversely impacted the potential market for Shirman’s work. And as the Ninth Circuit recognized in KCAL-TV, if such conduct became widespread, it would “destroy” the market for Shirman’s work. Ultimately, WHEC’s claims on the fourth factor raise factual issues that are unsuited for resolution on a motion to dismiss.

Attorney’s Fees . . . WHEC argues that Shirman is not entitled to attorney’s fees under the Copyright Act because he registered his work after the alleged infringement. At the hearing, Shirman’s counsel conceded that attorney’s fees are not recoverable under these circumstances. Therefore, WHEC’s motion is granted as to Shirman’s request for attorney’s fees.
MUSIC CHOICE V. CLAGGETT
No. 18-CV-3739(KMW), 2019 WL 2176178 (S.D.N.Y. May. 20, 2019)
Outcome: Motion to dismiss - granted
Works of Authorship: Music - sound recording
Topics: Copyright Royalty Board - appellate review

Plaintiff Music Choice (“Music Choice”) seeks review of a ruling by Karyn Temple Claggett, the Acting Register of Copyrights (the “Register”), issued in connection with a statutory license ratemaking proceeding held before the Copyright Royalty Board (the “Board”). Because the ruling is subject to review solely under the statutory review procedure provided for by 17 U.S.C. § 803, which vests jurisdiction exclusively in the Court of Appeals for the D.C. Circuit, Music Choice’s Complaint must be dismissed.

DOWNS V. OATH INC.
No. 18-CV-10337 (JSR), 2019 WL 2209206 (S.D.N.Y. May. 22, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - photograph
Topics: Limitations on liability relating to material online - storage at user direction, Limitations on liability relating to material online - knowledge, Limitations on liability relating to material online - financial benefit, Limitations on liability relating to material online - control

Plaintiff Kevin Downs brings a one-count complaint against defendant Oath Inc. Now before the Court are the parties' cross-motions for summary judgment. Downs moves for summary judgment on the issue of liability, and Oath moves for summary judgment on its defense of statutory immunity under the Digital Millennium Copyright Act. For the reasons below, Downs’s motion is denied, Oath’s motion is granted, and the case is dismissed . . .

By Reason of Storage at the Direction of a User . . . Beginning with the issue of who added the photograph to the article, the undisputed evidence demonstrates that it was Kim, not Cohn . . .

Moving to the question of whether Cohn’s cursory screening and modification place Kim’s article outside of the safe harbor’s protections, the case law supports Oath’s position over Downs’s. . . . Here, contributors like Kim published their articles directly to HuffPost.

Moreover, the addition of content tags does not deprive Oath of immunity under § 512 (c) . . . The undisputed evidence demonstrates that Kim added the photograph to the article. And Cohn’s cursory screening and modification of Kim’s article do not place the article outside of the protections of § 512(c).

Red Flag Knowledge . . . Here, the Court concludes that infringement would not have been so obvious. . . . [T]he Court holds that HuffPost did not have red flag knowledge of the alleged infringement in Kim’s article. As in Capitol Records, Cohn’s viewing of Downs’s photograph may have been brief. And as in Capitol Records, Cohn was viewing Kim’s article for multiple purposes, including subject matter classification and screening for offensive content. It is of
course possible that Cohn saw the New York Daily News photo credit, but Capitol Records makes clear that this possibility is not enough to create a triable issue as to red flag knowledge.

Moreover, even if Downs showed that Cohn was aware of the New York Daily News photo credit, Capitol Records suggests that Oath still would be entitled to summary judgment on the issue of red flag knowledge. Although the fair use and licensing issues raised by the inclusion of a sound recording in a video are not identical to those raised by the inclusion of a photograph in a blog post, the Court does not see how Cohn, any more than the employees in Capitol Records, could be expected to distinguish between infringements and fair or authorized uses. Accordingly, the Court holds that Downs has failed to create a triable issue as to red flag knowledge.

Financial Benefit and the Right and Ability to Control . . . Here, Downs has made no showing that the advertising revenue HuffPost received was “distinctly attributable” to infringing activity. There is no evidence that HuffPost encouraged infringement, or that it promoted advertising by pointing to infringement, or even that its users primarily engaged in infringing conduct. To the contrary, the undisputed evidence shows that HuffPost simply ran advertisements on user-generated articles, some of which inevitably contained infringing material. This case is thus much closer to Ventura than it is to Fung. Indeed, the financial benefit analysis likely favors Oath even more than it did the defendant in Ventura, as the defendant in Ventura operated a website that hosted nearly 13 million pornographic photographs and videos that were uploaded by users. Id. at 600. The Court suspects that infringing content was a more significant driver of advertising revenue on the Ventura defendant’s website than it was on HuffPost’s contributor platform.

Based on the evidence before the Court, Downs has failed to create a genuine dispute as to whether HuffPost exerted substantial influence over contributors’ activities. Instead, the undisputed evidence shows that contributors self-published their articles directly to the website and that HuffPost engaged in cursory screening and modification. This level of involvement is insufficient as a matter of law to establish that HuffPost had the “right and ability to control” infringing activity by members of its contributor platform. Accordingly - and for the reasons discussed above - the Court holds that Oath is not disqualified from the DMCA’s safe harbor by reason of failure to satisfy the requirements of § 512(c)(1)(B).

GUNTHER V. TOWN OF OGDEN
No. 6:19-CV-06199-MAT, 2019 WL 6130710 (W.D.N.Y. Nov. 19, 2019)
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - summary sheet
Topics: Copyright registration - registration requirement, Infringement - pleading requirements

Plaintiffs Frederick Gunther and New York Electrical Inspection Agency (hereinafter, “Plaintiffs”) bring this action against defendants Town of Ogden, Gay Lenhard, Thomas Cole, Malcolm Perry, Thomas Uschold, David Feeney, and Patrick Smith (collectively, the “Defendants”), alleging violations of the Copyright Act . . . . Presently before the Court is
Defendants’ motion to dismiss Plaintiffs’ complaint for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. . . . For the reasons set forth below, Defendants’ motion is denied. . . .

Plaintiffs have adequately plead a copyright infringement claim. The complaint contains allegations identifying the specific original works, i.e., the summary sheets . . . ; Plaintiffs’ ownership of copyrights in the summary sheets . . . ; that the copyrights are registered . . . ; and how and when Defendants’ allegedly infringed the copyright . . . . The summary sheets, Certificate of Registration, and Defendants’ alleged infringing works are attached to the complaint. . . . Based on the materials submitted by the parties, the Court will not decide, at this stage of the litigation, whether Plaintiffs’ have established copyright infringement.

Third Circuit

Court of Appeals for the Third Circuit

TD BANK N.A. V. HILL
No. 16-2897, 2019 WL 2722552 (3d Cir. Jul. 1, 2019)
Outcome: Appeal - reversed
Works of Authorship: Literary work - book
Topics: Defenses - statute of limitations, Ownership - work made for hire, Ownership - assignment, Scope of protection - merger, Defenses - fair use, Remedies - permanent injunction

This case marks the latest chapter in the bitter feud between Commerce Bank, which has since merged with TD Bank, and its former CEO, Vernon W. Hill, II. . . . Beset by acrimony, TD Bank filed this copyright lawsuit against Hill, alleging that a portion of his 2012 book infringes a neglected manuscript that Hill co-authored while CEO of Commerce Bank. In enjoining Hill from publishing or marketing his book, the District Court concluded that TD Bank owned the copyright under a letter agreement and that Hill’s book irreparably violated the Bank’s “right to not use the copyright.” . . . In this denouement, we resolve certain open questions in our Circuit concerning employees’ rights to their artistic creations and the proper exercise of equitable discretion.

We conclude that, although the agreement between the parties did not vest initial ownership of the copyright in the Bank by purporting to designate the manuscript a work “for hire,” it did transfer any ownership interest Hill possessed to TD Bank. As a result, Hill’s co-ownership defense, like his other defenses, fails. As for the imposition of injunctive relief, however, we cannot accept the District Court’s sweeping conclusions, which would justify the issuance of an injunction in every copyright case. Instead of employing “categorical rule[s]” that would resolve the propriety of injunctive relief “in a broad swath of cases,” courts should issue injunctive relief only if the moving party makes a sufficient showing that such relief is warranted under the particular circumstances of that case. . . . Accordingly, we will vacate the District Court’s permanent injunction.
NICASSIO V. VIACOM INT’L, INC.
No. 18-2085, 2019 WL 2762343 (3d Cir. Jul. 2, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Literary work - book, Audiovisual work - film
Topics: Infringement - substantial similarity

Jennie Nicassio appeals from the order of the United States District Court for the Western District of Pennsylvania granting the motion to dismiss for failure to state a claim filed by Viacom International, Inc. (“Viacom”) and Penguin Random House LLC (“Penguin”). We will affirm. . . .

[T]he District Court properly applied the governing Rule 12(b)(6) standards as well as the principles governing claims of copyright infringement. We agree with the District Court that Rocky and Albert are not substantially similar as a matter of law. . . . [T]he District Court properly considered the storylines, similarities, and significant differences between Rocky and Albert. . . . For instance, Albert clearly explores themes not present in Rocky, such as the importance of family, empathy, and forgiving others—and does so by using plot twists that are completely missing from Rocky . . . .

Although a defendant cannot immunize itself against liability for infringement by adding new elements on top of those copied, these differences show that Albert has not infringed Rocky’s overall “concept and feel.” Similarly, although some of the characters may share certain aspects in common, there are also obvious differences, e.g., Rocky is initially a small tree who doubles in size while Albert remains a small tree throughout the story; Rocky’s only friend is the forest fairy named Mary Louise while Albert’s friends (who accompany him on his adventures) include a child named Molly, Maisie (a palm tree), and Gene (a stink–breath weed); and while the bullying spruce tree is Rocky’s competitor in the contest, Cactus Pete was a more complex character ultimately driven by a feeling of loneliness and exclusion. Given these circumstances, “the works’ ‘total concept and overall feel ... as instructed by good eyes and common sense’ would not lead a lay observer to conclude that [Appellees’] alleged copying, if proven, was of protectable aspects of Rocky.”

SILVERTOP ASSOCS. INC. V. KANGAROO MFG. INC.
No. 18-2266, 2019 WL 3484240 (3d Cir. Aug. 1, 2019)
Outcome: Appeal - affirm
Works of Authorship: Visual work - costume
Topics: Copyrightability - useful article

This interlocutory appeal involves the validity of a copyright in a full-body banana costume. Appellant Kangaroo Manufacturing Inc. concedes that the banana costume it manufactures and sells is substantially similar to the banana costume created and sold by Appellee Rasta Imposta. See infra Appendix A. Yet Kangaroo claims that Rasta cannot hold a valid copyright in such a costume’s “pictorial, graphic, or sculptural features.” . . . This dispute presents a matter of first impression for our Court and requires us to apply the Supreme Court’s recent decision in Star
Athletica, L.L.C. v. Varsity Brands, Inc. . . . . We hold that, in combination, the Rasta costume’s non-utilitarian, sculptural features are copyrightable, so we will affirm the District Court’s preliminary injunction.

**District of Delaware**

**VATIDIS V. TRIMBLE, INC.**  
Outcome: Motion to dismiss - granted  
Works of Authorship: Literary work - computer program  
Topics: Ownership - standing, International law - United Kingdom, International law - Netherlands

This action arises out of a Share Purchase Agreement (“SPA”) pursuant to which defendant Trimble, Inc. (“Trimble”) acquired from plaintiff Steve Vatidis (“Vatidis”) a collection of software companies (collectively, “the Target Companies”). Post-closing, Vatidis, in his capacity as the shareholder representative, initiated this action against Trimble, asserting claims for breach of contract . . . . Trimble, in return, asserted counterclaims for breach of contract (Count I), fraudulent inducement (Count II), fraudulent concealment (Count III), and copyright infringement (Count IV) . . . .

Currently pending before the Court is Vatidis’ Partial Motion to Dismiss Counterclaim Counts II, III, and IV . . . . For the following reasons, Vatidis’ motion to dismiss is GRANTED . . . .

As a plaintiff, Trimble bears the burden of establishing standing . . . . Ultimately, Trimble has presented all of this to the court without providing reliable authorities explaining the operation of Dutch contract law and U.K. copyright law. Accordingly, Trimble has failed to carry its burden of establishing that it has standing to assert a copyright infringement claim based on the CDPA, and Count IV will be dismissed without prejudice.

**District of New Jersey**

**DURANT V. DUPONT PUBL'G, INC.**  
Outcome: Motion to dismiss - granted-in-part  
Works of Authorship: Visual work - photograph  
Topics: Ownership - pleading requirements, Infringement - pleading requirements, Contributory infringement - direct infringement, Vicarious infringement - direct infringement, Contributory infringement - inducement, Remedies - attorneys fees

This matter comes before the Court upon Defendant duPont Publishing Inc.’s (“Defendant”) Motion to Dismiss the Amended Complaint . . . . For the reasons set forth below, Defendant’s Motion to Dismiss is granted in part, without prejudice, and denied in part . . . .

A. Direct Copyright Infringement . . . Here, Plaintiff adequately alleged the ownership requirement because he alleged that he “obtained a registration with the United States Copyright
Office for the [Copyrighted Work].” . . . Defendant also does not dispute Plaintiff’s ownership of the Copyrighted Work.

Second, Plaintiff adequately pled the unauthorized copying requirement because Plaintiff plausibly alleged facts to support his claim that Defendant used the Copyrighted Work without Plaintiff’s authorization. . . . The Court accepts these allegations as true and concludes that Plaintiff has pled a legitimate claim for direct copyright infringement on which relief can be granted. The Court, accordingly, denies Defendant’s Motion to Dismiss the direct copyright infringement claim.

B. Contributory Copyright Infringement and Vicarious Copyright Infringement . . . Here, because Plaintiff only raised claims against Defendant, neither Plaintiffs contributory copyright infringement claim, nor his vicarious copyright infringement claim, survives Defendant’s Motion to Dismiss. In addition, because a claim against a third party is a threshold element to an indirect copyright infringement claim, the Court need not examine the remaining requisite elements for Plaintiff’s indirect copyright infringement claims.

C. Attorneys’ Fees . . . The Court, accordingly, denies without prejudice both Defendant’s and Plaintiff’s requests for attorneys’ fees.

AIR EXPRESS INT’L V. LOG-NET, INC.
Outcome: Motion for judgment as a matter of law - denied, Motion for attorneys fees and costs - denied
Works of Authorship: Literary work - computer program
Topics: Infringement - evidence of copying, Remedies - attorneys fees

This matter comes before the Court upon Plaintiff Air Express International d/b/a DHL Global Forwarding Corporation’s (“DHL”) omnibus motion . . . and Defendant LOG-NET, Inc.’s (“LOG-NET”) Motion for Attorneys’ Fees and Costs . . . , Motion for Release of Bond Obligation . . . , Motion for Permanent Injunction . . . , and Motion for Prejudgment Interest . . . . For the reasons stated below, and for other good cause shown, DHL’s omnibus motion is denied; LOG-NET’s Motions for Attorneys’ Fees and Costs, Release of Bond Obligation, and Permanent Injunction are denied; and LOG-NET’s Motion for Prejudgment Interest is granted. . . .

According to DHL, the fact finder must have the source code before it because the only way the fact finder can determine whether the two programs are “substantially similar” is by comparing the source code of both programs. Indeed, the out-of-circuit cases DHL relies upon partially support this view of the law. This proposition, however, finds little support in Third Circuit precedent. Moreover, the proposition is inapposite in a case, such as this one, where the plaintiff is not asserting that the defendant infringed upon the source code of the protected work.
This case concerns alleged copyright infringement in the sale of car seat covers. . . . Plaintiff Day to Day Imports, Inc., alleges that Defendant FH Group International, Inc. has infringed, and is currently infringing, on two of Plaintiff’s copyrights for two-dimensional visual art designs that are incorporated into car seat covers. Id. Currently pending before the Court is Defendant’s motion to dismiss Plaintiff’s Complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and Fed. R. Civ. P. 12(b)(6) for failure to state a claim. . . . For the reasons stated below, Defendant’s motion to dismiss is denied. . . .

The Copyrighted Designs are incorporated in car seat covers. . . . Defendant argues, and Plaintiff does not dispute, that car seat covers are useful articles. . . . The Court therefore accepts, for purposes of this motion, that car seat covers are useful articles, and applies the Star Athletica two-part test. As to the first element, the Court can look at the Copyrighted Designs and spot two-dimensional designs incorporated into the seat covers. The 832 Design has a colored rectangle at the headrest, a colored “H” pattern across the backrest, and colored parallel lines spanning the side of the seat. . . . The 842 Design has a colored “H” design that narrows towards the bottom across the backrest and two narrow, colored triangles positioned on the seat. . . . Thus, the Copyrighted Designs meet the “separate identification” element.

The second element of the Star Athletica test is also met. If the arrangement of colored geometrical shapes on the surface of the car seat were separated from the car seat medium and placed on a canvas, they would qualify as two-dimensional works of art. It does not matter that such image on the canvas may resemble a car seat or a picture of a car seat – the image still would not replicate a car seat as a useful article. The usefulness of the car seat is the contour of the fabric so that it fits snug over the seat; this is separable from the colored graphical shapes placed on this fabric for decoration. These designs add nothing to the utilitarian function of the car seat cover. The second element of the Star Athletica test, independent existence, is satisfied. Thus, Plaintiff plausibly established the first element of its trademark infringement claim. . . .

Here, as noted, Defendant alleges that its work is not “substantially similar” to the Copyrighted Designs. The Court disagrees. When the 832 Design is placed side-by-side Defendant’s design, both designs have a colored rectangle at the headrest, a colored “H” pattern with the same curvature across the backrest, and colored parallel lines spanning the side of the seat. . . . Similarly, when the 842 Design is placed side-by-side Defendant’s design, both designs have a colored “H” pattern that narrows towards the bottom across the backrest and two narrow, colored triangles positioned similarly on the seat. . . . Defendant’s designs and the Copyrighted Designs are virtually indistinguishable aside from the color schemes. The Defendant’s designs do not have any additional shapes or altered configurations distinguishing them from the Copyrighted Designs; both sets of designs are composed of the same shapes in the same configuration. Thus, it is plausible that a lay observer would find that the artistic aspects of Defendants’ car seat cover
design are substantially similar to the protectable aspects of the Copyrighted Designs. Accordingly, Plaintiff has plausibly plead a claim for copyright infringement.

QUICK TIME PERFORMANCE.COM, INC. v. GRANATELLI MOTOR SPORTS, INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Infringement - pleading requirements, Preemption - Dastar, Preemption - unfair competition, Preemption - false advertising

This is a copyright infringement case. Plaintiff Quick Time Performance.com, Inc. (“Quick Time”) filed this action against Granatelli Motor Sports, Inc. (“Granatelli”), alleging copyright infringement, false advertising in violation of the Lanham Act, 15 U.S.C. § 1125, and misappropriation under N.J. Stat. § 56:4-1. The matter comes before the Court on Defendant Granatelli’s motion to dismiss. . . . For the reasons stated below, the motion is DENIED. . . .

Copyright Infringement . . . Granatelli contends that Quick Time has not satisfied the pleading requirements as to the fourth element because Quick Time does not allege that Granatelli committed any infringing acts with regard to the Quick Time Photograph. Accepting as true the factual allegations that Granatelli copied the Quick Time Photograph during the time it was displayed on the Quick Time website and then publicly displayed the photograph on the JEGS automotive website . . . the Court finds that Quick Time pleaded the infringing act with sufficient specificity. In those instances where courts have found that a plaintiff failed to plead infringing acts with specificity, the plaintiff failed to allege that the defendant copied plaintiff’s work. . . . Conversely, courts have found that copyright infringement was sufficiently pleaded where plaintiffs alleged that defendants engaged in the mere copying of protected designs or items. . . . Thus, Quick Time’s copyright infringement claim is facially plausible and Granatelli is on notice as to the nature of its allegedly infringing act . . .

Copyright Preemption and the Lanham Act . . . In Count Two, Quick Time asserts liability pursuant to the Lanham Act, specifically 15 U.S.C. § 1125. . . . Quick Time alleges that Granatelli, by using the Quick Time Photograph to market Granatelli products, falsely suggests that Quick Time and Granatelli sell identical cutout products, that the businesses are affiliated, or that Quick Time approves Granatelli’s sale of Quick Time products, and consequently, causes public confusion. . . . Granatelli argues that because the scheme alleged is one wherein Granatelli is misrepresenting Quick Time’s goods as its own, it is “reverse passing off.” Therefore, Defendant argues the claim is precluded under Dastar Corp. v. Twentieth Century Fox Film Corp. . . .

The Court finds that Quick Time’s allegation is a passing off claim, not a reverse passing off claim. Quick Time alleges that by displaying a photo of Quick Time cutouts to sell its products, Granatelli passes off its goods as Quick Time’s and so misrepresents its own goods as someone else’s. This is the essence of a passing off claim and thus, is not precluded under Dastar Corp. . . .
Preemption of State Law Claim. In Count Three, Quick Time alleges unfair competition and false advertising in violation of N.J. Stat. § 56:4-1. Granatelli argues that this claim is preempted by Section 301 of the Copyright Act because it is a reverse passing off claim. The Copyright Act preempts unfair competition state law claims premised on reverse passing off theories, but not state law claims premised on passing off theories. For the reasons stated above, the Court finds that Quick Time’s unfair competition and false advertising claim is a passing off, not reverse passing off, claim. Therefore, it is not preempted by the Copyright Act.

JOSE LUIS PELAEZ, INC. V. PEARSON EDU., INC.
No. 16-CV-5216, 2019 WL 6211261 (D.N.J. Nov. 21, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - photograph
Topics: Infringement - pleading requirements, Defenses - license, Contributory infringement - direct infringement, Vicarious infringement - direct infringement

Plaintiffs Jose Luis Pelaez and Jose Luis Pelaez, Inc. bring this copyright infringement action against Defendant Pearson Education Inc. Now before the Court are the parties’ cross motions for summary judgment. For the reasons set forth below, Defendant’s motion is GRANTED and Plaintiff’s motion is DENIED.

A. Prima Facie Direct Copyright Claim? Here, Plaintiffs contend Defendant reproduced their copyrighted photographs without a license. Therefore, their claims sound in copyright.

B. License to Copy Photographs? Because the 2001, 2004, and 2007 PVAs provide a license for Defendant to use Plaintiffs’ copyrighted works without prior authorization, summary judgment is GRANTED on Plaintiff’s direct copyright claims (Count One).

C. Evidence Supporting Contributory or Vicarious Liability? Plaintiffs failed to meet their burden of citing record evidence that counters Defendant’s assertion that there is no evidence of direct, third-party infringement.

Eastern District of Pennsylvania

NSI NURSING SOLUTIONS, INC. V. VOLUME RECRUITMENT SERVS., LLC
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Literary work - document
Topics: Copyrightability - validity, Infringement - substantial similarity

This copyright infringement action was originally commenced by Plaintiff on March 1, 2017 in the Court of Common Pleas of Lancaster County, then removed by Defendants to this Court. In its Second Amended Complaint, Plaintiff asserts counts for breach of fiduciary duty (Count I), breach of contract (Count II), tortious interference with contractual relations (Count III), copyright infringement (Count IV), misappropriation of trade secrets (Count V), false advertising
(Count VI), unfair competition (Count VII), tortious interference with contractual relations (Count VIII) and civil conspiracy (Count IX). Presently before the Court is the defendants’ motion for summary judgment. For the reasons that follow, the motion is granted in part and denied in part. . . .

VRS argues that it is entitled to judgment on each of the 16 documents because NSI has failed to prove that any of the 16 copyrights are valid and, assuming arguendo, that any of the 16 copyrights are valid, that VRS infringed any of the 16 documents.

In the first instance, the Court notes that in its response to VRS’s motion for summary judgment, NSI only contests VRS’s arguments with respect to only six of the 16 copyrighted documents. . . . Therefore, in the absence of a response by NSI, the Court will enter judgment on favor of VRS with respect to the following 10 documents: Boomerang Letter; Employee Feedback Report; New Hire Information Sheet; Recruiting Letter; Recruiting Postcard; Recruiting Incentive Bonus Agreement; Recruiting Incentive Bonus Agreement v2; Recruitment Scorecard; Rules of Engagement for an Attraction Hospital; and Services Agreement. . . .

[The Court finds that there are genuine issues of material fact as to whether VRS has infringed the remaining six NSI works. Therefore, the motion for summary judgment will be denied as to the remaining six NSI works.

CRAMER V. CECIL BAKER & PARTNERS, INC.
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Ownership - standing

Bill Cramer commenced this copyright infringement action after Hidden City Philadelphia posted an online publication that included a photograph Cramer took of Cecil Baker. Before the Court is Hidden City’s motion for summary judgment and for sanctions. For the reasons set forth below, the Court will grant in part and deny in part Hidden City’s motion. . . .

Here, Cramer has not established copyright ownership of the photograph to satisfy the standing requirement. Nor has Cramer explained why the copyright is registered to Wonderful Machine. Instead, he asserts a “belief” that, as president of Wonderful Machine, he is “entitled” to sue in his individual capacity. . . . His status as president of Wonderful Machine, however, is not enough. Unlike in Jules Jordan Video, Inc., Cramer is not the sole officer, director, and shareholder of Wonderful Machine. The record establishes that Wonderful Machine includes players other than Cramer: Adrienne Cramer is listed as a corporate officer on records with the Pennsylvania Bureau of Corporations and Charitable Organizations, and Jess Dudley signed correspondence to Baker on Wonderful Machine letterhead. . . . Thus, Cramer has not demonstrated an ownership interest in the relevant copyright. Because Cramer has not demonstrated an ownership interest, he lacks standing to bring the copyright claim.
A. The Burden of Proof in Copyright Cases... The Supreme Court has identified only two elements for a copyright-infringement claim: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” But in cases where the parties agree that the defendant possessed a license but the scope of the license is at issue, the Courts of Appeals have differed on which party bears the burden of proving that the defendant's copying was unauthorized. . . . Accordingly, the court will treat unauthorized use as an affirmative defense which Scholastic has the burden of proving. For this reason, Defendant's motion for summary judgment on the basis that Plaintiff failed to show unauthorized use is denied.

B. Plaintiff Had Ownership of Valid Copyright Registrations and Defendant Copied Plaintiff's Work . . . 1. Absence of Copyright Information . . . Scholastic concedes that “Plaintiff alleges Copyright Registration Numbers and dates for the majority of the Licensed Uses” but argues that Plaintiff has not shown a valid copyright for the photograph “Uros women on reed island in Lake Titicaca.” The Court agrees that Plaintiff has failed to allege or to show a copyright registration for this photograph, and therefore, summary judgment will be granted for any use by Scholastic of this photograph.

2. Corbis Group Registrations . . . In sum, based on the Copyright Office's consistent interpretation of § 409(2) to allow for group registration, the policy reasons supporting allowing group registration, the reliance interests of photographers and stock photograph agencies, the reasonableness of interpreting the text to mean that it is the “author” of the collective work that must be listed on the registration forms, and the “specialized experience and broader investigations and information’ available to the agency,” the Court holds that the Copyright Office's manuals and opinion letters are entitled to Skidmore deference.

Therefore, group registrations are valid even if they fail to list all of the individual authors' names so long as they comply with the Copyright Office's instructions. Here, “Corbis complied with the statute's requirements by listing its own name as the author of the collective work,” a title for the collective work, and including “and (number) other photographers.” Therefore, the
Court holds that Krist had a valid copyright in the photographs listed in the complaint. Thus, Scholastic's Motion for Summary Judgment based on the invalidity of the Corbis Group Registration Program is denied.

Plaintiff, therefore, has met his prima facie burden of showing that there is no genuine dispute that he owned a valid copyright in the photographs (except for “Uros women on reed island in Lake Titicaca”) and that Scholastic copied the photographs. The Court thus turns to Scholastic's affirmative defenses.

C. Scholastic's Affirmative Defenses . . . 1. Statute of Limitations . . . Because Defendant met its burden of demonstrating storm warnings, the burden shifts to Plaintiff to show that he “exercised reasonable due diligence and yet was unable to discover its injuries.” Plaintiff cannot do so. Krist testified at his deposition that, rather than exercise due diligence, he “put it up on the shelf” to think about it and it “was relegated to, you know, something that we were going to come back to and do more thinking about.” Plaintiff further testified that “I may have pushed it further down the queue than it deserved at that point, but it's just that I don't enjoy learning that I've been ripped off. It's not pleasant. So I had a million other things to deal with, so I dealt with them.”

Accordingly, all of Plaintiff's copyright claims against Scholastic that accrued before November 30, 2013 — which was three years before Plaintiff filed his Complaint — are barred by the statute of limitations.

KRIST V. PEARSON EDU., INC.
Outcome: Motion for summary judgment - denied
Works of Authorship: Visual work - photograph
Topics: Defenses - statute of limitations, Copyright registration - group registration, Infringement - evidence of copying

This is an action for copyright infringement. Plaintiff Bob Krist is a professional photographer who licenses the use of his photographs through an agency, Corbis, under agreements allowing Corbis to sublicense those photographs to third parties. Pearson Education, Inc. is a long-time Corbis customer, and is one of the third-parties to whom Corbis has sublicensed Krist’s work. Krist contends that Pearson made use of the photographs at issue here in ways that exceeded the scope of its agreements with Corbis.

Krist filed suit against Pearson for one count of copyright infringement embracing 359 separate claims. Of the 359 claims Krist asserts, 352 of them arise from the licenses granted to Pearson through Corbis. The remaining seven claims involve licenses Krist issued directly to Pearson.

The parties now each move for summary judgment. For the reasons that follow, I will deny summary judgment to both parties. Rather than provide a detailed recitation of the facts involved at the outset, I will instead address the facts relevant to each issue below. . . .
Pearson’s Motion for Summary Judgment . . . Statute of Limitations . . . In conclusion, I find that the question of when the limitation period began to run must be resolved by a jury. I also deny Pearson’s request for summary judgment as to any claims that accrued before November 23, 2013 because that would have the same functional effect as granting its original request. . . .

Copyright Infringement vs. Breach of Contract . . . I see no basis to apply the covenant-condition distinction here because, as Pearson concedes in its briefing, the Third Circuit has never addressed, let alone adopted, the covenant-condition framework. . . . Reduced to its essence, Graham involved a dispute between a licensor and licensee over the failure to pay royalties, not a dispute about the use of protected works outside the scope of the license. . . . In practical terms, Graham was a collection action. . . .

Validity of Copyright Registrations . . . Without explicit statutory guidance for this practice, courts have come to opposite conclusions about the validity of group registration following the Register’s more relaxed procedure. Pearson relies upon two district court decisions finding that group registrations following this procedure are invalid and therefore bar the plaintiff from filing an infringement suit. . . . These decisions carry little weight in the face of numerous cases finding that the group registration process also validly registers each individual photo. Although the Third Circuit has not expressly addressed the issue, it has observed that “decisions of this Court and others counsel that registration of a collective work is sufficient to support an action for infringement of the underlying self-contained parts.” . . . Because I am satisfied that the 21 photos challenged by Pearson are validly registered, I deny summary judgment to Pearson on this issue.

Krist’s Motion for Partial Summary Judgment . . . Copyright Infringement . . . Krist does not fare as well with the second element of the analysis. Krist asserts that he has provided undisputed evidence of Pearson’s copying because Pearson’s own documents show that Pearson either exceeded the scope of the applicable licenses or used Krist’s works without obtaining a license in the first instance. . . . First, the reports produced by Pearson on which the summary relies do not reflect the print or distribution information for Krist’s photographs. In producing the reports, Pearson included an express disclaimer—affixed at the bottom of each page—that their inclusion did not represent any admission that Krist’s photographs in fact appeared in the relevant publication. . . . Consequently, Krist has failed to provide specific evidence establishing the presence of any of the photographs here in any of the publications referenced in the Pearson reports.

Second, Pearson points to serious deficiencies in the methodology by which Krist attempts to establish that Pearson exceeded the print runs or other limitations on its use of the images. . . . Specifically, with respect to allegations that Pearson exceeded the print runs, Pearson challenges the sufficiency of Krist’s evidence that his photographs were used in the publications at issue. Pearson also asserts that the totals do not account for photographs that may have been removed from specific publications and that Krist combined data from different reports in a way that is not representative of Pearson’s actual printing of textbooks. Furthermore, Pearson contends, Krist similarly provides insufficient evidence that Pearson exceeded other limitations on its use of
Krist’s photographs and asserts that the summary chart contains inaccurate and incomplete information with respect to those allegations.

Third, in keeping with its contention that the PVAs governed the use of each photo, Pearson contends that any payments satisfying the terms of the PVA for its uses of the photos cover the allegedly infringing uses. Obviously, the parties dispute whether that is the case, but the presence of a genuine dispute about which agreements governed the use of individual photos makes summary judgment inappropriate.

Middle District of Pennsylvania

DESIGN BASICS, LLC V. MTF ASSOCS., INC.
Outcome: Motion to amend - denied
Works of Authorship: Architectural work - design
Topics: Defenses - misuse

Before the Court are Defendants Haubert Construction, LLC d/b/a Fogarty Homes, Fogarty Homes, Inc., and Randall E. Haubert’s (the “Haubert Defendants”) motion for leave to file an amended answer and affirmative defenses . . . , and Defendants MTF Associates, Inc., Fogarty Homes, Inc., JF Development Corporation, John Fogarty Custom Built Homes, Inc. d/b/a Distinctive Homes by Fogarty, and John T. Fogarty’s (the “Fogarty Defendants”) motion for leave to file an amended answer and affirmative defenses . . . . For the reasons provided herein, the Court will deny both motions. . . .

As noted above, the Haubert Defendants’ allege that, in establishing a scheme that incentivized Plaintiff’s employees to find violations of its copyrights and then pursued litigation in defense of those copyrights, Plaintiff is “attempting to use its copyrights as a sword rather than a shield,” which “is directly at odds with the intellectual property clause in the Constitution and the Copyright Act itself.” . . . Similarly, the Fogarty Defendants allege that, in filing lawsuits “with the intent of exacting settlement payments from the alleged infringers,” Plaintiff is using its copyright “to restrain, rather than promote, creative expression.” . . . These allegations do not, however, support a reasonable inference of copyright misuse.

While Defendants’ allegations suggest that Plaintiff engaged in an aggressive litigation strategy in defense of its copyrights, Defendants do not allege facts that suggest that this strategy constituted anti-competitive behavior. Plaintiff’s copyright claim is not “likely to interfere with creative expression to such a degree that [it] affect[s] in any significant way the policy interest in increasing the public store of creative activity.” . . . Further, the copyright misuse defense fails where a plaintiff merely seeks to enforce its copyright, and nothing more. . . . Defendants have only alleged that Plaintiff is seeking to enforce its own copyrights and nothing more. Accordingly, the Court concludes that Defendants’ motions for leave to amend do not state a claim for copyright misuse and thus amendment would be futile.
Fourth Circuit

Court of Appeals for the Fourth Circuit

BRAMMER V. VIOLENT HUES PRODS., LLC
No. 18-1763, 2019 WL 1867833 (4th Cir. Apr. 26, 2019)
Outcome: Appeal - reversed
Works of Authorship: Visual work - photograph
Topics: Defenses - fair use

Russell Brammer, a commercial photographer, brought this copyright infringement action after learning that Violent Hues Productions, LLC, had made an unlicensed use of one of his photographs on its website. The district court granted summary judgment to Violent Hues, ruling that this unauthorized display constituted “fair use” under the Copyright Act, 17 U.S.C. § 107. For the reasons that follow, we reverse and remand for further proceedings consistent with this opinion.

A . . . 1 . . . We thus examine Brammer's original Photo and Violent Hues' secondary use of the Photo side-by-side. . . . This examination shows no apparent transformation. The only obvious change Violent Hues made to the Photo's content was to crop it so as to remove negative space. . . . Rather, the cropping appears to be purely functional, giving the Photo the same dimensions as the other images on Violent Hues' website. This copying is of a kind with other non-transformative uses. . . . Because of the minimal changes to the Photo's content and context, we conclude that Violent Hues' copying was not transformative. This weighs against a finding of fair use.

2 . . . Violent Hues' website did not generate direct revenue or run advertising. But Violent Hues is a limited liability company, and it used the Photo on its website to promote a for-profit film festival. On their own, these facts tend to demonstrate commercial use.

3 . . . Whatever relevance good faith has to the fair use inquiry, Violent Hues has not offered any evidence that it acted in good faith. At best, Violent Hues appears to have acted negligently. Violent Hues' owner, Fernando Mico, stated that he believed the Photo was freely available. But contrary to Violent Hues' suggestion, this does not end the matter. For Mico did not explain why this belief was reasonable given that all contemporary photographs are presumptively under copyright . . . and given his own acknowledgment that he downloaded the Photo from Flickr, which stated “© All rights reserved” in the Photo caption. . . . We thus conclude that Violent Hues' claim of good faith does nothing to aid its fair use defense. The district court clearly erred by finding otherwise. Because Violent Hues' reproduction of the Photo was non-transformative and commercial, we must weigh the first factor against a finding of fair use.

B . . . In taking the photograph at issue here, Brammer made many creative choices. He alleges that he set up at a “private, rooftop location” and “experimented with numerous shutter speed and aperture combinations.” The resulting Photo is a stylized image, with vivid colors and a bird's-eye view. Notably, the vehicle traffic appears as streaks of light. The Photo's subject may be a real-world location, but that location does not, in reality, appear as shown. This creativity
entitles the Photo to thick copyright protection. Although Brammer could not prevent others from taking night-time photographs of Adams Morgan, he surely can assert his rights in his own expression of that scene. . . . Because Brammer's Photo merits thick protection and because we find the Photo's published status has no effect here, the second factor also weighs against fair use.

C . . . Here, Violent Hues used roughly half of the Photo. Moreover, Violent Hues merely removed the negative space and kept the most expressive features, which constituted the “heart of the work.” . . . Given that Violent Hues' use was non-transformative, this considerable taking was not justified. . . . Violent Hues could just as easily have accomplished its goal of depicting Adams Morgan by taking its own photograph or finding an image under free license. The third factor thus weighs against fair use.

D . . . A “common sense” presumption of cognizable market harm exists when a commercial use is not transformative but instead “amounts to mere duplication of the entirety of an original.” . . . That presumption applies here. Violent Hues made commercial use of the Photo and duplicated the heart of the work by copying the Photo's most expressive features. Brammer thus need not demonstrate that the licensing market for his Photo would be depressed should Violent Hues' behavior become widespread. Even so, Brammer introduced evidence showing that he has, on two occasions, licensed this specific Photo for online use. In one instance, a real estate company paid Brammer a $1,250 fee to use the Photo as a stock image to represent Adams Morgan on its website — a similar use to that of Violent Hues. If the real estate company had acted as Violent Hues did, Brammer would not have received that fee. Indeed, if Violent Hues' behavior became common and acceptable, the licensing market for Brammer's work specifically, and professional photography more broadly, might well be dampened.

Violent Hues asks that we affirm the district court's conclusion that Brammer did not show market harm because he made two sales of the Photo after Violent Hues' use began. That cannot be correct. If the mere fact of subsequent sales served to defeat a claim of market harm, then commercially successful works could hardly ever satisfy this factor. Like the others, the fourth factor weighs against fair use.

Micro does not dispute that Micro IP owns the copyright. Instead, Micro contends that because it is listed under the “rights and permissions” heading of the copyright registration, it may assert
the claim on Micro IP’s behalf. However, the “rights and permission” designation does not confer standing to sue for copyright infringement. Instead, it does little more than afford information for the “organization that should be contacted for permission to use the work.” . . . Copyright ownership for purposes of enforcing the copyright may only be conveyed “in writing and signed by the owner of the rights conveyed.” . . . Because a “copyright infringement action may only be brought by the ‘legal or beneficial owner’ of a copyright,” Micro lacks standing to bring this claim.

AM. CHEM. SOC’Y V. RESEARCHGATE GMBH
Outcome: Motion for notice - denied
Works of Authorship: Literary work - article
Topics: Copyright registration - presumption of validity, Infringement - notice of action

Plaintiffs American Chemical Society (“ACS”) and Elsevier Inc., Elsevier Ltd, and Elsevier B.V. (collectively, “Elsevier”) allege that Defendant ResearchGate GmbH engages in various forms of copyright infringement when it disseminates peer-reviewed articles published and owned by Plaintiffs’ academic journals. Pending before the Court is Defendant’s Motion for Notice pursuant to 17 U.S.C. § 501(b) in which Defendant requests that the Court order Plaintiff to serve certain authors with notice of this suit. . . . In support of that motion, Defendant claims that when Plaintiffs’ publications appear on Defendant’s website, it is often because a co-author who has not personally signed an agreement with Plaintiffs has uploaded the material. In this context, Defendant argues that Plaintiffs must serve these co-authors with § 501(b) notice because the co-authors “have an interest” in the copyrights asserted by Plaintiffs and the co-authors’ rights are “likely to be affected” by the outcome. . . . For the following reasons, Defendant’s Motion for Notice will be denied. . . .

To the extent that either party should benefit from a presumption at this stage, Plaintiffs, as the non-moving party and the party asserting copyright infringement, are the logical beneficiary. . . . Here, Plaintiffs’ publications are protected by copyright registrations, creating a presumption of Plaintiffs’ ownership. . . . To be sure, “this presumption is fairly easy to rebut,” . . . and if “other evidence in the record casts doubt upon” a copyright’s validity, “validity will not be assumed,” . . . However, no such evidence exists at this early stage of the case. Because Defendant has not met its burden to prove that any specific non-corresponding co-authors have a legal interest in the copyrights at issue, Defendant’s Motion for Notice will be denied.
Eastern District of North Carolina

BLACKROCK ENG'RS, INC. V. DUKE ENERGY PROGRESS, LLC
No. 7:15-CV-250-D, 2019 WL 4267863 (E.D.N.C. Sep. 9, 2019)
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Visual work - drawing
Topics: Defenses - fair use

As explained below, the court grants in part and denies in part Duke Energy’s first motion to strike, grants BlackRock’s motion for an extension, denies as moot Duke Energy’s motion for adjudication, denies Duke Energy’s second motion to strike, grants in part and denies in part BlackRock’s motion for partial summary judgment, and grants in part and denies in part Duke Energy’s motion for summary judgment.

The court assumes without deciding that BlackRock owned a valid copyright and that Duke Energy copied the copyrighted work. Even viewing the record in the light most favorable to BlackRock, no rational jury could find that Duke Energy’s use did not constitute fair use. Duke Energy submitted BlackRock’s copyrighted materials as part of a regulatory process, and Duke Energy previously compensated BlackRock for preparing these materials. BlackRock’s drawings had no marketability otherwise because they were specific to the Roxboro Landfill project. Furthermore, considering the scope of BlackRock’s copyright infringement claim, Duke Energy used only a portion of BlackRock’s total copyrighted work. Examining the record in the light most favorable to BlackRock and weighing the factors in section 107, Duke Energy’s use constituted fair use. Accordingly, the court grants Duke Energy’s motion for summary judgment on count one.

Middle District of North Carolina

SILER V. LEJARZA
No. 1:19CV403, 2019 WL 6219956 (M.D.N.C. Nov. 21, 2019)
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Literary work - test
Topics: Infringement - pleading requirements, Preemption - common law copyright infringement, Preemption - breach of contract, Preemption - unfair and deceptive trade practices, Preemption - unfair competition

Plaintiffs David Siler and Distinctive Human Resources, Inc. (“Distinctive HR”) bring this action against Defendants Elga Lejarza a/k/a Elga Lejarza-Penn, Michael Penn, Lejarza Compliance Trainings, LLC (“Compliance Trainings”), and Lejarza HR Consulting, LLC (“HR Consulting”) for their allegedly unlawful use of Plaintiffs’ copyrighted materials. Before the court is Defendants’ motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6). . . . The motion is fully briefed . . . and is ready for decision. For the reasons set forth below, the motion will be granted in part and denied in part.
Copyright Infringement . . . Under this scope of potential liability for copyright infringement, it is apparent that Plaintiffs have pleaded sufficient facts to state a claim against the individual Defendants. Plaintiffs allege that Lejarza was the only individual authorized to access the copyrighted Test Prep Materials and infringed on Plaintiffs’ copyright when she personally shared the Test Prep Materials with others and used them in workshops that she herself taught. Plaintiffs also allege that Penn is an owner of both Compliance Trainings and HR Consulting and “takes an active role in [their] management and business.” . . . They further allege that Penn profits off the infringing activity. . . . Viewed in the light most favorable to Plaintiffs, these allegations are sufficient to plausibly claim that Lejarza directly infringed on Plaintiffs’ rights under the Copyright Act and that Penn may be liable under an indirect theory of infringement. . . . Therefore, Defendants’ motion to dismiss the copyright infringement claim against these individual Defendants will be denied. . . .

Preemption . . . 1. Common Law Copyright Infringement . . . Defendants are correct that Plaintiffs’ common law claim is preempted by the Copyright Act. The common law claim has at its core the same allegedly copyrighted materials that make up Plaintiffs’ statutory copyright infringement claim and plainly falls within the scope of copyright. Plaintiffs claim common law copyright protection over “all of the collective and individual components of the Test Prep Materials.” . . . While these components, collectively and individually, could contain uncopyrightable material, Plaintiffs fail to explain how they are not all related to Plaintiffs’ test prep content and therefore fall within the scope of copyright. . . .

2. Breach of Contract . . . No party has provided the underlying contract between Lejarza and Plaintiffs, and the burden is on Defendants to show that all provisions of the contract alleged in Plaintiffs’ complaint are preempted. Defendants have failed to do so. Due to inadequate briefing, the court is unable to decide the motion without undertaking the work for the parties. Because justice is invoked, not dispensed, Defendants’ motion to dismiss will be denied without prejudice.

3. North Carolina UDTPA . . . Here, the allegations underlying Plaintiffs’ UDTPA claim are all equivalent to rights protected under the Copyright Act. Plaintiffs argue that they allege “palming off” as an extra element, but their complaint does not bear this out. . . . Nowhere in their complaint do Plaintiffs allege that Defendants are promoting their own original material as that of Siler or Distinctive HR. Rather, they allege that Defendants are selling Plaintiffs’ copyrighted material as Defendants’ own or without credit to Plaintiffs. This is classic reverse palming off, which is preempted by the Copyright Act. Defendants’ motion to dismiss as to this claim will therefore be granted.

4. Unfair Competition . . . Plaintiffs have therefore put forth sufficient allegations to state a claim for unfair competition by false endorsement under the Lanham Act and are in the category of individuals meant to have a remedy for Defendants’ conduct. Defendants’ motion to dismiss will therefore be denied.
Western District of North Carolina

OPPENHEIMER V. MORGAN
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Infringement - pleading requirements, Integrity of Copyright Management Information - pleading requirements, Contributory infringement - pleading requirements, Vicarious infringement - pleading requirements

THIS MATTER is before the Court on Defendant Harley Obolensky Morgan’s (“Morgan”) Motion to Dismiss the Complaint . . .

A. Direct Copyright Infringement . . . Here, the Plaintiff asserts sufficient facts to allege direct copyright infringement against Defendant Morgan. . . . The Complaint alleges that Defendant Morgan “controlled nearly all decisions of Capital,” . . . so it is reasonable to infer that Defendant Morgan personally engaged in the publication of the photographs and the infringement on the copyrights.

B. DMCA Violations . . . The Plaintiff alleges that Defendant Morgan controlled nearly all decisions of Capital and is the dominant influence in the company. . . . The Plaintiff further alleges that one or more of the Defendants removed the copyright management information that Plaintiff placed on the copyrighted photographs. . . . Further, the Plaintiff alleges that Defendants knew or had reasonable grounds to know that removing the copyright management information would induce, enable, facilitate, and/or conceal any potential copyright infringement. . . . Accepting the Plaintiff’s allegations as true and construing them in the light most favorable to Plaintiff, there are sufficient facts to allege that Defendant Morgan removed the copyright management information in violation of the DMCA.

C. Contributory Copyright Infringement . . . The Plaintiff alleges that Defendant Morgan caused, enabled, facilitated, and/or materially contributed to the infringements. . . . However, the Plaintiff makes no allegation that Defendant Morgan induced or encouraged another to infringe the Plaintiff’s copyrights. Plaintiff only alleges that Defendant Morgan was the decision-maker for Defendant Capital. As such, Plaintiff’s allegations support a claim for direct infringement by Defendant Morgan but are inconsistent with a claim for contributory infringement. Therefore, there are insufficient facts to support a claim for contributory copyright infringement against Defendant Morgan, as there are no allegations that Defendant Morgan induced or encouraged direct copyright infringements that were effectuated by another. Accordingly, this claim will be dismissed.

D. Vicarious Copyright Infringement . . . Here, the Plaintiff alleges that Defendant Morgan controlled nearly all decisions of Capital and is the dominant influence in the company. . . . In addition, the Plaintiff alleges that Defendant Morgan “had the right and ability to supervise and/or control the infringing conduct of Capital, and/or stop the infringements once they began.” . . . Finally, the Plaintiff alleges that Defendant Morgan has an obvious and direct financial
interest in the infringing activities of Capital since he is an officer, director, manager or other principal of/for Capital. As a principal of Capital, Defendant Morgan’s financial interests are intertwined with Capital’s. . . . Therefore, Defendant Morgan has a direct and obvious financial interest in Capital. Thus, Plaintiff’s allegations present sufficient facts with regard to each element of this claim.

SEDGEWICK HOMES, LLC V. STILLWATER HOMES, INC.
No. 5:16CV49, 2019 WL 2881616 (W.D.N.C. Jul. 1, 2019)
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Architectural work - design
Topics: Remedies - attorneys fees

This matter is before the Court upon the Defendant’s Motion for Attorney’s Fees. Plaintiff Sedgewick filed claims against Stillwater for copyright infringement, Lanham Act reverse passing off, North Carolina statutory unfair and deceptive trade practices (“NCUDTPA”), and unfair competition. The Court denied both parties’ motions for summary judgment, and a jury trial was held. After Sedgewick’s case in chief, the Court granted in part Stillwater’s Rule 50 motion, leaving only the copyright infringement claim. The jury returned a verdict finding that Plaintiff owned a valid copyright; Stillwater had access to Plaintiff’s work and there is substantial similarity between the Quail Valley and the Trent, but that Trent plan was created independently by Stillwater. Defendant Stillwater now seeks $271,154.88 in attorney’s fees as a prevailing party pursuant to the Copyright Act, the Lanham Act, and the NCUDTPA.

OPPENHEIMER V. KENNEY
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Defenses - fair use

THIS MATTER is before the Court on the Defendant’s Motion to Dismiss Plaintiff’s First Amended Complaint . . . .

Here, the Defendant argues that the use of Plaintiff’s copyrighted photographs was non-commercial and had no economic impact on the marketplace for Plaintiff’s photographs. . . . However, the Amended Complaint alleges that the Defendant “benefitted” from the use of the photographs at issue, causing “irreparable injury to his business, reputation, and goodwill, and dilution in the marketplace.” . . . Further, while the Defendant also asserts that his blog is “educational” and “informational,” the nature of the blog is not articulated in the Amended Complaint, nor evident from the exhibits thereto. . . . Thus, the Court cannot say that all facts necessary to the resolution of Defendant’s affirmative defense “clearly appear” on the face of the Amended Complaint.
SEDGEWICK HOMES, LLC V. STILLWATER HOMES, INC.
No. 5:16CV49, 5:16CV50, 2019 WL 3226929 (W.D.N.C. Jul. 17, 2019)
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Architectural work - design
Topics: Remedies - attorneys fees

This matter is before the Court upon the Individual Defendants’ Motions for Attorney’s Fees as prevailing parties in this federal copyright lawsuit. Each motion has been fully briefed and this matter is ripe for disposition. . . .

Considering each of the factors set out in Diamond Star Bldg., the Court finds that these factors weigh in favor of a fee award to the Individual Defendants. While the reasonableness of Sedgwick’s position is a significant factor, as stated by the Supreme Court in Kirtsaeng, it is not controlling and can be outweighed by other considerations. Here, the Court finds that Sedgwick’s admitted bad faith motivation for suing these Defendants outweighs any consideration of the objective reasonableness factor.

SONY MUSIC ENTMT'V. COX COMM'C'NS, INC.
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Music - sound recording, Music - musical work
Topics: Copyright registration - presumption of validity, Contributory infringement - knowledge

Before the Court are the Parties' Cross Motions for Summary Judgment. . . . In a hearing before the Court on November 26, 2019, Defendants directed the Court's attention to an issue regarding the knowledge element for contributory infringement, and its treatment at summary judgment. Specifically, there is confusion regarding the treatment of musical compositions within a prima facie case for contributory liability. The Court agrees with the Parties that clarification is appropriate, and takes this opportunity to clarify its ruling. As to knowledge of musical compositions in suit, Section II.B.2 is replaced, and this opinion supersedes the Memorandum Opinion and Order of November 15, 2019 . . . .

Fifty-three members of the recording industry (“Plaintiffs” or “Sony”) bring this action for copyright infringement. They seek relief from Cox Communications, Inc. and CoxCom, LLC (“Defendants” or “Cox”) for infringement of Plaintiffs' works that allegedly occurred by unauthorized download and distribution of files using Cox's network. Plaintiffs allege both contributory infringement and vicarious liability for infringement by Cox's internet subscribers. Specifically, Plaintiffs claim that Defendants are liable for infringement of 7,068 copyrighted sound recordings and 3,452 copyrighted musical compositions from February 1, 2013 until November 26, 2014 (“Claim Period”). . . .

A. Ownership of Copyrights in Suit . . . Plaintiff has shown sufficient ownership evidence, and Defendants have failed, in most instances, to rebut Plaintiffs’ claims with evidence to create a genuine issue of material fact. The Court intends for this holding to apply to 10,022 works;
specifically, the Court grants summary judgment on all 10,100 works referenced in Plaintiffs' Reply brief, except for the 78 works discussed above as ineligible for suit because of late registration. For the reasons stated herein, Plaintiffs' motion for summary judgment on copyright ownership is hereby GRANTED with the exclusion of those works registered late. Copyright ownership for the works in suit is not an issue for trial.

B. Knowledge, as Applied to Contributory Infringement . . . To conclude, neither the existing body of law in the Fourth Circuit nor Cobbler in the Ninth Circuit preclude a jury from finding that Cox had actual knowledge of or was willfully blind to infringement by residential and business subscribers alike. As outlined above, relative to the stated issues of the knowledge element of contributory infringement, Plaintiffs' motion is GRANTED, and Defendants' motion is DENIED. This ruling is limited to the knowledge element and thus not dispositive of a contributory infringement claim.

Western District of Virginia

CANCIAN V. HANNABASS AND ROWE, LTD.
Outcome: Motion for summary judgment - denied
Works of Authorship: Visual work - photograph
Topics: Infringement - liability of corporate officers, Vicarious infringement - financial interest, Defenses - fair use, Remedies - actual damages

This matter comes before the court on a number of motions filed by defendants Hannabass and Rowe, Ltd. (“Hannabass”) and Lindsay Michelle Stinson (“Stinson”). The first of these is Hannabass and Stinson's (collectively, “defendants”) motion for summary judgment, filed on June 19, 2019. . . . For the reasons articulated below, the court now . . . DENIES defendants' motion for summary judgment . . . .

Defendants make four arguments in favor of summary judgment: (1) that Stinson cannot be held individually liable for copyright infringement committed by Stinson Communications, LLC; (2) that Hannabass cannot be held vicariously liable for copyright infringement committed by Stinson Communications; (3) that the infringement in this case is excused by the fair use doctrine; and (4) that Cancian cannot sustain his case because he has made no showing of damages. The court will address each argument individually. . . .

Defendants contend that not enough has been produced to show that Stinson either was “the dominant influence” at Stinson Communications or “determined the policies that resulted in the infringement.” . . . The court disagrees. Stinson is the owner, principal, and sole member of Stinson Communications. . . . Defendants admit that she personally selected the “Speeding Fall” photo for use on Hannabass' website. . . . This on its own is enough to create a question of material fact as to whether Stinson was the dominant influence at her company and whether she determined the policies that resulted in the alleged infringement.

Dennis Holdren, president and owner of Hannabass, stated in his declaration in support of summary judgment that Hannabass hired Stinson Communications to create its commercial
Whether hired as an employee or independent contractor, the law on this issue is clear that such a relationship creates at least a question of fact as to the right and ability of Hannabass to supervise the creation of its own website. Further, because “Speeding Fall” was posted on Hannabass' commercial website, sufficient evidence of an obvious and direct financial interest in this infringement has been produced such that summary judgment is inappropriate. The court DENIES defendants' motion to dismiss Hannabass as a defendant from this case.

The court finds little, if any, transformative value in the use of the photo on Hannabass' website. The context of the use, placement above and next to an article about safe driving during the fall, may alter the meaning of the photo somewhat. An individual reading this article would view “Speeding Fall” as a reference to the fall season rather than as an artistic work. Additionally, nothing about the safe driving tips offered encourages a reader to note the photo-editing techniques applied to “Speeding Fall.” All the same, Cancian took a picture of a roadway surrounded by a forest and intentionally altered it to look like a fall scene rather than a summer scene—though the artistic expression and technical proficiency meant little to Stinson when she posted the photo on Hannabass' website, the photo was chosen because it depicts exactly what Cancian intended it to—a road in autumn. One assumes that any individual viewing Cancian's photo in any context would see it as a road in autumn. Accompanying the photo with an article on driving safety doesn't change that interpretation.

Stinson's use of the photo is neither a technological function nor a documentary function. While the documentary function may come closest to explaining Stinson's use of Cancian's photo, any such argument clearly falls quite short. “Speeding Fall” arguably served a representational, informative purpose, but was certainly far from necessary to provide historical accuracy (or accuracy of any kind) to the article on safe driving in the fall. The court thus concludes that the use of “Speeding Fall” is not transformative. This conclusion weighs against a finding of fair use.

As regards the second part of this element's analysis, the court finds that the use of the photo was only somewhat commercial, despite the fact that the photo was used on a commercial website. Neither Stinson nor Hannabass was attempting to sell the photograph, advertise photographic editing techniques, promote tourism, or even draw attention to the photo. And while certainly anything posted on Hannabass' website could be termed commercial, since the website itself is commercial, the photo's use on this particular page doesn't appear to be the promotion of Hannabass, but the delivery of several safety tips. Defendants contend that, to the extent the use of the photo was commercial, the commercial gain has been so “tenuous” that neither party is able to identify a financial benefit.

Defendants argued that Stinson chose “Speeding Fall” purely as a factual depiction of a road in the fall. For that reason, any number of photos could have served the same purpose. The photo was intended to serve purely as a reference to a season. The use of the photo is thus unrelated to any creative decisions made by Cancian in taking and editing the photo. The court finds that the second factor weighs in favor of a finding of fair use.
While the photo was reduced to approximately one fourth the size of the original, it was reproduced in its entirety, and then was reproduced again—a portion of the photo was used as a “banner” photo at the top of the website page. . . . The court finds that the third factor weighs against a finding of fair use. . . .

Cancian is a commercial photographer who engages in the licensing of photographs for profit. Were website operators permitted to use copyrighted photographs without obtaining licenses on a grand scale, sites like “Shutterstock” would no longer be able to charge even $2.90 per month for their myriad fall foliage photographs. The court finds that the fourth factor weighs in favor of a finding of fair use. . . .

Finally, defendants argue that Cancian cannot sustain his case without proof of damages, citing deposition testimony showing that Cancian does not know how much he earns from his photographs available for license. . . . As has already been stated, however, Cancian has previously licensed this photo on four occasions, earning $1,625, and has entered into settlement agreements including retroactive licenses twice in the amount of $5,250. . . . This evidence constitutes proof of damages, however small those damages might be.

CHELKO V. DOES JF RESTAURANTS, LLC
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Defenses - statute of limitations, Integrity of Copyright Management Information - falsity, Integrity of Copyright Management Information - knowledge, Integrity of Copyright Management Information - pleading requirements

THIS MATTER COMES before this Court on Defendant JF Restaurants, LLC’s (“Defendant”) Motion to Dismiss . . . . As such, this matter is ripe for disposition. . . .

Plaintiff’s Claim of Direct Infringement . . . If every access of a copyrighted work on a website establishes a new claim for infringement, as Plaintiff contends, the statute of limitations becomes obsolete for the internet. Merely checking to see if a photograph is still on a website would reset the clock and establish a new claim. Given the express purpose of the statute of limitations – “to render uniform and certain the time within which copyright claims could be pursued,” – this Court declines to read out the statute of limitations and interpret digital infringement this way. . . . Thus, Plaintiff alleges no new internet infringement that he discovered within the statutory period.

The only allegation that survives this Motion is Plaintiff’s assertion that Defendant continued to sell gift cards displaying infringing photographs into 2016. Even if Plaintiff knew about this practice in 2013, the repeated, independent sale of these gift cards into 2016 is a claim that survives the statute of limitations. Title 17 United States Code Section 106(3) gives to copyright holders the exclusive right to “distribute” the work “to the public by sale or other transfer of ownership.” If Defendant used three of Plaintiff’s images improperly on gift cards sold to the
public into 2016, this clearly violates Plaintiff’s exclusive right to distribute the work by sale within the statutory period. . . .

Plaintiff does not identify any information, CMI or otherwise, that is false on the photographs, nor identify which photographs contain false information. Instead, his allegation is a near-identical recitation of § 1202(a)(1)-(2). This runs afoul of the clear standard in Iqbal that “[t]hreadbare recitals of a cause of action’s elements ... do not suffice.” . . . Furthermore, Plaintiff does not allege the scienter requirements that are also necessary to bring a § 1202(a) claim. Plaintiff does not plead that Defendant’s falsification of CMI was done knowingly and with intent to induce or aid a copyright claim. All mention of Defendant’s state of mind occurs in paragraph 45 and specifically refers to the removal or alteration of CMI, the acts barred under § 1202(b). . . . Thus, Plaintiff does not allege a plausible claim for relief for a violation of 17 U.S.C. § 1202(a). Defendant’s Motion to Dismiss as relates to this claim is GRANTED.

Plaintiff does not adequately identify CMI on his photographs that Defendant removed or altered. He does not allege sufficient factual support to state a plausible claim for relief under § 1202(b). Accordingly, Defendant’s Motion to Dismiss as it relates to this claim is GRANTED.

Northern District of West Virginia

WH MIDWEST, LLC V. A.D. BAKER HOMES, INC.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Architectural work - plan
Topics: Infringement - pleading requirements, Preemption - unfair competition, Preemption - unjust enrichment

This is a copyright infringement action arising out of plaintiff's possession of certain rights and interests in the copyrighted “Covington” home plan (Copyright Registration Number VA0001842229) and the “Westport” home plan (Copyright Registration Number VA0002081794) (hereinafter, collectively the “Copyrighted Works”). Plaintiff, WH Midwest, LLC, doing business under the registered trade name “Wayne Homes” (hereinafter “Wayne Homes”), contends that the copyrighted architectural works and copyrighted depiction of the materials described in the Copyrighted Works constitute original material that is copyrightable under federal law. . . .

In the complaint, plaintiff describes two specific instances of defendants' alleged infringing actions referred to as the Ortiz infringement and the Black infringement. Plaintiff pleads, with sufficient specificity, its claims for infringement of the copyrighted “Covington” home plan (Copyright Registration Number VA0001842229) and the “Westport” home plan (Copyright Registration Number VA0002081794) (Count I). Without considering the merits of the allegations set forth in Count I, this Court finds that the complaint states a claim for relief that is sufficient on its face, which is all that is required to survive a motion to dismiss under Rule 12(b)(6). Based upon the standard of review for motions to dismiss, this Court finds that the plaintiff's allegations as to copyright infringement (Count I) are sufficient to warrant denial of the defendants' motions to dismiss. . . .
Defendants argue that plaintiff's alleged Lanham Act claim cannot be asserted in this case, as it is preempted by copyright law. This Court agrees. The entirety of plaintiff's unfair competition claim is premised upon the allegation that “[d]efendants, by utilizing Wayne Homes’ Copyrighted Works and by constructing the Infringing Ortiz House and/or Infringing Black House, and by publication of the Infringing Black House on the A.D. Baker Facebook website, have falsely led the public to believe that the source and origin of the copyrighted Wayne Homes designs are that of A.D. Baker and/or Unknown Architect Number 1 and/or MJB and not Wayne Homes.” . . . None of these allegations are qualitatively different from plaintiff's copyright infringement allegation. In comparison, the plaintiff's copyright infringement allegation (Count I) asserts, in pertinent part, “[p]ublication of the photograph of the Infringing Black House on the A.D. Baker Facebook website has infringed Wayne Homes' copyrights in the Copyrighted Works.” . . . Essentially, plaintiff claims in this count that the right to create, distribute, and use the Copyrighted Works has been infringed. Such rights are precisely among those that § 106 of the Copyright Act protects. . . . Thus, under the law cited above, and upon review of the plaintiff's complaint as it relates to the allegation of unfair competition under the Lanham Act (Count II), this Court finds that plaintiff's unfair competition claim is preempted as it falls within the realm of copyright and is subject to dismissal as a matter of law. . . .

Upon review, plaintiff's alleged unjust enrichment claim is not qualitatively different from plaintiff's copyright infringement allegation. Essentially, plaintiff claims in this count that the right to reproduce and distribute a copyrighted work has been infringed. Because the plaintiff attempts to vindicate via state law claims the same rights being pursued through the Copyright Act, plaintiff's unjust enrichment claim (Count III) is preempted. Once a court determines that a state law claim has been completely preempted by the Copyright Act and therefore that it has jurisdiction to consider it, the court must then dismiss the preempted claim for failing to state a claim. . . . Thus, under the law cited above, and upon review of the plaintiff's complaint as it relates to the allegation of unjust enrichment (Count III), this Court finds that plaintiff's claim for unjust enrichment is preempted and is subject to dismissal as a matter of law.

Fifth Circuit

Court of Appeals for the Fifth Circuit

GEOPHYSICAL SERV., INC. V. TGS-NOPEC GEOPHYSICAL CO.
No. 18-20493, 2019 WL 4410259 (5th Cir. Sep. 13, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Literary work - survey
Topics: Defenses - license

Geophysical Service, Incorporated (“Geophysical”), a Canadian company that collects, prepares, and licenses offshore seismic data, appeals the grant of summary judgment against it on its copyright infringement claim. Because we agree with the district court that Geophysical granted non-party the Canada-Newfoundland and Labrador Offshore Petroleum Board (the “Board”) an implied license to copy and distribute its speculative seismic data, we AFFIRM the judgment without reaching the parties’ other arguments. . . .
Geophysical appeals both of the district court’s holdings, and TGS argues the panel can alternatively affirm the district court under copyright law’s first-sale doctrine. Because we agree with the district court that Geophysical granted the Board an implied license, we do not reach the express-license or first-sale arguments.

Eastern District of Louisiana

BATISTE V. LEWIS
No. CV 17-4435, 2019 WL 1591951 (E.D. La. Apr. 12, 2019)
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Music - sound recording
Topics: Remedies - attorneys fees

Before the Court is Motion to Fix Attorneys’ Fees . . . . IT IS ORDERED that Motion to Fix Attorney’s Fees . . . is GRANTED and that the Plaintiff is awarded reasonable attorney’s fees in the amount of $3,554.00.

R. CHRISTOPHER GOODWIN & ASSOCS., INC. V. SEARCH, INC.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Literary work - report
Topics: Remedies - statutory damages, Remedies - attorneys fees, Circumvention of copyright protection systems - circumvention, Preemption - trade secret misappropriation, Preemption - Dastar

The following motion is before the Court: Motion to Partially Dismiss Complaint . . . filed by Defendants, Southeastern Archaeological Research, Inc. d/b/a SEARCH, Inc. and Charlotte D. Pevny, Ph.D. . . .

Count I – Copyright Violations . . . § 412 prohibits an award of statutory penalties and attorney’s fees under §§ 504 & 505 because the last act of infringement allegedly occurred in October 2018, and the effective date of the copyright registrations is April 2, 2019. . . .

The Court is persuaded that Plaintiff’s allegations do not state a claim for circumvention under the plain terms of § 1201 of the DMCA. Circumvention is an essential part of a violation. . . . While the user id/password combination required for access was surely a “technological measure” that controlled access to the works at issue, Pevny did not circumvent that measure. She validly accessed the system using her id/password combination while she was still an employee with Plaintiff. Even if the use that she made of that access is not something that Plaintiff would have authorized her to do, i.e., copy the materials at issue, it remains that Pevny’s alleged abuse of her logon privileges does not rise to the level of descrambling, decrypting, or otherwise to avoiding, bypassing, removing, deactivating, or impairing anything. . . .
2. Count II – Louisiana Unfair Trade Practices Act . . . The Fifth Circuit has previously held that § 301 of the Copyright Act does not preempt a LUTPA claim because a LUTPA claim requires proof of fraud, misrepresentation, or other unethical conduct . . . Therefore, the relief provided by the LUTPA is not “equivalent” to that provided in the Copyright Act. Id. Thus, preemption does not apply . . .

7. Count VII – Lanham Act . . . Defendants argue that allegations of copyright infringement are not cognizable under the Lanham Act. Defendants rely upon Dastar Corp. v. Twentieth Century Fox Film Corp. . . . in support of their contention that the Lanham Act claim should be dismissed on the pleadings.

The Copyright Act expressly warns that it does not annul or limit any rights or remedies under any other federal statute. . . . The Copyright Act does not preempt the Lanham Act, or vice versa . . . The Lanham Act does not vindicate the rights of an author of ideas, concepts, or communications embodied in goods offered for sale. Id. The Lanham Act is not designed to protect originality and creativity—that’s what the Copyright Act does . . . Therefore, claims of false authorship and reverse passing off, when raised to protect an author’s interest in the intellectual content of communicative products, should be pursued under copyright infringement and not the Lanham Act . . .

Plaintiff has alleged no additional facts in support of it Lanham Act claim that take it beyond an ordinary copyright infringement claim . . . The motion to dismiss is GRANTED as to the Lanham Act claim.

Northern District of Mississippi

RONALDO DESIGNER JEWELRY, INC. V. COX
Outcome: Motion for issuance - granted
Works of Authorship: Visual work - jewelry
Topics: Defenses - fraud on the Copyright Office

This intellectual property case is before the Court on “Defendants James B. Cox and Catherine A. Cox's Motion for Issuance of Request to Register of Copyrights pursuant to 17 U.S.C. § 411(b)(2).” . . .

A. Claimant and Owner . . . The Coxes argue that Ronaldo Inc. was not the owner of the Angelina and Power of Prayer bracelets at the time it applied for the relevant copyright registrations because “Ronaldo, by and through its CEO and founder [Ronnie] Needham, lost copyright ownership in Power of Prayer and Angelina jewelry designs by operation of law after Mr. Needham filed for chapter 7 bankruptcy in 2009.” . . . [T]he Coxes have offered no allegations which would support a conclusion that the transfer between Gold Craft and Ronaldo Inc. was in any way “fraudulent” so as to implicate the statute. Even if the transfer was fraudulent under the statute, there is no allegation the trustee in Ronnie's bankruptcy has acted to set aside the transfer. In the absence of such allegations, the Coxes' invocation of § 548(a) is unwarranted by existing law or non-frivolous argument to extend existing law . . .
B. Authorship and Transfer . . . The Coxes next argue referral to the Register is required because Ronaldo Inc.'s initial copyright applications, which have since been corrected, erroneously listed Ronaldo Inc. (rather than Gold Craft) as the author of the bracelet designs and failed to specify that Ronaldo Inc. was claiming the copyright through a transfer. . . . There is no dispute the applications were incorrect in this regard. . . . Here, because the Register accepted Ronaldo Inc.'s supplemental registration and because the Coxes have made no allegation that the appropriate information would not have been provided to the Copyright Office in response to an inquiry, the Court concludes that the Coxes have not made a good faith allegation that the Register would have rejected Ronaldo Inc.'s applications based on the incorrect author information.

C. Excludable Elements . . . 1. Power of Prayer bracelet . . . The Coxes submit the Power of Prayer bracelet “is a derivative of pre-existing designs, including” designs by Preston Reuther and those included in an Incahoots brochure. . . . In sum, the Court concludes that the Coxes have made good faith allegations which warrant a request to the Register regarding the Power of Prayer bracelet. On referral, the Register is requested to provide guidance as to whether, had it known the Power of Prayer bracelet was derivative of the Reuther window bracelet, it would have rejected the application for failure to disclose previous material works.

2. Angelina bracelet . . . Because the Coxes have not identified a Donnan bracelet on which the Angelina bracelet is allegedly based, and have not alleged that Ronnie was familiar with any such work, the Court finds no good faith allegations to justify a referral on such grounds. However, for the reasons above, considering the similarities between the Angelina bracelet and Reuther bar bracelet identified by the Coxes, and Ronnie's familiarity with Reuther's work, the Court finds sufficient grounds to issue a request to the Register on the potential effect of the Reuther bar bracelet on the Angelina bracelet application.

Southern District of Mississippi

RAJU V. MURPHY
Outcome: Motion to amend - granted-in-part
Works of Authorship: Audiovisual work - video
Topics: Scope of protection - procedure, Copyright registration - registration requirement, Infringement - pleading requirement, Preemption - trade secret misappropriation, Preemption - civil conspiracy

On October 31, 2018, the Court entered an Order denying without prejudice Dr. Seshadri Raju's motion to amend. . . . Now before the Court is Raju's renewed motion. Docket No. 140. The proposed amendment adds a party, Medtronic Vascular, Inc. (“Medtronic”), and six substantive claims: (1) copyright infringement (2) federal misappropriation of trade secrets, (3) state misappropriation of trade secrets, (4) tortious interference with contract, (5) civil conspiracy, and (6) unauthorized access to a computer network. Dr. Erin Murphy argues that each of the proposed claims are futile and as such, the amendment should be denied. . . .
Murphy's first argument is unpersuasive. Raju is alleging a copyright violation over the use of his surgical videos, not his surgical procedures. . . . Copyright protection extends to Raju's surgical videos. . . .

As for the second argument, Raju submitted to the Court a copy of his application for copyright registration of his surgical videos and receipts for fees paid. He is awaiting the issuance of registration certificates. Murphy claims that this is insufficient to allege ownership of a valid copyright, but the Fifth Circuit disagrees. . . . Raju, therefore, has alleged ownership of a valid copyright.

Next, Murphy claims that because Raju has alleged only that Murphy took a surgical video without permission, rather than actually using it in Murphy's or Medtronic's own work, or any substantial similarity, Raju has failed to allege actionable copying. . . . In Raju's proposed complaint, he alleges that the stolen video was used to develop Medtronic's venous stent program. . . . This is sufficient to allege actionable copying.

Raju may amend his complaint to include a copyright infringement claim. . . .

Raju's surgical procedures and methods all fall within the subject matter of copyright and, as such, pass the first prong of the preemption test. . . . In accordance with the overwhelming case law, the Court concludes that Raju's trade secret misappropriation claim requires establishing an additional element—that the protected information was acquired through a breach of a confidential relationship or discovered by improper means—than what is required to make out a copyright violation. Having failed the second prong of the preemption test, this claim is not preempted. . . .

The civil conspiracy claim is not qualitatively different from the underlying federal copyright claim. As such, Raju's conspiracy claim is preempted to the extent that the conspiracy claim implicates Raju's copyrighted materials. However, because Raju also alleges that Murphy and Medtronic conspired to steal his trade secrets, that claim is not preempted.

Eastern District of Texas

VIRTUAL CHART SOLUTIONS I, INC. V. MEREDITH
Outcome: Motion for summary judgment - granted
Works of Authorship: Literary work - computer program
Topics: Infringement - evidence of copying, Infringement - substantial similarity

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. On June 17, 2019, the Magistrate Judge issued a Report and Recommendation (“R&R”), recommending Defendant MRI Centers of Texas, LLC’s Motion for Summary Judgment . . . be granted and that Plaintiff’s copyright infringement claims against Defendant be dismissed with prejudice . . . . Virtual Chart Solutions I, Inc. (“Plaintiff” or “VCSI”) filed objections to the R&R . . . . The Court conducts a de novo review of the Magistrate Judge’s findings and conclusions. . . .
The Court agrees Meredith’s testimony is not evidence, which if believed, proves factual copying of the copyrighted work without inference or presumption. Like the Magistrate Judge, the Court is not convinced Plaintiff offered direct evidence, from Meredith or otherwise, that MCT as the alleged infringer actually copied the protected material. Plaintiff’s failure to present sufficient direct (or circumstantial) evidence to create a genuine issue of material fact on the element of factual copying means summary judgment is proper.

Similarly here, Plaintiff has failed to present sufficient tangible evidence of source code copying to survive summary judgment. Although the question of substantial similarity is typically left to the impressions of a fact finder, the Creations Unlimited decision contemplates that a fact-finder will have the opportunity to view the two works side-by-side. Putting aside the issue of whether Plaintiff may proceed to trial without an expert to opine on the “substantial similarity” of Plaintiff’s code and Defendant’s code and also assuming Plaintiff had presented sufficient evidence to create a genuine issue of material fact as to factual copying (which it has not), Plaintiff would still not be able to satisfy the requirement that the protected and alleged infringing code be compared side-to-side. As noted above, Plaintiff’s copyrighted work is comprised of over 250 pages of technical source code. There is no evidence in the record as to the alleged infringing software or executable code which Meredith claimed he leased to Defendant. The Court finds Plaintiff’s second objection without merit.

Northern District of Texas

WINDSOR V. OLSON
Outcome: Motion for summary judgment - granted, Motion for summary judgment - granted-in-part
Works of Authorship: Literary work - plan
Topics: Copyrightability - creativity

Before the court are Plaintiff’s Motion for Summary Judgment Against Defendant Nerium International, LLC’s Counterclaims . . . . Defendants' Motion for Partial Summary Judgment . . .

After carefully considering the motions, briefs, record, and applicable law, the court grants Defendants' Motion for Partial Summary Judgment . . . and grants in part and denies in part Plaintiff’s Motion for Summary Judgment Against Defendant Nerium International, LLC’s Counterclaims . . . . Specifically, the court grants Defendants' motion for partial summary judgment as to Plaintiff’s federal and state law claims. The court denies Plaintiff’s motion for summary judgment with respect to Nerium’s counterclaims under the Defend Trades Secret Act (“DTSA”) and Texas Uniform Trade Secrets Act (“TUTSA”); its state common law claims for breaches of fiduciary duty and duty of loyalty, and conversion; and declaratory judgment of no copyright infringement and invalidity. The court grants Plaintiff’s motion for summary judgment with respect to Nerium’s counterclaim for declaratory judgment that it has copyright ownership in the alleged works and denies it with respect to Nerium’s counterclaim for declaratory judgment of no copyright infringement, copyright invalidity, and implied license. . . .
"Compensation Plan" . . . The court determines that Windsor has failed to meet his burden of establishing that he has a valid and enforceable copyright in the “Compensation Plan,” as required under the first element for asserting a copyright infringement claim. As the court previously discussed, Windsor bears the burden of establishing that the work is copyrightable because the copyright registration for this work shows that it was not timely procured pursuant to 17 U.S.C. § 410(c) and, therefore, is not entitled to a prima facie finding of validity. Windsor has not set forth any evidence that the “Compensation Plan” bears the minimal degree of creativity required for copyright protection. Windsor makes a conclusory argument that the “Compensation Plan” is an original factual compilation. Notwithstanding Judge Horan’s order precluding Windsor from arguing that he has a copyright in the “Compensation Plan” based on its arrangement of text and graphics, Windsor fails to explain the basis for his assertion that the selection, placement, and arrangement of the information in the “Compensation Plan” is sufficiently original. The court’s review of the “Compensation Plan” leads it to conclude that it contains an unoriginal spreadsheet of rows and columns with textual description and numerical percentages, lacking any graphics and featuring information relating to commissions and bonuses that correspond to various Nerium “brand partner” rankings.

The only other summary judgment evidence regarding the copyrightable elements of the “Compensation Plan” is Windsor’s answer to Interrogatory No. 7(c), wherein he lists five short, textual phrases that appear in the “Compensation Plan”: (1) “Personal Customer Commissions,” (2) “Leadership Development Bonus”; (3) “Sponsor Tree”; (4) “First Order Bonus”; and (5) “Unilevel Commissions.” “The Copyright Act, [however], does not protect fragmentary words or short phrases.” . . . Windsor is not entitled as a matter of law to a valid and enforceable copyright in the fragmentary phrases that are listed in his response to Interrogatory No. 7(c) and that appear in the “Compensation Plan” spreadsheet.

As there is no evidence establishing that protectable elements exist in the “Compensation Plan,” Defendants are entitled to judgment as a matter of law on Windsor’s copyright infringement claim with respect to this work.

“Roadmap to Success” . . . The court . . . agrees with Defendants that the elements asserted by Windsor as the copyrightable elements of “Roadmap to Success” are not subject to copyright protection. In the response to Interrogatory No. 7(c), Windsor first asserts that he has a copyright in the “Entire Road to Lexus (Success) program”—but he does not elaborate in his Response or provide evidence as to what constitutes such program. Nevertheless, in reviewing the “Roadmap to Success,” the court reasonably infers that the “program” to which Windsor refers is the multi-level marketing business model and how a brand partner can earn commissions, bonuses, and other rewards, and gain status within the company over a certain amount of time (30 days, 60 days, 90 days) through establishing connections with other brand partners. As noted by Defendants, the business model of a multi-level marketing scheme is not protectable under copyright law.

The remaining alleged protected elements that Windsor has identified are the phrases: (1) “Fast Start Qualify – First 30 Days,” (2) “Qualify as Director – First 60 Days”; and (3) “Qualify as Sr.
Director – First 90 Days.” See Defs.’ App., Doc. 112 at 268. These phrases are featured in “Roadmap to Success” as what appear to be three steps to qualifying for certain promotional statuses as a brand partner and earning corresponding rewards over periods of time (30 days, 60 days, 90 days). These are “fragmentary words and phrases ... dictated solely at functional considerations” and do not exhibit “the minimal level of creativity necessary to warrant copyright protection.” . . . Windsor’s response fails to address this flaw or identify any other specific protectable elements of the “Roadmap to Success” that the court should consider. Accordingly, the court determines that Defendants have rebutted the presumption of validity afforded to the copyright registration in “Roadmap to Success” and Windsor has failed to raise a genuine dispute of material fact that he owns a valid and enforceable copyright in the work. Defendants are accordingly entitled to judgment as a matter of law as to this work.

EXNER V. FIRST COMMAND FIN. SERVS., INC.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Literary work - business plan
Topics: Ownership - standing

Came on for consideration the motion of defendants, First Command Financial Services, Inc., First Command Financial Planning, Inc., First Command Advisory Services, Inc., First Command Insurance Services, Inc., and First Command Bank, to partially dismiss. The court, having considered the motion, the response of plaintiffs, Joachim (John) W. Exner (“John”), Claudia Exner (“Claudia”), Exner, Inc. (“EI”), and Exner & Associates, Inc. (“EAI”), the reply, the record, and applicable authorities, finds that the motion should be granted in part. . . .

Here, plaintiffs have pleaded that the copyrights at issue are owned by EI.5 Therefore, EAI lacks standing to assert those claims and they will be dismissed.

DIAMONDBACK INDUS., INC. V. REPEAT PRECISION, LLC
Outcome: Motion to dismiss - denied
Topics: Integrity of Copyright Management Information - copyright registration

Came on for consideration the partial motion to dismiss by defendants, Kingdom Downhole Tools, LLC, Trea H. Baker, and Justice Baker. The court, having considered the motion, the response, the reply, the record, and applicable authorities, finds that such motion should be denied. . . .

Because copyright registration is not a prerequisite to this action, plaintiff’s DMCA claim need not be dismissed for failure to state a claim. . . . First, a plain reading of the DMCA does not establish that it is subject to the registration requirement found in 17 U.S.C. § 411(a). . . . Second, Section 411(a) need not apply to the DMCA merely because other provisions of Title 17
do. . . . Third, the case law cited by defendants does not indicate that registration is required for DMCA actions.

STROSS V. PR ADVISORS, LLC
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Infringement - pleading requirements, Vicarious infringement - pleading requirements

Before the court is the motion of the defendant PR Advisors, LLC, d/b/a Pinnacle Realty Advisors (“PRA”), to dismiss the plaintiff’s claim for vicarious copyright infringement pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. . . . For the reasons set forth below, the motion is denied. . . .

Here, Stross has stated a claim for direct copyright infringement against Gardner. Stross alleges that he is the sole author and creator of the photo at issue, and that Gardner displayed the photo on her website, www.karmengardner.com, without permission. The court therefore concludes that the plaintiff has sufficiently pleaded his claim for direct infringement against Gardner. . . .

Upon careful consideration of the pleadings and the parties’ arguments, the court concludes that the plaintiff has stated a claim for vicarious copyright infringement against PRA. First, Stross has adequately alleged that PRA has a direct financial interest in Gardner’s use of the photo on her website. Gardner is PRA’s sponsored agent, and it is plausible that Gardner’s use of the photo to enhance the appeal of her website provides both Gardner and PRA with a direct financial benefit in the form of increased business. . . .

Second, Stross’s undisputed allegation that Gardner is a licensed real estate agent under PRA’s sponsorship, coupled with PRA’s statutory obligation to supervise Gardner’s actions, are sufficient to state a plausible claim that PRA has the right and ability to supervise Gardner’s infringing activity.

Southern District of Texas

HACIENDA RECORDS, LP V. RAMOS
Outcome: Motion for attorneys fees and costs - granted, Motion for permanent injunction - denied
Works: Music - sound recording
Topics: Remedies - attorneys fees, Remedies - costs, Remedies - permanent injunction

Pending before the Court are Plaintiff/Counter-Defendants’ Hacienda Records and Recording Studio, Inc.; Hacienda Records, L.P.; Latin America Entertainment, LLC; Rick Garcia; and Roland Garcia, Sr.’s (deceased) (collectively “Hacienda”) Application for Attorneys’ Fees and Costs . . . and Motion for Appellate Related Attorneys’ Fees and Costs . . . . For the reasons set
out below, the Court awards Hacienda attorneys’ fees in the amount of $236,544.50 and costs in the amount of $58,101.15.

Western District of Texas

MAI LARSEN DESIGNS V. WANT2SCRAP, LLC
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - design
Topics: Copyright registration - registration requirement, Preemption - conversion, Preemption - fraud, Preemption - fraud in the inducement, Preemption - conspiracy, Preemption - unfair competition

Before the Court in the above-styled cause of action are the following four dispositive motions: Defendants Wants2Scrap, LLC and Michele Parrish’s Motion for Judgment on the Pleadings Pursuant to Fed. R. Civ. P. 12(c) . . . , Defendants Wants2Scrap, LLC and Michele Parrish’s Motion for Summary Judgment . . . , Plaintiff and Counter-Defendants’ Motion for Partial Summary Judgment or Alternatively to Exclude Evidence . . . , and Defendants Wants2Scrap, LLC and Michele Parrish’s Supplemental Motion for Summary Judgment . . . For the reasons set forth below, the Court will (1) grant Defendants’ Supplemental Motion for Summary Judgment and dismiss Plaintiff’s copyright claim for failure to obtain a copyright registration prior to filing suit; (2) order Defendants to show cause as to why their counterclaims for a declaratory judgment of non-infringement and claims of copyright infringement and breach of contract should not be dismissed sua sponte along with Plaintiff’s copyright claim; (3) grant in part Defendants’ motion for judgment on the pleadings and dismiss Plaintiff’s conversion claim as preempted by the Copyright Act; (4) grant in part Defendants’ motion for summary judgment on Plaintiff’s fraud and Texas Free Enterprise and Antitrust Act claims; and (5) hold in abeyance Plaintiff’s and Counter-Defendants’ motion for partial summary judgment while the Court considers whether to dismiss Defendants’ counterclaims sua sponte after receiving Defendants’ show cause response. . . .

Larsen argues that it complied with Section 411(a)’s registration requirement because its copyright registrations were made effective on August 7, 2014 and August 18, 2017, before she filed suit on October 25, 2017. . . . As a preliminary matter, the Court finds that the 2014 registration is not relevant to this suit. This registration is not referenced in any of Larsen’s pleadings, nor are the 2014 copyrighted works. Rather, Larsen has repeatedly referred to Exhibit A to the Original and First and Second Amended Complaints as the works at issue in this lawsuit. . . . Exhibit A is a chart of the 2-D chipboard designs submitted to the Copyright Office on July 28, 2017 and August 18, 2017. . . . The drawings protected by the 2014 copyright registration are not chipboard designs; they are hand sketches of doll figures. . . . Larsen now attempts to argue that “several of [Larsen’s] earlier drawings were her inspiration for later developed designs that Defendants have infringed.” . . . This assertion is irrelevant, however, as Larsen has never claimed that Defendants have infringed upon the works protected by the 2014 registration. Accordingly, the 2014 registration has no bearing on her claim of copyright infringement in this lawsuit.
As to the 2017 registration, Larsen does not disclose to the Court the date on which she received notice that the registrations had been awarded. She simply argues the effective date of the registration predates the filing of this lawsuit, and therefore she satisfied the administrative preconditions to suit under the Copyright Act. To adopt Larsen's reasoning the Court would have to hold that Fourth Estate allows a plaintiff to file a lawsuit before copyright registrations have been awarded and to amend the pleadings after registration is obtained, so long as the effective date (i.e., the date of application) predates the filing of the lawsuit. The Court cannot square this argument with the holding of Fourth Estate, and Larsen's argument has been directly rejected by at least one federal district court since the Supreme Court issued its decision. . . .

Defendants move to dismiss all of the state-law claims in Larsen's Second Amended Complaint as preempted by the Copyright Act. The Court holds that Larsen's conversion claim is preempted and must be dismissed with prejudice. Larsen's claims of fraud, fraud in the inducement, and conspiracy and unfair competition under the Texas Free Enterprise and Antitrust Act, however, are not preempted.

HAAS OUTDOORS, INC. V. DRYSHOD INT'L, LLC
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - graphic work
Topics: Infringement - substantial similarity

Before the Court is a motion to dismiss filed in the lead case, 1:18-CV-978-RP, by Defendants Dryshod International, LLC (“Dryshod”) and James Donohue (“Donohue”) (together, “Defendants”). . . . Having considered the parties' briefs, the record, and the relevant law, the Court will deny the motion. . . .

Defendants argue that the shape or color of bark, sticks, or leaves is not protectable; only the “particular arrangement” of bark, sticks, and leaves is. . . . In comparing the arrangement of the two companies' patterns, Defendants say there is “no similarity.” . . . Haas's pattern is “overall lighter in color,” featuring “brown, yellow, and bright green leaves,” as opposed to the “grey, copper, and dark moss green” leaves in Dryshod's. . . . Moreover, Defendants say, the two patterns feature different plants: red oak for Haas's pattern versus live oak, Spanish oak, and mountain laurel for Dryshod's. . . . Defendants' pattern also includes ball moss. . . .

But based on the allegation in Haas's amended complaint, the patterns' differences are outstripped by their similarities. Whatever the actual differences in the oak-tree species depicted, both patterns feature a primary background consisting of dark oak tree bark. . . . Both feature diagonal, cross-layered smaller branches and twigs covered with lichen. . . . Both use shadows and black spaces to generally darken the pattern. . . . Both contrast live, green, oak leaves with dark, dead, oak leaves. . . . Both overlay the pattern with a watermark feature. . . . Both use repeating elements to establish a multi-directional pattern. . . . These similarities are highlighted in the side-by-side image featured in Haas's pleading, in which boots featuring Dryshod's MOBU pattern sit atop—and blend in with—Haas's NEW BREAK-UP pattern. . . . As alleged, the two
patterns could be adjudged by a reasonable factfinder to be substantially similar. Haas has therefore plausibly alleged that Defendants' MOBU pattern infringes its NEW BREAK-UP pattern. . . . The Court will not dismiss this claim.

PROF'L LIAB. INS. SERVS., INC. V. HISCOX, INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - plan
Topics: Copyright registration - pleading requirements, Infringement - pleading requirements

Before the Court are Defendant's Motion to Dismiss . . . . Here, the Plaintiff has pled enough facts to survive a motion to dismiss. Regarding the first prong—ownership of a valid copyright—U.S. Risk argues that PLIS's complaint fails because it is a complaint about four short words or phrases, rather than a copyright on its insurance policy as a whole. However, as PLIS rightly argues, it does not base its claim merely on the ownership of the short words and phrases, but rather is arguing that the Defendants' “Restaurant Contamination” policy infringes upon Plaintiff's copyrighted TNR policy, or overall policy. PLIS in its Complaint “asserts that Defendants' conduct constitutes an infringement of its TNR policy in violation of Title 17 U.S.C. § 500.” . . .

Moving to the second prong, PLIS has also pled enough facts to plead a claim that U.S. Risk copied constituent elements of the work that are original. PLIS alleges that U.S. Risk had access to the copyrighted work prior to the creation of its own infringing policy by way of Defendant Hiscox's policy. PLIS further alleges that, according to a communication between employees at Hiscox and U.S. Risk in February 2016, Hiscox admitted that it copied parts of PLIS's policy. . . . Finally, PLIS, at this stage, has pled enough facts to show that the copying is legally actionable. PLIS's complaint alleges enough facts, including through a side-by-side comparison of select definitions from its policy and U.S. Risk's allegedly infringing policy, to show that the two works are substantially similar. Therefore, PLIS has pled enough factual material to allow the Court to draw the reasonable inference that the Defendants are liable for a claim of copyright infringement.

MCGUCKEN V. DISPLATE CORP.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Infringement - joint and several liability, Infringement - pleading requirements

Before this Court are Defendant's Motion to Dismiss . . . . All participants in copyright infringement are jointly and severally liable as tortfeasors. . . . “Where liability is joint and several, a plaintiff may sue one or more of the joint tortfeasors at its discretion.” . . . In this case, GWD and Displate could both be liable for copyright infringement.
To the extent Displate argues that Plaintiff must prove at the motion to dismiss stage that Displate maintains control over the Website or is an alter ego of GWD, such arguments are premature. Based on the foregoing, the Court finds that Plaintiff has alleged sufficient facts at this stage of the case “to state a claim to relief that is plausible on its face.”

PIERSON V. DOSTUFF MEDIA, LLC
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Defenses - fair use

Before this Court are Defendant's Federal Rule of Civil Procedure 12(b)(6) Motion to Dismiss...

1. The purpose and character of the use...

In this case, Defendant does not dispute that it used the Photographs for commercial purposes. Defendant ran the Photographs on its commercial Website to promote an upcoming Lotus Land concert. The use of the Photographs was not for criticism, comment, or news reporting...

In addition, Plaintiff has alleged sufficient facts in her Amended Complaint to support a finding that Defendant's use of the Photographs was not transformative. It is undisputed that Defendant ran the Photographs on its Website to promote an upcoming Lotus Band concert. Thus, Plaintiff alleges, Defendant used the photos for the exact same purpose as they were created, namely, to show the Lotus Land band members performing their music. Plaintiff alleges, moreover, that Defendant did not materially alter the Photographs but instead merely republished them on its Website. While Defendant superimposed the band's name onto one of the images and cropped the images to give them the same dimensions, Defendant did not make any aesthetic alterations to the Photographs. Defendant also did not provide any commentary or critique directed at the merits of the Photographs, nor engage in any news reporting about any controversy surrounding the Photographs themselves. Defendant did nothing more than display the Photographs to show the musicians they depict. Accordingly, Defendant did not alter the original Photographs with “new expression, meaning or message.” Therefore, Plaintiff has alleged sufficient facts to show that the first factor weighs against a finding of fair use.

2. The nature of the copyrighted work...

Although the Photographs in this case do not appear to be highly artistic in nature, the Court finds that Plaintiff has alleged facts sufficient to show that the Photographs are creative works entitled to protection. The fact that the Photographs have been published does not tip the scale in favor of fair use here. Accordingly, this factor also weighs against fair use.

3. Amount and substantiality...

Plaintiff alleges that Defendant used a significant percentage of the Photographs, merely cropping out the negative space, and also has used “the heart” of the copyrighted material. Accordingly, Plaintiff has alleged sufficient facts to show that this third
factor weighs against a finding of fair use. The court rejects Defendant's argument that the use of the Photographs was de minimis. . . .

4. The effect on the potential market . . . Plaintiff alleges that Defendant's secondary use impairs the actual market for Plaintiff's work because Defendant's unauthorized republication of the Photographs made it unlikely that they would be purchased from Plaintiff and therefore diminished the licensing value of the copyright. Plaintiff alleges that Defendant's use clearly supplanted the market in which Plaintiff had a reasonable expectation to earn licensing revenue. In addition, Plaintiff alleges that Defendant's secondary use also impairs the potential market for Plaintiff's Photographs because “unrestricted and widespread conduct of the sort engaged in by the defendant ... would result in the substantially adverse impact on the potential market for [licensing of] the original.” . . . Plaintiff alleges that because Defendant engaged in wholesale copying of the Photographs, any authorized commercial market for her original work was severely diminished. The Court finds that Plaintiff has alleged sufficient facts to show that the fourth factor also weighs against a finding of fair use.

OPPENHEIMER V. DEISS
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Vicarious infringement - pleading requirements, Contributory infringement - pleading requirements

Before this Court are Defendants Ryan Kyle Deiss, Jason Jon Burkle, and Thomas Litchfield's Rule 12(b)(6) Motion to Dismiss . . .

Vicarious Infringement . . . In support of his vicarious copyright infringement claim, Plaintiff alleges that the Individual Defendants were managing officers of both Startup Jungle and Digital Marketer, and that they had a financial stake in the companies. . . . Plaintiff further alleges that the Individual Defendants “provided hands-on decision making with respect to the activities of the companies, making most or all of the decisions.” . . . Plaintiff further states that the Individual Defendants “had the right and ability to supervise and/or control the infringing conduct of Startup Jungle and/or Digital Marketer, and/or to stop the infringements once they began.” . . . Plaintiff also alleges that the Individual Defendants “as the founders, directors, and/or managing members of the companies –had obvious and direct financial interests in the infringing activities of Startup Jungle and Digital Marketer.” Id. As Plaintiff points out, “[a]t the very least, the infringement saved the Individual Defendants the cost of additional licensing fees.” . . . The Court finds that Plaintiff has alleged sufficient facts to support a plausible claim of vicarious copyright infringement against the Individual Defendants in this case. . . .

Contributory Infringement . . . In support of his contributory copyright claim, Plaintiff alleges that the Individual Defendants “intentionally induced, encouraged, caused, enabled, facilitated, and/or materially contributed to the infringements complained of herein by directly and/or indirectly promoting the infringements, and/or have refused to exercise their right and/or ability
to stop the infringements after they began.” . . . Plaintiff also alleges that the Individual Defendants “provided hands-on decision making with respect to the activities of the companies, set and controlled the companies’ policies and protocols, and established corporate rules and cultures which encouraged the infringing activities.” . . . Additionally, Plaintiff alleges that the Individual Defendants “had the right and ability to supervise and/or control the infringing conduct of Startup Jungle and/or Digital Marketer, and/or to stop the infringements once they began, but either directly refused to exercise such rights or chose to remain willfully blind to the infringing activities while creating a work environment that encouraged and enabled the same.” . . . The Court finds that Plaintiff has alleged sufficient facts to allege a plausible claim of contributory copyright infringement, which is all that is required at the motion to dismiss stage.

**Sixth Circuit**

Court of Appeals for the Sixth Circuit

WRIGHT V. PENGUIN RANDOM HOUSE
No. 18-6323, 2019 WL 3945632 (6th Cir. Aug. 21, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Literary work - book
Topics: Preemption - right of publicity, Preemption - contract interference, Preemption - intentional interference with prospective economic advantage, Preemption - misappropriation, Copyright registration - registration requirement

Many are intimately familiar with the best-selling Fifty Shades of Grey trilogy. Much less so the online memoir Ladyhawk’s Life, published by Plaintiff Eva Wright. Yet Wright says the two are bound together.

According to Wright, Fifty Shades is the product of fact, not fantasy. She says it was her personal memoir that inspired Fifty Shades, but her personal story was misappropriated by Defendant Penguin Random House. As a result of Fifty Shades’s success, Wright claims to have experienced significant pain—both physical and financial. So she filed this pro se lawsuit, seeking to punish Penguin for its alleged misappropriation.

The district court dismissed Wright’s claims, some of them because they are state-law tort claims preempted by the Copyright Act, and others because they failed to state a claim upon which relief could be granted. Now represented by counsel, Wright challenges that decision. We agree with the district court and thus AFFIRM.
PHILPOT V. LM COMM'NS II OF S.C.
No. 18-6207, 2019 WL 4256860 (6th Cir. Sep. 9, 2019)
Outcome: Appeal - reversed
Works of Authorship: Visual work - photograph
Topics: Remedies - attorneys fees

Larry Philpot appeals the denial of his demand for attorney’s fees in this copyright-infringement action. We REVERSE. . . . Philpot argues that the district court erred as a matter of law by concluding that he was not the “prevailing party” under § 505. Because he did prevail on his infringement claim, we agree.

EVOQUA WATER TECHS., LLC V. M.W. WATERMARK, LLC
Outcome: Appeal - reversed
Works of Authorship: Literary work - brochure
Topics: Ownership - transfer

In 2016, Plaintiff Evoqua Water Technologies, LLC (“Evoqua”) filed this action against Defendants M.W. Watermark, LLC (“Watermark”) and Michael Gethin, asserting copyright, trademark, and false-advertising claims and seeking to enforce a 2003 consent judgment obtained by Evoqua’s alleged predecessor against Watermark and Gethin. The district court dismissed Evoqua’s claim that Watermark and Gethin were in contempt for violating the consent judgment, holding that the consent judgment was not assignable and therefore Evoqua lacked standing to enforce it. The district court also granted Watermark and Gethin summary judgment on Evoqua’s copyright claim after concluding that the agreement selling assets to Evoqua unambiguously did not transfer copyrights. A jury later returned a verdict for Watermark and Gethin on Evoqua’s false-advertising claim and for Evoqua on its trademark-infringement claim against Watermark but found that Gethin was not personally liable. Following trial, the district court denied Watermark’s and Gethin’s requests for attorney’s fees on Evoqua’s copyright and false-advertising claims. We conclude that the consent judgment is assignable, that the agreement transferring assets to Evoqua is ambiguous regarding copyrights, and that the district court did not abuse its discretion in declining to award Watermark and Gethin attorney’s fees on the false-advertising claim. Accordingly, we VACATE the district court’s dismissal of Evoqua’s claim seeking to hold defendants in contempt of the consent judgment; VACATE the district court’s grant of summary judgment on the copyright claim; AFFIRM the district court’s denial of defendants’ request for attorney’s fees on the false-advertising claim; and REMAND for further proceedings.
This is a copyright infringement action brought against the owner and manager of the Blue Moon in Richmond, Kentucky. Plaintiffs Broadcast Music, Inc. (“BMI”), Del Sound Music, House of Cash, Inc., Warner-Tamerlane Publishing Corp., Eleksylum Music, Inc., No Surrender Music, Muscle Shoals Sound Publishing Co., Peermusic III, Ltd., and ARC Music Corp. have filed a motion for summary judgment, asserting that Defendants Mary Katherine Lockhart and Prentice Richardson knowingly and intentionally infringed upon four copyrights licensed by the plaintiffs.

The defendants argue that 17 U.S.C. § 110(4) provides an exemption from the licensing requirements. Richardson provides an affidavit explaining that there is no cover charge or entrance fee when the band plays, the band receives no compensation, there is no cash flow as a result of the performance, and the band members play for their own enjoyment, not for money. However, Richardson notes that the defendants make money on the Juke Box and commission on KENO sales. Blue Moon is a profit-making enterprise, even though it breaks even on cash flow. Therefore, the exception under 17 U.S.C. § 110(4) does not apply in this case.

The Blue Moon is a sole proprietorship, so the plaintiffs seek to impose vicarious liability through the tort theory of respondeat superior. The defendants admit that they had the right and ability to direct and control activities at the Blue Moon and that they operated and maintained the Blue Moon. Further, Lockhart had a direct financial interest in Blue Moon. Additionally, Richardson was a performer of the unauthorized performance. There is no genuine issue of material fact that Lockhart is vicariously liable for the unauthorized performance on April 15, 2017.

Because the defendants continued to hold live performances after receiving multiple letters and phones calls from BMI, there is a strong likelihood that copyright infringement may occur in the future at Blue Moon, thus, injunctive relief is appropriate. The defendants will be enjoined from performing any of the songs within the BMI repertoire unless and until they receive the proper license.

This Court will impose statutory damages of $3,500.00 per infringement, for a total of $14,000.00. This amount is sufficient to compensate the plaintiffs and serves the goal of deterring wrongful conduct.
**Broadcast Music, Inc. v. Lockhart**


Outcome: Motion for attorneys fees and costs - granted

Works of Authorship: Music - musical work

Topics: Remedies - attorneys fees

This action arose from copyright infringement that occurred at the Blue Moon establishment in Richmond, Kentucky. The Court granted Plaintiffs Broadcast Music, Inc.'s (“BMI”), Del Sound Music's, House of Cash, Inc.'s, Warner-Tamerlane Publishing Corp.'s, Eleksylum Music, Inc.'s, No Surrender Music's, Muscle Shoals Sound Publishing Co.'s, Peermusic III, Ltd.'s, and ARC Music Corp.'s motion for summary judgment. The Court concluded that Defendants Mary Katherine Lockhart and Prentice Richardson knowingly and intentionally infringed upon four copyrights licensed by the plaintiffs. . . . The Court granted statutory damages and a permanent injunction. . . . The Court further noted that attorney's fees would be awarded and directed the plaintiffs to submit evidence of their fees. . . . The plaintiffs' counsel filed an affidavit and invoices in support of their request for attorney's fees. . . . The defendants had fourteen days to object to the plaintiffs' submission but did not file any objections.

**Eastern District of Michigan**

**Ford Motor Co. v. Versata Software, Inc.**


Outcome: Motion for summary judgment - granted

Works of Authorship: Literary work - computer program

Topics: Copyright registration - registration requirement, Scope of protection - efficiency, Scope of protection - function, Scope of protection - regular business practices, Scope of protection - originality

In this action, Versata Software, Inc., Versata Development Group, Inc., and Trilogy, Inc. (collectively, “Versata”) assert, among other things, that Ford Motor Company committed copyright infringement when Ford copied automotive configuration software files known as “.jar” files belonging to Versata. . . . Ford denies that allegation and seeks a declaratory judgment that it did not infringe Versata’s copyrights. . . .

On August 28, 2018, Ford filed a motion for summary judgment with respect to (1) its request for declaratory judgment that it did not infringe Versata’s copyrights and (2) Versata’s affirmative claim of copyright infringement. . . . For the reasons that follow, Ford’s motion is GRANTED. . . .

Here, Ford has presented evidence that Versata did not register with the United States Copyright Office the version of the ACM software from which the allegedly-copied “.jar” files came. . . . In fact, both parties agree that Versata registered only a later version of ACM. . . . Because Ford produced this undisputed evidence of non-registration, the burden shifted to Versata to show that the allegedly-copied “.jar” files should be treated as if they are protected by a registration. . . . Versata has not sufficiently linked the later, registered version of the ACM software to the earlier version from which the allegedly-copied “.jar” files came. . . . Accordingly, Ford is entitled to
summary judgment on the copyright infringement claims on the ground that the allegedly-copied “.jar” files are not protected by a valid copyright registration. . . .

First, Versata has not sufficiently countered Ford’s showing that potentially substantial portions of the ACM software are dictated by efficiency, function, and/or regular business practices. Versata’s response brief does not respond to this showing. At the hearing on Ford’s motion, Versata said that its technical consultant and fact witness Seth Krauss addressed this argument in paragraphs 8 and 9 of his declaration. . . . But those cited paragraphs do not identify any specific portions of the ACM software that are not dictated by efficiency, function, and/or regular business practices. Versata has failed to present evidence as to which portions, if any, of the ACM software are not dictated by efficiency, function, and/or regular business practices and are therefore protected.

Second, Versata has also failed to provide sufficient evidence of which portions of the ACM software are original. Here again, Versata relies on the Krauss declaration. But Krauss says only that the registered version of the ACM software is “original.” . . . What Krauss does not say in his declaration is that the unregistered, earlier-created version of the software from which the allegedly-copied “.jar” files came from is “original.” More importantly, Krauss does not support his opinion that the registered version of the ACM software is “original” with sufficient facts or analysis. For example, Krauss does not identify which portions of the software are original and he does not filter out the unoriginal portions of the software (such as the portions that are comprised of open-source material).

REMARK HOME DESIGNS, LLC V. OAK ST. CONDO PROJECTS, LLC
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Architectural work - drawing
Topics: Infringement - substantial similarity

Brian Kramer, who owns Remark Home Designs, prepared the architectural plans for a three-unit condominium building in Wyandotte, Michigan. Adjacent to the three-unit building, foundations were poured to build a four-unit condominium building; but construction halted due to the recession and the property went into receivership. Later, Oak Street Condo Projects, LLC (owned by Paul Zulewski) purchased the four-unit property and hired Jack Runkle as its architect. They also purchased the three-unit architectural plans from the prior owner of the lot. The four-unit site was then built. Believing the four-unit building is a copy of the three-unit building, Remark alleges that Oak Street, Zulewski, and Runkle infringed on its copyright for both the architectural plans and the three-unit building constructed from those plans. . . .

For the reasons that follow, the Court will grant Oak Street and Zulewski's motion for summary judgment with respect to the constructed building and deny it with respect to the plans. Runkle's motion is also denied. . . .
And here, Defendants have established as a matter of law that they did not copy a substantial portion of the interiors of the two buildings. Two of their fours units have no claimed similarities. As constructed, the second floor of unit 223 of the four-unit building is one large master suite. . . . There is nothing comparable in the 3-unit building. None of the units have a third floor. Remark is alleging only that the first floor of unit 225 and the second floor of unit 229 were copied into the outer units of the four-unit building. That amounts to only two-ninths of the three-unit building. And, as discussed, the floors that were alleged to be copied have significant differences. So, although courts are reluctant to grant summary judgment at the substantial-similarity stage, this Court, left with just elements of two floors in two separate units, finds that no reasonable jury would could find substantial similarity between the look and feel of the two constructed buildings. . . .

Remark also cannot escape summary judgment by relying on exterior similarities. Remark alleges that the protectible elements of the exterior include “double window opening space symmetrically on both the first and second floors,” “alternating vertical elements,” three evenly-spaced dormers; the back of the building has brick on the first floor and siding on the second, and “lantern style lighting” to “complement the brickwork.” . . .

Even assuming that these elements are protectible, no reasonable jury could find that the exterior of the four-unit building is substantially similar to the three-unit building. A review of the “overall form” of the exteriors reveals marked differences between the two buildings. . . . The four-unit building has no dormers (rooftop windows) and the siding columns extend into a gabled roof. . . . The porches on the front of the four-unit building have gabled roofs as opposed to shed-style roofs in the three-unit building, resulting in more shaker siding visible in the four-unit building and more brick in the three-unit building. . . . The back porches on the four-unit building are smaller than the porches in the three-unit building . . . . The overall look of the back is affected by the four-unit building having larger windows next to the porches, and the dormer in the middle of the three-unit building that is absent from the four-unit building . . . . And the overall look is certainly affected by the inclusion of the middle units in the four-unit building.

VRACHOVSKA V. BEACOZ L.L.C
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Infringement - pleading requirements, Infringement - access, Infringement - striking similarity

This is a copyright infringement case. A photographer claims that a beer company copied one of her works to use on its website. The beer company has moved to dismiss. For the reasons below, the Court will deny the motion to dismiss. . . .

Vrachovska alleged that 8 Degrees Plato “viewed or had a reasonable opportunity to view” the photograph because it was “available to for purchase at www.alamy.com, a website accessible to the public.” . . .
Thus, it is not clear that Vrachovska has pleaded sufficient facts to establish that 8 Degrees Plato had access to the photograph. However, even assuming that she did not adequately plead access, her complaint certainly demonstrates that there is a striking resemblance between her photograph and the photograph posted on 8 Degrees Plato’s website. In fact, to describe the photographs as “strikingly similar” is likely an understatement—they are seemingly identical in every respect. . . . As alleged in the complaint, 8 Degrees Plato appears to have merely taken Vrachovska’s photograph and zoomed in on the statute’s head and shoulders. This alleged action surely implicates protectible elements of the copyrighted work. Because of the striking similarity between the works, Vrachovska has met her burden as to both access and similarity. . . . Her copyright claim may proceed.

Northern District of Ohio

HAYDEN V. 2K GAMES, INC.
No. 1:17CV2635, 2019 WL 1299943 (N.D. Ohio Mar. 21, 2019)
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Visual work - graphic work
Topics: Preemption - unjust enrichment, Copyright registration - fraud on the Copyright Office, Remedies - statutory damages, Remedies - attorneys fees

This matter comes before the Court upon the Motion . . . of Defendants to Dismiss in part Plaintiff’s Second Amended Complaint. For the following reasons, the Motion is granted in part and denied in part. . . .

Preemption of Hayden’s Unjust Enrichment Claim . . . 1. Subject Matter Requirement . . . The subject matter of Hayden’s Unjust Enrichment claim . . . is the same as his claim under the Copyright Act; namely, tattoos. . . . The fact that Hayden did not register some of his tattoos and that some of them may not be copyrightable is not alone enough to save his Unjust Enrichment claim. Tattoos are generally within the subject matter of copyrightable works and, in the Copyright Act, Congress clearly intended for federal law to preempt state law claims predicated on copyrightable subject matter. Thus, the Court finds that both Hayden’s Registered and Unregistered Tattoos fall within the subject matter requirement of the preemption provision in the Copyright Act.

2. Equivalency Requirement . . . Hayden asserts that Take-Two has “appropriated and exercised proprietorship over HAYDEN’s tattoos without acknowledging him in any way for the use of his artwork in their products.” . . . This, however, is merely a reformulation of the type of claim the Copyright Act was intended to preempt. In other words, Hayden’s Unjust Enrichment claim depends on Take-Two’s unauthorized use of Hayden’s work. This is the essence of Hayden’s claim under the Copyright Act. More importantly, it meets the Sixth Circuit’s articulation of the equivalency requirement prong in Stromback because Hayden cannot point to any concrete action taken by Take-Two that would constitute an “extra element.” Thus, Hayden’s Unjust Enrichment claim is functionally equivalent to his claim under the Copyright Act. As such, Hayden’s Unjust Enrichment claim is preempted.
Declaratory Judgment Claim - Fraud on the Copyright Office . . . Hayden . . . has failed to demonstrate to the Court that there is an actual “case or controversy” within the meaning of 28 U.S.C. § 2201(a) regarding the ownership of the Registered Tattoos and Unregistered Tattoos . . . . Take-Two has not asserted copyright claims against Hayden. Further, Hayden has not alleged that Take-Two has in any way threatened Hayden with a lawsuit for infringement or challenged his ownership of the Registered Tattoos or Unregistered Tattoos. Thus, there is no dispute regarding the ownership interest of the tattoos at issue in this lawsuit. Hayden’s claim for Declaratory Judgment is accordingly dismissed due to the absence of an actual “case or controversy” as required by statute and Article III.

Statutory Damages and Attorney’s Fees . . . The Court finds that, with respect to Hayden’s Registered Tattoos depicted in NBA 2K17 and 2K18, further discovery is required to determine whether the NBA 2K games constitute a “series of acts constituting infringement,” . . . or “separate, distinct acts of infringement,” . . . . If the NBA 2K series constitutes a series of acts that are essentially the same infringement, relief in the form of statutory damages and attorney’s fees would be foreclosed to Hayden. If, however, each annual release of NBA 2K constitutes a separate and distinct act of infringement, Hayden would be able to obtain statutory damages and attorney’s fees for versions of NBA 2K released after Hayden registered his tattoos with the Copyright Office, specifically for NBA 2K17 and NBA 2K18. In his Second Amended Complaint, Hayden sufficiently alleges that each annual release of NBA 2K is a distinct act of copyright infringement. Therefore, the Court will not dispose of Hayden’s request for statutory damages and attorney’s fees with respect to Hayden’s Registered Tattoos at this time. Take-Two’s Motion to Dismiss this relief is accordingly denied.

Southern District of Ohio

PREMIER DEALER SERVS., INC. V. ALLEGIANCE ADM’RS, LLC
Outcome: Motion to dismiss - granted
Works: Literary work - form
Topics: Copyrightability - originality, Infringement - extraterritoriality

This matter is before the Court for consideration of the Motion to Dismiss . . . filed by Defendants Dimension Service Corporation and Allegiance Administrators, LLC (collectively “Allegiance”). . . . For the reasons set forth below, the Court GRANTS in PART and DENIES in PART Allegiance’s Motion to Dismiss, GRANTS Premier’s Leave to Amend, and DENIES Allegiance’s Motion to Stay. . . .

Allegiance argues that the copyrighted forms are unoriginal because they “are standard through the industry, contain information that is almost identical to contracts used by other companies throughout the industry, and lack the required originality.” . . . The Court disagrees. . . . Whether Premier’s copyrighted forms are standard through the industry is a factual claim, not resolvable on a 12(b)(6) motion. Instead, Allegiance directs the Court to Exhibit 1 of its Memorandum in Opposition, which compares the forms used by Allegiance and Premier section by section, and to Exhibits B and C of Premier’s First Amended Complaint, which include the forms used by Premier and Allegiance, respectively. By comparing the two forms, Allegiance
does not offer proof of industry standard forms since Allegiance cannot reasonably rely solely on its own form as the industry standard. Therefore, at this stage, the Court concludes that Allegiance has failed to rebut the presumption that Premier’s copyrighted forms are valid.

Although Premier has established the first element of its copyright claim, the Court must still determine whether the Copyright Act’s scope covers the alleged infringing activity. . . . Premier does not allege that Allegiance has engaged in any directly infringing activity. Instead, Premier alleges the infringing activity took place in Canada, and that Allegiance is headquartered in Ohio. Notably, Premier never claims that Allegiance engaged in any infringing activity in the United States. Therefore, in its First Amended Complaint, Premier failed to establish any nexus between the allegedly infringing activity in Canada and the United States.

NAVARRO V. PROCTER & GAMBLE CO.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Defenses - statute of limitations

This copyright infringement lawsuit is before the Court on the motion of Defendant Walmart Inc. (f/k/a Wal-Mart Stores, Inc.) (“Walmart”) to dismiss Plaintiffs’ Third Amended Complaint . . . .

It is not apparent from the face of the Third Amended Complaint that Navarro’s copyright infringement claim against Walmart accrued outside the three-year limitations period; to the contrary, the Third Amended Complaint alleges Walmart continues to infringe Navarro’s copyrights. . . .

Second, even if some acts of infringement were time-barred on the face of the Third Amended Complaint (and they are not), dismissal would still be inappropriate. Under the separate-accrual rule, Navarro is entitled to recover for acts of infringement that occurred during the three years prior to the filing of the Third Amended Complaint even if other infringing acts occurred outside that period. . . . The Third Amended Complaint’s allegations regarding Walmart’s “continued” infringement set forth a plausible claim for copyright infringement during the limitations period.

PREMIER DEALER SERVS., INC. V. ALLEGIANCE ADM'RS, LLC
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - form
Topics: Infringement - extraterritoriality

This matter is before the Court for consideration of Defendant Dimension Service Corporation’s (“Dimension”) Motion to Dismiss . . . . For the reasons that follow, the Court DENIES Dimension’s Motion to Dismiss . . . .
In its previous Opinion and Order, the Court noted the fact that Defendants “copied Premier’s copyrighted forms is not disputed.” . . . Consequently, the Court found that Premier sufficiently established the elements of copyright infringement, including: (1) ownership of a valid copyright, and (2) proof that the defendant copied the valid copyright. . . . However, the Court “concluded that Premier’s First Amended Complaint did not adequately state a copyright infringement claim upon which relief could be granted because Premier failed to plausibly allege any infringing activity in the United States.” . . .

Examining Premier’s Second Amended Complaint, the Court finds that it includes the curative language: “Allegiance has no physical presence in Tricor’s market in Canada. All acts taken by Allegiance were carried out by its employees in and about Dublin, Ohio.” . . . Thus, Premier alleged sufficient facts to plausibly indicate a copyright infringement. The Court DENIES Dimension’s Motion to Dismiss Premier’s copyright infringement claim.

DESIGN BASICS, LLC V. LANDMARK COMMUNITIES, INC.
Outcome: Motion for summary judgment - granted
Works of Authorship: Architectural work - design
Topics: Infringement - evidence of copying, Vicarious infringement - control, Infringement - access

This matter is before the Court on Plaintiff’s Motion for Partial Summary Judgment . . . and the Landmark Defendants' Motion for Summary Judgment . . . Plaintiff asserts that the Landmark Defendants copied and built homes using its copyrighted home designs. The Landmark Defendants deny copying Plaintiff’s designs and deny that their home designs are substantially similar to Plaintiff’s designs. For the reasons that follow the Court will DENY AS MOOT Plaintiff’s Motion for Partial Summary Judgment and GRANT Defendants' Motion for Summary Judgment . . .

The sole evidence regarding PR Properties and Orchard Meadows comes from Paul Berding, the founder of each company. He asserted without contradiction that neither company has constructed, marketed, or constructed a house, that neither is a member of a builders' association, and that neither company has received profits from Landmark Communities, Kelly Homes, or Berkey Homes. Instead, PR Properties and Orchard Meadows only have developed tracks of land and sold them to those builders. Design Basics suggests that Landmark Communities and Berkey Homes might have built houses using the Accused Works on tracts of land sold by PR Properties or Orchard Meadows, but it does not support that supposition with evidence. Orchard Meadows was not even founded until 2005, well after many of the purportedly infringing houses were sold. . . Moreover, Design Basics offers no evidence that PR Properties or Orchard Meadows had the right and ability to supervise the activities of the home builders. . . Accordingly, the Court will grant summary judgment to PR Properties and Orchard Meadows on all claims against them. . .

Design Basics' contention that Kelly Homes, Matthew Berding, Berkey Homes, and Ronald Gehrlich had access to the Copyrighted Works is based solely on their relationship with Paul
Berding and Landmark Communities. The lack of evidence that Paul Berding and Landmark Communities had access to the Copyrighted Works is fatal to the copyright infringement claims against all of the Landmark Defendants. Additionally, the lack of evidence of access is fatal to the DMCA claims as well. “To succeed on a DMCA claim, however, a copyright holder still bears the burden of proving two of the elements essential to a traditional copyright infringement claim: (1) that it owns the copyright; and (2) that the defendant had access to it.” . . . Accordingly, the Landmark Communities are entitled to summary judgment on all of the claims against them.

DESIGN BASICS, LLC V. LANDMARK COMMUNITIES, INC.
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - design

This matter is before the Court on Plaintiff’s Motion for Relief of Court’s [Summary Judgment] Order . . . . In the Summary Judgment Order . . . the Court held that Plaintiff Design Basics, LLC had not offered sufficient evidence to establish that the Landmark Defendants had access to any of its seven copyrighted home designs (“the Copyrighted Works”), a necessary element for its copyright infringement claims. Accordingly, the Court granted summary judgment to the Landmark Defendants and denied as moot summary judgment to Design Basics. . . . Design Basics now submits additional evidence—an updated shipping invoice that was utilized in discovery, but inadvertently not filed with the summary judgment briefs—and seeks relief from the Summary Judgment Order as to only the Paterson and Lancaster Copyrighted Works.

For the reasons that follow, the Court GRANTS Design Basics relief from the Summary Judgment Order. The Court will admit the updated shipping invoice into evidence. Then the Court will reconsider Design Basics’s Motion for Partial Summary Judgment . . . and the Landmark Defendants’ Motion for Summary Judgment . . . . Ultimately, the Court concludes that Design Basics is entitled to summary judgment on the issue of ownership of valid copyrights in the Paterson and Lancaster designs and on several affirmative defenses asserted by the Landmark Defendants. The Landmark Defendants retain summary judgment on Design Basics’s claims based on the five Copyrighted Works no longer at issue, but they are not entitled to summary judgment as to Design Basics’s claims based on the Paterson and Lancaster Copyrighted Works.

W.H. MIDWEST, LLC V. A.D. BAKER HOMES, INC.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Architectural work - plan
Topics: Infringement - substantial similarity, Preemption - unfair competition, Preemption - unjust enrichment

This matter comes before the Court on Defendants' A.D. Baker Homes, Inc. (“A.D. Baker”) and Cody and Joan Ochsenbine (“Ochsenbines”) Motions to Dismiss . . . and Plaintiff’s Answer to
Defendants' Counterclaims requesting dismissal of such claims. . . . For the reasons below, Defendants' Motions to Dismiss are GRANTED in part and DENIED in part. Plaintiff’s Motion to Dismiss Defendants' counterclaims are GRANTED in part and DENIED in part. . . .

The complaint sufficiently pleads that Defendants' work was substantially similar to Wayne Homes’s copyrighted works to survive the motion to dismiss stage. . . . Wayne Homes pleads that “[t]he Infringing House, as built by A.D. Baker, is substantially similar to the Wayne Homes' Montgomery Craftsman elevation” and that “the interior of the Infringing House contains design elements that are nearly identical to (or copies) of those found in the Wayne Homes Alexandria copyrighted plans and drawings.” . . . The complaint includes a picture of the exterior of a home built according to the Montgomery Craftsman model as well as a picture of the exterior of the Ochsenbines' house for the lay observer to compare. . . . Plaintiff have alleged sufficient facts at the Motion to Dismiss stage which, if taken as true, could state a claim for copyright infringement upon which relief can be granted. Accordingly, Defendants' Motions to Dismiss Plaintiff’s copyright infringement claim are denied. . . .

Because Plaintiff’s unfair competition allegations are not “qualitatively different” from their copyright infringement claim, Plaintiff’s unfair competition claim is preempted by copyright law and Defendant’s motion to dismiss is granted as to Plaintiff’s unfair competition claim. . . .

Plaintiff claims Defendants have been unjustly enriched by the benefits they received from their alleged infringement of Plaintiff’s copyrighted works. Plaintiff’s unjust enrichment claim is also preempted by the Copyright Act.
FPM has produced the work-for-hire agreements for the other seventeen songs in question. Since FPM has presented certificates of registration, FPM is entitled to a presumption of validity. FPM further supports its copyright ownership with the work-for-hire agreements and assignment agreements. Although the presumption of validity is rebuttable, Arbogast has not presented any evidence that would rebut that presumption for the songs produced under work-for-hire agreements. Thus, FPM is entitled to summary judgment on the issue of copyright ownership for the songs produced under the work-for-hire agreements, unless Arbogast can prove fraud on the Copyright Office.

Since FPM has provided the registration certificates, it is entitled to the presumption of validity, and that presumption covers not only the registration itself, but also the facts stated in the registration. The burden lies with the alleged infringer to present evidence that the copyright holder’s registration is invalid, including the date of first publication. Arbogast, however, has presented no evidence that Schreer or any of the other authors first published the works at some date different from what is listed with the Copyright Office. The fact that Schreer, at his deposition, could not recall the exact dates for the creation and publication of “background music” does not evidence falsity of the publication date. Since Arbogast has not presented evidence that would call into question the accuracy of the information included in the registration, FPM is entitled to a presumption of validity that extends to the date of first publication stated in the certificate of registration.

Arbogast fails to carry the burden of proving fraud on the Copyright Office. Both arguments regarding the name change and the omission of co-authors are insufficient to prove fraud, because the arguments involve immaterial issues that would not affect the validity of the copyright registrations. Since Arbogast raises no arguments involving material issues, the presumption of validity of the copyright registration stands. Since the presumption of validity has not been rebutted by proof of fraud on the Copyright Office, FPM, upon a showing of actual infringement, is entitled to summary judgment on the issue of liability, unless there is a valid defense to enforcement.

B. Unauthorized Use

Unlike the browsewrap agreement in Specht, FPM’s home page displayed a visible link that read: “[t]o learn how you can use Freeplay music click on Terms of Use, Licensing, Rate Card.” FPM website users did not have to scroll to find the link for the terms of use. The link is easily visible in the upper left-hand corner of the home page. Also, the header of the page included links for licensing and rate cards that are immediately visible when the website is accessed. Id. Like the agreement in Major v. McCallister, the hyperlink was immediately visible to the user of the website. Clicking on any of these links would have alerted Arbogast that, although personal use of the music was free, business uses required a paid license. Under these circumstances, no reasonable jury could find that FPM had granted Arbogast an express license to use the songs free of charge. Thus, Arbogast was not granted an express license and Arbogast had constructive knowledge of the browsewrap agreement by nature of using the website.
Arbogast never asked FPM to create any works. Nor did FPM make any works at Arbogast’s request to be used in Arbogast’s YouTube videos. Moreover, given FPM’s paid license requirements for business use of the copyrighted works available on its website, it cannot be said that FPM intended that Arbogast download and distribute those works free of charge. Accordingly, the Court finds that no implied license exists. Therefore, there exists no issue of material fact on the subject of express or implied license. Arbogast had neither an express nor implied license to use the music free of charge. Accordingly, FPM will be entitled to summary judgment on the issue of liability for copyright infringement, unless any defense to copyright infringement applies.

Unclean hands . . . Arbogast has not presented sufficient evidence that would allow a reasonable trier of fact to find unclean hands through fraud, deceit, unconscionability, or bad faith. Nothing about the old website, which Arbogast used to download the music, demonstrates fraud or the intent to commit fraud. Links to Terms and Conditions, Licensing, and Rate Cards were clearly visible on the website’s home page. Given that these links were prominently displayed on the home page, a sophisticated business would not reasonably believe all of the music to be available free of charge. In fact, Schreer maintains that the “free” in “Freeplay” represents the free synchronization fee model and nothing else. . . . Likewise, the website is not intentionally deceptive nor are the terms of the licensing agreement unconscionable. Charging businesses for the use of copyrighted music in advertising would not shock the conscience of any reasonable trier of fact. Nor is there any evidence that FPM acted in bad faith, by tricking businesses to download the music so that it could sue them for copyright violations. . . .

Copyright Misuse . . . FPM’s activity does not support a claim of copyright misuse. . . . This case is distinguishable because FPM clearly owns the copyright to each song in question and the songs are copyrightable material. FPM is not claiming anything outside the scope of the copyright protection. Moreover, FPM’s use of TuneSat does not violate the public policy underlying copyright laws. Unlike the scheme employed by Design Basics, FPM’s use of TuneSat raises no concerns that innovation and creativity will be stifled. TuneSat is simply a tool that can help musicians locate the unauthorized reproduction or publication of copyright protected work that would otherwise be difficult to locate.

This case is further distinguishable from the copyright “troll” line of cases. . . . Here, the Court finds no evidence that FPM is a copyright troll. FPM has not employed unorthodox litigation tactics or made material misstatements in an effort to intimidate Arbogast. Moreover, although FPM has been a party to 41 similar copyright actions, its efforts to enforce its copyrights are distinguishable from those who have been labeled as copyright trolls. For example, Design Basics initiated over 80 cases on infringement claims that covered unprotected elements of the copyrights in question and the plaintiff in McDermott initiated some 700 cases that were described as “unorthodox” or “frivolous.” FPM seeks only to protect its copyrighted works from infringement.

Moreover, the evidence does not show that FPM is focused on the business of litigation. FPM is primarily concerned with providing licenses to businesses for the use of its music. In fact, other businesses have been purchasing licenses since 2001 when the company was founded.
notes that it has issued over 3.5 million legitimate licenses since July 2013, yet it has filed only a few dozen lawsuits alleging copyright infringement. . . . Although FPM may be aggressive in its protection of legitimate copyrights, the Court finds that FPM is not a copyright troll and has not misused its copyrights. . . .

Equitable Estoppel . . . The court finds that equitable estoppel is inapplicable in this case. There is no evidence that Arbogast was reasonably and justifiably mislead into believing that FPM would not pursue a claim for copyright infringement. There is no evidence that FPM intended Arbogast to act on a misleading notion that the music was free to use for business purposes, nor did Arbogast justifiably believe that the music was free to use in business advertisements. In fact, the evidence demonstrates that FPM always intended to require a license for business use. The facts also demonstrate that Arbogast had constructive notice of the terms and conditions of the usage of the music because of the clear and visible browsewrap agreement. Thus, Arbogast’s equitable estoppel defense fails as a matter of law.

Middle District of Tennessee

EVERLY V. EVERLY
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Music - musical work
Topics: Remedies - attorneys fees

Before the court are plaintiff Don Everly’s Bill of Costs . . . , Motion for Attorneys’ Fees, Costs and Expenses of Litigation . . . , and Amended Motion for Supplementary Attorneys’ Fees, Costs and Expenses of Litigation Incurred Since Filing Original Motion for Attorneys’ Fees, Costs and Expenses (“Amended Motion”) . . . .

Because the Amended Motion actually supersedes the original, the original Motion . . . will be denied as moot, but the Amended Motion will be deemed timely. For the reasons set forth herein, the court will award the full amount of costs sought in the Bill of Costs ($6,706.66). The Amended Motion for fees and for litigation expenses in excess of those itemized in the Bill of Costs will be denied.

GLOBAL FORCE ENTMT’INC. V. ANTHEM SPORTS & ENTMT’CORP.
Outcome: Motion to dismiss - granted
Works of Authorship: Audiovisual work - video
Topics: Copyright registration - registration requirement

This lawsuit arose as a result of a failed merger between wrestling entities. In one corner are Global Force Entertainment, Inc. (“GFE”) and Jeffrey Jarrett, who bring a number of federal and state law claims. In the other, are Anthem Sports & Entertainment, Corp. (“Anthem Sports”) and Anthem Wrestling Exhibitions, LLC (“Anthem Wrestling”), who have filed a Motion to Dismiss . . . the majority of those claims. . . .
In the Second Amended Complaint, Plaintiffs allege that “GFE filed applications for federal copyright registration for each of the sixteen, one-hour GFW Amped videos on August 9, 2018, before the filing of this lawsuit,” and that GFE “paid the required filing fees.” . . . The Second Amended Complaint also concedes that the registration process was not completed, but explains that this was a result of “Defendants' unlawful possession and/or deletion of the only master records of the 16 one-hour GFW Amped videos.” . . . Whatever the reason that the registration process was never completed dooms Plaintiffs' copyright claim. . . . In light of Fourth Estate, Plaintiffs have no rights under the Copyright Act, and their copyright claim will be dismissed.

TAILGATE BEER, LLC V. BOULEVARD BREWING CO.
Outcome: Motion for preliminary injunction - denied
Works of Authorship: Visual work - logo, Literary work - Internet work
Topics: Copyright registration - presumption of validity, Scope of protection - idea, Infringement - substantial similarity

Pending before the Court is Plaintiff Tailgate Beer, LLC (“TailGate”)’s Motion for Preliminary Injunction (the “Motion”), filed on June 19, 2018. . . . For the reasons discussed below, TailGate’s Motion for Preliminary Injunction with be denied. . . .

i. Ownership . . . TailGate attached to its Complaint a certificate of registration for the Copyrighted TailGate Logo and the TailGate Beer website. . . . TailGate’s timely registered copyrights are entitled to a “presumption of validity.” . . . Boulevard does not contest TailGate’s ownership of the Copyrighted TailGate Logo. Accordingly, the ownership prong is satisfied.

ii. Infringement . . . Here, the elements that TailGate asks the Court to consider include the use of a pickup truck with a lowered tailgate, the angle of the parked truck, and the beer keg positioned in the bed of the truck. . . . First, the Court finds that the “idea” of a truck is not protected by copyright. . . . TailGate’s particular truck, however, is a protectable element of the Copyrighted TailGate Logo. The original design elements of the truck render it original such that it is entitled to copyright protection. Second, the angle of the parked truck is not a protectible element. Elements are not protectible when they depict the natural portrayal of an inanimate object. . . . To find that the position of TailGate’s truck is a protected element of a copyrighted image would imply that the profile of a truck, or trucks pictured straight on and from the back are protectible elements of a copyrighted work. Finally, the Court finds that the depiction of the keg in the bed of the truck is not a protectable element of the Copyrighted TailGate Logo. . . . Here, although a substantially similar keg could theoretically be protected, the idea of a keg in a truck is too generalized to warrant copyright protection. . . .

According to Tailgate, the combination of the truck parked in the same manner with its tailgate lowered, featuring a keg in the bed of the truck from the Copyrighted TailGate Logo in the Pale Ale Image render the images substantially similar. TailGate does not analyze these elements individually, perhaps because so doing would not support its position. Although throughout its
briefing and during the Preliminary Injunction Hearing TailGate generally alleged that Boulevard is using “our truck,” it does not explain how the trucks are similar beyond their angle and the keg in the back. Boulevard, on the other hand, disputes that the truck or keg are actually similar. Specifically, Boulevard states that the make and models of the trucks are different, the tires are different, the windshields differ in style, the “TailGate Beer” decal appears in the back windshield of the TailGate Mark, the Pale Ale Image has a license plate whereas the TailGate mark does not, and the taillights differ. . . . The Court, considering the prospective of the intended audience, finds that these images are not substantially similar. Rather, the Court finds persuasive the plethora of differences between the two trucks identified by Boulevard and described above.

**Seventh Circuit**

Court of Appeals for the Seventh Circuit

NARKIEWICZ-LAINE V. DOYLE  
No. 18-2535, 2019 WL 3244501 (7th Cir. Jul. 19, 2019)  
Outcome: Appeal - affirmed  
Works of Authorship: Visual work - graphic work  
Topics: Remedies - attorneys fees

This case arose from the destruction of personal property and artwork belonging to Christian Narkiewicz-Laine, an artist. Narkiewicz-Laine stored his artwork and other belongings in a space in Galena, Illinois that he rented from the defendants. Years into the lease, the defendants emptied the unit, destroying the majority of Narkiewicz-Laine’s property. He responded by suing to recover for the loss of his property. After a six-day trial, the jury awarded him damages on multiple claims. Unsatisfied with his damages award, Narkiewicz-Laine now appeals, challenging a number of the district court’s rulings made along the way. We affirm. . . .

We owe a final word to the district court’s decision not to award Narkiewicz-Laine attorneys’ fees. . . . The jury found for Narkiewicz-Laine on only four of those claims. The flipside is that the jury necessarily found for the defendants on the remaining claims under the Visual Artists Rights Act—indeed, on the vast majority of those claims.

As the district court explained, that Narkiewicz-Laine “chose to plead all of his VARA claims in one count should not dictate who is determined to be the prevailing party.” And, unlike in the context of civil rights suits in which a plaintiff need not prevail on every claim to be considered the prevailing party, plaintiffs and defendants are on equal footing for the purposes of fee awards under § 505. . . . Where, as here, the jury’s verdict points in two directions as to who prevailed, the district court was well within its discretion in declining to grant Narkiewicz-Laine fees.
This appeal presents a question of first impression for us on the scope of statutory damages recoverable under the Copyright Act of 1976. Section 504(c)(1) of the Act permits a copyright holder “to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work,” with Congress separately instructing that, in determining statutory damages, “all the parts of a compilation or derivative work constitute one work.” This case requires us to determine what constitutes “one work” in a fact pattern where a jury found infringement on multiple works registered in a single copyright application.

Amy Sullivan, a graphic design artist, produced a series of 33 illustrations for Flora, Inc., an herbal supplement company, to use in two advertising campaigns. Upon noticing that Flora was using the illustrations in other ads, Sullivan brought suit for copyright infringement and opted to pursue statutory damages. She did so to maximize her potential payout by classifying each of her 33 illustrations as “one work” within the meaning of § 504(c)(1) of the Copyright Act. Flora disagreed, contending that the illustrations were part of two broader compilations and thus, if Sullivan prevailed, § 504(c)(1) limited her to just two statutory damage awards—one award for infringement on the illustrations used in each of the two advertising campaigns. The district court agreed with Sullivan, and instructed the jury that she could recover separate awards of statutory damages for 33 acts of infringement on 33 separate illustrations. The jury found infringement on each of the 33 illustrations and returned a statutory damages award of $3.6 million.

On appeal Flora challenges the district court’s ruling on statutory damages and separate rulings on two additional defenses to liability asserted at trial. While procedural shortcomings defeat these latter two challenges, Flora is right that the district court committed error in permitting separate awards of statutory damages unaccompanied by any finding that each or any of the 33 illustrations constituted “one work” within the meaning and protection of § 504(c)(1) of the Copyright Act. It is neither appropriate nor possible for us to make that finding on the record before us. So we vacate the judgment in Sullivan’s favor and remand for further proceedings.

DESIGN BASICS, LLC V. WK OLSON ARCHITECTS, INC.
No. 17 C 7432, 2019 WL 527535 (N.D. Ill. Feb. 11, 2019)
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Architectural work - design
Topics: Infringement - substantial similarity, Infringement - access, Remedies - willful infringement, Integrity of Copyright Management Information - removal

Plaintiffs Design Basics, LLC (“Design Basics”) and Carmichael & Dame Designs, Inc. (“CDD”), architectural design companies that create home plans and sell design licenses,
discovered home plans on Defendants WK Olson Architects, Inc. (“WK Olson”) and R&D Custom Homes’ websites that appear to copy those of Plaintiffs. To protect their copyrights, Plaintiffs filed this suit against WK Olson, its controlling shareholder William K. Olson, R&D Custom Homes, and its controlling shareholders, Daniel DeVivo and Rocky Spano. The Court dismissed the first amended complaint, finding Plaintiffs had only set forth conclusory allegations to support their claims. In their second amended complaint, Plaintiffs reallege claims for willful and non-willful copyright infringement in violation of the Copyright Act . . . vicarious infringement against the controlling shareholders, and violation of the Digital Millennium Copyright Act (“DMCA”) . . . . WK Olson and Olson again move to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Because Plaintiffs have provided additional details of substantial similarity and access and the Court cannot as a matter of law determine that Plaintiffs’ design plans include no protectable elements or arrangement of elements that WK Olson allegedly copied, the Court allows the non-willful infringement and vicarious infringement claims to proceed. The willful infringement claims may also proceed because Plaintiffs have sufficiently alleged WK Olson’s knowledge of the infringing conduct. But the Court dismisses the DMCA claim where Plaintiffs do not allege WK Olson removed copyright management information from their original works but rather only that they copied elements of those works into virtually identical floor plans.

TOWADA AUDIO CO. V. AIWA CORP.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - logo
Topics: International law - Japan, Ownership - transfer, Ownership - pleading requirements, Copyrightability - creativity, Copyrightability - pleading requirements

In the 1950s, non-party Sony Corporation and its predecessors-in-interest developed and promoted a brand called “Aiwa” to promote the sale of its many audio and video products, including stereo systems, CD players, and color televisions. In 1991, one of those predecessors-in-interest commissioned a famous Japanese designer named Shin Matsunaga to create a new logo for the company. In recent years, Sony assigned the United States interests in that logo to Plaintiff Towada Audio Co., Ltd. (Towada), who created a subsidiary Aiwa Co., Ltd. (Aiwa) to use the logo. Aiwa is now advertising and selling consumer electronics products under that logo abroad and has plans to enter the United States market.

Plaintiffs sue Defendant Aiwa Corporation, who they claim have engaged in copyright infringement and unfair competition in violation of federal and state laws by advertising and selling products under their logo. Defendant moves to dismiss, or in the alternative, to strike the portion of Plaintiffs’ prayer for relief requesting statutory damages and attorney’s fees under the United States Copyright Act . . . . For the reasons explained below, this Court denies Defendant’s motion to dismiss, and grants its motion to strike. . . .

1. Ownership and Copyright Standing . . . Based upon the record here, including the fact that a Japanese designer created the Aiwa Design in Japan, this Court finds that Japan retains the
closest relationship to the Aiwa Design. . . . This Court thus applies Japanese law to determine ownership. . . .

Under those standards, this Court finds that Plaintiffs have sufficiently alleged their ownership of the Aiwa Design. Namely, Plaintiffs assert that Matsunaga, the creator of the Aiwa Design, designed it as a “work made for hire” on behalf of the First Aiwa Company. . . . The First Aiwa Company thus legally owned the Aiwa Design. The First Aiwa Company then assigned its rights to Sony, id., who subsequently assigned its United States rights in the Aiwa Design to Plaintiff . . . . That subsequent assignment—from Sony to Aiwa—is registered with the Japanese Copyright Office, making the transfer effective against third parties. . . . Thus, Plaintiffs sufficiently pled their ownership interest in the Aiwa Design.

And, although Japanese law controls the determination of copyright ownership, that choice of law is subject to the qualification under United States federal procedural law that “an owner (including one determined according to foreign law) may sue for infringement in a United States court only if it meets the standing test of 17 U.S.C. § 501(b), which accords standing only to the legal or beneficial holder of an ‘exclusive right.’ ” . . . Here, because Plaintiffs have established that they are the legal owner of the exclusive rights in the Aiwa Design, this Court finds that they also have standing to sue under the United States Copyright Act.

2. Copyrightable . . . Defendant does not contest that Matsunaga independently created the work, so this Court focuses solely upon whether the Aiwa Design possesses the requisite minimal degree of creativity. On this point, Defendant is correct that neither the word “Aiwa,” nor its typeface, standing on its own, is copyrightable. . . . But the law requires this Court to look beyond those individual elements. And indeed, when viewing the combination of the word “Aiwa,” the typeface variations, color, arrangement and spacing between letters, this Court concludes that the Aiwa Design possesses some modicum of creativity, at least for the purposes of a motion to dismiss. Thus, while this claim may not survive at another stage in these proceedings, the Aiwa Design possesses, for now, the requisite originality to merit United States copyright protection.

Shanlian Quan and Kwan Joong Kim sued Ty, Inc., alleging copyright and patent infringement. Ty has moved for summary judgment on the basis of equitable estoppel and abandonment. For the reasons stated below, the Court denies the motion. . . .
the first sale doctrine protected Ty's distribution of the toys manufactured by Creatail and that as a result there is a genuine dispute regarding whether Ty engaged in conduct constituting copyright infringement during the period in which Creatail manufactured the toys. Because Ty is not entitled to summary judgment on its equitable estoppel defense unless it can show that no reasonable jury could find that the plaintiffs were unaware of allegedly infringing conduct, the first sale doctrine precludes granting the motion on the basis of copyright estoppel.

B. Abandonment . . . Ty is not entitled to summary judgment on this basis as there is a genuine dispute about whether Kim intended to abandon the copyright.

ALAN ROSS MACH. CORP. V. MACHINIO CORP.
Outcome: Motion to dismiss - granted
Works of Authorship: Literary work - Internet work, Visual work - photograph, Literary work - computer program
Topics: Integrity of Copyright Management Information - removal, Integrity of Copyright Management Information - conveyed, Integrity of Copyright Management Information - injury

In its Second Amended Complaint (“SAC”), Alan Ross Machinery Corporation alleges Defendant Machinio Corporation “scraped” sales listings of industrial machinery from Alan Ross’s website and duplicated those listings on its website, in violation of the Digital Millennium Copyright Act (“DMCA”). . . . Before the Court is Machinio’s motion to dismiss the SAC. For the following reasons, Machinio’s motion is granted. . . .

As the Court has already held, Alan Ross has failed to allege that when Machinio copied the photographs and listings from its website, it removed CMI from those photographs and listings. At the bottom of each page on Alan Ross’s website, there is a general copyright notice that states “© 2018 - Alan Ross Machinery Corporation.” But that notice does not indicate to what it refers. The notice does not specify that it refers to the photographs or the listings. Indeed, the copyright notice appears on each page of Alan Ross’s website, regardless of whether there is only one listing and photograph on the page or several. . . . But Alan Ross admits that it does not own at least some of the photographs on its website. . . . And, there is a clear demarcation between the listings and the copyright notice. . . . Accordingly, the only plausible explanation is that the copyright notice refers to the actual pages of the website. . . . Again, however, Alan Ross does not allege that Machinio copied Alan Ross’s pages, only the photographs and descriptions contained in the listings. “Without allegations that Machinio removed or altered any CMI from the listings it allegedly copied, Alan Ross fails to allege a violation of 17 U.S.C. § 1202(b).” . . .

Alan Ross’s allegations also fail because it does not allege Machinio removed or altered CMI conveyed “in connection with” the photographs or listings. . . . Here too, where the only CMI displayed by Alan Ross appears on the website’s footer, not on the works or images themselves, the only conclusion the Court can reach about the general copyright notice at the bottom of Alan Ross’s website is that it has some intellectual property rights in its own website, not that it is
claiming ownership of a copyright to all of the photographs or information contained in the listing. . . .

For similar reasons, Alan Ross’s new allegations regarding its source code also do not constitute CMI conveyed with the listings. Again, Alan Ross does not allege that the CMI contained in the source code referred to anything but the pages themselves (or perhaps the instructions for how the pages were laid out). Again, Alan Ross does not allege that Machinio copied the pages or those instructions. Instead, it alleges Machinio copied only its desired content. . . . Alan Ross does not allege any CMI was contained with the listings copied, even within the source code.

Finally, as the Court explained in its prior opinion, the link to Alan Ross’s terms and conditions also is not CMI conveyed in connection with the work. Alan Ross’s terms and conditions are located on a separate page than the listings copied. And, the terms and conditions do not even state that Alan Ross owns any of the information contained in its website—only that visitors are prohibited from copying and distributing content from the site without Alan Ross’s consent. . . . While Machinio’s terms of use on a separate page do suggest that the “site and all services and content” are subject to copyright protection . . . those terms of use are not conveyed in connection with the works at issue because they too are located on a different page. . . .

In any event, Alan Ross’s SAC fails for an independent reason—it has failed to allege that it is a “person injured” as required by the DMCA to bring a claim under the statute. . . . Although the Court notified Alan Ross of its failure to allege any injury in its previous opinion, Alan Ross again fails to allege an injury associated with Machinio’s violation of the DMCA. Instead, it continues to allege that Machinio caused confusion in the marketplace: “By reproducing the Copied Listings on its website, Machinio caused third-party websites such as Google to falsely represent that the copied listings were Machinio’s property and caused some actual and potential buyers to conclude the same.” . . . But as the Court previously stated, that confusion does not plausibly amount to an injury, such as reduced sales or advertisements, particularly because Machinio does not sell any products. That § 1203(c) allows for statutory damages in lieu of actual damages does not change the first requirement that Alan Ross be injured before it can bring a claim under the Act. Alan Ross’s failure to allege any injury, despite several opportunities to do so, is fatal to its claim.

FAIR ISAAC CORP. V. TRANS UNION, LLC
Outcome: Motion to dismiss - granted-in-part, Motion for a more definite statement - denied
Works of Authorship: Literary work - computer program
Topics: Infringement - pleading requirements

Fair Isaac Corporation (“FICO”) brings this amended complaint against TransUnion, LLC alleging breach of contract, breach of good faith and fair dealing, copyright infringement, conversion, and false advertising in violation of both federal and state law. Currently before the Court is TransUnion’s motion to dismiss the amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Alternatively, TransUnion moves for a more definite statement
pursuant to Federal Rule of Civil Procedure 12(e). For the reasons explained below, TransUnion’s motion . . . to dismiss is granted in part and denied in part and its motion for a more definite statement is denied. . . .

The Court find that dismissal of the copyright infringement claim is not appropriate at this stage. . . . TransUnion does not cite, and the Court has not found, any case law that supports the argument that breach of contract somehow preempts a copyright infringement claim, even when both causes of action have overlapping facts. Whether TransUnion’s actions amounted to copyright infringement is a factual issue, and therefore, should not be considered at the 12(b)(6) stage. Accordingly, TransUnion’s motion to dismiss Count VI is denied.

LIFE AFTER HATE, INC. V. FREE RADICALS PROJECT, INC.
No. 18 C 6967, 2019 WL 2644237 (N.D. Ill. Jun. 27, 2019)
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Audiovisual work - video
Topics: Preemption - unjust enrichment, Preemption - conversion, Preemption - tortious interference, Preemption - deceptive trade practices, Ownership - pleading requirements, Infringement - pleading requirements

Plaintiff Life After Hate, Inc. (“LAH”) initiated this suit against Defendants Christian Picciolini and Free Radicals Project, Inc. (“FRP”). LAH claims in its amended complaint that Picciolini, one of LAH’s co-founders, left LAH and started Free Radicals Project, a competing organization, and began infringing LAH’s registered trademarks. . . . LAH brings claims against Picciolini and FRP for trademark infringement and counterfeiting, tortious interference with a business expectancy, deceptive trade and business practices, cybersquatting, conversion, unjust enrichment, and breach of fiduciary duty. . . . LAH moved for a preliminary injunction to prevent Picciolini and FRP from using LAH’s trademarks, which remains under advisement. . . . Picciolini and FRP answered LAH’s complaint and brought counterclaims against LAH for copyright infringement, violation of right of publicity, unfair competition, unjust enrichment, conversion, and deceptive trade practices. . . . Picciolini and FRP also brought claims against LAH and four individual third-party defendants, Tony McAleer, Sammy Rangel, Angela King, and Frank Meeink, each of whom is affiliated with LAH, for tortious interference with a business expectancy, conspiracy, breach of fiduciary duty, and defamation and disparagement. . . .

LAH and the third-party defendants (which the Court will jointly refer to here as “LAH”) now move to dismiss Picciolini and FRP’s claims in their entirety, arguing that all claims fail to state a claim for relief under Federal Rules of Civil Procedure 12(b)(6) and 9(b), and that some claims are preempted by the Copyright Act. . . . For the reasons stated here, the motion to dismiss . . . is granted in part and denied in part. Counts Two, Three, Four, Six, Seven, Eight, and Ten are dismissed without prejudice. Count Five is dismissed with prejudice. Count Nine is dismissed without prejudice as to third-party defendant McAleer only. The motion is denied as to Count One and the remainder of Count Nine. . . .
a. Unjust Enrichment (Count IV) . . . To the extent the unjust enrichment claim relies on LAH’s use of the Picciolini Copyrights, that conduct is not qualitatively different from the conduct proscribed by the Copyright Act and that part of the claim is preempted. The claim is also preempted to the extent it relies on LAH’s use of Picciolini’s “likeness,” because the only facts Picciolini and FRP allege to support their claim that LAH used Picciolini’s likeness involve LAH’s alleged use of the Picciolini Copyrights. Picciolini and FRP argue that their unjust enrichment claim is not entirely preempted because it also relies on the allegation that LAH concealed the fact that Picciolini was no longer associated with the organization. Picciolini and FRP argue that this concealment is qualitatively different from conduct regulated by federal copyright law. The Court agrees, so this aspect of their unjust enrichment claim survives preemption. . . .

b. Conversion (Count V) . . . Picciolini and FRP concede, as they must, that their conversion claim as to the Picciolini Copyrights is preempted, because a claim for conversion of copyrighted materials involves conduct that is not qualitatively distinguishable from that governed by the Copyright Act. . . . LAH does not argue that the remaining aspects of the conversion claim (i.e., conversion of the trademarks and domain name) are preempted. As discussed below, the remaining conversion claim is dismissed with prejudice.

c. Tortious Interference (Count VI) . . . As above, to the extent the tortious interference claim relies on LAH’s alleged copyright infringement, that conduct is not qualitatively different from that governed by copyright law. . . . Picciolini and FRP concede that that aspect of the claim is preempted. . . . LAH does not argue that the remaining aspects of the tortious interference claim (i.e., those based on the alleged conversion, defamation, and breach of fiduciary duty) are preempted. As discussed below, the remaining tortious interference claim fails to state a claim for relief and is dismissed.

d. Deceptive Trade Practices (Count X) . . . As to the second basis for their claim, Picciolini and FRP similarly do not allege any facts, other than LAH’s use of the Picciolini Copyrights, to support their claim that LAH represented that Picciolini approved or sponsored its services. The Complaint alleges elsewhere that LAH “refused to publicly disclose” that Picciolini left LAH . . . but the Complaint does not connect that refusal to the allegation that LAH represented that Picciolini approved or sponsored its services. That inference is not reasonable without some further details or other facts to connect the dots, and none are alleged here. This aspect of their claim necessarily depends on LAH’s use of the Picciolini Copyrights, so it is also preempted. That leaves just the third basis—that LAH disparaged Picciolini’s services. As discussed further below, the remainder of the claim is dismissed under Rule 12(b)(6). . . .

a. Copyright Infringement (Count I) . . . Picciolini and FRP allege that Picciolini owns five federally registered copyrighted works, three of which are videos. They list the titles of the works and their registration numbers and allege that LAH has continued to “use and publish” his copyrights, including the videos, without his authorization. . . . By alleging that Picciolini owns valid copyrights and that LAH continues to “use and publish” them, they clear that bar, but just barely. Their allegations are sparse and they must provide much more detail about the circumstances of LAH’s alleged use of the copyrights to survive summary judgment. But at this
stage, where the Court assumes the truth of their allegations, they have alleged enough to survive a Rule 12(b)(6) challenge.

GC2 INC. V. INT'L GAME TECH.
No. 16 C 8794, 2019 WL 3080922 (N.D. Ill. Jul. 15, 2019)
Outcome: Motion for judgment as a matter of law - denied, Motion for a new trial - denied, Motion for permanent injunction - granted, Motion for attorneys fees and costs - denied
Works of Authorship: Visual work - graphic work
Topics: Integrity of Copyright Management Information - intent, Integrity of Copyright Management Information - knowledge, Integrity of Copyright Management Information - removal, Remedies - actual damages, Remedies - attorneys fees

GC2 Inc. sued International Game Technology, IGT, Doubledown Interactive LLC, and Masque Publishing, Inc. alleging copyright infringement and violations of the Digital Millennium Copyright Act (DMCA). GC2's claims went to trial in January 2019. The jury found unanimously in GC2's favor. Specifically, the jury found that each of the defendants had both directly and vicariously violated GC2's copyrights, that IGT Holding, IGT NV, and Doubledown had also contributorily infringed, and that IGT Holding, IGT NV, and Doubledown had committed 696 separate violations of the DMCA.

The defendants have filed several post-trial motions. They ask for partial judgment as a matter of law on the DMCA claims on the basis that evidence did not support the jury's verdict; for a new trial, remittitur, and/or to alter the verdict; and for attorney's fees under the Copyright Act. GC2, the plaintiff, has moved for a permanent injunction, supplemental damages, prejudgment interest, attorney's fees, and costs. For the reasons below, the Court (1) denies the defendants' motion for partial judgment as a matter of law; (2) denies the defendants' motion for a new trial, remittitur, and/or to alter the judgment; (3) grants GC2's motion for a permanent injunction; (4) denies GC2's motion for supplemental damages; (5) grants GC2's motion for prejudgment interest in part; (6) denies GC2's motion for attorney's fees; and (7) denies the defendants' motion for attorney's fees. The Court will rule separately on GC2's bill of costs.

A. Defendants' motion for judgment as a matter of law . . . 1. DMCA's intent and knowledge requirements . . . Put another way, "the evidence as a whole, when combined with all reasonable inferences permissible drawn from that evidence, is sufficient to allow a reasonable jury to find in favor of the plaintiff." . . . The DMCA's dual knowledge and intent requirements provide no basis to disturb the jury's verdict.

2. DMCA removal claims . . . a. Application to collaborative derivative works . . . Here, in contrast with Fischer and Faulkner Press, GC2 presented undisputed evidence that it provided the defendants with artwork for Coyote Moon and Pharaoh's Fortune for use in the development of land-based games, which was then used, in its entirety, in the online versions of the games later developed by the defendants. The defendants do not contest that much. They do not even contest that the artwork appeared without attribution. The defendants simply argue that because they modified the artwork provided by GC2, creating a derivative work, there was no longer an
"original work" from which to remove the copyright management information. That argument is wholly without merit and provides no basis to upset the jury's verdict on this claim.

b. "Pre-existing" copyright management information . . . Here, as in Monotype, the defendants cannot hide behind an unreasonably crabbed reading of the word "remove." As with their previous contention, the defendants here rest their argument on language used by district courts presented with disputes readily distinguishable from those at issue here. Nowhere does the text of section 1202 suggest that removal of copyright management information is only a violation if that information was placed on the copyrighted materials by the plaintiff itself. Such a reading would lead to the absurd result where a copyright owner who contracts with another entity to manufacture their products—and in the process to affix copyright management information—could not avail itself of the DMCA's removal provisions. The Court declines to adopt the defendants' requested approach. . . .

B. Defendants' motion for a new trial, remittitur, and/or alteration of the verdict . . . 1. Apportionment of damages . . . After carefully reviewing the record, Court concludes that the jury's verdict was not contrary to the manifest weight of the evidence, nor did it result in a miscarriage of justice. . . . Even accepting the defendants' argument that there was insufficiently precise quantitative evidence in the record to lead the jury to the 75% apportionment figure, the Seventh Circuit's recognition that "the fact that the jury was not given the materials for constructing a rational path from the evidence to the verdict is not fatal" surely applies. . . . Looking only to the "bottom line" and not "the mental process that led there," as the Court must when reviewing a jury's damages calculation . . . the Court concludes that there was sufficient evidence in the record to support the jury's verdict and thus declines to disturb its judgment. . . .

C. Plaintiff's motion for a permanent injunction, supplemental damages, and prejudgment interest . . . 1. Permanent injunction . . . In sum, the Court finds that the equitable factors from eBay support the issuance of a permanent injunction. The defendants must delete, destroy, or otherwise abate infringement of GC2's copyrights—with the exception of the existing Masque brochures—subject to the terms of the injunction outlined below. . . .

D. Motions for attorney's fees . . . 1. GC2's motion for fees . . . The Fogerty factors . . . do not support an award of attorney's fees to GC2. Indeed, GC2 hardly attempts to apply them to the circumstances of this case. To the extent that it tries, GC2 seems to misunderstand to whom the factors apply by asserting that its own claims were not frivolous and that it is therefore entitled to fees. It would be challenging to argue that claims on which a party prevailed were frivolous; that is why the Fogerty factors apply to the non-prevailing party's claims or defenses and not to the victor's. But rather than correctly applying Fogerty to the defendants' claims and defenses, GC2 embarks on a free-wheeling recitation of each misdeed it contends the defendants committed before and during this litigation in a plea to award attorney's fees as a form of deterrence lest the defendants "enjoy the windfall of their business decision and be undeterred from engaging in future infringement." . . . Beyond ignoring the fact that GC2 has already won more than $17 million in damages and disgorged profits (a sum doubtless sufficient to address any concerns of the defendants "enjoying a windfall"), this discussion was neither particularly persuasive nor relevant to the question of attorney's fees, which primarily rests on whether the losing party's
litigation positions were so meritless as to be frivolous or objectively unreasonable. As a result, GC2 has failed to demonstrate this is entitled to attorney's fees under Fogerty and its motion is denied.

2. Defendants' motion for fees . . . The Court concludes that Fogerty factors do not support an award of attorney's fees to IGT PLC. There is little evidence beyond the defendants' speculation that GC2's claims against IGT PLC were frivolous or made in bad faith. Indeed, despite the defendants' bald assertions that GC2 knew IGT PLC was an improper defendant, it also seems to admit that only after jurisdictional discovery was it "reveal[ed]" that IGT PLC was beyond this Court's jurisdiction. . . . Particularly in the context of this case, where GC2 took many of its claims against the remaining defendants to trial and won, it would be incongruous to find that its claims against one of the defendants' affiliates were frivolous, objectively unreasonable, or begotten of ill motives simply because IGT PLC did not prove to have sufficient contacts with this district to confer personal jurisdiction. The defendants' motion for attorney's fees is therefore denied.

FAMEFLYNET, INC. V. JASMINE ENTERS. INC.
No. 17 C 4749, 2019 WL 3733592 (N.D. Ill. Aug. 8, 2019)
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Visual work - photograph
Topics: Remedies - attorneys fees

FameFlynet, Inc. (FFN) brought this action against Jasmine Enterprises for copyright infringement after Jasmine posted celebrity wedding photos on its company blog. In January 2019, the parties stipulated to the facts, evidence, and a statutory damages award, reserving only their claims to attorneys’ fees . . . . Now before the Court is FFN’s petition for attorneys’ fees and costs . . . , and Jasmine’s motion to strike FFN’s motion . . . . For the following reasons, Jasmine’s motion to strike is granted in part and denied in part, and FFN is awarded $10,500 in attorneys’ fees and costs.

IN RE DEALER MGMT. SYS. ANTITRUST LITIG.
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - computer program
Topics: Circumvention of copyright protection systems - secondary liability, Circumvention of copyright protection systems - pleading requirements

Before the Court is the motion to dismiss the counterclaims of Defendant/Counter-Plaintiff CDK Global, LLC (“Counter-Plaintiff” or “CDK”) . . . filed by Plaintiffs/Counter-Defendants ACA Motors, Inc.; Continental Classic Motors, Inc.; 5800 Countryside, LLC; HDA Motors, Inc.; H & H Continental Motors, Inc.; Continental Autos, Inc.; Naperville Zoom Cars, Inc.; NV Autos, Inc.; Baystate Ford Inc.; Cliff Harris Ford, LLC; Marshall Chrysler Jeep Dodge, L.L.C.; Warrensburg Chrysler Dodge Jeep, L.L.C.; Cherry Hill Jaguar; JCF Autos LLC; Jericho
Turnpike Sales LLC; Patchogue 112 Motors LLC; and Waconia Dodge, Inc. (collectively, “Counter-Defendants”). For the reasons set forth below, the motion to dismiss . . . CDK’s counterclaims is granted in part and denied in part. . . .

Counter-Defendants argue that the Court should not extend secondary liability principals to Section 1201(a) because that provision created a distinct anti-circumvention right under Section 1210(a) without any infringement nexus requirement. Thus, according to Counter-Defendants, attaching a copyright context to this provision of the statute would be improper. The Court disagrees. As noted by the Supreme Court in Sony, the secondary liability principles applied in copyright law stemmed from more generally applicable common law principles. Counter-Defendants have not identified any basis for concluding that such principles do not also apply to Section 1201(a).

In any event, CDK alleges facts sufficient to establish that Counter-Defendants themselves circumvented a technological measure that effectively controls access to a work protected under this title. Although it is true—as Counter-Defendants contend—that the use of valid username/password combinations alone is insufficient to establish liability under Section 1201(a)(1)(A) of the DMCA . . . CDK alleges that Counter-Defendants Continental and Warrensburg did more than simply provide Authenticom with valid passwords. Specifically, CDK claims that these Counter-Defendants took affirmative steps—including the installation of computer programs and/or the use of other automated programs—to circumvent CDK’s efforts to prevent Authenticom’s alleged unauthorized access of its DMS. For example, CDK alleges that these Counter-Defendants worked to evade “blocking by having new credentials created and/or by restoring disabled credentials—including on information and belief by automated means.” . . . These allegations are sufficient to establish primary liability at the motion to dismiss stage.

NUCAP INDUS., INC. V. ROBERT BOSCH LLC
No. 15 C 02207, 2019 WL 4242499 (N.D. Ill. Sep. 7, 2019)
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Visual work - drawing
Topics: Copyrightability - creativity, Integrity of Copyright Management Information - intent

Plaintiffs Nucap Industries, Inc. and Nucap US Inc. (Nucap) brought this suit against Robert Bosch LLC; Bosch Brake Components LLC; and Robert Bosch GmbH (Bosch) after the dissolution of their five-year commercial relationship. Nucap brought both federal and state law claims, all of which relate to Bosch’s use of Nucap’s allegedly proprietary drawings of aftermarket brake pad components, which Nucap had originally allowed Bosch to access as part of their relationship. In turn, Bosch levelled counter-claims against Nucap, challenging Bosch’s ownership of the drawings, as well as Nucap’s decision to stop acting as a supplier for Bosch. The parties now cross-move for summary judgment. For the reasons discussed below, both motions are granted in part and denied in part. . . .

Copyright Infringement . . . Here, there is evidence in the record supporting Bosch’s argument that the manufacturing perimeters are factual depictions of a publicly available component part
and thus not copyrightable. . . . But when the evidence is viewed in a light most favorable to Nucap, a reasonable jury could find that Nucap’s manufacturing perimeters are “original” for purposes of copyright protection. Nucap’s expert explained that each manufacturing perimeter “does not simply reflect the nominal dimensions,” but rather “takes into account numerous considerations,” like the capabilities of Nucap’s tooling and Nucap’s prior experience about how similar parts have performed. . . . He also explained that there are areas in a manufacturing perimeter that do “not contain sufficient dimension and tolerance information to derive the shape depicted.” . . . Moreover, Bosch’s expert testified that manufacturing perimeters are not purely a function of the nominal dimensions of tolerances of a component part. . . . Finally, both sides’ experts agreed that different engineering teams would produce different manufacturing perimeters. . . . To be sure, this copyright claim is not particularly strong. But the evidence is enough to create a triable issue of fact on whether Nucap’s manufacturing perimeters are copyrightable. . . .

DMCA . . . Nucap has failed to make such a showing here, even when viewing the facts in its favor. There is ample evidence that Bosch did not know that it was committing copyright infringement when it overlayed Nucap’s drawings with drawings from competitors. Wilkes explained in his declaration that Bosch does not send original supplier’s component drawings to replacement suppliers, and that the overlay process is conducted entirely internally. . . . He also explained that the overlay process was standard procedure. . . . This is supported by Nucap’s admission that Bosch disclosed Nucap information externally no more than nine times. . . . Nucap’s expert also testified that Bosch maintained enough of Nucap’s CMI in the overlays that Bosch’s engineers could identify which information came from Nucap drawings. . . . Multiple witnesses also confirmed that Bosch turned to the overlay process in desperation after Nucap cut off its supply of component parts. . . . Although this does not, by itself, entirely negate the possibility that Bosch had reason to know it was facilitating copyright infringement, it is strong evidence that Bosch was motivated not by an intent to infringe, but by a business necessity. Then, of course, there is Bosch’s repeated expressed belief that it owned the rights to the drawings under the POTCs.

Against all this, there is insufficient countervailing evidence to support a jury’s finding that Bosch acted with the requisite intent.

Northern District of Indiana

DESIGN BASICS, LLC V. HELLER & SONS, INC.
Outcome: Motion for summary judgment - granted
Works of Authorship: Architectural work - design
Topics: Infringement - substantial similarity

Plaintiff is a prolific design firm, copyrighting more than 2,500 different designs and plans for moderately priced single-family homes. This case involves a claim by Plaintiff for copyright infringement of five of those designs. The issue before the Court now is Defendant’s Second Motion for Summary Judgment . . . wherein Defendant asks this Court to determine, as a matter
of law, that it did not infringe on any of Plaintiff’s copyrights. . . . The Court concludes that, while the designs at issue bear superficial similarities to their allegedly infringing siblings, there nonetheless exist numerous differences which defeat any claim of copyright infringement. Accordingly, Defendant’s Motion for Summary Judgment will be granted.

ART OF DESIGN, INC. V. PONTOON BOAT, LLC
Outcome: Motion for issuance - granted-in-part
Works of Authorship: Visual work - graphic work
Topics: Defenses - fraud on the Copyright Office

This matter is before the Court on Defendant’s Motion for the Issuance of a Request to the Register of Copyrights and to Dismiss Pursuant to 17 U.S.C. § 411(b) . . . filed June 28, 2019. Defendant requests that the Court stay this case, seek an opinion from the Register of Copyrights regarding copyrighted designs at issue in this case, and dismiss the action if the Register finds that Plaintiff’s copyright registration should have been refused. . . .

The Court finds that it is not necessary to decide whether fraudulent intent is required, because Defendant has presented adequate possibility of fraud to justify a referral to the Register. Plaintiff argues that its lawyer filled out the application, and the lawyer did not know that the works were partly derived from other sources. Plaintiff does not fully explain why lawyer and client would not have consulted on this point before attempting to register the copyright. Defendant presents evidence that Plaintiff and its counsel persisted in the position that the work had been created from scratch, through written discovery and into depositions, until Plaintiff’s Rule 30(b)(6) deponent was confronted with the “stock” file that the works were based on.

DESIGN BASICS, LLC V. HELLER & SONS, INC.
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Architectural work - design
Topics: Remedies - attorneys fees

This matter is one of dozens of lawsuits brought by Design Basics and its associated entities alleging violations of their copyrighted home designs. On June 24, 2019, this Court entered summary judgment in favor of Defendants, determining that Defendants had not violated any of the five home designs identified by Design Basics. Having determined that Defendants were the “prevailing parties” in this litigation, this Court invited Defendants to file a request for attorneys’ fees pursuant to 17 U.S.C. § 505, and further invited Design Basics to file a response in opposition. Those filings have now been submitted . . . and the issue of attorneys’ fees is now ripe for determination. . . . For the foregoing reasons, this Court GRANTS Defendants’ Petition for Attorney Fees and Costs . . . and awards Defendants fees and costs in the amount of $310,759.34.
BELL V. POWELL
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Visual work - photograph
Topics: Remedies - attorneys fees

This matter is before the Court on Motions for Attorney Fees and Bill of Costs filed by Defendants David N. Powell (“Powell”) and Midwest Regional Network for Intervention with Sex Offenders (“MRNISO”). The Defendants filed their Motions pursuant to 17 U.S.C. § 505 of the Copyright Act after they became the “prevailing party” in this Copyright Act case. For the following reasons, the Court grants MRNISO’s Motions and awards it $76,200.05 in fees and costs.

DESIGN BASICS, LLC V. KERSTIENS HOME & DESIGNS, INC.
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Architectural work - plan
Topics: Remedies - attorneys fees

This matter is before the Court on a Motion for Costs, Including Attorney Fees . . . filed by Defendants Kerstiens Homes & Designs, Inc., T-Kerstiens Homes Corp., Kerstiens Management Corp., Kerstiens Leasing Corp., Kerstiens Holding Corp., and Kerstiens Development, Inc. (collectively, “Defendants” or “Kerstiens”). The Defendants filed their Motion for Costs pursuant to 17 U.S.C. § 505 of the Copyright Act after they became the “prevailing party” in this Copyright Act case. For the following reasons, the Court grants the Defendants’ Motion and awards them $518,457.80 in fees and costs.

HADDLEY V. NEXT CHAPTER TECH., INC.
Outcome: Motion for summary judgment - granted
Works of Authorship: Literary work - computer program
Topics: Defenses - license, Integrity of Copyright Management Information - license, Copyright registration - litigation requirement, Infringement - evidence of copying

This matter is before the Court on Defendants Next Chapter Technology, Inc.’s (“NCT”), Vaughn Mulcrone’s, and dataBridge LLC’s Second Motion for Partial Summary Judgment . . . and a Motion for Partial Summary Judgment . . . brought by Plaintiff Neil Leonard Haddley (“Plaintiff” or “Haddley”). For the reasons set forth below, the Court grants Defendants’ motion and denies Plaintiff’s motion. . . .
II. Plaintiff’s Motion . . . A. Count I (Copyright Infringement) . . . The Court has carefully reviewed Plaintiff’s motion for summary judgment on his copyright claim in Count I and the parties’ competing arguments. The Court concludes that the same fact issues discussed in the prior order remain. As explained in the September Order, a fact-finder will be appropriately tasked with determining whether NCT or Clay and Steele Counties were licensed to use Scanning Enabler, whether the terms of the license were exceeded, and whether Plaintiff granted implied licenses and is estopped from denying them. Thus, the Court denies summary judgment on Count I.

B. Count III (Copyright Management Circumvention) . . . Haddley alleges Defendants NCT and Mulcrone acted in concert with County Defendants to bypass the license key system allowing the distribution of unauthorized copies of Scanning Enabler. . . . As explained above, fact issues exist as to whether Defendants were licensed to use Scanning Enabler and to the scope of the relevant licenses. Because a claim under the DMCA requires circumvention to occur “without the authority of the copyright owner,” summary judgment cannot be granted. Should a fact-finder conclude that NCT was licensed to use Scanning Enabler and that Defendants did not exceed the terms of the licenses or otherwise act inconsistently with the license, or that Plaintiff impliedly licensed each county to connect workstations to the servers, then Haddley’s DMCA claim will fail. The Court denies summary judgment on Count III. . . .

III. Defendants’ Motion for Summary Judgment . . . The 2007 source code is relevant because it forms the basis of Plaintiff’s copyright infringement claim in Count II. Plaintiff submitted a “deposit copy” of the work, but did not submit a complete copy of the 2007 source code. Plaintiff represents that Defendants have a copy of Scanning Enabler source code exactly as it existed on Clay and Steele County servers, as well as the deposited Scanning Enabler code from the 2014 registration. However, the record demonstrates that Plaintiff has made changes to the Scanning Enabler code while working in the United States. Plaintiff acknowledges that he made changes to the software but claims that the revisions were minor and did not amount to copyrightable changes or create a derivative work. . . . Therefore, the Court does not have jurisdiction over any claims based on unregistered derivative works.

Here, Plaintiff’s copyright claim in Count II is based on 2007 source code, a complete copy of which Plaintiff has not produced. Without such a copy, there can be no meaningful comparison or analysis of the asserted copyrighted work against what Plaintiff claims to be infringing work. Therefore, Defendants are entitled to summary judgment on Count II. Plaintiff claims that he only made minor or inconsequential changes to the 2007 source code over the years. However, this does not alter the decision here. Indeed, reliance on a later version of the registered code to prove infringement can be fatal to a copyright infringement claim. . . . Moreover, without the 2007 source code, there is no way of determining if the changes were, indeed, inconsequential, or whether Plaintiff’s allegations of infringement are based on the 2007 registered work or on an expression added later. In any case, the lack of a complete copy of the registered 2007 source code is fatal to Plaintiff’s claim in Count II.
This matter is before the Court on Defendant Kevin Ortner's motion for attorneys fees and costs. For the reasons addressed below, the motion is denied.

Here, the Court dismissed the claim against Ortner with prejudice, and that dismissal materially altered the legal relationship between Ortner and Live Face. Consistent with various circuit courts' interpretations of “prevailing party,” this Court holds that Ortner is a prevailing party under Section 505.

On balance, the factors do not favor an award of attorneys’ fees and costs under Section 505. Accordingly, Ortner’s motion for attorneys’ fees and costs is denied.

This case arises out of a contract between Plaintiff FurnitureDealer.Net (“FDN”) and Defendant Coaster Company of America (“Coaster”) in which FDN agreed to create a website to market Coaster’s products. FDN, a furniture marketing company, noticed that copyrighted material it created for Coaster began appearing on Defendant Amazon.com’s (“Amazon”) URLs. FDN brought this action against Coaster after learning that it provided the allegedly infringed material to Amazon. Against Coaster, FDN alleges direct copyright infringement, contributory infringement, vicarious infringement, unjust enrichment, breach of contract, breach of the covenant of good faith and fair dealing, and violations of the Digital Millennium Copyright Act (“DMCA”).

Coaster now moves to dismiss FDN’s claims under Fed. R. Civ. P. 12(b)(6) and, in the alternative, requests a more definite statement under Rule 12(e). Because FDN has alleged facts sufficient to support its claims, the Court will deny Coaster’s motion to dismiss as to every claim save FDN’s unjust enrichment claim. The Court will grant Coaster’s motion to dismiss the unjust enrichment claim because that claim is preempted by the Copyright Act. Finally, because it is
possible for Coaster to reply to FDN’s allegations, the Court will deny Coaster’s motion for a more definite statement.

The Merger Doctrine . . . Coaster argues that the search-engine-optimization process used in the creation of the Descriptive Text limits the number of ways the ideas behind the text can be expressed, making application of the merger doctrine appropriate. The Court disagrees. While the language FDN used in writing furniture descriptions was influenced by the SEO process, the ideas behind those descriptions could nonetheless be expressed in a variety of ways. Indeed, FDN describes a process that is fairly involved, such that the authors – not an algorithm – ultimately determine how their marketing ideas will be expressed. The Court thus finds the merger doctrine inapplicable here.

Creativity and Originality . . . While Coaster argues otherwise, the Descriptive Text at issue in this case consists of more than single words, short phrases, labeling, or technical descriptions. Indeed, a review of examples of the text reveals unique phrasing and language that seems designed to maximize the attractiveness of the products described to online buyers. For instance, a description of a dresser includes the sentence, “Two distinctive transparent doors add a unique touch, while clean lines, simple molding, and square tapered feet create a sophisticated style.” . . . That this text is descriptive in nature does not preclude it from possessing the minimal degree of originality required under the Copyright Act. As such, the Court finds that the Descriptive Text has the creativity and originality required for copyrightability.

The Scope of the Copyright . . . Here, FDN registered what the Court must infer was a collective work and retained exclusive rights to the relevant components of that work – the Descriptive Text. Accordingly, the Court finds FDN’s allegations sufficient to show that the copyright of the Automated Database extends to the Descriptive Text.

Joint Authorship . . . Even assuming Coaster’s provision of the catalog constitutes more than a de minimis contribution, the Court is not persuaded that Coaster is a joint author of the Descriptive Text. Coaster paid FDN to more effectively promote its products, in part through creating tailored descriptions. The very nature of this relationship suggests that the parties did not intend to be joint authors, but instead intended that FDN would provide Coaster with a service by creating content for the Website. The Agreement confirms as much. It states that “[FDN] will create and enhance content in the Content Library at Coaster’s request ... such as keyword enriching product descriptions.” . . . That Coaster provided short words and phrases to FDN through its catalog does not make it a genuine collaborator, nor show the intent necessary for joint authorship. As such, the Court finds it probable that FDN was the sole author of the Descriptive Text, and Coaster’s claim of right to it fails.

Coaster next argues that by contributing photos and logos, providing product information, and discussing ideas with FDN, it contributed to the “unitary whole” (the Website) and is therefore a joint author with equal rights to any content on the site. As a preliminary matter, it is not clear to the Court that Coaster’s contributions to the Website were more than de minimis. But even assuming they were, the Court finds that the Website is best characterized as a collective – not a joint – work, with each party enjoying ownership over its individual contributions. The
Agreement states explicitly that Coaster would keep rights to any “design elements” it contributed and, likewise, that any content created by FDN for the Website would belong exclusively to FDN. The parties’ insistence suggests that they lacked the intent required for joint authorship; that is, an intent that they be considered joint authors of the Website. Indeed, if they did intend to share authorship, it is difficult to understand why they would bother at all with defining their respective rights to the components of the site.

Coaster’s Access to the Automated Database . . . First, FDN need only show that Coaster had access to the Descriptive Text, not the entire Automated Database. Second, FDN has alleged facts showing that Coaster had access to the Descriptive Text. . . . Here, FDN alleges hundreds of incidences of Amazon URLs incorporating language identical or nearly identical to the Descriptive Text to describe Coaster furniture. This similarity alone allows the Court to infer access.

Moreover, both as a member of the public and through its working relationship with FDN, Coaster indisputably had access to the Website where the Descriptive Text appears. Coaster argues that access to the Website does not equate to access to the Automated Database. While true, this point is immaterial. Again, at issue here is only the Descriptive Text. Whether Coaster’s point of access to that text was through the Database or through the Website is of no import. As such, the Court finds that FDN has alleged facts sufficient to show that Coaster had access to the copyrighted material.

The DMCA Claim . . . Coaster first argues that FDN’s DMCA claim must be dismissed because the Notice was not posted on copyrightable subject matter. Because the Court has already found the Descriptive Text is copyrightable, it will not discuss copyrightability further. Coaster also argues that as a joint author of the Website, it had a right to remove CMI from the Descriptive Text. Having already found it unlikely that the parties were joint authors, the Court will likewise not revisit that discussion.

Coaster next argues that the Notice is false or misleading because it asserts that FDN has a copyright on the Website when in fact Coaster holds that copyright, and because the Notice suggests that FDN owns all the material on the Website when some of the material belongs to Coaster. In doing so, Coaster ostensibly argues that FDN has not adequately alleged that valid CMI existed for it to remove or alter. While there may be some merit to Coaster’s argument, the Court is not prepared to dismiss FDN’s DMCA claim on the pleadings. As an initial matter, it is not clear from the pleadings that Coaster owns a valid copyright in the Website, and the Court is not obligated to take Coaster at its word when it argues as much. It is also not obvious to the Court that the Notice implies that FDN owns material that rightfully belongs to Coaster. These are questions of fact that may be revisited following discovery.

Moreover, the Notice may be valid even if Coaster is correct that it implies FDN owns material that belongs to it. . . . [I]f FDN is the owner of the Website – which, again, the Court will not determine at this time – a blanket notice covering its own contributions and others’ is perfectly valid. Because it does not necessarily follow that the owner of a contribution may post CMI for the work as a whole, matters may be more complicated if, after discovery, it appears that Coaster
is the owner of the Website. But the Court need not address this issue until the relevant factual questions have been answered.

Finally, Coaster contends that because the Notice was placed on the Website rather than the Automated Database, FDN has only alleged that CMI was removed from a copy of its work, not from the copyrighted work itself. The Court first reiterates that at issue here is not the Automated Database, but the Descriptive Text. The Court is not convinced that the Notice’s placement on the Website (rather than the Database) removes the Descriptive Text from the protection of the DMCA. . . . Here, as in Kelly, FDN may claim under 1202(b)(3) that Coaster wrongfully removed CMI from a copy of FDN’s copyrighted work. As such, the Court finds that FDN has plausibly stated a claim under the DMCA and will deny Coaster’s motion to dismiss the claim. . . .

Unjust Enrichment . . . FDN argues that its unjust enrichment claim falls outside the scope of the Copyright Act because the enrichment arose not from copyright infringement, but from Coaster’s breach of the Agreement. The Court disagrees. As in Issaenko, FDN’s unjust enrichment claim amounts to allegations that Coaster unjustly benefited from the wrongful appropriation of its works. That the unjust enrichment is also connected to Coaster’s alleged breach of the Agreement does not remove the claim from the scope of the Copyright Act. As such, the Court will grant Coaster’s motion to dismiss FDN’s unjust enrichment claim. . . .

Breach of Contract . . . [O]ne provision of the Agreement creates rights different from those protected by the Copyright Act. The Agreement provides that in consideration for FDN’s services, Coaster would refer authorized dealers to FDN, who could then set up their own websites. While FDN does not explicitly identify this provision in the Amended Complaint, the Court finds that the claim may fairly be read to allege that Coaster breached this provision of the Agreement by failing to refer Amazon to FDN. It will therefore deny Coaster’s motion to dismiss FDN’s breach of contract claim. . . .

Breach of the Covenant of Good Faith and Fair Dealing . . . Because FDN’s breach of contract claim will not be dismissed, however, the Court will also deny Coaster’s motion to dismiss FDN’s good faith and fair dealing claim.

This case arises out of Defendant COA, Inc.’s (‘Coaster’) and Defendant Amazon.com’s (‘Amazon’) alleged copying of text created by Plaintiff FurnitureDealer.net (‘FDN’). In 2010, FDN and Coaster entered into an Agreement in which FDN agreed to create and license to Coaster a website to market Coaster’s furniture products. Copyrighted content from that site
allegedly appeared on Amazon URLs in 2016. FDN brought this action against Coaster and Amazon in 2018, alleging copyright infringement and breach of contract. In March 2019, Coaster brought eight counterclaims against FDN.

Before the Court now is FDN’s Motion for Partial Dismissal of Coaster’s Answer, Affirmative Defenses, and Counterclaims. FDN moves to dismiss the following counterclaims: (III) Tortious Interference with Existing Business Relationships; (IV) Tortious Interference with Prospective Economic Advantage; (V) False and/or Misleading Representation of Fact – Lanham Act; (VI) Unfair and/or Deceptive Trade Practices – Minnesota Uniform Deceptive Trade Practices Act (“MUDTPA”); (VII) Unfair Business Practices – California Business & Professions Code (“CBPC”); and (VIII) Contractual and/or Equitable Indemnification.

Because they are preempted by the Copyright Act, the Court will dismiss Counts III, IV, VI, and VII with prejudice. Because Coaster’s Lanham Act claim is foreclosed under Dastar v. Twentieth Century Fox Film Corp. . . . the Court will dismiss Count V with prejudice. Because FDN is not required to indemnify Coaster for any damages or fees Coaster may be required to pay as a result of this action, the Court will dismiss Count VIII with prejudice.

FAIR ISAAC CORP. V. FED. INS. CO.
No. 16-CV-1054 (WMW/DTS), 2019 WL 5057865 (D. Minn. Oct. 9, 2019)
Outcome: Motion to strike - granted
Works of Authorship: Literary work - computer program
Topics: Remedies - disgorgement of profits

This is a hotly disputed, vigorously litigated copyright infringement case relating to business-rules software. Plaintiff Fair Isaac Corporation (FICO) claims Defendants Federal Insurance Company, et al. (Federal) have breached their license agreement for the software and have infringed FICO's copyright. FICO has asserted damages of $37 million for breach of contract, $34 million for copyright infringement, and has made a claim for recovery of Federal's profits under Section 504(b) of the Copyright Act in an amount between $2.5 billion and $31 billion.

FICO demanded a jury trial on all claims so triable. . . . Federal has moved to strike FICO's jury demand as to its claim for disgorgement of profits. The issue is whether FICO has a right to a jury trial on this claim under the Seventh Amendment to the United States Constitution. This question has been squarely addressed by very few courts, none of them within the Eighth Circuit. Therefore, the question whether FICO's claim for recovery of Federal's profits is a legal remedy on which it is entitled to a jury determination, or an equitable remedy on which it is not, is an issue of first impression within this circuit. For the reasons described below, this Court finds FICO does not enjoy a Seventh Amendment right to a jury determination on its claim for recovery of Federal's profits. . . .

For all these reasons the Court finds there is no statutory right to a jury trial under the Copyright Act. Therefore, the question turns on whether the Seventh Amendment guarantees FICO the right to a jury trial on its claim for recovery of Federal's profits under 17 U.S.C. § 504(b). . . . For
all the reasons previously stated, this Court finds FICO's request for disgorgement is equitable in nature and FICO is not entitled to a jury determination of this issue.

Eastern District of Wisconsin

ROTH V. WALSH CO.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Integrity of Copyright Management Information - definition of CMI

Ian Roth, a professional photographer, sues The Walsh Co., Inc. d/b/a Walsh Products, for copyright infringement and violation of the Digital Millennium Copyright Act (“DMCA”) . . . stemming from Walsh’s allegedly infringing use of Roth’s copyrighted photograph of a horse. Walsh moves to dismiss Count Two of Roth’s complaint—the DMCA claim—because it fails to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons that follow, Walsh’s motion to dismiss is denied. . . .

The complaint plainly alleges that the false CMI is Walsh’s company name and trademarked logo and that by placing its name and logo on or directly adjacent to Roth’s photograph, Walsh provided false CMI in violation of § 1202(a). . . . The link is therefore clear. . . . It cannot be, and Walsh has provided no authority in support, that an alleged infringer can escape liability under § 1202(a) simply because the false CMI put forth is the alleged infringer’s own name. . . . Thus, because Roth’s complaint properly alleges that Walsh included its own company name or trademarked logo on or directly adjacent to each unauthorized display of Roth’s copyrighted photograph, and alleges sufficient facts to indicate Walsh did so knowingly and with the intent to induce, enable, facilitate, or conceal infringement, Roth’s complaint properly states a claim upon which relief can be granted. Walsh’s motion to dismiss is denied.

Western District of Wisconsin

REILLY V. BADGER COACHES, INC.
No. 18-CV-198-WMC, 2019 WL 1435913 (W.D. Wis. Apr. 1, 2019)
Outcome: Motion for judgment on the pleadings - denied, Motion to strike - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Ownership - pleading requirements, Infringement - pleading requirements, Integrity of Copyright Management Information - pleading requirements, Vicarious infringement - pleading requirements, Limitations on liability relating to material online - pleading requirements

Plaintiff Jennifer Rondinelli Reilly asserts copyright infringement claims against defendants Badger Coaches, Inc., Badger Tour & Travel, LLC, John Meier, David Meier and James Meier based on their alleged use of two of Reilly’s photographs on Badger Coaches’ website. Before the court is plaintiff’s most recent motion, a motion for judgment on the pleadings or, in the alternative, to strike affirmative defenses. . . . For the reasons that follow, the court will deny plaintiff’s motion for judgment on the pleadings, finding defendants’ denials preclude this relief.
While motions to strike are typically disfavored, the court will credit some of plaintiff’s arguments, and grant that motion in part for the reasons explained below. . . .

Even more specifically, plaintiff’s claims require her to prove a number of elements that have been denied -- either outright or under Rule 8(b)(5) -- by defendants: (1) that she owns a valid copyright, which encompasses a finding that the photographs are subject to copyright protection; (2) that defendants used her photographs without her permission; (3) that such copying was in reckless disregard of her rights; (4) that defendants removed her copyright management information or knew that it had been altered; (5) that the individual defendants profited from direct infringement; and (6) that the individual defendants have the right and ability to control infringement. . . . Given her allegations and the nature of copyright law, plaintiff may well be capable to proving each of these elements and defendants may be unable to prove any of their affirmative defenses, but defendants are entitled to hold her to that proof. Of course, if plaintiff is correct and the evidence is overwhelming in her favor, she is free to marshal her evidence and bring a motion for summary judgment, but she is wasting time and effort pursuing an essentially frivolous 12(c) motion. . . .

[D]efendants’ ninth affirmative defense -- that plaintiff’s claims are barred because of the safe harbors provision of the Digital Millennium Copyright Act . . . is frivolous in light of defendants’ own answer, admitting that they are not a service provider as defined by 17 U.S.C. § 512(k). . . . As such, the court will strike this defense.

_Eighth Circuit_

Eastern District of Missouri

ETRAILER CORP. V. TEXTRAIL, INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - logo
Topics: Integrity of Copyright Management Information - definition of CMI, Integrity of Copyright Management Information - conveyed

This matter is before the court on Defendant’s Motion to Dismiss Plaintiff’s Count II under Fed. R. Civ. P. 12(b)(6). . . . For the reasons set forth below, the Court will deny Defendant’s Motion to Dismiss. . . .

It is this Court’s opinion that a sticker containing a copyright owner’s name and logo, placed prominently on a picture’s object piece as an indication of ownership of the pictorial work for the purpose of copyright control and management, may constitute CMI under the plain language of § 1202. It is undisputed the stickers were contained “within” or “in” Plaintiff’s Works. It is also undisputed the stickers in question contained Plaintiff’s name and logo. A logo is indisputably “identifying information.” The cases cited by the Defendant are not to the contrary. Because such a sticker falls within the plain and unambiguous language of 17 U.S.C. § 1202(c)(2)-(3), and its digital removal from the Works would in fact be the removal of the Plaintiff’s name and logo from its copyrighted works, this Court holds that the Plaintiff’s allegations contain sufficient
factual matter to state a claim for relief that is plausible on its face and upon which relief can be granted.

Western District of Missouri

DESIGNWORKS HOMES, INC. V. THOMSON SAILORS HOMES, LLC.
Outcome: Motion for summary judgment - granted
Works of Authorship: Architectural work - design
Topics: Infringement - access, Infringement - striking similarity

Before the Court is Defendants’ Motion for Summary Judgment. . . . For the reasons discussed below, the Motion is GRANTED. . . .

Access . . . Plaintiffs’ speculation that Defendants “had possible access to the Plaintiffs’ architectural work” simply because the property was “easily accessible from the public-right-away [sic]” and because Plaintiffs advertised the homes during construction amounts to no more than a bare possibility of access, which is not enough. . . . Plaintiffs offer no evidence that any of the Defendants viewed Plaintiffs’ homes. Plaintiffs also assert that their copyrighted design won awards in Columbia, Missouri, but offer no evidence that any of the Defendants knew of the awards or learned of Plaintiffs’ design based on the awards. Plaintiffs argue that Defendants could have viewed Plaintiffs’ design at an open house, but Plaintiff James admits he does not know whether any of the Defendants attended any open houses, could not recall seeing them there, and did not produce the sign-in sheets he claimed to have kept from the open houses. . . .

Similarity . . . Plaintiffs are unable to prove substantial similarity, let alone striking similarity. There are objective differences in the details of Plaintiffs’ and Defendants’ works. Plaintiffs describe their copyrighted design as a triangular atrium design with stairs as part of the main room. Plaintiffs’ design includes a diamond-shaped great room with a straight staircase to the basement. The great room is positioned at a forty-five-degree angle to the rest of the house. The stairs are integrated as part of the great room, or parallel to the wall in the great room that is opposite the staircase. In contrast, Defendants’ design includes an offset triangular atrium that is adjacent to, not part of, a rectangular living room, and an angled staircase to the basement. The staircase forms the triangular shape and protrudes out from the living room. Further, Plaintiffs’ diamond-shaped great room is significantly larger than Defendants’ triangular atrium design at the end of living room. Accordingly, the arrangement of spaces and elements in the design is not substantially, let alone strikingly, similar. . . . Plaintiffs’ copyright does not extend to the idea of a triangular-shaped atrium, but to the particular arrangement and composition of the great room and stairwell designed by Plaintiff. . . . Plaintiffs have failed to demonstrate striking similarity between Defendants’ and Plaintiffs’ works.
Before the Court is Defendants' Motion for Summary Judgment... The Court, being duly advised of the premises, grants Defendants' motion....

1. Defendants are entitled to summary judgment on Count I for Registration C and Registration U. With respect to Registration U, there exists no genuine issue of material fact that the structure, based on construction drawings making up Registration U’s deposit materials, was never built. Because the structure was never built, Designworks cannot show that Defendants had “a reasonable possibility” of viewing the structure based on construction drawings underlying Registration U. Additionally, there is no basis in the record for the conclusion that Defendants otherwise had an opportunity to view Designworks' drawings at all....

Similarly, with respect to Registration C, there exists no genuine issue of material fact that Defendants never had a “reasonable possibility” of viewing Designworks' construction drawings, nor the interior of 4804 Chilton. Consequently, the record presents no basis for the conclusion that Defendants ever viewed the drawings or the structure underlying Registration C. Therefore, assuming, without deciding, that with all reasonable inferences drawn in Designworks' favor, the record demonstrates a prima facie case of copyright infringement with respect to Registration C, Designworks cannot establish access to the materials protected by Registration C....

2. Defendants are entitled to summary judgment on Count I for Registration K. a. Defendants are not entitled to summary judgment based on Designworks' claims for infringement of unregistered aspects of 1713 Kenilworth because these unregistered aspects are within the scope of Registration K. Defendants argue they are entitled to summary judgment because Designworks' certificate of copyright states that Registration K is for technical drawing only under § 102(a)(5), and not under § 102(a)(8) for an architectural work. Defendants assert this distinction is important because the record does not contain evidence suggesting Defendants ever had access to Designworks' drawings, though the record demonstrates Defendants had access to the interior of 1713 Kenilworth, upon which the Floorplan is based.

Defendants' argument relates to the scope of Registration K, which goes to the first element of Designworks' copyright infringement claim. However, Defendants' motion for summary judgment asserts their right to summary judgment based on the affirmative defenses of the applications of 17 U.S.C. § 120(a) and/or 17 U.S.C. § 107 for fair use. Therefore, for purposes of Defendants' motion for summary judgment, the Court assumes, without deciding, that with all reasonable inferences drawn in Designworks' favor, the record demonstrates a prima facie case of copyright infringement of Registration K with respect to Defendants' Floorplan. From this
perspective, the Court considers whether Defendants are entitled to summary judgment based on its affirmative defenses.

b. Defendants are entitled to summary judgment based on § 120(a). . . . In this case, the Court considers § 120(a) from the perspective that Registration K confers copyright ownership in not only the underlying technical drawings, but also the completed structure located at 1713 Kenilworth. Pursuant to § 120(a), Designworks' copyright in the structure located at 1713 Kenilworth, which, under the uncontroverted facts, is ordinarily visible from the public street, does not include the right for Designworks to prevent another from making a pictorial representation of the structure located at 1713 Kenilworth. To the extent Designworks argues the § 120 exemption is limited to the exterior structure of 1713 Kenilworth that is ordinarily visible from a public place, the plain language of the statute belies this argument in stating its equal application to “the building in which the work is embodied.” 17 U.S.C. § 120(a). The work at issue in this case is the Design, which is embodied in the completed architectural work located at 1713 Kenilworth, which is ordinarily visible from a public place. Consequently, Defendants' creation of the Floorplan capturing the layout of 1713 Kenilworth is not an infringing act because the Floorplan is a pictorial representation of the structure's interior as it exists. Defendants are thus entitled to summary judgment based on 17 U.S.C. § 120(a) on Designworks' Count I for copyright infringement of Registration K. In light of this conclusion, the Court declines to consider whether Defendants are also entitled to summary judgment based on the other arguments raised.

B. Defendants are entitled to summary judgment on Designworks' claims for contributory and vicarious for copyright infringement alleged in Counts II and III. . . . In this case, based on the conclusion that Defendants are entitled to summary judgment on Designworks' Count I with respect to Registrations U, C, and K, Designworks has not established direct infringement, such that Designworks cannot demonstrate copyright infringement based on secondary liability as alleged in Counts II and III. Therefore, Defendants are likewise entitled to summary judgment on Designworks' Counts II and III.

C. Defendants are entitled to summary judgment on Designworks' claim for violation of VARA alleged in Count IV. . . . In this case, there is no genuine issue of material fact that the drawings on which the structure at 1713 Kenilworth is based are technical drawings. Under the plain language of § 101, technical drawings are among the works of authorship not included in the definition of “a work of visual art.” Because technical drawings are specifically excluded from this category, Defendants are entitled to summary judgment to the extent Designworks alleges violation of VARA with reference to the underlying drawings for 1713 Kenilworth.

Likewise, to the extent Designworks alleges violation of VARA based on the completed structure at 1713 Kenilworth, Defendants are entitled to summary judgment. “Not every artist has rights under VARA, and not everything called ‘art’ is protected by such rights.” . . . VARA's protection is specifically limited only to those works of visual art like a painting, drawing, print, sculpture, or photograph, and not works that serve a utilitarian function, despite the addition of artistic embellishment. . . . Because “an architectural work embodied in a building does not fall within the definition of a work of visual art,” Designworks cannot establish a VARA violation
based on the Design as incorporated into the residence located at 1713 Kenilworth. . . . Therefore, Defendants are entitled to summary judgment on Designworks' Count IV for violation of VARA.

District of Nebraska

ETRAILER CORP. V. AUTOMATIC EQUIP. MFG., CO.
Outcome: Motion to dismiss - granted
Works of Authorship: Visual work - photograph, Audiovisual work - video
Topics: Copyrightability - creativity, Integrity of Copyright Management Information - definition of CMI

The plaintiff alleges claims of copyright infringement pursuant to 17 U.S.C. § 501 et seq., and removal of copyright management information pursuant to 17 U.S.C. § 1202. The defendant moves for dismissal of the plaintiff’s complaint pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons that follow, the Court will grant the defendant’s motion. . . .

1. Copyright Infringement . . . Here, the plaintiff (etrailer) did not recite any facts regarding the staging of its photographs, decisions that etrailer made regarding lighting, facts regarding the arrangement of the items in the photographs, the purpose of the background against which the towing part were set, or any other element that would owe its origin to etrailer or its employee, thereby making the work etrailer’s creation—even if etrailer’s degree of creativity was merely slight. . . .

The works depicted are towing parts and accessories that are stamped with logos of both the plaintiff and defendant. Nothing about the images would allow the Court to conclude that any level of creativity or originality went into the production of the photographs on the plaintiff’s website. . . .

2. Removal of Copyright Management Information . . . The Court does not understand how stamping the plaintiff’s “etrailer” logo on a towing part could reasonably represent notice of a copyright regarding a photograph of that part used to advertise its sale on the plaintiff’s website. Stamping “etrailer” on the towing part itself cannot possibly alert anyone to the fact that a photograph of that towing part appearing on the plaintiff’s website has been copyrighted. Stamping “etrailer” on the towing part only indicates that etrailer is the seller of the towing part, not that etrailer is the owner of a copyright to all photographic images of every product it sells through its website. . . .

Copyright management information is intended to inform the public that an image or work is copyrighted and thereby prevent copyright infringement. . . . Stamping products the plaintiff sells on its website with its logo is intended to inform the public that the plaintiff sells that particular product. That is not the kind of information § 1202 was intended to protect. The Court finds that the plaintiff failed to state a claim for relief for the unauthorized removal of copyright management information.
EDGE IN COLLEGE PREPARATION, LLC V. PETERSON'S NELNET, LLC
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Literary work - test
Topics: Ownership - assignment, Infringement - substantial similarity

The parties in this lawsuit are generally in the business of test preparation for college entrance exams. . . . The plaintiff, the Edge in College Preparation, agreed to write an ACT test preparation manuscript for the defendant, Peterson’s Nelnet. . . . But at some point, Nelnet decided it no longer wanted to work with the Edge. Now, the Edge is suing Nelnet for allegedly breaching its contractual obligations and infringing on the Edge’s copyrighted work. . . .

This matter is before the Court on the parties’ cross-motions for summary judgment . . . . For the reasons set forth below, the Court will grant the Edge’s motion for partial summary judgment . . . in part and deny it in part.

Determining which party owned the copyright at the time of the alleged infringement, however, requires the resolution of a factual dispute underlying much of this litigation: on what date did Nelnet actually terminate the Publishing Agreement? If the agreement was terminated on August 10, 2015 as the Edge contends, then the Edge owned the copyright to the manuscript on August 13 when Nelnet distributed that material. On the other hand, if Nelnet did not terminate the parties’ agreement until August 17, as it contends, then Nelnet would have been assigned the copyright at the time of the August 13 distribution. . . . Accordingly, the Court will deny the Edge’s motion for summary judgment with respect to its first copyright infringement claim.

Based on the foregoing, a reasonable juror could certainly conclude that arrangement and selection of information in the two works are objectively substantially similar. . . . Accordingly, the Court will proceed to the intrinsic part of the substantial similarity test. . . Based on that evidence, a reasonable fact finder could conclude that the works, when considered in their entirety, discuss similar ideas, in similar contexts, with the exact same overall purpose. . . . Accordingly, the Court finds that there are genuine disputes of material facts on the issue of substantial similarity. As such, the Court will deny Nelnet’s summary judgment on the Edge’s copyright infringement claim.

Ninth Circuit

WHITE V. BROADUS
No. 17-55864, 2019 WL 168985 (9th Cir. Jan. 11, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Music - musical work
Topics: Defenses - statute of limitations, Remedies - attorneys fees

Plaintiffs Antonio White and Craig Ward appeal the dismissal of their first amended complaint, with prejudice, in their copyright action against Defendants Calvin Broadus, Jr.; Marion Knight;
Andre Young; Warner-Tamerlane Publishing Corp.; Ricardo Brown; and Warren Griffin III. We affirm.

1. Plaintiffs’ claims for copyright infringement became time-barred years ago under the Copyright Act’s three-year statute of limitations, 17 U.S.C. § 507(b), because copyright ownership—not infringement—forms the core of their complaint. Plaintiffs learned of Defendants’ allegedly infringing song no later than 1995. . . .

2. The district court did not abuse its discretion by striking Plaintiffs’ opposition to Young’s fee motion for failure to comply with the local rules. . . . Moreover, we review the fee award for abuse of discretion . . . and the award itself was reasonable under the Copyright Act’s fee-shifting provision . . . . Defendants won on a motion to dismiss, and Plaintiffs’ claims were objectively unreasonable because they waited so many years to bring them.

Singer-songwriter Alisa Apps appeals the district court’s grant of summary judgment in favor of Universal Music Group, Inc. (“UMGI”) and songwriters John Newman and Steve Booker in Apps’s action for copyright infringement.

Apps failed to show substantial similarity. The only lyrical commonality between both songs is the phrase “I need to know now.” . . . Moreover, these lyrics are not original to Apps. UMGI showed that at least 11 songs pre-dating Apps’s song included this common phrase.

Apps also argues that the sound of defendant’s recording of “Love me Again” is similar to the sound of her copyrighted recording of her composition. Yet she does not, and could not, argue that there was any copying of her recording itself; she argues only that there is similarity. That is insufficient under the terms of the statute. . . .

To the extent that Apps continues to argue infringement of the musical composition of her song, she failed to produce sufficient evidence of objective similarities between the compositions of the songs to allow such a claim to proceed to trial. . . .

Because Apps cannot show substantial similarity, we need not decide whether she could establish access, whether UMGI is an improper defendant, or whether Apps should have been granted leave to name a different defendant.
Zillow, an online real estate marketplace, has become a popular website for homeowners and others to check estimated valuations of their property, look for houses and condominiums for sale and rent, and see photographs of a wide range of properties. Thousands of those copyrighted photos come from VHT, the largest professional real estate photography studio in the country.

The copyright claims on appeal concern Zillow's use of VHT's photos on two parts of Zillow's website: the “Listing Platform” and “Digs.” The Listing Platform is the core of the website, featuring photos and information about real estate properties, both on and off the market. Zillow claims that the site includes “most homes in America.” Digs features photos of artfully-designed rooms in some of those properties and is geared toward home improvement and remodeling. Zillow tags photos on the Listing Platform so that Digs users can search the database by various criteria, like room type, style, cost, and color.

Real estate brokers, listing services, and agents hire VHT to take professional photos of new listings for marketing purposes. A VHT photographer takes the photos and sends them to the company's studio for touch-up, where they are saved to VHT's electronic photo database, and then delivered to the client for use under license. Each license agreement between VHT and its clients differs slightly, but each contract generally grants the requesting client the right to use the photos in the sale or marketing of the featured property. Zillow receives these photos and other data in feeds from various real estate-related sources.

In 2015, VHT sued Zillow Group, Inc., and Zillow, Inc., (collectively “Zillow”) for copyright infringement, alleging that Zillow's use of photos on the Listing Platform and Digs exceeded the scope of VHT's licenses to brokers, agents, and listing services who provided those photos to Zillow. The district court granted partial summary judgment on a limited set of claims, while other claims advanced to trial. The jury found in favor of VHT on most remaining claims, awarding over $8.27 million in damages. The district court partially granted Zillow's post-trial motion for judgment notwithstanding the verdict, reversing in part the jury verdict and reducing total damages to approximately $4 million.

The parties cross-appealed issues stemming from partial summary judgment, the jury verdict, and judgment notwithstanding the verdict. We affirm in part and reverse in part . . .

I. Direct Infringement . . . It is undisputed that VHT is the copyright holder of the allegedly infringed photos and therefore has the exclusive right to reproduce, adapt, and display them. . . .
A. Direct Infringement—Listing Platform Photos . . . Zillow did not engage in volitional conduct necessary to support a finding of direct liability. The content of the Listing Platform is populated with data submitted by third-party sources that attested to the permissible use of that data, and Zillow's system for managing photos on the Listing Platform was constructed in a copyright-protective way. The feed providers themselves select and upload every photo, along with the evergreen or deciduous designations, that wind up on the Listing Platform. As a result, the photos on the Listing Platform were not “selected” by Zillow. . . . Nor did Zillow “exercise[ ] control” over these photos beyond the “general operation of [its website].” Id. Zillow required feed providers to certify the extent of their rights to use each photo. Consistent with these designations, Zillow's system classified each photo as deciduous or evergreen and programmed its automated systems to treat each photo consistently with that scope of use certified to by the third party.

Further, when multiple versions of the same photo were submitted through the various feeds, Zillow invoked its copyright-protective “trumping” rules. For example, one rule might prefer a photo provided by an agent over one provided by a multiple listing service, and another might prefer a local broker to an international one. Zillow used a rule that gave preference to photos with evergreen rights over photos with deciduous rights in the same image. As the district court recognized, “trumping” is a reasonable way to design a system to manage multiple versions of the same photo when the authorized use varies across versions. These rules, along with other features of the system, facilitate keeping the photos with evergreen rights on the website and removing the photos with deciduous rights once a property has sold. Thus, Zillow actively designed its system to avoid and eliminate copyright infringement. . . .

B. Direct Infringement—Digs Photos . . . 1. Jury Verdict—Direct Infringement . . . In sum, VHT did not present substantial evidence that Zillow, through the Digs platform, directly infringed its display, reproduction, or adaption rights in 22,109 not displayed photos and 2,093 displayed but non-searchable photos. . . .

2. Summary Judgment—Fair Use re Searchable Photos . . . That Digs makes these images searchable does not fundamentally change their original purpose when produced by VHT: to artfully depict rooms and properties. Additionally, Digs displays the entire VHT image, not merely a thumbnail. . . .

VHT's photos are aesthetically and creatively shot and edited by professional photographers. That Zillow's curators select the most creative photos for the Digs searchable set underscores the creative nature of the works. . . .

In contrast to Amazon and Kelly, nothing justifies Zillow's full copy display of VHT's photos on Digs. . . .

Although VHT had licensed only a handful of photos for secondary uses (and none on a searchable database), that market was more than “hypothetical.” . . . Significantly, VHT was “actively exploring” the market for licensing its photos to home design websites like Digs—including with Zillow itself. This factor favors VHT. . . .
II. Secondary Infringement—Digs . . . A. Contributory Liability . . . VHT's position that “the jury could have reasonably decided that Zillow in fact had the means to identify and remove” the allegedly infringing images that VHT identified by property address, as opposed to their website designation or Uniform Resource Locator (“URL”), fails. Zillow testified throughout trial that, in order to systematically or swiftly take down a large number of photos, it required the Zillow Image ID—a number that is in the URL for each image. This stands to reason, because “Zillow receives multiple copies of the same photograph, depicting the same property, with the same listing agent, from different feeds.” Merely identifying the physical property address in no way identified the proper feed or the correct photo. Thus, Zillow did not have appropriately “specific” information necessary to take “simple measures” to remedy the violation.

VHT's argument that Zillow is liable for failing to ask for the URLs of the allegedly infringing photos also fails. Asking for the URLs was not Zillow's duty under the contributory liability standard: Zillow must have “actual knowledge that specific infringing material is available using its system.” . . . Zillow first reasonably asked to see the licenses between VHT and the feed providers; otherwise, Zillow could not assess ownership and rights in the undefined images. That Zillow did not proactively request a list of URLs before VHT filed suit does not make Zillow contributorily liable.

Additionally, Zillow's failure to systematically use watermarking technology does not show there was a “simple measure” available that it failed to use. Even assuming there were “reasonable and feasible means” for Zillow to employ watermark detection technology, in practice VHT rarely watermarked its photos. . . .

In view of the evidence, “no reasonable juror could conclude [Zillow] distributed its product with the object of promoting its use to infringe copyright.” . . . For example, Zillow's generally applicable tools and messages for users to save more photos from the Listing Platform to Digs does not “promote[ ] the use of [Digs] specifically to infringe copyrights.” . . . Nor does evidence that Zillow sometimes makes mistakes about the display rights in a feed plainly communicate an improper object of infringement. Zillow corrects these inadvertent errors when it learns of them. Because a “failure to take affirmative steps to prevent infringement” alone cannot trigger inducement liability, the inducement claim is a particularly poor fit for Zillow's real estate and home design websites, which have “substantial noninfringing uses.” . . .

B. Vicarious Liability . . . As discussed with respect to contributory infringement, there was insufficient evidence that Zillow had the technical ability to screen out or identify infringing VHT photos among the many photos that users saved or uploaded daily to Digs. Regardless, such allegations do not fall under the vicarious liability rubric: Zillow's “failure to change its operations to avoid assisting [users] to distribute ... infringing content ... is not the same as declining to exercise a right and ability to make [third parties] stop their direct infringement.” . . .

III. Damages . . . B. Willfulness . . . Zillow's agreements with its feed providers grant it an express license to use, copy, distribute, publicly display, and create derivative works for each photo, and the agreements include unambiguous representations by the feed providers that they
have the authority to assign such rights. Zillow developed procedures to identify ex ante the scope of its license for each uploaded photo and employed automated protocols to manage the use of each photo consistent with its evergreen or deciduous designation. At no point during their year of communications prior to issuance of the notice letter did VHT raise the specter of infringement. Notably, VHT's eventual notice was minimal: one letter with a list of allegedly infringing photos, designated by residential street address, not web address.

The notion that Zillow failed to take appropriate responsive measures after receiving this notice is belied by the record. Zillow immediately requested information to confirm VHT's copyright ownership and cross-reference the photos with licensing information. VHT was not forthcoming with that information. Rather, in response, VHT offered merely an unsigned form contract. Instead of providing helpful information, VHT then filed suit. Given the limited information provided by VHT, Zillow could not reasonably be expected to have promptly and unilaterally removed each flagged photo. As the district court noted, VHT failed to demonstrate there were simple measures available for the removal of infringing photos or that Zillow had any “practical ability to independently identify infringing images.”

Thus, we are compelled to conclude that substantial evidence does not show Zillow was “actually aware” of its infringing activity. . . . Zillow's belief that feed providers had properly licensed its uses and that its system effectively respected those rights was reasonable. And, as the district court observed, “[t]he record suggests no reason to conclude that Zillow maintained that position in bad faith, and Zillow's non-infringement contention proved accurate as to most of the images at issue in this lawsuit.”

We reach the same conclusion as to whether Zillow recklessly disregarded or willfully blinded itself to its infringement. In reaching an opposite conclusion, the district court observed that Zillow did not “perform[ ] further investigation into the rights each [feed provider] possesses,” nor did it “[ake] responsive measures to obtain further information” after VHT provided the minimal notice of potential infringement. That conclusion is at odds with the evidence, for the reasons outlined above.

VHT's argument that Zillow, a sophisticated business with a robust legal team, should have known that its feed provider license agreements were invalid is unavailing. VHT argues that when Zillow saw the non-exclusive grant of rights in VHT's unsigned form contract, showing that the feed providers did not have a right to sublicense, Zillow should have known the licenses were invalid. Despite requests for such information, Zillow did not have access to VHT's executed licenses with the feed providers who furnished VHT's photos to Zillow. Access to a blank form contract (that the district court earlier found ambiguous as a matter of law) is not enough. We conclude that substantial evidence does not show Zillow was “reckless or willfully blind” as to its infringement. We reverse the district court and vacate the jury's finding of willful infringement.
DOLORES PRESS, INC. V. ROBINSON  
No. 17-55069, 2019 WL 1224532 (9th Cir. Mar. 15, 2019)  
Outcome: Appeal - affirmed, Appeal - reversed  
Works of Authorship: Audiovisual work - recording  
Topics: Ownership - pleading requirements, Defenses - abandonment  

Case Numbers 17-55068, 17-55069, 17-55071, 18-55288, and 18-55487 involve what is essentially a single copyright and trademark infringement dispute. In a series of lawsuits, copyright and trademark claimants, Dolores Press, Inc. and Pastor Melissa Scott, sued Patrick Robinson, Truth Seekers, Inc., Doc’s Dream, LLC, and Bobbi Jones. Doc’s Dream also filed its own lawsuit, seeking a judicial determination that the works at issue were abandoned to the public domain. Dolores Press and Pastor Scott challenge the district court’s dismissal of all three of their lawsuits and of their counterclaims in Doc’s Dream’s lawsuit. Doc’s Dream challenges the grant of summary judgment on its claim of copyright abandonment. We have jurisdiction under 28 U.S.C. § 1291. We reverse in 17-55068, 17-55069, 17-55071, and 18-55487, and we affirm in 18-55288. . . .  

The district court erred in granting the motion to dismiss. Dolores Press alleged that it “is the exclusive licensee of all of the pertinent intellectual property rights of Pastor Melissa Scott, including the rights of Pastor Scott in and to the audiovisual recordings of Dr. Scott’s teachings.” In its complaint, Dolores Press also described the works created by Dr. Scott, alleged that Dr. Scott bequeathed “all rights to his intellectual property” to Pastor Scott, and alleged that Pastor Scott “granted an exclusive license to all rights in the Works to [Dolores Press].” These allegations of ownership are sufficient. . . .  

The alleged infringers argue the dismissal was proper because the license agreement, which Dolores Press attached to its proposed amended complaint, was non-exclusive. In its order denying Dolores Press’s motion for reconsideration of the denial of leave to amend, the district court concluded that amendment would be futile on that basis. The district court’s reading of the license agreement was erroneous. The license agreement is ambiguous. The district court cited the one provision of the agreement suggesting that the license is non-exclusive, but it ignored other provisions suggesting exclusivity. For example, a provision titled “Grant of Licenses” states, “Subject to the terms and conditions of this Agreement, Licensor grants to Licensee a revocable, exclusive, worldwide, royalty-free ... right and license during the Term....” . . . The district court’s selective reading of the agreement was improper, particularly at the pleading stage where the plaintiff is entitled to reasonable inferences in its favor. . . .  

Doc’s Dream’s theory of abandonment shifted during the summary judgment proceedings. Initially, its position was that Dr. Scott (the author of the works) abandoned all of his rights under copyright law. That position was well refuted by evidence that Dr. Scott during his life was consistent (and adamant) in asserting copyright protection in his works. Doc’s Dream then changed its theory by claiming that a limited abandonment (what Doc’s Dream calls a “Naked License”) occurred. Under Doc’s Dream’s narrowed theory, Dr. Scott abandoned the right to control non-commercial dissemination of his works by allowing the public to view his works on the Internet, while retaining other rights afforded by the Copyright Act. The district court did not
In this copyright infringement case involving fabric designs, Neman Brothers & Associates, Inc. (“Neman”) appeals the district court’s grant of summary judgment in favor of defendants Burlington Stores, Inc. and One Step Up, Ltd. . . .

The district court properly concluded that no reasonable juror could find that the designs are substantially similar under the extrinsic test. While there are some objective similarities between the fabric designs at issue, the similarities are not substantial. Indeed, the defendants submitted an expert report opining that the designs were not substantially similar, and Neman failed to controvert this evidence.

Neman’s remaining arguments in support of reversal are unavailing. Neman argues that the district court erred by failing to apply the “inverse ratio rule.” But that rule is not applicable in proving unlawful appropriation, which is the only issue before us.

Defendant-Appellant Kraig Kast (“Kast”) appeals a jury verdict finding that he vicariously and contributiorily infringed Plaintiffs-Appellees Erickson Productions, Inc. and Jim Erickson's (collectively, “Erickson”) copyrighted images by displaying them on his website and did so willfully. We vacate the jury's vicarious liability verdict but affirm its contributory liability verdict, so we uphold the judgment against Kast. We vacate the jury's willfulness finding and remand for a determination of whether Kast's infringement was willful on the existing record. . . .

I. The Vicarious Liability Verdict . . . a. Enhanced attractiveness of Kast's website . . . Erickson does not contend that anyone visited Kast's website in order to view his photographs or purchased his services because they saw the photographs. The parties agree that no one visited the website or purchased anything after doing so. If Kast had a direct financial interest in every
piece of content on this website that arguably made the website marginally more attractive or presentable, then the requirement of a causal link would be erased. Erickson does not argue the photographs were anything more, at best, than an “added benefit” to visitors of Kast's website, so the infringement did not confer a direct financial benefit on Kast as a matter of law.

b. Avoidance of licensing fees . . . Erickson's argument must be that Kast received a direct financial benefit when Only Websites avoided Erickson's licensing fee. Only Websites surely owed Erickson a licensing fee, and saved money by failing to pay it, but the direct infringer's avoidance of fees alone cannot satisfy the requirement of a direct financial benefit to the vicarious infringer. Otherwise, the requirement of a direct financial benefit would be rendered meaningless, since—at least where, as here, licenses are for sale—a direct infringer necessarily saves money by failing to obtain a license . . . Erickson never claimed that Only Websites and Kast were able to offer services more cheaply or quickly because Only Websites infringed Erickson's copyright. Erickson's alternative theory that Only Websites avoided the licensing fee in its capacity as Kast's agent, such that Kast himself is liable for its failure to pay, is also unpersuasive. Kast employed Only Websites to develop the website, but the latter's decision to infringe Erickson's copyright would have exceeded the scope of any agency relationship that may have existed between them.

c. The “rush” completion of the website . . . Kast conceded that he “rushed” the site out before it was finished in order to seek appointment to manage certain estates. But Kast received no money, clients, business inquiries, or website visitors by rushing the website's completion before removing Erickson's photos. Erickson never explained how using the photos allowed Kast to launch the website more quickly, or how the rushed launch enabled him to realize any profits at all.

II. The Contributory Liability Verdict . . . Kast claims the trial judge erred by instructing the jury that “knowledge” for contributory infringement purposes includes having a “reason to know” of the infringement. According to Kast, only “actual knowledge” or “willful blindness” are sufficient. . . . Inconsistency in our case law on the “knowledge” element of contributory liability precludes a finding of plain error. For instance, in Luvdarts, LLC v. AT & T Mobility, LLC . . . we held that “actual knowledge of specific acts of infringement” and “[w]illful blindness of specific facts” are the only two mental states that satisfy the “knowledge” element of contributory infringement. . . . But in Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc. . . . we cited with approval a “know or have reason to know” instruction for contributory liability . . . . Neither case is close to Kast's on the facts. While Luvdarts was decided after Louis Vuitton, it did not explicitly overrule it . . . Without resolving the apparent tension between Luvdarts and Louis Vuitton, we hold that Kast has not demonstrated that the jury instructions were plainly erroneous.

III. The Willfulness Finding . . . A “should have known” instruction does not fit within this framework because it is a negligence standard . . . Negligence is a less culpable mental state than actual knowledge, willful blindness, or recklessness, the three mental states that properly support a finding of willfulness.
Joshua L. Simmons
joshua.simmons@kirkland.com

CHARTER SCH. CAPITAL, INC. V. CHARTER ASSET MGMT. FUND, L.P.
No. 17-56601, 17-56603, 2019 WL 1873199 (9th Cir. Apr. 26, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Literary work - form
Topics: Ownership - assignment, Ownership - copyright registration, Infringement - substantial similarity

Defendants-Appellants Charter Asset Management Fund, L.P. and Charter Asset Management GP, LLC (together, “CAM”) appeal from a jury verdict finding CAM liable for copyright infringement and awarding $1,174,642 in profits to Plaintiff-Appellee Charter School Capital, Inc. (“CSC”). CSC cross-appeals the district court’s post-trial rulings granting a new trial and summary judgment to Defendants and Cross-Appellees Paul Im and David Park (together, the “Individual Defendants”). We have jurisdiction under 28 U.S.C. § 1291, and we affirm. . . .

There was sufficient evidence for the jury to find that CAM was liable for copyright infringement of either the 2013 form receivables purchase agreement (the “Form RPA”) or the 2012 receivables purchase agreement between Avance Academia and CSC (the “Avance RPA”). . . . There was testimony suggesting that the Avance RPA was covered by the assignment agreement because the Avance RPA was essentially the Form RPA with the blanks filled in, and CSC’s general counsel testified that the copyright application for the 2012 financing documents included the Avance RPA. CSC’s counsel also testified that she compared CAM’s form not only to the Avance RPA, but also to the CSC template form and concluded they were substantially similar.

MEDIA RIGHTS TECHS., INC. V. MICROSOFT CORP.
No. 17-16509, 2019 WL 1945119 (9th Cir. May. 2, 2019)
Outcome: Appeal - reversed
Works of Authorship: Literary work - computer program
Topics: Defenses - statute of limitations

This case requires that we apply longstanding principles of claim preclusion to a contemporary set of facts. Plaintiff-Appellant Media Rights Technologies, Inc. (“MRT”) developed a technology in the early 2000s to protect electronic files, such as music files, from content piracy. MRT claims that Defendant-Appellee Microsoft Corporation developed a similar technology following exchanges between the parties and in doing so used information learned from MRT. In 2013, MRT brought a patent infringement suit against Microsoft. After a court in a separate proceeding declared one of the patents at issue invalid, MRT voluntarily dismissed that suit with prejudice.

But that dismissal did not end the dispute in which the parties were embroiled. MRT then filed this suit against Microsoft, asserting claims for copyright infringement, violation of the Digital Millennium Copyright Act (“DMCA”), and breach of contract. The key question before us is whether MRT's first suit for patent infringement precludes this later suit for copyright
infringement under the doctrine of claim preclusion even though the current claims have different elements.

We hold that claim preclusion bars the claims in this suit that had accrued at the time of MRT's patent-infringement action: namely, (1) copyright infringement claims arising from the sale of Microsoft products before MRT filed its patent-infringement suit; (2) the DMCA claim; and (3) the breach of contract claims. These claims all arise from the same events—Microsoft's alleged misappropriation of MRT's software—as the prior patent infringement claims. They merely offer different legal theories for why Microsoft's alleged conduct was wrongful. We affirm the district court's dismissal of these claims.

However, we hold, under Howard v. City of Coos Bay . . . that claim preclusion does not bar MRT from asserting copyright infringement claims that accrued after it filed its patent-infringement suit: namely, claims arising from the sale of Microsoft products after MRT filed its patent-infringement suit. We reverse the district court's dismissal of these copyright infringement claims, and remand for further proceedings.

GOLD VALUE INT’L TEXTILE, INC. V. SANCTUARY CLOTHING, LLC
No. 17-55818, 2019 WL 2347390 (9th Cir. Jun. 4, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Visual work - design
Topics: Defenses - fraud on the Copyright Office, Copyright registration - publication, Remedies - attorneys fees

Gold Value International Textile, Inc., doing business as Fiesta Fabric (“Fiesta”), brought this action for copyright infringement against Sanctuary Clothing, LLC (“Sanctuary”), and several clothing retailers. Fiesta alleges that Sanctuary copied its fabric design, which was used to manufacture a blouse that was sold by the defendant retail outlets. Sanctuary filed a counterclaim, seeking invalidation of Fiesta's copyright. Concluding that Fiesta's copyright registration was invalid, the district court granted summary judgment in favor of Defendants. The district court determined invalidity pursuant to 17 U.S.C. § 411(b), finding that Fiesta knowingly included inaccurate information in its copyright application that would have caused the Copyright Office to deny registration. Recognizing that a valid copyright registration is a prerequisite to bringing suit, the district court dismissed Fiesta's complaint. The court also awarded attorney's fees and costs to Defendants. Fiesta appeals the final judgment as of right. Finding no error in the conclusions of the district court, we affirm. . . .

It is undisputed that Fiesta sold 190 yards of fabric bearing the 1461 Design before registering its copyright. Because the 1461 Design was distributed “to the public by sale or other transfer of ownership,” it was published within the meaning of the Copyright Act. . . . The district court did not err in finding that the 1461 Design had been published prior to registration and that, therefore, Fiesta's '509 Registration application contained an inaccuracy. . . .
Unlike the plaintiff in L.A. Printex, Fiesta knowingly included previously published designs in its application to register an unpublished collection. Fiesta was aware that it had sold yards of fabric to customers prior to registering the 1461 Design as part of an unpublished collection. Although Fiesta asserts that it did not believe that such sales constituted publication as a matter of law, Fiesta provides no reasonable basis for this belief. Fiesta's lack of authority or plausible explanation for its position distinguishes this case from others in which a claimant's good faith or inadvertent mistake did not constitute a knowing inaccuracy. Moreover, “the term ‘knowingly’ does not necessarily have any reference to a culpable state of mind or to knowledge of the law. As Justice Jackson correctly observed, ‘the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law.’ ”

Fiesta claims that L.A. Printex requires a showing of fraud on the part of the claimant in order to invalidate a copyright registration. L.A. Printex did not address this issue, however. Although we stated that there was no evidence that the claimant intended to defraud the Copyright Office, we did not consider the issue of whether a showing of fraud is required to invalidate a registration pursuant to § 411(b). We hold that Fiesta's argument is foreclosed by the plain language of § 411(b), which does not require a showing of fraud, but only that the claimant included inaccurate information on the application “with knowledge that it was inaccurate.”

In light of the Register's response, we agree that § 411(b)(1)(B) is satisfied and that the inaccuracy in the '509 registration renders it invalid as to the 1461 Design. Fiesta included inaccurate information regarding the 1461 Design in its application, knew the information was inaccurate, and the Register would have refused registration of the collection if it had been aware of the inaccuracy. The district court properly declared the '509 registration invalid as to the 1461 Design, pursuant to § 411(b).5 Because a valid registration is a precondition to bringing an action for infringement, we affirm the district court's grant of summary judgment in favor of Defendants.

The district court carefully considered and weighed the various factors relevant to a fee award. Its decision does not reflect “an inaccurate view of the law” or “clearly erroneous” findings of fact. Accordingly, the district court did not abuse its discretion in awarding attorney's fees to Defendants.

FLO & EDDIE, INC. V. PANDORA MEDIA, LLC
No. 15-55287, 2019 WL 5268624 (9th Cir. Oct. 17, 2019)
Outcome: Appeal - reversed
Works of Authorship: Music - sound recording
Topics: Music - pre-1972 sound recordings

In this case, we previously certified two questions to the California Supreme Court. In May 2019, the California Supreme Court dismissed consideration of the certified questions. For the reasons explained below, we vacate the district court’s order and remand for further proceedings.
Whether the MMA applies to and preempts Flo & Eddie’s claims, as Flo & Eddie note, cannot be answered on the record before us. The resolution of this issue depends on various unanswered factual questions, including whether (1) Pandora would have satisfied the specific statutory licensing requirements under either section 114(d)(2) or 112(e)(1), or been exempt under section 114(d)(1); (2) the relevant royalty payment was made within 270 days of the enactment of the MMA; (3) that payment covered all reproductions and transmissions of pre-1972 recordings during the three-year period; (4) Pandora accurately identified all pre-1972 recordings it reproduced or transmitted during the three-year period; and finally, whether Pandora provided notice of the use of pre-1972 recordings within 270 days of the enactment of the MMA.

HALL V. SWIFT
No. 18-55426, 2019 WL 5543864 (9th Cir. Oct. 28, 2019)
Outcome: Appeal - reversed
Works of Authorship: Music - musical work
Topics: Copyrightability - originality

Sean Hall and Nathan Butler (together, Hall) appeal from the district court’s dismissal under Federal Rule of Civil Procedure 12(b)(6) of their complaint against Taylor Swift, Martin Sandberg, and Karl Schuster (together, Swift) alleging copyright infringement. The complaint alleged that Swift’s hit song Shake It Off (2014) illegally copied a six-word phrase and a four-part lyrical sequence from Hall’s Playas Gon’ Play (2001). . . . We reverse and remand.

The district court dismissed the complaint based on a lack of originality in the pertinent portions of Hall’s work. . . . Even taking into account the matters of which the district court took judicial notice . . . Hall’s complaint still plausibly alleged originality. . . . Because the absence of originality is not established either on the face of the complaint or through the judicially noticed matters, we reverse the district court’s dismissal under Rule 12(b)(6).

GREG YOUNG PUBL’G, INC. V. ZAZZLE, INC.
No. 18-55522, 2019 WL 6186057 (9th Cir. Nov. 20, 2019)
Outcome: Appeal - affirmed-in-part
Works of Authorship: Visual work - photograph
Topics: Remedies - willful infringement, Remedies - attorneys fees

Greg Young Publishing, Inc. (“Young”) brought this copyright-infringement action against Zazzle, Inc. (“Zazzle”) after discovering its copyrighted images for sale on items on Zazzle’s website. Before trial, Zazzle conceded infringement as to the thirty-five images remaining at issue, contesting only damages and whether infringement was willful. The jury awarded Young $460,800 in statutory damages; in doing so, the jury awarded over $30,000 for five of the works, necessarily finding willful infringement as to those works. . . . The district court reduced the award by $109,700, finding insufficient evidence of willful infringement. The court also (1) entered, but later vacated, a permanent injunction, (2) denied Young’s motion for attorney’s fees,
and (3) awarded costs to both parties. We have jurisdiction over Young’s appeal under 28 U.S.C. § 1291. We affirm in part, reverse in part, and remand. . . .

Recklessness can constitute willful infringement, and can be established by an infringer’s knowing reliance on obviously insufficient oversight mechanisms. . . . Zazzle never deviated from, or improved, its oversight system throughout the two-year period at issue, despite repeated notice of that policy’s ineffectiveness. Zazzle “knew it needed to take special care with respect to [Young’s] images,” . . . but never gave its content-management team a catalogue of those images provided by Young. Even after Young provided the catalogue, Zazzle continued to sell products bearing each of the works for which the jury found willful infringement. Zazzle also relied on a user-certification process it knew produced false certifications and took no action to remove a user who had marketed more than 2,000 infringing products. A reasonable jury could find willfulness on this evidence and we therefore remand for entry of judgment consistent with the jury verdict. . . .

The district court did not abuse its discretion in denying Young’s motion for attorney’s fees. . . . Zazzle conceded infringement of the works considered by the jury, and Young’s ultimate recovery was only about 16% of the damages sought at trial. Zazzle obtained summary judgment on eight works. Zazzle also defeated a summary judgment motion on its Digital Millennium Copyright Act defense.

HALL V. SWIFT
No. 18-55426, 2019 WL 6608746 (9th Cir. Dec. 5, 2019)
Outcome: Appeal - reversed
Works of Authorship: Music - musical work
Topics: Copyrightability - originality

The Memorandum Disposition, filed on October 28, 2019, and reported at 782 F. App’x 639 (9th Cir. 2019), is amended as follows:

At 782 F. App’x at 639, all text, starting with the paragraph beginning with <Originality, as we have long recognized> through the final paragraph concluding with <we reverse the district court’s dismissal under Rule 12(b)(6).> is deleted. Footnote 1 remains and follows the second full paragraph at 782 F. App’x at 639, ending with <See Aschcroft v. Iqbal, 556 U.S. 662, 679, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).>.

GREAT MINDS V. OFFICE DEPOT, INC.
No. 18-55331, 2019 WL 7206433 (9th Cir. Dec. 27, 2019)
Outcome: Appeal - affirmed
Works of Authorship: Literary work - curriculum
Topics: Defenses - license
Plaintiff-Appellant Great Minds, publisher of math curriculum Eureka Math, appeals from the January 18, 2018 dismissal under Fed. R. Civ. P. 12(b)(6) of its copyright infringement claim against Office Depot, Inc. in the United States District Court for the Central District of California (Walter, J.). We AFFIRM. Office Depot did not itself become a licensee of the “Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Public License” (and become bound by its terms) or otherwise infringe Great Minds’ copyright by making copies of Eureka Math materials for a profit on behalf of school and school district licensees.

District of Arizona

MEROLA SALES CO. V. TABARKA STUDIO, INC.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Visual work - graphic work
Topics: Ownership - pleading requirements, Copyright registration - pleading requirements

Plaintiff Merola Sales Company, Inc. (“Merola”) filed suit against Tabarka Studio, Inc. (“Tabarka”) seeking a declaratory judgment against any copyright infringement claims and other relief. . . . Tabarka filed counterclaims against Merola for copyright infringement and injunctive relief. . . . Before the Court is Merola’s motion to dismiss (the “Motion”) seeking dismissal of Tabarka’s infringement counterclaims against it. . . .

The Court finds that Tabarka alleged facts sufficient to show that it owns valid copyright interests in PM 1 and PM 11. First, it is undisputed that Zenati is the creator of the works at issue. . . . It is well settled that ownership rights to a piece of artwork vest in the creator of such work. . . . Therefore, the Court finds that the ownership rights to PM 1 and PM 11 were vested in Zenati as the creator of those works. . . .

The Court also finds that Tabarka pleaded facts sufficient to demonstrate that it possessed the copyright interests in PM 1 and PM 11 at the time of the alleged infringement. . . . Here, Tabarka asserts that Zenati transferred his ownership rights to Tabarka through an oral agreement made between Zenati and Tabarka “upon the formation” of Tabarka in 2009. . . . Tabarka also states that the oral agreement was memorialized in writing on May 1, 2018. . . . It is well settled that a copyright interest may be assigned via oral agreement so long as it is later memorialized in writing. . . .

Taking the facts in Tabarka’s pleading in the light most favorable to Tabarka, the Court finds that Tabarka has pleaded facts sufficient to establish a claim for copyright infringement. First, for the aforementioned reasons, the Court finds that Tabarka asserts facts sufficient to show that the creator of PM 1 and PM 11 transferred his copyright interests to Tabarka; therefore, Tabarka has valid copyright interests in the works at issue. Specifically, Tabarka states that Zenati, the creator vested with original ownership rights in the works, transferred his ownership interests to Tabarka upon the formation of the corporation in 2009. The Court also finds that Tabarka has pleaded sufficient facts to demonstrate that its rights were infringed upon during the time it possessed those ownership interests. Specifically, Tabarka pleaded facts sufficient to demonstrate that Merola was selling unlicensed identical tiles by alleging that Merola was offering the identical
tiles for sale on its website. . . . The Court finds that Tabarka has clearly pleaded facts sufficient to demonstrate that it owns valid copyright interests in the works at issue and that those rights have been violated through Merola’s distribution of tiles reflecting nearly identical artwork. Accordingly, the Court finds that the Rule 12(b)(6) basis of the Motion must be denied as to works PM 1 and PM 11.

Tabarka also seeks to bring an infringement claim against Merola for C2. It is undisputed that Zenati created C2 and orally transferred his ownership rights over the piece to Tabarka. It is also undisputed that the Copyright Office denied the registered copyright application for C2. . . . It is the Court’s understanding that the Motion is limited to dismissing Tabarka’s counterclaims for infringement related to C2 and not any of Tabarka’s counterclaims for injunctive relief. Therefore, without a registered copyright, the Motion will be granted with respect to Tabarka’s counterclaim for infringement as it relates to C2.

DRK PHOTO V. MCGRAW-HILL GLOBAL EDU. HOLDINGS LLC
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Visual work - photograph
Topics: Remedies - attorneys fees

This matter is before the Court on Defendant1 McGraw-Hill Global Education Holdings LLC’s (“McGraw-Hill”) Motion for Attorney’s Fees . . . . Weighing each of these factors, and taking into account other relevant considerations as set forth below, the Court finds that all five factors weigh in favor of awarding McGraw-Hill’s attorneys' fees.

SELLPOOLSUPPLIESONLINE.COM LLC V. UGLY POOLS ARIZ. INC.
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Visual work - photograph
Topics: Remedies - attorneys fees

Defendants, Ugly Pools Arizona, Inc., and Brian Morris (“Defendants”), have filed a motion for attorney’s fees and costs . . . and a motion for sanctions. . . . For the reasons below, the Court denies the motion for attorney’s fees and costs. . .
Plaintiff Kangaroo Manufacturing Incorporated (the “Plaintiff”) filed suit against Amazon.com Incorporated (the “Defendant”) alleging trademark infringement, among other claims. . . . The Defendant moved for summary judgement on each of the Plaintiff’s claims (the “Motion”). . . .

It is undisputed that the Plaintiff owns valid copyright interests in the photographs at issue. . . . The Defendant also admits that it had access to the Plaintiff’s protected photographs, as the Plaintiff, and potentially other third-party sellers, uploaded the photographs to the PDPs hosted by the Defendant. . . . The Plaintiff alleges that a single PDP is used for a product with a particular UPC code, and multiple sellers can attempt to sell a single product through a single PDP. . . . In the Motion, the Defendant states that any images of products for sale on the website must be uploaded by third parties. . . . Therefore, the Court finds that the Plaintiff has sufficiently established that the Defendant had access to the Plaintiff’s protected photographs. . . .

The Court finds that there are genuine disputes as to the material facts on when and whether the Defendant knew of the infringing material on its website and whether the Defendant took reasonable steps to quickly remove that content. . . . The Plaintiff alleges that it registered several complaints with the Defendant alerting it to the infringing photographs and asking for the infringing content to be removed. . . . The Defendant states that the Plaintiff “never submitted an infringement report regarding the images used” for the Plaintiff’s emoji beach balls. . . . The Defendant states that it removed infringing content “usually within days” of the Plaintiff’s complaints, but the Plaintiff disputes that the Defendant “responded and removed material when appropriate.” . . . The Plaintiff also argues that the Defendant itself continued to use the protected images to sell counterfeit products after the Plaintiff’s notifications of infringement. . . . Based on these disputed facts, which are essential to the Defendant’s defense against the Plaintiff’s copyright infringement claim, the Motion must be denied as to Count 3.

HOWARTH V. PATTERSON
Outcome: Motion to strike - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Defenses - failure to state a claim, Defenses - First Amendment, Defenses - fair use, Defenses - equitable estoppel, Defenses - waiver, Defenses - license, Defenses - laches

On February 4, 2019, Plaintiff filed a Complaint . . . alleging copyright infringement under 17 U.S.C. § 101 et seq. Plaintiff alleges that Defendants engaged in the unauthorized commercial exploitation of one of Plaintiff’s federally registered photographs. . . . Defendants filed an Answer (Doc. 14) that raises ten affirmative defenses. Pending before the Court is Plaintiff’s
“Motion to Strike Affirmative Defenses” . . . in which Plaintiff seeks to strike Defendants' first, second, third, sixth, eighth, ninth, and tenth affirmative defenses. For the reasons explained herein, the Motion . . . will be denied in part and granted in part. . . .

A. First Affirmative Defense . . . Defendants' first affirmative defense asserts that Plaintiff has failed to state a claim. . . . “Failure to state a claim is not a proper affirmative defense but, rather, asserts a defect in [Plaintiff’s] prima facie case.” . . .

B. Second Affirmative Defense . . . Defendants' second affirmative defense alleges that “[a]ny purported use by Defendants are an exercise of free speech and constitutionally protected by the First Amendment of the United States Constitution.” . . . Plaintiff correctly contends that the assertion of a First Amendment right is not a valid affirmative defense in a copyright infringement case. . . .

C. Third, Sixth, and Ninth Affirmative Defenses . . . Defendants' third affirmative defense asserts that “[a]ny purported use by Defendants of Plaintiff’s copyrighted work, if any is found to exist, is fair use under 17 U.S.C. § 107.” . . . As a sixth affirmative defense, Defendants' allege that Plaintiff’s claim is barred by the doctrines of equitable estoppel and waiver. . . . Defendants' ninth affirmative defense states that “[a]ny copying of Plaintiff’s work (which Defendant denies and assume only for sake of asserting this defense) was consented to by the owner of the appropriate rights in Plaintiff’s works.” . . .

Plaintiff asserts that the Court should strike Defendants' third, sixth, and ninth affirmative defenses on the ground that Defendants have not provided any factual allegations in support of those affirmative defenses. . . . The Court is persuaded by cases that conclude that the “fair notice standard does not require defendants to provide a detailed statement of facts.” . . .

D. Eighth Affirmative Defense . . . Defendants' eighth affirmative defense alleges that Plaintiff’s claim is barred by laches. . . . Citing Petrella v. Metro-Goldwyn-Mayer, Inc., . . . Plaintiff argues that the laches affirmative defense may not be raised in a copyright infringement action. . . . The Court will grant Plaintiff’s Motion . . . as to Defendants' eighth affirmative defense. . . .

E. Tenth Affirmative Defense . . . The tenth affirmative defense enumerated in the Answer states: “Defendant reserves the right to assert additional affirmative defenses as further circumstances and discovery warrant.” . . . This is not a valid affirmative defense.

KRASEMANN V. SCHOLASTIC INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Defenses - statute of limitations

Pending before the Court is Defendant Scholastic Incorporated’s (“Scholastic”) motion to dismiss. . . . For the following reasons, the Court denies the motion. . . .
Applying the discovery rule, the Court cannot dismiss Plaintiffs’ complaint at this early stage. . . . Here, the complaint doesn’t mention when Plaintiffs discovered the alleged infringement by Scholastic. Therefore, Scholastic’s motion to dismiss based on expiration of the statute of limitations must be denied.

GREAT AM. DUCK RACES INC. V. KANGAROO MFG. INC.
Outcome: Bench trial - judgment for plaintiff
Works of Authorship: Visual work - toy
Topics: Infringement - evidence of copying, Infringement - substantial similarity

As established at trial, ducks in nature are often yellow and usually have wings, bills, and tails. But “[d]ucks do not naturally wear sunglasses in the wild.” . . . Both parties decided to try to improve on nature by manufacturing pool floats in the shape of ducks wearing sunglasses. Plaintiff Great American Duck Races Inc. (“GAME”) owns copyrights and trademarks covering its depiction of a duck wearing sunglasses and GAME believes the pool float manufactured by Defendant Kangaroo Manufacturing Inc. (“Kangaroo”) infringed those copyrights and trademarks. GAME also believes Kangaroo engaged in unfair competition. Based on the evidence presented at the trial, all of GAME’s claims do not succeed. . . .

A. Copying . . . The evidence at trial established Kangaroo “copied” the Derby Duck when designing its own duck. A Kangaroo employee reviewed the Derby Duck and instructed another employee to make a different version for Kangaroo to manufacture. . . . That evidence is sufficient to satisfy the “copying” requirement. Contrary to GAME’s position at trial and during post-trial argument, the fact that Kangaroo copied the Derby Duck does not establish liability. Even once GAME established “copying,” it still had to prove “unlawful appropriation.”

B. Unlawful Appropriation . . . In the present case, GAME’s copyright cannot prevent others from depicting yellow ducks, with a bill, wings, a tail, and a crest on the head. All of those attributes are found on ducks in nature. Moreover, the general design and coloring of the duck has become a “stock or standard feature[ ].” . . . As noted earlier, the GAME duck resembles the Rubber Duckie from Sesame Street and many other examples. Therefore, there are very few protectable elements in the Derby Duck. The parties have focused on the addition of sunglasses as the crucial protectable element. And the Court agrees that the sunglasses are the key protectable element of the Derby Duck. But even there, GAME’s copyright provides no protection to the idea of a duck float wearing sunglasses. Rather, GAME’s copyright only protects the particular expression of that idea. . . . That is, GAME is entitled to protection only for the way it expressed the idea of a duck wearing sunglasses.

When confronted with the two ducks, and focusing on the sunglasses, there are a few striking differences. The sunglasses on the Derby Duck consist of a double bridge, are solid black, and most importantly are separately inflatable. The fact that the sunglasses are inflatable make the sunglasses a very prominent feature of the Derby Duck. By contrast, the sunglasses on the
Kangaroo duck have a single bridge, are not solid black, and are merely painted on the duck’s head. An “ordinary observer” confronted with the two works and focusing on the sunglasses would not be “disposed to overlook” these differences. . . . While the Derby Duck and Kangaroo’s duck undoubtedly share the general idea or concept of a duck wearing sunglasses, GAME “cannot claim an exclusive right to ideas or concepts at that level of generality.” . . .

The similarity of the protectable elements is not enough for GAME to pass the extrinsic test. Therefore, the Court need not continue and conduct the intrinsic test. But even if GAME had passed the extrinsic test, its copyright claim would fail. The intrinsic test requires the Court conduct “a more holistic, subjective comparison of the works to determine whether they are substantially similar in ‘total concept and feel.’ ” . . . The two ducks do not meet this test.

The parties’ ducks are very different when compared with any care. The Derby Duck has a red bill that is open. Kangaroo’s duck has an orange bill that is closed. The Derby Duck is a flat float while Kangaroo’s duck is a ring float. Finally, the Derby Duck’s sunglasses are all black and exceptionally prominent. The Kangaroo duck’s sunglasses are only partially black and not especially prominent. In short, the “total concept and feel” of the two ducks preclude a finding of liability on the copyright claim.
Design. . . . Further, as explained in the following section, there are additional issues of material fact regarding the originality of the Burrell Residence’s design. The Court will deny Plaintiff JADD’s Motion for Partial Summary Judgment . . . .

B. The Burrell Defendants’ Motion for Summary Judgment . . . 1. There are Genuine Issues of Fact as to Whether the Burrell Residence’s Design is Protected by Copyright . . . As explained in the previous section, the Court finds that there is a genuine issue of material fact as to whether the Burrell Residence is substantially similar to the Wyant Design in relation to the contention that Plaintiff Macewicz copied the Burrell Residence’s design from the Wyant Design. . . . A jury could reasonably conclude that in designing the Burrell Residence, Plaintiff Macewicz exercised the minimal degree of creativity that is required for copyright protection. In addition, the Court finds that Plaintiff JADD has produced sufficient evidence disputing the Burrell Defendants’ assertion that the Burrell Residence is not original because “[t]here were only a limited number of ways to configure the home using Mr. Burrell’s example floor plan that would meet the site requirements, zoning regulations, and Mr. Burrell and Ms. Jantz’s parameters.” . . . The Burrell Defendants’ Motion for Summary Judgment . . . is denied as to the issue of whether Plaintiff JADD holds a valid copyright in the Burrell Residence’s design.

2. There are Genuine Issues of Material Fact as to Whether the Burrell Defendants are Liable for Vicarious or Contributory Copyright Infringement . . . It is undisputed that Burrell is authorized to make business decisions on behalf of Black Dog Management, L.P. . . . Defendant 5650 Wilkinson, LLC is the current record owner of the real property upon which the Burrell Residence was built, and Defendant Burrell is the sole manager and member of that entity. . . . Jantz deeded the property to 5650 Wilkinson, LLC in June 2016—after the effective date of the Certificate of Registration concerning the purported copyright in the Burrell Residence’s design. . . . The Court concludes that genuine issues of material fact exist regarding whether the Burrell Defendants are liable for vicarious copyright infringement. . . .

Plaintiffs point to evidence that Plaintiff Macewicz emailed Defendants Burrell and Banner: “I have not given anyone permission to use my designs, and to do so is a violation of federal copyright law. CSOF 105, 106.” . . . Plaintiffs also cite evidence that Defendants Banner, Spencer, and ATB “would not have used Plaintiffs’ Burrell residence work as the source for the construction documents, and the construction of the house itself, without the active assistance and direction of Burrell and Jantz.” . . . The Building Contract defines (i) Burrell and Jantz as “The Owner”; (ii) CBAN Properties, LLC as the “Project Manager”; (iii) ATB as “The Builder”; and (iv) 5650 N. Wilkinson, Paradise Valley, Arizona as “The Property.” . . . The Building Contract states that the “Project Manager & Builder have worked with the Owner and have caused Architectural, Landscape Design & Civil Engineering plans to be drawn for the work to be built on The Lot.” (Id.). Defendants have not introduced sufficient evidence casting doubt that the architectural plans used to construct the Burrell Residence did not copy the design created by Plaintiff Macewicz. Considering the evidence and drawing all inferences from it in the light most favorable to Plaintiffs, the Court finds a genuine issue of material fact as to contributory copyright infringement.

3. There are Genuine Issues of Material Fact as to Damages . . .
Because the Court has denied summary judgment on the issues of the validity of Plaintiff JADD’s alleged copyright and the Burrell Defendants’ liability for the alleged copyright infringement, the Court finds that summary judgment on damages is premature at this time. . . . Moreover, the Court finds that there are genuine issues of material fact concerning Plaintiffs’ claim for actual damages and infringer profits. The Burrell Defendants’ Motion for Summary Judgment . . . will be denied as to the issue of damages.

GREAT AM. DUCK RACES INC. V. KANGAROO MFG. INC.
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Visual work - pool float
Topics: Remedies - attorneys fees

After prevailing at trial, Defendants Kangaroo Manufacturing, Inc., Yagoozon Inc., and Justin Ligeri (collectively, “Defendants”) seek an award of $249,298.50 in attorneys’ fees. Plaintiff Great American Duck Races Inc. (“GAME”) believes no award of fees is merited but, if an award is made, it should be substantially less than what Defendants seek. Based on the relevant factors, and especially the objectively reasonable nature of GAME’s copyright claim, Defendants’ motion will be denied.

Central District of California

UNIVERSAL DYEING & PRINTING, INC. V. TOPSON DOWNS OF CAL., INC.
Outcome: Bench trial - judgment for defendant
Works of Authorship: Visual work - textile
Topics: Copyright registration - single unit of publication requirement

Plaintiff brings this action against Defendant for the alleged infringement of a copyrighted fabric design. The matter was tried before the court on January 15 and 16, 2019. . . .

The fifteen designs included in the Registration were not first published in a single unit of publication. The fifteen designs included in the Registration were published on a variety of dates prior to July 15, 2011, as reflected in Proposed Facts 8-17. . . .

Plaintiff has failed to establish that it has a valid single work registration that complies with the single unit of publication requirement. As a result, Plaintiff has not established its prima facie case for infringement. Topson Downs is therefore entitled to judgment in its favor.
BOOST BEAUTY, LLC. V. WOO SIGNATURES, LLC.
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - advertisement
Topics: Infringement - pleading requirements


Plaintiff asserts the same eleven claims in its TAC as in its initial complaint: (1) copyright infringement, in violation of the Copyright Act . . . ; (2) contributory copyright infringement; (3) vicarious copyright infringement; (4) intentional fraud, as against Sedighi; (5) breach of implied contract; (6) trademark infringement and counterfeiting, in violation of the Lanham Act . . . ; (7) unfair competition and false designation of origin, in violation of the Lanham Act . . . ; (8) trademark infringement under California common law; (9) violation of the California Unfair Competition Law (“UCL”) . . . ; (10) trademark infringement by imitating and false advertising, in violation of the Lanham Act . . . ; and (11) common law unfair competition and false designation of origin. In brief, plaintiff alleges that defendants engaged in a scheme to gain access to plaintiff's confidential information and thereby replicate the beauty product that plaintiff produces, markets, and sells. Specifically, plaintiff alleges that defendants copied its signature eyelash enhancement product by using plaintiff's manufacturer, by unlawfully copying plaintiff's copyrighted online advertisement (the “Work”), and by unlawfully using variations of the term “BoostLash,” plaintiff's trademarked product name (the “Mark”), as a search engine adword.

On November 27, 2018, defendants filed the instant motion to dismiss. . . . (“Mot.”). . . . Having carefully considered the parties' arguments, the Court finds and concludes as follows. . . .

At oral argument, the Court inquired as to why plaintiff had once again failed to file the allegedly infringing work, and plaintiff responded that it would file the infringing work that day. Subsequently, plaintiff filed a supplemental declaration, which contained a copy of defendants' allegedly infringing work. . . . Now in receipt of the allegedly infringing work, the Court finds that plaintiff's allegations sufficiently notify defendants of the allegedly infringing conduct, and accordingly state a claim for copyright infringement. While, “[o]n a motion to dismiss, the court may decide as a matter of law ‘[w]hether there is sufficient objective similarity under the extrinsic test,’ ” the Court here declines to conduct this analysis. . . . Given plaintiff's delayed
filing of the allegedly infringing work, the Court finds that this issue is better decided on a motion for summary judgment, when the issue has been briefed.

MARSHALL V. BABBS
Outcome: Motion to dismiss - granted
Works of Authorship: Music - musical work, Music - sound recording
Topics: Remedies - attorneys fees

Presently before the court is Defendants Durrell Babbs, p/k/a Tank, Jeremy Hairston; Johnnie Newt; Rickey Offord, p/k/a Slikk, p/k/a Slikk Muzik; and Atlantic Recording Corp. (collectively “Defendants”)’s motion to dismiss Plaintiff’s request for statutory damages and attorneys' fees. . .

As the Ninth circuit discussed in Derek Andrew, each separate act of infringement of the same kind, although a separate infringement within the meaning of the statute, does not mark the “commencement” of a new infringement within the meaning of section 412, rather, the infringement is part of an ongoing, continuing infringement. . . . Plaintiff has alleged two new acts of infringement that were part of a continuing series of infringements that commenced on September 29, 2017. Under section 412, Plaintiff is not entitled to statutory damages or attorneys' fees.

BOOST BEAUTY, LLC. V. WOO SIGNATURES, LLC.
Outcome: Motion for judgment on the pleadings - granted
Works of Authorship: Literary work - Internet work
Topics: Copyright registration - registration requirement

On April 9, 2018, Boost Beauty filed this action against defendants Woo Signatures, LLC (“Woo Signatures”), Tadeh Booghosianssardabi, Farshid Karamzad Goflsaz, Arash Sedighi, and Does 1 through 10 (collectively, “defendants”). . . . The operative amended complaint was filed on November 13, 2018. Dkt. 32 (“TAC”). In brief, plaintiff alleges that defendants engaged in a scheme to gain access to plaintiff’s confidential information and thereby replicate the beauty product that plaintiff produces, markets, and sells. . . . Plaintiff specifically alleges that defendants unlawfully copied its signature eyelash enhancement product, unlawfully copied plaintiff’s online advertisement (the “Work”), and unlawfully used variations of the term “BoostLash,” plaintiff’s trademarked product name, as an internet search engine adword.

Plaintiff alleges claims for: (1) copyright infringement, in violation of the Copyright Act . . . ; (2) contributory copyright infringement; (3) vicarious copyright infringement; (4) intentional fraud, as against Sedighi; (5) breach of implied contract; (6) unfair competition and false designation of origin, in violation of the Lanham Act . . . ; (7) trademark infringement under California common law; (8) violation of the California Unfair Competition Law (“UCL”) . . . ; (9) trademark
infringement by imitating and false advertising, in violation of the Lanham Act . . . ; and (10) common law unfair competition and false designation of origin. . . .

On April 22, 2019, defendants filed the instant motion for judgment on the pleadings as to plaintiff’s first through third claims, which pertain to copyright infringement. . . .

In this case, plaintiff has not obtained a registration of copyright for the online advertisement which is the subject of plaintiff’s copyright claims. Because plaintiff claimed that it had filed an application for registration with the United States Copyright Office . . . in accordance with the Ninth Circuit’s previous standard, the Court previously found that plaintiff adequately alleged ownership of a copyright, which permitted plaintiff to sue for copyright infringement . . . . However, the Supreme Court’s recent and unanimous decision invalidates this conclusion. . . .

Notably, however, in Fourth Estate, the Supreme Court identified “limited circumstances” in which a suit for copyright infringement may be filed before undertaking registration—namely where a plaintiff owns materials which are vulnerable to predistribution infringement (e.g. films or musical compositions), for which an owner may apply for preregistration, or where the plaintiff seeks to sue for infringement of a live broadcast. . . . While plaintiff does not specify which specific exception would apply in its case, plaintiff argues that its complaint does not “foreclose any of the statutory exceptions to the registration requirement of the Copyright Act.” . . . Plaintiff thus contends that the Court should infer that an exception applies in this case. . . . The Court disagrees. . . . Here, the Court cannot plausibly infer that plaintiff’s case satisfies one of the aforementioned exceptions. Plaintiff has applied for registration of a copyright for a textual advertisement, displayed on webpages; this differs strikingly from a live performance, film, or musical composition. . . .

Accordingly, the Court finds that plaintiff cannot bring its copyright infringement claims because the Copyright Office has not yet processed plaintiff’s copyright application. The Court therefore GRANTS defendants’ motion for judgment on the pleadings, with leave to amend.

MFG. AUTOMATION & SOFTWARE SYS., INC. V. HUGHES
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Literary work - computer program
Topics: Remedies - attorneys fees

This action concerns two employees who allegedly stole proprietary information from their employer to start a new, competing business. Plaintiff Manufacturing Automation & Software Systems, Inc. (“MASS Group”) developed and sold a software product that is used for tracking and tracing inventory and other assets of a business or other entity. Defendants Kristopher Hughes and James Huysentruyt, while still employed at MASS Group, allegedly started a new business called InformaTrac, Inc. (“Informatrac”) and worked with Ed Nugent and PcVue, Inc. (“PcVue”) to copy plaintiff's software and market it to plaintiff's customers. . . .
Although the first Fogerty factor weighs in favor of defendants because they prevailed on plaintiff's claims for copyright infringement, the Court finds that none of the other Fogerty factors weighs in favor of awarding fees to defendants. . . . Accordingly, the Court declines to award defendants attorneys' fees under section 505 of the Copyright Act.

UNIVERSAL DYEING & PRINTING, INC. V. KNITWORK PRODS. II, LLC
Outcome: Motion for summary judgment - denied, Motion for issuance - denied
Works of Authorship: Visual work - textile
Topics: Defenses - fraud on the Copyright Office, Copyright registration - single unit of publication requirement

Plaintiff Universal Dyeing & Printing, Inc. brings this action against Defendants Knitwork Productions II, LLC and Dolgencorp, LLC (collectively, “Defendants”) for the alleged infringement of copyrighted fabric designs. Pending before the Court are Defendants' Motion for Summary Judgment (“MSJ”) . . . and Motion for Issuance of a Request to the Register of Copyrights and Stay Pending Response (“Motion for Issuance”) . . . . For the following reasons, the Court DENIES Defendants' MSJ . . . and Motion for Issuance . . . .

MOTION FOR SUMMARY JUDGMENT . . . A. Copyright Infringement of UA 14823 . . .
Defendants do not dispute the infringement element, but contend only that Plaintiff has no valid copyright of UA 14823. Specifically, Defendants contend that the '959 Registration, '956 Registration, and the supplementary '041 Registration, are invalid and subject to cancellation based on a theory that Plaintiff intended to defraud the Copyright Office. . . .

Defendants offer no evidence that Plaintiff's failure to correctly register UA 14823 was anything but an inadvertent mistake. It is undisputed that when UA 14823 was initially registered, it was registered by Plaintiff's vice-president, Bryant Hwang. . . . On September 13, 2010, Mr. Hwang attempted to apply for 40 copyright registrations, including UA 14823. . . . On that day, it was Mr. Hwang's first time applying for copyright registrations on Plaintiff's behalf as the person usually responsible was on vacation. . . . During the process of registering UA 14823, the deposit material that was deposited was actually UA 14840, which matured into the '959 Registration. . . . Instead, UA 14823 was deposited for the '956 Registration, which was intended to be UA 14882. . . . As such, Plaintiff applied for a supplementary registration to correct the '956 Registration to reflect the information in the deposit material, UA 14823. The supplemental '041 Registration now contains the correct information and correlates with the UA 14823 deposit material. Defendants argue that this is improper and constitutes fraud because Plaintiff failed to disclose its intent that the '956 Registration was intended to cover UA 14823. . . . Although Defendants are correct that “[s]upplementary registration is intended to correct errors made by the applicant on the application form itself, not errors in the deposit material,” this is exactly what Plaintiff did when it corrected the '956 Registration with the '041 Registration. Plaintiff did not swap out the deposit material or correct the content of deposit material; it simply corrected the application.
Accordingly, Defendants have not rebutted the presumption of validity or shown that the errors in registration were anything more than inadvertent mistakes; therefore partial summary judgment on this issue is not proper.

B. Copyright Infringement of UA 17679 . . . Similar to UA 14823, Defendants do not dispute the infringement element, but contend only that Plaintiff has no valid copyright of UA 17679. . . . Specifically, Defendants advance two arguments: (1) the '100 Registration is invalid because it does not constitute a single unit of publication; and (2) the '100 Registration contains inaccuracies. . . .

1. Single Unit of Publication . . . Here, even assuming that eight of the fifteen designs were previously published based on Plaintiff's purchase from a third party, these eight designs are not at issue in this case. Defendants' position would support invalidating the eight previously published designs, but Plaintiff does not allege that Defendants violated these purportedly published designs. Plaintiff sued for infringement of UA 17679. It is undisputed that UA 17679 was created by Plaintiff's designer, Kathy Kim. . . . Defendants present no evidence that UA 17679, the design at issue, was previously-published prior to the publication date on the '100 Registration that would support invalidating the copyright for UA 17679. Accordingly, summary judgment on this issue is improper.

2. Inaccuracies with the '100 Registration . . . Plaintiff's error in the '100 Registration does not invalidate the registration. The record, when viewed in the light most favorable to Plaintiff, does not demonstrate that Plaintiff's errors were anything other than inadvertent mistakes or that Plaintiff intended to defraud the Copyright Office. Upon discovering the issues with the '100 Registration, Plaintiff communicated with the Copyright Office, applied for, and received, a supplementary registration: the '315 Registration. The '315 Registration corrected the space marked “Limitation of copyright claim” to exclude the public domain elements that appear in certain designs, including UA 17679. Additionally, the '315 Registration also added information regarding the authors of the designs. The Copyright Office, after being informed of the errors, issued a certificate of supplementary registration. This shows that the errors were not one that “if known, would have caused the Register of Copyrights to refuse registration.” . . . Accordingly, summary judgment on this issue is also improper.

REQUEST TO REGISTER OF COPYRIGHTS . . . Here, as discussed above, there is no evidence that the errors in Plaintiff's registrations were anything but an inadvertent mistake. In the case of UA 14823, the undisputed material facts show that Plaintiff accidentally swapped the deposit materials when it attempted to register UA 14823, and that Plaintiff ultimately corrected its registration with the supplementary '041 Registration. Similarly, with the '100 Registration, Plaintiff failed to include certain information on the registration, but supplemented the registration to include the missing information and the Copyright Office issued a certificate for the supplementary registration, the '315 Registration.

Defendants have not met the standard necessary for an issuance of a request to the Register of Copyrights, that Plaintiff knowingly included the inaccuracies. Nonetheless, the Copyright Office also issued supplementary registrations for the two designs at issue, which suggests that
the Copyright Office would not have refused registration. Accordingly, the Motion for Issuance is denied.

ROMEX TEXTILES, INC. V. HK WORLDWIDE, LLC
Outcome: Motion for summary judgment - denied
Works of Authorship: Visual work - design
Topics: Copyright registration - presumption of validity, Infringement - substantial similarity

Plaintiff Romex Textiles, Inc. (“Plaintiff”) brings this copyright infringement Action against Defendants Apollo Apparel NY, LLC; Ross Stores, Inc.; R&R Goldman Associates, Inc., d/b/a Discovery Clothing Company; Specialty Retailers, Inc.; Beall's Outlet Stores, Inc.; and Does 1 through 10 (collectively, “Defendants”). . . . Currently before the Court is Defendants' Motion for Summary Judgment (“Motion”) . . . Having reviewed all papers submitted pertaining to this Motion, the Court NOW FINDS AND RULES AS FOLLOWS: the Court DENIES Defendants' Motion. . . .

a. Ownership of Valid Copyright . . . Plaintiff's design was registered with the United States Copyright Office, and thus validity of the copyright is presumed. . . . To overcome this presumption, the burden shifts to Defendants to “rebut the facts set forth in the copyright certificate.” . . . Defendants fail to do so, and in any event, assert that their Motion for Summary Judgment is “based solely on the lack of substantial similarity between the allegedly copyrighted design and the allegedly infringing design ....” . . . Thus, the Court turns to the copying element, and evaluates the similarity of the designs.

b. Copying by Defendants . . . While the idea of a floral design or the natural appearance of the flowers themselves is not protectable, Plaintiff's “[o]riginal selection, coordination, and arrangement” of the flowers in the Subject Design is protectable expression. . . . “After all, there are gazillions of ways to combine petals, buds, stems, leaves, and colors in floral designs on fabric.” . . . In sum, the Court finds that a triable issue of fact exists as to whether there is substantial similarity between the Subject Design and Version 1 of the Accused Design.

For many of the same reasons as stated with respect to Version 1 of the Accused Design, a reasonable juror could also find that Version 2 of the Accused Design is substantially similar to the Subject Design.

KNOWLES V. SPIN MASTER, INC.
Outcome: Motion for summary judgment - granted
Works of Authorship: Literary work - comic book, Audiovisual work - television series
Topics: Copyright registration - registration requirement, Infringement - evidence of access, Infringement - substantial similarity
Before the Court is a Motion for Summary Judgment filed by defendants Spin Master, Inc., Spin Master Studios, Inc., Spin Master Ltd., Nickelodeon Animations Studios Inc., and Viacom International Inc. (collectively “Defendants”).

A. Registration Requirement . . . Plaintiff has only registered with the United States Copyright Office Issues 1 and 2 of the Comic Book; Issue 3 was never registered. Because Plaintiff did not comply with the Copyright Act's registration requirement for Issue 3, he is unable to pursue infringement claims arising out of Issue 3. . . . Plaintiff's failure to register the copyright for Issue 3 prior to commencing this action forecloses any claim for infringement related to elements appearing only in Issue 3, like the images of the characters “Cal. Q. Lattor” and “Atlas” that Plaintiff claims are substantially similar to the TV Show's “Orbit” and “Flingbot.”

B. Access . . . All of the individuals involved in the development of the TV Show disclaim having had access to Plaintiff's Comic Book and Plaintiff admitted at deposition that he has no proof that any of those involved in the TV Show had access to his work. Nor is there evidence that Plaintiff's Comic Books were widely disseminated. Instead, Plaintiff relies on circumstantial evidence in an effort to prove access. This circumstantial evidence consists largely of the alleged similarities in the titles of the two works and the names of certain characters, including that the Comic Book's main characters are Rivets and Ruby, while the TV Show's main characters are Rusty Rivets and Ruby. Character names and titles are not subject to copyright protection. . . . “A title standing alone cannot be copyrighted, but the copying of a title ‘may ... have copyright significance as one factor in establishing’ an infringement claim.” . . . Plaintiff claims other similarities, including that the Comic Book has a character, Professor Herbert, and the TV Show has a character, Mr. Higgins, that both have last names beginning with the letter “H” and are older than the main characters. Plaintiff also asserts that similarities in the design elements of some of the robots appearing in the works establish that Defendants copied Plaintiff's work. The Court concludes these examples, along with Plaintiff's other circumstantial evidence of access, is exceedingly weak. . . . Plaintiff has therefore failed to establish the requisite access or copying to defeat Defendants' summary judgment motion.

C. Extrinsic Similarity Analysis . . . During his Deposition, Plaintiff admitted that no episode of the TV Show copies any storyline or sequence of events from the Comic Book, and that the themes and dialogue were not similar. . . . Other than at “a very high level of generality,” the abstract idea of humans interacting with robots, which is not protectable, the Court concludes that the works are objectively neither substantially nor strikingly similar in the plot, themes, dialogue, mood, pace, or sequence of events. . . .

The primary purported similarity relied upon by Plaintiff is that both his Comic Book and the TV Show have a character named “Ruby.” As explained above, that the characters share the same name is not protectable. . . . Nor are the characters substantially or strikingly similar in any protectable way. The Comic Book's Ruby is a young adult who is depicted on a date in Issue 2, and is frequently begging the robot Rivets to stop endangering himself as a crime-fighter. The TV Show's Ruby is a 10-year-old girl who supports Rusty Rivets and participates in the creation of their robots and machines. Plaintiff does not contend that they look substantially similar. Other than their names, they are in no way objectively similar. Plaintiff's arguments concerning
perceived similarities between Professor Herbert and Mr. Higgins — that both are older male authority figures with last names beginning with the letter “H” — are generic similarities that are not protectable under the extrinsic test. Nor is Professor Herbert “especially distinctive” when compared to the countless disgraced scientists who appear in literature. Despite Plaintiff's arguments to the contrary, there is also no protectable substantial similarity between the Comic Book's “Doggy Jones” — described as a dog robot head grafted onto a life-sized Gary Coleman action figure — and “Bytes,” the robot dog appearing in the TV Show. The remaining alleged similarities between characters that Plaintiff focuses on largely relate to the visual depictions of robots rather than the literary aspects of the characters.

Plaintiff places significant importance on the fact that his Comic Book includes a “Servotronic Disposal Unit” or “Robot Graveyard” while the TV Show includes a salvage yard. The Robot Graveyard is depicted as a dark and foreboding location with piles of discarded robots strewn about. The TV Show's salvage yard is depicted as bright and organized, with some items in storage bins. As explained in the evidence submitted by Defendants, including the Declaration and Expert Report of Mr. Rovin, garbage dumps and salvage yards are common settings for stories involving robots. Indeed, the idea of a salvage yard or garbage dump as a setting for a story about robots is not protectable but instead flows from the basic premise of a location with plentiful spare parts for mechanical creations. The Court additionally notes that “New City,” the larger setting within which the robot graveyard appears in the Comic Books, is a crime-infested urban dystopia, which shares no substantial similarities with the small town or suburban “Sparkton Hills” in which the TV Show is set.

The Court therefore concludes that Plaintiff has failed to establish that Defendants had access to or illicitly copied the protectable elements of either the literary or visual aspects of Plaintiff's Comic Book under the extrinsic test. When analyzed under that test, the alleged similarities, whether assessed individually or collectively, are not substantially or strikingly similar. As a result, Defendants are entitled to summary judgment on Plaintiff's claim for copyright infringement.
Having heard and reviewed the evidence and having considered the parties' post-trial briefs, the Court makes the following findings of fact and conclusions of law.

1. Copyright Ownership. Here, each of the registration certificates was made within five years of Baldy's first publication. Therefore, she has established ownership of valid copyrights.

2. Copying. Baldy's Facebook pages, where she published her original works, were accessible to the public at all relevant times. Valentin and Baldy appeared to be fierce competitors in a niche industry, establishing that there was a reasonable possibility that Valentin either visited Baldy's Facebook page and viewed these images, or was otherwise shown these images by customers or others in the industry. Further, there was evidence that Baldy's works were widely disseminated among the crafting/scrapbooking industry. Therefore, Baldy has established access.

The depiction of little girls with big heads and eyes is an unprotectable idea. However, particularized expression of the characters' hair style, clothing and accessories, and facial expression can be protectable if the “selection, coordination, and arrangement” of the elements are original. In other words, where wavy hair alone may not be protectable, wavy hair combined with a polka dotted dress, stilettos, and a smiling child smelling a flower may form protectible expression.

Under the extrinsic test, the Court declines to consider the sex or age of the characters in the drawings, their resemblance to humans, the mere fact of exaggerated features, or the black outline and lack of colors. Daisy Do All and the Mayde Spring Cleaning Dust Bunny are substantially similar. As described above, both depict maid characters with big eyes and curly hair tied up in a polka-dotted ribbon with a bow. Both are wearing short-sleeved dresses over capri-length pants. The right foot is tilted inwards in both and both characters are holding a duster in the left hand, with the right hand flexed on the side of the body. Considering the selection and arrangement of these elements in combination, the works are substantially similar under the extrinsic test. Under the intrinsic test, an ordinary, reasonable person would find the total concept and feel of the works to be substantially similar. As further evidence of this fact, Baldy testified that some of her customers asked Baldy whether the Mayde character was created by her.

The 2013 Rory characters are not substantially similar to Baldy's characters, including the Little Fishing Girl or Betsy. As noted above, and as Baldy testified, the 2013 Rorys have saggy eyes and do not have the sweet, happy feel of Baldy's characters. Further, the hats are different, the hair styles are different, and the 2013 Rorys have one eye covered by their hair while Baldy's characters have both eyes visible. While all of the characters are wearing baggy pants and have their toes pointing inward, and both 2013 Rory and Betsy have a similar strap on their shirt, there are significant elements that are different between the two works.
Josephina and the January 2017 Rory are not substantially similar. Although both have a top hat, the January 2017 Rory hat is a common leprechaun hat and does not have the same “feel” as Josephina's hat. Also the body positions are different: Josephina's hands are behind her back while both of January 2017 Rory's hands are outstretched and holding items. Further, Josephina's dress is strapless, puffy, and full-length, and January 2017 Rory's dress is long-sleeved, knee-length, and less puffy. January 2017 Rory also has her ankles crossed and is wearing flats, while Josephina's legs are not crossed and she is wearing sneakers without shoelaces.

Nor are Josephina and the May 2017 Rory substantially similar. Beyond the hair being clasped to one side, covering one eye and both having a hat, the clothes are very different, and the eyes, eyelashes, and lips of May 2017 Rory are much smaller and less exaggerated than Josephina's.

Baldy's Daisy Fairy and Valentin's “Little Fairy” are not substantially similar. Although both have bows in their hair, both have wings, and both are sitting on top of a flower (which is a generic idea), there are many differences. The wings are very different, and Valentin's Fairy has her hair down and is wearing a frilly skirt with shoes on. Daisy Fairy appears to be wearing leggings and is barefoot. Further, Daisy Fairy has more exaggerated features while Valentin's Fairy has more realistic features.

Baldy's Posie Pocket and Valentin's Matilda Button Boo are not substantially similar. Both have a similar floppy hat, wear their hair in pig tails with bows, have their toes turned in, and have ruffles at the tops of their socks. However, Posie Pocket has a frilly dress with a shawl, while Matilda Button Boo is wearing overalls and a sweater. Further, Matilda Button Boo's head and feet are much larger compared to her body, and she has no neck. Matilda Button Boo is sitting with her hands on her knees while Posie Pocket is standing with her hands behind her back.

The 2013 Rorys are not substantially similar to Little Violet, Bunny Basket, Lil Ragamuffins, or Wild Child. Although Bunny Basket and Wild Child, like 2013 Rorys, have one eye covered with their hair, there are significant elements that are different between the works. Bunny Basket has one eye closed and is hiding inside of a basket. Wild Child has her hair down, is not wearing a hat, and is wearing a tutu skirt. She also has her hands behind her back and is standing on one foot. Similarly, the Lil Ragamuffins have curly hair with flowers in them and are wearing ruffle skirts with frilly socks.

3. Damages

In her closing statement, Baldy elected to seek statutory damages. Baldy presented no evidence at trial of her actual damages for the copyright infringement claim.

Each alleged infringement of Baldy's copyrights occurred after publication, but before the effective date of registration, and registration was not made within three months of first publication. Therefore, Baldy is not entitled to statutory damages or attorney's fees and Baldy has not proven any actual damages by a preponderance of the evidence.
JOHNSON V. UMG RECORDINGS, INC.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Music - sound recording
Topics: Defenses - statute of limitations, Defenses - de minimis use, Defenses - fair use

Plaintiff Syl Johnson ("Johnson") brings several claims against Defendant UMG Recordings, Inc. ("UMG") involving copyright infringement. Plaintiff claims Defendant UMG reproduced, distributed, and licensed a sampled portion of Plaintiff's music. . . .

Defendant moves to dismiss on the following grounds: (1) Plaintiff's claims are barred by the statute of limitations; and (2) Defendant's alleged copying is not actionable. . . .

For the reasons that follow, the Court GRANTS, IN PART and DENIES, IN PART, Defendant's Motion to Dismiss. . . .

A. Statute of Limitations . . . Plaintiff asserts that the first instance of infringement occurred in 1991, yet he is entitled to relief for every infringing act since then because Defendant continues to sell recordings with Plaintiff's unlicensed Recording and each sale constitutes a new instance of infringement. . . . However, an individual cannot bring copyright claims beyond the statute of limitations simply because instances of copyright infringement continue to occur within the statutory period. . . . Acts that accrued within the three years preceding the filing of suit may be brought. . . . Furthermore, under California law, the continuing violation doctrine does not apply to toll the statute of limitations periods for claims of misappropriation, and violation of the UCL unless necessary for series of harms to accumulate before alleged wrongdoing became apparent and actionable. . . . Here, Plaintiff has made no such allegation. Thus, Plaintiff is limited to bringing claims that accrued within the statute of limitations preceding the filing of suit. . . .

Though Plaintiff concedes the first instance of infringement occurred in 1991, Plaintiff asserts that he was unaware of the infringement because he does not listen to the genre of "rap" or "gangster rap" due to religious reasons. (Opp'n 13, 15.) Plaintiff further concedes that he became aware of the infringement when a disc jockey friend brought it to his attention in December 2013. . . . Yet, Plaintiff filed his complaint on March 28, 2019. As five years have elapsed since the time Plaintiff allegedly became aware of his claim, even if applicable, the discovery delay would not save his claims outside of those accrued within the relevant statute of limitations. Thus, Plaintiff may bring an action for copyright infringement under the California statute for all acts that accrued between March 27, 2016 and March 28, 2019. Furthermore, he may bring a UCL claim and a misappropriation claim for all acts that accrued up to four and two years, respectively, before March 28, 2019. . . .

Here, Plaintiff asserts that by omitting any credit to Plaintiff or the Recording on any label copy, Defendant fraudulently prevented Plaintiff from discovering the infringing use. As Plaintiff concedes that he became aware of the alleged infringements in December 2013, he could have only relied on Defendant's misrepresentations until then. Even if applicable, the doctrine would only toll the statute of limitations until December 2013. Consequently, as above, the doctrine
Joshua L. Simmons
joshua.simmons@kirkland.com

would not save his claims outside of those accrued within the relevant statute of limitations as five years have elapsed since December 2013. Thus, Plaintiff is barred from bringing claims accrued beyond the statute of limitations. . . .

Plaintiff argues that the doctrine of equitable tolling should apply. Plaintiff must satisfy three essential elements: (1) timely notice to the defendant in filing the first claim; (2) lack of prejudice to defendant in gathering evidence to defend against the second claim; and, (3) good faith and reasonable conduct by the plaintiff in filing the second claim. . . . Here, Plaintiff fails to meet the standard for equitable tolling as he lacks the third element. . . . Here, Plaintiff waited a year and a half after he became aware of the infringement in December 2013 to file his first case, and Plaintiff waited another eleven months after the resolution of his first action to file his second one. . . . Furthermore, after District Court Judge Amy St. Eve in the Northern District of Illinois indicated to Plaintiff on January 4, 2017 that this case would be proper in the Central District of California, Plaintiff filed its second case in the Middle District of Tennessee. . . . Plaintiff's disregard of Judge St. Eve's order demonstrates that Plaintiff intended to forum shop and circumvent the proper venue. Thus, the Court finds that Plaintiff lacks good faith and therefore, the doctrine of equitable tolling does not apply. Accordingly, the Court GRANTS Defendant's Motion as to all claims accrued outside the relevant statute of limitations.

B. Failure to State a Claim . . . The Court finds that, at this stage, Plaintiff has sufficiently alleged that the copying can be substantial enough to constitute infringement. Although Defendant only allegedly sampled “3.094 second fragment” of the bridge of the Recording, which is about two-and-a-half minutes long, Plaintiff alleged that Defendant sampled a segment containing Plaintiff's distinctive vocal “Ohh” followed by a fast-paced drum roll, instrumental guitar, high note on a saxophone, and Plaintiff singing “Yeah.” . . . Based on Plaintiff's allegations of Plaintiff's signature voice and unique composition, the Court concludes that a jury could find the two pieces substantially similar. Thus, the Court DENIES Defendant's Motion on this ground. . . .

Here, Plaintiff alleges that Defendant has “reproduced, manufactured, distributed, licensed, and/or sold master recordings embodying [the Recording] ... in motion pictures, television programs, commercials, music videos and video games.” . . . At this juncture, the Court does not find that Defendant's use of Plaintiff's clip for its commercial benefit was fair. Thus, the Court DENIES Defendant's motion.

PATEL BURICA & ASSOCS., INC. V. LIN
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Visual work - design
Topics: Ownership - pleading requirements, Infringement - pleading requirements

This case concerns the alleged infringement of a structural engineering firm's copyrighted designs, as well as the alleged misappropriation of that firm's other non-copyrighted trade secrets, by a former employee.
For the purpose of this motion, and unless stated otherwise, the Court assumes the truth of the following allegations. Plaintiff Patel Burica & Associates, Inc. (“PBA”) is a structural engineering firm based in Irvine, California. . . . Defendant Jason Lin (“Lin”) is a structural engineer who was employed by PBA in 2006 as an intern, and between 2011 and 2014 as a staff engineer. . . . After leaving PBA, Lin joined a competing engineering firm in Irvine and also formed a new entity based in Arcadia, California—defendant JKL Structural Engineering, Inc. (“JKL”)—to provide private structural engineering services to clients. . . .

PBA filed this action on September 25, 2019. . . . PBA claims that it “created numerous copyright-protected design details” for use in its structural plans, and “registered the copyrights.” . . . PBA refers to these unidentified design details as the “Copyrighted Material,” but does not explain what these details comprise, what they relate to, or how they are used. . . . PBA does not attach images of its allegedly copyrighted designs, the copyright registrations, or even the corresponding registration numbers. PBA also claims that it separately, and at great cost, “developed various trade-secret materials for use in its design work,” including “CAD files” that “contain proprietary design details and embedded algorithms to automate the design process,” as well as coded “spreadsheets used to conduct structural load calculations.” . . . PBA alleges that the trade secrets “give PBA a competitive advantage in the field,” and are accordingly stored in secured and access-restricted computer systems. . . . As an added layer of precaution, PBA requires its employees to protect the confidentiality of PBA's trade secrets as a term of their employment agreement. . . .

PBA alleges that Lin had access, including remote access, to the PBA computer systems where the alleged copyrighted and trade secret materials are stored. . . . At some point in 2019, PBA claims that it “discovered plans that Lin/JKL had prepared for the construction of a new private home in Arcadia.” . . . The discovered plans are not described, or attached, to PBA's complaint. However, according to PBA, the “detail drawings on the plans are identical” to the copyrighted material that Lin had access to while he was employed by PBA. . . . On this basis, PBA alleges that Lin “took PBA's Copyrighted Material and Trade Secrets prior to the end of his employment with PBA in 2014,” “us[ed] PBA's property for his own professional and financial gain,” and “intends to continue doing so in the future.” . . . PBA claims that Lin's and JKL's conduct unlawfully infringes on its copyrights pursuant to 17 U.S.C. §§ 101 et seq. . . . and violates anti-misappropriation provisions of the California Uniform Trade Secrets Act (Cal. Civil Code §§ 3426 et seq.) (“CUTSA”). . . . Defendants Lin and JKL filed the instant motion to dismiss on November 12, 2019. . . .

PBA satisfies the first element of ownership. Although PBA does not attach or identify any particular copyright registrations to its complaint, PBA does allege that it possesses valid registered copyrights to the work or works it claims to be at issue. . . . That allegation, while threadbare, satisfies the ownership element at the pleading stage. . . .

However, the Court concludes that PBA does not sufficiently plead copying because the complaint fails to put defendants on notice of what design detail or details they are alleged to have infringed upon. . . . Here, the complaint does not describe, in any level of specificity, what
“design details” Lin and JKL allegedly copied. That is insufficient. To state a claim for copyright infringement, PBA “must plead some non-speculative facts about what Defendant infringed and how.” . . .

The insufficiency of the copying allegations are particularly problematic in this case because PBA asserts copying on a substantial (or striking) similarity theory, as well as a direct copying theory. . . . The Court finds the foregoing authorities persuasive, and accordingly GRANTS defendants' motion to dismiss PBA's claim for copyright infringement, without prejudice.

Eastern District of California

RASSAMNI V. FRESNO AUTO SPA, INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - brochure
Topics: Copyright registration - presumption of validity, Copyrightability - blank form, Scope of protection - function, Scope of protection - merger, Scope of protection - scenes a faire

This case concerns Plaintiff A.J. Rassamni’s claims against Defendants Fresno Auto Spa, Inc., Stevan Matijevich, and Does 1 through 25 for copyright infringement. The Court dismissed Plaintiff’s complaint with leave to amend on September 25, 2018. . . . Plaintiff filed a First Amended Complaint (“FAC”) on October 12, 2018. . . . On November 2, 2018, Defendants Fresno Auto Spa, Inc. and Matijevich (collectively “Defendants”) filed a motion to dismiss the FAC. . . . For the following reasons, Defendants’ motion to dismiss is DENIED. . . .

Plaintiff alleges that he has obtained a certificate of registration for the Copyrighted Materials from the United States Copyright Office. . . . This certificate constitutes prima facie evidence of copyrightability, shifting the burden to Defendants to demonstrate that the copyright is not valid. . . .

A. Blank Form Exception . . .

Based on Plaintiff’s allegations and the exhibits attached to the FAC, the Copyrighted Material is not purely a blank form conveying no information. The Copyrighted Material, considered as a whole, contains blank fields where information may be recorded, but also includes explanatory statements such as lists of services provided, a description of a membership program, and notices regarding liability. . . . These statements convey specific information about the nature and extent of the services Plaintiff’s business offers. They are not of the purely functional, instructional type which are excepted from copyright protection. Viewing the form as a whole, the blank form exception would not apply because the Copyrighted Material conveys specific information.

Moreover, as Defendants acknowledge, Plaintiff’s allegations of infringement center on the liability disclaimer. . . . The inspection sheet as a whole, with its blanks for filling in customer information, is not the thrust of Plaintiff’s allegations of infringement. Rather, it is the alleged copying of the liability disclaimer, which by no plausible stretch of the term could be considered a “blank form.” The mere presence in that disclaimer of spaces for a customer’s name, signature, and the date do not render the disclaimer itself a blank form of the sort described in 17 C.F.R. §
202.1(c). Therefore, Defendants’ arguments regarding the blank form exception are not a convincing basis on which to grant Defendants’ motion to dismiss.

B. Functional Work . . . Plaintiff’s allegation is that Defendants impermissibly copied the liability disclaimer from the Copyrighted Materials. Plaintiff does not allege that the entire inspection sheet was copied, only that the liability disclaimer was copied. The mere fact that the Copyrighted Material has a business purpose of collecting and disseminating information does not render it unprotectable. The exclusion of functional works from copyright protection is intended to prevent the copyrighting of a method or process that is dictated by the purpose served. It is not intended to block copyright protection of expressive works. While the “contents” of the Copyrighted Material and liability disclaimer are unprotectable ideas, copyright does protect the manner of their presentation. . . . Additionally, even if the Copyrighted Material is a functional work, it is still entitled to thin copyright protection.

C. Merger and Scènes à Faire . . . However, the Court cannot conclude from the pleadings alone that merger or scènes à faire apply. First, Defendants’ conclusion that a liability disclaimer can be expressed in only a few ways is unsubstantiated. . . . It is not readily apparent from the FAC that there are sufficiently few means of expressing the ideas in the disclaimer such that the ideas and expressions merge, or that the language of a disclaimer is akin, in the legal profession, to a stock scene or character. Defendants offer no authority suggesting that disclaimers of this sort can only be crafted in one or two ways. Instead, Defendants attempt to shift the burden of showing that there are many ways of expressing the idea of a liability disclaimer onto Plaintiff. . . . Once the presumption of copyrightability has been established by the existence of a copyright registration certificate, it is the burden of the party challenging copyrightability to show that an exception applies. Moreover, on a motion to dismiss under Rule 12(b)(6) the Court assumes the truth of well pled allegations and does not engage in factual determinations. There is a marked and conspicuous similarity in the two disclaimers, including word choice and phrasing, but it is not readily apparent from the compliant that the similarities are owed to the nature of a disclaimer.

Even if the Copyrighted Material is a functional work, or merger or scènes à faire applied, it is still entitled to thin protection. The Court cannot conclude as a matter of law that thin protection would not bar the alleged infringement. A reasonable finder of fact could conclude that the disclaimer of liability contained within Defendants’ form is virtually identical to its opposite number in the Copyrighted Material. Notable is the identical wording in the salutation and first sentence, the first clause of which is non-functional as a disclaimer in that it expresses in “advertising speech” the intention to provide excellent service. The only changes, apart from those mandated by the layout, are the alteration of the word “best” to all-caps, the addition in Defendants’ disclaimer of a comma between “service” and “and,” the replacement of underlining with all-caps and the deletion of the word “any” in the phrase “necessary for us to disclaim any and all damages,” and omissions to the list of specific types of damage for which liability is disclaimed. Defendants’ sheet also includes a bolded statement to the effect that car wash employees are not permitted to remove child seats or other child restraints. . . . Therefore, even assuming that the Copyrighted Material is entitled only to “thin” copyright protection, Defendants’ motion to dismiss fails.
REIFFER V. HGM HOLDINGS LLC
Outcome: Motion to strike - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Defenses - statute of limitations, Defenses - estoppel, Defenses - waiver, Defenses - fair use, Defenses - license, Defenses - abandonment, Copyright registration - pleading requirements

This is a copyright infringement dispute between Plaintiff Paul Reiffer (“Reiffer” or “Plaintiff”), a professional landscape, cityscape and commercial photographer, and Defendant HGM Holdings LLC, d/b/a HGM Business Group (“HGM” or “Defendant”), a consulting firm for small businesses that helps with strategic planning, daily operating procedure and marketing. . . . The complaint alleges one count of copyright infringement in violation of 17 U.S.C. § 501, claiming HGM copied Reiffer's photograph from the internet to promote its business activities. . . . Defendant answered and on November 26, 2018, Plaintiff filed a motion to strike all twenty (20) of Defendant's affirmative defenses pursuant to Federal Rule of Civil Procedure 12(f). . . . The Court denied the motion to strike as moot after ordering Defendant to file an amended answer that was more well-considered and relevant to the cause of action alleged against it. . . .

Defendant filed an amended answer pursuant to the Court's Order. . . . On February 28, 2019, Plaintiff again moved to strike all of Defendant's affirmative defenses in the amended answer. . . .

A. First Affirmative Defense – Statute of Limitations . . . Plaintiff's complaint also does not make it clear when the alleged copyright infringement actually took place besides stating when the photograph was taken (2014) and when its copyright was registered (2017). It makes little sense to strike the statute of limitation defenses when the complaint also lacks detail on the timing of its infringement claim. . . . The motion to strike is DENIED as to the first affirmative defense.

B. Second and Third Affirmative Defenses – Estoppel and Waiver . . . Defendant did not bother to change or amend the conclusory terms of these affirmative defenses despite being given the opportunity to do so by the Court. Accordingly, the second and third affirmative defenses for estoppel and waiver are therefore STRICKEN without leave to amend.

C. Fourth, Fifth, and Sixth Affirmative Defenses – Fair Use, License, and Abandonment . . . Here it is possible that these affirmative defenses have some bearing on the copyright infringement claim. It is not clear whether HGM's fair use, license, abandonment defenses will be successful, but that is not for the Court to decide on a motion to strike. . . . In the absence of any arguments from Plaintiff that such defenses are inapplicable to the cause of action, the Court will not strike these defenses, as it appears fair use, license, or abandonment may be applicable to the copyright infringement claim stated against Defendant and therefore may have some possible bearing on the litigation. . . . As to Plaintiff's arguments on the merits of the sixth affirmative defense for abandonment, such merits arguments are not appropriate on a motion to strike. . . .
Additionally although these affirmative defenses do not allege facts in support, Plaintiff does not explain how he will be prejudiced by the pleading of these defenses besides stating in conclusory terms that each of these defenses prejudices him. . . . It is not clear what extraneous issues Plaintiff will be forced to litigate as a result of these defenses that may be relevant to the copyright infringement claim. . . . The Court finds that Plaintiff has not demonstrated how he will prejudiced by the lack of factual detail provided in these defenses. Accordingly, the motion to strike the fourth, fifth, and sixth affirmative defenses is DENIED.

D. Seventh Affirmative Defense - Defective Copyright . . . Besides the repeated chorus in the motion that all the affirmative defenses “forc[e] [Plaintiff] to litigate issues without any basis or allegation and [are] a waste of both time and money[,]” . . . Plaintiff does not actually explain how this seemingly relevant defense, albeit not technically an affirmative defense, would cost it more resources to litigate in the context of this copyright infringement suit. . . . Plaintiff here has not demonstrated prejudice and the motion to strike the seventh affirmative defense is DENIED.

Northern District of California

SMITH V. AMC NETWORKS, INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - comic book, Audiovisual work - television series
Topics: Infringement - substantial similarity

Plaintiff Melvin Smith brings suit against Defendants and claims that Defendants infringed Plaintiff's copyright and that Defendants breached their fiduciary duties to Plaintiff. At the center of this dispute are two zombie-themed works: Plaintiff's comic book called Dead Ahead and Defendants' television series entitled Fear the Walking Dead. Plaintiff claims that Fear the Walking Dead infringed Plaintiff's copyright on Dead Ahead.

Before the Court is Defendants AMC Networks Inc., AMC Film Holdings LLC, AMC Network Entertainment LLC, AMC TV Studios LLC, and Valhalla Entertainment, Inc.'s (collectively, “AMC Defendants”) motion to dismiss the second amended complaint. . . . Also before the Court is Defendants Skybound Productions, Inc., Circle of Confusion Productions, LLC, New Circle of Confusion Productions, Inc., Robert Kirkman, LLC, Robert Kirkman, and David Alpert's (collectively, “Skybound Defendants”) motion to dismiss the second amended complaint. . . . The Court will refer to the Skybound Defendants and AMC Defendants collectively as “Defendants.”

Having considered the parties' submissions, the relevant law, and the record in this case, the Court DENIES Defendants' motions to dismiss the second amended complaint. . . .

In sum, based on the record before the Court, the Court cannot conduct the analysis to separate the unprotectable elements from the protectable elements in Dead Ahead. As such, the Court DENIES Defendants' motions to dismiss the copyright claim.
Pending before the Court is a motion to remand to Santa Clara Superior Court filed by Plaintiffs Cathy O'Brien and Laura Adney. Dkt. No. 16. For the following reasons, the Court GRANTS the motion.

i. Right of Publicity (Claim Two) . . . Here, because Plaintiffs allege an unlawful use of their likenesses by Defendants, and further allege the misappropriation of non-photographic elements of their likenesses and identities, Plaintiffs have asserted rights that are not equivalent to the rights of copyright holders. Therefore, the subject matter of Plaintiffs' right of publicity claim does not fall within the subject matter of the Copyright Act.

ii. Contract Interference (Claim Three) . . . The subject matter of Plaintiffs' contract interference claim is not limited to the use of Plaintiffs' photographs. The contract claim additionally relies on the unauthorized removal of third-party affiliates' links that were associated with the photographs. The removal of those links is a key component to Plaintiffs' claim, and is separate from the reproduction of Plaintiffs' photographs. For this reason, Plaintiffs' contract interference claim is not preempted by the Copyright Act.

iii. Unjust Enrichment (Claim Four) . . . As with the contract interference claim, an integral component of Plaintiffs' unjust enrichment claim is separate and separable from the unauthorized used of Plaintiffs' photographs. For that reason, Plaintiffs' unjust enrichment claim is not preempted by the Copyright Act.

iv. UCL (Claim One) . . . For the same reasons discussed above with respect to Plaintiffs' right of publicity claim, Plaintiffs' UCL claim relies on additional rights separate from the infringement of Plaintiffs' copyrighted images. Therefore, to the extent Plaintiffs' UCL claim relies upon Plaintiffs' non-preempted state law claims, the UCL claim is also not preempted.

BATRA V. POPSUGAR, INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - photograph
Topics: Integrity of Copyright Management Information - definition of CMI, Integrity of Copyright Management Information - removal, Preemption - right of publicity, Preemption - contract interference, Preemption - unfair competition, Remedies - statutory damages, Remedies - attorneys fees

On June 25, 2018, Plaintiff Nita Batra filed suit against Defendant POPSUGAR Inc. ("POPSUGAR"), alleging that POPSUGAR: (1) removed and/or altered her copyright
management information ("CMI") in violation of Section 1202(b) of the Digital Media Copyright Act ("DMCA"); (2) infringed Plaintiff's copyright in her photographs; (3) misappropriated Plaintiff's likeness and infringed her right of publicity; (4) intentionally interfered with Plaintiff's contractual relationship; (5) made a false or misleading representation in violation of the Lanham Act; and (6) violated the California Unfair Competition Law ("UCL"). . . . Plaintiff alleges class action claims on behalf of "persons with large numbers of followers on social media," also known as "influencers." . . . The complaint alleges that POPSUGAR copied thousands of influencers' Instagram images, removed the links in the original pages that allowed the influencers to monetize their following, and reposted the images on its own website without authorization with links that allowed POPSUGAR to profit when users clicked through and purchased items. . . .

DMCA Claim . . . Plaintiff has sufficiently alleged a violation of section 1202(b). The Instagram sidebar is alleged to include identifying information about Plaintiff that plausibly constitutes CMI under section 1202(c). And the plausible inference from Plaintiff's allegations is that PopSugar removed the CMI from Plaintiff's Instagram posts knowing that removing the CMI would help to conceal the alleged infringement of Plaintiff's images. The Court therefore DENIES Defendant's motion to dismiss Plaintiff's DMCA claim. . . .

Copyright Act Preemption . . . a. Infringement of the Right of Publicity (Claim Three) . . . Here, because Plaintiff alleges an unlawful use of her likeness by Defendant, and further alleges the misappropriation of non-photographic elements of her likeness and identity, Plaintiff has asserted rights that are not equivalent to the rights of copyright holders. Therefore, the subject matter of Plaintiff's right of publicity claim does not fall within the subject matter of the Copyright Act.

b. Contract Interference (Claim Four) . . . The subject matter of Plaintiff's contract interference claim is not limited to the use of Plaintiff's copyrighted images. The contract claim additionally relies on the unauthorized removal of LIKEtoKNOW.it monetized links that were associated with the copyrighted images. . . . The removal of those monetized links is a key component of Plaintiff's claim, and separate from the reproduction of Plaintiff's copyrighted images. For this reason, Plaintiff's contract interference claim is not preempted by the Copyright Act.

c. UCL (Claim Six) . . . For the same reasons discussed above with respect to Plaintiff's contract interference claim, Plaintiff's UCL claim relies on additional rights separate from the infringement of Plaintiff's copyrighted images. . . . Therefore, to the extent Plaintiff's UCL claim relies upon Plaintiff's non-preempted state law claims, the UCL claim is also not preempted. . . .

Copyright Infringement Claim . . . Plaintiff's allegations here raise the plausible inference that Plaintiff's copyright registration satisfies the requirements of section 412. Unlike Wright, in which the plaintiff's copyright registration dates fell outside of the statutory damages window, Plaintiff has not precluded the availability of statutory damages in her pleadings. . . . And unlike McGucken, in which the plaintiff alleged no information about the date of registration of his copyrights or the dates of infringement, Plaintiff has alleged dates of infringement and further alleged that "Plaintiff and members of the Subclass either hold a copyright registration certificate from the United States Copyright Office or have applied for a registration certificate." . . .
Clearly, to survive summary judgment on her individual claim for statutory damages and to serve as a class representative under Rule 23(a), Plaintiff must establish copyright registration dates that satisfy section 412. But at the pleading stage, Plaintiff has plausibly alleged facts sufficient to support her claim for statutory damages and attorneys' fees. The Court therefore DENIES Defendant's motion to dismiss Plaintiff's prayer for statutory damages and attorneys' fees.

KECK V. ALIBABA.COM HONG KONG LTD.
Outcome: Motion for judgment on the pleadings - denied
Works of Authorship: Visual work - graphic work
Topics: Vicarious infringement - pleading requirements

Plaintiff Michel Keck brings this copyright and trademark infringement action against Alibaba.com Hong Kong Ltd. (“Alibaba HK”), Taobao China Holding Ltd. (“TCHL”), Zhejiang Taobao Network Co., Ltd. (“Zhejiang Taobao”) (collectively, the “Alibaba Defendants”) and numerous Chinese merchants. See generally First Amended Complaint (“FAC”) . . . . Before the Court is Alibaba Defendants' Motion for Partial Judgment on the Pleadings (“Motion”). . . . Specifically, Defendants move to dismiss Count III of the FAC for failure to sufficiently allege the requisite elements of a vicarious copyright infringement claim. . . . For the reasons set forth below, the Court hereby DENIES Defendants' Motion for Partial Judgment on the Pleadings. . . .

As stated above, the Court finds that Plaintiff has sufficiently alleged vicarious copyright infringement. For this claim, full application of the law to the facts would require a developed record. The Court has reviewed Defendants' arguments in full and finds certain arguments compelling but better suited for summary judgment or trial on a developed record.

LONG V. DORSET
Outcome: Motion to dismiss - granted
Topics: Limitations on liability relating to material online - expeditiousness

Defendant Facebook, Inc.'s (“Facebook”) motion to dismiss came on for hearing before this court on February 13, 2019. Plaintiffs Raymond Long and his corporation, Bandha Yoga Publications, LLC (“Bandha LLC,” together with Long, “plaintiff”) appeared through their counsel, Barry Coburn and Ross Libenson. Facebook appeared through its counsel, Joseph Gratz. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS defendant's motion, for the following reasons. . . .

Under the facts allege here, the court finds that Facebook's five-business-day response satisfies the DMCA’s expeditious requirement. Plaintiff sought the removal of over a hundred allegedly infringing images and also sought the restoration of his administrator status. . . . Facebook
promptly responded to plaintiff's initial email and, over the next several days, continued to exchange emails with plaintiff to resolve the issue. A total of five business days after it first received notice of the alleged infringement, Facebook resolved plaintiff's complaint. Based on those allegations, the court finds that the DMCA's safe harbors apply to plaintiff's copyright claims against Facebook because Facebook “satisfied the ‘responds expeditiously to remove’ requirement.” . . . Accordingly, plaintiff's copyright claims are DISMISSED WITH PREJUDICE.

IZMO, INC. V. ROADSTER, INC.
Outcome: Motion to dismiss - granted
Works of Authorship: Visual work - photograph
Topics: Copyright registration - registration requirement

Before the Court is defendant Roadster, Inc.’s motion to dismiss part of plaintiff Izmo, Inc.’s second amended complaint. See Dkt. No. 38. The sole question in Roadster’s motion is whether, in light of the Supreme Court’s recent ruling in Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC . . . Izmo may amend its complaint to assert copyright infringement of photographs that were not registered at the time it initiated this lawsuit. . . .

Here, permitting amendment to cure a claimant’s failure to register its copyright before suing would undermine the objectives animating the Supreme Court’s decision in Fourth Estate. The fact that Izmo properly “commenced” this lawsuit as to some of its copyrights does not excuse its failure to comply with § 411(a) as to its other copyrights. . . .

Accordingly, the Court GRANTS Roadster’s motion to dismiss. Izmo’s copyright infringement claims are dismissed without prejudice to the extent they allege infringement of photographs registered before October 3, 2018.

HO V. PINSUKANJANA
Outcome: Motion for summary judgment - denied
Works of Authorship: Visual work - photograph
Topics: Infringement - evidence of creation of a derivative work, Copyright registration - registration requirement

On May 29, 2019, a score of motions came on for hearing before this court. Plaintiff Rita C. Ho (individually, the “plaintiff”) and counter-defendant Claudia S. Ho, Rita Ho’s daughter (together with Rita Ho, the “Ho Family”), appeared through their counsel, Allen Baden and Benjamin Schwartz. Allen Baden also made a special appearance on behalf of the counter-defendant Sarah Greene, who is a resident of Hong Kong and who filed a motion challenging service. Defendants and counter-plaintiffs Mark Pinsukanjana, Bryan Yedinak, and Architektur, dba Themes + Projects, formerly dba as Modernbook (“Modernbook,” together with Pinsukanjana and
Yedinak, the “defendants” or “counter-plaintiffs”) appeared through their counsel, Hillary Johns.

a. Counterclaim Two: Declaratory Judgment re Copyright . . . As at least one dispute of material fact exists regarding whether any “derivative work” exists and whether defendants contributed to the creation of any derivative work, the court DENIES this part of plaintiff’s motion for summary judgment.

b. Claim One: Copyright Infringement . . . Here, plaintiff has submitted no evidence suggesting that she possesses a registered copyright over any of the decedent’s Works. Indeed, plaintiff’s papers concede that point. Nor does plaintiff’s counsel’s belated representation—unsupported by any evidence submitted to the court—that the Copyright Office has registered one unidentified photograph save plaintiff’s motion. As an initial matter, plaintiff has failed to present any evidence of that fact. Relatedly, plaintiff has failed to identify which photograph has been registered. And, putting aside those two problems, plaintiff has failed to provide evidence connecting that unidentified registered work with an act of infringement. Accordingly, plaintiff’s motion for summary judgment on her first claim is DENIED.

FREE SPEECH SYS., LLC V. MENZEL
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Defenses - statute of limitations, Infringement - server test, Contributory infringement - pleading requirements, Defenses - fair use, Integrity of Copyright Management Information - pleading requirements

In this action, plaintiff Free Speech Systems, LLC (“FSS”) seeks a declaration that it has not directly, contributorily, or vicariously infringed on defendant Peter Menzel’s copyrights. Menzel filed a First Amended Answer and Counterclaims (FAAC) that raises several affirmative defenses to FSS’s complaint and seeks relief against FSS for copyright infringement and violation of the Digital Millennium Copyright Act. Before me are FSS’s Motion to Dismiss Menzel’s amended counterclaims and a Motion to Strike most of Menzel’s affirmative defenses. Menzel has not stated a claim for contributory negligence because he did not identify a third party infringer, and has not stated a DMCA claim because he did not describe which photographs had copyright management information (CMI) removed or what the removed CMI was. He has leave to amend those claims. Otherwise, FSS’s motions are denied.

A. Statute of Limitations under 17 U.S.C. § 507(b) . . . As noted above, reasonableness of discovering copyright infringement is generally a question of fact. Neither FSS nor Menzel cite any cases supporting their position that Menzel’s delay in discovering the infringement by FSS was either reasonable or unreasonable as a matter of law. Ignoring the extra-judicial facts asserted by FSS (e.g., Google reverse image searching) and considering only the alleged or admitted facts – that Menzel polices his copyrights but does not frequent the InfoWars site and that the Post was up as of April 30, 2012 – Menzel’s pleading does not establish as a matter of
law that his delay in filing suit was unreasonable. The Motion to Dismiss based on the statute of limitations is DENIED.

B. Allegations of Copyright Infringement . . . It is undisputed that Menzel is the owner of the photographs. Menzel alleges that FSS violated his copyright by its display and distribution of the images, as well as the creation of a derivative work in violation of Section 106. . . . In moving and opposing the motion, the parties discuss only “display”; I will limit my analysis accordingly. . . .

There are two problems with FSS’s wholesale reliance on Perfect 10. First, FSS cites no case applying the Perfect 10 server test outside of the context of search engines. Indeed, subsequent cases have refused to apply the Perfect 10 server test outside of that context. . . . While these cases are from outside the Ninth Circuit, FSS has not provided any case within the Ninth Circuit applying the server test outside of the search engine context or in the context here, the wholesale posting of copyrighted material on a news site.

Second, even if the server test applies – and I am not concluding it does at this juncture – it does not preclude the direct infringement claim on this motion to dismiss. As noted above, I have not (and absent apposite case authority will not) take judicial notice that Menzel’s photographs were hosted on the naturalsociety.com site and were never saved on InfoWars’s servers. While I have taken notice of the Post as presented in a hard copy attached to the Complaint under the doctrine of incorporation, whether the underlying code for the images pointed only to naturalsociety.com and only ever pointed to that site and whether the images were never saved on InfoWars’s servers are not facts I can judicially notice at this juncture.

Menzel’s direct infringement claim has been adequately alleged and the Motion to Dismiss this claim is DENIED.

2. Contributory Infringement . . . FSS argues that, here too, Menzel has only alleged that FSS provided the means to accomplish an infringing activity and that is not enough to state a contributory infringement claim. . . . I agree that the contributory infringement has not been sufficiently pleaded. FSS’s Motion to Dismiss is GRANTED with leave to amend.

C. FSS’s Fair Use Defense . . . Menzel asserts there are a number of material facts in dispute that weigh on the fair use determination, including the purpose and character of the Post as compared to Menzel’s original purpose and use of the photographs, the extent to which the Post was used for commercial purposes, and the effect the publication of the Post had on the market for Menzel’s licensed photographs and book. . . . Fair use cannot be resolved as a matter of law on this record. The Motion to Dismiss is DENIED on this ground.

D. Violation of the DMCA . . . I agree that because Menzel has merely alleged that his photographs “were altered to remove certain of [his] copyright management information” without providing any facts to identify which photographs had CMI removed or to describe what the removed or altered CMI was, he has not sufficiently stated a claim under Section 1202(b)(1) with respect to “removal,” much less with respect to distribution under (b)(2) and (b)(3).
Regarding distribution, Menzel simply reiterates the legal standard and alleges no facts in support... Without identifying what CMI FSS allegedly distributed or how that was distributed, and without identifying what CMI was removed prior to distribution and how that distribution was accomplished by defendants, Menzel has likewise failed to state a claim under Section 1202(b)(2) and (b)(3).

The Motion to Dismiss is GRANTED on the DMCA claim. Menzel is given leave to amend to allege additional facts in support.

KEVIN BARRY FINE ART ASSOC'S. V. KEN GANGBAR STUDIO, INC.
Outcome: Motion to dismiss - denied
Works of Authorship: Visual work - sculptural work
Topics: Ownership - pleading requirements, Copyrightability - pleading requirements, Copyright registration - pleading requirements, Infringement - pleading requirements, Vicarious infringement - pleading requirements

On June 6, 2018, Plaintiff Kevin Barry Fine Art Associates (“KBFAA”) brought this suit against Defendant Ken Gangbar Studio Inc. (“KGSI”) for a declaratory judgment of non-infringement... On August 7, 2018, KGSI submitted an answer and counterclaims against not only KBFAA but also its owner Kevin A. Barry, as well as John Johnson, Richard McCormack, and Richard McCormack Design d/b/a Studio McCormack (“Studio McCormack”), asserting copyright infringement, as well as conspiracy to commit and substantive violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”)... (“Answer & Counterclaims”). Pending before the Court are two motions to dismiss KGSI’s counterclaims... 1. KGSI Has Adequately Stated a Claim for Infringement Against the KBFAA Counter-Defendants... a. Valid Copyrights... First, KGSI has plausibly alleged it owns valid copyrights in the relevant sculptures: Star, Swish, Palomar, and Fin Wave (collectively, “KGSI Works”). KGSI alleges that Mr. Gangbar created the KGSI Works and assigned all copyrights to Ken Gangbar Studio Inc. ... The KGSI Works are undoubtedly subject to copyright protection, as they are “fixed in [a] tangible medium of expression.”... The KGSI Works are also “original work[s] of authorship,” given the several specific “creative decisions” Mr. Gangbar made in crafting them. ... Finally, KGSI alleges it registered the KGSI Works with the Copyright Office, which is generally a prerequisite for a civil copyright infringement action... b. Copying Protected Aspects... The Court first finds that KGSI has pled facts sufficient to create a presumption that the accused works (collectively, “KBFAA Works”) were the result of copying. KGSI alleges that before outright copying the KGSI Works, a KBFAA associate emailed KGSI—attaching photographs of Mr. Gangbar’s sculptures, including Star—and asked about commissioning a similar piece... i. Step One: Protectable Elements... Here, although copyright law would not protect (1) cyclical patterns of nature, (2) three-dimensional wall sculptures, (3) wave-like patterns, or (4)
the use of rocks, or rock-shaped disks, it does protect the original “selection, coordination, and arrangement” of rocks and rock-shaped disks depicting the cyclical patterns of nature within large three-dimensional abstract wall sculptures. . . . And the breadth of protection is broad, “because there is a wide range of expression for selecting, coordinating, and arranging” the constituent elements in a stylized three-dimensional wall sculpture. . . . After all, there are “gazillions of ways” to depict the cyclical patterns of nature, and the author was creatively unconstrained. . . .

ii. Step Two: Similarity Comparison . . . Here, the similarities between the KGSI and KBFAA Works extend far beyond just the mutual depiction of patterns of nature. The works contain similar disc-shaped rocks in similar general arrangements, with similar cluster patterns, presented in nearly the same way—as large three-dimensional wall art. And not only does the complaint plead the similarities between the works, but it “provide[s] side-by-side pictures that make the similarities apparent.” . . .

Undoubtedly, the KGSI and KBFAA Works differ in some ways, such as (1) different uses of space, particularly when comparing KGSI’s Star against KBFAA’s Bayview Work; (2) using slightly different colored rocks; and (3) curvature disparities. But a rational jury could find that these deviations were “knowing modifications,” which would evidence deliberate copying, rather than independent creation. . . .

The Court accordingly finds that, at this stage, KGSI has adequately pled substantial similarity to survive dismissal of its copyright infringement claims against the KBFAA Counter-Defendants. . . .

2. KGSI Adequately Pled Vicarious Liability as to the McCormack Counter-Defendants . . .
KGSI’s copyright infringement counterclaim alleges that the McCormack Counter-Defendants vicariously infringed KGSI’s copyrights by circulating a photograph of one of KGSI’s copyrighted works and soliciting bids from art dealers to copy the work for placement at The Ritz Prime Seafood. . . . The McCormack Counter-Defendants then allegedly gave the job to Mr. Barry and KBFAA, who submitted the lowest bid. Id. These facts, according to KGSI, show that the McCormack Counter-Defendants “had the right and the ability to supervise and control the selection of artwork to be purchased and placed at The Ritz Prime Seafood.” . . . And these counter-defendants allegedly “financially benefitted from the sale” of the accused work to The Ritz Prime Seafood. . . .

All told, a rational jury could view the facts as pled by KGSI and find that the McCormack Counter-Defendants had the requisite “control” to establish vicarious liability. The Court thus DENIES the McCormack Counter-Defendants’ request to dismiss KGSI’s infringement claim against them.
SYNOPSYS, INC. V. INNOGRIT, CORP.
Outcome: Motion for preliminary injunction - granted
Works of Authorship: Literary work - computer program
Topics: Circumvention of copyright protection systems - circumvention, Circumvention of copyright protection systems - trafficking

On April 23, 2019, the Court denied Plaintiff’s ex parte application for a temporary restraining order. . . . However, the Court also ordered Defendant to show cause why a preliminary injunction should not issue. . . . The Court permitted the parties to brief whether a preliminary injunction is appropriate here. Before the Court is the question of whether to impose a preliminary injunction in the instant case. Having considered the parties' submissions, the relevant law, and the record in this case, the Court GRANTS a preliminary injunction.

1. 17 U.S.C. § 1201(a)(1) . . . Plaintiff retained FTI Consulting Technology LLC to analyze the forensic evidence from Defendant’s computers. . . . FTI Consulting Technology LLC has identified at least two ways that Defendant appears to have violated 17 U.S.C. § 1201(a)(1).

First, according to Daniel Roffman, senior managing director in the digital forensic and investigation practice at FTI Consulting Technology LLC, forensic evidence collected from Defendant’s computers revealed “evidence of software piracy, including forensic artifacts related to counterfeit license keys, counterfeit key generators, and ‘crack’ files for Synopsys software. Generally, a ‘crack file’ is a file containing tools to ‘unlock’ unauthorized copies of Synopsys EDA software.” . . .

Second, Roffman confirmed that Defendant manually changed the media access control (“MAC”) addresses on 11 computers in the United States, which allowed Defendant to run Plaintiff’s software on unauthorized computers. . . . Thus, Defendant circumvented technological measures that control access to Plaintiff’s software because Plaintiff’s software only runs when a software license key matches the MAC address of a computer authorized to run the software. . . .

Accordingly, Plaintiff is likely to succeed on Plaintiff’s 17 U.S.C. § 1201(a)(1) cause of action. Defendant’s computers contained evidence of, inter alia, crack files used to gain unauthorized access to Plaintiff’s EDA software by circumventing Plaintiff’s anti-piracy measures through “unlocking” Plaintiff’s proprietary EDA software. Moreover, Defendant manually changed the MAC addresses of 11 computers in the United States, which also allowed Defendant to circumvent Plaintiff’s anti-piracy measures.

2. 17 U.S.C. § 1201(a)(2) . . . The forensic evidence collected from Defendant’s computers shows that Defendant imported a crack file from an Iranian software piracy website and obtained license key generator software from a Chinese website known to host pirated software. . . . As aforementioned, crack files are used to “unlock” pirated copies of software. Thus, Plaintiff can prove that Defendant imported technology (i.e., the crack file) from Iran that can “unlock” (i.e., circumvent) Plaintiff’s measures to control access to Plaintiff’s software. Thus, Plaintiff is likely to succeed on Plaintiff’s 17 U.S.C. § 1201(a)(2) cause of action.
IMAGIZE LLC V. ATEKNEA SOLUTIONS HUNGARY KFT
Outcome: Motion to dismiss - granted
Works of Authorship: Visual work - photograph
Topics: Copyright registration - registration requirement

Plaintiff Imagize LLC (“Imagize”) brings suit against Defendants Ateknea Solutions Hungary KFT (“Ateknea”), a Hungarian limited liability company, Aero Glass, Inc. (“Aero Glass”), a Delaware corporation, and Akos Maroy for copyright infringement and misappropriation of trade secrets, along with numerous claims based on contract. Maroy moves to dismiss Imagize’s complaint for insufficient service of process under Rule 12(b)(5) of the Federal Rules of Civil Procedure. Additionally, Maroy and Aero Glass (collectively “Defendants”) move to dismiss Imagize’s copyright infringement claim for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons explained below, Maroy’s motion under Rule 12(b)(5) is denied and Defendants' motion under Rule 12(b)(6) is granted. . . .

The parties agree that Imagize did not allege its ownership of a valid copyright registration in the Complaint. Instead, Imagize pled it had submitted two applications for copyright registration at the time the complaint was filed. Imagize cites to Exhibits 4 and 5 of Tibor Kozek’s Declaration . . . , which provides the certificate of registration for the copyrights at issue. Exhibit 4 is a Certificate of Registration of Copyright No. VAu 1-333-300 with an Effective Date of Registration on February 2, 2018, while Exhibit 5 is a Certificate of Registration of Copyright No. TX 8-527-329, with an Effective Date of Registration on January 17, 2018. . . . Imagize contends that each registration’s effective date satisfies the requirements of section 411. The Effective Date of Registration, however, refers to the date on which the U.S. Copyright Office received the required elements for registration, rather than the date the Copyright Office completed processing and approval of the application. . . . Therefore, in light of Fourth Estate, Imagize’s claim for copyright infringement is defective as a matter of law.

CRISTO V. CAYABYAB
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Literary work - hymn
Topics: Copyright registration - registration requirement, Defenses - exemption of certain performances and displays, Infringement - pleading requirements

Plaintiff Iglesia Ni Cristo (“INC”) is a non-profit religious corporation that has congregations throughout the United States and numerous other countries. INC sues eleven of its former ministers, officers, and members (“Individual Defendants”), claiming that after expulsion from INC the Individual Defendants formed Defendant H2O Now USA (“H2O”) and continued holding worship services as though still affiliated with INC. The Individual Defendants and H2O allegedly use INC’s trademarked and copyrighted materials, including INC’s Seal, Executive Seal, Flag, and hymns, in worship services. INC claims that Defendants’ conduct violates federal trademark law, copyright law, and state unfair competition law.
This order addresses four motions filed by two sets of Defendants, the first set comprising H2O, Lionel Roque Dela Uso, Allan Monte De Ramos, Jesle Llaban Kuizon, Edwin Lionel R. Mora, and Allan Villanueva (“H2O Defendants”), and the second set comprising Luisito E. Cayabyab and Rolando Dizon, Jr. Each set of Defendants has filed a special motion to strike under California’s anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, and a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

For the reasons discussed below, the anti-SLAPP motions are DENIED and the Rule 12(b)(6) motions are GRANTED IN PART AND DENIED IN PART, WITH LEAVE TO AMEND.

The FAC alleges that INC has applied for copyright registration of a number of works. INC alleges that it has obtained registrations of six works, attached as Exhibit A to the FAC. However, Exhibit A contains receipts for copyright applications, not evidence that registrations have issued. INC’s copyright claim therefore is subject to dismissal for failure to allege ownership of a valid copyright. INC indicated at the hearing that it could amend to allege issuance of valid copyright registrations. The Court therefore will dismiss the copyright claim with leave to amend.

Defendants correctly assert that a plaintiff suing for copyright infringement must identify with specificity which work or works were copied. INC has identified specific instances where Individual Defendants Dizon and Cayabyab used INC’s hymns in worship services shown on videos published to the Internet. The Copyright Act exempts from copyright protection “performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly.” However, INC alleges that the videos in question displayed the lyrics of the hymns in question, which arguably constitutes distribution of the works falling outside the scope of the exemption. Accordingly, with respect to Defendants Dizon and Cayabyab, the Court finds the copyright claims to be adequately alleged, except for the ownership issue addressed above. The conduct of Dizon and Cayabyab appears attributable to Defendant H2O as well, based on their roles in H2O.

With respect to the other Individual Defendants, INC alleges only that they “participated in the use and publishing of INC’s copyrighted hymns in H2O worship services and online.” That allegation, which is wholly conclusory, is inadequate to show copyright infringement.
ADOBE SYS. INC. v. NA TECH DIRECT INC.
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Literary work - computer program
Topics: Infringement - evidence of distribution, Defenses - waiver, Defenses - acquiescence, Defenses - estoppel, Contributory infringement - extraterritoriality, Contributory infringement - knowledge, Defenses - statute of limitations, Defenses - collateral estoppel


Now before the Court are the parties’ cross-motions for summary judgment. Adobe seeks summary judgment for its direct copyright infringement, contributory copyright infringement, and contributory trademark infringement claims. Defendants oppose Adobe’s motion and cross-move for summary judgment on the knowledge element of contributory infringement. Defendants also seek summary judgment on their statute of limitations, latches, and collateral estoppel defenses. . . . Having considered the papers, as well as arguments by counsel on October 8, 2019, the Court GRANTS IN PART and DENIES IN PART Adobe’s motion for summary judgment and DENIES Defendants’ motions for the same. . . .

A. Direct Copyright Infringement . . . 1. Adobe’s Evidence of Direct Copyright Infringement . . . Adobe indisputably owns the registered copyrights for the software programs at issue. Adobe has produced certificates of copyright registrations to establish a presumption that the copyrights are valid. . . . Adobe indisputably licensed the copyrighted works to the Defendants subject to multiple restrictions. Adobe also produced admissible evidence to show violations of these restrictions. However, in order to be entitled to summary judgment, Adobe was obligated to attribute specific conduct to each Defendant. . . . Nevertheless, Adobe moved for summary judgment for all Defendants based on conduct linked to only two of the Defendants, namely unauthorized sales to Tiger Direct and unauthorized purchases by SYX Distribution Inc. Further, each unauthorized sale constitutes a separate act of copyright infringement. . . . The Court therefore cannot conclude that Defendants are liable for all unauthorized sales where Adobe failed to provide sufficiently definite evidence. Accordingly, the Court finds that Adobe has met its initial burden to show direct copyright infringement only for those sales for which it produced concrete evidence linked to a specific Defendant, namely those set forth in footnote 7, subject to the analysis regarding the statute of limitations defense in Section II.D.1 below. Adobe has not met its burden as to its remaining direct copyright infringement claims.
2. Defendants’ Waiver, Acquiescence, and Estoppel Defenses . . . Defendants argue that Adobe waived, acquiesced, or became estopped from asserting its claims because it failed to sue Defendants upon discovering the unauthorized sales . . . . On this record, Adobe’s failure to act does not create a genuine dispute regarding Defendants’ affirmative defenses. Absence of lawsuit does not constitute an “affirmative” or “overt” act as necessary for waiver or acquiescence. . . . On the contrary, Adobe’s admonishments over the unauthorized sales shows lack of intent to acquiesce or abandon its rights. . . . Similarly, estoppel is not appropriate because Defendants were not ignorant of their infringement and did not rely on Adobe’s apparent inaction. Indeed, Mr. Clark’s email directing sales persons to stop unauthorized sales shows that Defendants knew of the sales and acted in anticipation of Adobe’s enforcement of its rights. . . . Accordingly, the Court GRANTS IN PART Adobe’s motion for summary judgment for direct copyright infringement for one sale to SunPumps, Inc. and five sales to J&B Medical Supply Co. as these are not subject to the statute of limitations analysis. Adobe’s motion is DENIED for all other claims of direct copyright infringement.

B. Contributory Copyright Infringement . . . Here, Adobe produces some evidence that Software Tech resold volume-licensed and EDU software in violation of Adobe’s licenses. . . . However, it did not show that the alleged direct infringement occurred inside the United States. To the contrary, Adobe concedes that Software Tech was based in Canada and received Adobe software from Mr. Qin at Tiger Direct CA—a Canadian company. . . . Thus, at minimum, Adobe failed to show that Software Tech’s alleged unauthorized sales took place in the United States and summary judgment is not appropriate.

Defendants’ cross-motion posits that no reasonable jury could find that Defendants had knowledge of Software Tech’s unauthorized sales. The Court finds that a genuine issue of material fact exists. . . . As examples: Tiger Direct CA and Mr. Qin were informed that Software Tech was operating a fake school to purchase Adobe EDU software in 2011. . . . Emails show that Mr. Qin then assisted in transferring the fake school account to one for “Canada software outlet” and then continued to sell EDU software. . . . Emails also suggest that Mr. Qin assisted Software Tech in purchasing volume-licensed software using fake customer information. . . . Further, Ms. Stilson informed executives at Tiger Direct CA that Software Tech was a reseller not authorized to receive EDU or volume-license software in 2014—the findings for which were forwarded to Mr. Shaffer, the Executive Vice President for all Defendants. Even more circumstantial evidence, not listed here, is proffered. Thus, Defendants’ knowledge of Software Tech’s conduct raises a genuine dispute of material fact. Accordingly, the Court DENIES Adobe’s motion for summary judgment on contributory copyright infringement and DENIES Defendants’ motion on the knowledge element of the same.

D. Defendants’ Affirmative Defenses . . . 1. Statute of Limitations . . . Defendants argue that Adobe is time-barred from recovering copyright infringement damages accrued before September 8, 2014. . . . The Court finds that summary judgment is inappropriate. Whether Adobe should have reasonably known or investigated the Defendants’ unauthorized sales based on the serial keys is a question of fact for the jury. . . . Moreover, even if Adobe should have known about Defendants’ infringement with respect to the Software Tech’s volume licensed software sales, the statute of limitations runs separately for Defendants other infringing conduct—
including sales to non-Software Tech resellers and improper sales of EDU software. . . . The
discovery rule holds that a claim accrues when a plaintiff discovers or should discover the cause
of action, not a single element of the cause of action. Hence, Adobe’s contributory infringement
claim accrued when it discovered or should have discovered all elements of Defendants’
contributory infringement, including both Software Tech’s direct infringement and Defendants’
involvement in that infringement. Accordingly, the Court DENIES Defendants’ motion for
summary judgment on the statute of limitations defense, and as a material dispute of fact remains
as to the timeliness of claims before September 8, 2014, Adobe’s motion for summary judgment
as to those sales similarly fails and is DENIED. . . .

3. Collateral Estoppel . . . Defendants argue that Adobe is collaterally estopped from recovering
more than $2,300,000 awarded in the Software Tech litigation for contributory copyright and
trademark infringement, as the current claims are based on the same facts. . . . [D]isputes of
material fact preclude summary judgment on that defense. Adobe convincingly argues that the
issues decided in the Software Tech litigation are not identical to the issue of Software Tech’s
direct infringement in this case. . . . For instance, the Software Tech litigation involved fewer
copyright and trademarks than this case; the time period was shorter than the time period here;
and the damages award included $1.9 million in sanctions. . . . Given the differences, the Court
cannot apply the collateral estoppel defense. Accordingly, the Court DENIES Defendants’
motion for summary judgment on this ground.

UAB PLANNER5D V. FACEBOOK, INC.
Outcome: Motion to dismiss - granted
Works of Authorship: Literary work - computer program
Topics: Copyright registration - registration requirement, Copyrightability - originality,
Copyrightability - creativity, Infringement - substantial similarity

UAB Planner 5D (“Planner 5D”) brings copyright infringement and trade secret
misappropriations claims against Facebook, Inc., Facebook Technologies, LLC (collectively
“Facebook”), and The Trustees of Princeton University (“Princeton”). . . . Planner 5D operates a
home design website that allows users to create virtual interior design scenes using a library of
virtual objects (such as tables, chairs, and sofas) to populate the scenes. It claims that it owns
copyrights in these three-dimensional objects and scenes, and in the compilation of objects and
scenes, as well as trade secrets in the underlying data files of these objects and scenes.

Princeton and Facebook move to dismiss for failure to state a claim, and I will GRANT their
motions. Planner 5D does not sufficiently allege a copyright infringement claim because it does
not allege: (i) that it has met the threshold registration requirement of 17 U.S.C. § 411(a) or that
it is exempt from that requirement as a non-United States work; (ii) the originality or creativity
of the objects, scenes, and compilations of objects and scenes; and (iii) that copyrightable
elements were copied. . . . Planner 5D may have leave to amend to address these deficiencies. . . .
A. Threshold Requirement Under Section 411(a) . . . Planner 5D is wrong to argue that it is not required to plead Section 411(a) inapplicability. If a plaintiff believes that the registration requirement in Section 411(a) does not apply because its work is not a United States work, the plaintiff “must allege that the work [is] not [a] United States work [ ] within the meaning of § 101.” . . .

Taking as true Planner 5D’s allegation that its works were authored by non-United States persons, the question remains whether it has also sufficiently alleged that its works are unpublished such that they can be considered non-United States works that are exempt from the Section 411(a) registration requirement. . . . The Complaint does not allege how these works were merely displayed on its website rather than being publicly available so that any user can obtain copies of them. . . . While Planner 5D has alleged that it authored its works outside the United States, in order to be exempt from the Section 411(a) registration requirement Planner 5D must also sufficiently allege that its works were unpublished. . . .

B. Originality and Creativity of Planner 5D’s Alleged Works . . . In its opposition, Planner 5D argues that its website reveals “‘hand-crafted’ objects with various colors, textures, features and embellishments.” . . . This is not alleged in the Complaint, and even if it was, these allegations are not enough. Planner 5D must sufficiently allege more than the time and effort that went into making the three-dimensional objects and scenes. . . .

Planner 5D has not sufficiently alleged any creative selection process behind its scene compilation. It has not alleged that it exercised any creativity in selecting among the user-generated scenes, nor does it identify any scenes that it omitted from the compilation. . . .

Even if Planner 5D has identified all the files in the SUNCG dataset as the infringed works, it does not identify what copyrightable elements Princeton copied when it allegedly took those objects, scenes, and/or underlying files. . . . This should be addressed in the amended complaint.

MENZEL V. SCHOLASTIC, INC.
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Defenses - license, Defenses - statute of limitations, Defenses - fraud on the Copyright Office, Remedies - willful infringement

Plaintiff Peter Menzel has sued Defendant Scholastic, Inc. for copyright infringement. Currently pending before the Court are motions for summary judgment or partial summary judgment filed by both parties. Having considered the parties’ briefs and accompanying submissions, as well as the oral argument of counsel, the Court hereby GRANTS in part and DENIES in part each party’s motion. The Court also GRANTS the various motions to file under seal that have been filed in conjunction with the summary judgment briefing. . . .
According to Scholastic, Mr. Menzel admitted in his SAC that Scholastic did have licenses to use his photographs . . . and, therefore, Mr. Menzel has the burden of proving that any use of his photographs by Scholastic was beyond the scope of the licenses. . . . Scholastic is correct. . . .

[T]he language from Petrella does not do away with the discovery rule. Instead, the Supreme Court recognized that it had not passed on the question of whether the discovery rule could serve as an alternative to the injury rule. Absent a clear overruling by the Supreme Court, this Court remains bound by the discovery rule as established in Polar Bear. . . .

The Court thus denies Scholastic’s motion for summary judgment on the statute of limitations. Scholastic has not established the essential elements of its affirmative defense – i.e., did Mr. Menzel know or should he have known about the alleged infringements prior to September 2014?

As for Mr. Menzel’s motion for summary judgment on the statute of limitations, it is granted. Mr. Menzel argued that there is no evidence to support Scholastic’s argument that his copyright claims are time barred. Scholastic did not provide any such evidence of Mr. Menzel’s earlier actual or constructive knowledge of the alleged infringements prior to 2014 (e.g., that information on print runs are public and that therefore Mr. Menzel should have known that a print run was exceeded on a license prior to September 2014). . . .

According to Scholastic, even if the Court does not construe Petrella in its favor on the statute of limitations, Petrella holds that, even if a claim is not time barred, a plaintiff is still limited to damages that were incurred within the three years prior to the plaintiff’s filing suit. There are several problems with Scholastic’s position. . . . Accordingly, as to the “damages bar” asserted by Scholastic, the Court denies summary judgment in favor of Scholastic and grants summary judgment in favor of Mr. Menzel. . . .

The Court is not persuaded by Scholastic’s argument. Although Scholastic has pointed to some inaccuracies in the copyright registration at issue – with respect to six different images – an inaccuracy in and of itself is not a basis to invalidate a copyright. . . . Here, Scholastic has not made any claim that it relied on Mr. Menzel’s mistake. And to the extent that Scholastic suggests Mr. Menzel intended to defraud the Copyright Office instead of simply committing an inadvertent error, no reasonable jury could so find based on the undisputed facts in the record. Scholastic admits that the group registration at issue covers thousands of photographs. . . . But it has pointed to inaccuracies with respect to only six of the thousands of images. This limited number suggests at most negligence or a mistake rather than a deliberate intent to defraud the Copyright Office. Nor is there any other indicia of a pattern or practice by Mr. Menzel to include inaccurate information in his registration application. Scholastic has not made a plausible claim of fraud which can reasonably be inferred on these facts. Accordingly, the Court grants Mr. Menzel’s motion for summary judgment on the affirmative defense to the extent copyright registration VA 1-719-226 is at issue. . . .

In addition to the copyright registration above, Scholastic challenges a few other copyright registrations. More specifically, Scholastic argues that, in certain instances, Mr. Menzel is
claiming infringement before Mr. Menzel registered the photograph. Scholastic has a fair point in two instances. . . . Other than these two examples, however, Scholastic has not shown alleged infringements prior to the copyright registration date. . . . Accordingly, the Court denies Mr. Menzel’s motion for summary judgment on Rows 50 and 51 of the SAC; but otherwise, Mr. Menzel’s motion is granted because Scholastic has not identified other examples where (alleged) infringement occurred prior to the registration date. . . .

Finally, Mr. Menzel has moved for summary judgment on the issue of willful infringement. . . . The evidence of record is not enough to show willful infringement as a matter of law – i.e., where the only conclusion a reasonable jury could reach is willful infringement. . . . Accordingly, Mr. Menzel’s motion for summary judgment on willful infringement is denied.

FOCAL POINT FILMS, LLC V. SANDHU
Outcome: Motion to dismiss - granted
Works of Authorship: Audiovisual work - motion picture
Topics: Preemption - Dastar

Plaintiff Focal Point Films, LLC (“Focal Point”) and its sole member Bryan Gibel (referred to collectively herein as “Gibel”) bring a copyright action seeking a declaratory judgment that Gibel is the sole author of a documentary film called Sign My Name to Freedom (the “Film”) that Defendant Arjot Sandhu also worked on. Sandhu, in turn, has asserted a counterclaim seeking a declaratory judgment that she is a co-author of the Film and owns an undivided interest in the copyright of the Film, as well as other related counterclaims. Presently before the Court is Gibel’s Motion to Dismiss Defendant/Counter-Plaintiff’s Counterclaims in Part (“Motion”). . . . For the reasons stated below, the Motion is GRANTED. . . .

One need only look to the allegations of Sandhu’s Lanham Act Counterclaim to conclude that the gravamen of that claim is Gibel’s alleged failure to give Sandhu appropriate credit as a co-author in his statements made in promotional materials and on the Film website. In particular, the FACC alleges in the Lanham Act Counterclaim that “Gibel and Focal [P]oint have falsely represented and continue to falsely represent to public, potential funders, investors, potential purchasers, and/or others that the Film is Mr. Gibel’s sole work, without crediting Ms. Sandhu as his co-author.” FACC ¶ 76 (emphasis added). Although the Ninth Circuit has not directly addressed whether misrepresentations regarding authorship can give rise to a false advertising claim under § 43(a)(1)(B) of the Lanham Act, numerous district courts in California have concluded that under the reasoning of Dastar and Sybersound they cannot.
Pending before the Court are three motions. The first is a motion to dismiss Plaintiff’s First Amended Complaint (“FAC”), filed by defendants BDL Products, Inc., Cargenix Holdings LLC, Henry Ji, Sorrento Therapeutics, Inc., TNK Therapeutics, Inc. (hereinafter, the “Sorrento Defendants”), on September 26, 2018. . . . For the reasons set forth below, the Court GRANTS both motions to dismiss . . . .

Here, Plaintiff has failed to state a claim of unlawful appropriation because she has only alleged an infringement upon the non-copyrightable aspects of her work.

Plaintiff does not clearly articulate the nature of her copyrights. She has not provided a copy of the copyrighted material, either under seal or otherwise. . . . But construing her pleadings liberally, and by relying on scattered descriptions of those works, it is apparent to the Court that her copyrights were secured for two scientific articles which describe a Phase 1/b2 clinical trial and provide a research agenda to improve anti-CEA Car T cell products. Under the “idea/expression dichotomy” articulated in Baker and emphasized Golan, the scope of Plaintiff’s copyright necessarily extends only to the expression of her ideas. . . . The actual science, theories, facts, and processes inherent in Plaintiff’s works were not made exclusively hers by operation of copyright.

The nature of Plaintiff’s pleadings demonstrate that she is seeking to protect the ideas and scientific processes (i.e., non-copyrightable aspects) of her works. Plaintiff never explains in her FAC how she believes the ‘818 and ‘370 applications infringe on her work. . . . She alleges only that Dr. Junghans failed to disclose “IP of SES” in the applicable disclosure statements and that the applications “are obvious over the IP of SES.” . . . Even construing her pleadings in the light most favorable to Plaintiff . . . what emerges is an allegation that Dr. Junghans implemented and relied on her research and theories of the anti-CEA Car T cell construct with respect to the ‘818 and ‘370 applications. But as explained previously, ideas and processes are not in themselves copyrightable and cannot give rise to claims of infringement. . . . Allegations that Tufts Medical Center somehow infringed on her copyrighted works by filing the patent application for the ‘825 priority data is therefore similarly unavailing.

Plaintiff also alleged infringement with respect to the defendants’ HITM-SURE trial, their promotion of the T-001 Investigation New Drug, SRNE’s joint venture with 3SBio in China, TNK’s contractual agreements with Celularity, and the acquisition of Virttu Biologics by SRNE. Again, the precise contours of any asserted infringement is not explained in the FAC. However, based on Plaintiff’s description of the defendants’ wrongful conduct, it is apparent that Plaintiff’s
quarrel with these actions is once again borne out of a concern for the non-copyrightable aspects of her work.

Plaintiff takes issue with the HITM-SURE trial for implementing a “substantially similar Phase 1b clinical trial utilizing the 2nd generation anti-CEA CAR T cells” described in her copyrighted works. . . . She objects to the T-001 IND, the joint venture with 3SBio, the Celularity contracts, and the acquisition of Virttu Biologics, ostensibly because those endeavors all seek to implement the research and discoveries Plaintiff claims to have made in her copyrighted works. But just as “the copyright for a book describing how to perform a complicated surgery does not give the holder the exclusive right to perform the surgery,” neither does a copyright for scientific articles describing how to perform trials involving anti-CEA CAR T cell constructs convey upon the copyright holder the exclusive right to perform such trials or to profit off of them. . . .

Since Plaintiff has no patent over the subject matter of her copyrighted works, Plaintiff cannot seek to preclude others from making use of the concepts inherent therein.

The copyright infringement claims are hereby dismissed without prejudice.

SOPHIA & CHLOE, INC. V. BRIGHTON COLLECTIBLES, INC.
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Visual work - jewelry
Topics: Remedies - attorneys fees

Before the Court is Defendant Brighton Collectibles, LLC's motion for attorney's fees and non-taxable costs under both the Copyright Act and the Lanham Act. . . . Because the Court finds the balance of factors favors no award, the Court DENIES granting fees and costs under the Copyright Act. . . .

Sophia & Chloe also moves the Court to re-tax costs, arguing it should not be required to pay costs the Court Clerk entered. . . . Finding that Sophia & Chloe failed to rebut the presumption of costs in favor of the prevailing party, the Court also DENIES that motion.

CRAFTY PRODS., INC. V. MICHAELS COS.
Outcome: Motion to dismiss - granted
Works of Authorship: Visual work - design
Topics: Preemption - intentional interference with prospective economic advantage, Preemption - unfair competition

Plaintiffs Crafty Productions, Inc. (“CPI”) and Crafty Productions, LLC (“CPL”) (collectively “Plaintiffs”) commenced this action against numerous defendants alleging copyright infringement of CPI’s original craft designs and products, trade dress infringement, intentional
interference with prospective business advantage, unfair competition, breach of contract, and fraud. Many parties were listed as defendants in the first complaint, but various defendants have been dismissed for lack of personal jurisdiction. . . . As relevant here, Defendants The Michaels Companies, Inc. and Michaels Stores, Inc. (collectively, “Michaels”) and Hobby Lobby Stores, Inc. moved to dismiss Plaintiffs' prior complaint for failure to state a claim. . . . The Court granted the motion to dismiss and granted Plaintiffs leave to amend. (“Prior Order,” . . . .) Plaintiffs filed a second amended complaint against Michaels; Plaid Enterprises, Inc.; Hobby Lobby Stores, Inc.; Party City Holdings, Inc.; and Party City Corporation. (“SAC,” Second Amended Complaint, . . . .) Plaintiffs allege trade dress infringement, intentional interference with prospective business advantage, and unfair competition. Michaels moves to dismiss the second amended complaint. (“Mot.,” . . . .) Defendants Hobby Lobby; Party City Holdings, Inc.; Party City Corporation; and Plaid Enterprises, Inc. join the Motion to Dismiss with respect to paragraphs III(A)(1)-III(A)(4) and III(B) of the Motion. . . . For the reasons stated below, the Court GRANTS Defendants' Motion. . . .

1. Intentional Interference with Prospective Economic Advantage . . . Here Plaintiffs make it clear they are accusing Defendants of distributing and/or selling Plaintiffs' copyrighted designs without Plaintiffs' authorization. . . . These rights are already protected by federal copyright law. Plaintiffs' claim of intentional interference is “predicated on” the allegation that Defendants sold the copyrighted works, even though the claim also involves the element of Defendants interfering with the Fuqing relationship in order to obtain those works. . . . Plaintiffs' claim is therefore not “qualitatively different” from a copyright infringement claim. . . . The Court finds Plaintiffs have done nothing more than “dress[ ] up” a copyright infringement claim “to look like [a] state law claim[ ].” . . . For these reasons, the Court finds Plaintiffs' intentional interference claim to be preempted. The Court GRANTS Defendants' Motion to Dismiss the intentional interference cause of action. . . .

2. Unfair Competition . . . Plaintiffs' unfair competition allegation stem from Defendants' acts “constituting intentional interference with prospective economic advantage.” . . . It appears the “unfair” act is Defendants' alleged interference with Plaintiffs' relationship with Fuqing. Thus, the same findings apply for this cause of action as they did for the intentional interference cause of action. The Court finds Plaintiffs' unfair competition claim to be preempted and GRANTS Defendants' Motion to Dismiss the cause of action.

CRAFTY PRODS., INC. V. MICHAELS COS.
Outcome: Motion to dismiss - granted
Works of Authorship: Visual work - design
Topics: Preemption - intentional interference with prospective economic advantage, Preemption - unfair competition

Plaintiffs Crafty Productions, Inc. (“CPI”) and Crafty Productions, LLC (“CPL”) (collectively “Plaintiffs”) commenced this action against numerous defendants alleging copyright infringement of CPI’s original craft designs and products, trade dress infringement, intentional
interference with prospective business advantage, unfair competition, breach of contract, and fraud. Many parties were listed as defendants in the first complaint, but various defendants have been dismissed for lack of personal jurisdiction. . . As relevant here, Defendants The Michaels Companies, Inc. and Michaels Stores, Inc. (collectively, “Michaels”) and Hobby Lobby Stores, Inc. moved to dismiss Plaintiffs’ complaint for failure to state a claim. . . The Court granted the motion to dismiss and granted Plaintiffs leave to amend. . . Plaintiffs filed a second amended complaint against Michaels; Plaid Enterprises, Inc.; Hobby Lobby Stores, Inc.; Party City Holdings, Inc.; and Party City Corporation. (“SAC,” Second Amended Complaint . . .) Plaintiffs alleged trade dress infringement, intentional interference with prospective business advantage, and unfair competition. Defendants filed a motion to dismiss the second amended complaint, which the Court granted in its entirety and dismissed the SAC without prejudice. (“Prior Order,” . . .) Plaintiffs filed their Third Amended Complaint, again alleging trade dress infringement, intentional interference with prospective business advantage, and unfair competition. (“TAC,” Third Amended Complaint . . .) Michaels moves to dismiss the TAC, (“Mot.,” . . .) . . . For the reasons stated below, the Court GRANTS Defendants’ Motion and dismisses Plaintiffs’ Third Amended Complaint with prejudice. . .

Intentional Interference with Prospective Economic Advantage . . . Plaintiffs’ claim of intentional interference with prospective economic advantage therefore does not protect any right “qualitatively different” from the rights protected by the Copyright Act. The claim is preempted. . . .

Unfair Competition . . . Plaintiffs’ unfair competition allegation stems from Defendants’ acts “constituting intentional interference with prospective economic advantage.” . . . As noted above, the focus of the intentional interference claim is Defendants’ sale of the “knock off” products to customers and the resulting interference with Plaintiffs’ ability to sell its products. This claim is preempted. Thus, the allegation that this action also forms an unfair competition claim is likewise preempted.

District of Hawai‘i

TYLOR V. HAWAIIAN SPRINGS, LLC
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Copyrightability - originality, Copyright registration - presumption of validity, Infringement - direct evidence, Defenses - fair use, Remedies - willful infringement

Plaintiff Vincent Khoury Tylor is a professional photographer who specializes in photography of Hawaiian landscapes. He conducts a business selling and licensing his copyrighted photographic works. Plaintiff operates a website where he displays his images and customers can obtain information on licensing and prices. . . .

I. Copyright Infringement . . . A. Ownership Of A Valid Copyright . . . 1. Original Work . . .
Plaintiff set forth in his Declaration that the three Images at issue are original works created by him. . . . Plaintiff explains that the Images were created using his photography equipment at each
of the scenic locations and his choosing the camera settings, angle, lighting, and perspective to capture the Images. . . . The three Images at issue are original works that are subject to copyright protection.

2. Copyright Registration . . . Plaintiff was issued a Certificate of Registration from the U.S. Copyright Office for the three Images at issue: (1) 7 Pools Image; (2) Akaka Falls Image; and (3) Waimea Canyon Image. . . . Plaintiff has established that the Images are subject to protection pursuant to the Copyright Act, 17 U.S.C. § 104(b). . . .

B. Unauthorized Copying . . . Here, there is direct evidence of copying. Defendant has admitted that it displayed Plaintiff's copyrighted Images on its commercial Facebook and Pinterest pages. . . . There is no dispute that Plaintiff did not authorize Defendant to display his copyrighted images publicly.

Defendant relies on the argument that it used outside vendors to manage its commercial Facebook and Pinterest pages and that it did not have knowledge that the copyrighted Images were being used on its pages without authorization. . . . Defendant's argument is misplaced. A defendant's knowledge or intent is irrelevant to their liability for copyright infringement. . . . The record is undisputed that the Defendant used Plaintiff's copyrighted Images on its commercial web pages without authorization.

Defendant claims that it is not subject to liability for copyright infringement regarding the Akaka Falls Image based on the exception of “fair use.” . . . First, the Image was not used by Defendant Hawaiian Springs, LLC for scholarship, criticism, or another particular fair use purpose. Second, the Image was not used by Defendant for scientific or artistic purposes. The use was for Defendant's own commercial advertising on Pinterest. . . . Third, the use included Plaintiff's entire Image with text and advertising materials on top of the Image. Fourth, Defendant did not set forth any evidence concerning the effect on Plaintiff's market of his work to support its fair use defense. Defendant's use of Plaintiff's entire Image for an exclusively commercial purpose of advertising its products on Pinterest is not subject to the fair use exception. . . .

II. Willful Infringement As To The Waimea Canyon Image . . . Here, there are disputes of fact as to the willfulness of the infringement by Defendant Hawaiian Springs, LLC. Defendant has put forward a Declaration by its former Marketing Director disputing that she either intended infringement or was reckless in infringing on Plaintiff's copyrighted works. . . . Defendant also put forward an Affidavit from its Chief Executive Officer Tamiko Broms stating, “I have no personal information regarding if, how or when the images described in the [First Amended Complaint] were posted to Hawaiian Springs' social media accounts or removed from Hawaiian Springs' social media accounts.” . . .

Defendant also submitted an expert report and a Declaration Michael McMurdo, President and Lead Investigator of Cetra Technology. . . . Mr. McMurdo states in his report that it is his opinion that Defendant Hawaiian Springs, LLC did not acquire Plaintiff's copyrighted Images directly from Plaintiff's website, but he opines that the Images were “more likely obtained
through a third party site such as a free wallpaper site.” . . . The factual issues identified prevent
the Court from granting summary judgment on the issue of willful infringement.

District of Nevada

LENARD E. SCHWARTZER, CHAPTER 7 BANKRUPTCY TRUSTEE V. HANSEN
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Visual work - graphic work
Topics: Remedies - attorneys fees, Remedies - costs

This matter is again before the Court on Plaintiffs' Motion for Attorneys' Fees and Nontaxable
Costs . . . pursuant to the Court of Appeals' memorandum order reversing the previous award of
attorneys' fees to Plaintiffs. . . . IT IS HEREBY ORDERED that Plaintiffs' Motion for Attorneys'
Fees and Nontaxable Costs (ECF No. 393) is granted as follows:
1. Plaintiffs are awarded attorneys' fees in the amount of $722,540.54.
2. Plaintiffs are award non-taxable costs in the amount of $66,0164.89.

MILLER V. 4INTERNET, LLC
Outcome: Motion to strike - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Defenses - failure to state a claim, Defenses - creativity, Defenses - originality, Defenses
- fair use, Defenses - unclean hands, Defenses - license, Limitations on liability relating to
material online - pleading requirements, Defenses - constitutionality

Before the Court is Plaintiff Robert Miller's Motion to Strike Defendant/Counterclaimant's
Affirmative Defenses. . . . For the reasons discussed below, Plaintiff's motion is granted in part
and denied in part. . . .

I. First Defense—Failure to State a Claim . . . Whether or not a failure to state a claim defense is
stricken, Defendant's discovery in the case will clearly focus on the potential issues and
inadequacies within the complaint. The Court should not strike a defense “to merely polish the
pleadings.” . . . Therefore, Plaintiff's motion to strike is denied as to the first defense.

II. Second and Eighth Defenses—Creativity and Originality . . . Defendant's second and eighth
defenses assert that the picture at issue in this case lacks sufficient creativity and originality to
qualify for copyright protection. . . . The Court finds that Defendant's second and eighth
defenses, as currently pled, do not provide fair notice to Plaintiff of their bases. . . . The Court
finds the interests of both parties and the Court are best served by requiring Defendant to provide
the legal theory and grounds for these defenses. This does not require any detailed factual
statement, but Defendant must give some indication of what direction the defenses will take.

III. Third Defense—Fair Use . . . The Court finds that Defendant's third defense, as currently
pled, does not provide fair notice to Plaintiff of its basis. Each defense must state its own
grounds. Defendant cannot rely on the facts asserted throughout an answer or counterclaim, putting the burden on Plaintiff to determine which facts could relate to a certain defense. Therefore, Defendant's third defense is stricken with leave to amend.

IV. Fourth and Fifth Defenses—Unclean Hands . . . The Court finds that Defendant's fourth defense is adequately pled and is not scandalous. The Court will not engage in a fact inquiry at this stage of the proceedings, as there has been no discovery. In addition, while the fourth defense is unfavorable to Plaintiff, it does not “cast a cruelly derogatory light on” Plaintiff as necessary for the Court to conclude that the defense is scandalous . . . Therefore, Plaintiff's motion to strike is denied as to the fourth defense and granted without leave to amend as to the fifth defense.

V. Sixth Defense—Implied Irrevocable License . . . The Court finds that Defendant's sixth defense is adequately pled. It states a legal theory and gives the grounds for that theory. As previously stated, the Court will not engage in a detailed factual analysis at this point in the case.

VI. Seventh Defense—Express License . . . The Court finds that Plaintiff's citation to a single case from a district court outside of the Ninth Circuit is insufficient to strike Defendant's seventh defense. Plaintiff did not identify, nor did the Court locate in its own research, a Ninth Circuit or District of Nevada case accepting Morel's holding regarding the meaning of Twitter's terms and conditions. I cannot predict with certainty that this Court would agree with Morel's holding, and striking the seventh defense at this point in the case would prevent argument on this issue from taking place before the Court. Therefore, Plaintiff's motion to strike is denied as to the seventh defense.

VII. Ninth Defense—Immunity . . . Defendant's ninth defense states that it is “a service provider under 17 U.S.C. § 512 and is entitled to immunity from any claims arising from the display of Plaintiff's photograph.” . . . The Court finds that Defendant's ninth defense, as currently pled, does not provide fair notice to Plaintiff of its basis. 17 U.S.C. § 512 has several subsections, but the defense does not state which subsection applies in this case or give an indication of why it would apply.

VIII. Tenth Defense—Constitutionality . . . Defendant's tenth defense asserts that 17 U.S.C. §§ 102 and 410, statutes dealing with copyright protections, are unconstitutional as applied to pictures based on technological advancements in photography . . . Plaintiff argues that “the Supreme Court since 1884 has found that copyright protection for photographs is constitutional” and “Defendants have presented no cognizable legal argument to suggest that Congress exceeded its constitutional powers by enacting the Copyright Act.” . . . Plaintiff also argues that the Court should strike the tenth defense under the canon of constitutional avoidance . . . .

The Court finds that Plaintiff's arguments regarding Defendant's tenth defense cannot be properly addressed through a motion to strike. The tenth defense is not insufficient, redundant, immaterial, impertinent, or scandalous. Defendant is arguing that the law, or at least the application of the law, should be changed, and Defendant has presented grounds for its argument. In addition, “[t]he canon of constitutional avoidance comes into play only when, after
the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction; and the canon functions as a means of choosing between them.” . . . The Court will not engage in a binding textual analysis 17 U.S.C. §§ 102 and 410 at this stage of the case, before the parties have had the chance to engage in discovery or develop their arguments on this issue.

INT’L INST. OF MGMT. V. ORG. FOR ECON. COOP. AND DEV.
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Literary work - report, Literary work - book
Topics: Remedies - attorneys fees

Presently before the court is defendants Joseph Stiglitz and the Organization for Economic Cooperation and Development's (“OECD”) joint motion for attorney's fees and taxable and nontaxable costs. . . . In consideration of the foregoing factors, the court holds that an award of attorney's fees is appropriate.

LHF PRODS., INC. V. KABALA
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Audiovisual work - motion picture
Topics: Remedies - attorneys fees

I previously granted defendant Brian Kabala a with-prejudice dismissal of LHF Productions, Inc.'s copyright-infringement claims, but I dismissed Kabala's counterclaims for declaratory judgment and abuse of process based, in part, on LHF's special motion to dismiss under Nevada's anti-SLAPP laws and denied his request for reconsideration.1 What remains to be determined is each party's request for attorney's fees and costs.2 The with-prejudice dismissal makes Kabala a prevailing party under the Copyright Act,3 but he has not shown that he is entitled to an attorney-fee award under the test that the United States Supreme Court set out in Fogerty v. Fantasy, Inc.,4 so I deny his request for attorney's fees and award him costs as “a matter of course” under Federal Rule of Civil Procedure 54(d)(1). LHF is also a prevailing party, having succeeded in litigating its anti-SLAPP motion for Kabala's abuse-of-process counterclaim. I award LHF attorney's fees, but I reduce the amount to $47,154 to reflect only the fees that LHF incurred in litigating the anti-SLAPP motion and related matters.

District of Oregon

REED V. EZELLE INVESTMENT PROPS. INC.
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Visual work - photograph
Topics: Remedies - attorneys fees
Plaintiff Aaron C. Reed (“Reed”) prevailed in this action for copyright infringement against defendants Glenn D. Ezelle Jr. (“Ezelle”) and Ezelle Investment Properties Inc. (collectively “defendants”). . . . This court awarded statutory damages of $1,500. . . . Reed now moves for costs and attorney's fees of $11,255 under 17 USC § 505. The court finds the motion appropriate for decision without oral argument. . . . For the reasons set forth below, the motion . . . is granted, and costs and attorney's fees are awarded in the amount of $10,539.20.

BARNETT V. UBIMODO, INC.
Outcome: Motion to dismiss - granted
Works of Authorship: Literary work - flowchart
Topics: Scope of protection - idea, Defenses - fair use

 Plaintiff filed a claim against Defendant Starr Indemnity & Liability Co. (“Starr”), among others, for alleged copyright infringement. . . . Defendant moves to dismiss Plaintiff’s claim with prejudice. As discussed below, Defendant’s Motion to Dismiss . . . is GRANTED. . . .

Here, Plaintiff also fails to appreciate the idea-expression dichotomy and likewise fails to sufficiently allege the second element of her copyright infringement claim. She seeks to enforce copyright of a process—a right that courts do not recognize. . . . Her copyright protects the flowchart itself, not the ideas or processes that it embodies, and she does not allege that Starr has reproduced the flowchart’s image. Plaintiff’s untimely “Rebuttal” suggests that Starr and its codefendants infringed her copyright by using her flowchart to “make transformative works” without her permission. . . . The mere fact that the works produced were transformative, however, also defeats Plaintiff’s claim.

Western District of Washington

CLEAN CRAWL, INC. V. CRAWL SPACE CLEANING PROS, INC.
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Literary work - compilation
Topics: Copyrightability - blank form, Scope of protection - fact

This matter comes before the Court on Defendant Crawl Space Cleaning Pros, Inc.’s (“CSCP”) motion for summary judgment or partial summary judgment. . . . The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion in part, grants the motion in part, and reserves ruling and requests supplemental briefing in part for the reasons stated herein. . . .

CCI alleges that CSCP has deliberately copied and used five of CCI’s works of authorship named in pending federal copyright applications. . . . The works are (1) CCI’s Project Graph, (2) CCI’s Project Bid Sheet, (3) CCI’s Project Worksheet, (4) Clean Crawls Standards, and (5) CCI’s Venting Calculator. . . .
Blank Forms . . . Project Graph. . . . CCI’s Certificate of Registration with the U.S. Copyright Office for the “Project Graph” identifies a “compilation of text and illustrations.” . . . The Project Graph document consists of a sheet of graph paper with the “Project Graph” heading, labeled spaces at the top for “Customer Name,” “Customer Service Rep.” and “North Heading,” and at the bottom, a series of boxes to identify features of the house, images of different rodents, and a list of tasks which a CCI employee may need to complete in the home, from A, Re-Screen Vent (Crawlspace) through O, Roof Ridge Line/Roof Cap. . . . The CCI and CSCP documents are virtually identical except for a portion of the bottom section identifying features of the house, which has slightly different language, symbols, and categories. . . .

CCI does not provide examples of the variety of alternative categories that a home maintenance provider could consider, or explain that the tasks it selected are an original and instructive selection. While the form does provide a good method for recording the required information, CCI does not explain how they have selected only a limited array of tasks in order to confine their employees to that limited universe, direct them away from less desirable methods of addressing the maintenance tasks in cleaning crawl spaces, or help them communicate CCI’s expertise to customers. On the briefing presented, CCI has simply listed the tasks a crawl space cleaning company would complete, along with a space to record the employee’s selection of tasks and data gathered from the home, which does not appear to meet the threshold for guiding the user or integrated instructions necessary to escape the blank form rule. . . . The Court believes CSCP has a strong case for summary judgment on CCI’s copyright claims for the Project Graph. However, the Court is requesting additional briefing on other copyright claims as discussed below, and so also requests additional briefing addressing the weaknesses of CCI’s claims for the Project Graph identified in this section.

Project Bid Sheet. CCI’s Certificate of Registration with the U.S. Copyright Office identifies the “Project Bid Sheet” as containing author-created text. . . . The first page contains spaces to fill in customer information and the tasks to be completed along with their costs, statements, recommendations, and disclaimers to the customer, and spaces for signature. . . . The second and third pages include the ‘General Conditions’ of the contract between CCI and the customer. . . . The Court’s concern is that CCI has not identified which aspects of the text within the Bid Sheet are actually original and thus protectable. . . . The Court cannot evaluate CCI’s claims for infringement of copyrighted text without clear identification of the specific elements of the work CCI claims are protected by its certificate of copyright—the specific elements CCI independently created. CCI highlights text in its signing statement that it argues is substantially similar to CSCP’s signing statement, and identifies five paragraphs of the ten-paragraph General Conditions page which “use nearly identical legal conditions expressed in nearly identical ways” but does not argue it independently created the text in these paragraphs, or detail specific drafting choices made “because of the particular circumstances surrounding the...industry” as the plaintiff did in Phoenix Renovation Corp. v. Rodriguez . . . . For example, the Court questions whether CCI is making a claim of independent authorship for one of the paragraphs identified, Paragraph Eight of the General Conditions titled “Time Limit for Filing Any Claim,” which reads “All claims by either party concerning the performance of this contract, including but not limited to claims for breach of contract, breach of warranty, and indemnification, are WAIVED unless filed
in a court of competent jurisdiction with four (4) months of the expiration of the one-year warranty period.” . . .

The Court requests additional briefing clarifying which aspects of the Project Bid Sheet CCI claims are original and thus protectable, and any specific contrary showings from CSCP.

Project Worksheet. CCI’s Certificate of Registration with the U.S. Copyright Office identifies the “Project Worksheet” as containing an author-created compilation of text. . . . It consists of a single sheet with a detailed array of labeled spaces to be checked or filled in, as well as an instruction at the top in white text within a red field stating “Red lettering notes what tasks require additional information (i.e. detailed notes and/or location indicated on Project Graph).” . . . CCI characterizes it as containing a set of data CCI specifically chose to gather. . . . However, as noted, Kregos suggests a disagreement between Circuits with Bibbero, and this form does not teach the user, provide information, or include more than the single line of instruction. Bibbero’s bright line, that conveying information cannot be established by containing “some of the possible categories of information but not others,” . . . would be directly violated by recognizing the Project Worksheet as conveying information. Like the Project Graph, CCI has failed to create a question of material fact about whether the Project Worksheet contains copyrightable subject matter. If the work contains no copyrightable subject matter, there is nothing to copy or infringe. Therefore, the Court grants summary judgment for CSCP on CCI’s copyright claims regarding the Project Worksheet. . . .

Venting Calculator . . . CCI’s Certificate of Registration with the U.S. Copyright Office identifies the “Venting Calculator” as containing a “compilation of text and equations.” . . . The Venting Calculator consists of two pages, the first containing colored boxes and simple instructions for the user to input figures to calculate the appropriate venting in different areas of a home, and the second containing a table of venting data. . . .

While “the copyright in a factual compilation is thin,” and a “subsequent compiler remains free to use the facts contained in another’s publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement,” CCI could make the case that it conveys something original in its visual illustration of calculations using factual information. As noted above, enforcing a valid copyright requires identifying precisely what was “independently created by the author.” . . . The Court requests additional briefing which outlines the differences, if any, between the factual calculations involved in determining the number of vents a service provider would install in a home, and the information conveyed by specific color choices and layout in the document. . . .

The second page of each company’s Venting Calculation document appears to be a table of data. . . . CCI admits as much, arguing that its creativity is expressed on “at least the first page” of the Calculator. . . . CCI explains that the colorful page of the Calculator “was authored by [CCI] and not provided by the local public utility districts,” but does not explain the source of the black-and-white page. . . . Thus, the Court expects that supplemental briefing will also clarify the origin and originality or lack thereof of this data.
Finally, finding CCI has not conclusively established any of the works at issue contain protectable content, the Court does not analyze the extent of the protection for the content under Mattel.

MOI V. CHIHULY STUDIO, INC.
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Visual work - sculptural work
Topics: Remedies - attorneys fees

This matter comes before the Court on “Chihuly’s Motion for Attorneys’ Fees.” . . . Plaintiff initiated this litigation under Washington’s procedural rules when he served the complaint on defendants in May 2017. The complaint sought disgorgement of revenues generated from unspecified artistic works which plaintiff claimed to have created over a fifteen year period. The complaint put at issue Dale Chihuly’s “reputation as a prolific artist whose ambition, brilliance, and talent allowed him to personally create” - and sell - art . . . essentially accusing Mr. Chihuly and his studio of selling bogus “Chihuly” art and defrauding their customers. In correspondence preceding service of the complaint, plaintiff demanded $21 million to settle his claims, threatened to publicly disclose personal and private information he possessed regarding Mr. Chihuly, and suggested that settlement was the only way to avoid publicity that would cause immediate harm to Mr. Chihuly’s personal and business interests. Plaintiff represented that he had a videotape, documents, and thirty-five witnesses who would support his claim that he authored the unspecified artistic works. . . .

For all of the foregoing reasons, defendants’ motion for an award of attorney’s fees is GRANTED. The Court awards defendants $1,621,817.48 in attorney’s fees pursuant to 17 U.S.C. § 505. The Clerk of Court recently awarded defendants costs in the amount of $24,842.20. . . . The Clerk is therefore directed to enter judgment in favor of defendants and against plaintiff in the amount of $1,646,659.68.

Tenth Circuit

Court of Appeals for the Tenth Circuit

ADVANCED RECOVERY SYS. V. AM. AGENCIES
No. 17-4202, 2019 WL 1997603 (10th Cir. May. 7, 2019)
Outcome: Appeal - affirmed-in-part
Works of Authorship: Literary work - computer program
Topics: Copyrightability - creativity

This appeal grew out of Mr. Brent Sloan's participation in two transactions. The first transaction entailed a merger between Advanced Recovery Systems, LLC and Kinum, Inc.; the second transaction consisted of a sale of software from Kinum to Sajax Software, LLC.
American Agencies, LLC alleged harm from these transactions and sued Mr. Sloan for damages and restitution. After the close of evidence, Mr. Sloan filed a motion for judgment as a matter of law. Following the denial of this motion, a jury found Mr. Sloan liable on American Agencies' claims of tortious interference with business relations, conspiracy to interfere with business relations, tortious interference with contract, copyright infringement, unjust enrichment, and misappropriation of trade secrets. Mr. Sloan unsuccessfully renewed his motion for judgment as a matter of law. After the district court denied this motion, Mr. Sloan appealed. We affirm in part and reverse in part based on four conclusions . . .

On the claim of copyright infringement, Mr. Sloan contends that the jury could not have reasonably found commercial use or regarded the pertinent documents as original. We disagree, concluding that (1) Mr. Sloan did not preserve his commercial-use argument and (2) American Agencies' evidence on originality was sufficient. . . .

The debt-collection software contained American Agencies' standard collection letter and service agreement. After obtaining the software, Kinum began using a collection letter and a service agreement like the ones used by American Agencies. Kinum's use of these documents led American Agencies to include a claim for copyright infringement against Mr. Sloan. . . .

Given this low standard, the jury could have reasonably inferred that the collection letter and service agreement had entailed the required degree of creativity. An executive for American Agencies testified that (1) she had contributed to the format and content of the collection letter and (2) the service agreement contained terms unique to American Agencies, including

- references to American Agencies' services to creditors,
- information in the “payment authorization” section,
- information about a “phase one guarantee,”
- language allowing a client to authorize American Agencies to review accounts for referral to an attorney for legal action, and
- language allowing clients to authorize American Agencies to offer settlements.

Given this testimony, the jury could reasonably find at least some creativity, rendering the evidence of originality sufficient for liability.

District of Colorado

HARRINGTON V. MCGRAW-HILL GLOBAL EDUC. HOLDINGS, LLC
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Defenses - license, Defenses - statute of limitations

This matter is before the Court on Defendants’ Motion for Partial Summary Judgment . . . and Plaintiff’s Motion for Partial Summary Judgment . . . . For the reasons that follow, Defendants’ motion is granted in part and denied in part, and Plaintiff’s motion is denied. . . .
A. Defendants’ Motion for Partial Summary Judgment . . . 1. “Undisputed” Claims . . . With respect to the four other claims on which Defendants contend they are entitled to summary judgment based on “indisputable record evidence,” . . . Defendants cite facts from the SUMF that are disputed by Plaintiff. Moreover, in his opposition, Plaintiff reiterates his position that Defendants’ use of these photos was not licensed. . . . With respect to Exhibit 1, Row 7, Plaintiff alleges unlicensed digital use. Defendants concede that the applicable license is silent as to digital use but argue that the applicable PPA allows such use. . . . With respect to Exhibit 1, Row 31, the parties disagree about whether the applicable license expired before Defendants stopped using the photo. . . . With respect to Exhibit 2, Row 4, the parties dispute whether Defendants’ use was authorized by the applicable license or licenses. . . . And with respect to Exhibit 2, Row 7, there are disputes as to whether the applicable invoice properly identified the books in which it appeared and whether these were separate uses of the photo. . . . The Court finds that genuine issues of material fact exist as to whether Defendants’ use was within the scope of any applicable license on these claims; therefore, Defendants are not entitled to judgment on Exhibit 1, Rows 7 and 31; and Exhibit 2, Rows 4 and 7.

2. Covenant/Condition Doctrine . . . Defendants next argue they are entitled to summary judgment on seven of the remaining claims because they are barred by the covenant/condition doctrine. . . . Defendants’ argument boils down to a contention that, based on the PPAs and their course of conduct with Corbis, they could use photos first (or exceed the use previously licensed) and then license and pay for that use later. But the Court finds Defendants cannot so easily convert this copyright infringement case into a breach of contract case. Plaintiff’s rights under copyright law cannot be displaced by any agreement—express or implied—between Defendants and Corbis. Rather, “[s]ince a nonexclusive license does not transfer ownership of the copyright from the licensor to the licensee, the licensor can still bring suit for copyright infringement if the licensee’s use goes beyond the scope of the nonexclusive license.” . . . In short, if Defendants’ use of the photos was unauthorized, as Plaintiff alleges, copyright law provides a remedy. Indeed, at least one of the PPAs expressly provides: “Unauthorized use of these Images constitutes copyright infringement and shall entitle Corbis to exercise all rights and remedies under applicable copyright law, including an injunction preventing further use and monetary damages against all users and beneficiaries of the use of such Images.” . . . Accordingly, Defendants are not entitled to summary judgment on the ground that Plaintiff’s claims are barred by the covenant/condition doctrine. . . .

B. Plaintiff’s Motion for Partial Summary Judgment . . . 2. Affirmative Defenses . . . Defendants’ second affirmative defense is that Plaintiff’s claims are barred by the statute of limitations. . . . Here, Defendants point to Plaintiff’s email correspondence with Corbis from 2007 through 2014, in which he expressed his concerns that he was not being compensated for every use of his photos. . . . Though this is thin evidence on which to find Plaintiff chargeable with knowledge that his copyrights were being infringed by Defendants, when viewed in the light most favorable to Defendants it is sufficient to establish a genuine issue for a jury. . . . Therefore, the Court denies Plaintiff’s request to strike Defendants’ affirmative defense based on the statute of limitations.
Defendants’ fifth affirmative defense is that Plaintiff’s claims are barred because their use of his photos was licensed. . . . The scope of Defendants’ licenses is the core legal issue of this dispute, and it hinges on the terms of each license, how the photos were used, whether photos were subject to multiple licenses or were re-licensed, and the effect of the PPAs. These disputed factual issues preclude granting summary judgment at this stage of the case.

Defendants’ sixth affirmative defense is that Plaintiff’s claims are barred “by the consent arising from the course of dealing between the parties to the transactions at issue in this proceeding.” . . . Still, the Court is not prepared to strike this affirmative defense on the current record, as there are disputed issues about the relationship between Defendants and Corbis and the means by which they negotiated licenses for the use of Plaintiff’s photos.

STOUFFER V. NAT’L GEOGRAPHIC PARTNERS, LLC
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Audiovisual work - television series
Topics: Infringement - substantial similarity

Plaintiffs Marty Stouffer and Marty Stouffer Productions, LTD (together, “Stouffer,” unless the context requires otherwise), sue Defendants (collectively, “National Geographic”) for trademark infringement, copyright infringement, and unfair competition. Currently before the Court is National Geographic’s Rule 12(b)(6) Motion to Dismiss Plaintiffs’ Complaint. (ECF No. 23.) For the reasons explained below, the Court . . . grants National Geographic's motion without prejudice as to Stouffer's copyright cause of action.

In light of these rulings, Stouffer will be given an opportunity to amend his complaint and National Geographic will be given another opportunity to move to dismiss. Should National Geographic file that motion, the stay of discovery will remain in place until the motion is resolved. . . .

Stouffer's allegations fall well short of “a significant number of unprotectable elements” in a “particular sequence.” As to sequence, only two elements are described in terms of when they appear in the episode, namely, “two rams head-butt one another as the introductory music crescendos” and narration begins “immediately following the introductory credits.” . . . As to number, Stouffer alleges barely a handful relevant comparisons—and, with the possible exception of an introductory head-butting-with-musical-crescendo sequence element, Stouffer's comparisons are qualitatively very weak even as compared to other unprotectable ideas. They are nothing close to, for example, “the idea of an idealistic young professional choosing between financial and emotional reward.” . . . Rather, “[v]oice-over narration of the episode by an iconic individual,” narration that begins “immediately following the introductory credits,” “[s]egments focused on specific animals,” segments about animals taking care of their young, and “slow-motion action shot[s]” . . . are so standard as to essentially define the nature documentary genre.
LIVE FACE ON WEB, LLC V. INTEGRITY SOLUTIONS GRP., INC.
Outcome: Motion for judgment as a matter of law - denied, Motion for attorneys fees and costs - granted
Works of Authorship: Literary work - computer program
Topics: Infringement - evidence of access, Infringement - volitional conduct, Remedies - attorneys fees

This matter is before the Court on six post-trial motions, three filed by Defendant Integrity Solutions Group, Inc.—(1) Renewed Motion Under Fed. R. Civ. P. 50(b) to Set Aside or Vacate the Judgment . . . , (2) Motion Under Fed. R. Civ. P. 59 for a New Trial or for Remittitur . . . , and (3) Motion for Protective Order . . . —and two filed by Plaintiff Live Face On Web, LLC— (4) Motion for Prejudgment Interest . . . and Plaintiff’s Motion for Fees and Full Costs . . .

DEFENDANT’S RENEWED MOTION UNDER FED. R. CIV. P. 50(b) . . . The Court finds that, viewing the record in the light most favorable to the prevailing party, substantial evidence supports Plaintiff’s position and the jury’s verdict. . . . With respect to access, at trial, Defendant’s CEO Mr. Kirschbaum testified that Defendant ordered a third-party company, 10 Pound Gorilla, to develop Defendant’s website. . . . As part of that development, Mr. Kirschbaum admitted that Defendant hired 10 Pound Gorilla to incorporate a “virtual spokesperson technology” or “talker overlay” (virtual greeter video) in Defendant’s website. . . . Indeed, Defendant purchased that virtual greeter video software from YakkingHeads, provided the software to 10 Pound Gorilla, and told 10 Pound Gorilla to install the software on Defendant’s website so that the virtual greeter video would “play” on the Integrity website. . . .

Additionally, the jury heard testimony from Plaintiff’s owner and CEO Mr. Shcherbakov, who authored the LFOW Code at dispute. . . . Mr. Shcherbakov testified that when YakkingHeads signed up as an affiliate for LFOW, YakkingHeads gained access to the LFOW Code, and as a result, its Virtual Greeter Video. . . . In fact, Mr. Shcherbakov located a near-identical copy of the LFOW Code on YakkingHeads’ server from 2013. . . . The LFOW Code from the Yakking Heads’ server was also within the source code that operated the Virtual Greeter Video playing on Defendant’s website. . . . Drawing all reasonable inferences in favor of Plaintiff from this testimony, the Court finds that there was sufficient evidence to support finding that Defendant or whoever created Defendant’s work for Defendant, i.e., 10 Pound Gorilla, had access to the LFOW Code through its dealings with YakkingHeads and 10 Pound Gorilla.

Because this evidence is sufficient to support the jury’s verdict as to the copying element, the Court denies Defendant’s request for judgment as a matter of law on Plaintiff’s direct infringement claim. . . .

The instant case did not involve the core question of who was responsible for the infringing conduct. Additionally, Defendant is neither an internet nor cable service provider that promoted a platform or service that permitted third party users or customers to use such a platform or service to engage in the infringing conduct. Instead, as previously discussed, the evidence showed that Defendant hired 10 Pound Gorilla, who had access to the infringing software, to
install the infringing software on Defendant’s website. Therefore, because the cases cited by Defendant are neither binding on this Court nor analogous to the instant action, the Court did not err in omitting “volitional conduct” as an element in the direct infringement jury instruction.

Accordingly, the Court finds Defendant’s distribution argument unavailing and denies Defendant’s request for judgment as a matter of law. . . .

PLAINTIFF’S MOTION FOR FEES AND FULL COSTS . . . For the following reasons, the Court finds that an award of attorney fees and full costs for Plaintiff is warranted under a totality of the circumstances.

District of Kansas

ENERGY INTELLIGENCE GRP., INC. V. CHS MCPHERSON REFINERY, INC.
Outcome: Motion for attorneys fees and costs - granted-in-part
Works of Authorship: Literary work - magazine
Topics: Remedies - attorneys fees, Remedies - costs, Remedies - offer of judgment

A jury trial was held in this copyright infringement case from May 14 through May 21, 2018. The jury awarded Plaintiffs Energy Intelligence Group, Inc., and Energy Intelligence Group (UK) Limited (collectively “EIG”) an award of $1,119,750 in statutory damages based on Defendant CHS McPherson Refinery, Inc.’s (the “Refinery’s”) infringement of its copyrighted publications. EIG now moves for its attorneys’ fees and costs under 17 U.S.C. § 505 . . . . The Refinery opposes EIG’s motion and moves for its attorneys’ fees and costs under Fed. R. Civ. P. 68 . . . . For the reasons set forth below, the Court grants in part and denies in part both motions.

DOLEZAL V. STARR HOMES, LLC
Outcome: Motion to strike - denied
Works of Authorship: Architectural work - design
Topics: Counterclaim - copyright misuse

Plaintiffs and Counterclaim Defendants Brian and Laura Dolezal (“Plaintiffs”) initiated this action for Copyright Infringement . . . against Defendants and Counterclaim Plaintiffs Starr Homes, LLC, Jerry and Jennifer Bain, and Castrop Design Group, LLC (“Defendants”). This matter is before the Court on Plaintiffs’ Motion to Strike . . . . For the reasons set forth below, the motion is denied in its entirety . . . .

A. Motion to Strike Individual Features from Copyright Misuse Claim . . . Plaintiffs move to strike paragraphs 59–106. In each of these paragraphs, Defendants list a separate, individual feature of the Dolezal home. Plaintiffs assert that Defendants have “repeatedly attempted to confuse the issues of the case and separate Plaintiffs' copyright infringement claims into individual features.” Defendants respond that prior to filing this lawsuit, Plaintiffs represented to Defendants that they had rights to various common architectural features, which are now named
here in paragraphs 59–106, and the list is necessary to demonstrate the scope of Plaintiffs' allegedly improper representations. The list of features is included as factual support for Defendants' copyright misuse counterclaim. . . . The list of features is factual support for Defendants' claim that Plaintiffs attempted to secure an exclusive right over something beyond the rights granted in their copyright, and accordingly the material is plausibly related to the copyright dispute. Further, Plaintiffs have not shown prejudice from these paragraphs, an explicit consideration in a motion to strike. The Court finds that responding to paragraphs 59–106 is not an “undue burden” as Plaintiffs allege, but rather part and parcel of litigation. Accordingly, the Court denies Plaintiffs' motion to strike paragraphs 59–106. . . .

E. Motion to Strike or Dismiss Counterclaim for Copyright Misuse . . . Plaintiffs move to strike, or in the alternative dismiss, Defendants' counterclaim for copyright misuse. . . . However, Defendants' counterclaim is not simply based on Plaintiffs' Complaint, but rather representations Plaintiffs made to Defendants “prior to filing this lawsuit.” As discussed above, Paragraphs 59–106 are Defendants' factual support of these alleged representations. . . . To the extent Defendants allege that Plaintiffs used their copyright to secure an exclusive right beyond that granted by the copyright office, they have alleged a plausible claim. Plaintiffs' motion to strike, or in the alternative dismiss, the counterclaim is denied.
unclean hands. But, as set forth below, the Court finds a genuine issue of material fact regarding whether the infringement was “willful.” The Court similarly finds a fact issue precluding summary judgment on Defendants’ defenses of equitable estoppel and innocent intent. The Court accordingly denies summary judgment on those issues. . . .

A. Claim for Copyright Infringement . . . 1. Ownership . . . The photographs at issue in this case meet this standard. Hired in part because of his knowledge of racing and experience photographing automotive events, Mr. Meyer had the freedom to take pictures of anything he believed would properly document the world-record attempt and promote the event and its sponsors. His pictures captured the Viper ACRs on and off the track, along with numerous images of the cars and the crew in the garage, pits, and on public roads. For each of the photographs, Mr. Meyer selected the camera and lens and manually adjusted the exposure (shutter speed), the aperture, and the ISO. Mr. Meyer also selected the angle and perspective from which he took each photograph, with some taken while stationary and others taken in motion. For some of the photos, Mr. Meyer even hung out of a moving vehicle to capture the desired image. After taking the photos, Mr. Meyer selected for editing those he believed were the “best” and, using editing software, adjusted the color temperature, tint, exposure, contrast, highlights, shadows, clarity, and brightness of the images. . . .

2. Copying . . . Here, the undisputed evidence establishes copying by Defendants. The parties stipulate that the agreement negotiated between Mr. Robbins and VNR conferred a license to use only one photograph in exchange for the sponsorship. The issue, therefore, is whether Defendants copied more than the single agreed-upon photo. Following VNR’s first world-record attempt, Mr. Robbins downloaded thirteen of the photos and saved copies of those photos to his computer. It is uncontroverted that one of those photos (bearing Registration No. VA 2-086-709) was posted to the RMC website and was also posted on Mr. Robbins’s personal Facebook account. It is similarly uncontroverted that at least four of the photos were posted to RMC’s Facebook page—including the photographs bearing Registration Nos. VA 2-086-715, VA 2-086-717, VA 2-086-720, and VA 2-086-721. RMC also posted a banner advertisement for RMC featuring another one of the photos (Registration No. VA 2-086-719) to a third-party website. Each of these acts constitutes a “display” of the photographs. . . . The uncontroverted evidence therefore establishes that Defendants copied more than the agreed-upon photograph. . . .

3. Willfulness . . . Here, the Court finds that there is a genuine issue of material fact regarding whether Defendants’ infringement was willful, precluding summary judgment on this issue. . . . With respect to VNR’s first argument, the Court agrees that it is undisputed that Defendants’ license only permitted them to use one photo, that Mr. Robbins understood this to be the case, and that he downloaded thirteen of the photos. The Court disagrees, however, that the record establishes that Mr. Robbins understood that he was infringing on VNR’s copyright, so as to satisfy the standard for willfulness. Mr. Oasis first contacted Mr. Robbins regarding his use of the photographs in September 2017. This initial communication, however, was not a model of clarity. In his message, Mr. Oasis advised Mr. Robbins that he “can’t just use [VNR’s] pictures in [RMC’s] advertising” and that if Mr. Robbins wanted to “license the use of the picture” he would need to pay an additional sum. If not, Mr. Oasis stated that Mr. Robbins would need to “remove the shot” from RMC’s advertising. Mr. Oasis’s alternative use of the phrases “the
pictures,” “the picture,” “the shot,” and “the shots” understandably left Mr. Robbins wondering exactly which photo Mr. Oasis was referencing. When Mr. Robbins requested clarification regarding which “shot” Mr. Oasis was referring to, Mr. Oasis responded that he was referencing the image used in RMC’s banner advertisement. He did not mention any of the other photographs at this time. . . .

B. Counterclaim for Declaratory Judgment . . . In this case, Defendants assert a counterclaim for declaratory judgment of “invalidity, unenforceability and non-infringement” of the copyrights at issue. Docs. 15, 85. Defendants seek a declaration from the Court that VNR’s copyrights are invalid, unenforceable, and not infringed. Id. VNR moves for summary judgment on this counterclaim. Doc. 86. Disposition of the counterclaim is necessarily linked to disposition of VNR’s affirmative claim for copyright infringement. In accordance with its above holding on VNR’s infringement claim, therefore, the Court finds that VNR’s copyrights are valid, enforceable, and that Defendants infringed on those copyrights. The Court therefore grants summary judgment in favor of VNR on Defendants’ request for declaratory judgment.

C. Defenses . . . 1. Fair Use . . . Here, consideration of the factors weighs against a finding of fair use. First . . . Defendants posted one photo directly to RMC’s website. Other photographs were posted to RMC’s Facebook page, which is used for a promotional purpose. The evidence therefore suggests Defendants’ use was for commercial, rather than non-commercial, purposes. Second . . . As evidenced by the extent of the creative effort expended by Mr. Meyer in capturing and editing the photos, the images at issue here are clearly creative—rather than informational or functional—works. Thus, the nature of the work weighs against a finding of fair use. Third . . . there is no dispute that Defendants published the photographs in their entirety. Fourth . . . Defendants present no relevant market evidence and the onus is upon them to come forward with evidence sufficient for a jury to find in their favor. Based on the record before it, therefore, the Court finds that this factor also weighs against a finding of fair use. . . .

2. Unclean Hands . . . The Court finds that VNR is entitled to summary judgment on this defense for several reasons. First, with respect to Defendants’ suggestion that VNR acted improperly in not registering its copyrights before the infringement, the Copyright Act specifically contemplates such situations—i.e., where a copyright owner does not apply for registration until after the infringing conduct. . . . Second, Defendants do not present any evidence to support their argument that the addendum to VNR’s agreement with Mr. Meyer was somehow improper. Third, and finally, the Court notes that, although available as a defense in a copyright infringement action, the doctrine of 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.” . . .

3. Equitable Estoppel . . . Considering the elements, the Court finds that summary judgment is inappropriate on Defendants’ equitable estoppel defense. First, the Court finds that a reasonable trier of fact could conclude that VNR knew the facts of Defendants’ infringing conduct. . . . Second, this timing arguably suggests that VNR intended that its conduct be acted upon. . . . Third . . . the evidence suggests Mr. Robbins was unaware he was infringing on VNR’s copyright until his receipt of Mr. Oasis’s March 2018 message. . . . Fourth, the Court finds that a
reasonable trier of fact could conclude that Defendants relied on VNR’s conduct to their detriment.

District of New Mexico

RODRIGUEZ V. SERNA
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Limitations on liability relating to material online - misrepresentation

THIS MATTER comes before the Court upon ten motions to dismiss filed by Defendants on October 19, 2018 . . . and April 18, 2019 . . . . Having reviewed the parties’ pleadings and the applicable law, the Court finds that Defendants’ motions are well-taken in part and, therefore, are GRANTED IN PART and DENIED IN PART. . . .

Here, Plaintiff has plausibly pled that the takedown notice was issued in bad faith and a knowingly material misrepresentation, as Defendant plausibly issued it in retaliation for Plaintiff’s prior speech. Plaintiff alleges she published on her website content critical of NNMC and certain administrators. . . . Plaintiff alleges that Defendant Serna submitted a takedown notice and attested that the photos were copyrighted, when they were not. Plaintiff’s service provider, Weebly, Inc., determined that Defendant Serna’s claims were false and restored the website. Defendant Serna stated that her website “tweeted hatred.” He stated that “this small group of angry and viscous [sic] people are capable of violence.” . . . Based on this prior alleged conflict, Plaintiff plausibly alleged that Defendant Serna knew that the photos were not copyrighted, and knowingly misrepresented the photos were copyrighted to be vindictive or retaliate against Plaintiff for her statements.

District of Utah

CRAFT SMITH, LLC V. EC DESIGN, LLC
No. 2:16-CV-01235, 2019 WL 2161560 (D. Utah May. 17, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Literary work - compilation
Topics: Copyright registration - presumption of validity, Scope of protection - idea, Scope of protection - process, Copyrightability - useful article, Infringement - supersubstantial similarity

On April 5, 2019 the court heard oral argument on EC Design’s Motion for Partial Summary Judgment on First Claim for Copyright Infringement, Craft Smith and Michaels’ Motion for Summary Judgment, as well as Craft Smith and Michaels’ Motion to Exclude Richard S. Hoffman and EC Design’s Motion to Exclude Expert Opinion of Clarke Nelson. . . .

a. Ownership of a Valid Copyright . . . The court agrees with Craft Smith on the initial question of the presumption of validity. Because the copyright asserted by EC Design in this case is a compilation copyright, the court looks first to the language of EC’s registration certificate for the “2016/2017 Vertical LifePlanner Compilation” that was deposited in the Copyright Office. . . .
That registration certificate describes the “limitation of copyright claim” as only including the following new material: “2-D artwork, compilation of introductory and section phrases, graphics.” . . . In fact, the certificate explicitly excludes “Calendar arrangement and calendar text” from the copyright claim. . . . And as Craft Smith points out, EC initially attempted to claim “layout” as part of its claim for copyright protection, but this was denied by the Copyright Office because “layout does not describe a copyrightable type of authorship.” . . . Thus, because EC’s asserted compilation seeks much broader protection than the scope outlined on the 2016-17 LifePlanner registration certificate, the court finds that EC’s 2015-16 LifePlanners are not entitled to a presumption of validity with respect to EC’s asserted compilation copyright. . . .

b. Protectable Expression . . . The court finds no protectable expression in EC’s asserted compilation. Once the non-copied features are removed from consideration (i.e., the 2-D artwork, introductory and section phrases, and graphics), EC’s remaining compilation ultimately consists of a collection of planner parts, common property (primarily calendars), templates of expression, and blank forms (such as lined pages and graph paper). For EC to assert that such a compilation qualifies as “authorship” under any definition strains credulity, let alone the specific requirements of Section 102. EC’s idea to arrange planner parts, templates, common property, and blank forms in a certain order is just that—an idea. While the LifePlanner could feasibly be conceptualized as a creative process for organizing one’s life, processes are also outside the scope of Section 102 and thus unprotectable. . . . Nor is the layout of EC’s calendars copyrightable. . . .

The relevant components of the LifePlanner (i.e., those features comprising EC’s asserted compilation, which excludes the 2-D artwork, phrases, and graphics which are not part of EC’s infringement claim) do not as a whole qualify as a “literary work” under the plain meaning of Section 102(a). Merely printing or publishing a work into a book form does not create a literary work—the statute requires that a book, greeting card, etc. must also “express” authorship “in words, numbers, or other verbal or numerical symbols or indicia ...” to qualify as a literary work. . . . Excluding the LifePlanner’s introductory and section phrases (uncontested by EC in this case), very few words are even used throughout the planner. It is axiomatic that for a party to claim a compilation of words or data, it must have at least used a sufficient quantity of words or data in the first place for the work to qualify as a work of authorship under Section 102. EC Design has not even met this initial burden. If the text of the LifePlanner’s introductory and section phrases were all part of EC’s asserted claim against Craft Smith, EC would have likely satisfied this initial literary work threshold, but EC is not alleging that the actual text of these short phrases are the subject of its infringement claim. Nor is the court persuaded that any “numbers or other verbal or numerical symbols or indicia” present in the LifePlanner qualify as a literary compilation. . . .

Separating out the LifePlanner’s 2-D artwork and graphics (not part of EC’s infringement claim), for EC’s remaining asserted compilation to qualify as a PGS work, it would need to be a three-dimensional work of art under the statute’s plain meaning. The court finds that EC’s asserted compilation does not qualify as a three-dimensional work of art, either collectively or individually, but instead more naturally as a book. Furthermore, the LifePlanner clearly has an “intrinsic utilitarian function” of organizing and planning one’s daily life. And as Craft Smith
persuasively argues, a “compilation of planner parts cannot ... be perceived as a three-
dimensional work of art separate from the LifePlanner itself ... [because it] cannot possibly exist
separately from the LifePlanner.” . . . Thus, even if the LifePlanner were a PGS work, EC’s
asserted compilation of planner parts and layout is not separable from the LifePlanner itself, and
thus does not qualify for protection under Section 102. . . .
c. Copying Protectable Constituent Elements . . . The court thus now considers whether the
2016-17 Recollections Planners “copied substantially the entire” applicable selection and
arrangement of EC’s corresponding 2015-16 LifePlanners. While this test is often left to a jury,
the court agrees with Craft Smith that no genuine issue of fact exists as to whether an ordinary
reasonable observer would conclude that the Recollections Planner is “virtually identi[cal]” to
EC’s LifePlanner compilation, which is a “thin” work when divorced of its specific 2-D artwork,
phrases, and graphics. As in Blehm (where the less exacting substantial similarity test was
employed to compare stick figure drawings), the court has examined the juxtaposing images of
the two planners, and now rules that “no reasonable juror” could conclude that these
Corresponding compilations are supersubstantially similar. . . .
BIG SQUID, INC. v. DOMO, INC.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Literary work - computer program
Topics: Preemption - breach of contract, Copyrightability - pleading requirements, Infringement
- pleading requirements, Preemption - conversion, Preemption - tortious interference

This case stems from a business relationship between two software companies. Beginning in
2015, Plaintiff Big Squid, Inc. and Defendant Domo, Inc. entered into contracts to sell software
and software implementation services. The parties’ relationship soured, and Big Squid filed suit
in the Third District Court for the State of Utah. Domo counterclaimed, and removed to this
court. The court now takes up Domo’s Motion to Stay Big Squid’s DAPPA-Related Claims and
Compel Arbitration, Domo’s Motion to Dismiss, and Big Squid’s Motion to Dismiss. For the
reasons stated, Domo’s Motion to Compel Arbitration is DENIED, Domo’s Motion to Dismiss is
GRANTED IN PART, and Big Squid’s Motion to Dismiss is DENIED. . . .

Big Squid’s breach of contract claim is qualitatively different from a copyright infringement
claim in three ways. First, Big Squid’s breach of contract claim concerns information that falls
outside the scope of the Act. . . . Second, Big Squid’s breach of contract claim asserts rights not
equivalent to the rights protected under the Act. . . . Finally, Big Squid’s breach of contract claim
requires one more element than a copyright infringement claim. . . .

Domo adequately alleges Big Squid had access to its copyrighted “source code,” and used this
source code to develop similar products. These allegations support the reasonable inference that
Big Squid copied Domo’s copyrighted material. . . . In relevant part, Domo alleges: (i) Big Squid
incorporated Domo’s copyrighted source code into Big Squid’s own products, (ii) Big Squid’s
products are “derivative works” of Domo’s copyrighted material, (iii) Big Squid is using those
“derivative works” to market itself to Domo’s customers, and (iv) Big Squid is sharing those “derivative works” with Domo’s competitors. These allegations give rise to a reasonable inference that Big Squid’s “derivative works” are substantially similar to Domo’s copyrighted material. It is reasonable to infer that Domo’s customers were attracted to Big Squid’s “derivative works” because they were substantially similar to Domo’s copyrighted material. Likewise, Domo’s competitors would benefit from Big Squid’s “derivative works” if those works incorporated essential components of Domo’s source code. It is reasonable to infer Domo’s competitors would be attracted to Big Squid’s “derivative works” because they were substantially similar to Domo’s protected material. These reasonable inferences, applicable at this stage of the proceeding, suggest Big Squid’s “derivative works” are substantially similar to Domo’s copyrighted material. Domo’s copyright claim is adequately pled. . . .

Domo’s conversion claim is not preempted by the Act and the UTSA because it concerns different subject matter and different rights. First, the subject matter of Domo’s conversion claim falls outside the scope of copyright and trade secret material. . . . Second, Domo’s conversion claim concerns the right to possess tangible materials. . . .

The subject matter of Domo’s tortious interference claim is outside the scope of claims covered by the Copyright Act and the UTSA. . . . Additionally, Domo’s tortious interference claim concerns different rights than copyright and UTSA claims.

CRAFT SMITH, LLC V. EC DESIGN, LLC
Outcome: Motion for attorneys fees and costs - denied
Works of Authorship: Literary work - compilation
Topics: Remedies - attorneys fees

Before the court is an application for an award of attorney fees and expenses filed by Craft Smith. . . . Here, EC Design had a registered copyright on its LifePlanner. . . . Craft Smith and Michaels created a planner with a similar design and layout to compete with EC’s planner. . . . While the court ultimately held that Craft Smith’s product did not infringe on EC’s copyright and that EC’s asserted compilation was not protectable expression, EC’s suit was not frivolous or unreasonable. . . . The court does not find that an award of attorney’s fees would serve the ends of compensation or deterrence. Accordingly, the court declines to award attorney fees under the Copyright Act.
Eleventh Circuit

Court of Appeals for the Eleventh Circuit

POHL V. MH SUB I LLC
No. 18-13233, 2019 WL 1950003 (11th Cir. May. 1, 2019)
Outcome: Appeal - reversed
Works of Authorship: Visual work - photograph
Topics: Copyrightability - originality

Plaintiff Mitchell A. Pohl, D.D.S., appeals the district court’s grant of summary judgment to Defendant MH Sub I LLC, d.b.a. Officite (“Officite”) on his copyright infringement claim. Without permission, Defendant Officite used and published photographs that were taken from Plaintiff Dr. Pohl’s website. The question on appeal is whether the record evidence created material issues of fact that preclude judgment for Defendant Officite at this summary judgment stage. After careful review of the record and the parties’ briefs, we conclude that the record creates genuine issues of material fact as to whether Dr. Pohl’s photographs were sufficiently original to warrant copyright protection. We thus reverse the judgment and remand the case to the district court for further proceedings consistent with this opinion.

Northern District of Alabama

TOLBERT V. HIGH NOON PRODS., LLC
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Audiovisual work - trailer, Audiovisual work - television series
Topics: Ownership - pleading requirements, Infringement - pleading requirements, Preemption - unjust enrichment

Plaintiff Melanie Tolbert brings this claim under the Copyright Act . . . and Alabama tort law against High Noon Productions, LLC and Discovery, Inc. . . . Defendants High Noon and Discovery move to dismiss the copyright claim under Federal Rule of Civil Procedure 12(b)(6) . . . . Finally, Defendants move to dismiss Plaintiff’s unjust enrichment claim as preempted by the Copyright Act and to dismiss some of Plaintiff’s claims for damages as impermissibly speculative . . . .

The court will DENY Defendant Discovery’s motion to dismiss under Rule 12(b)(6) . . . . The court will GRANT Defendant’s motion to dismiss Plaintiff’s unjust enrichment claim as preempted and will DENY Defendant’s motion to dismiss some of Plaintiff’s claims for damages as speculative . . . .

Plaintiff has established prima facie evidence of her ownership of a valid copyright of the video and has specifically alleged that Defendant copied elements of that video and then used them in Good Bones. Thus, this court rejects Defendant’s argument that Plaintiff’s complaint attempts to
claim copyright protection for an idea or concept because the complaint goes further in alleging copying of actual components of her teaser.

Alternatively, Defendant argues that Plaintiff has alleged “the barest of similarities between her video and two seasons of Good Bones” and seemingly moves this court to dismiss Plaintiff’s claim for failing to show substantial similarity between her teaser and Good Bones. . . . Defendant may be correct that Plaintiff “does not come close to proving [ ] substantial similarity between [the] teaser video and Good Bones.” . . . But that is not her burden at the pleading stage.

This court declines to make any judgment on the merits without having seen the complete works at issue and thus will DENY Defendant’s motion to dismiss Plaintiff’s complaint for failing to state a claim upon which relief can be granted. . . .

As an initial matter, Ms. Tolbert’s teaser video falls within the subject matter of copyright as set forth in §§ 102 and 103, so the only question is whether her unjust enrichment claim includes an “extra element.” Ms. Tolbert asserts that her unjust enrichment claim features an extra element because she alleges that at least one of the unnamed producers to whom she sent her teaser deceived her by downplaying potential interest, only to later capitalize on the idea and teaser with Defendant Discovery. . . . This court . . . concludes that Plaintiff’s unjust enrichment claim does not allege a meaningful extra element in addition to the acts required for a copyright infringement claim.

Southern District of Alabama

BELL V. FROST
Outcome: Motion for attorneys fees and costs - granted
Works of Authorship: Visual work - photograph
Topics: Remedies - attorneys fees

This matter is before the court on Defendants' motion for attorney's fees and costs . . . . Accordingly, it is ORDERED that Defendants' motion for attorney's fees and costs (Doc. 38) is GRANTED. The Court awards $20,632.50 in fees and $250.30 in costs.

Middle District of Florida

LANARD TOYS LTD. V. TOYS "R" US-DELAWARE, INC.
Outcome: Motion for summary judgment - granted
Works of Authorship: Visual work - toy
Topics: Copyright registration - presumption of validity, Copyrightability - creativity, Copyrightability - useful article, Infringement - substantial similarity, Scope of protection - idea

THIS CAUSE is before the Court as a copyright, patent, trade dress and unfair competition action pertaining to a toy chalk holder. . . . Plaintiff Lanard Toys Limited (Lanard) developed a chalk holder in the shape of an over-sized, no. 2 pencil (the Chalk Pencil) as a fanciful toy for
children. Lanard registered a copyright in its Chalk Pencil and also obtained a design patent for the toy. Soon thereafter, Defendant Ja-Ru, Inc. (Ja-Ru) released a similar version of a chalk holder in the shape of a pencil (the Ja-Ru Chalk Holder). When Defendants Toys R US-Delaware, Inc. (TRU) and Dolgencorp, LLC (Dolgencorp) stopped selling Lanard’s Chalk Pencil and began selling the Ja-Ru Chalk Holder instead, Lanard brought this lawsuit asserting claims for copyright infringement, patent infringement, trade dress infringement and unfair competition against Defendants. Defendants responded with counterclaims seeking declaratory judgment as to the invalidity, unenforceability, and non-infringement of Lanard’s copyright, patent and trade dress, as well as the lack of any unfair competition. . . . At present, this simple toy, retailing at less than $5, has spawned five years of contentious litigation, hundreds of pages of evidence, expert testimony, and legal briefing, and no doubt hundreds of thousands of dollars in legal fees. Having unsuccessfully encouraged the parties to resolve the dispute amicably, the Court now turns to the merits of their claims. . . .

Lanard’s Certificate of Registration for the Chalk Pencil, made within five years after first publication of the work, is “prima facie evidence of the validity of the copyright,” . . . including “the requirements of originality and susceptibility to copyright under 17 U.S.C. § 102(a).” . . . Defendants attempt to rebut the presumption of validity by arguing that the Chalk Pencil is not sufficiently distinguishable from the preexisting no. 2 pencil design in the public domain. Notably, Lanard’s design does copy to a significant degree elements found in the prior art, such as the yellow, hexagonal body of a no. 2 pencil with a silver, grooved ferrule, pink columnar eraser, and tapering to hold a writing medium. However, “the originality requirement is a low bar,” and all that is required is that “the work possess ‘some creative spark, no matter how crude, humble or obvious.’ ” . . . Although Lanard’s designer admits that he chose a number of the design features because they were “common,” viewing the evidence in the light most favorable to Lanard, a reasonable juror could conclude that he independently created some features of the Chalk Pencil design. . . . And, given the low threshold for originality, Lanard’s design appears to evidence the “‘modicum of creativity’” necessary to warrant protection. . . . Nonetheless, the limited protection its copyright affords “is not particularly strong” given that much of the expression in the Chalk Pencil still reflects the uncopyrightable features of the no. 2 pencil in the public domain. . . .

Defendants also argue that Lanard’s copyright is invalid in its entirety because the Chalk Pencil is a “useful article.” . . . Here, Lanard contends that the Chalk Pencil design is a sculptural work separable from the chalk holder function of the device. Although Lanard does not identify any specific sculptural “feature” of the overall design that it maintains is separable, Lanard’s position appears to be that the pencil design itself serves no utilitarian function and merely encases the chalk holder. . . . The problem with Lanard’s argument, however, is that the pencil design does not merely encase or disguise the chalk holder, it is the chalk holder. When one imagines the pencil design as a separate work of sculptural art, one is merely picturing a replica of the chalk holder. . . . While Lanard may have developed this particular design for aesthetic and imaginative reasons, “this fact alone does not make the entire useful article copyrightable.” . . . Moreover, unlike Star Athletica, Lanard does not seek protection for artistic surface features, applied to the utilitarian object; Lanard seeks to protect the entirety of the Chalk Pencil—including its shape and form—the very components that make up the chalk holder itself. . . .
While the Chalk Pencil in its entirety may be a “‘unique and attractively shaped’” chalk holder, its features are not capable of “existing independently” as a work of art, and therefore, it is not protectable under copyright law. . . . Accordingly, Lanard does not own a valid copyright in the Chalk Pencil and its copyright claim must fail.

However, even if Lanard does have a protectable copyright interest in the Chalk Pencil, Lanard fails to demonstrate that Defendants infringed any protectable aspect of that work. . . . Here, both Lanard and Defendants have incorporated a no. 2 pencil design into a chalk holder. Thus, both designs employ the general features of a no. 2 pencil—a tapered conical holder for the writing element, a yellow, hexagonal elongated body, a silver, grooved ferrule, a pink columnar eraser, and the number 2 in a darkened oval. But, as with the anatomical features of a teddy bear, every sculpture of a no. 2 pencil contains these features as they are what define a no. 2 pencil. “To protect this basic combination of features would in effect give [Lanard] exclusive rights over the very idea of a [no. 2 pencil], which is expressly precluded under the copyright laws.” . . . As stated above in the patent analysis, there are readily apparent differences in each company’s expression of a pencil-shaped chalk holder. Most notably, the appearance of the ferrules on the two chalk holder designs are dissimilar, the proportions of the separate elements in relation to each other are different, and the color, surface and slope of the tapered conical pieces are distinct, as is the specific pink shade of the eraser. In addition, not only are the words on the chalk holders different, both the positioning and font of the words are distinctly different as well.

Lanard asks the Court to find substantial similarity because the works both involve no. 2 pencil designs applied to chalk holders, and there are numerous other ways to design a chalk holder that do not employ the look of a pencil. This argument is faulty as the Court must consider the sculptural design separately from the useful article into which it is incorporated. . . . As in Baby Buddies, Lanard is not entitled to copyright protection for the idea of a pencil-shaped chalk holder. . . . Lanard’s insistence that there are many ways to design a chalk holder that do not utilize a pencil design misses the point—there are also many ways to design a baby’s pacifier holder that do not utilize a teddy bear, and many ways to design a jewelry pin that do not utilize a bee. . . . Ja-Ru, TRU and Dolgencorp, “are free to utilize” the idea of a pencil-shaped chalk holder, “so long as they do not plagiarize its expression.” . . . Given the differences in the pencil features of the designs, no reasonable juror could conclude that Defendants have appropriated Lanard’s expression of a pencil-shaped chalk holder, as opposed to the idea of such an item. Accordingly, the Court determines that Defendants are entitled to summary judgment in their favor on the claim for copyright infringement.

HEALTHPLAN SERVS., INC. V. DIXIT
No. 8:18-CV-2608-T-23AAS, 2019 WL 1490230 (M.D. Fla. Apr. 4, 2019)
Outcome: Motion to dismiss - denied
Works of Authorship: Literary work - computer program
Topics: Infringement - pleading requirements

HealthPlan Services sues . . . Rakesh Dixit, Feron Kutsomarkos, E-Integrate, Knowmentum, and Media Shark Productions for misappropriating a trade secret, for infringing a copyright, for
breaching a contract, and for violating Florida’s Deceptive and Unfair Trade Practices Act (FDUTPA). Dixit, Knowmentum, and Media Shark move . . . to dismiss HealthPlan’s “shotgun complaint.” Kutsomarkos and E-Integrate answer . . . and E-Integrate counterclaims . . . against HealthPlan for breaching a contract and for violating FDUTPA.

HealthPlan moves . . . to strike the answer and moves . . . to dismiss the counterclaim for failing to plead fraud with particularity. Also, each defendant except Kutsomarkos moves . . . for leave to file a third-party complaint.

The motion (Doc. 49) to dismiss the amended complaint . . . The amended complaint describes each defendant’s conduct and each count incorporates by reference the pertinent paragraphs of the amended complaint. The amended complaint is not a “shotgun pleading” and complies with Rule 8(a), Federal Rules of Civil Procedure.

YELLOW PAGES PHOTOS, INC. V. DEX MEDIA, INC.
Outcome: Motion to dismiss - granted-in-part
Works of Authorship: Visual work - photograph
Topics: Integrity of Copyright Management Information - pleading requirements,

This cause comes before the Court upon Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint . . . In the Motion, Defendants argue that Plaintiff’s Amended Complaint (1) fails to state a claim for Digital Millennium Copyright Act violations, (2) involves improper claim splitting, and (3) is barred by claim preclusion and collateral estoppel. The Court, having considered the parties’ submissions and being fully advised in the premises, will grant Defendants’ Motion to Dismiss in part.

1. False copyright management information . . . The Court is not persuaded that it should consider the placement of the copyright notices upon a motion to dismiss based upon the cases Defendants have cited in their Motion. Moreover, even if the Court could properly consider the placement of Dex Media’s copyright notices in relation to the YPPI Images and determine that the copyright notices did not convey false copyright management information, it is questionable whether the Court could properly adjudicate the entire claim at this stage. The Court only has available for review the examples of Dex Media’s DMCA violations as provided in the attachments to the Amended Complaint. YPPI does not appear to have provided all of the evidence it has in support of its DMCA violation claim against Dex Media, nor is it required to provide all such evidence at this stage. For these reasons, it would be premature for the Court to judge whether Dex Media’s placement of its copyright notices in relation to the YPPI Images convey false copyright management information.

2. Intent . . . Defendants’ discussion of intent focuses on whether Dex Media believed it could lawfully use the images—not whether Dex Media intended to convey false copyright information, regardless of whether it believed it could use the images in the first instance. . . . YPPI has set forth enough facts in its Amended Complaint, accepted as true, to plausibly allege
that Dex Media “knowingly and with intent” provided false copyright management information. YPPI does so by setting forth a theory of why it believes Dex Media had the requisite intent. YPPI therefore avoids Defendants’ Motion on Count I.

YELLOWPAGES PHOTOS, INC. V. YP, LLC
No. 8:17-CV-764-T-36JSS, 2019 WL 6341018 (M.D. Fla. Nov. 27, 2019)
Outcome: Motion for summary judgment - granted-in-part
Works of Authorship: Visual work - graphic work
Topics: Defenses - license, Remedies - disgorgement of profits

This matter comes before the Court upon Defendants YP LLC and Print Media LLC’s Motion for Summary Judgment . . . . The Amended Complaint alleges two counts for copyright infringement, one against Defendant YP, LLC, and one against Defendant Print Media LLC . . . . In their joint Motion for Summary Judgment, Defendants argue that they are entitled to summary judgment and dismissal of Plaintiff’s Amended Complaint with prejudice because they were permitted to use Plaintiff’s copyrighted images under the licenses . . . . Plaintiff responds that Defendants are not among the entities permitted to use the licenses and that, even if they were, Defendants exceeded the scope of the licenses . . . . The Court, having considered the motions and being fully advised in the premises, will grant Defendants’ Motion for Summary Judgment in part and deny it in part . . . .

With respect to Defendant YP, LLC, the undisputed evidence shows that it was permitted to use the licenses at issue in this case, and that none of its actions fell outside the scope of the license or otherwise invalidated its use of the images under the license. Accordingly, the Court will grant Defendants’ Motion for Summary Judgment on the issue of whether Defendant YP, LLC was permitted to use the licenses. As a matter of law, Defendant YP, LLC’s use of Plaintiff’s copyrighted images covered by the licenses did not constitute copyright infringement. However, because the evidence is disputed as to whether Defendant YP, LLC used only images covered by the licenses, the Court cannot grant summary judgment as to Count I of the Amended Complaint.

With respect to Defendant Print Media LLC, the undisputed evidence shows that it was permitted to use images covered by the “Software License and Maintenance—Snap-Out Agreement 20071211.071.C Between Yellow Pages Photo, Inc. And AT&T Services, Inc.” (the “ATT License”), and, as a matter of law, any use of such images did not constitute copyright infringement. Doc. 157-6. However, the language of the License Agreement between L.M. Berry and Company, and all affiliates owned or owning the same, and Yellow Pages Photos, Inc. (the “Berry License”) . . . is ambiguous with respect to whether all affiliates of L.M. Berry and Company were covered by the license. The Court, therefore, cannot determine as a matter of law whether Defendant Print Media LLC’s use of such images constituted copyright infringement. Additionally, the evidence is disputed as to whether all images were covered by the licenses. Accordingly, the Court will deny summary judgment as to Count II of the Amended Complaint.

Regarding Plaintiff’s request for Defendants’ profits from any copyright infringement, the undisputed evidence shows that Defendants did not profit from their use of YPPI’s copyrighted
images. Accordingly, the Court will grant summary judgment on this issue. Plaintiff may not claim Defendants’ profits as damages.

Southern District of Florida

ROBERT SWEDROE ARCHITECT PLANNERS, A.I.A., P.A. V. J. MILTON & ASSOC., INC.
No. 18-CV-62715, 2019 WL 1059836 (S.D. Fla. Mar. 6, 2019)
Outcome: Motion to dismiss - denied
Works of Authorship: Architectural work - design, Architectural work - drawing
Topics: Ownership - pleading requirements, Infringement - pleading requirements, Contributory infringement - pleading requirements

THIS CAUSE is before the Court upon Defendant Caymares Martin Architectural & Engineering Design, Inc.’s (“Caymares”) Motion to Dismiss . . . and Defendant J. Milton & Associates, Inc.’s (“Milton”) . . . (together, the “Motions”). . . . For the reasons set forth below, the Motions are denied. . . .

Here, Plaintiff has stated a claim for copyright infringement against Defendants by adequately alleging both of the required elements for a copyright infringement claim. Specifically, with regard to the first element—ownership of a valid copyright—Plaintiff alleged that it “owns a valid copyright for its plans and designs for the Project,” and that “Swedroe’s technical drawings and architectural work for the Project were submitted to the United States Copyright Office on February 28, 2018” . . . . Plaintiff has also attached its Certificate of Copyright Registration as an exhibit to the Complaint . . . . Thus, for purposes of a motion to dismiss, the Court finds that Swedroe has adequately alleged “ownership of a valid copyright.” . . .

Turning to the second prong—the copying of the constituent elements of the work that is original—the Court also finds that the Plaintiff has adequately alleged this element. In the Complaint, Plaintiff states that each of the Defendants copied “original elements” of Plaintiff’s protected work. . . .

Here, in addition to alleging that Defendant Milton “knew or should have known” of Caymares' alleged infringement of Plaintiff’s Plans, Plaintiff has also asserted that the Plans were “available in the public record.” . . . Regarding the requisite “knowledge” element relating to a claim for contributory copyright infringement, all that must be alleged is that a defendant had reason to know of the alleged infringement. The Plaintiff has sufficiently alleged that Defendant Milton had “reason to know” of the infringing activity by Defendant Caymares through the availability of the Plans in the public record. . . . Accordingly, at this stage, the Court construes the facts alleged in the light most favorable to the Plaintiff and disagrees with the Defendants that the Complaint is “implausible” on its face.
Joshua L. Simmons  
joshua.simmons@kirkland.com

AFFORDABLE AERIAL PHOTOGRAPHY, INC. V. MODERN LIVING REAL ESTATE, LLC
Outcome: Motion to dismiss - granted
Works of Authorship: Visual work - photograph
Topics: Infringement - pleading requirements, Vicarious infringement - pleading requirements

THIS CAUSE is before the Court upon Defendant Compass Florida, LLC’s (“Defendant” or “Compass”) Motion to Dismiss . . . filed on June 26, 2019. . . . For the reasons set forth below, the Motion is granted. . . .

Upon review, the Complaint does not contain factual allegations sufficient to lead to the inference that Compass copied the copyrighted photographs, or otherwise had access to the copyrighted work. . . .

In the Complaint, Plaintiff alleges in conclusory fashion only that Compass is vicariously liable for the infringements of Modern Living as “a parent, successor, alter ego, continuation, or reincarnation” of Modern Living, and “has the right and ability to control the actions of MODERN LIVING’s employees and the Modern Living Website.” . . . Once again, Plaintiff has not alleged any underlying facts that would lead to the inference that such a conclusion is plausible. As a result, Plaintiff fails to sufficiently state a claim for vicarious copyright infringement against Compass.

VALLEJO V. NARCOS PRODS. LLC
No. 18-23462-CIV, 2019 WL 5867970 (S.D. Fla. Nov. 8, 2019)
Outcome: Motion for summary judgment - granted
Works of Authorship: Literary work - book, Audiovisual work - television series
Topics: Infringement - substantial similarity

THIS MATTER is before the Court on the Defendants' Motion for Summary Judgment . . ., [and] Plaintiff's Motion for Summary Judgment . . . Plaintiff's Amended Complaint . . . alleges violations of two registered copyrights, issued by the United States Copyright Office for Plaintiff's memoir, Amando a Pablo, Odiando a Escobar, in English, “Loving Pablo, Hating Escobar.” Specifically, Plaintiff alleges that Defendants, the producers and distributors of the show Narcos, directly and indirectly infringed on her copyrights in two specific scenes from the first season of the show. Defendants, arguing that there is no copyright protection for historical fact, move for summary judgment on both counts. Plaintiff maintains that she is entitled to summary judgment because the “average lay observer” would recognize the two scenes as having been copied from her copyright protected work. For the reasons set forth below, Defendant's Motion for Summary Judgment is granted and Plaintiff's is denied. . . .

A. The Revolver Scene Does Not Infringe Plaintiff's Copyrights. . . . Comparing the two scenes leads to the conclusion that they are not substantially similar. The atmosphere, or overall feel, of each of the scenes is very different. In the Memoir, contrary to Plaintiff's argument, Plaintiff

- 230 -
does not appear afraid of Escobar and does not respond to his aggressive banter in a submissive manner; instead, she responds by verbally sparring with him (Escobar: “I would never underestimate a panther with delusions of genius.” Plaintiff: “I would never underestimate a criminal with delusions of a schizophrenic.”). Plaintiff also spurs Escobar on, telling him that being caressed by a gun is “exquisite” and “sublime.” In contrast, in the Narcos scene Velez does respond submissively; there is no verbal sparring or challenges to Escobar, as in the Memoir. Velez does not spur him on. Plaintiff also stops Escobar from going any further with the gun and he relents, unlike in the Narcos scene where Escobar uses the gun to bring Velez to a climax. The Memoir paints a picture of two people holding equal power over each other. In Narcos, Velez may be a willing participant but she does not hold the power in the relationship. Velez simply submits to Escobar, telling him that she will do anything he wants.

Further, and contrary to Plaintiff, many of the details in the scenes are different. Plaintiff states she is seated in a low-backed chair, while in Narcos Velez is tied to the bed with her arms spread wide when the scene opens. While Escobar caresses her with the gun, Plaintiff, who is blindfolded is not tied up and she is fully dressed. Only later, after Escobar puts down the gun and her blindfold is removed, is Plaintiff handcuffed to the chair by her ankle. In Narcos, the scene opens with Velez tied to the bed by her wrists and blindfolded. Escobar removes the blindfold before he touches Velez with the gun. While Plaintiff states that Escobar held her by the hair while he caressed her with the gun, Escobar does not hold Velez by the hair. Thus, the only similarities between these two scenes are the blindfold, caressing with a gun, and Plaintiff/Velez is aroused. These facts are not protectable. The idea of a sex scene involving a gun is not protectable. Despite Plaintiff arguing that her description of this event is filled with her vivid description of the setting, the sounds, and her thoughts and feelings at the time, Plaintiff does not point to any specific original, non-factual portions of her Memoir that have been copied. There is no dialogue that has been copied, the settings are different, the feel of the scenes are different, and how the scenes play out are different. Consequently, Defendants are entitled to summary judgment on Plaintiff's claims based on the Revolver Scene.

B. The Meeting Scene Does Not Infringe Plaintiff's Copyrights. . . . In comparing the two scenes, the first thing one notices is that, in Narcos, Velez is not the woman who meets with Escobar and Ivan. Further, the woman in the Narcos scene is not part of the conversation between Escobar and Ivan, as Plaintiff was in the Memoir. This is a significant difference because it changes the tone of the scene.

The similarities that do exist between the two scenes are not protectable expression. The most obvious similarity is the title of the chapter in the Memoir and the title of the Narcos episode, “That Palace in Flames” and “The Palace in Flames.” However, the copyright regulations make it clear that “short phrases such as names, titles, and slogans” are not copyrightable. . . . Based on this regulation, the chapter title is not protectable and neither is the name “Ivan.”

Many of the remaining similarities are factual and, therefore, not protectable. The fact that Escobar met with Ivan, a leader of the M-19, prior to the Supreme Court considering his extradition; the fact that Escobar paid a total of $2 million for the raid; and the fact that the raid occurred and resulted in the disappearance of the files about Escobar are all historical facts.
These facts are not protectable. The fact that Plaintiff's Memoir was the first to make some of these facts public does not change the analysis.

Plaintiff also claims that her impression of Ivan was infringed by Defendants. Plaintiff describes Ivan as wearing civilian clothes, being of medium build, and having “blunt features, wispy hair, and a mustache.” The Narcos Ivan has a beard and a full head of thick hair. Regardless, Ivan's appearance would constitute facts. Plaintiff states that, in comparison, Escobar is an Adonis. Such a comparison may be entitled to protection. However, no such comparison is made in Narcos.

Finally, Plaintiff also argues that in both the Memoir and the Meeting Scene, Escobar uses “revolutionary bonding” to persuade Ivan to carry out the raid. In the Memoir, it appears that Escobar and Ivan have already made the deal when Plaintiff reenters the room and starts talking to Ivan about his reasons for joining the revolution. Plaintiff is the one who tells of her solidarity with his cause. During the conversation, Escobar tells Ivan more about Plaintiff's solidarity with the workers. In the Narcos scene, Escobar is the one who speaks of revolution. Thus, the way in which the “revolutionary bonding” occurs in the Memoir differs from the way it occurs in the Narcos Meeting Scene. Further, if talk of solidarity and revolution were used to convince Ivan, such would be historical fact, which is not protectable.

Again, the overall feel of the two scenes is also quite different. In the Memoir, only Escobar, Plaintiff, and Ivan are present. Ivan, who is very high, ogles Plaintiff and chats with her and Escobar for a while about the revolution. It is clear that Ivan and Escobar have a preexisting relationship that has mutually benefited them both. In Narcos, it is only clear that the two have met before. Further, it is clear from the prior scene that Escobar is willing to sacrifice Ivan to achieve his goal of destroying the records – Escobar tells his associates that the government wants someone more than them, so why not give the government what it wants. In Narcos, both Escobar and Ivan have armed men with them at the meeting, indicating that neither trusts the other. Ivan is seated in a relaxed manner leaning back on the couch, while Escobar is leaning forward on the edge of a chair. Such postures indicate that Ivan believes that he holds the power and Escobar is the one in need of a favor. This dynamic does not seem to be present in the Memoir. Consequently, there is no substantial similarity between the Meeting Scene in Narcos and Plaintiff's Memoir.
II. COPYRIGHT-RELATED LEGISLATION

House

H.R. 704: Fair Trade With China Enforcement Act

H.R. 704: FAIR TRADE WITH CHINA ENFORCEMENT ACT
116th Congress (2019-2020)
Topics: Legislation - trade

On January 22, 2019, H.R. 704 was introduced in the House by Rep. K. Michael Conaway [R-TX], and cosponsored by Reps. Tim Ryan [D-OH] and Eric A. Crawford [R-AR]. It was referred to the Committees on Ways and Means, Financial Services, the Judiciary, Foreign Affairs, and Oversight and Reform.

It is intended to "safeguard certain technology and intellectual property in the United States from export to or influence by the People’s Republic of China and to protect United States industry from unfair competition by the People’s Republic of China, and for other purposes." It provides, "The Secretary of Commerce shall prohibit the export to the People’s Republic of China of any national security sensitive technology or intellectual property subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States."

H.R. 1006: Open Internet Act of 2019

H.R. 1006: OPEN INTERNET ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - telecommunications

On February 6, 2019, H.R. 1006 was introduced in the House by Rep. Robert E. Latta [R-OH]. It was referred to the House Committee on Energy and Commerce.

It is intended to "amend title I of the Communications Act of 1934 to provide for internet openness, and for other purposes." It provides, "Nothing in this section shall prohibit reasonable efforts by a provider of broadband internet access service to address copyright infringement or other unlawful activity."
H.R. 1096: Promoting Internet Freedom and Innovation Act of 2019

H.R. 1096: PROMOTING INTERNET FREEDOM AND INNOVATION ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - telecommunications

On February 7, 2019, H.R. 1096 was introduced in the House by Rep. Cathy McMorris Rodgers [R-WA]. It was referred to the House Committee on Energy and Commerce.

It is intended to "amend the Communications Act of 1934 to provide for open internet requirements for providers of broadband internet access service." It provides, "Nothing in this section . . . prohibits reasonable efforts by a provider of broadband internet access service to address copyright infringement or other unlawful activity."

H.R. 1101: To Amend the Communications Act of 1934 To . . .

H.R. 1101: TO AMEND THE COMMUNICATIONS ACT OF 1934 TO . . .
116th Congress (2019-2020)
Topics: Legislation: telecommunications

On February 7, 2019, H.R. 1101 was introduced in the House by Rep. Greg Walden [R-OR]. It was referred to the House Committee on Energy and Commerce.

It is intended to "amend the Communications Act of 1934 to ensure internet openness, to prohibit blocking lawful content and non-harmful devices, to prohibit throttling data, to prohibit paid prioritization, to require transparency of network management practices, to provide that broadband shall be considered to be an information service, and to prohibit the Commission or a State commission from relying on section 706 of the Telecommunications Act of 1996 as a grant of authority." It provides, "Nothing in this section . . . prohibits reasonable efforts by a provider of broadband internet access service to address copyright infringement or other unlawful activity."

H.R. 1644: Save the Internet Act of 2019

H.R. 1644: SAVE THE INTERNET ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - telecommunications

On March 8, 2019, H.R. 1644 was introduced in the House by Rep. Michael F. Doyle [D-PA], and cosponsored by 132 additional representatives. It was referred to the House Committee on Energy and Commerce's Subcommittee on Communications and Technology.
It is intended to "restore the open internet order of the Federal Communications Commission." It provides, "As described in the Report and Order on Remand, Declaratory Ruling, and Order in the matter of protecting and promoting the open internet that was adopted by the Federal Communications Commission on February 26, 2015 (FCC 15–24) . . . nothing in this Act prohibits providers of broadband Internet access service from blocking content that is not lawful, such as child pornography or copyright-infringing materials . . . ."

On March 12, 2019, the Subcommittee held a hearing on H.R. 1644.

On March 26, 2019, the Subcommittee considered H.R. 1644 and a mark-up session was held. The Bill was forwarded by the Subcommittee to the Full Committee by a vote of 18 to 11.

On April 3, 2019, the Committee considered H.R. 1644 and a mark-up session was held. The Bill was ordered to be reported as amended by a vote of 30 to 22.

On April 10, 2019, the House passed H.R. 1644 by a vote of 232 to 190. It was then received in the Senate.

On April 29, 2019, H.R. 1644 was placed on the Senate Legislative Calendar under General Orders (Calendar No. 74).

**H.R. 1709: Scientific Integrity Act**

**H.R. 1709: SCIENTIFIC INTEGRITY ACT**

116th Congress (2019-2020)
Topics: Legislation - scientific integrity

On March 13, 2019, H.R. 1709 was introduced in the House by Rep. Paul Tonko [D-NY], and cosponsored by Reps. Eddie Bernice Johnson [D-TX], Haley M. Stevens [D-MI], and Alan S. Lowenthal [D-CA]. It was referred to the House Committee on Science, Space, and Technology.

It is intended to "amend the America COMPETES Act to establish certain scientific integrity policies for Federal agencies that fund, conduct, or oversee scientific research, and for other purposes." It provides, "Nothing in this Act shall affect the application of United States copyright law."

On October 17, 2019, the Committee considered H.R. 1709 and a mark-up session was held. The Bill was ordered to be reported as amended by a vote of 25 to 6.
H.R. 1793: Artist-Museum Partnership Act of 2019

On March 14, 2019, H.R. 1793 was introduced in the House by Rep. John Lewis [D-GA] and cosponsored by Reps. Danny K. Davis [D-IL] and Eleanor Holmes Norton [D-DC]. It was referred to the House Committee on Ways and Means.

H.R. 1793 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, "For purposes of this paragraph, 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" in certain circumstances. It also 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)."

On May 28, 2019, the Congressional Research Service released the following summary of H.R. 1793:

This bill allows 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.

H.R. 1865: Further Consolidated Appropriations Act, 2020

On December 20, 2019, H.R. 1865 was signed by the President. It provides:

For all necessary expenses of the Copyright Office, $91,840,000, of which not more than $43,221,000, to remain available until expended, shall be derived from collections credited to this appropriation during fiscal year 2020 under sections 708(d) and 1316 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 $6,482,000 shall be derived from collections during fiscal year 2020 under sections 111(d)(2), 119(b)(3), 803(e), and 1005 of such title:

Provided further, That the total amount available for obligation shall be reduced by the amount by which collections are less than $49,703,000: Provided further, That of the funds provided under this heading, not less than $17,100,000 is for modernization initiatives, of which $10,000,000 shall remain available until September 30, 2021:

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).

H.R. 2136: Open Internet Preservation Act

H.R. 2136: OPEN INTERNET PRESERVATION ACT
116th Congress (2019-2020)
Topics: Legislation - telecommunications

On April 8, 2019, H.R. 2136 was introduced in the House by Rep. Lloyd Smucker [R-PA]. It was referred to the House Committee on Energy and Commerce.

H.R. 2136 is 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, "Nothing in this section . . . prohibits
reasonable efforts by a provider of broadband internet access service to address copyright infringement or other unlawful activity."

H.R. 2426: Copyright Alternative in Small-Claims Enforcement Act of 2019

H.R. 2426: COPYRIGHT ALTERNATIVE IN SMALL-CLAIMS ENFORCEMENT ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - small claims

On May 1, 2019, H.R. 2426 was introduced in the House by Rep. Hakeen S. Jeffries [D-NY], and cosponsored by eight representatives. It was referred to the House Committee on the Judiciary.

H.R. 2426 is intended to "amend title 17, United States Code, to establish an alternative dispute resolution program for copyright small claims, and for other purposes."

On May 20, 2019, H.R. 2426 was referred to the House Subcommittee on Courts, Intellectual Property, and the Internet.

On September 10, 2019 at 2:00 p.m. the House Judiciary Committee held a markup of H.R. 2426. It ordered H.R. 2426 to be reported as amended by voice vote.

On October 22, 2019, H.R. 2426 was reported as amended by the House Committee on the Judiciary. The House Report is available at https://www.congress.gov/congressional-report/116th-congress/house-report/252. The Bill was then considered by the House under a suspension of the rules, and debate for forty minutes was held. A transcript of the debate is available at https://www.congress.gov/congressional-record/2019/10/22/house-section/article/H8345-1. At the conclusion of debate, the Yeas and Nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed.

Later that day, H.R. 2426 was considered by the House as unfinished business. A transcript of the proceedings is available at https://www.congress.gov/congressional-record/2019/10/22/house-section/article/H8370-1. On a motion to suspend the rules and pass the bill as amended, the Bill was agreed to by the Yeas and Nays (410-6). The final vote results are available at http://clerk.house.gov/evs/2019/roll578.xml.

On October 23, 2019, H.R. 2426 was received in the Senate, read twice, and placed on the Senate Legislative Calendar under General Orders (Calendar No. 266).

On October 29, 2019, the Congressional Research Service released the following summary of H.R. 2426:
This bill creates the Copyright Claims Board, a body within the U.S. Copyright Office, to decide copyright disputes. Damages awarded by the board are capped at $30,000.

Participation in board proceedings is voluntary with an opt-out procedure for defendants, and parties may choose instead to have a dispute heard in court. If the parties agree to have their dispute heard by the board, they shall forego the right to be heard before a court and the right to a jury trial. Board proceedings shall have no effect on class actions.

The board shall be authorized to hear copyright infringement claims, actions for a declaration of noninfringement, claims that a party knowingly sent false takedown notices, and related counterclaims.

The bill provides for various procedures, including with respect to requests for information from the other party and requests for the board to reconsider a decision.

The board may issue monetary awards based on actual or statutory damages.

The parties shall bear their own attorneys' fees and costs except where there is bad faith misconduct.

A board's final determination precludes relitigating the claims in court or at the board. Parties may challenge a board decision in federal district court only if (1) the decision was a result of fraud, corruption, or other misconduct; (2) the board exceeded its authority or failed to render a final determination; or (3) in a default ruling or failure to prosecute, the default or failure was excusable.

H.R. 2779: Legislative Branch Appropriations Act, 2020

H.R. 2779: LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2020
116th Congress (2019-2020)
Topics: Copyright Office - appropriation

On May 16, 2019, H.R. 2779 was introduced in the House by Rep. Tim Ryan [D-OH]. The House Committee on Appropriations reported an original by Rep. Ryan, and H.R. 2779 was placed on the Union Calendar as Calendar No. 41. House Report No. 116-64 is available at https://www.congress.gov/congressional-report/116th-congress/house-report/64.

H.R. 2779 is intended to "Making appropriations for the Legislative Branch for the fiscal year ending September 30, 2020, and for other purposes." It provides:

For all necessary expenses of the Copyright Office, $91,856,000, of which not more than $43,221,000, to remain available until expended, shall be derived from collections credited to this appropriation during fiscal year 2020 under sections 708(d) and 1316 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 $6,482,000 shall be derived from collections during fiscal year 2020 under sections 111(d)(2), 119(b)(3), 803(e), and 1005 of such title: Provided further, That the total amount available for obligation shall be reduced by the amount by which collections are less than $49,703,000: Provided further, That of the total amount appropriated under this heading, not less than $17,100,000 is for modernization initiatives, of which $10,000,000 shall remain available until September 30, 2021: 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).

H.R. 3002: A bill to provide for the carriage of certain television broadcast stations, and for other purposes.

H.R. 3002: A BILL TO PROVIDE FOR THE CARRIAGE OF CERTAIN TELEVISION BROADCAST STATIONS, AND FOR OTHER PURPOSES.
116th Congress (2019-2020)
Topics: Legislation - telecommunications

On May 23, 2019, H.R. 3002 was introduced in the House by Rep. Richard E. Neal [D-MA]. It was referred to the House Committee on Energy and Commerce.

H.R. 3002 was intended to "provide for the carriage of certain television broadcast stations, and for other purposes." It provides, "Nothing in this Act shall be construed . . . to affect the applicability of any other communications or copyright law related to the retransmission of a television broadcast station by a cable operator."
H.R. 3230: Defending Each and Every Person from False Appearances by Keeping Exploitation Subject to Accountability Act of 2019

116th Congress (2019-2020)
Topics: Legislation - false personation

On June 12, 2019, H.R. 3230 was introduced in the House by Rep. Yvette D. Clarke [D-NY]. It was referred to the House Committee on the Judiciary, Committee on Energy and Commerce, and Committee on Homeland Security.

H.R. 3230 is intended to "combat the spread of disinformation through restrictions on deep-fake video alteration technology." It provides, "Nothing in this section shall be interpreted as a defense against, or as preempting or limiting, any Federal, State, local, or territorial laws, regulations, or policies that prohibit, impose more stringent standards in relation to, or provide additional or alternative remedies or damages in relation to, the production or distribution of advanced technological false personation records, deep fakes, or related content, including criminal and civil laws relating to copyright, tortious conduct, and false personation."

On June 24, 2019, H.R. 3230 was referred to the House Committee on Homeland Security's Subcommittee on Cybersecurity, Infrastructure Protection, and Innovation.

On June 28, 2019, H.R. 3230 was referred to the House Committee on the Judiciary's Subcommittee on Crime, Terrorism, and Homeland Security.

H.R. 3532: China Technology Transfer Control Act of 2019

116th Congress (2019-2020)
Topics: Legislation - trade

On June 27, 2019, H.R. 3532 was introduced in the House by Rep. Mark E. Green [R-TN], and cosponsored by 15 Representatives. It was referred to the House Committees on Foreign Affairs, and Ways and Means.

H.R. 3532 is intended to "control the export to the People's Republic of China of certain technology and intellectual property important to the national interest of the United States, and for other purposes." It provides that "the President shall control the export or re-export to, or transfer in, the People's Republic of China of any covered national interest technology or intellectual property subject to the jurisdiction of the United States or exported by any United States person."
H.R. 3994: Modern Television Act of 2019

H.R. 3994: MODERN TELEVISION ACT OF 2019
116th Congress (2019-2020)
Topics: Defenses - limitations on exclusive rights of secondary transmissions of distant television programming by satellite

On July 25, 2019, H.R. 3994 was introduced in the House by Rep. Steve Scalise [R-LA], and cosponsored by Rep. Anna G. Eshoo [D-CA]. It was referred to the House Committee on Energy and Commerce, and Committee on the Judiciary.

H.R. 3994 is intended to "repeal certain provisions of the Communications Act of 1934, title 17 of the United States Code, and certain regulations, to allow for interim carriage of television broadcast signals, and for other purposes." It repeals 17 U.S.C. § 119 and makes various conforming amendments.

On August 28, 2019, H.R. 3994 was referred to the House Subcommittee on Antitrust, Commercial, and Administrative Law, as well as the House Subcommittee on Courts, Intellectual Property, and the Internet.

H.R. 4083: FINISH Act

H.R. 4083: FINISH ACT
116th Congress (2019-2020)
Topics: Legislation - education

On July 26, 2019, H.R. 4083 was introduced by Rep. Ben McAdams [D-UT], and cosponsored by Reps. Rob Wright [R-TX] and John Katko [R-NY]. It was referred to the House Committee on Education and Labor.

H.R. 4083 was intended to "amend the Higher Education Act of 1965 to support innovative, evidence-based approaches that improve the effectiveness and efficiency of postsecondary education for all students, to allow pay for success initiatives, to provide additional evaluation authority, and for other purposes." It amends 20 U.S.C. § 1138 by adding the following text to the end: "(14) making all forms of postsecondary instructional content widely available, which may include the use of open educational resources (defined, for purpose of this paragraph, as teaching, learning, or research resources that reside in the public domain or have been released under a copyright license that permits their free use, reuse, modification, and sharing with others)."

H.R. 4414: ELECTRONIC BOOKS OPENING OPPORTUNITY FOR KNOWLEDGE ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - education

On September 19, 2019, H.R. 4414 was introduced in the House by Rep. Suzan K. DelBene [D-WA], and cosponsored by Reps. Josh Harder [D-CA] and Susan W. Brooks [R-IN]. It was referred to the House Committee on Education and Labor.

H.R. 4414 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, "From amounts made available by the Secretary that are not otherwise obligated, the Secretary may award grants on a competitive basis to not more than 10 institutions of higher education to reduce the cost of attendance for undergraduate students by providing such students with expanded access to digital course materials." The term "digital course materials" includes "electronic books, portable document format and word-processing documents, internet websites, interactive and adaptive digital learning tools, open educational resources, and other digital and online educational resources." The 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."

H.R. 4471: Back to Basics Job Creation Act of 2019

H.R. 4471: BACK TO BASICS JOB CREATION ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - social security

On September 24, 2019, H.R. 4471 was introduced in the House by Rep. John Lewis [D-GA]. It was referred to the House Committee on Ways and Means.

H.R. 4471 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, "An eligible entity awarded a grant under this section shall use the grant . . . (A) to provide education and training for business and financial literacy, certification, small business plan development, entrepreneurship, and patent and copyright processes; and (B) to provide funding for new small businesses that pay employees at a living wage."
H.R. 4476: Financial Transparency Act of 2019

H.R. 4476: FINANCIAL TRANSPARENCY ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - securities

On September 24, 2019, H.R. 4476 was introduced in the House by Rep. Carolyn B. Maloney [D-NY], and cosponsored by Rep. Patrick T. McHenry [R-NC]. It was referred to the House Committee on Financial Services and the House Committee on Agriculture.

H.R. 4476 is intended to "amend securities, commodities, and banking laws to make the information reported to financial regulatory agencies electronically searchable, to further enable the development of RegTech and Artificial Intelligence applications, to put the United States on a path towards building a comprehensive Standard Business Reporting program to ultimately harmonize and reduce the private sector’s regulatory compliance burden, while enhancing transparency and accountability, and for other purposes." It provides, "Nothing in this Act or the amendments made by this Act may be construed to alter the existing legal protections of copyrighted material or other intellectual property rights of any non-Federal person."

On October 11, 2019, H.R. 4476 was referred to the House Subcommittee on Commodity Exchanges, Energy, and Credit.

H.R. 4675: College Affordability Act

H.R. 4674: COLLEGE AFFORDABILITY ACT
116th Congress (2019-2020)
Topics: Legislation - education

On October 15, 2019, H.R. 4674 was introduced in the House by Rep. Robert C. Scott [D-VA], and cosponsored by 24 representatives. It was referred to the House Committee on Education and Labor.

It is intended to "amend and strengthen the Higher Education Act of 1965 to lower the cost of college for students and families, to hold colleges accountable for students’ success, and to give a new generation of students the opportunity to graduate on-time and transition to a successful career." It provides:

(5) OPEN LICENSING REQUIREMENT.—

(A) COPYRIGHT.—An eligible entity receiving a grant under this section may, with prior approval from the Secretary, assert a copyright in a copyrightable work first produced under the grant.
(B) OPEN LICENSE REQUIREMENT.—

(i) REQUIREMENT.—With respect to each copyrightable work first produced under the grant, except as provided in clause (ii), an eligible entity that asserts a copyright under subparagraph (A) shall provide to the public a non-exclusive, royalty-free, perpetual, irrevocable, worldwide license to carry out each exclusive right provided to that eligible entity under section 106 of title 17, United States Code.

(ii) EXCEPTION.—With respect to a copyrightable work first produced under the grant that employs preexisting material, the requirement described under such subparagraph shall apply to such work to the extent that—

(I) no copyright subsists in such preexisting material; or

(II) the eligible entity is authorized to license such material in the manner described under such subparagraph.

(C) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as affecting the application of the requirements of chapter 18 of title 35, United States Code (commonly known as the ‘Bayh-Dole Act’).

(D) COPYRIGHTABLE WORK DEFINED.—In this subsection, the term ‘copyrightable work’ means a work subject to protection under title 17, United States Code, but does not include a work that may be patentable or otherwise protectable under title 35, United States Code.

On October 31, 2019, the House Committee on Education and Labor considered H.R. 4674 and held a mark-up session. The Bill was ordered to be reported as amended by a vote of 28 to 22.

H.R. 4822: Alice Cogswell and Anne Sullivan Macy Act

H.R. 4822: ALICE COGSWELL AND ANNE SULLIVAN MACY ACT
116th Congress (2019-2020)
Topics: Legislation - education

On October 23, 2019, H.R. 4822 was introduced in the House by Rep. Matt Cartwright [D-PA], and cosponsored by 18 representatives. It was referred to the House Committee on Education and Labor.

H.R. 4822 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."

H.R. 4857: For the 99.8 Percent Act

H.R. 4857: FOR THE 99.8 PERCENT ACT
116th Congress (2019-2020)
Topics: Legislation - tax

On October 24, 2019, H.R. 4857 was introduced in the House by Rep. Jimmy Gomez [D-CA], and cosponsored by 37 representatives. It was referred to the House Committee on Ways and Means.

H.R. 4857 is intended to "amend the Internal Revenue Code of 1986 to reinstate estate and generation-skipping taxes, and for other purposes." It provides that the term "passive asset" means, among other things, any "asset (other than a patent, trademark, or copyright) which produces royalty income."

On November 5, 2019, the Congressional Research Service released the following summary of H.R. 4857:

This bill imposes increased tax rates on decedent estates, gifts, and generation-skipping transfers.

Estates with a value of over $1 billion are taxed at a 77% tax rate. The basic exclusion amount is reduced to $3.5 million.

The bill increases (1) to $3 million the reduction in valuations of farmland for estate tax purposes and adjusts such increased amount for inflation, and (2) to $2 million the maximum estate tax exclusion for contributions of conservation easements.

The bill requires (1) consistent basis reporting for property acquired by gift and transfers in trust, and (2) executors of estates and donors of gifts required to file a gift tax return to disclose to the Department of the Treasury, and to recipients of any interest in an estate or a gift, information identifying the value of each interest received.

The bill sets forth estate valuation rules for certain transfers of nonbusiness assets and limits estate tax discounts for certain individuals with minority interests in a business acquired from a decedent.

The bill expands rules for valuing assets in grantor retained annuity trusts to require that (1) the right to receive fixed amounts from an annuity last for a term of not less than 10 years and not more than the life expectancy of the annuitant plus 10 years, and that such fixed amounts not decrease during the first 10 years of the annuity term, and (2) the remainder
interest have a value when transferred that is not less than the the greater of 25% of the fair market value of the trust property or $500,000. The bill also sets forth rules for the application of transfer taxes to a grantor trust (a trust in which the grantor retains control over the trust assets and has the right to receive income from the trust).

The bill eliminates the generation-skipping transfer tax exemption for any trust whose termination date is not greater than 50 years after its creation.

The bill modifies the gift tax exclusion for annual gifts (currently, $14,000).

H.R. 4997: Artistic Recognition for Talented Students Act

H.R. 4997: ARTISTIC RECOGNITION FOR TALENTED STUDENTS ACT
116th Congress (2019-2020)
Topics: Copyright Office - fees

On November 8, 2019, H.R. 4997 was introduced in the House by Rep. Martha Roby [R-AL], and cosponsored by Rep. Hakeem S. Jeffries [D-NY]. It was referred to the House Committee on the Judiciary.

H.R. 4997 is intended to "amend section 708 of title 17, United States Code, to permit the Register of Copyrights to waive fees for filing an application for registration of a copyright claim in certain circumstances, and for other purposes." It provides:

Section 708 of title 17, United States Code, is amended by adding at the end the following new subsection:

“(c) (1) In this subsection, the term ‘covered competition’ means—

“(A) an art competition sponsored by the Congressional Institute that is open only to high school students; and

“(B) the competition described in section 3 of H. Res. 77, as adopted by the 113th Congress.

“(2) With respect to a work that wins a covered competition, the Register of Copyrights—

“(A) shall waive the requirement under subsection (a)(1) with respect to an application for registration of a copyright claim for that work if that application is filed not later than the last day of the calendar year following the year in which the work claimed by the application wins the covered competition (referred to in this paragraph as the ‘covered year’); and
“(B) may waive the fee described in subparagraph (A) for an application filed after the end of the covered year if the fee would have been waived under that subparagraph had the application been submitted before the last day of the covered year.”.

H.R. 5140: Satellite Television Community Protection and Promotion Act of 2019

H.R. 5140: SATELLITE TELEVISION COMMUNITY PROTECTION AND PROMOTION ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - telecommunications

On November 18, 2019, H.R. 5140 was introduced in the House by Rep. Jerrold Nadler [D-NY]. It was referred to the House Committee on the Judiciary.

H.R. 5140 is intended to "amend title 17, United States Code, to narrow the category of households eligible to receive signals under a distant-signal satellite license, and for other purposes." It provides, "A subscriber of a satellite carrier who receives the secondary transmission of a network station under the statutory license in section 119 of title 17, United States Code, as in effect on the day before the date of the enactment of this Act, and to whom subsection (a)(2)(B) of such section, as amended by subsection (a), does not apply, shall continue to be eligible to receive that secondary transmission from such carrier under such license, and at the royalty rate established for such license by the Copyright Royalty Board or voluntary agreement, as applicable, until the date that is the earlier of—(A) 120 days after the date of the enactment of this Act; or (B) the date on which such carrier provides local-into-local service to all DMAs."

On November 21, 2019, the House Committee on the Judiciary considered H.R. 5140 and held a mark-up session. H.R. 5140 was ordered be reported as amended.


H.R. 5140 was placed on the Union Calendar (Calendar No. 282).

H.R. 5150: Transparency in Government Act of 2019

H.R. 5150: TRANSPARENCY IN GOVERNMENT ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - government transparency

On November 18, 2019, H.R. 5150 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 Reform; Committee on Rules; Committee on House Administration; Committee on the Judiciary; Committee on Ethics; Committee on Financial Services; and Committee on the Budget.

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, "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 each of the following . . . Not subject to any copyright, patent, trademark, or trade secret regulation (with reasonable privacy, security, and privilege restrictions)."

H.R. 5219: Ask Musicians for Music Act of 2019

H.R. 5219: ASK MUSICIANS FOR MUSIC ACT OF 2019
116th Congress (2019-2020)
Topics: Music - sound recording

On November 21, 2019, H.R. 5219 was introduced in the House by Rep. Jerrold Nadler [D-NY]. It was referred to the House Committee on the Judiciary.

It is intended to "amend title 17, United States Code, to require broadcasters to obtain permission to transmit content owned by another person, and for other purposes." It provides, "Section 114(d)(1)(A) of title 17, United States Code, is amended by adding after 'transmission' the following: ', except that, in the case of a transmission made by a radio station, the radio station shall obtain the express authority of the copyright owner of that sound recording for any such transmission (unless the transmission consists of services at a place of worship (or at another religious assembly) or incidental uses of a musical work')."

H.R. 5430: United States-Mexico-Canada Agreement Implementation Act

H.R. 5430: UNITED STATES-MEXICO-CANADA AGREEMENT IMPLEMENTATION ACT
116th Congress (2019-2020)
Topics: Legislation - trade

On December 13, 2019, H.R. 5430 was introduced in the House by Rep. Steny H. Hoyer [D-MD], and cosponsored by Rep. Kevin McCarthy [R-CA].

It defines the term "royalties" to mean "payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use of, or right to use, a
copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, or secret formula or secret process, excluding payments under technical assistance or similar agreements that can be related to a specific service such as--(A) personnel training, without regard to where the training is performed; or (B) if performed in the territory of one or more USMCA countries, engineering, tooling, die-setting, software design and similar computer services, or other services."

On December 19, 2019, H.R. 5430 was considered by the House. It was passed by the House by the Yeas and Nays (385-41). The debate on H.R. 5430 is available at https://www.congress.gov/congressional-record/2019/12/19/house-section/article/H12221-1.

**Senate**

S. 2: Fair Trade With China Enforcement Act

S. 2: FAIR TRADE WITH CHINA ENFORCEMENT ACT
116th Congress (2019-2020)
Topics: Legislation - trade

On January 3, 2019, S. 2 was introduced in the Senate by Sen. Marco Rubio [R-FL] and cosponsored by Sen. Tammy Baldwin [D-WI]. It was referred to the Committee on Finance.


S. 2 is intended to "safeguard certain technology and intellectual property in the United States from export to or influence by the People's Republic of China and to protect United States industry from unfair competition by the People's Republic of China, and for other purposes." It provides that the "Secretary of Commerce shall prohibit the export to the People's Republic of China of any national security sensitive technology or intellectual property [defined to include copyrights] subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States."

On July 19, 2019, the Congressional Research Service released the following summary of S. 2:

This bill revises trade, finance, and tax provisions with respect to China.

The bill directs the Department of Commerce to prohibit the export of certain U.S. technology and intellectual property to China.

The bill places a shareholder cap on Chinese investments in certain U.S. corporations.
Federal agencies are prohibited from using or procuring telecommunications equipment or services from Huawei Technologies Company, ZTE Corporation, or any other entity reasonably believed to be owned or controlled by China.

The bill requires the U.S. Trade Representative to list certain Chinese products that receive support pursuant to China's Made in China 2025 policy. The bill expedites the countervailing duty process (i.e., the imposition of duties to offset a subsidy by a foreign government) for products on such a list.

The bill amends the Internal Revenue Code to (1) repeal certain reduced withholding rates for residents of China, and (2) tax income received by China from certain U.S. investments.

S. 309: For the 99.8 Percent Act

S. 309: FOR THE 99.8 PERCENT ACT
116th Congress (2019-2020)
Topics: Legislation - tax

On January 31, 2019, S. 309 was introduced in the Senate by Sen. Bernard Sanders [I-VT], and cosponsored by Sen. Kristen E. Gillibrand [D-NY]. It was referred to the Senate Committee on Finance. Remarks from the Bill's sponsor are available at https://www.congress.gov/congressional-record/2019/01/31/senate-section/article/S802-1.

S. 309 is intended to "amend the Internal Revenue Code of 1986 to reinstate estate and generation-skipping taxes, and for other purposes." It provides that the term "passive asset" means, among other things, any "asset (other than a patent, trademark, or copyright) which produces royalty income."

The Congressional Research Service released the following summary of S. 309:

This bill imposes increased tax rates on decedent estates, gifts, and generation-skipping transfers.

Estates with a value of over $1 billion are taxed at a 77% tax rate. The basic exclusion amount is reduced to $3.5 million.

The bill increases (1) to $3 million the reduction in valuations of farmland for estate tax purposes and adjusts such increased amount for inflation, and (2) to $2 million the maximum estate tax exclusion for contributions of conservation easements.

The bill requires (1) consistent basis reporting for property acquired by gift and transfers in trust, and (2) executors of estates and donors of gifts required to file a gift tax return to disclose to the Department of the Treasury, and to recipients of any interest in an estate or a gift, information identifying the value of each interest received.
The bill sets forth estate valuation rules for certain transfers of nonbusiness assets and limits estate tax discounts for certain individuals with minority interests in a business acquired from a decedent.

The bill expands rules for valuing assets in grantor retained annuity trusts to require that (1) the right to receive fixed amounts from an annuity last for a term of not less than 10 years and not more than the life expectancy of the annuitant plus 10 years, and that such fixed amounts not decrease during the first 10 years of the annuity term, and (2) the remainder interest have a value when transferred that is not less than the the greater of 25% of the fair market value of the trust property or $500,000. The bill also sets forth rules for the application of transfer taxes to a grantor trust (a trust in which the grantor retains control over the trust assets and has the right to receive income from the trust).

The bill eliminates the generation-skipping transfer tax exemption for any trust whose termination date is not greater than 50 years after its creation.

The bill modifies the gift tax exclusion for annual gifts (currently, $14,000).

S. 775: Scientific Integrity Act

S. 775: SCIENTIFIC INTEGRITY ACT
116th Congress (2019-2020)
Topics: Legislation - scientific integrity

On March 13, 2019, S. 775 was introduced in the Senate by Sen. Brian Schatz [D-HI]. It was referred to the Senate Committee on Commerce, Science, and Transportation.

It is intended to "amend the America COMPETES Act to require certain agencies to develop scientific integrity policies, and for other purposes." It provides, "Nothing in this Act or the amendments made by this Act shall affect the application of United States copyright law."

S. 847: Commercial Facial Recognition Privacy Act of 2019

S. 847: COMMERCIAL FACIAL RECOGNITION PRIVACY ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - privacy

On March 14, 2019, S. 847 was introduced in the Senate by Sen. Roy Blunt [R-MO] and cosponsored by Sen. Brian Schatz [D-HI]. It was referred to the Senate Committee on Commerce, Science, and Transportation.

S. 847 was intended to "prohibit certain entities from using facial recognition technology to identify or track an end user without obtaining the affirmative consent of the end user, and for other purposes." It provides, "Except as provided in paragraph (2), subsections (a)(1) and (b)
shall not apply to controllers that use . . . an application that . . . involves identification of public figures in copyrighted material for theatrical release . . . ."

S. 1059: Fund for Innovation and Success in Higher Education Act

S. 1059: FUND FOR INNOVATION AND SUCCESS IN HIGHER EDUCATION ACT
116th Congress (2019-2020)
Topics: Legislation - education

On April 8, 2019, S. 1059 was introduced in the Senate by Sen. Todd Young [R-IN], and cosponsored by Sens. Michael Bennet [D-CO] and Tim Scott [R-SC]. It was referred to the Senate Committee on Health, Education, Labor, and Pensions.

S. 1059 is intended to "amend the Higher Education Act of 1965 to support innovative, evidence-based approaches that improve the effectiveness and efficiency of postsecondary education for all students, to allow pay for success initiatives, to provide additional evaluation authority, and for other purposes." It provides, "Section 741(a) of the Higher Education Act of 1965 (20 U.S.C. 1138(a)) is amended . . . by adding at the end the following . . . '(14) making all forms of postsecondary instructional content widely available, which may include the use of open educational resources (defined, for purpose of this paragraph, as teaching, learning, or research resources that reside in the public domain or have been released under a copyright license that permits their free use, reuse, modification, and sharing with others)."


S. 1092: SANCTION ENTITIES IN CHINA FOR UNDERMINING RULES, EXPLOITING INTELLECTUAL PROPERTY ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - trade

On April 9, 2019, S. 1092 was introduced in the Senate by Sen. Ted Cruz [R-TX]. It was referred to the Senate Committee on Foreign Relations.

S. 1092 is intended to "impose sanctions with respect to the theft of United States intellectual property by Chinese persons, and for other purposes."

On July 12, 2019, the Congressional Research Service released the following summary of S. 1092:

This bill directs the President to publish a list identifying Chinese individuals and entities responsible for or involved in the misappropriation of intellectual property belonging to a U.S. individual or entity, if such infringement materially contributed to a significant threat to U.S. national security, foreign policy, or economic interests.
The President shall impose property-blocking and visa denial sanctions on the Chinese individuals and entities on the list. The President may remove a person from the list if it is determined that the person has not engaged in any misappropriation of U.S. intellectual property in the past two years and has made assurances to not engage in such activity in the future.

S. 1273: Copyright Alternative in Small-Claims Enforcement Act of 2019

S. 1273: COPYRIGHT ALTERNATIVE IN SMALL-CLAIMS ENFORCEMENT ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - small claims

On May 1, 2019, S. 1273 was introduced in the Senate by Sen. John Kennedy [R-LA], and cosponsored by Sens. Richard J. Durbin [D-IL], Thom Tillis [R-NC], and Mazie K. Hirono [D-HI]. It was referred to the Senate Committee on the Judiciary.

S. 1273 is intended to "amend title 17, United States Code, to establish an alternative dispute resolution program for copyright small claims, and for other purposes."

On July 11, 2019, the Senate Committee on the Judiciary held an Executive Business Meeting to consider S. 1273. For more information about the meeting, please visit https://www.judiciary.senate.gov/meetings/07/11/2019/executive-business-meeting.

On July 18, 2019, the Senate Committee on the Judiciary ordered S. 1273 to be reported favorably without amendment. The bill was sent to the Senate as a whole for consideration.

On September 12, 2019, the Senate Committee on the Judiciary reported S. 1273 without amendment, and with a written report (No. 116-105). S. 1273 also was placed on the Senate Legislative Calendar under General Orders (Calendar No. 206).

On October 30, 2019, the Congressional Research Service released the following summary of S. 1273:

This bill creates the Copyright Claims Board, a body within the U.S. Copyright Office, to decide copyright disputes. Damages awarded by the board are capped at $30,000.

Participation in board proceedings is voluntary with an opt-out procedure for defendants, and parties may choose instead to have a dispute heard in court. If the parties agree to have their dispute heard by the board, they shall forego the right to be heard before a court and the right to a jury trial. Board proceedings shall have no effect on class actions.
The board shall be authorized to hear copyright infringement claims, actions for a declaration of noninfringement, claims that a party knowingly sent false takedown notices, and related counterclaims.

The bill provides for various procedures, including with respect to requests for information from the other party and requests for the board to reconsider a decision.

The board may issue monetary awards based on actual or statutory damages.

The parties shall bear their own attorneys' fees and costs except where there is bad faith misconduct.

A board's final determination precludes relitigating the claims in court or at the board. Parties may challenge a board decision in federal district court only if (1) the decision was a result of fraud, corruption, or other misconduct; (2) the board exceeded its authority or failed to render a final determination; or (3) in a default ruling or failure to prosecute, the default or failure was excusable.

S. 1459: China Technology Transfer Control Act of 2019

S. 1459: CHINA TECHNOLOGY TRANSFER CONTROL ACT OF 2019
116th Congress (2019-2020)
Topics: Legislation - trade

On May 14, 2019, S. 1459 was introduced in the Senate by Sen. Josh Hawley [R-MO], and cosponsored by Sen. Marco Rubio [R-FL]. It was referred to the Senate Committee on Banking, Housing, and Urban Affairs.

S. 1459 is intended to "control the export to the People's Republic of China of certain technology and intellectual property important to the national interest of the United States, and for other purposes."

S. 1655: A bill to provide for the carriage of certain television broadcast stations, and for other purposes.

S. 1655: A BILL TO PROVIDE FOR THE CARRIAGE OF CERTAIN TELEVISION BROADCAST STATIONS, AND FOR OTHER PURPOSES.
116th Congress (2019-2020)
Topics: Legislation - telecommunications

On May 23, 2019, S. 1655 was introduced in the Senate by Sen. Edward J. Markey [D-MA], and cosponsored by Sen. Elizabeth Warren [D-MA]. It was referred to the Senate Committee on Commerce, Science, and Transportation.
S. 1655 is intended to "provide for the carriage of certain television broadcast stations, and for other purposes." It states, "Nothing in this Act shall be construed . . . to affect the applicability of any . . . copyright law related to the retransmission of a television broadcast station by a cable operator."

S. 2454: Go Pack Go Act of 2019

On September 10, 2019, S. 2454 was introduced in the Senate by Sen. Tammy Baldwin [D-WI]. It was referred to the Senate Committee on Commerce, Science, and Transportation.

S. 2454 is intended to "amend the Communications Act of 1934 and title 17, United States Code, to provide greater access to in-State television broadcast programming for cable and satellite subscribers in certain counties." It amends 17 U.S.C. § 119.

S. 2557: Student Aid Improvement Act of 2019

On September 26, 2019, S. 2557 was introduced in the Senate by Sen. Lamar Alexander [R-TN]. It was referred to the Senate Committee on Health, Education, Labor, and Pensions.

S. 2557 is intended to "amend the Higher Education Act of 1965 to improve the financial aid process for students, to provide continued support for minority-serving institutions, and for other purposes." It defines the term "business assets" as "property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights." It provides, "A financial aid administrator shall be considered to be making a necessary adjustment in accordance with subsection (a) if . . . (1) the administrator makes adjustments excluding from family income or assets any proceeds or losses from a sale of farm or business assets of a family if such sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy or a voluntary or involuntary liquidation; or . . . (2) the administrator makes adjustments for a student with a disability so as to take into consideration the additional costs such student incurs as a result of such student's disability."
S. 2581: Legislative Branch Appropriations Act, 2020

On September 26, 2019, S. 2581 was introduced in the Senate by Sen. Cindy Hyde-Smith [R-MS]. It is an original measure from the Senate Committee on Appropriations, and was accompanied by Senate Report No. 116-124, which is available at https://www.congress.gov/congressional-report/116th-congress/senate-report/124. It was placed on the Senate Legislative Calendar under General Orders (Calendar No. 228).

S. 2581 makes "appropriations for the Legislative Branch for the fiscal year ending September 30, 2020, and for other purposes." It provides:

For all necessary expenses of the Copyright Office, $91,840,000, of which not more than $43,221,000, to remain available until expended, shall be derived from collections credited to this appropriation during fiscal year 2020 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 $6,482,000 shall be derived from collections during fiscal year 2020 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 $49,703,000: 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 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).

On September 30, 2019, the Congressional Research Service released the following summary of S. 2581:

This bill provides FY2020 appropriations for the legislative branch, including the Senate and Joint Items such as

the Joint Economic Committee,
the Joint Congressional Committee on Inaugural Ceremonies of 2021,
the Joint Committee on Taxation,
the Office of the Attending Physician, and
the Office of Congressional Accessibility Services.

In addition, the bill provides FY2020 appropriations for

- the Capitol Police;
- the Office of Congressional Workplace Rights;
- the Congressional Budget Office;
- the Architect of the Capitol;
- the Library of Congress, including the Congressional Research Service and the Copyright Office;
- the Government Publishing Office;
- the Government Accountability Office;
- the Open World Leadership Center Trust Fund; and
- the John C. Stennis Center for Public Service Training and Development.

(Pursuant to the longstanding practice of each chamber of Congress determining its own requirements, funds for the House of Representatives are not included in the Senate bill.)

The bill also sets forth permissible and prohibited uses for funds provided by this bill.

S. 2681: Alice Cogswell and Anne Sullivan Macy Act

S. 2681: ALICE COGSWELL AND ANNE SULLIVAN MACY ACT
116th Congress (2019-2020)
Topics: Legislation - education

On October 23, 2019, S. 2681 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, Pensions.

S. 2681 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."
S. 2667: FAFSA Simplification Act of 2019

S. 2667: FAFSA Simplification Act of 2019
116th Congress (2019-2020)
Topics: Legislation - education


S. 2667 is intended to "amend the Higher Education Act of 1965 to make it easier to apply for Federal student aid, to make that aid predictable, to amend the Federal Pell Grant program, and for other purposes." It provides that the term "business assets" means "property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights." It also provides, "A financial aid administrator shall be considered to be making a necessary adjustment in accordance with subsection (a) if—(1) the administrator makes adjustments excluding from family income or assets any proceeds or losses from a sale of farm or business assets of a family if such sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy or a voluntary or involuntary liquidation; or (2) the administrator makes adjustments for a student with a disability so as to take into consideration the additional costs such student incurs as a result of such student's disability."

S. 2824: Artistic Recognition for Talented Students Act

S. 2824: ARTISTIC RECOGNITION FOR TALENTED STUDENTS ACT
116th Congress (2019-2020)
Topics: Legislation - education

On November 7, 2019, S. 2824 was introduced in the Senate by Sen. Thom Tillis [R-NC], and cosponsored by Sen. Patrick J. Leahy [D-VT]. It was referred to the Senate Committee on the Judiciary.

S. 2824 is intended to "amend title 17, United States Code, to require the Register of Copyrights to waive fees for filing an application for registration of a copyright claim in certain circumstances, and for other purposes."

On December 16, 2019, S. 2824 was discharged by the Senate Committee on the Judiciary by unanimous consent. https://www.congress.gov/congressional-record/2019/12/16/senate-section/article/S7058-3. It was then passed by the Senate without amendment by unanimous consent.
On December 17, 2019, S. 2824 was received in the House and referred to the House Committee on the Judiciary.

S. 2920: A bill to reauthorize the Violence Against Women Act of 1994, and for other purposes.

S. 2920: A BILL TO REAUTHORIZE THE VIOLENCE AGAINST WOMEN ACT OF 1994, AND FOR OTHER PURPOSES.
116th Congress (2019-2020)
Topics: Legislation - domestic violence

On November 20, 2019, S. 2920 was introduced in the Senate by Sen. Joni Ernst [R-IA], and cosponsored by 10 senators. It was placed on the Senate legislative calendar under General Orders (Calendar No. 308).

S. 2920 is intended to "reauthorize the Violence Against Women Act of 1994, and for other purposes." It provides, "Section 408 of title 17, United States Code, is amended by adding at the end the following: '(g) Works involving pornography.—With respect to a work involving pornography, in the absence of a validly executed contract assigning ownership of the work, any individual appearing in the work may obtain registration under this section of a copyright claim in the work as a joint work."

S. 2932: Ask Musicians for Music Act of 2019

S. 2932: ASK MUSICIANS FOR MUSIC ACT OF 2019
116th Congress (2019-2020)
Topics: Music - sound recording

On November 21, 2019, S. 2932 was introduced in the Senate by Sen. Marsha Blackburn [R-TN]. It was referred to the Senate Committee on the Judiciary.

It is intended to "amend title 17, United States Code, to require broadcasters to obtain permission to transmit content owned by another person, and for other purposes." It provides, "Section 114(d)(1)(A) of title 17, United States Code, is amended by adding after 'transmission' the following: ', except that, in the case of a transmission made by a radio station, the radio station shall obtain the express authority of the copyright owner of that sound recording for any such transmission (unless the transmission consists of services at a place of worship (or at another religious assembly) or incidental uses of a musical work)."
Resolutions

H. Res. 369: Expressing the Sense of the House of Representatives Supporting the Federal Workforce.

H. RES. 369: EXPRESSING THE SENSE OF THE HOUSE OF REPRESENTATIVES SUPPORTING THE FEDERAL WORKFORCE.
116th Congress (2019-2020)
Topics: Legislation - federal workforce
URL: https://www.congress.gov/bill/116th-congress/house-resolution/369

On May 9, 2019, H. Res. 369 was introduced in the House by Rep. Eleanor Holmes Norton [D-DC], and cosponsored by Reps. Barbara Lee [D-CA] and Gwen Moore [D-WI]. It was referred to the House Committee on Oversight and Reform.

H. Res. 369 provides that "Whereas Federal employees perform scientific, technical, and legal work to protect copyrights, trademarks, and patents in furtherance of the United States progress in technology, biosciences, and international competition . . . That it is the sense of the House of Representatives that (1) Federal employees should be applauded for their tireless work and extensive efforts on behalf of the people of the United States; (2) Federal employees further should be recognized for the benefits that they bring to the public welfare, to the progress of democracy, and to the United States as a whole; and (3) Federal employees’ salaries and benefits should not be uniquely targeted for deficit reduction."

- 261 -
III. COPYRIGHT OFFICE

Rulemakings

Copyright Office Fees Rulemaking

COPYRIGHT OFFICE FEES
Supplemental Notice of Proposed Rulemaking on 6/21/2019
Topics: Copyright Office - rulemaking, Copyright Office - fees, Copyright Office - recordation,
Literary work - Internet work, Music - musical work, Music - sound recording

As part of its ongoing fee study, the Copyright Office proposes limited revisions to its previously
proposed fee schedule relating to document recordation and new prospective group registration
options. The proposed modifications would adjust the fee structure for document recordation
from a fee formula based on the number of titles to a formula based on the number of works and
alternate titles and registration numbers to which a document pertains, and make certain other
clarifications. The Office is also noticing its intention to issue fees for its previously-proposed
group registration options for short online literary works and for works contained on an album of
music. The Office is providing an opportunity to the public to comment on these specific
proposed changes before the Office's fee schedule is submitted to Congress.

COPYRIGHT OFFICE FEES RULEMAKING WRITTEN COMMENTS
Written Comments on 7/22/2019
Topics: Copyright Office - rulemaking, Copyright Office - fees, Copyright Office - recordation,
Literary work - Internet work, Music - musical work, Music - sound recording
URL: https://www.copyright.gov/rulemaking/feestudy2018/

The Copyright Office received 163 written comment submissions in response to its Copyright
Office Fees rulemaking. They are available by clicking on the links below:

Joshua L. Simmons
joshua.simmons@kirkland.com

- Blaine Harrington III Worldwide Travel Photography
Joshua L. Simmons
joshua.simmons@kirkland.com

ABA-IPL Copyright Division
https://www.americanbar.org/groups/intellectual_property_law/committees/copyrights-division/

ABA-IPL Copyright Division
https://www.americanbar.org/groups/intellectual_property_law/committees/copyrights-division/

Joshua L. Simmons
joshua.simmons@kirkland.com


COPYRIGHT OFFICE SUBMITS PROPOSED FEE SCHEDULE AND ANALYSIS TO CONGRESS
Topics: Copyright Office - fees
URL: https://www.copyright.gov/newsnet/2019/783.html

The Copyright Office has submitted to Congress a proposed schedule and analysis of fees for Copyright Office services in accordance with copyright law. The proposed schedule recommends new fees for certain Office services, including applications to register copyrights, record documents, and issue certifications, among others. This proposed schedule follows the Office’s comprehensive cost study, which included a number of comments that the Office considered carefully. It also reflects modifications to the Office’s earlier proposals based on public comment, including a reduction in proposed increases.

Pursuant to copyright law, the Register of Copyrights may institute the new fees 120 days after the proposed schedule is submitted to Congress, unless Congress enacts a law within the 120-day period stating that it does not approve the schedule.

The Office seeks to implement the new fees in the spring of 2020 pursuant to regulations to be issued by the Register of Copyrights. The proposed fee schedule and analysis is available here.

Designations of Mechanical Licensing Collective and Digital Licensee Coordinator Rulemaking

DESIGNATION OF MUSIC LICENSING COLLECTIVE AND DIGITAL LICENSEE COORDINATOR
Final Rule on 7/8/2019
Topics: Copyright Office - rulemaking, Music - musical work, Music - sound recording

Pursuant to title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, and following a solicitation of proposals and public comment on those proposals, the Register is designating the entities who will perform certain functions relating to the compulsory license for digital music providers to make and distribute digital phonorecord deliveries. For the reasons published in this document, the Register designates Mechanical Licensing Collective, Inc. as the mechanical
licensing collective and Digital Licensee Coordinator, Inc. as the digital licensee coordinator, including their individual proposed board members.

**Freedom of Information Act Regulations Rulemaking**

**FREEDOM OF INFORMATION ACT REGULATIONS**

Final Rule on 2/13/2019

Topics: Copyright Office - Freedom of Information Act, Copyright Office - rulemaking


The U.S. Copyright Office is issuing a final rule that amends its regulations governing its practices and procedures under the Freedom of Information Act (FOIA). The final rule closely follows the February 7, 2017 interim rule, implementing the FOIA Improvement Act of 2016. The final rule makes limited modifications to align with public comments and to promote further regulatory clarity and customer service.

**Group Registration of Newspapers Rulemaking**

**GROUP REGISTRATION OF NEWSPAPERS**

Final Rule on 2/13/2019

Topics: Copyright Office - rulemaking, Copyright registration - rulemaking, Literary work - newspaper


The U.S. Copyright Office is amending its regulation governing the group registration option for newspaper issues. This rule will eliminate the three-month deadline for submitting this type of claim. Based on requests received from several newspaper publishers, the Office has determined that there is a legitimate need to make this change effective immediately.

**GROUP REGISTRATION OF NEWSPAPERS**

Final Rule on 11/12/2019

Topics: Copyright Office - rulemaking, Copyright registration - rulemaking, Literary work - newspaper


The U.S. Copyright Office is amending its regulation governing the group registration option for newspapers. Under the current regulation, applicants are required to upload a complete copy of each newspaper issue through the Office's electronic registration system. Applicants may also submit their newspaper issues on microfilm on a voluntary basis (in addition to and at the same time as submitting the required digital files), provided the microfilm is received by December 31, 2019. The microfilm option expires at the end of this year; therefore, today's final rule eliminates the reference to that option.
GROUP REGISTRATION OF SERIALS
Final Rule on 11/12/2019
Topics: Copyright Office - rulemaking, Copyright registration - rulemaking, Literary work - serial

The U.S. Copyright Office is amending its regulation governing the group registration option for serials. Under the current regulation, applicants may complete and submit the online application designated for a group of serial issues, or they may complete and submit a paper application using Form SE/Group, provided the Office receives the paper form by December 30, 2019. Applicants submitting Form SE/Group may submit a physical copy of each issue in the group; applicants using the online application may upload one electronic copy of each issue through the Office's electronic registration system or they may submit one physical copy, provided the Office receives the physical copy by December 30, 2019.

GROUP REGISTRATION OF SHORT ONLINE LITERARY WORKS RULEMAKING
WRITTEN COMMENTS
Written Comments on 2/19/2019
Topic: Copyright Office - written comments, Copyright registration - rulemaking, Literary work - Internet work
URL: https://www.copyright.gov/rulemaking/shortonline-literaryworks/

The Copyright Office received eight written comment submissions in response to its group registration of short online literary works proposed rulemaking. They are available by clicking on the links below:

GROUP REGISTRATION OF UNPUBLISHED WORKS
Final Rule on 2/13/2019
Topics: Copyright Office - rulemaking, Copyright registration - rulemaking

The U.S. Copyright Office is modernizing its practices and procedures to increase the efficiency and quality of the registration process. As part of this effort, this final rule establishes a new group registration option for a limited number of unpublished works, replacing the prior accommodation for “unpublished collections.” The new group registration option will allow the Office to examine each work for copyrightable authorship, create a more robust record of the claim, and improve the overall efficiency of the registration process. In addition, the final rule makes certain technical amendments to the regulations governing the group registration option for photographs.

COPYRIGHT OFFICE INSTITUTES NEW GROUP REGISTRATION PROCEDURE FOR UNPUBLISHED WORKS
Announcement on 3/11/2019
Topics: Copyright Office - rulemaking, Copyright registration- rulemaking
URL: https://www.copyright.gov/title37/202/37cfr202-4.html

Starting on March 15, the Copyright Office is instituting a new group registration procedure for unpublished works. The Group Registration for Unpublished Works (GRUW) will replace the Unpublished Collections registration procedure. Applicants may no longer submit claims for unpublished collections on the Standard Application or a paper application. Beginning on March 15, 2019, applicants must use the new GRUW Online Application and must submit electronic deposits for each of the works included in the claim.

The new procedure will benefit authors of unpublished works by creating a detailed public record of their registration that will identify by title all the works covered by their claim. Additionally, every work included in a GRUW application will be separately examined by the Copyright Office’s registration staff.

A GRUW application may include up to ten works. The works may be individual works, joint works, or derivative works. All the works in the application must have the same author or co-authors and be of the same type. Additionally, all authors must be named as copyright claimants.
Databases, collective works, compilations, and websites are not eligible for this type of registration.

Regulations governing GRUW are found at section 202.4(c) of Title 37 of the Code of Federal Regulations. Supplementary registrations will be available. An applicant will be asked to contact the Office of Registration Policy and Practice for instructions on filing a supplementary registration.

**Group Registration of Works on an Album of Music Rulemaking**

GROUP REGISTRATION OF WORKS ON AN ALBUM OF MUSIC
Notice of Proposed Rulemaking on 5/20/2019
Topics: Copyright Office - rulemaking, Copyright registration- rulemaking, Music - musical work
URL: https://www.federalregister.gov/documents/2019/05/20/2019-10166/group-registration-of-works-on-an-album-of-music

The U.S. Copyright Office is proposing to create a new group registration option for musical works, sound recordings, and certain other works contained on an album. The proposed rule will expand the registration options currently available to register multiple musical works or sound recordings under one application. In particular, this proposed group registration option will permit the registration of multiple musical works and/or sound recordings distributed together, regardless of whether such distribution occurs via physical or digital media.

**Music Modernization Act Blanket License Implementation Rulemaking**

MUSIC MODERNIZATION ACT IMPLEMENTING REGULATIONS FOR THE BLANKET LICENSE FOR DIGITAL USES AND MECHANICAL LICENSING COLLECTIVE
Notification of Inquiry on 9/24/2019
Topics: Copyright Office - rulemaking, Music - mechanical license, Music - musical work

The U.S. Copyright Office is issuing a notification of inquiry regarding the Musical Works Modernization Act, title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. Title I establishes a blanket compulsory license, which digital music providers may obtain to make and deliver digital phonorecords of musical works. The blanket license, which will be administered by a mechanical licensing collective, will become available on January 1, 2021. The MMA specifically directs the Copyright Office to adopt a number of regulations to govern the new blanket licensing regime, including regulations regarding notices of license, notices of nonblanket activity, usage reports and adjustments, information to be included in the mechanical licensing collective's database, database usability, interoperability, and usage restrictions, and the handling of confidential information. The statute also vests the Office with general authority to adopt such regulations as may be necessary or appropriate to effectuate this new blanket licensing structure. To promulgate these regulations, the Office seeks public comment regarding the subjects of inquiry discussed in this notification.
The Copyright Office received 15 written comment submissions in response to its Music Modernization Act blanket license implementation rulemaking. They are available by clicking on the links below:

The U.S. Copyright Office is extending the deadline for the submission of written reply comments in response to its September 24, 2019 notification of inquiry regarding implementation regulations for the Musical Works Modernization Act, title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act.

The Copyright Office received 14 written comment submissions in response to its Music Modernization Act blanket license implementation regulations rulemaking. They are available by clicking on the links below:

ABA-IPL Copyright Division
https://www.americanbar.org/groups/intellectual_property_law/committees/copyrights-division/


MUSIC MODERNIZATION ACT BLANKET LICENSE IMPLEMENTATION REGULATIONS RULEMAKING REPLY WRITTEN COMMENTS
Written Comments on 11/8/2019
Topics: Copyright Office - rulemaking, Music - mechanical license, Music - musical work
URL: https://www.copyright.gov/rulemaking/mma-implementation/

The Copyright Office received 17 written comment submissions in response to its Music Modernization Act blanket license implementation regulations rulemaking. They are available by clicking on the links below:

Noncommercial Use of Pre-1972 Sound Recordings That Are Not Being Commercially Exploited Rulemaking

NONCOMMERCIAL USE OF PRE-1972 SOUND RECORDINGS THAT ARE NOT BEING COMMERCIALY EXPLOITED
Notice of Proposed Rulemaking on 2/5/2019
Topics: Music - pre-1972 sound recordings, Music - sound recording
URL: https://www.federalregister.gov/documents/2019/02/05/2019-00873/noncommercial-use-of-pre-1972-sound-recordings-that-are-not-being-commercially-exploited

The U.S. Copyright Office (“Copyright Office” or “Office”) is issuing a notice of proposed rulemaking regarding the Classics Protection and Access Act, title II of the recently enacted
Orrin G. Hatch-Bob Goodlatte Music Modernization Act. In connection with the establishment of federal remedies for unauthorized uses of sound recordings fixed before February 15, 1972 ("Pre-1972 Sound Recordings"), Congress also established an exception for certain noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited. To qualify for this exemption, a user must file a notice of noncommercial use after conducting a good faith, reasonable search to determine whether the Pre-1972 Sound Recording is being commercially exploited, and the rights owner of the sound recording must not object to the use within 90 days. After soliciting public comments through a notice of inquiry, the Office is proposing regulations identifying the specific steps that a user should take to demonstrate she has made a good faith, reasonable search. The proposed rule also details the filing requirements for the user to submit a notice of noncommercial use and for a rights owner to submit a notice objecting to such use.

NONCOMMERCIAL USE EXCEPTION TO UNAUTHORIZED USES OF PRE-1972 SOUND RECORDINGS RULEMAKING WRITTEN COMMENTS
Written Comments on 3/7/2019
Topics: Copyright Office - rulemaking, Copyright Office - written comments, Music - pre-1972 sound recordings, Music - sound recording
URL: https://www.copyright.gov/rulemaking/pre1972-soundrecordings-noncommercial/

The Copyright Office received nine written comment submissions in response to its noncommercial use of pre-1972 sound recordings that are not being commercially exploited rulemaking. They are available by clicking on the links below:


NONCOMMERCIAL USE OF PRE-1972 SOUND RECORDINGS THAT ARE NOT BEING COMMERCIALY EXPLOITED; CORRECTION
Final Rule; Correction on 5/9/2019
Topics: Music - pre-1972 sound recordings, Music - sound recording

The U.S. Copyright Office is correcting a final rule that appeared in the Federal Register on April 9, 2019. The document incorrectly numbered paragraphs governing the filing fees of certain documents that can be filed with the Copyright Office.

Registration Modernization Rulemaking

REGISTRATION MODERNIZATION RULEMAKING WRITTEN COMMENTS
Written Comments on 1/15/2019
Topic: Copyright Office - written comments, Copyright Office - modernization
URL: https://www.copyright.gov/rulemaking/reg-modernization/

The Copyright Office received 54 written comment submissions in response to its Registration Modernization proposed rulemaking. They are available by clicking on the links below:

• Copyright Clearance Center (https://www.regulations.gov/document?D=COLC-2018-0009-0022)
Rules Regarding Schedules of Pre-1972 Sound Recordings and Notices of Contact Information By Transmitting Entities Rulemaking

FILING OF SCHEDULES BY RIGHTS OWNERS AND CONTACT INFORMATION BY TRANSMITTING ENTITIES RELATING TO PRE-1972 SOUND RECORDINGS
Final Rule on 3/22/2019
Topics: Copyright Office - rulemaking, Music - pre-1972 sound recordings, Music - sound recording

Pursuant to the Classics Protection and Access Act, title II of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (“MMA”), the U.S. Copyright Office is adopting as final a rule regarding the filing of schedules by rights owners listing their sound recordings fixed before February 15, 1972, and the filing of contact information by entities publicly performing these sound recordings by means of digital audio transmission. This rule largely finalizes the interim rule published on October 16, 2018, with some adjustments adopted in response to public comment.
Simplifying Copyright Registration for Architectural Works Rulemaking

SIMPLIFYING COPYRIGHT REGISTRATION FOR ARCHITECTURAL WORKS
RULEMAKING WRITTEN COMMENTS
Written Comments on 2/11/2019
Topics: Copyright Office - rulemaking, Copyright registration - rulemaking, Copyright Office - written comments, Architectural work - drawing, Architectural work - photograph
URL: https://www.copyright.gov/rulemaking/architecturalworks/

The Copyright Office received three written comment submissions in response to its Simplifying Copyright Registration for Architectural Works proposed rulemaking. They are available by clicking on the links below:


Technical Amendments to Section 115 Compulsory License Regulations Rulemaking

NOTICES OF INTENTION AND STATEMENTS OF ACCOUNT UNDER COMPULSORY LICENSE TO MAKE AND DISTRIBUTE PHONORECORDS OF MUSICAL WORKS
Final Rule on 3/22/2019
Topics: Copyright Office - rulemaking, Music - sound recording

The U.S. Copyright Office is issuing final regulations pursuant to the Musical Works Modernization Act, title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. This rule adopts previously issued interim regulations as final. The interim rule amended the Office's prior regulations pertaining to the compulsory license to make and distribute phonorecords of musical works so as to conform the prior regulations to the new law, including with respect to the operation of notices of intention and statements of account. In addition to adopting the interim rule as final, this final rule makes further technical changes to update cross-references to regulations that were recently amended by the Copyright Royalty Judges.
The U.S. Copyright Office has submitted a letter to Congress detailing the results of the Office’s public inquiry on how certain visual works, particularly photographs, graphic artworks, and illustrations, are registered, monetized, and enforced under the Copyright Act of 1976. The Office sought commentary on the marketplace for these visual works, as well as observations regarding the real or potential obstacles that creators and users of visual works face when navigating the digital landscape. A number of stakeholders raised specific issues they face on a regular basis regarding current copyright law and practices that fall within three general categories: (1) difficulties with the registration process; (2) challenges with licensing generally and monetizing visual works online; and (3) general enforcement obstacles.

The Copyright Office takes these concerns seriously and has already taken steps to address them where it can, most notably with the ongoing Office modernization efforts in preparation for a wholesale technological upgrade to the Office’s systems. In other areas, the Office finds that legislative action is the best solution. The Office continues to strongly support the idea of a small copyright claims tribunal, as well as a legislative solution to the orphan works conundrum. Congress’ action in these two areas would go far to alleviate several important concerns raised by visual artists.

The U.S. Copyright Office is undertaking an effort to provide additional guidance regarding the determination of a work's publication status for registration purposes. To aid this effort, the Office is seeking public input on this topic, including feedback regarding issues that require clarification generally, as well specific suggestions about how the Office may consider amending its regulations and, as appropriate, effectively advise Congress regarding possible changes to the Copyright Act. Based on this feedback, the Office may solicit further written comments and/or schedule public meetings before moving to a rulemaking process.
Section 512 Study

SECTION 512 STUDY: ANNOUNCEMENT OF PUBLIC ROUNDTABLE
Notice of Public Roundtable on 2/1/2019
Topics: Copyright Office - study, Copyright Office - roundtable, Limitations on liability relating to material online - Copyright Office study

The U.S. Copyright Office is conducting a study to evaluate the impact and effectiveness of the Copyright Act's safe harbor provisions for online service providers. At this time, the Office is announcing that it will hold a one-day public roundtable to allow interested members of the public to address relevant domestic and international developments that have occurred since the close of the written comment period on February 6, 2017. The roundtable is not intended to allow participants to supplement the record with respect to events occurring before that date, and discussion will be limited to the specific topics set forth in this notice.

Unclaimed Royalties Study

UNCLAIMED ROYALTIES STUDY: ANNOUNCEMENT OF PUBLIC SYMPOSIUM
Notice of Public Symposium on 10/30/2019
Topics: Copyright Office - study, Music - musical work, Copyright Office - event

As directed by the Music Modernization Act, the U.S. Copyright Office is conducting a study to evaluate best practices that the Mechanical Licensing Collective should implement in the following areas: (1) To identify and locate musical work copyright owners and unclaimed accrued royalties held by the collective; (2) to encourage musical work copyright owners to claim the royalties of those owners; and (3) to reduce the incidence of unclaimed royalties. To initiate this effort, the Office is holding a one-day symposium to provide an educational foundation and facilitate public discussion on issues relevant to the study. Following this symposium, the Office will separately issue Notices of Inquiry soliciting written comments and announcing roundtables, both of which will provide opportunities for public input on the Unclaimed Royalties Study.

Requests for Information

COPYRIGHT OFFICE SEEKS WEBSITE USER FEEDBACK
Topic: Copyright Office - information request
URL: https://www.copyright.gov/newsnet/

The Office of Public Information and Education (PIE) is taking a fresh look at the Copyright Office website – copyright.gov – to see how we can serve the public better.
To help [PIE], and to better understand user experiences with copyright.gov, [they] are inviting external users to provide feedback on both website navigability (Can you find what you are looking for?) and content availability (What, if any, content would you like to see added or changed on copyright.gov?).

Please note that this exercise will not look at the recordation system or the online registration system (eCO) but instead will focus on the rest of copyright.gov.

Letters

Section 119 Compulsory License

VIEWS OF THE U.S. COPYRIGHT OFFICE CONCERNING SECTION 119 COMPULSORY LICENSE
Letter on 6/3/2019
Topics: Defenses - limitations on exclusive rights of secondary transmissions of distant television programming by satellite

I am pleased to deliver this response to your letter of May 28, 2019, regarding the compulsory license for secondary transmissions of distant broadcast programming by satellite under section 119 of the U.S. Copyright Act. The Copyright Office has administered the section 119 compulsory license since it was added as a temporary license in 1988, and we appreciate the opportunity to provide you with detailed information in response to your request for the Office's views about the current usage of this compulsory license and whether it should be reauthorized.

As detailed in the attached response, after considering the general ecosystem for licensing video content and the limited current usage of the section 119 license, the Office again recommends letting the license sunset without renewal. This recommendation is consistent with the Office's long-standing position on the section 119 compulsory license, reflected in the Office's previous comprehensive reports to Congress in 2011 and 2008, recommending that the license be allowed to sunset. We appreciate, however, that Congress is considering fully the many equities involved as it deliberates whether to reauthorize this license, set to expire on December 31, 2019. We would be pleased to provide further information on this subject and look forward to working with you on this issue.
We write to you today following the U.S. Supreme Court's recent decision in Fourth Estate Public Benefit Corporation v. Wall-Street.com, LLC, which resolved a split among circuit courts of appeal in favor of requiring the Copyright Office to finish the registration process before an infringement lawsuit can be filed. As Chairman and Ranking Member of the Committee with oversight of the copyright laws, we are concerned about the impact that this ruling will have on the ability of creators and rights-holders to seek timely relief of infringement due to the amount of time it currently takes to complete the standard registration process.

We are aware that the Copyright Office also has created expedited procedures for registration, although they are more expensive, and has begun the process of making much needed improvements to the Office's IT systems. We ask for the Copyright Office to provide us with the current status of the length of time it takes to register (particularly whether the seventh month period cited in Fourth Estate is still the average), the different options available to rightsholders for registration, and the Copyright Office's current plan and projections for lowering the time needed for standard registration to be closer to what it was when the relevant statutory provision, 17 U.S.C. § 411(a), was passed.

More generally, so that we can also understand how lowering the registration pendency fits within the broader context of Copyright Office modernization efforts, we request that the Copyright Office continue its practice of producing five-year strategic plans, and issue a strategic plan for 2021-2025.

*Restoration of Copyrighted Works*

COPYRIGHT RESTORATION OF WORKS IN ACCORDANCE WITH THE URUGUAY ROUND AGREEMENTS ACT
Notice on 2/4/2019
Topics: Copyrightability - copyright in restored works

The U.S. Copyright Office is publishing a list of works for which it has received and processed a Notice of Intent to Enforce copyrights restored under the Uruguay Round Agreements Act. The Office is required by law to publish such lists to provide a public record of works in which copyrights have been restored and whose owners have notified the Office of their intent to
enforce those copyrights. In addition, publication triggers the statutory 12-month grace period within which reliance parties may continue to exploit existing copies of the identified works.

**Compendium**

PUBLIC DRAFT OF THE COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES
Release of Public Draft on 3/15/2019
Topics: Copyright Office - Compendium

The U.S. Copyright Office is announcing the release of a public draft of an update to its administrative manual, the Compendium of U.S. Copyright Office Practices, Third Edition. The update has been released in draft form to give the public an opportunity to review and provide comments on the revisions.

PUBLIC DRAFT OF THE COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES
Extension of Comment Period on 5/14/2019
Topics: Copyright Office - Compendium

The U.S. Copyright Office is extending the deadline for the submission of written comments in response to its March 15, 2019, notice announcing the release of a public draft of an update to its administrative manual, the Compendium of U.S. Copyright Office Practices, Third Edition.

**Audit**

LIBRARY OF CONGRESS PUBLISHES RESULTS OF AN INDEPENDENT AUDIT OF THE FISCAL YEAR 2018 FIDUCIARY FINANCIAL STATEMENTS
Topics: Copyright Office - audit

Earlier this year, the Library of Congress contracted with an independent public accounting firm, Cotton & Company LLP, to conduct an audit of the financial statements prepared for the fiduciary assets administered by the Copyright Office's Licensing Division. The purpose of this independent audit was to provide an opinion on the fairness of the statements in accordance with generally accepted accounting principles and to report on internal control over financial reporting and compliance with applicable laws and regulations.

The audit found:
- The fiduciary financial statements for fiscal year 2018 are presented fairly;
- No material weakness or significant deficiencies were present in the internal control over financial reporting; and
• There is no reportable noncompliance with the provisions of applicable laws and regulations.

For more about the results of this audit, read the recently published report, Statutory Licensing Fiduciary Assets Financial Statements and Independent Auditors' Report.

**Announcements**

**Staff**

KEVIN R. AMER APPOINTED DEPUTY GENERAL COUNSEL
Topics: Copyright Office - leadership
URL: https://www.copyright.gov/about/leadership/kevin-amer.html

Acting Register of Copyrights Karyn A. Temple has appointed Kevin R. Amer deputy general counsel of the United States Copyright Office. His appointment is effective March 3, 2019.

In his position, Amer assists the General Counsel and Associate Register of Copyrights in providing legal guidance to the Office’s divisions, promulgating regulations governing the administration of the copyright system, advising congressional offices and other federal agencies, and developing legal positions in copyright litigation and other matters.

KARYN A. TEMPLE IS NAMED REGISTER OF COPYRIGHTS
Topics: Copyright Office - leadership
URL: https://www.copyright.gov/about/leadership/karyn-temple.html

Librarian of Congress Carla Hayden announced that she has appointed Karyn A. Temple as Register of Copyrights and director of the U.S. Copyright Office, effective today, March 27, 2019. Temple has been Acting Register of Copyrights since October 21, 2016.

COPYRIGHT OFFICE ANNOUNCES OPEN APPLICATION PERIOD FOR RINGER FELLOWSHIPS
Topics: Copyright Office - announcement
URL: https://www.copyright.gov/about/special-programs/ringer.html

The United States Copyright Office is now accepting applications for the Barbara A. Ringer Copyright Honors Program. This fellowship, which runs eighteen- to twenty-four months, was created for attorneys in the initial stages of their careers who demonstrate exceptional ability and interest in copyright law. Ringer Fellows work closely with senior attorneys and others in the Office of the General Counsel, the Office of Policy and International Affairs, the Office of the Register, and the Office of Registration Policy and Practice on a range of copyright-related law and policy matters. Ringer Fellows serve as full-time federal employees for the term of their fellowships and are eligible for salary and benefits as permitted under federal law.
Additional details about the Ringer Fellowship, including the application process, can be found on the Barbara A. Ringer Copyright Honors Program website. Applications will be accepted through September 30, 2019.

U.S. COPYRIGHT OFFICE OPENS CHIEF OF OPERATIONS SEARCH
Topics: Copyright Office - leadership
URL: https://www.usajobs.gov/GetJob/ViewDetails/540928400/

The U.S. Copyright Office announced the search for a chief of operations. The chief of operations is a principal advisor to the Register of Copyrights on all aspects of operations and planning and is responsible for coordinating and directing certain operational activities of the Copyright Office, including human resources and administrative services.

This position is key to implementing the U.S. Copyright Office Strategic Plan, 2019–2023 and coordinates strategic planning for all components of the Copyright Office. With the Register of Copyrights, the chief of operations establishes short- and long-term goals for each office, consistent with the vision of the Register, as well as goals that cross the organization, developing a plan and methods to achieve those goals.

Applications are due September 9. For more information and to apply for the position, visit the posting on USAJOBS at.

KIMBERLEY A. ISBELL APPOINTED DEPUTY DIRECTOR OF POLICY AND INTERNATIONAL AFFAIRS
Topics: Copyright Office - leadership
URL: https://www.copyright.gov/newsnet/2019/777.html

Register of Copyrights Karyn A. Temple has appointed Kimberley A. Isbell as deputy director of policy and international affairs at the United States Copyright Office. Her appointment is effective September 1, 2019.

In her position, Isbell will assist the Associate Register of Copyrights and Director of Policy and International Affairs with critical policy functions of the Office, including domestic and international policy analyses, legislative support, and trade negotiations. The Office of Policy and International Affairs represents the U.S. Copyright Office at meetings of government officials concerned with the international aspects of copyright protection and enforcement and provides regular support to Congress and its committees.
COPYRIGHT OFFICE WELCOMES NEW RINGER FELLOW
Topics: Copyright Office - announcement
URL: https://www.copyright.gov/newsnet/2019/780.html

The U.S. Copyright Office announced that Cassandra Sciortino has joined the Office as a fellow (2019–2021) in the Barbara A. Ringer Copyright Honors Program. Sciortino earned her JD at the Antonin Scalia Law School at George Mason University in 2019, where she was a research editor for the George Mason Law Review and a board member of the George Mason Moot Court Board. During law school, she worked in the George Mason Arts & Entertainment Clinic, and interned at the U.S. Copyright Office as well as the National Music Publishers’ Association. Sciortino received her BA magna cum laude in English and philosophy from the University of Mary Washington, where she served as music director for one of the coed a cappella groups, received departmental honors in philosophy, and was awarded the Philosophy and Law Prize.

REGISTER KARYN A. TEMPLE ANNOUNCES DEPARTURE FROM THE COPYRIGHT OFFICE
Topics: Copyright Office - leadership, Copyright Office - announcement
URL: https://www.copyright.gov/newsnet/2019/791.html

Today, Register of Copyrights Karyn Temple announced that she will be leaving the Copyright Office on January 3, 2020, to accept a new position with the Motion Picture Association. Temple has worked at the Copyright Office since 2011, first in the Office of Policy and International Affairs where she advised Congress on important copyright law and policy issues and was involved in several treaty negotiations, including the successful Marrakesh treaty that Congress implemented last year. She served as Acting Register of Copyrights from October 2016 until March 2019, when she was appointed Register. During her tenure, she spearheaded modernization efforts, oversaw improvements such as new public outreach mechanisms, the elimination of the registration backlog, and reduced registration processing times. Temple noted, "I have been continuously inspired by the excellent staff of the Copyright Office. They have served the American people well and are dedicated to the administration of the Copyright Act. It has been an honor for me to work at the Copyright Office, and, while I am looking forward to the next chapter, I will greatly miss all of the talented staff of the Copyright Office. I am truly grateful for the support and friendship of the entire Copyright Office staff during my tenure here."

"Karyn has been a huge asset for the U.S. Copyright Office throughout her tenure here. Her leadership in the effort to modernize the Copyright Office's IT infrastructure, in close collaboration with the Library of Congress, has greatly improved critical functions and paved the way for a modernized Copyright system," said Dr. Carla Hayden, Librarian of Congress. "On behalf of the staff of the U.S. Copyright Office and the entire Library of Congress, I want to thank Karyn for her service and wish her all the best in her new role." The Librarian of Congress is developing a transition plan and will appoint an Acting Register, who will serve during the search for the next Register.
Librarian of Congress Carla Hayden announced today that she has appointed Maria Strong as Acting Register of Copyrights and Director of the U.S. Copyright Office, effective January 5, 2020. She succeeds Register of Copyrights Karyn A. Temple, who announced last week that she will be leaving the Copyright Office to accept a new position in the private sector.

Modernization

COPYRIGHT OFFICE ADDS 24 MILLION IMAGES TO VIRTUAL CARD CATALOG PROOF OF CONCEPT
Topics: Copyright Office - modernization
URL: https://copyright.gov/vcc/

The Copyright Office updated the Virtual Card Catalog (VCC) proof of concept yesterday with more than 24 million card images from 1870 through 1954. These images contain Copyright Registrations, Assignments, Notices of Use, Commercial Prints and Labels, Title Indexes, and Pseudonym Files. The addition of these card images expands the range of card images from 1870 through 1977, totaling more than 41 million card images. The Office welcomes the public to browse the newly added indexes and provide feedback through the Virtual Card Catalog website at vcc.copyright.gov.

COPYRIGHT OFFICE ANNOUNCES SECOND MODERNIZATION WEBINAR
Topics: Copyright Office - modernization
URL: https://locgov.webex.com/locgov/onstage/g.php?MTID=ef9474e1b7b24f85ef0520382c8221aa7

The Copyright Office will host its second public modernization webinar on March 28, 2019, at noon eastern time. This webinar will focus on the development of user-centered design principals, such as evaluating how people use and experience online services, to better inform development of future interfaces.

Panelists will discuss the importance of testing with internal and external audiences. These tests are part of an overall effort to shape designs for a reimagined registration system. Webinar presenters will share some conceptual designs and features being considered for system development. To participate in this webinar, register here.
COPYRIGHT OFFICE LAUNCHES STRATEGIC PLAN 2019–2023

The U.S. Copyright Office released its strategic plan that sets priorities of the Office for the next five years. The plan describes how the Office will streamline and improve the efficiency of services while actively participating in discussions, both national and international, on ways to further transform the Office to better meet the needs of a modern digital society.

Six focus areas, Information Technology Modernization, Optimizing Business Processes, Organizational Change Management, Education and Engagement, Impartial Expertise on Copyright Law and Policy, and Measuring Success, set the themes for goals that fulfill the Office’s mission. The themes reflected in the United States Copyright Office 2019–2023 Strategic Plan, also align with the Library of Congress’s strategy framework: Expand Access, Enhance Services, Optimize Resources and Measure Impact. “These are exciting times at the Copyright Office,” said Karyn A. Temple, Register of Copyrights. “The Office looks forward to the challenge and the opportunity of remaking itself for the twenty-first century.”

The Office has committed itself to adopting quantifiable, measurable goals and benchmarks to improve transparency regarding the pace and progress of Office modernization. Throughout this process, the Office will seek continued engagement with stakeholders through a multiplatform communications plan that focuses on reaching people where they are and through the means by which they prefer to communicate. The Strategic Plan is available here.

ELECTRONIC COPYRIGHT OFFICE (ECO) SYSTEM USERS MUST UPDATE THEIR PASSWORDS EVERY SIXTY DAYS

Beginning April 14, 2019, users of the Electronic Copyright Office (eCO) system will need to reset their passwords every sixty days.

Users who attempt to login with a password that has already expired will be taken directly to a screen to reset it. Users who have a password within a few days of expiring will be prompted to reset the password after logging into eCO.

eCO users will receive notification in advance of the date by which the password must be changed. If no action is taken to change the password, users will receive an email about the password expiration. For more information, contact CSDTech@copyright.gov.
COPYRIGHT OFFICE ANNOUNCES THIRD MODERNIZATION WEBINAR
Topics: Copyright Office - event, Copyright Office - modernization

The Copyright Office will host its third public modernization webinar on May 30, 2019, at noon eastern time. This webinar will focus on how data management will be applied in relation to copyright data and modernization.

As the Copyright Office modernizes, we’re taking a close look at how we handle our data. The better we manage data, the more effective we’ll be in making decisions. One of our most important goals is to offer quick and easy access to accurate copyright information. Good data management helps make that possible. Suman Shukla, who serves as the Copyright Office’s Data Management section head, will discuss standards for collecting, storing, and analyzing data to better serve the public.

Participants must register for this Copyright Office webinar. The Copyright Office launched its modernization webinar series on January 31, 2019. View past webinars and presentation slides on copyright.gov. The Office will continue to hold additional webinars every other month during modernization to keep the public informed about and involved in the modernization process.

U.S. COPYRIGHT OFFICE RELEASES PAY.GOV FORM FOR SA3 CABLE SYSTEMS TO PAY THE SPORTS SURCHARGE
Topics: Audiovisual work - sports, Defenses - limitations on exclusive rights of secondary transmissions of broadcast programming by cable
URL: https://www.copyright.gov/licensing/111/sports-addendum-instructions.pdf

On December 6, 2018, the Copyright Royalty Board issued a final rule, effective January 1, 2019, that requires affected cable systems to pay a separate per-program royalty (the Sports Surcharge) in addition to the requisite royalties under the section 111 license. The Sports Surcharge applies only to certain Form SA3 filers for the secondary transmission of live, non-network broadcasts of sports events on a distant television station carried by the cable system that would have been subject to blackout under the Federal Communication Commission’s sports exclusivity rule (FCC Sports Blackout Rule) prior to its repeal in 2014.

COPYRIGHT OFFICE ANNOUNCES FOURTH MODERNIZATION WEBINAR
Topics: Copyright Office - modernization
URL: https://locgov.webex.com/locgov/onstage/g.php?MTID=e18d858eff8b2e6ad4d98caf600c22a87

The Copyright Office will host its fourth public modernization webinar on Thursday, July 25, 2019, at noon eastern time. The Office has received a number of questions on modernization and will use this webinar to highlight some of them to help explain the functions of the Enterprise Copyright System (ECS), future available data, and more. After the presentations, the panelists will answer additional questions submitted by the attendees. Participants must register for this Copyright Office webinar.

COPYRIGHT OFFICE ANNOUNCES FIFTH MODERNIZATION WEBINAR
Bulletin on 9/10/2019
Topics: Copyright Office - modernization
URL: https://content.govdelivery.com/accounts/USLOCCOPYRIGHT/bulletins/25e1727

The Copyright Office will host its fifth public modernization webinar on Thursday, September 26, 2019, at noon eastern time.

As part of its modernization efforts, the Copyright Office is transitioning its recordation system from a paper process to a digital platform under the Recordation Modernization Initiative. This presentation will discuss the reasons for modernizing, the progress so far, and new features expected in the system. After the presentations, the panelists will answer questions submitted by the attendees. Participants must register for this Copyright Office webinar.

OUTDATED APPLICATIONS AND OBSOLETE TEMPLATES TO BE REMOVED FROM THE ELECTRONIC REGISTRATION SYSTEM
Topics: Copyright Office - announcement, Copyright Office - modernization
URL: https://www.copyright.gov/newsnet/2019/782.html

On November 30, 2019, the U.S. Copyright Office will make the following changes to the electronic registration system (eCO):

Draft copyright applications more than 1 year old: Over the years, many users have saved draft applications in the eCO system that have never been submitted to the Copyright Office. To conserve system resources, any draft application created on or before October 31, 2018, will be permanently discarded on November 30, 2019. Draft applications created and saved on or after November 1, 2018, will not be affected.

Obsolete templates: The eCO system offers a “template” feature, which may be used to create a “carbon copy” of a completed application. The template may then be used to create other applications that contain the exact same information as the previous submission.
The Office recently amended the rules for registering multiple unpublished works and multiple photographs. To register these types of works, applicants are now required to use the online applications specifically designed for a “Group of Photographs” or a “Group of Unpublished Works.”

Many templates that were previously used to submit these types of claims are now obsolete.

If an applicant uses an outdated template to submit an “unpublished collection” or a group of photographs, the claim may be refused for failing to use the correct form. To prevent these mistakes and the loss of filing fees, the following templates will be discarded on November 30, 2019:

- Any template created before March 15, 2019, for an unpublished work (the effective date for the final rule on group registration of unpublished works).
- Any template created before February 20, 2018, for a “photograph” (the effective date for the final rule on group registration of photographs).

Templates for published works or claims involving other types of works will not be affected.

COPYRIGHT OFFICE RELEASES NEW ETL VALIDATOR TOOL
Topics: Copyright Office - recordation
URL: https://www.copyright.gov/newsnet/2019/787.html

The Copyright Office has released a new tool designed to assist those who are submitting an optional electronic title list (ETL) when submitting a transfer of copyright ownership or other document pertaining to a copyright for recordation. In the past, the Office rejected some ETLs because of issues that submitters could have corrected before submitting information. The new ETL Validator Tool provides the public the opportunity to evaluate the acceptability of their ETL and correct any issues prior to submission.

Along with the release, the Copyright Office has developed a tutorial to assist the public in using the new ETL Validator Tool.

COPYRIGHT OFFICE ANNOUNCES SIXTH MODERNIZATION WEBINAR
Topics: Copyright Office Modernization
URL: https://www.copyright.gov/newsnet/2019/788.html

The U.S. Copyright Office will host its sixth public modernization webinar on Wednesday, December 18, 2019, at 1 p.m. eastern time.
As part of its modernization efforts, the Copyright Office is conducting business process reengineering (BPR). BPR includes mapping current processes, identifying issues and opportunities for improvement, and recommending possible redesigned workflows to resolve any process bottlenecks or inefficiencies. The presenters will discuss BPR and its key activities. They will also explain how it will help the Office identify opportunities for improvement. After the presentations, the panelists will answer questions submitted by the attendees.

Participants must register for this Copyright Office webinar. The Copyright Office launched its modernization webinar series on January 31, 2019. View past webinars and presentation slides on copyright.gov. The Office will continue to hold additional webinars every other month during modernization to keep the public informed about and involved in the modernization process. Future webinar dates and topics will be announced through NewsNet.

Education

COPYRIGHT OFFICE LAUNCHES NEW LEARNING ENGINE VIDEO SERIES
Topics: Copyright Office - announcement
URL: https://www.copyright.gov/learning-engine/

The Copyright Office has just launched a new video series on its YouTube channel and on its website. The new Learning Engine series of videos introduces the Copyright Office and copyright concepts to viewers who are new to these topics or who want to learn more.

Through these short videos, viewers will learn about issues like what is copyright, copyright on the internet, what to do when others use your ideas, fair use, and the public domain.

The Office will add more videos to the series in the future as we create them. Subscribe to the channel to be notified when new videos are available.

Events

COPYRIGHT OFFICE MODERNIZATION WEBINAR SERIES KICKS OFF
Topics: Copyright Office - event, Copyright Office - modernization
URL: https://locgov.webex.com/locgov/onstage/g.php?MTID=e53b527aef73ec6bc22fc322d09a0694b&locId=eanco

The Copyright Office is modernizing! We are reimagining almost every aspect of the Office to enable us to provide the best services and information to the public that modern technology allows. On January 31 at noon eastern time, the Copyright Modernization Office (CMO) will host the first of a series of webinars to update the public on our ongoing modernization process. Acting Register of Copyrights Karyn A. Temple and CMO director Ricardo Farraj-Feijoo will welcome the public to hear more about these efforts. Future webinars, held every other month, will provide further opportunities for the creative community and the public at large to learn about our progress.
CELEBRATE WORLD IP DAY 2019 WITH THE COPYRIGHT OFFICE
Topics: Copyright Office - event
URL: https://www.copyright.gov/copyrightmatters/sports2019/index.html

The U.S. Copyright Office will celebrate World Intellectual Property Day with a special event on Thursday, April 25, 2019, at 2:00 p.m. eastern time 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 “Reach for Gold: IP and Sports.”

The Copyright Office’s program will explore the unique and sometimes surprising relationship between sports and copyright. We will look at different points at which sports and copyright intersect, including how people watch games from home, the various ways athletes work with copyright to develop merchandise and more, and the burgeoning world of esports.

CREATE AN ADVENTURE WITH COPYRIGHT
Topics: Copyright Office - event
URL: https://www.copyright.gov/copyrightmatters/adventure2019/

The U.S. Copyright Office is hosting the Copyright Matters event “Create an Adventure with Copyright” on Wednesday, July 31, at 10:00 a.m. eastern time, in the historic Coolidge Auditorium of the Library of Congress in the Jefferson Building in Washington, DC. The event will also be livestreamed.

While copyright might not be the first thing that comes to mind when you think about taking an adventure, copyright and adventure actually go hand in hand. Have you seen a photograph of a beautiful location and then gone on your own adventure there? Or have you written a song about an incredible place you have visited? The event will celebrate the role copyright plays in inspiring adventure and how adventure promotes copyright, with a focus on the impact copyright has on photographs, travel books, music, TV shows, and movies.

Featured speakers include Jeanne M. Fink, vice president and senior associate general counsel, National Geographic Society; John Hessler, author and curator of the Kislak Collection of the Archaeology of the Early Americas, Library of Congress; Andrea Sachs, travel reporter, The Washington Post; and Shodekeh, professional beatboxer, hip-hop vocal percussionist, breath artist.

Please visit the Copyright Office website to register for the event and to stay up-to-date about this program and speakers. Request ADA accommodations five business days in advance at (202) 707-6362 or at ada@loc.gov.
The U.S. Copyright Office is hosting the Copyright Matters event “Quoth the Raven: Edgar Allan Poe & Derivative Works” on October 29, at 10:00 a.m. eastern time, in the Montpelier Room, Library of Congress Madison Building, in Washington, DC.

During this event, the Office will discuss Poe’s advocacy for copyright law, the breadth of his impact, and the many derivative works Poe has inspired. More than 300 comic book adaptations of Poe’s work exist, plus many works use Poe’s characters as an inspiration. Moreover, Poe was a strong advocate for copyright protections, especially in the international arena.

After a brief introduction and recitation of The Raven, featured speakers will talk about Poe, his life, his artistry, and the many creative works spawned by his creations. Speakers include Christopher Semtner, curator of the Edgar Allan Poe Museum in Richmond, Virginia; Enrica Jang, executive director of The Edgar Allan Poe House and Museum in Baltimore; and Thad Ciechanowski, owner of Dijit Media and filmmaker, director, and editor.

Please visit the Copyright Office website to register for the event and to stay up-to-date about this program and speakers. Request ADA accommodations five business days in advance at (202) 707-6362 or at ada@loc.gov.
IV. COPYRIGHT ROYALTY BOARD

Adjustments

COST OF LIVING ADJUSTMENT TO PUBLIC BROADCASTERS COMPULSORY LICENSE ROYALTY RATE
Final Rule; Cost of Living Adjustment on 11/21/2019
Topics: Music - musical work

The Copyright Royalty Judges announce a cost of living adjustment (COLA) to the royalty rate that noncommercial radio stations at certain colleges, universities, and other educational institutions that are not affiliated with National Public Radio must pay for the use in 2020 of published nondramatic musical compositions in the SESAC repertory pursuant to the statutory license under the Copyright Act for noncommercial broadcasting.

COST OF LIVING ADJUSTMENT TO SATELLITE CARRIER COMPULSORY LICENSE ROYALTY RATES
Final Rule; Cost of Living Adjustment on 11/21/2019
Topics: Audiovisual work - television series

The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 1.8% 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 2018 to October 2019.

COST OF LIVING ADJUSTMENT TO ROYALTY RATES FOR WEBCASTER STATUTORY LICENSE
Final Rule; Cost of Living Adjustment on 11/21/2019
Topics: Music - sound recording

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.
Determinations of Royalty Rates and Terms

DETERMINATION OF RATES AND TERMS FOR DIGITAL PERFORMANCE OF SOUND RECORDINGS AND MAKING OF EPHEMERAL COPIES TO FACILITATE THOSE PERFORMANCES (WEB V)
Notice Announcing Commencement of Proceeding with Request for Petitions to Participate on 1/24/2019
Topics: Copyright Royalty Board - determinations, Music - sound recording

The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine reasonable rates and terms for two statutory licenses permitting the digital performance of sound recordings over the internet and the making of ephemeral recordings to facilitate those performances for the period beginning January 1, 2021, and ending December 31, 2025. 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 the accompanying $150 filing fee.

DETERMINATION OF ROYALTY RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (PHONORECORDS III)
Final Rule and Order on 2/5/2019
Topics: Copyright Royalty Board - determination, Music - sound recording

The Copyright Royalty Judges announce their final determination of the rates and terms for making and distributing phonorecords for the period beginning January 1, 2018, and ending on December 31, 2022.

DETERMINATION OF RATES AND TERMS FOR DIGITAL PERFORMANCE OF SOUND RECORDINGS BY NEW SUBSCRIPTION SERVICES AND MAKING OF EPHEMERAL COPIES TO FACILITATE THOSE PERFORMANCES (NSS IV)
Notice Announcing Commencement of Proceeding with Request for Petitions to Participate on 2/25/2019
Topics: Copyright Royalty Board - determination, Copyright Royalty Board - determinations, Music - sound recording

The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine reasonable rates and terms for digital performance of sound recordings by new subscription services and the making of ephemeral recordings to facilitate those performances for the period beginning January 1, 2021, and ending December 31, 2025. 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 the accompanying $150 filing fee.

**DETERMINATION AND ALLOCATION OF INITIAL ADMINISTRATIVE ASSESSMENT TO FUND MECHANICAL LICENSING COLLECTIVE**
Notice announcing commencement of Initial Administrative Assessment proceeding and requesting Petitions to Participate on 7/8/2019
Topics: Copyright Royalty Board - determinations

The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine the initial administrative assessment that digital music providers and any significant nonblanket licensees must pay to fund the operations of the Mechanical Licensing Collective. The Judges also set the date by which the Mechanical Licensing Collective and the Digital Licensee Coordinator must, and other eligible participants may, file a Petition to Participate and the accompanying $150 filing fee. A rule relating to the Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective is published elsewhere in this issue of the Federal Register.

**DETERMINATION OF ROYALTY RATES AND TERMS FOR EPHEMERAL RECORDING AND DIGITAL PERFORMANCE OF SOUND RECORDINGS (WEB V)**
Proposed Rule Related to Public Broadcasters (Radio) on 10/29/2019
Topics: Copyright Royalty Board - determination, Music - sound recording

The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performances of sound recordings by certain public radio stations and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025.

**DETERMINATION OF RATES AND TERMS FOR DIGITAL PERFORMANCE OF SOUND RECORDINGS AND MAKING OF EPHEMERAL COPIES TO FACILITATE THOSE PERFORMANCES (WEB V)**
Proposed Rule Related to Noncommercial Education Webcasters on 10/30/2019
Topics: Copyright Royalty Board - determination, Music - sound recording

The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performance of sound recordings by noncommercial educational
webcasters and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing January 1, 2021, and ending on December 31, 2025.

**Distributions**

**DISTRIBUTION OF SATELLITE ROYALTY FUNDS**
Notice Announcing Commencement of Distribution Proceeding with Request for Petitions to Participate on 2/8/2019
Topics: Copyright Royalty Board - distribution, Audiovisual Work - television series

The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine distribution of 2014, 2015, 2016, and 2017 royalties deposited with the Copyright Office under the statutory license for secondary transmissions satellite television services. The Judges also set the date by which all parties wishing to participate and share in the distribution of satellite retransmission royalties for the years 2014 through 2017 must file a Petition to Participate and the accompanying $150 filing fee, if applicable. The Judges seek a single Petition to Participate from any entity intending to participate in the Allocation Phase or the Distribution Phase of this proceeding, or both Phases. ANY PARTY THAT FILED A PETITION TO PARTICIPATE IN ANY OF THE PROCEEDINGS CONSOLIDATED IN THIS PROCEEDING MUST NONETHELESS FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING. ANY PARTY THAT FAILS TO FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING BY THE TIME SET IN THIS NOTICE SHALL NOT BE A PARTICIPANT AT ANY STAGE OF THIS CONSOLIDATED PROCEEDING.

**DISTRIBUTION OF CABLE ROYALTY FUNDS**
Notice Announcing Commencement of Distribution Proceeding with Request for Petitions to Participate on 2/8/2019
Topics: Copyright Royalty Board - distribution, Audiovisual work - television series

The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine distribution of 2014, 2015, 2016, and 2017 royalties deposited with the Copyright Office under the statutory license for secondary transmissions by cable systems. The Judges also set the date by which all parties wishing to participate and share in the distribution of cable retransmission royalties for the years 2014 through 2017 must file a Petition to Participate and the accompanying $150 filing fee, if applicable. The Judges seek a single Petition to Participate from any entity intending to participate in the Allocation Phase or the Distribution Phase of this proceeding, or both Phases. ANY PARTY THAT FILED A PETITION TO PARTICIPATE IN ANY OF THE PROCEEDINGS CONSOLIDATED IN THIS PROCEEDING MUST NONETHELESS FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING. ANY PARTY THAT FAILS TO FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING BY THE TIME SET IN THIS NOTICE SHALL NOT BE A PARTICIPANT AT ANY STAGE OF THIS CONSOLIDATED PROCEEDING.
THIS CONSOLIDATED PROCEEDING BY THE TIME SET IN THIS NOTICE SHALL NOT BE A PARTICIPANT AT ANY STAGE OF THIS CONSOLIDATED PROCEEDING.

DISTRIBUTION OF CABLE ROYALTY FUNDS
Final Allocation Determination on 2/12/2019
Topics: Copyright Royalty Board - distribution, Audiovisual work - television series

The Copyright Royalty Judges announce the allocation of shares of cable and satellite royalty funds for the years 2010, 2011, 2012, and 2013 among six claimant groups.

DISTRIBUTION OF CABLE ROYALTY FUNDS
Final Allocation Determination; Correction on 2/21/2019
Topics: Copyright Royalty Board - distribution, Audiovisual work - television series

The Copyright Royalty Judges published a document in the Federal Register of February 12, 2019, concerning allocation of cable royalty funds. The document contained an incorrect reference to satellite royalty funds in the Summary and was missing citations in four footnotes.

DISTRIBUTION OF 2000-2003 CABLE ROYALTY FUNDS
Notice Requesting Comments on 4/1/2019
Topics: Copyright Royalty Board - distribution, Audiovisual work - television series

The Copyright Royalty Judges solicit comments on a motion of Independent Producers Group for partial distribution of 2000-2003 cable royalty funds.

DISTRIBUTION OF CABLE ROYALTY FUNDS
Notice Requesting Comments on 4/10/2019
Topics: Copyright Royalty Board - distribution, Audiovisual work - television series

The Copyright Royalty Judges solicit comments on a motion for partial distribution of 2017 cable royalty funds.
Final Distribution Determination on 4/17/2019
Topics: Copyright Royalty Board - distribution, Audiovisual work - television series

The Copyright Royalty Judges announce their final determination of the distribution percentages of cable and satellite royalties in the program suppliers funds and the devotional funds for numerous years.

DISTRIBUTION OF DIGITAL AUDIO RECORDING ROYALTY FUNDS
Final Distribution Determination on 6/12/2019
Topics: Copyright Royalty Board - distribution, Music - sound recording

The Copyright Royalty Judges announce their final determination of the distribution of 2007 DART royalties in the Featured Artists Subfund of the Sound Recordings Fund.

DISTRIBUTION OF SATELLITE ROYALTY FUNDS
Notice Requesting Comments on 7/16/2019
Topics: Copyright Royalty Board - distribution, Audiovisual work - television series

The Copyright Royalty Judges solicit comments on a motion of Allocation Phase claimants for partial distribution of 2016 and 2017 satellite royalty funds.

DISTRIBUTION OF DIGITAL AUDIO RECORDING ROYALTY FUNDS
Notice Announcing Commencement of Paper Proceeding, Requesting Petitions to Participate, and Allowing Comments on 9/20/2019
Topics: Copyright Royalty Board - distribution, Music - sound recording

The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine the distribution of digital audio recording technology royalty fees in the 2014 Sound Recordings Fund. 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.
Audits

NOTICE OF INTENT TO AUDIT
Public Notice on 1/28/2019
Topics: Copyright Royalty Board - audit, Audiovisual work - television series

The U.S. Copyright Office is announcing receipt of five notices of intent to audit certain statements of account filed by cable operators and a satellite carrier pursuant to the section 111 and 119 statutory licenses.

NOTICE OF INTENT TO AUDIT
Public Notice on 2/1/2019
Topics: Copyright Royalty Board - audit, Music - sound recording

The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2015, 2016, and 2017 statements of account submitted by noncommercial webcaster Educational Media Foundation concerning royalty payments it made pursuant to a statutory license.

NOTICE OF INTENT TO AUDIT
Public Notice on 2/1/2019
Topics: Copyright Royalty Board - audit, Music - sound recording

The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2015, 2016, and 2017 statements of account submitted by commercial webcaster and eligible small webcaster AccuRadio, LLC concerning royalty payments it made pursuant to two statutory licenses.

NOTICE OF INTENT TO AUDIT
Public Notice on 2/1/2019
Topics: Copyright Royalty Board - audit, Music - sound recording

The Copyright Royalty Judges announce receipt of two notices of intent to audit the 2015, 2016, and 2017 statements of account submitted by commercial webcasters and broadcasters Entercom Communications Corp. and iHeartMedia concerning royalty payments each made pursuant to two statutory licenses.
NOTICE OF INTENT TO AUDIT
Public Notice on 6/7/2019
Topics: Copyright Royalty Board - audit, Music - sound recording

The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2018 statements of account submitted by commercial webcaster TuneIn, Inc. concerning royalty payments it made pursuant to two statutory licenses.

NOTICE OF INTENT TO AUDIT
Public Notice on 8/28/2019
Topics: Copyright Royalty Board - audit, Music - sound recording

The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2018 statements of account submitted by Sirius XM Radio Inc.'s Commercial Webcaster service, Preexisting Satellite Digital Audio Radio Service, New Subscription Service, and Business Establishment Service concerning royalty payments they made pursuant to two statutory licenses.

Rulemaking

Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims Rulemaking

NOTICE OF INQUIRY REGARDING CATEGORIZATION OF CLAIMS FOR CABLE OR SATELLITE ROYALTY FUNDS AND TREATMENT OF INELIGIBLE CLAIMS
Notice of Inquiry on 12/30/2019
Topics: Copyright Royalty Board - rulemaking

The Copyright Royalty Judges (Judges) publish a notice of inquiry regarding categorization of claims for cable or satellite royalty funds and treatment of royalties associated with invalid claims.
Digital Performance Right in Sound Recordings and Ephemeral Recordings Rulemaking

DIGITAL PERFORMANCE RIGHT IN SOUND RECORDINGS AND EPHEMERAL RECORDINGS
Proposed Rule on 11/8/2019
Topics: Copyright Royalty Board - rulemaking, Music - sound recording

The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performances of sound recordings by new subscription services and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025.

Implementing Hatch-Goodlatte Music Modernization Act Rulemaking

COPYRIGHT ROYALTY BOARD REGULATIONS REGARDING PROCEDURES FOR DETERMINATION AND ALLOCATION OF ASSESSMENT TO FUND MECHANICAL LICENSING COLLECTIVE AND OTHER AMENDMENTS REQUIRED BY THE HATCH-GOODLATTE MUSIC MODERNIZATION ACT
Proposed Rule on 3/13/2019
Topics: Copyright Royalty Board - rulemaking, Music - musical work, Music - sound recording

The Copyright Royalty Judges (Judges) propose regulations governing proceedings to determine the reasonableness of and allocate responsibility to fund the operating budget of the Mechanical Licensing Collective authorized by the Music Modernization Act (MMA). The Judges also propose amendments to extant rules as required by the MMA. The Judges solicit comments on the proposed rules.

COPYRIGHT ROYALTY BOARD REGULATIONS REGARDING PROCEDURES FOR DETERMINATION AND ALLOCATION OF ASSESSMENT TO FUND MECHANICAL LICENSING COLLECTIVE AND OTHER AMENDMENTS REQUIRED BY THE HATCH-GOODLATTE MUSIC MODERNIZATION ACT
Final Rule on 7/8/2019
Topics: Copyright Royalty Board - rulemaking, Music - musical work, Music - sound recording

The Copyright Royalty Judges (Judges) adopt regulations governing proceedings to determine the reasonableness of, and allocate responsibility to fund, the operating budget of the Mechanical
Licensing Collective authorized by the Music Modernization Act (MMA). The Judges also adopt proposed amendments to extant rules as required by the MMA.
V. EXECUTIVE BRANCH

President of the United States

MEMORANDUM ON COMBATING TRAFFICKING IN COUNTERFEIT AND PIRATED GOODS
Presidential Memorandum on 4/3/2019
URL: https://www.whitehouse.gov/presidential-actions/memorandum-combating-trafficking-counterfeit-pirated-goods/

On April 3, 2019, President Trump signed a memorandum that provides: "Within 210 days of the date of this memorandum, the Secretary of Homeland Security, in coordination with the Secretary of Commerce, and in consultation with the Attorney General, the Director of the Office of Management and Budget, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for Trade and Manufacturing Policy, the heads of other executive departments and agencies (agencies) and offices as determined by the Secretary of Homeland Security, shall prepare and submit a report to the President through the Assistant to the President for Economic Policy and the Assistant to the President for Trade and Manufacturing Policy. In preparing the report, the Secretary of Homeland Security, in coordination with the Secretary of Commerce, shall, consistent with applicable law, consult with intellectual property rights holders, third-party intermediaries, and other stakeholders."

Department of Commerce

Internet Policy Task Force

DEVELOPING THE DIGITAL MARKETPLACE FOR COPYRIGHTED WORKS
Topics: Internet Policy Task Force - event
URL: https://www.uspto.gov/about-us/events/developing-digital-marketplace-copyrighted-works-third-public-meeting

On March 28, the Department of Commerce’s Internet Policy Task Force will host the Third Public Meeting on Developing the Digital Marketplace for Copyrighted Works at the USPTO headquarters in Alexandria, Virginia. The meeting is free and open to members of the public on a first-come, first-served basis, either in person or online. The registration form includes a list of possible topics for the breakout sessions so the conference can be tailored to participants' interests. Please register early. Additional information, including the agenda, federal register notice, and webcast information, is available on the event page of the USPTO website.
NOTICE OF THIRD PUBLIC MEETING ON DEVELOPING THE DIGITAL MARKETPLACE FOR COPYRIGHTED WORKS

Notice of Public Meeting on 3/19/2019
Topics: Internet Policy Task Force - event

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 March 28, 2019, to discuss current initiatives and technologies used to develop a more robust and collaborative digital marketplace for copyrighted works. In the previous public comments and meetings, the Task Force heard from stakeholders that the government can play a useful role by facilitating dialogues between and among industry sectors and by convening stakeholder groups to make recommendations on specific issues. Based on this feedback, the Task Force is organizing this meeting to build on the work of the prior meetings and continue to facilitate constructive, cross-industry dialogue about ways to promote a robust and collaborative online marketplace for copyrighted works.

TRANSCRIPT AND VIDEO NOW AVAILABLE FOR DEVELOPING THE DIGITAL MARKETPLACE FOR COPYRIGHTED WORKS (THIRD PUBLIC MEETING)
Topics: Internet Policy Task Force - event
URL: https://www.uspto.gov/about-us/events/developing-digital-marketplace-copyrighted-works-third-public-meeting

The transcript and video recording of the March 28 public meeting on Developing the Digital Marketplace for Copyrighted Works, organized by the Department of Commerce’s Internet Policy Task Force, are now accessible on the event page on the USPTO website. The meeting facilitated constructive, cross-industry discussions among stakeholders about current initiatives and technologies used to promote a more robust and collaborative digital marketplace for copyrighted works.

REGISTER NOW TO ATTEND FREE SEMINAR ON PROTECTING YOUR INTELLECTUAL PROPERTY IN CHINA
Topics: Patent & Trademark Office - event

Businesses, individuals, and attorneys looking to hear about strategies for better protecting intellectual property in China should plan to attend the China IP Road Show being conducted by the USPTO in Los Angeles, California, on Friday, June 7. Several sessions of the all-day program will focus on the protection and enforcement of trademarks. Opening remarks will be given by Under Secretary of Commerce for Intellectual Property and Director of the USPTO Andrei Iancu.

Patent & Trademark Office
Register and see more details about the program at the event website. There is no charge to attend.

REQUEST FOR COMMENTS ON INTELLECTUAL PROPERTY PROTECTION FOR ARTIFICIAL INTELLIGENCE INNOVATION
Request for Comments on 10/30/2019
Topics: Patent & Trademark Office - request for comments, Literary work - computer program

The United States Patent and Trademark Office (“USPTO”) is gathering information about the impact of artificial intelligence (“AI”) technologies on intellectual property law and policy. To assist in gathering this information, on August 27, 2019, the USPTO published questions related to the impact of artificial intelligence inventions on patent law and policy and asked the public for written comments. Those questions cover a variety of topics, including whether revisions to intellectual property protection are needed. The present notice extends this inquiry to copyright, trademark, and other intellectual property rights impacted by AI.

REQUEST FOR COMMENTS ON INTELLECTUAL PROPERTY PROTECTION FOR ARTIFICIAL INTELLIGENCE INNOVATION
Request for Comments; Extension of Comment Period on 12/3/2019
Topics: Patent & Trademark Office - request for comments, Literary work - computer program

The United States Patent and Trademark Office (USPTO) published a request for comments in the Federal Register on October 30, 2019, seeking public comment on the impact of artificial intelligence (“AI”) technologies on intellectual property law and policy. Through this notice, the USPTO is extending the period for public comment until January 10, 2020.
Department of Treasury

Customs and Border Protection

ENFORCEMENT OF COPYRIGHTS AND THE DIGITAL MILLENNIUM COPYRIGHT ACT
Notice of Proposed Rulemaking on 10/16/2019
Topics: Circumvention of copyright protection systems - customs seizure, Customs and Border Protection - rulemaking

This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations pertaining to importations of merchandise that violate or are suspected of violating the copyright laws, including the Digital Millennium Copyright Act (DMCA), in accordance with Title III of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). The proposed amendments set forth in this document are intended to clarify the definition of “piratical articles,” simplify the detention process involving goods suspected of violating the copyright laws, and prescribe new regulations enforcing the DMCA.
VI. COPYRIGHT IN THE NEWS

January 2019

MICKEY MOUSE AND BATMAN WILL SOON BE PUBLIC DOMAIN—HERE’S WHAT THAT MEANS
via Ars Technica by Timothy B. Lee on 1/1/2019
URL: https://arstechnica.com/?p=1434409

As the ball dropped over Times Square last night, all copyrighted works published in 1923 fell into the public domain (with a few exceptions).

ROBERT FROST WROTE THIS MASTERPIECE IN ABOUT 20 MINUTES. IT BELONGS TO ALL OF US NOW.
via Washington Post by Steve Hendrix on 1/1/2019
URL: https://www.washingtonpost.com/history/2019/01/01/robert-frost-wrote-this-masterpiece-about-minutes-it-belongs-all-us-now/

And on New Year's Day, they entered the public domain, along with a huge cache of other long-copyrighted material. For the first time, we and anyone ...

'THE DROUGHT IS OVER': MASS US COPYRIGHT EXPIRY BRINGS FLOOD OF WORKS INTO PUBLIC DOMAIN
via Guardian by Alison Flood on 1/2/2019
URL: https://www.theguardian.com/books/2019/jan/02/the-drought-is-over-mass-us-copyright-expiry-brings-flood-of-works-into-public-domain

'The drought is over': mass US copyright expiry brings flood of works into ... Christie to Virginia Woolf, in an unprecedented expiration of copyrights.

MARC JACOBS SUED OVER NIRVANA SMILEY FACE LOGO
via World IP Review on 1/2/2019

A company representing former American rock band Nirvana is suing Marc Jacobs International for copyright infringement over its “Bootleg Redux ...
AUTHOR SAYS CBS, SHOWTIME USED HER BOOK TO MAKE 'BILLIONS'
via Intellectual Property Law360 by Tiffany Hu on 1/2/2019
URL: https://www.law360.com/ip/articles/1114368

A hedge fund performance coach has accused CBS and Showtime of ripping off a book she wrote to create their TV series “Billions,” alleging that a key character in the show...

ATARI TAKES SWING AT TARGET OVER 'FOOT PONG' GAME
via World IP Review on 1/2/2019

The video games company accused Target of trademark infringement and counterfeiting, copyright infringement, false designation of origin, and ...

WHO OWNS THE COPYRIGHT TO A CROCHETED BIKINI? LEGAL BATTLE WAGED BY KIINI MAKER TAKES A TURN
via ABA Journal by Debra Cassens Weiss on 1/2/2019

The woman who took the fashion world by storm with a crocheted bikini called the Kiini fought retailers that sold different versions of the swimwear with ...

SEVEN WACKY JANUARY HOLIDAYS AND THE ‘HOW GOOGLE FIGHTS PIRACY’ REPORT
via CreativeFuture by Jason Thomas on 1/2/2019
URL: https://creativefuture.org/how-google-enables-piracy/

Well, another holiday season has come and gone, and we’re feeling a little blue – though not for the reason you might be thinking.

REDIGI 2.0: THE LEGAL DEBATES REGARDING DIGITAL RESALE OF COPYRIGHT MUSIC LIKELY TO CONTINUE

Just after Capitol Records filed its complaint in this litigation, ReDigi launched a new service, called ReDigi 2.0. With ReDigi 2.0, customers would originally download iTunes music files directly from Apple onto a specific physical location on ReDigi’s server, from which they could
then stream their music or download it for personal use on their own media devices. When a customer chose to sell a digital file, ReDigi would retain the file in the same server space and simply assign “title” to...

JUSTICE ALITO 'UNRECUSES' FOR 9TH TIME, REJOINING ORACLE COPYRIGHT CASE
via Law.com by Tony Mauro on 1/3/2019
URL: https://www.law.com/2019/01/03/justice-alito-unrecuses-for-9th-time-rejoining-oracle-copyright-case/

Because of a family inheritance several years ago, Alito and his wife have had holdings in numerous corporations, unlike most other justices. He has sold several of the stocks over time.

ROBERT FROST POEM AND OTHER 1923 WORKS ENTER THE PUBLIC DOMAIN
via ABA Journal by Debra Cassens Weiss on 1/3/2019

But a law passed the prior year “hit a two-decade pause button and extended their copyright term for 20 years,” according to the Center for the Study of...

MICKEY MOUSE, AND FRIENDS, ARE FALLING INTO THE PUBLIC DOMAIN SOON
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 1/3/2019

Mickey Mouse is running out of protection. In five years, the world's most famous mouse will lose copyright protection. The famed Disney character will then fall into the public domain. It's not like Mickey Mouse will die. But little did the hero of "Steamboat Willie" know he would run......

ARGUMENT PREVIEW: WHEN HAS REGISTRATION OF A COPYRIGHT CLAIM “BEEN MADE”?
via SCOTUS Blog by Jessica Litman on 1/3/2019
URL: http://www.scotusblog.com/2019/01/argument-preview-when-has-registration-of-a-copyright-claim-been-made/

Copyright protection is automatic, and is independent of registration. ... Fourth Estate filed an application seeking to register the copyrights in 244 ...
NIRVANA SUE DESIGNER MARC JACOBS OVER ALLEGED COPYRIGHT BREACH
via Guardian by Laura Snapes on 1/3/2019
URL: https://www.theguardian.com/music/2019/jan/03/nirvana-sue-designer-marc-jacobs-over-alleged-copyright-breach

Nirvana are suing designer Marc Jacobs for copyright infringement. ... of “Nirvana's copyrighted image on and to promote its products is intentional”.

STUDIOS DECRY 'GAME-PLAYING' BY MEDIA EXEC IN COPYRIGHT SUIT
via Intellectual Property Law360 by Mike LaSusa on 1/3/2019
URL: https://www.law360.com/ip/articles/1115097

A group of the most powerful companies in the media industry including Disney, Netflix and Amazon have asked a California federal judge to punish a businessman accused of copyright infringement for...

ED SHEERAN HEADED TO TRIAL OVER CLAIM HE COPIED "LET'S GET IT ON"
URL: https://www.hollywoodreporter.com/thr-esq/ed-sheeran-headed-trial-claim-he-copied-lets-get-it-1172992

Ed Sheeran is accused of copying Gaye's 1973 hit "Let's Get It On" in his 2014 song "Thinking Out Loud."

BETHESDA SETTLES COPYRIGHT LAWSUIT WITH WARNER BROS., BEHAVIOUR INTERACTIVE OVER 'WESTWORLD ...
via Hollywood Reporter by Patrick Shanley on 1/3/2019

The Maryland-based video game publisher resolved a lawsuit it brought against Behaviour Interactive and Warner Bros. last June for copyright ...

ED SHEERAN MUST FACE TRIAL OVER MARVIN GAYE SONG
via Intellectual Property Law360 by Bill Donahue on 1/3/2019
URL: https://www.law360.com/ip/articles/1115132

A lawsuit claiming Ed Sheeran’s "Thinking Out Loud" infringes Marvin Gaye’s iconic "Let's Get It On" is headed for a jury trial after a New York federal judge refused Thursday to...
ALITO UNRECUSES SELF FROM ORACLE, RIMINI COPYRIGHT COSTS ROW
via Intellectual Property Law360 by Mike LaSusa on 1/3/2019
URL: https://www.law360.com/ip/articles/1115261

U.S. Supreme Court Justice Samuel Alito has unrecused himself from a dispute between computer corporation Oracle and third-party technical support company Rimini Street Inc. that offers the high court an opportunity...

PUBLISHED WORKS ENTER THE PUBLIC DOMAIN IN THE UNITED STATES FOR FIRST TIME IN TWENTY YEARS
via Copyright: Creativity at Work by Anandashankar Mazumdar on 1/4/2019
URL: https://blogs.loc.gov/copyright/2019/01/publicdomain/

New Year’s Day 2019 was a landmark for American copyright law. For the first time in twenty years, published works of expression—including books, music, and films—started moving out of copyright protection and into the public domain. Edgar Rice Burroughs' "Tarzan and the Golden Lion" entered the public domain in the United States January 1, 2019.

LEBRON SMARTLY SIDES WITH THE PRODUCERS OF NBA 2K IN TATTOO COPYRIGHT CASE, BUT WILL THAT BE ...
via Forbes by Thomas Baker on 1/4/2019

Professor Nimmer's declaration in Whitmill stated that skin should not qualify as a tangible medium for expression and that copyrighted work must be ...

FOUNDER OF CHINESE PIRACY WEBSITE JAILED
via World IP Review on 1/4/2019

A Chinese court has sentenced the founder of an online piracy website to three years in prison for copyright infringement. The man, identified only by ...

PHOTOGS SAY 9TH CIRC.'S NIKE RULING CHILLS CREATIVITY
via Intellectual Property Law360 by Hailey Konnath on 1/4/2019
URL: https://www.law360.com/ip/articles/1114777

Two industry groups have chimed in on a photographer’s bid to revive his claims Nike Inc. is unfairly using his famous 1984 image of Michael Jordan for its “Jumpman” logo, telling...
POPCORN TIME FACING LAWSUIT FROM FILM COMPANIES
via World IP Review on 1/4/2019

Bovee, a Honolulu resident, shared and downloaded copyright-protected material using Popcorn Time, according to the complaint. “The deceptive ...

FEDS OK'D TO ARGUE IN ORACLE, RIMINI COPYRIGHT COSTS ROW
via Intellectual Property Law360 by Mike LaSusa on 1/4/2019
URL: https://www.law360.com/ip/articles/1115643

The U.S. Supreme Court on Friday said it would allow the federal government to participate in oral arguments in a copyright dispute between tech companies Oracle Corp. and Rimini Street Inc....

LMFAO SEES 'HUSTLIN" COPYRIGHT SUIT GREENLIGHTED FOR TRIAL
via Intellectual Property Law360 by Cara Salvatore on 1/4/2019
URL: https://www.law360.com/ip/articles/1115515

A Florida federal judge ruled Friday that a jury should hear copyright claims against LMFAO over the hit “Party Rock Anthem” brought by the producing team that created the Rick Ross...

UP NEXT AT HIGH COURT: DRUGS, COPYRIGHTS AND STATE IMMUNITY
via Law360: Legal Industry by Jimmy Hoover on 1/4/2019
URL: https://www.law360.com/legalindustry/articles/1115351

The U.S. Supreme Court begins its first oral argument session of 2019 on Monday by hearing tort claims against pharmaceutical giant Merck & Co., a circuit split over copyright infringement suits...

SHEERAN FACES TRIAL ON SONG WITH PARALLELS TO 'LET'S GET IT ON'
via Courthouse News Service by Josh Russell on 1/5/2019
URL: https://www.courthousenews.com/sheeran-faces-trial-on-song-with-parallels-to-lets-get-it-on/

Though the Townsends own a 22 percent share in the copyrights to the original sheet music, Sheeran's defense hinges on distinguishing the sheet...
UPDATE-170 PIRATE LINKS LATER, GOOGLE STILL PROTECTS GOOGLE DRIVE PIRATE ACCOUNT
via Vox Indie by Ellen Seidler on 1/6/2019
URL: http://www.voxindie.org/update-170-pirate-links-later-google-still-protects-google-drive-pirate-account/

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 pirated […]

PIRACY’S SCOFFLAWS – ALL ROADS LEAD THROUGH CLOUDFLARE?
via Vox Indie by Ellen Seidler on 1/6/2019
URL: http://www.voxindie.org/piracy-s-scofflaws-all-roads-lead-through-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. Despite this, no one in Congress seems in any great hurry to update law and as they drag their feet, creative artists […]

OCASIO-CORTEZ VIDEO A GOOD EXAMPLE OF WHAT RIGHTS HOLDERS REALLY WANT
via The Illusion of More by David Newhoff on 1/6/2019
URL: http://illusionofmore.com/ocasio-cortez-video-a-good-example-of-what-rights-holders-really-want/

Some news hit the fan late last week that certain parties tried to embarrass newly-elected congresswoman Alexandria Ocasio-Cortez by sharing a video of her dancing with college friends on a Boston rooftop, riffing on the 80s film The Breakfast Club to the tune by Phoenix called “Lisztomania.”

2019 IN US COPYRIGHT LAW AND POLICY
via Copyhype by Terry Hart on 1/7/2019

It’s a new year, and the world is split between those who call it “two thousand nineteen” and those who say “twenty nineteen.”
SUPREME COURT ASKED TO DECIDE COPYRIGHTABLE ELEMENTS OF ICONIC MICHAEL JORDAN PHOTOGRAPH
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 1/7/2019
URL: http://www.ipwatchdog.com/2019/01/07/supreme-court-rentmeester-michael-jordan-photograph/id=104650/

Rentmeester is asking the nation’s highest court to answer the question of whether copyright protection for a photograph is limited solely to the photographer’s selection and arrangement of unprotected elements or rather that such protection also covers elements of the photograph that express original creative judgments of the photographer.

HIGH COURT IS ASKED TO REVIVE COPYRIGHT SUIT AGAINST NC
via Intellectual Property Law360 by Bill Donahue on 1/7/2019
URL: https://www.law360.com/ip/articles/1098946

A videographer is asking the U.S. Supreme Court to allow him to sue the state of North Carolina for using his copyrighted footage of a pirate shipwreck without permission, aiming to...

ARGUMENT PREVIEW: JUSTICES TO CONSIDER LIMITS ON AWARDS OF “COSTS” TO PREVAILING PARTIES IN COPYRIGHT ...
via SCOTUSblog by Ronald Mann on 1/7/2019

Rimini Street v Oracle USA, set for argument on January 14, is another one of those routine statutory interpretation cases that reach the Supreme ...

SOFTWARE RENTAL BUSINESS GOES BUST AFTER NAFTA
via CBC on 1/8/2019
URL: https://www.cbc.ca/archives/software-rental-business-goes-bust-after-nafta-1.4968966

Twenty-five years ago, CBC News reported on a Winnipeg business owner who was about to be out of business thanks to a change in copyright law ...
SCOTUS COPYRIGHT RULING COULD COST CREATORS MORE MONEY, LAWYERS SAY
via World IP Review on 1/8/2019

If the US Supreme Court rules that copyright owners must obtain approval of their registration before filing an infringement suit, it could prove much ...

JUSTICES SKEPTICAL OF ALLOWING FASTER COPYRIGHT SUITS
via Intellectual Property Law360 by Bill Donahue on 1/8/2019
URL: https://www.law360.com/ip/articles/1116338

The U.S. Supreme Court heard arguments Tuesday over whether copyright owners must fully register their works before filing a lawsuit, during which several justices seemed skeptical of a claim that authors...

CONTROLLED DIGITAL LENDING IS NEITHER CONTROLLED NOR LEGAL
via The Authors Guild by Jennifer Simms on 1/8/2019
URL: https://www.authorsguild.org/industry-advocacy/controlled-digital-lending-is-neither-controlled-nor-legal/

“Controlled Digital Lending” or “CDL” is a recently invented legal theory that allows libraries to justify the scanning (or obtaining of scans) of print books and e-lending those digital copies to users without obtaining authorization from the copyright owners. A position statement on CDL, along with an accompanying white paper, was issued this past October …

COPYRIGHT OWNERS FACE UPHILL BATTLE AT SUPREME COURT
via National Law Journal by Scott Graham on 1/8/2019
URL: https://www.law.com/nationallawjournal/2019/01/08/copyright-owners-face-uphill-battle-at-supreme-court/

The U.S. Supreme Court sounded inclined Tuesday to resolve a circuit split over copyright registration procedures against copyright holders.

THE CCIA AND THE FUTURE OF COPYRIGHT ENFORCEMENT IN THE EU
via CreativeFuture by Jason Thomas on 1/9/2019
URL: https://creativefuture.org/ccia-vs-copyright/

With all the controversy swirling around Big Tech in 2018, you may have missed yet another, slightly less reported-on scandal that occurred near the end of the year in New Zealand.
FILM STUDIOS TARGET ISPS IN A BID TO STOP PIRACY
via World IP Review on 1/9/2019

The group's application cites a range of copyright material including films and television programmes. Some of the titles mentioned include “Kingsman: ..."
EFF FLIPS BIRD THE BIRD, SAYS BOING BOING POST DOESN’T VIOLATE COPYRIGHT LAW
via Ars Technica by Cyrus Farivar on 1/11/2019
URL: https://arstechnica.com/?p=1440095

According to a new letter published Friday by an Electronic Frontier Foundation lawyer, the scooter startup Bird significantly overstepped when it recently demanded that Boing Boing remove a post describing personal "conversion kits" that enable the removal of Bird’s proprietary hardware from a seized scooter.

ORACLE’S LEGAL FEE REIMBURSEMENT FIGHT HEADS TO SUPREME COURT
via Bloomberg by Kyle Jahner on 1/11/2019

Rimini Street Inc., ordered to pay for infringing Oracle's copyright with its software, is likely to tell the justices that copyright law isn't special and doesn't ... 

COPYRIGHT OFFICE SEEKS MECHANICAL LICENSING COLLECTIVE MEMBERS
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 1/14/2019
URL: http://www.ipwatchdog.com/2019/01/14/copyright-office-seeks-mechanical-licensing-collective-members/id=104665/

The U.S. Copyright Office recently published a Notice in the Federal Register regarding Title I of the Orrin G. Hatch - Bob Goodlatte Music Modernization Act (MMA). This section of the law created a new blanket licensing system that governs the licensed uses of musical works by digital music providers. In this recent notice, the Copyright Office is seeking input to identify entities which are appropriate for inclusion in the Mechanical Licensing Collective (MLC) that will manage the new blanket...

TAKE-TWO SUES AFTER 'RED DEAD' THREATENED WITH TM SUIT
via Intellectual Property Law360 by Bill Donahue on 1/14/2019
URL: https://www.law360.com/ip/articles/1118169

Video game giant Take-Two Interactive Software Inc. filed a preemptive lawsuit Friday after being threatened with trademark litigation for including "Pinkerton" detectives in its recently launched Wild West game "Red Dead...
CHINA AND BIG TECH POSE THREATS TO OUR DEMOCRACY, BUT WE HAVE THE POWER TO REGULATE ONE
via Hill by Gale Anne Hurd on 1/14/2019
URL: https://thehill.com/blogs/congress-blog/technology/425147-china-and-big-tech-pose-threats-to-our-democracy-but-we-have

For decades, Big Tech's power players have waged war on copyright, the legal concept that fuels American innovation by ensuring creatives are paid ...

VIDANGEL ASKS COURT TO REVISIT PAUSE ON ITS SERVICE
via Legal News & Entertainment Law - Hollywood, ESQ. | Hollywood Reporter by Ashley Cullins on 1/14/2019
URL: https://www.hollywoodreporter.com/thr-esq/vidangel-asks-court-revisit-pause-service-1175880

VidAngel is asking the court to revise the injunction that shut down its service until its legal battle with the major studios is resolved.

BETTING GIANT WILLIAM HILL DROPS FANDUEL COPYRIGHT SUIT
via Intellectual Property Law360 by Mike Curley on 1/14/2019
URL: https://www.law360.com/ip/articles/1118050

The American arm of British betting company William Hill has dropped a lawsuit against FanDuel that alleged the fantasy sports and betting website stole a copyrighted gambling how-to pamphlet from a...

ORACLE, RIMINI SPAR AT HIGH COURT OVER COPYRIGHT COSTS
via Intellectual Property Law360 by Bill Donahue on 1/14/2019
URL: https://www.law360.com/ip/articles/1118426

Attorneys for Oracle and a technical support service called Rimini Street Inc. faced off Monday before the U.S. Supreme Court over how much a winning copyright litigant can recoup in legal...

THE COPYRIGHT LAW OF INTERFACES
via Written Description by Michael Risch on 1/15/2019
URL: https://writtendescription.blogspot.com/2019/01/the-copyright-law-of-interfaces.html

Winter break has ended and so, too, has my brief blogging break. I've blogged before (many times) about the ongoing Oracle v. Google case.
SUPREME COURT MULLS CIRCUIT SPLIT ON WHEN A COPYRIGHT IS REGISTERED IN FOURTH ESTATE V. WALL-STREET.COM
via IPWatchdog.com | Patents & Patent Law by Margaret Esquenet on 1/15/2019

On January 8th, the Supreme Court heard oral arguments in Fourth Estate Public Benefit Corporation v. Wall-Street.com [Case No. 17-571 (Jan. 8, 2019)] to settle a longstanding circuit split on the copyright registration prerequisite to a copyright infringement suit... The Justices gave little indication as to how convincing they found either party’s policy arguments. The first rule of statutory interpretation, however, is that if the plain meaning of the text is clear, the inquiry ends. Here,...

INFOWARS CLAIMS "PEPE THE FROG" DERIVED FROM ARGENTINIAN "EL SAPO PEPE"
URL: https://wwbw.hollywoodreporter.com/thr-esq/infowars-claims-pepe-frog-derived-argentian-el-sapo-pepe-1176218

Defending a copyright lawsuit, Alex Jones' website raises a new affirmative defense and chases discovery in South America.

CELEBRITY NEWS BLOG SUED OVER PHOTO OF HERNANDEZ'S FIANCEE
via Intellectual Property Law360 by Rick Archer on 1/15/2019
URL: https://www.law360.com/ip/articles/1118681

Gossip website Hollywoodlife.com has become the latest media outlet sued by photography agency Polaris Images Corp. for allegedly publishing a photograph of the late NFL player Aaron Hernandez's pregnant former fiancée without...

MUSIC THEATRE INTERNATIONAL AWARDED DAMAGES IN COPYRIGHT INFRINGEMENT CASE
via Playbill by Logan Culwell-Block on 1/15/2019
URL: https://www.playbill.com/article/music-theatre-international-awarded-damages-in-copyright-infringement-case

Theaterpalooza was found to have been aware of MTI's copyrights on the musicals as early as January 12, 2015. Because the youth theatre continued ...
ARGUMENT ANALYSIS: QUIESCENT BENCH DUBIOUS ABOUT BROAD FEE AWARDS IN COPYRIGHT CASES
via SCOTUSBlog by Ronald Mann on 1/15/2019
URL: https://www.scotusblog.com/2019/01/argument-analysis-quiescent-bench-dubious-about-broad-fee-awards-in-copyright-cases/

The case calls for a reading of Section 505 of the Copyright Act, which defines the recovery of a prevailing party under the act. That provision states: “In ... 

RIMINI AND ORACLE'S LEGAL EAGLES RETURN TO THE RING IN FRONT OF SUPREME COURT
via Register by Rebecca Hill on 1/15/2019
URL: https://www.theregister.co.uk/2019/01/15/rimini_oracle_supreme_court_hearing/

The legal wrangling has shifted from the initial complaint – alleging the third party support vendor infringed Big Red's copyright – and onto the matter ...

ORACLE CITES PTO AS SILENT AMICUS IN COPYRIGHT SPAT WITH RIMINI STREET
via National Law Journal by Scott Graham on 1/15/2019

Tuesday's arguments in Rimini Street v. Oracle stem from a 2015 jury verdict that Rimini infringed Oracle's copyright and violated anti-hacking statutes ...

EFF OBSERVES (ANTI) COPYRIGHT WEEK
via The Illusion of More by David Newhoff on 1/16/2019
URL: http://illusionofmore.com/eff-observes-anti-copyright-week%ef%bb%bf/

So, it turns out it’s Copyright Week.

MICROSOFT REMOVES FORZA DANCES AMID FORTNITE LAWSUITS
via Ars Technica by Kyle Orland on 1/16/2019
URL: https://arstechnica.com/?p=1442099

Forza Horizon 4 no longer features two dance emotes—the Carlton and the Floss—which were previously available for use by in-game avatars.
NAPSTER SETTLES SONGWRITER LAWSUIT OVER UNPAID ROYALTIES
via Intellectual Property Law360 by Bill Donahue on 1/16/2019
URL: https://www.law360.com/ip/articles/1119317

The company that currently operates Napster reached a settlement Tuesday in California federal court to end one of several class actions that claimed streaming music services had failed to pay millions...

APPOINTMENT OF CANADA'S NEW MINISTER OF JUSTICE RAISES CONCERNS ABOUT COPYRIGHT REFORM
via Billboard by Karen Bliss on 1/16/2019

Canadian Prime Minister Justin Trudeau on Monday (Jan. 14) appointed as Minister of Justice and Attorney General an MP and former law professor ...

NEARLY 100 EUROPEAN AUTHORS DEMAND ‘PROPORTIONATE’ REMUNERATION IN EU COPYRIGHT DIRECTIVE
via Intellectual Property Watch by William New on 1/17/2019
URL: http://www.ip-watch.org/2019/01/17/nearly-100-european-authors-demand-proportionate-remuneration-eu-copyright-directive/

With negotiations for the European Union Copyright Directive apparently approaching an end, a group of some 95 screenwriters and directors joined the intensive lobbying efforts with a letter today urging that a principle of "proportionate" remuneration to them be enshrined. The letter spells out several elements they argue are key to ensuring European audiovisual authors are able to "make a living from our craft and creativity."

EX-ROLLING STONE PHOTOG SUES OVER JANIS JOPLIN BAND PIC
via Intellectual Property Law360 by Chris Villani on 1/17/2019
URL: https://www.law360.com/ip/articles/1119665

A photographer best known for his work in the 1960s with the music magazine Rolling Stone sued a Boston music publication Thursday in federal court, claiming the site ripped off his...
TWENTY LEGAL BATTLES THAT STAND OUT ACROSS ARS’ 20 YEARS OF COVERING THEM
via Ars Technica by Cyrus Farivar on 1/18/2019
URL: https://arstechnica.com/?p=1430421

The legal system is often a confounding place, where disputes are adjudicated—it’s a world full of jargon that we journalists try to explain as best we can. And over the last two decades, legal cases have remained a fixture on Ars Technica.

STUDIOS SETTLE STREAMING DEVICE WAR WITH DRAGON BOX
via Intellectual Property Law360 by Tiffany Hu on 1/18/2019
URL: https://www.law360.com/ip/articles/1120011

Netflix, Disney, Amazon and other media outlets have tentatively agreed to settle with a company accused of selling a device that allows customers to stream movies and TV shows for free,...

ISRAEL ACCEPTS COPYRIGHT AMENDMENTS TO COMBAT INFRINGEMENT ON INTERNET
via IP Pro by Barney Dixon on 1/18/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6397

According to lawyers from S Horowitz & Co, the new amendments establish measures to combat copyright infringement online while preserving the ...

AUTOMATED VEHICLES IN 2019: PREDICTIONS AND SUGGESTIONS
via Intellectual Property Law360 by Melody Drummond Hansen et al. on 1/18/2019
URL: https://www.law360.com/ip/articles/1120165

“The only thing that is constant is change.” —Attributed to Heraclitus

GOOGLE SEARCH COULD DITCH ALL PHOTO THUMBNAILS UNDER EU COPYRIGHT LAW
via PetaPixel by Michael Zhang on 1/18/2019
URL: https://petapixel.com/2019/01/18/google-search-could-ditch-all-photo-thumbnails-under-eu-copyright-law/

In September 2018, the European Parliament voted in favor of the highly controversial EU Copyright Directive, which aims to “harmonize” copyright...
MOVIE STUDIOS CALL VIDANGEL'S FAIR USE BID 'UTTER NONSENSE'
via Intellectual Property Law360 by Lauren Berg on 1/18/2019
URL: https://www.law360.com/ip/articles/1120210

Disney and a half dozen other movie studios urged a California federal judge Friday to find that streaming service VidAngel can't rely on fair use principles to defend its practice of...

HOW STRANGER THINGS' PRETEEN FANS WENT TO WAR WITH THE EU
via Guardian by Alex Hern on 1/19/2019

Fansites such as hers are built around creative but unlicensed reuse of copyrighted material. Cory Doctorow of the Electronic Frontier Foundation, ...

THE WEEK IN IP – EU COPYRIGHT TRILOGUE CANCELLED, USPTO AND THE SHUTDOWN, MCDONALD'S EU IPO ...
via Managing IP by Ellie Mertens on 1/19/2019

Please log in to read the rest of this article. New to Managing Intellectual Property? Take advantage of free access to up to 5 articles on Managing IP ...

SUPREME COURT WEIGHS MEANING OF ‘FULL COSTS’ IN RIMINI STREET V. ORACLE USA ORAL ARGUMENTS
via IPWatchdog.com | Patents & Patent Law by Steve Brachmann on 1/20/2019
URL: http://www.ipwatchdog.com/2019/01/20/supreme-court-arguments-meaning-full-costs-copyright-infringement/id=105185/

On the morning of January 14th, the U.S. Supreme Court heard oral arguments in Rimini Street v. Oracle USA, a case that asks the nation’s highest court to decide whether the recovery of “full costs” in a copyright infringement suit as governed by 17 U.S.C. § 505 is limited to taxable costs under 28 U.S.C. § 1920 and 28 U.S.C. § 1821 or whether non-taxable costs can also be recovered. Much of the day’s discussion centered on the meaning of “full costs” and how that term had evolved under various...
YOUTUBER PEWDIEPIE RETWEETED AND 'LIKED' BY UKIP SENDING FANS INTO MELTDOWN
via Mirror by Milo Boyd on 1/20/2019
URL: https://www.mirror.co.uk/news/uk-news/youtuber-pewdiepie-retweeted-liked-ukip-13882915

The European Union Directive on Copyright in the Digital Single Market is, simply put, a way to put the responsibility on websites such as Youtube, ...

TVEYES WILL NO LONGER CARRY FOX NEWS IN NEGOTIATED END TO BIG COPYRIGHT FIGHT

The conclusion comes in a five-year-old lawsuit that tested the boundaries of fair use.

LOOMING EU COPYRIGHT RULES – TACKLING GOOGLE NEWS ARTICLE SCRAPING, INSTALLING UPLOAD FILTERS ...
via Register by Kieren McCarthy on 1/21/2019
URL: https://www.theregister.co.uk/2019/01/21/new_eu_copyright_plan/

And Article 13 covers the uploading of copyrighted material and would require large and medium sized companies to introduce systems that check ...

WHAT IS INTELLECTUAL PROPERTY, AND DOES CHINA STEAL IT?
via Washington Post by Grant Clark on 1/21/2019

IP is protected in law by patents, copyright and trademarks, enabling people to earn recognition or financial benefit from what they invent or create.

GOOGLE'S UNVEILS EU COPYRIGHT TESTS
via IP Pro by Ben Wodecki & Barney Dixon on 1/21/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6404

Google has conducted tests to show what its news search function might look like in Europe post-implementation of the EU's copyright reforms.
AXEL VOSS: THERE IS CURRENTLY AN IMBALANCE FOR RIGHTS HOLDERS IN THE DIGITAL WORLD
via IP Pro by Ben Wodecki on 1/21/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6403

The EU’s copyright reforms will tackle the imbalance for rights holders in the digital world, says Axel Voss, German MEP and rapporteur on the EU's ...

WHAT DOES FEMINISM HAVE TO DO WITH COPYRIGHT IN CANADA?
via Hugh Stephens Blog on 1/21/2019
URL: http://hughstephensblog.net/2019/01/21/what-does-feminism-have-to-do-with-copyright-in-canada/

In the ongoing review of the Copyright Act of Canada, the Parliamentary Committee tasked with receiving testimony and formulating recommendations has received hundreds of submissions, ranging from proposals that would totally gut the current copyright regime to ones that argue for much stronger copyright provisions, or perhaps a rollback of some of the changes introduced in the last review in 2012.

TVEYES TO STOP OFFERING FOX NEWS CLIPS
via MediaPost by Wendy Davis on 1/21/2019

Online monitoring service TVEyes will no longer offer subscribers to its $500-a-month service video clips from Fox News programs, both companies ...

GOOGLE CONSIDERING PULLING NEWS SERVICE FROM EUROPE
via Bloomberg by Natalia Drozdiak on 1/22/2019

The European Union is working towards finalizing a controversial new copyright law. The rules give publishers rights to demand money from the ...
INTERNET ARCHIVE'S EBOOK LOANS FACE UK COPYRIGHT CHALLENGE
via Guardian by Alison Flood on 1/22/2019
URL: https://www.theguardian.com/books/2019/jan/22/internet-archives-ebook-loans-face-uk-copyright-challenge

Some are out of copyright, but the collection includes books from authors including AS Byatt, Kate Atkinson, Hilary Mantel, William Boyd, Philip ...

ATTENTION LEGACY ARTISTS: 6 THINGS YOU NEED TO KNOW TO RECAPTURE YOUR COPYRIGHTS (GUEST COLUMN)
via Billboard by Erin M. Jacobson on 1/22/2019
URL: https://www.billboard.com/articles/business/8494284/legacy-artists-recapture-copyrights-primer-guest-column

As mentioned above, serving notice on the current owners of the copyrights is required to recapture rights. Because of the additional requirement that ...

AN ANALYSIS OF TITLE I AND TITLE III OF THE MUSIC MODERNIZATION ACT, PART 1 OF 2 (GUEST BLOG POST)
via Technology & Marketing Law Blog by Tyler Ochoa on 1/22/2019

On October 11, 2018, President Trump signed into law H.R. 1551, the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, which became Public Law 115-264, 132 Stat. 3676.

EUROPEAN COPYRIGHT REFORMS FACE DELAY
via World IP Review on 1/22/2019

Major reforms to EU copyright law have been delayed after talks to discuss the proposals were called off yesterday, January 21. The European ...

TVEYES, FOX NEWS END COPYRIGHT CASE WITH SETTLEMENT
via Intellectual Property Law360 by Bill Donahue on 1/22/2019
URL: https://www.law360.com/ip/articles/1120659

TVEyes, a subscription-based search engine for TV clips at the center of a long-running copyright lawsuit, has reached a settlement with Fox News to end the case six weeks after the U.S....
AN ANALYSIS OF TITLE I AND TITLE III OF THE MUSIC MODERNIZATION ACT, PART 2 OF 2 (GUEST BLOG POST)
via Technology & Marketing Law Blog by Tyler Ochoa on 1/22/2019

One of the most important provisions in the MWM Act is the provision requiring the Collective to “establish and maintain a database containing information relating to musical works (and shares of such works) and, to the extent known, the identity and location of the copyright owners of such works (and shares thereof) and the sound recordings in which the musical works are embodied.”

HOLLYWOOD PHOTOG SAYS POP ARTIST KNOCKED OFF HIS WORK
via Intellectual Property Law360 by Carolina Bolado on 1/23/2019
URL: https://www.law360.com/ip/articles/1120937

Famous Hollywood photographer Douglas Kirkland filed suit Tuesday in Miami against pop artist Kfir Moyal, alleging he used a copyrighted photograph in an art piece to promote his business.

FEDERAL JUDGE DISMISSES MAJOR LABELS' LAWSUIT AGAINST RUSSIAN STREAM-RIPPER
via Billboard by Marc Schneider on 1/23/2019
URL: https://www.billboard.com/articles/business/8494630/judge-major-labels-lawsuit-flvto-russian-stream-ripper

A federal judge in the Eastern District of Virginia has dismissed a copyright infringement case brought by Universal Music, Sony Music and 10 other...

BLOCBOY JB HITS 'FORTNITE' WITH NEW SUIT OVER DANCE RIGHTS
via Intellectual Property Law360 by Mike LaSusa on 1/23/2019
URL: https://www.law360.com/ip/articles/1121500

Memphis-based rapper Blocboy JB on Wednesday became the latest pop culture figure to sue Epic Games Inc. for allegedly using signature dance moves without permission in the company's widely-popular video game...
A US rapper is the latest to file a copyright lawsuit against the creator of a popular video game “Fortnite”, claiming it uses a dance move he created, ...

A federal lawsuit in Miami paints the Kfir Moyal Art Gallery Inc. as a copyright infringer for allegedly reproducing and profiting from a photo of French actress, model and activist Brigitte Bardot.

Several months after requesting an extension to file a petition for writ of certiorari (request for Supreme Court review), Google today announced the filing of that petition today (one day before the extended deadline), and published the document (PDF).

A Virginia federal court has thrown out a copyright infringement lawsuit brought by a slew of record companies, including Warner Bros. Records Inc. and Sony Music Entertainment, against the Russian owner...
ANDROID WAR: GOOGLE ASKS US SUPREME COURT TO TAKE UP APPEAL OF ORACLE'S COPYRIGHT VICTORY
via Law.com by Ross Todd on 1/24/2019
URL: https://www.law.com/2019/01/24/android-war-google-asks-u-s-supreme-court-to-take-up-appeal-of-oracles-copyright-victory/

Lawyers for Google wrote that if Oracle's win at the Federal Circuit is allowed to stand, it would "upend the longstanding expectation of software developers that they are free to use existing software interfaces to build new computer programs."

GOOGLE TAKES ORACLE SMARTPHONE WAR TO THE SUPREME COURT
via Intellectual Property Law360 by Bill Donahue on 1/24/2019
URL: https://www.law360.com/ip/articles/1122059

Google asked the U.S. Supreme Court on Thursday to finally weigh in on the company’s yearslong legal battle with Oracle over smartphone software, blasting a lower court’s rulings as “a distortion...

OPEN ACCESS ADVOCATES SEE END OF US COPYRIGHT TERM EXTENSION ACT AS WIN FOR COMMONS
via Intellectual Property Watch by David Branigan on 1/25/2019

Open access advocates in the United States are celebrating the expiration, and non-renewal, of the Copyright Term Extension Act, which introduces into the public domain all works from 1923, and signals an end of the practice by US lawmakers to continually extend the terms of copyright protection. Leading figures from groups such as Creative Commons and Wikimedia Foundation gathered to discuss why this shift in policy took place, and what it means for the public domain. They asserted that this change is the result of a general acceptance of the value of “the commons,” brought on in part by the era of the internet.

GOOGLE ASKS SUPREME COURT TO OVERRULE DISASTROUS RULING ON API COPYRIGHTS
via Ars Technica by Timothy B. Lee on 1/25/2019
URL: https://arstechnica.com/?p=1446121

An application programming interface is the glue that holds complex software systems together. Until 2014, it was widely assumed that no one could use copyright law to restrict APIs' use—a view that promoted software interoperability.
GOOGLE: ORACLE JAVA WIN WILL KILL SOFTWARE DEVELOPMENT, SO SUPREME COURT MUST RULE
via ZDNet by Liam Tung on 1/25/2019
URL: https://www.zdnet.com/article/google-oracle-java-win-will-kill-software-development-so-supreme-court-must-rule/

Google has asked the US Supreme Court to review its nine-year copyright ... Oracle, Google give closing arguments in Java API copyright case.

OPEN-SOURCE JAVASCRIPT: COMPLIANCE TIPS FOR COMPANIES
URL: https://www.law360.com/ip/articles/1119787

Many companies are now aware that if they incorporate open-source software into their products, there are specific terms and conditions that go along with the grant of the use of the...

CONAN O'BRIEN SAYS JOKES TOO UNORIGINAL TO BE STOLEN
via Intellectual Property Law360 by Suzanne Monyak on 1/25/2019
URL: https://www.law360.com/ip/articles/1122135

Late night TV host Conan O’Brien has argued that a freelance comedy writer's jokes that he is accused of stealing are too unoriginal to enjoy copyright protections, according to a Thursday...

GETTY'S PHOTO COPYRIGHT WIN TO BE RECONSIDERED
via Intellectual Property Law360 by Tiffany Hu on 1/25/2019
URL: https://www.law360.com/ip/articles/1122023

Months after tossing a copyright suit accusing Getty Images of recklessly selling access to tens of thousands of photos it didn’t own, a New York federal judge on Thursday agreed to...

NETFLIX’S ALLIANCE WITH THE MPAA SIGNALS A SHIFT IN PLATFORM PRIORITIES
via Mister Copyright by Kevin Madigan on 1/25/2019
URL: http://mistercopyright.org/netflix-s-alliance-with-the-mpaa-signals-a-shift-in-platform-priorities

Earlier this week, it was announced that Netflix would be joining the Motion Picture Association of America (MPAA) as the film studio coalition’s first streaming platform member.
US COURT THROWS OUT CASE AGAINST AUDIO-RIPPING SITES
via World IP Review on 1/26/2019

A US court has thrown out a copyright infringement case after ruling that it doesn't have jurisdiction over Russian websites Flvto and 2conv.

THAILAND JOINS MARRAKESH TREATY
via YouTube by WIPO on 1/28/2019
URL: https://www.youtube.com/watch?v=cZebfRuUDcw

WIPO Director General Francis Gurry welcomed on January 28, 2019 Thailand accession to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, WIPO's fastest growing treaty. The instrument of accession was deposited with the Director General by Deputy Minister of Commerce Chutima Bunyapraphasara who said this was an important development for Thailand and its population of blind and visually impaired persons.

'PURGE' PRODUCERS ESCAPE LAWSUIT CLAIMING RIP-OFF
URL: https://www.hollywoodreporter.com/thr-esq/purge-producers-escape-lawsuit-claiming-rip-1180114

It's the end of a four-year-old lawsuit that haunted Universal and the film's director. In court papers stipulating dismissal, the parties tout "independent creation."

BLACKBEARD IS BACK: WILL HE MAKE IT TO THE SUPREME COURT?
via Hugh Stephens Blog on 1/28/2019
URL: http://hughstephensblog.net/2019/01/28/blackbeard-is-back-will-he-make-it-to-the-supreme-court/

Next month will mark three years since I started writing this blog.
COURTS LIMITING USE OF COPYRIGHTED PHOTOS FOR NEWS MEDIA
via Intellectual Property Law360 by Tal Dickstein & Sarah Levitan on 1/28/2019
URL: https://www.law360.com/ip/articles/1121482

Charges of “fake news” are not the only thing buffeting the news business of late. As news outlets increasingly use images and videos in their reporting to engage subscribers, particularly on...

GOOGLE V. ORACLE – SUPREME COURT PETITION
via Patent Law Blog (Patently-O) by Dennis Crouch on 1/28/2019
URL: https://patentlyo.com/patent/2019/01/google-supreme-petition.html

This new petition from Google asks important questions about the role of copyright in protecting software. Questions presented:

UNIVERSAL, WRITER REACH DEAL TO KILL SUIT OVER 'PURGE' IDEA
via Intellectual Property Law360 by Hailey Konnath on 1/28/2019
URL: https://www.law360.com/ip/articles/1122771

After a four-year legal battle, screenwriter Douglas Jordan-Benel has agreed to drop his lawsuit claiming Universal Studios stole from him the premise of its dystopian thriller “The Purge,” conceding in the...

HOW THE GOOGLE-ORACLE SMARTPHONE WAR GOT TO HIGH COURT
via Intellectual Property Law360 by Bill Donahue on 1/28/2019
URL: https://www.law360.com/ip/articles/1122968

Google is asking the U.S. Supreme Court to tackle the company’s smartphone war with Oracle, capping off more than eight years of contentious copyright litigation between the two software giants....

FAIR USE IN FLUX: SECOND CIRCUIT TVEYES RULING MAY HAVE A LASTING EFFECT ON FAIR USE ANALYSIS
via National Law Review by Kevin P. Milewski on 1/29/2019
URL: https://www.natlawreview.com/article/fair-use-flux-second-circuit-tveys-ruling-may-have-lasting-effect-fair-use-analysis

In recent weeks, the Supreme Court denied TVEyes' petition for certiorari, leaving in place the appeals court's decision; and Fox and TVEyes settled...
'FAIR USE' DOCTRINE SHOULD BE CONSISTENT AND PROTECT COPYRIGHT OWNERS, ABA HOUSE SAYS
via ABA Journal by Amanda Robert on 1/29/2019

Section 107 of the Copyright Act outlines four factors that must be considered to determine whether an alleged infringer has made a case for fair use.

PHOTOGRAPHER ACCUSES ATTORNEY GENERAL'S CAMPAIGN OF COPYRIGHT INFRINGEMENT
via Daily Report by R. Robin McDonald on 1/29/2019

Schwarz registered the photograph copyright on Oct. 31—the day the Carr video containing Schwarz's photo appeared online, according to the ...

HASBRO WINS IN 'GAME OF LIFE' COPYRIGHT DISPUTE WITH CO-CREATOR
via Bloomberg by Kyle Jahner on 1/29/2019

The successor to a late co-creator of The Game of Life board game can't end an old licensing agreement with Milton Bradley Co. because it doesn't ...

GOOGLE TRIES AGAIN AT SUPREME COURT IN COPYRIGHT FIGHT WITH ORACLE
via IPWatchdog.com | Patents & Patent Law by Eileen McDermott on 1/29/2019
URL: http://www.ipwatchdog.com/2019/01/29/google-oracle-supreme-court-copyright-fight/id=105727/

Following a Federal Circuit ruling last March in which Google lost the latest in a nine-year battle with Oracle over Google’s unauthorized use of nine lines of code and 37 packages of Oracle’s Java API packages in its Android operating system, Google has once again petitioned the Supreme Court to step in.
Gigi Hadid has been slapped with a copyright infringement suit that accuses the model of posting a photograph of herself on her Instagram account without first obtaining permission from the company...

The Google v. Oracle litigation over Java APIs is on its ninth year, and now, second appeal to the United States Supreme Court. Google has filed a petition for writ of certiorari seeking to resolve one fundamental issue for software copyrights (whether APIs can even be copyrighted), and one......

A San Francisco federal judge on Tuesday tossed out a copyright lawsuit filed by Oracle Corp. accusing Hewlett Packard Enterprise Co. of selling unauthorized updates to Oracle software.

The entertainment industry has scored a big victory over the maker of a "free TV" box that helped users watch pirated video.

On a trip to the Ninth Circuit, U.S. District Judge William Smith of Rhode Island took a short detour to hear live testimony from three 90-something-year-old witnesses to resolve a 50-year-old copyright dispute over the Game of Life.
US GYPSUM CLAIMS COMPETITORS STOLE ITS MARKETING COPY
via Intellectual Property Law360 by Michael Phillis on 1/30/2019
URL: https://www.law360.com/ip/articles/1123603

U.S. Gypsum Co. has accused two companies that sell a rival flooring product of duplicating Gypsum's marketing language and overstating their product's fire resistance, according to a lawsuit filed in Illinois...

US JOINS TREATY TO EASE ACCESS TO BOOKS, MUSIC FOR BLIND
via Intellectual Property Law360 by Suzanne Monyak on 1/30/2019
URL: https://www.law360.com/ip/articles/1123879

The U.S. has ratified an international treaty carving out a copyright exception for accessible formats of published works, allowing individuals with visual impairments or other disabilities to more easily purchase published...

MUSIC RIGHTS AGENCY FIGHTS RADIO GROUP'S NEW-EVIDENCE BID
via Intellectual Property Law360 by Matt Bernardini on 1/30/2019
URL: https://www.law360.com/ip/articles/1123743

Global Music Rights LLC told a Pennsylvania federal court Tuesday that a radio industry group accusing it of forcing radio stations to pay unfair royalty fees can't introduce recent correspondence as new evidence...

FORD GETS COPYRIGHT CLAIMS NIXED IN SOFTWARE IP ROW
via Intellectual Property Law360 by Mike LaSusa on 1/30/2019
URL: https://www.law360.com/ip/articles/1123474

Ford Motor Co. won a bid to kill Versata Technology Inc.'s claims that the automaker's copying of the software company's files constituted copyright infringement when a Michigan federal judge on Tuesday...

AP SUES INSURER FOR MORE COVERAGE IN NFL PHOTOG SPAT
via Intellectual Property Law360 by Ryan Boysen on 1/30/2019
URL: https://www.law360.com/ip/articles/1123649

The Associated Press has sued three Chubb Ltd. units in New York federal court over the insurer's alleged failure to pay for a copyright infringement suit against the news organization and...
A California federal judge Tuesday signed off on a stipulation that will require a company that sold a device allowing customers to stream movies and TV shows for free to pay...

Ford Motor Co. prevailed over a developer's allegations of infringing vehicle software copyrights because the developer, Versata Software Inc., failed ...

For a small but committed band of activists strongly opposed to copyright reform, Jan. 19 was supposed to be a day of protest across Europe.

The Dragon Box lawsuit has, after a year, been settled. But unlike most settlements, Dragon Box agreed to have a stipulated judgment taken against them to the tune of $14.5 million, and various injunctive relief that all but shuts down the company as consumers know it today. However, given......

European publishers have appealed to German chancellor Angela Merkel and French president Emmanuel Macron to intervene in the EU copyright ...
WHAT CAN THE FASHION INDUSTRY LEARN FROM A LEGAL SQUABBLE OVER VIDEO GAMES & TATTOOS?
via Fashion Law on 1/31/2019
URL: http://www.thefashionlaw.com/home/what-can-the-fashion-industry-learn-from-a-legal-squabble-over-lebron-james-tattoos

Sports figures and the leagues, themselves, have been grappling with how to handle certain ink in light of both copyright concerns and league-specific ...

'ART OF FIELDING' RIP-OFF CLAIM DOUBTED BY 2ND CIRC. JUDGE
via Intellectual Property Law360 by Pete Brush on 1/31/2019
URL: https://www.law360.com/ip/articles/1124246

Second Circuit Judge Guido Calabresi looked ready Thursday to deep-six a suit by writer Charles Green claiming “The Art of Fielding” is a rip-off, remarking that similarities between Green's unpublished baseball...

NETFLIX SUED OVER 'WILD WILD COUNTRY' FOOTAGE OF CONTROVERSIAL GURU
via Legal News & Entertainment Law - Hollywood, ESQ. | Hollywood Reporter by Ashley Cullins on 1/31/2019
URL: https://www.hollywoodreporter.com/thr-esq/netflix-sued-wild-wild-country-footage-controversial-guru-1181751

A documentary filmmaker and Swiss company claim their works featuring Bhagwan Shree Rajneesh, known as Osho, were used without permission in the Netflix docuseries.

US RATIFIES MARRAKESH TREATY
via IP Pro by Ben Wodecki on 1/31/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6437

The US has ratified the Marrakesh Treaty, a copyright exception that facilitates the creation of accessible versions of books and copyrighted works for ...
February 2019

JUDGE WON'T KILL LAWSUIT CLAIMING AMC'S 'FEAR THE WALKING DEAD' RIPPED OFF COMIC BOOK

AMC can't escape a copyright claim from Mel Smith. The cable network also faces an additional claim of aiding Smith's agent, who was also Robert Kirkman's partner and became an executive producer on the series.

NETFLIX'S 'WILD WILD COUNTRY' NAMED IN COPYRIGHT INFRINGEMENT SUIT
via World IP Review on 2/1/2019

Netflix's award-winning documentary series “Wild Wild Country” has been named in a copyright infringement suit for “appropriating” the teachings of ...

TATTOOS, VIDEO GAMES AND QUESTIONS OF COPYRIGHT REUSE
URL: https://www.law360.com/ip/articles/1123040

A recent New York Times article chronicles legal challenges around the reuse of tattoos in sports video games.[1] The problem arises when a tattooed athlete grants permission to a game manufacturer...

NETFLIX ACCUSED OF WILD, WILD IP ABUSE IN CULT DOCUMENTARY
via Intellectual Property Law360 by Dave Simpson on 2/1/2019
URL: https://www.law360.com/ip/articles/1124567

Netflix and the makers of its acclaimed series "Wild Wild Country" were sued in California federal court Thursday for allegedly using a foundation's copyrighted materials as part of their show documenting...
AMC CAN'T KILL 'FEAR THE WALKING DEAD' COPYRIGHT CASE
via Intellectual Property Law360 by Mike LaSusa on 2/1/2019
URL: https://www.law360.com/ip/articles/1124547

AMC and others can’t escape a copyright suit alleging a spinoff of the wildly popular “Walking Dead” TV series copped a zombie-comic creators’ characters, dialogue and plot points without permission, a...

GAME MAKER CAN'T HIT JACKPOT IN COPYRIGHT SUIT, JURY HEARS
via Intellectual Property Law360 by Lauraann Wood on 2/1/2019
URL: https://www.law360.com/ip/articles/1124774

Illinois-based game maker GC2 Inc. is asking for about $15 million to compensate it for video slot game artwork that was used in online games, even though it didn't infringe its...

CLOSING THE GAP BETWEEN INTELLECTUAL PROPERTY AWARENESS AND UNDERSTANDING
URL: http://www.ipwatchdog.com/2019/02/03/closing-gap-intellectual-property-awareness-understanding/id=105866/

Intellectual property (IP) promotes innovation. The limited right to exclude others from copying patented inventions, copyrighted original works of authorship, and trademarked brands and logos encourages innovators to invest their time and money. IP appeals to our sense of fairness by discouraging or preventing counterfeiting, passing off, and other harmful takings of the fruits of investments in research, development, creativity and innovation, and is leveraged by entrepreneurs seeking...

SONGWRITERS, PUBLISHERS UNVEIL BID TO RUN NATION'S MUSIC LICENSING
via Tennessean by Nate Rau on 2/4/2019

"Our Mechanical Licensing Collective submission provides a comprehensive roadmap to the Copyright Office to establish the first collective of its kind," ...
A Manhattan federal magistrate judge on Monday rejected a request by a photographer demanding copies of copyright settlements and records related to thousands of photos published by news companies including Gannett...

The named plaintiffs in the UMG case are John Waite, a solo artist and former lead singer of the 1970s group The Babys, and Joe Ely, who has recorded 18 solo albums and also was a performer on works by The Clash and Rosie Flores. In the Sony case, David Johansen of The New York Dolls, John Lyon (known as Southside Johnny) and Paul Collins of The Beat are hoping to lead the charge.

A California visual artist has dropped his copyright suit accusing the company behind the music festival Lollapalooza of misusing illustrations the artist created for the festival, after both sides reached a...

A year ago, the Copyright Royalty Board (CRB) announced its rate determinations for what record labels and digital services will pay to music ...
FILM CO. SAYS 'SUPER BOWL SHUFFLE' CLIPS WERE FAIR USE
via Intellectual Property Law360 by Mike Curley on 2/5/2019
URL: https://www.law360.com/ip/articles/1125801

The production company behind a documentary about the 1985 Chicago Bears has asked an Illinois federal judge for a quick win in a suit alleging the film infringed copyrights for the...

PHOTOGRAPHER NAMES DAILY MAIL IN COPYRIGHT SUIT
via World IP Review on 2/5/2019
URL: https://www.worldipreview.com/news/photographer-names-daily-mail-in-copyright-suit-17463

A New York City-based photographer has filed a copyright infringement lawsuit against British newspaper Daily Mail. In a complaint filed at the US ...

JURORS AWARD $16.2M TO SLOT GAME MAKER IN COPYRIGHT ROW
via Intellectual Property Law360 by Lauraann Wood on 2/5/2019
URL: https://www.law360.com/ip/articles/1125321

An Illinois federal jury has awarded slot game maker GC2 Inc. $16.2 million over its claims that International Game Technology PLC and several others infringed its copyrights when they used its...

FURNITURE CO. WANTS NEW POST-VERDICT PATENT CLAIMS TOSSED
via Intellectual Property Law360 by Lauraann Wood on 2/5/2019
URL: https://www.law360.com/ip/articles/1125649

A high-end furniture and lighting company that was awarded $7 million over claims that a Canadian competitor infringed patents and copyrights in several products should not be able to have "another..."

MUSICIANS SUE SONY, UMG FOR 'SECOND CHANCE' AT COPYRIGHT
via Intellectual Property Law360 by Mike LaSusa on 2/5/2019
URL: https://www.law360.com/ip/articles/1125985

Sony Music Entertainment Inc. and UMG Recordings Inc. have violated a provision of copyright law giving creators a “second chance” to assert rights over their works after 35 years, a group...
THE COPYRIGHT HAS EXPIRED ON THOUSANDS OF BOOKS. HERE ARE THE BEST ONES TO READ.
via Washington Post by Michael Dirda on 2/6/2019
URL: https://www.washingtonpost.com/entertainment/books/the-copyright-has-expired-on-thousands-of-books-here-are-the-best-ones-to-read/2019/02/05/732b4a00-289f-11e9-8eeef-0d74f4bf0295_story.html

Information, as the saying goes, wants to be free, though copyright lawyers do their best to make us pay for it as long as possible. In the case of ...

EU TO CONSIDER 'SOFTER LIABILITY' IN COPYRIGHT DIRECTIVE
via World IP Review on 2/6/2019

A leaked proposal for negotiations on the European copyright directive has indicated some support for a “softer liability regime” for smaller companies.

'STRANGER THINGS' CREATORS ASK COURT TO TOSS LAWSUIT OVER THE SHOW'S ORIGIN

The Duffer brothers say they've proven that they independently created the hit Netflix series and didn't get the idea from Charlie Kessler at a 2014 Tribeca Film Festival party.

UNION CABINET APPROVES AMENDMENT TO CINEMATOGRAPH ACT TO TACKLE FILM PIRACY, COPYRIGHT ...
via Hindu on 2/6/2019

The government has proposed to make film piracy offences punishable with imprisonment of up to three years and fines that may extend to ?10 lakh ...
WHEN PASSION BECOMES ENTITLEMENT: ROMS AND VIDEO GAME PIRACY
via CreativeFuture by Justin Sanders on 2/6/2019
URL: https://creativefuture.org/video-game-piracy/

For adults of a certain age – whose formative years included uncountable hours of mashing primitive controllers in pursuit of 8- and 16-bit pixelated glory – there are few things as nostalgic as Nintendo and Super NES games.

EU COPYRIGHT PROPOSALS REVEAL 'SOFTER LIABILITY REGIME'
via IP Pro by Barney Dixon on 2/6/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6457

New proposals for articles 11 and 13 of the EU Copyright Directive have suggested a move to a “softer liability regime” for smaller platforms. According ...

'ART OF FIELDING' COPYRIGHT SUIT STRIKES OUT IN 2ND CIRC.
via Intellectual Property Law360 by Mike Curley on 2/6/2019
URL: https://www.law360.com/ip/articles/1126339

A Second Circuit panel on Wednesday refused to give the author of an unpublished manuscript another swing at allegations that the 2011 best-selling baseball novel "The Art of Fielding" steals from...

PROMINENT 1970S MUSICIANS SUE MUSIC COMPANIES FOR COPYRIGHT INFRINGEMENT
via ABA Journal by Amanda Robert on 2/6/2019

A group of well-known 1970s musicians filed a pair of proposed class action lawsuits Tuesday, accusing Sony Music Entertainment Inc. and UMG ...

NIKE ASKS HIGH COURT TO IGNORE PHOTOG'S 'JUMPMAN' SUIT
via Intellectual Property Law360 by Mike Curley on 2/6/2019
URL: https://www.law360.com/ip/articles/1126400

Nike told the U.S. Supreme Court on Wednesday to deny a photographer's petition to revive a suit claiming Nike copied his Michael Jordan photo in its own promotional image, saying court...
CASE TO WATCH: FED CIRCUIT WEIGHS NOVEL COPYRIGHT THEORY IN SYNGENTA CASE
via Reuters by Jan Wolfe on 2/7/2019

A federal appeals court on Friday will consider a novel theory of copyright liability made by agrochemical company Syngenta AG in a dispute with a ...

GOOGLE: EU COPYRIGHT RULES WILL CUT 45 PERCENT OF TRAFFIC TO NEWS SITES
via ZDNet by Liam Tung on 2/7/2019
URL: https://www.zdnet.com/article/google-eu-copyright-rules-will-cut-45-percent-of-traffic-to-news-sites/

As EU lawmakers finalize the text of the European Copyright Directive, Google has revealed how badly the new rules could impact traffic to European ...

TOSS OF HEWLETT-ORACLE IP SUIT EXPLAINED IN WRITTEN RULING
via Intellectual Property Law360 by Bill Donahue on 2/7/2019
URL: https://www.law360.com/ip/articles/1126842

A San Francisco federal judge on Wednesday issued a written ruling explaining a decision last month to toss out a software copyright lawsuit filed by Oracle Corp. against Hewlett Packard Enterprise Co., saying...

POPSUGAR CAN'T SHAKE INSTAGRAM INFLUENCER'S IP SUIT
via Intellectual Property Law360 by Dave Simpson on 2/7/2019
URL: https://www.law360.com/ip/articles/1126960

A California federal judge Thursday declined to dismiss a copyright infringement suit and a putative class action brought by a law degree-holding Instagram influencer claiming that the lifestyle website PopSugar stole...

ONE DIRECTION SONG 'NIGHT CHANGES' AT CENTRE OF HIGH COURT DISPUTE
via Irish Times by Aodhan O'Faolain on 2/7/2019

A singer songwriter has taken a case over alleged copyright infringement against the five original members of boy band One Direction and various ...
PUERTO RICAN AUTHOR'S HEIRS, PLAYWRIGHT WIN COPYRIGHT SUIT
via Intellectual Property Law360 by Daniel Siegal on 2/7/2019
URL: https://www.law360.com/ip/articles/1126908

A Puerto Rico federal jury on Wednesday awarded the heirs of Puerto Rican author Enrique Laguerre and a playwright who adapted his work $266,350, finding that publishing company Editorial Cultural Inc....

ED SHEERAN CAN'T GET QUICK APPEAL OVER MARVIN GAYE SONG
via Intellectual Property Law360 by Bill Donahue on 2/7/2019
URL: https://www.law360.com/ip/articles/1126638

Ed Sheeran lost a bid Wednesday to file a fast-track appeal aimed at ending a lawsuit that claims his “Thinking Out Loud” infringes Marvin Gaye’s iconic “Let’s Get It On,” sending...

USA JOINS WIPO MARRAKESH TREATY AS 50TH MEMBER
via YouTube by WIPO on 2/8/2019
URL: https://www.youtube.com/watch?v=ANi9FQ6l0P4

WIPO Director General Francis Gurry and Mark Cassayre, Chargé d’Affaires of the U.S. Mission to the United Nations in Geneva, explain the significance of the USA’s ratification of WIPO’s Marrakesh Treaty. The United States of America joined the Marrakesh Treaty as its 50th member on February 9, 2018, adding a major global publishing center to the Treaty that promotes the increased worldwide availability of texts specially adapted for use by persons with visual or print impairments. The U.S. is home to the largest number of English-language texts in accessible formats, such as Braille, for use by people living with print or visual disabilities. The Treaty eases the creation and international transfer of accessible texts among its 50 contracting parties, which cover 78 countries (including the 28-member European Union).

EUROPE'S FILM, TV INDUSTRIES HIT OUT AT NEW EU COPYRIGHT PLANS
via Variety by John Hopewell on 2/8/2019

Europe's film and TV industries say they are teetering on the edge of disaster as the European Union finalizes new copyright regulation. At the Berlin ...
COURT WEIGHS SPLITTING UP TRIAL IN 'HUSTLIN" COPYRIGHT SUIT
via Intellectual Property Law360 by Nathan Hale on 2/8/2019
URL: https://www.law360.com/ip/articles/1123601

An upcoming trial in a copyright infringement suit over LMFAO’s hit song “Party Rock Anthem” could be split in two, as a Florida federal judge said Friday she is “seriously considering”...

SONY AND UMG FACE TERMINATED COPYRIGHT CLASS ACTION
via FindLaw Writ - Recent Articles by George Khoury, Esq. on 2/8/2019

A recently filed pair of proposed class action lawsuits in the New York District Court seek to hold Sony and UMG liable for ignoring the copyright termination notices they have received from countless musicians, including John Waite, Joe Ely, David Johansen, John Lyon, and Paul Collins. The plaintiffs assert......

MUSIC BIZ GOES TO WAR WITH ITSELF OVER EUROPEAN COPYRIGHT DIRECTIVE
via Billboard by Richard Smirke on 2/8/2019
URL: https://www.billboard.com/articles/business/8497395/music-biz-split-over-european-copyright-directive-article-11-13

For the past two years, the music and tech industries have been warring over the European Union’s plans to reform copyright law -- one party (music) ...

USOC HIT WITH COPYRIGHT SUIT OVER PING PONG PHOTO
via Intellectual Property Law360 by Rick Archer on 2/8/2019
URL: https://www.law360.com/ip/articles/1127303

The United States Olympic Committee is facing a suit in Colorado federal court from a photographer who claims the committee used his photo of a New York City ping pong match...

KANYE DIDN'T PAY FOR 'LIFE OF PABLO' PRAYER SAMPLE, SUIT SAYS
via Intellectual Property Law360 by Lauren Berg on 2/8/2019
URL: https://www.law360.com/ip/articles/1127452

Rapper Kanye West used an audio sample of a young girl passionately praying in his 2016 song “Ultralight Beam” and now her parents want him to pay up, according to a...
UNITED STATES RATIFIES MARRAKESH TREATY TO INCREASE ACCESS TO WORKS FOR THE VISUALLY IMPAIRED
via IPWatchdog.com | Patents & Patent Law by Jake Wharton on 2/10/2019
URL: http://www.ipwatchdog.com/2019/02/10/united-states-ratifies-treaty-increase-access-works-visually-impaired/id=106147/

According to the World Blind Union, of the millions of books published each year, approximately only 1-7 percent are made available to those who are visually impaired. On January 28, President Donald J. Trump signed the documents for the United States to ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. The treaty was adopted in Marrakesh, Morocco in 2013. The goal of the copyright treaty is to increase...

UNIVERSAL MUSIC TARGETS AUSTRALIAN POLITICIAN IN COPYRIGHT INFRINGEMENT SUIT
via World IP Review on 2/11/2019

Universal Music has filed a copyright infringement claim against an Australian politician for using a re-worked version of a song by heavy-metal band ...

PETRELLA'S INCONSISTENT IMPACT ON COPYRIGHT DAMAGES
URL: https://www.law360.com/ip/articles/1125453

In its 2014 ruling in Petrella v. Metro-Goldwyn-Mayer Inc.,[1] the U.S. Supreme Court appeared to endorse and rely on an “injury” accrual rule for copyright infringement in stating the recoverable damages...

US COPYRIGHT ROYALTY BOARD SAYS SONGWRITERS WILL BE PAID HIGHER ROYALTIES
via World IP Review on 2/11/2019

The US Copyright Royalty Board (CRB) has announced that it will raise the royalty rates paid to songwriters for the streaming of their music for the ...
LIBRARY OF CONGRESS NAMES NEW CHIEF COPYRIGHT JUDGE
via Intellectual Property Law360 by Kevin Penton on 2/11/2019
URL: https://www.law360.com/ip/articles/1128051

The Library of Congress has elevated a member of the Copyright Royalty Board to serve as its chief judge following the imminent retirement of the position’s current occupant, the agency announced...

SLOT GAME CO. WANTS $209M IN COPYRIGHT PENALTIES
URL: https://www.law360.com/ip/articles/1127835

Slot game maker GC2 Inc. has set its sights on the maximum possible penalty under the Digital Millennium Copyright Act after a jury found three companies infringed its artwork for online slot...

LAWMAKERS AGREE NEW EU RULES THAT CAMPAIGNERS SAY WILL CHANGE THE WAY THE INTERNET WORKS
via Independent by Andrew Griffin on 2/11/2019

New copyright rules that campaigners say will change the way the internet works could soon be on their way, after EU lawmakers agreed on changes ...

CCIA CRITICISES “UNWORKABLE” EU COPYRIGHT DIRECTIVE
via World IP Review on 2/12/2019

“Foreign countries are increasingly prone to imposing onerous IP regulations aimed at US internet companies”, according to the Computer ...
'FORTNITE' PUBLISHER URGES DISMISSAL OF RAPPER'S SUIT: "NO ONE CAN OWN A DANCE STEP"

Epic Games says 2 Milly's moves are unprotectable, aren't similar to what's actually in the game and his lawsuit represents an attempt to chill free speech.

COPYRIGHT ROYALTY JUDGE SUZANNE BARNETT TO RETIRE
via IP Pro by Ben Wodecki on 2/12/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6479&

She concluded: “I owe my successes to the sophisticated level of litigation practice and to the dedication and talent of the incomparable Copyright ...

'FORTNITE' HITS BACK IN IP SUIT: 'NO ONE CAN OWN A DANCE STEP'
via Intellectual Property Law360 by Bill Donahue on 2/12/2019
URL: https://www.law360.com/ip/articles/1128299

The creator of the smash hit video game "Fortnite" is pushing to kill one of several lawsuits that claim the game infringed copyrights by letting players perform popular dance moves, arguing...

UNIVERSAL HIT WITH $100M SUIT OVER 'DEATH DAY' MOVIES
via Intellectual Property Law360 by Hailey Konnath on 2/12/2019
URL: https://www.law360.com/ip/articles/1128645

The New Orleans artist and studio owner behind the sinister, rosy-cheeked expressionist work of art known as "King Cake Baby" said Universal Studios unlawfully twisted elements of his art into the...

OBsolete HOT NEWS DOCTRINE BACK IN THE NEWS AS BLOOMBERG IS SUED FOR REPORTING TOO QUICKLY
via TechDirect by Mike Masnick on 2/13/2019

It's been a few years since we've really talked about the Hot News doctrine, which was a mostly obsolete and, frankly, bizarre attempt to turn the idea of publishing a similar news story too quickly after the original reporters broke the story into a form of "misappropriation."
IS PINTEREST A COPYRIGHT INFRINGEMENT MASTERPIECE?
via CreativeFuture by Jason Thomas on 2/13/2019
URL: https://creativefuture.org/pinterest/

In 2012, Choire Sicha at The Awl voiced a concern about Pinterest being entirely dependent on copyright infringement — calling it “delightful, addictive, and theft.”

CONTROLLED DIGITAL LENDING: AN APPEAL TO LIBRARIANS AND READERS
via The Authors Guild by Jennifer Simms on 2/13/2019
URL: https://www.authorsguild.org/industry-advocacy/cdl-appeal-to-readers-and-librarians/

Today we are joining a coalition of 37 national and international organizations in an “Appeal to readers and librarians from the victims of Controlled Digital Lending (CDL).” As described in the Appeal, CDL is the flawed legal theory under which “printed books are being scanned and distributed online to readers worldwide …

EU COPYRIGHT RULES: PROVISIONAL DEAL STRUCK ON CHANGES
via Intellectual Property Watch by William New on 2/13/2019

The European Council's Romanian presidency announced today it has struck a provisional agreement with the EU Parliament on a draft directive that makes changes to existing European Union copyright rules. The draft agreement, which will go before the full Council of member states and Parliament for approval, would make changes such as a controversial new "publishers' right" or "snippet tax," and strengthens copyright protections on online content sharing platforms. It also would introduce copyright exceptions for a range of purposes such as text and data mining, online teaching, and cultural heritage.

EUROPEAN UNION AGREES ON COPYRIGHT DIRECTIVE LANGUAGE, PUSHING LEGISLATION TOWARDS FINAL VOTE
via Billboard by Richard Smirke on 2/13/2019
URL: https://www.billboard.com/articles/business/8498315/european-union-approves-deal-over-controversial-copyright-directive

The European Union's plan to reform copyright has taken a major step towards becoming law after policy makers agreed upon a definitive text of ...
POPSUGAR CAN'T DODGE INFLUENCER'S CLASS ACTION LAWSUIT
URL: https://www.hollywoodreporter.com/thr-esq/popsugar-cant-dodge-influencers-class-action-lawsuit-1186428

Fashion blogger Nita Mann claims the site reposted influencers' photos without permission to cash in on their social media following.

PRO WRESTLER SAYS 'CALL OF DUTY' STOLE HIS CHARACTER
via Intellectual Property Law360 by Bill Donahue on 2/13/2019
URL: https://www.law360.com/ip/articles/1128661

Professional wrestler Booker T is suing video game giant Activision Blizzard, Inc. for copyright infringement for allegedly copying his G.I. Bro persona for a character in the latest “Call of Duty”...

YOUTUBE'S COPYRIGHT CLAIM SYSTEM ABUSED BY EXTORTERS
via BBC by Tom Gerken on 2/14/2019
URL: https://www.bbc.co.uk/news/technology-47227937

Google has removed a YouTube channel after it was found to be abusing copyright claims to extort money from users. Kenzo and ObbyRaidz, whose ...

CAN U.S. STATES INFRINGE COPYRIGHTS WITH IMPUNITY?
via The Illusion of More by David Newhoff on 2/14/2019
URL: http://illusionofmore.com/can-u-s-states-infringe-copyrights-with-impunity/

If the Supreme Court agrees to hear Allen v. Cooper, copyright owners and constitutional scholars will both be watching closely. The practical matter for copyright [...]
SOUTH AFRICA’S COPYRIGHT AMENDMENT BILL STILL MOVING
via Intellectual Property Watch by Linda Daniels on 2/14/2019

Copyright law stakeholders and pundits are keeping a close watch on the progress of South Africa’s Copyright Amendment Bill, as it makes its way to the National Council of Provinces in Parliament this week for further deliberation.

DANCE IN 'FORTNITE' SUIT REFUSED BY COPYRIGHT OFFICE
via Intellectual Property Law360 by Bill Donahue on 2/14/2019
URL: https://www.law360.com/ip/articles/1129321

The creator of the hit video game Fortnite, facing a copyright lawsuit for allowing players to perform a dance move known as the "Milly Rock," alerted a federal judge Thursday that...

EU FINISHES FINAL VERSION OF CONTROVERSIAL COPYRIGHT RULES
via Intellectual Property Law360 by Tiffany Hu on 2/14/2019
URL: https://www.law360.com/ip/articles/1129156

The final version of a controversial set of changes to the European Union's copyright laws that would alter how technology companies such as Google LLC police digital content has been approved...

'WE CAN'T STOP' LAWSUIT AGAINST MILEY CYRUS SHOULD MOVE AHEAD,
JUDGE RECOMMENDS
via Legal News & Entertainment Law - Hollywood, ESQ. | Hollywood Reporter by Ashley Cullins on 2/14/2019
URL: https://www.hollywoodreporter.com/thr-esq/we-cant-stop-lawsuit-miley-cyrus-should-move-judge-recommends-1186915

The singer is being sued for copyright infringement over her track "We Can't Stop," and a magistrate judge doesn't buy her arguments that the suit should be dismissed at this early stage.

MILEY CYRUS 'CAN'T STOP' LIFTED LYRICS CLAIMS, JUDGE ADVISES
via Intellectual Property Law360 by Hailey Konnath on 2/14/2019
URL: https://www.law360.com/ip/articles/1129090

Pop artist Miley Cyrus should have to face the bulk of a Jamaican musician’s claims that she poached much of her 2013 hit “We Can’t Stop” from his 1988 reggae song,...
EUROPEAN UNION AGREES TO NEW COPYRIGHT LAW
via WSJ.com: Technology by Valentina Pop et al. on 2/15/2019
URL: https://www.wsj.com/articles/european-union-agrees-to-new-copyright-law-11550101284

The European Union agreed on a new copyright law aimed at reining in tech giants and throwing a lifeline to news publishers.

COPYRIGHT MAY PROTECT A CAR WASH’S LIABILITY DISCLAIMER–RASSAMNI V. FRESNO AUTO SPA
via Technology & Marketing Law Blog by Eric Goldman on 2/15/2019

A pretty interesting copyright dispute is brewing in unexpected circumstances: among rival car washes in Fresno.

FLA. JUDGE SPLITS UP TRIAL IN 'HUSTLIN' COPYRIGHT SUIT
via Intellectual Property Law360 by Carolina Bolado on 2/15/2019
URL: https://www.law360.com/ip/articles/1129726

A Florida federal judge on Thursday split an upcoming trial in a copyright infringement suit over LMFAO’s hit song “Party Rock Anthem” in two, separating out a question over whether the...

FILM STUDIOS SAY OMNIVERSE SOLD PIRATED MOVIES, SHOWS
via Intellectual Property Law360 by Dorothy Atkins on 2/15/2019
URL: https://www.law360.com/ip/articles/1129715

Disney, Paramount Pictures Corp., Twentieth Century Fox Film Corp. and other Hollywood heavyweights sued Omniverse One World Television in California federal court, accusing the company of selling illegal packages of unlicensed,...

DISNEY WANTS ATTY DOCS IN VIDANGEL STREAMING IP ROW
via Intellectual Property Law360 by Emma Cueto on 2/15/2019
URL: https://www.law360.com/ip/articles/1129902

Disney and the streaming service VidAngel Inc., which Disney and other studios have accused of infringement, have asked a California court to sort out a dispute over whether VidAngel must hand...
EU COPYRIGHT DIRECTIVE: REJECTION OF ENTIRE BILL OR OF ARTICLE 13 ONLY
REALISTIC OPTIONS FOR OPPONENTS OF IDIOCY
via FOSS Patents by Florian Mueller on 2/16/2019
URL: http://www.fosspatents.com/2019/02/eu-copyright-directive-rejection-of.html

I'm a copyright hardliner regarding the scope of copyrightable works, a reasonably narrow exception for fair use, and remedies.

TRUMP VIDEO REMOVED AFTER COPYRIGHT COMPLAINT BY REM PUBLISHER:
REPORT
via Hill by Rachel Frazin on 2/16/2019

Trump has drawn scrutiny for his use of copyrighted material before. In November, he tweeted a picture of himself with the words "sanctions are ..."

EUROPEAN COMMISSION REMOVES OFFENSIVE BLOG POST THAT CALLED CRITICS OF COPYRIGHT BILL A "MOB"
via FOSS Patents by Florian Mueller on 2/16/2019
URL: http://www.fosspatents.com/2019/02/european-commission-removes-offensive.html

Earlier today I shared my views on what needs to improve with respect to strategy and execution in order to prevent the EU's "copywrong" bill from being adopted.

ANDY THE APPROPRIATOR: THE COPYRIGHT BATTLES YOU WON’T HEAR ABOUT AT THE WHITNEY’S WARHOL EXHIBIT
via Columbia Journal of Law and the Arts on 2/17/2019

'FRIENDS! THE MUSICAL PARODY' WILL BE THERE FOR YOU, TAKING YOUR MONEY
via Chicago Tribune by Chris Jones on 2/17/2019

Therein, it was wisely determined that there was a “fair use” exception to copyrighted works. This allows, say, a column of mine to quote from someone ...

MAYBE THE INTERNET IS JUST A DUMB PIPE
via The Illusion of More by David Newhoff on 2/17/2019
URL: http://illusionofmore.com/maybe-the-internet-is-just-a-dumb-pipe/

“Content is king” was the catch-phrase of the 1990s and the heady (headless really) days of the Dot Com bubble. And although that stopped being [...] 

COPYRIGHTING A DANCE STEP? BETWEEN A HARD (MILLY) ROCK AND A COPYRIGHT OFFICE
via At last ... the 1709 Copyright Blog by Marie-Andree Weiss on 2/18/2019
URL: http://the1709blog.blogspot.com/2019/02/copyrighting-dance-step-between-hard.html

We wrote last year about several copyright infringement suits filed against Epic Games, the maker of the Fortnite game, by individuals who became associated with a particular dance move, whether it be their sole claim to fame or not (see hereand here).

BACKROOM DEAL ON EU COPYRIGHT DIRECTIVE IS A FAKE COMPROMISE: HERE'S WHAT A GENUINE COMPROMISE WOULD LOOK LIKE
via FOSS Patents by Florian Mueller on 2/18/2019
URL: http://www.fosspatents.com/2019/02/backroom-deal-on-eu-copyright-directive.html

Politico.eu published the outcome of backroom negotiations (called "trilogue" because three institutions participated) on the EU Copyright Directive.

MILEY CYRUS COPYRIGHT SUIT SHOULD MOVE FORWARD, JUDGE SAYS
via World IP Review on 2/18/2019

The dispute is over whether the phrase “we run things, things don't run we” used by Cyrus in her song infringes copyright belonging to Flourgon, ...
Copyright infringement lawsuits that involve registered works usually ask for statutory damages, which are assessed -- at up to $150,000 per work in ...

For those of us who find copyright to be a fascinating field of study, copyright issues lurk everywhere.

If I'm not mistaken, this is the first time--in almost ten years and after more than 2,000 posts--that a tweet gives rise to a FOSS Patents article.

The European Commission has been forced to delete a blog post about its copyright legislation and issue an apology to readers. On Thursday ...

Artist Christopher Boffoli is known for his detailed photographs contrasting small people with large food.
VOX LAWYERS BRIEFLY CENSORED YOUTUBERS WHO MOCKED THE VERGE’S BAD PC BUILD ADVICE
via Ars Technica by Timothy B. Lee on 2/19/2019
URL: https://arstechnica.com/?p=1458901

Last week, The Verge got a reminder about the power of the Streisand effect after its lawyers issued copyright takedown requests for two YouTube videos that criticized—and heavily excerpted—a video by The Verge.

HOLLYWOOD TRIES TO CRIPPLE SEVERAL ALLEGED PIRATE TV SERVICES IN ONE LAWSUIT
via Ars Technica by Jon Brodkin on 2/19/2019
URL: https://arstechnica.com/?p=1459347

Most of the major Hollywood movie studios are trying to cripple multiple alleged pirate TV services with a single lawsuit.

FOX ROTHCHILD PARTNER FACES SANCTIONS HEARING OVER PORN COPYRIGHT CASES
via Law.com by Roy Strom on 2/19/2019
URL: https://www.law.com/2019/02/19/fox-rothschild-partner-faces-sanctions-hearing-over-porn-copyright-cases/

Partner Lincoln Bandlow is asking a California federal judge not to issue sanctions related to his work for an ultra-litigious porn maker.

GERMAN GOVERNMENT MAY OPPOSE ARTICLE 13 OF EU COPYRIGHT DIRECTIVE IN TOMORROW’S COREPER VOTE, ACCORDING TO TWEET BY MEP FROM COALITION PARTY
via FOSS Patents by Florian Mueller on 2/19/2019

The most problematic part of the proposed EU Directive on Copyright in the Single Market may be deleted tomorrow!
YOUTUBE UPDATES ITS THREE-STRIKES POLICY—BUT NOT THE ONE YOU'RE MAD ABOUT
via Gismodo by Melanie Ehrenkranz on 2/19/2019
URL: https://gizmodo.com/youtube-updates-its-three-strikes-policy-but-not-the-on-1832726224

Making bullshit copyright claims to get content removed from YouTube remains a tried-and-true way to screw with creators, which is why the ...

SYNOPSYS SAYS SOFTWARE SECURITY CO. ABUSED ITS LICENSE
via Intellectual Property Law360 by Dave Simpson on 2/19/2019
URL: https://www.law360.com/ip/articles/1130622

Synopsys Inc., which makes software for testing and designing computer chips, accused Fortinet Inc., a security software company, in California federal court of routinely skirting its software access licensing agreement to...

79 MORE VOTES ARE NEEDED IN THE EUROPEAN PARLIAMENT TO DEFEND USER-GENERATED CONTENT AGAINST UPLOAD FILTERS: EU COPYRIGHT DIRECTIVE
via FOSS Patents by Florian Mueller on 2/20/2019

Everything one can read on Twitter points to the EU Council being hell-bent to approve the proposed EU Copyright Directive (see Pirate Party MEP Julia Reda's tweet).

EU REACHES COPYRIGHT REFORM AGREEMENT BUT OPPOSITION REMAINS
URL: http://www.ipwatchdog.com/2019/02/20/eu-reaches-copyright-reform-agreement-but-opposition-remains/id=106511/

Have European Union legislators finally agreed on the substance of a new Copyright Directive? That was the claim made in a statement by the European Commission on February 13. The Commission announced that it, the EU Council (which represents member state governments) and the European Parliament (comprising 751 elected members) had reached a “breakthrough” on controversial proposals that have been hotly debated for the past six years. The Commission explained that the three bodies had found a...
CARLTON DANCE CAN'T GET A COPYRIGHT
via FindLaw Writ - Recent Articles by George Khoury, Esq. on 2/20/2019

If you ever watched the Fresh Prince of Bel Air, or even vaguely know about it, one of the things you are likely to know is the Carlton Dance. Alfonso Ribeiro, also known as Carlton Banks from the 90s hit TV show, and the current host of America's Funniest......

AMAZON, APPLE, NETFLIX SUED FOR KIDS' SONG IN BURLESQUE FILM
via Intellectual Property Law360 by Pete Brush on 2/20/2019
URL: https://www.law360.com/ip/articles/1130285

Amazon.com Inc., Apple Inc. and Netflix Inc. are unlawfully distributing a children's song about a schoolgirl looking forward to her lunch to viewers of a movie about burlesque performers in Oregon,...

BIPARTISAN COALITION BACKS LATEST BILL TO BLOCK RADIO ROYALTIES
via Intellectual Property Law360 by Anne Cullen on 2/20/2019
URL: https://www.law360.com/ip/articles/1130979

Dozens of lawmakers from both sides of the aisle are backing the newest iteration of a bill aiming to limit royalties that radio stations have to pay, marking the latest attempt...

PLAINTIFFS BAR FINDS BOOMING BIZ IN STRIP CLUB COPYRIGHT SUITS
via Intellectual Property Law360 by Diana Novak Jones on 2/20/2019
URL: https://www.law360.com/ip/articles/1126290

Plaintiffs lawyers are pairing up with former Playboy Playmates and reality stars to file dozens of suits against strip clubs over the use of their images in ads, a potentially lucrative...

AMERICAN MUSIC LICENSING COLLECTIVE SAYS 'COMPETITION IS NEEDED' IN FORMING MUSIC ...
via Billboard by American Music Licensing Collective on 2/20/2019

The U.S. Register of Copyrights will select by July which applicant gets to form and run the MLC, which will also create and maintain a musical works ...
DESIGNER’S ESTATE SUES EX-EMPLOYEE OVER UNAUTHORIZED BOOK
via Intellectual Property Law360 by Mike LaSusa on 2/20/2019
URL: https://www.law360.com/ip/articles/1131151

The estate of Massimo Vignelli and his wife accused one of the late Italian designer's former employees of publishing a book that uses Vignelli’s name and work without permission, according to...

SLOT GAME MAKER AWARDED ANOTHER $1.74M IN COPYRIGHT ROW
via Intellectual Property Law360 by Lauraann Wood on 2/20/2019
URL: https://www.law360.com/ip/articles/1131060

International Game Technology PLC must pay an additional $1.74 million in statutory damages, an Illinois federal judge ruled Wednesday, after a jury found that the company infringed slot game maker GC2...

LAW360 TAKES YOU TO THE OSCARS
via Intellectual Property Law360 on 2/21/2019
URL: https://www.law360.com/ip/articles/1131157

Chances are your Oscar viewing party will include ballots, strong opinions about "Bohemian Rhapsody" and hot takes on a hostless show. But will it have anyone who can rhapsodize about the...

DOES BLOCKCHAIN MATTER YET IN INTELLECTUAL PROPERTY FOR BUSINESS?
via Forbes by Jess Collen on 2/21/2019

The three main pillars of intellectual property are patents, copyrights, and trademarks. The potential of blockchain, at the present time, varies for each ...

HOLLYWOOD SUES TO SNUFF OUT PIRATE TV
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 2/21/2019

Just in time for the Oscars, Hollywood is trying to snuff out competition from streaming video. If it were a movie, it would be a pirate story. The major studios claim one company is stealing their bounty online. Omniverse One World Television provides streaming content to several online television......
EU COUNTRIES BACK COPYRIGHT DIRECTIVE
via World IP Review on 2/22/2019
URL: https://www.worldipreview.com/news/eu-countries-back-copyright-directive-17557

A majority of European Union countries have agreed to back the latest text of the proposed EU copyright directive, which would impose a so-called ...

ACADEMICS OPPOSE JAPAN'S PROPOSAL TO MAKE ALL PIRATE DOWNLOADS ILLEGAL
via World IP Review on 2/22/2019

A group of academics, lawyers and IP experts have issued an “emergency statement”, urging Japan's government to reconsider its new copyright ...

MEGHAN, DUCHESS OF SUSSEX, THREATENS TO SUE MAIL ON SUNDAY
via Guardian by Jim Waterson on 2/23/2019
URL: https://www.theguardian.com/uk-news/2019/feb/23/duchess-of-sussex-threatens-to-sue-mail-on-sunday-over-letter-to-father

Royals have previously invoked the copyright act in an attempt to keep ... or issuing to the public, the whole or a substantial part of your copyrighted ...

STREET PROTESTS ARE MOUNTING AGAINST ARTICLE 13 OF THE EU COPYRIGHT DIRECTIVE: MORE PARTICIPANTS THAN LAST WEEK
via FOSS Patents by Florian Mueller on 2/23/2019
URL: http://www.fosspatents.com/2019/02/street-protests-are-mounting-against.html

Toward the end of an eventful week on the EU copyright reform front, during which the EU Commission was forced to apologize for calling dissidents a "mob" and the most controversial part of the bill--Article 13--almost got blocked in the EU Council, it's clear that the only EU institution that can still prevent a digital disaster is the European Parliament.

KODAK'S KODAKIT ASKS PHOTOGRAPHERS TO GIVE UP THE 'ENTIRE COPYRIGHT'
via Peta Pixel by Michael Zhang on 2/23/2019
URL: https://petapixel.com/2019/02/23/kodaks-kodakit-asks-photographers-to-sign-over-the-entire-copyright/

Kodak launched an on-demand photography service called Kodakit back in January 2017 that aims to connect photographers to brands looking for ...
COPYRIGHT REVIEW IN CANADA: WILL FAIR DEALING BE WIDENED FURTHER, TIGHTENED OR LEFT AS IS?
via Hugh Stephens Blog on 2/25/2019
URL: http://hughstephensblog.net/2019/02/25/copyright-review-in-canada-will-fair-dealing-be-widened-further-tightened-or-left-as-is/

There are many issues under consideration as the mandated five year review of the Copyright Act in Canada continues to grind away, but one area to be carefully watched is that of fair dealing.

TOP INTERNET LAW DEVELOPMENTS OF 2018
via Technology & Marketing Law Blog by Eric Goldman on 2/25/2019

My schedule tends to get busy around each new year, so my year-end recaps keep coming later and later.

FERGUSON V. EPIC GAMES: HIP-HOP DANCE, COPYRIGHT, AND FORTNITE
via JOLT Digest RSS Feed by Adam Chang on 2/25/2019
URL: http://jolt.law.harvard.edu/digest/ferguson-v-epic-games-hip-hop-dance-copyright-and-fortnite

Second Amended Complaint, Ferguson v. Epic Games, Inc., No. 2:18-cv-10110 (C.D. Cal. Feb. 8, 2019), complaint hosted by Bloomberg Law. Defendant’s Motion to Dismiss, Ferguson v. Epic Games, Inc., No...

PIRATE SITES TO BE BLOCKED IN THOUSANDS OF BRITISH SCHOOLS
via World IP Review on 2/25/2019

The new partnership would also reassure schools that they would not be liable for copyright infringement due to pirate sites being accessed from their ...

SCRIBD TARGETS STUDENT-CREATOR OF 'UNAUTHORISED' DOWNLOAD TOOL
via World IP Review on 2/25/2019

In its complaint, Scribd said it has digital rights management technology in place to prevent users from downloading or saving copies of copyrighted ...
WHY 65 INTELLECTUAL PROPERTY SCHOLARS FILED AN AMICUS CURIAE BRIEF IN SUPPORT OF GOOGLE’S PETITION FOR CERT IN THE ORACLE CASE
via Patent Law Blog (Patently-O) by Pamela Samuelson on 2/25/2019
URL: https://patentlyo.com/patent/2019/02/intellectual-property-petition.html

In January 2018, Google filed a petition to ask the U.S. Supreme Court to review two adverse rulings by the Court of Appeals for the Federal Circuit in the Oracle Am. Inc. v. Google Inc. case.

2 MORE RULES FOR SUCCESS FOR BLOCKCHAIN MUSIC ENTREPRENEURS
via Forbes by George Howard on 2/25/2019

In short, a song typically has two copyrights, and often these copyright are not owned or controlled by the same party. Add in the fact that the labels ...

A REAFFIRMATION OF THE LAW REGARDING ORIGINALITY FOR COPYRIGHT PROTECTION UNDER US LAW
via At last ... the 1709 Copyright Blog by Jade McKellar on 2/26/2019
URL: http://the1709blog.blogspot.com/2019/02/a-reaffirmation-of-law-regarding.html

For a work to be protected by copyright, a modicum of originality is required. But would a blank form with some text be sufficiently original?

TWO-THIRDS MAJORITY IN EUROPEAN PARLIAMENT'S LEGAL AFFAIRS COMMITTEE (JURI) FOR PROPOSED EU COPYRIGHT DIRECTIVE WITH UPLOAD FILTERS: 16-9
via FOSS Patents by Florian Mueller on 2/26/2019

Unfazed by street protests, the European Parliament's traditionally IP-extremist Legal Affairs Committee (JURI) has just voted overwhelmingly in favor of an ill-conceived "compromise" bill on copyright (this post continues below the tweet):
GERMANY'S FEDERAL DATA PROTECTION COMMISSIONER: EU COPYRIGHT REFORM POSES RISKS TO DATA PROTECTION
via FOSS Patents by Florian Mueller on 2/26/2019

In my previous post I reported and commented on the two-thirds majority of the members of the European Parliament's legal affairs committee (JURI) that voted in favor of the proposed EU Copyright Directive and announced at the end that I was going to translate—in the post you now have in front of you—a statement that came out just before the JURI vote and may help with a view to the European Parliament's plenary vote as well as the further process, provided there is a further process, which requires the Parliament to reject or amend the directive.

'FORTNITE' SUED AGAIN, THIS TIME OVER 'RUNNING MAN' DANCE
via Intellectual Property Law360 by Bill Donahue on 2/26/2019
URL: https://www.law360.com/ip/articles/1132695

The creator of the video game "Fortnite" has been hit with another lawsuit that claims it infringed copyrights by letting players perform a popular dance move, this time by two former...

MINNESOTA COURT REFUSES PRINCE COPYRIGHT CASE
via World IP Review on 2/26/2019

The estate of late American singer Prince cannot move forward with a copyright case in his home state of Minnesota, a court has ruled. The singer's ...

COPYRIGHT PROTECTION FOR JEWELRY SEEMS TANGLED
via Intellectual Property Law360 by Amy Goldsmith on 2/26/2019
URL: https://www.law360.com/ip/articles/1132964

You’re a jewelry designer. (Or you represent one.) After years of studying design and working for other designers, you have finally developed your own jewelry collection. It debuts to rave reviews:...
PROJECT TO ERASE RAT FROM 'THE DEPARTED' KILLED BY COPYRIGHT
via Intellectual Property Law360 by Bill Donahue on 2/26/2019
URL: https://www.law360.com/ip/articles/1133029

A crowd-funding project aimed at digitally removing the rat that appears in the final moments of Martin Scorsese's film "The Departed" has been shuttered by a copyright takedown from Warner Bros.,...

PA. DEVELOPERS SAY ARTIST'S FAME CAN'T CARRY MURAL SUIT
via Intellectual Property Law360 by Matthew Santoni on 2/26/2019
URL: https://www.law360.com/ip/articles/1132913

Developers, property owners, Norfolk Southern and the city of Pittsburgh objected to a magistrate judge's recommendation that a muralist's claim of fame was enough to sustain his lawsuit against them in...

WASHINGTON CONSIDERS OVERHAUL OF MUSIC-LICENSING RULES
via WSJ.com: Technology by Brent Kendall & Anne Steele on 2/27/2019

Justice Department officials and lawmakers are considering an overhaul of longstanding music-licensing rules that have pitted songwriters and publishers against the businesses, broadcasters and digital streaming services that want to play their compositions. The government’s review could have major implications on the multibillion-dollar music industry.

FAIR USE WEEK AGAIN. BUT WHY?
via The Illusion of More by David Newhoff on 2/27/2019
URL: http://illusionofmore.com/fair-use-week-again-but-why/

Well, it’s Fair Use Week again. Sixth annual. I suppose one must say something. Though what I really want to say is Why? What exactly [...] 

CAN AI ROBOTS OWN COPYRIGHTS?
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 2/27/2019
URL: http://blogs.findlaw.com/technologist/2019/02/can-ai-robots-own-copyrights.html

If an artificial intelligence writes an article, does it own the copyright? Does an animal have rights to a photo it takes? These are questions a tech writer ponders. Mike Masnick, writing for TechDirt, says lawyers ought to wonder, too. They are not questions for the future; it's already......
Mozilla, Mapbox, Medium, Patreon, Etsy, and Wikimedia have filed an amicus brief in support of Google in its case against Oracle at the U.S Supreme Court. The platforms disagree with the Federal Circuit’s March 27, 2018, ruling that Google’s use of Oracle’s Java application programming interface (API packages) was not fair as a matter of law, reversing the district court’s decision on the matter. The brief is the latest of 14 that have been filed in the last week in support of granting the...

Although the case seemed primed for settlement, Nicki Minaj has countered Tracy Chapman's copyright infringement lawsuit over Minaj's “Sorry,” ...

WIPO Director General Francis Gurry welcomed on February 27, 2019 Tajikistan as the 53rd member of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are blind, visually impaired or otherwise print disabled. In presenting his Government’s accession document, Ambassador Jamshed Khamidov, Permanent Representative of Tajikistan to the United Nations Office and other International Organizations in Geneva, said this is a sign of his country’s commitment to provide equal opportunities to knowledge for all Tajiks.

The efforts, which were started in July of last year, saw the deletion of 1.85 million links that redirected to copyrighted material, with 1.23 million pirated ...
ANALYSIS SHOWS INITIAL HEADWAY AGAINST ARTICLE 13 OF EU COPYRIGHT DIRECTIVE, BUT NOT ENOUGH JUST YET
via FOSS Patents by Florian Mueller on 2/28/2019
URL: http://www.fosspatents.com/2019/02/analysis-shows-initial-headway-against.html

After the legal affairs committee (JURI) of the European Parliament rubberstamped, with a solid but unsurprising 16-9 majority, an interinstitutional agreement on the EU Copyright Directive, it became known that the decisive plenary vote will be held the last week of March.

CHINA ANNOUNCES RESULTS OF 2018 'SPECIAL ACTION' ON COPYRIGHT
via World IP Review on 2/28/2019

China is successfully clamping down on online piracy following a “special action” last year, the state National Copyright Administration (NCA) has said ...

AUTHORS GUILD CHAMPIONS NEW GROUP REGISTRATION FOR ONLINE PIECES
via The Authors Guild by Jennifer Simms on 2/28/2019
URL: https://www.authorsguild.org/industry-advocacy/authors-guild-champions-new-group-registration-for-online-pieces/

The U.S. Copyright Office issued a proposed new regulation at the behest of the Authors Guild and other author groups that would permit writers to register groups of short literary pieces (such as blog posts or articles) published within any 90-day period. Such a group registration would be vastly cheaper and more efficient than registering …

JUDGE SANCTIONS FOX ROTHSCILD PARTNER IN PORN COPYRIGHT CASES
via Law.com by Roy Strom on 2/28/2019
URL: https://www.law.com/2019/02/28/judge-sanctions-fox-rothschild-partner-in-porn-copyright-cases/

Fox Rothschild partner Lincoln Bandlow, who has led a nationwide copyright infringement litigation campaign on behalf of a pornography producer, ...

MILEY CYRUS SAYS JUDGE VIEWED SONGS THROUGH WRONG LENS
via Intellectual Property Law360 by Kevin Penton on 2/28/2019
URL: https://www.law360.com/ip/articles/1133662

A New York federal magistrate judge zeroed in on the wrong details when comparing Miley Cyrus’ 2013 hit “We Can’t Stop” with the reggae song of a Jamaican musician accusing her of...
WEINSTEIN, STUDIOS LIKELY CAN'T NIX 'AMITYVILLE HORROR' IP SUIT
via Intellectual Property Law360 by Lauren Berg on 2/28/2019
URL: https://www.law360.com/ip/articles/1133949

A California federal judge on Thursday tentatively rejected a bid by Harvey Weinstein, Miramax LLC and others to toss claims they stole intellectual property from the author of "The "Amityville Horror"...
FYRE FESTIVAL ATTENDEE TAKES NETFLIX TO COURT
via World IP Review on 3/1/2019

Clarissa Cardenas filed a copyright lawsuit yesterday, February 28 at the US District Court for the Southern District of New York. In her Instagram bio, ...

AS WARNER AND SPOTIFY FACE OFF OVER INDIA, WHAT COMES NEXT?
via Billboard by Ed Christman on 3/1/2019
URL: https://www.billboard.com/articles/business/8500618/warner-spotify-face-off-over-india-what-comes-next

Since Indian copyright law doesn't provide statutory damages for copyright holders, if Spotify is found to be infringing WMG copyrights, the company ...

NETFLIX HIT WITH COPYRIGHT SUIT OVER 'FYRE' DOCUMENTARY
via Intellectual Property Law360 by Bill Donahue on 3/1/2019
URL: https://www.law360.com/ip/articles/1134198

An attorney who has been called a "copyright troll" by a federal judge filed an infringement lawsuit Thursday against Netflix over footage used in the streaming giant's Fyre Festival documentary....

WHAT THE EU'S FINAL COPYRIGHT DIRECTIVE CONTAINS & WHAT IT MEANS FOR LABELS, ARTISTS & YOUTUBE ...
via Billboard by Richard Smirke on 3/1/2019

Late in the evening of Feb. 13, European Union policymakers hammered out the final version of the new Copyright Directive -- the subject of a fierce ...

MUSICIAN CLAIMS SPIKE LEE AND PRINCE COPIED THE SONG FOR 'GIRL 6'
via World IP Review on 3/1/2019

Oscar winner Spike Lee and late singer Prince copied the title song to the film “Girl 6” from another artist, a copyright infringement suit claimed this ...
NOT EVERY OPEN SOURCE CLOUD HAS A SILVER LINING
URL: https://www.law360.com/ip/articles/1134076

The use of open source software and cloud-based computing individually are growing at a rapid pace. The use of open source in cloud deployments is also growing. Until recently, the OSS...

JUDGE TOSSES COPYRIGHT SUIT OVER STEPHEN KING'S 'DARK TOWER'
via Intellectual Property Law360 by Carolina Bolado on 3/1/2019
URL: https://www.law360.com/ip/articles/1134430

A Florida federal judge on Friday dismissed a suit claiming Stephen King’s “The Dark Tower” ripped off the time-traveling comic book series “The Rook,” ruling that the protected elements of the two...

2ND CIRC. SPIKES SEAT SCOUT’S 1ST APPEAL IN COPYCAT FIGHT
URL: https://www.law360.com/ip/articles/1134472

The Second Circuit on Friday rejected an appeal that ticket sales technology firm Seat Scouts LLC made early on in its legal beef with competitor Broker Genius Inc., citing procedural reasons...

AN UGLY-YET-ICONIC SWEATER BRAND IS SUING NIKE, THE NBA, AND THE BROOKLYN NETS OVER LOOKALIKE ...
via Fashion Law on 3/3/2019

To be exact, in response to the special “City Edition” jerseys that the Brooklyn Nets debuted last year, Coogi has cried copyright, trade dress, and ...

HIGH COURT SAYS COPYRIGHT OWNERS MUST WAIT TO SUE
URL: https://www.law360.com/ip/articles/1134778

The U.S. Supreme Court ruled Monday that a copyright owner cannot file an infringement lawsuit until the Copyright Office has registered the work at issue, resolving a long-simmering circuit split....
HIGH COURT RULES AGAINST ORACLE ON COPYRIGHT COSTS
URL: https://www.law360.com/ip/articles/1134773

The U.S. Supreme Court on Monday overturned a ruling that awarded Oracle more than $12 million in litigation costs in a copyright battle with technical support service Rimini Street Inc., ruling...

WHAT DOES COPYRIGHT INFRINGEMENT SOUND LIKE?
via Washington Post by Daron Taylor on 3/4/2019
URL: https://www.washingtonpost.com/arts-entertainment/2019/03/04/what-does-copyright-infringement-sound-like/

What do Pharrell Williams, Vanilla Ice and Ed Sheeran have in common? They've all been accused of plagiarism. Vanilla Ice and Williams were both...

FOURTH ESTATE V. WALLSTREET.COM: REGISTRATION REQUIRED TO COMMENCE A COPYRIGHT INFRINGEMENT SUIT
URL: http://www.ipwatchdog.com/2019/03/04/scotus-rules-fourth-estate-registration-required-copyright-suits/id=107001/

Justice Ruth Bader Ginsburg delivered the opinion for a unanimous Supreme Court in Fourth Estate v. Wallstreet.com, et. al. Monday morning, March 4, holding that copyright registration occurs—and thus, an infringement action can only be brought—once the Copyright Office officially registers a copyright. The case considered whether “registration of [a] copyright claim has been made” within the meaning of Section 411(a) of the Copyright Act “when the copyright holder delivers the required...

SUPREME COURT HOLDS THAT COPYRIGHT OWNERS MUST WAIT FOR REGISTRATION TO SUE
URL: https://www.hollywoodreporter.com/thr-esq/supreme-court-holds-copyright-owners-wait-registration-sue-1192061

The unanimous decision overturns certain circuits in the United States that allowed copyright lawsuits upon mere applications for registration.
'FULL COSTS' DOESN'T MEAN ALL IMAGINABLE COSTS, SUPREME COURT RULES
via Law.com by Scott Graham on 3/4/2019

The court's unanimous interpretation of Section 505 of the Copyright Act will cost Oracle Corp. about $12.8 million.

INFRINGEMENT SUITS MUST AWAIT COPYRIGHT REGISTRATION
via The Media Institute by John Eggerton on 3/4/2019
URL: https://www.medainstitute.org/2019/03/04/infringement-suits-must-await-copyright-registration/

The Supreme Court has ruled unanimously that with a few exceptions, a party can’t sue for copyright infringement until the copyright has been registered, not starting when the proper paperwork for registration has been filed.

RIMINI STREET V. ORACLE USA: KAVANAUGH FROWNS ON BROAD INTERPRETATION OF ‘FULL COSTS’ UNDER COPYRIGHT ACT
URL: http://www.ipwatchdog.com/2019/03/04/kavanaugh-frowns-broad-interpretation-full-costs-rimini-street/id=107020/

On Monday, March 4, Justice Brett Kavanaugh issued the decision for a unanimous Supreme Court in Rimini Street, Inc. v. Oracle USA, Inc., which asked whether the meaning of “full costs” under 17 U.S.C. § 505 of the U.S. Copyright Act extends to damages outside of the six categories of costs that U.S. district courts can award against a losing party as outlined in 28 U.S.C. § 1821 and 28 U.S.C. § 1920. In siding with petitioner Rimini Street, the Supreme Court held that “full costs” in the...

EU'S NEW COPYRIGHT DIRECTIVE COULD MEAN BIG CHANGES FOR GOOGLE, YOUTUBE AND OTHER WEB PLATFORMS
URL: https://www.law.com/2019/03/04/eus-new-copyright-directive-could-mean-big-changes-for-google-youtube-and-other-web-platforms/

New copyright rules, the first update of copyright law in 20 years, would require platforms such as Google and YouTube to give content rights-holders a greater share of the revenue they earn from that content.
OPINION ANALYSIS: COURT LIMITS FEE AWARDS IN COPYRIGHT CASES  
via SCOTUSblog by Ronald Mann on 3/4/2019  
URL: https://www.scotusblog.com/2019/03/opinion-analysis-court-limits-fee-awards-in-copyright-cases/  

The desultory argument in Rimini Street v. Oracle USA (discussed in my earlier post) suggested a consensus hostile to the broad fee award approved...

OPINION ANALYSIS: A COPYRIGHT OWNER CAN'T SUE FOR INFRINGEMENT BEFORE THE REGISTER HAS PROCESSED ...  
via SCOTUSblog by Jessica Litman on 3/4/2019  
URL: https://www.scotusblog.com/2019/03/opinion-analysis-a-copyright-owner-cant-sue-for-infringement-before-the-register-has-processed-its-copyright-registration-application/  

Fourth Estate alleged that Wall-Street.com infringed Fourth Estate's copyrights in news articles by displaying the text of those articles online after...

HIGH COURT LIMIT ON COSTS IN COPYRIGHT CASES CLARIFIES STAKES  
URL: https://www.law360.com/ip/articles/1134878  

The U.S. Supreme Court's decision Monday restricting the costs that prevailing parties can recover in copyright litigation will provide greater certainty about what is at stake in cases, though it will...

THE INTERNET IS NOT (AND NEVER WAS) PARADISE  
via The Illusion of More by David Newhoff on 3/4/2019  
URL: http://illusionofmore.com/the-internet-is-not-and-never-was-paradise/  

I was reading an editorial the other day written by Stephen Witt for NPR shortly after the passing of John Parry Barlow in 2018; and [...]

4 THINGS TO KNOW ABOUT BIG COPYRIGHT REGISTRATION RULING  
URL: https://www.law360.com/ip/articles/1135152  

The U.S. Supreme Court says you might need to wait before you file a copyright lawsuit.
IT'S REALLY HARD TO WIN A MOTION TO DISMISS BASED ON 512(C)–MYERESS V. BUZZFEED
via Technology & Marketing Law Blog by Eric Goldman on 3/5/2019

512(c) and 230 diverge in key procedural respects, including the implications of scienter for motions to dismiss.

SUPREME COURT WILL BE ASKED TO PERMIT RESALE OF DIGITAL MUSIC FILES

ReDigi is finishing up a petition that will request review of a big copyright decision last December.

NICKI MINAJ HITS BACK AT TRACY CHAPMAN COPYRIGHT INFRINGEMENT CLAIMS
via IP Pro by Ben Wodecki on 3/5/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6538&

Onika Tanya Maraj, better known as Nicki Minaj, has denied copyright infringement claims from Fast Car singer Tracy Chapman. Chapman filed a ...

EU GOES WHERE OTHERS FEAR TO TREAD ON COPYRIGHT REFORM
via Vox Indie by Ellen Seidler on 3/5/2019
URL: https://www.voxindie.org/eu-goes-where-others-fear-to-tread-on-copyright-reform/

Excellent news out of the European Union, as contentious copyright reform directive (Copyright in the Digital Single Market) was recently approved by the European Council. While the agreement still has a couple more hurdles before it can become law, momentum seems to be moving in the right direction. Agreement reached on #copyright! Europeans will finally […]

COPYRIGHT OWNERS MUST WAIT TO SUE
via The Authors Guild by Jennifer Simms on 3/5/2019
URL: https://www.authorsguild.org/industry-advocacy/copyright-owners-must-wait-to-sue/

Before an author or other copyright owner can bring a lawsuit for copyright infringement, they first must have “made a registration” of the copyright with the Copyright Office, or had the
registration denied. But courts have disagreed on when a registration is deemed “made:” when the application for registration has been submitted, or when a registration has been issued (or denied)?

A DISPUTE BETWEEN A COMEDIAN AND A SPORTS SITE ILLUSTRATES THE INSANITY OF COPYRIGHT LAW
via New York Magazine by Brian Feldman on 3/5/2019
URL: http://nymag.com/intelligencer/2019/03/barstool-sports-ripped-miel-bredouw-copyright-dmca.html

When it comes to uploading stuff to the internet, I think it's safe to say that we, as a society, have unanimously settled on forgiveness instead of ...

THE PIRACY WARS ARE OVER. LET'S TALK ABOUT DATA INCUMBENCY
via Wired by Joe Karaganis on 3/5/2019
URL: https://www.wired.com/story/the-piracy-wars-are-over-lets-talk-about-data-incumbency/

The EU copyright proposals reflect the view that the main problem for artists is still Internet “piracy” in different forms, such as the notional “value gap” ...

REDIGI PLANS HIGH COURT APPEAL OVER DIGITAL MUSIC RESALES
via Intellectual Property Law360 by Bill Donahue on 3/5/2019
URL: https://www.law360.com/ip/articles/1135576

ReDigi, an online music service that was sued by record labels for letting users resell digital songs, is planning an appeal to the U.S. Supreme Court, telling the justices that the...

JUDGE WARNS LITIGIOUS COPYRIGHT ATTY IN TRUMP PHOTO CASE
via Intellectual Property Law360 by Bill Donahue on 3/5/2019
URL: https://www.law360.com/ip/articles/1135646

Prolific copyright attorney Richard Liebowitz dodged sanctions Tuesday in a lawsuit he filed against Esquire over a photo of President Donald Trump crashing a wedding, though a judge warned the lawyer...
MILE HIGH LABS FILES COPYRIGHT CLAIM AGAINST RIVAL CBD COMPANY
via World IP Review on 3/6/2019

Cannabidiol (CBD) extraction company Mile High Labs has filed a complaint against a competitor, alleging copyright infringement and unfair trade ...

US SUPREME COURT DECIDES TWO COPYRIGHT CASES AND IMPACTS REGISTRATION STRATEGY FOR COPYRIGHT ...

March 4, 2019 marked the first time in over 100 years that the Supreme Court of the United States issued two copyright decisions in the same day[1] ...

25 YEARS AFTER: CAMPBELL V. ACUFF-ROSE AND THE STATE OF COPYRIGHT FAIR-USE CONTROVERSIES
via Law.com by Stan Soocher on 3/6/2019

This article appeared in Entertainment Law & Finance, your monthly source for real-world news and strategy from major players in entertainment, contract

9 WAYS TO PREPARE YOUR IP RIGHTS FOR BREXIT
URL: https://www.law360.com/ip/articles/1135485

On March 29, 2019, the U.K. is scheduled to leave the European Union under Brexit. Less than a month before the scheduled exit date,[1] it is still unclear if the exit...

WHY IS IT THAT WE, A CREATIVE RIGHTS ORGANIZATION, CARE SO MUCH ABOUT GOOGLE AND FACEBOOK?
via CreativeFuture by Ruth Vitale on 3/6/2019
URL: https://creativefuture.org/google-and-facebook/

Perhaps you have been a follower of CreativeFuture since we started, or maybe you’ve just caught up with us recently.
SCOTUS ASKED TO PERMIT RESALE OF DIGITAL MUSIC
via FindLaw Writ - Recent Articles by George Khoury, Esq. on 3/6/2019

With how far the music world has come over the last few decades -- where most music is now purchased digitally rather than in a tangible medium like a record or CD -- some consumers are often left wondering whether they can get any value out of their old......

POP-UP GREETING CARD CO. WINS $488K IN IP ROW
via Intellectual Property Law360 by Daniel Siegal on 3/6/2019
URL: https://www.law360.com/ip/articles/1135842

A Massachusetts federal jury found Tuesday that pop-up greeting card company LovePop Inc.'s copyrighted designs were infringed by rival greeting card company Paper Pop Cards Inc., rejecting PaperPop's own copyright infringement counterclaims...

RNC BEATS COPYRIGHT SUIT OVER PHOTO OF DEMOCRAT
via Intellectual Property Law360 by Bill Donahue on 3/6/2019
URL: https://www.law360.com/ip/articles/1135914

A federal judge has tossed a copyright lawsuit filed against the Republican National Committee over its use of a Montana photographer's image of a Democratic congressional candidate, ruling it a fair...

COPYRIGHT RULING COULD HINDER USPTO'S HIGH COURT FEE CASE
via Intellectual Property Law360 by Ryan Davis on 3/6/2019
URL: https://www.law360.com/ip/articles/1135933

With the U.S. Supreme Court set to consider the U.S. Patent and Trademark Office’s policy of seeking attorneys' fees regardless of the outcome of a case, a copyright decision by the...

SUMMARIES OF THIS WEEK’S US SUPREME COURT COPYRIGHT DECISIONS:
FINNEGAN LLP
via Intellectual Property Watch by William New on 3/7/2019
URL: http://www.ip-watch.org/2019/03/07/summaries-weeks-us-supreme-court-copyright-decisions-finnegan-llp/

The United States Supreme Court took two important actions on copyright-related matters this week. US law firm Finnegan LLP has summarised the decisions in two separate articles.
HOLLYWOOD STUDIOS WIN COPYRIGHT BATTLE AGAINST VIDANGEL'S STREAMING SERVICE

A judge rules that VidAngel can't evade liability for a sex- and profanity-filtering service that broke encryption on DVD and Blu-rays.

HOW THE SUPREME COURT MADE IT HARDER FOR COPYRIGHT OWNERS TO PROTECT THEIR RIGHTS—AND WHY CONGRESS SHOULD FIX IT
via Center for the Protection of Intellectual Property by Devlin Hartline on 3/7/2019

Earlier this week, the Supreme Court handed down its decision in Fourth Estate v. Wall-Street.com, a case examining the registration precondition to filing a suit for copyright infringement in the federal district courts.

HOLLYWOOD STUDIOS WIN COPYRIGHT FIGHT AGAINST VIDANGEL
via Intellectual Property Law360 by Bill Donahue on 3/7/2019
URL: https://www.law360.com/ip/articles/1136459

Siding with Walt Disney and other Hollywood studios, a California federal judge ruled Wednesday that a company called VidAngel Inc. violated copyright law by offering a streaming service that allowed users...

WHO OWNS THE COPYRIGHT FOR AI ART?
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 3/7/2019
URL: http://blogs.findlaw.com/technologist/2019/03/who-owns-the-copyright-for-ai-art.html

Artificial intelligence can write, paint, and even create sculpture. This AI art has ushered in a new gold rush, the connoisseurs say. The purists wonder, however, whether it will reinvent or destroy art. Lawyers, meanwhile, wonder who owns the copyrights. After all, art is also about the money.......
'FAMILY FRIENDLY' STREAMING SERVICE LOSES BATTLE WITH HOLLYWOOD
via MediaPost by Wendy Davis on 3/7/2019

Tech company VidAngel, which operated a supposedly “family friendly” streaming video service, infringed movie studios' copyright, a federal judge ...

AMAZON, APPLE ASK TO CLOSE 'SUPER BOWL SHUFFLE' SUIT
via Intellectual Property Law360 by Michael Phillis on 3/7/2019
URL: https://www.law360.com/ip/articles/1136220

Amazon, Apple and other technology companies who own media that distributed a documentary on the 1985 Chicago Bears told an Illinois federal court on Wednesday that a copyright suit over scenes...

'FORTNITE' LEGAL DANCE BATTLES PAUSED FOLLOWING SUPREME COURT RULING

'Fresh Prince' star Alfonso Ribeiro, rapper 2 Milly and internet sensations Backpack Kid and Orange Shirt Kid have dropped their claims against Epic Games over its use of their dance moves in the game, but it's only temporary.

DANCE CASES TO BE REFILED FOLLOWING BIG COPYRIGHT RULING
via Intellectual Property Law360 by Bill Donahue on 3/7/2019
URL: https://www.law360.com/ip/articles/1136676

In the wake of a U.S. Supreme Court ruling that copyright owners must wait to sue, a wave of lawsuits filed over dances featured in the video games Fortnite and NBA2K...

MUSIC STREAMING COS. TO FIGHT COPYRIGHT BOARD ROYALTY HIKE
via Intellectual Property Law360 by Mike LaSusa on 3/7/2019
URL: https://www.law360.com/ip/articles/1136742

Some of the most powerful companies in the music streaming business, including Google, Spotify and Pandora, announced on Thursday that they will challenge the Copyright Royalty Board's ruling last year ordering...
BUSY COPYRIGHT WEEK UPDATE
via The Illusion of More by David Newhoff on 3/8/2019
URL: http://illusionofmore.com/busy-copyright-week-update/

Though most people can be forgiven for missing it, two Supreme Court Decisions and a District Court granting a motion for summary judgment made a fair bit of copyright news this week.

SPOTIFY, GOOGLE, PANDORA AND AMAZON PLAN TO APPEAL COPYRIGHT ROYALTY BOARD RATES
URL: https://www.hollywoodreporter.com/thr-esq/spotify-google-pandora-amazon-appeal-copyright-royalty-board-rates-1193252

The digital services filed a notice of their intentions after a recent decision would boost payments to songwriters and publishers by 44 percent over a four-year term.

FILM WASN'T FAIR USE OF 'SUPER BOWL SHUFFLE,' COURT TOLD
URL: https://www.law360.com/ip/articles/1137004

Amazon, Apple Inc. and other technology companies shouldn't be allowed to claim fair use in a copyright suit over the use of scenes from a music video called the "Super Bowl Shuffle" for a documentary on the 1985 Chicago Bears, the video's owners told an Illinois federal court Friday.

COMPLETE COPYRIGHT CARD CATALOG IMAGES ONLINE
via Copyright: Creativity at Work by George Thuronyi on 3/9/2019
URL: https://blogs.loc.gov/copyright/2019/03/complete-copyright-card-catalog-images-online/

We began last year by releasing nearly eighteen million card images from 1955 to 1977 to better understand how a virtual card catalog would work and how people might use it. We received some great feedback from our survey, which you can continue to take on the VCC webpage.

FEMINISM AND COPYRIGHT REVISITED
via Hugh Stephens Blog on 3/10/2019
URL: http://hughstephensblog.net/2019/03/10/feminism-and-copyright-revisited/

A few weeks ago I put my foot tenderly into the minefield of feminism, arguing in a blog “What Does Feminism have to with Copyright in Canada” that statements made by Carys Craig, a law professor at York University to the effect that robust copyright protections were anti-feminist were off base.
SUPREME COURT REQUIRES COMPLETED COPYRIGHT REGISTRATION BEFORE FILING SUIT–FOURTH ESTATE PUBLIC BENEFIT V. WALL-STREET (GUEST BLOG POST)
via Technology & Marketing Law Blog by Tyler Ochoa on 3/11/2019

On March 4, 2019, the U.S. Supreme Court decided Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC, No. 17-571, 139 S.Ct. ____, 2019 U.S. LEXIS 1730.

FORTNITE INFRINGEMENT SUITS DROPPED AFTER SCOTUS RULING
via World IP Review on 3/11/2019

Last week, the Supreme Court handed down its decision, which said that rights owners must have registration for their work granted by the Copyright ...

FORTNITE COPYRIGHT DANCE MOVE LAWSUITS DISMISSED FOLLOWING FOURTH ESTATE RULING
via IP Pro by Ben Wodecki on 3/11/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6560

Lawyers representing artists who took action against the developer of Fortnite have announced retractions of copyright lawsuits following the Supreme ...

LMFAO, PRODUCERS FIND HARMONY IN 'HUSTLIN' COPYRIGHT SUIT
URL: https://www.law360.com/ip/articles/1123602

With a trial date looming next month, a full settlement has been reached in a copyright suit in Florida federal court against electronic dance music duo LMFAO over their hit “Party Rock Anthem” brought by the producing team that created the Rick Ross song “Hustlin',” according to court records.
SHOWTIME ASKS COURT TO TOSS 'BILLIONS' LAWSUIT

The pay cabler argues the fictional character of Wendy Rhoades, played by Maggie Siff, and the real-life performance coach who is suing the network have very little in common, and the series and the book it is alleged to have infringed are "strikingly dissimilar."

MARC JACOBS RESPONDS TO NIRVANA'S SMILEY FACE LOGO LAWSUIT
via Billboard by Tatiana Cirisano on 3/12/2019

Marc Jacobs is asking a judge to dismiss a lawsuit filed by Nirvana last December that alleged copyright infringement over images used in the fashion ...

MARC JACOBS ATTEMPTS TO DISMISS COPYRIGHT LAWSUIT FROM NIRVANA
via Guardian by Ben Beaumont-Thomas on 3/12/2019
URL: https://www.theguardian.com/music/2019/mar/12/marc-jacobs-dismiss-copyright-lawsuit-nirvana-smiley-face

The lawsuit, filed in early January, argues that Jacobs intentionally used “Nirvana's copyrighted image on and to promote its products” in an ...

WIPO WELCOMES BOLIVIA TO MARRAKESH TREATY
via YouTube by WIPO on 3/12/2019
URL: https://www.youtube.com/watch?v=GvJd5skwXCY

WIPO Director General Francis Gurry welcomed on March 12, 2019 Bolivia as the 54th contracting party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. After receiving Bolivia’s instrument of accession from Mr. Ruddy José Flores Monterrey, Chargé d'affaires a.i. and Deputy Permanent Representative of Bolivia to the United Nations in Geneva, Mr. Gurry lauded Latin American countries for their support of the Marrakesh Treaty, noting that almost every country in the region is party to the international agreement that facilitates access to published materials in accessible formats.
GEORGIA TELLS HIGH COURT LEGAL TEXTS ARE COPYRIGHTABLE
via Intellectual Property Law360 by Bill Donahue on 3/12/2019
URL: https://www.law360.com/ip/articles/1137968

The state of Georgia is urging the U.S. Supreme Court to overturn a ruling that wiped out the state’s copyright control over annotations to its official code, calling it a “policy-based”...

DR. SEUSS-STAR TREK MASHUP IS FAIR USE, JUDGE RULES
via Intellectual Property Law360 by Bill Donahue on 3/12/2019
URL: https://www.law360.com/ip/articles/1138161

A California federal judge ruled Tuesday that a mashup of Dr. Seuss and "Star Trek" was protected by copyright law’s fair use doctrine, tossing out an infringement case filed by the...

'Star Trek'/DR. SEUSS MASHUP DEEMED COPYRIGHT FAIR USE BY JUDGE

A judge praises the "highly creative" nature of "Oh, the Places You'll Boldly Go!" and doesn't see sufficient evidence that the book will harm Dr. Seuss' position in the children's book market.

FOX SEARCHLIGHT WANTS WIN IN 'SHAPE OF WATER' COPYRIGHT APPEAL
via Bloomberg Law by Porter Wells on 3/12/2019

The opposite result would upend decades of copyright law that require a two-part extrinsic and intrinsic evaluation of the works at issue, Fox said in its ...

THE MUSIC MODERNIZATION ACT: A SONGWRITER'S GUIDE TO WHAT MATTERS NEXT
via Billboard by Jordan Bromley on 3/12/2019

The process: The Copyright Office is accepting proposals -- business plans, essentially -- for what the MLC will look like: who will be on the board and ...
OFFICIAL CONCESSION OF UPLOAD FILTERS BY GERMAN GOVERNMENT DESTROYS CREDIBILITY OF PROONENTS OF ARTICLE 13 OF EU COPYRIGHT DIRECTIVE
via FOSS Patents by Florian Mueller on 3/13/2019

The European Parliament will hold its plenary debate on the Directive on Copyright in the Digital Single Market on March 26, suggesting a plenary vote later that day or the next day.

DON’T BLAME INTERNET CULTURE ON COPYRIGHT
via The Illusion of More by David Newhoff on 3/13/2019
URL: http://illusionofmore.com/dont-blame-internet-culture-on-copyright/

In response to a recent social media dustup, Mike Masnick writes on Techdirt, “…we’ve got quite a story today about how copyright is a total […]

EU FINTECH REGULATION RAISES US COPYRIGHT QUESTIONS
via Intellectual Property Law360 by John Polito et al. on 3/13/2019
URL: https://www.law360.com/ip/articles/1138442

The EU’s revised Payment Services Directive, known as PSD2, requires banking entities to provide an interface by which fintech companies, such as payment services and mobile banking providers, may securely access and...

TO BE ANTI-COPYRIGHT IS TO BE ANTI-FREE MARKET AND ANTI-CREATIVITY
via CreativeFuture by Ruth Vitale on 3/13/2019
URL: https://creativefuture.org/r-street/

As Europe’s Article 13 – and YouTube’s increasingly dirty efforts to stop it – has grabbed the lion’s share of copyright-related headlines in recent weeks, our government has quietly been stepping up its game against intellectual property theft here in the States.

DR. SEUSS ENTERPRISES V. COMIXMIX
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 3/14/2019
URL: http://nysbar.com/blogs/EASL/2019/03/dr_seuss_enterprises_v_comixmi.html

There was a significant S.D. Cal. March 12th decision in the long running Dr. Seuss Enterprises v. ComixMix case, which granted ComixMix summary judgment on the copyright infringement claim, finding that the defendant's mashup of content from various Seuss works (including Oh, the Places You'll Go! ("Go!")) and Star Trek episodes, entitled Oh, the Places You'll Boldly Go! ("Boldly"), was entitled to a fair use defense, despite it not being a parody.
WHY WIKIPEDIA WILL GO OFFLINE FOR 24 HOURS IN GERMANY
via Washington Post by Rick Noack on 3/14/2019
URL: https://www.washingtonpost.com/world/2019/03/14/wikipedia-go-offline-hours-germany-protest-against-eu-bill-that-could-harm-freedom-speech/

The technology would be similar to mechanisms already in place on YouTube, where uploaded videos are automatically checked for music copyright ...

THE FOURTH ESTATE DECISION AND COPYRIGHT REGISTRATION
via Copyright: Creativity at Work by Regan A. Smith on 3/14/2019
URL: https://blogs.loc.gov/copyright/2019/03/the-fourth-estate-decision-and-copyright-registration/

Last week, the Supreme Court issued an important opinion regarding copyright registration.

AMC DEAL LAYS 'WALKING DEAD' COPYRIGHT CASE TO REST
via Intellectual Property Law360 by Mike LaSusa on 3/14/2019
URL: https://www.law360.com/ip/articles/1139122

AMC and others have buried the hatchet with an author who claimed that a spin-off of the network’s wildly popular TV show “The Walking Dead” ripped off his zombie comics, according...

MILEY CYRUS “CAN’T STOP” THIS COPYRIGHT INFRINGEMENT SUIT
via Columbia Journal of Law and the Arts by Brandon A. Zamudio on 3/14/2019
URL: https://lawandarts.org/2019/03/14/miley-cyrus-cant-stop-this-copyright-infringement-suit/

In some respects, imitation can be the sincerest form of flattery.

SONY/ATV CHIEF SLAMS STREAMING SERVICES' 'INCREDIBLY DISAPPOINTING' COPYRIGHT APPEAL
via Variety by Jem Aswad on 3/14/2019

Outgoing Sony/ATV chairman Martin Bandier is certainly not phoning it in during his last month on the job — earlier this month he signed a deal that ...
COPYRIGHT OFFICE RELEASES PUBLIC DRAFT OF UPDATE TO COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES
via Copyright: Creativity at Work by George Thuronyi on 3/15/2019

Today, the Copyright Office releases a public draft of the latest update to the Compendium of U.S. Copyright Office Practices.

SCOTUS TRIPS UP 'FORTNITE' DANCE-MOVE SUITS
via Law.com by Richard Binder on 3/15/2019
URL: https://www.law.com/2019/03/15/scotus-trips-up-fortnite-dance-move-suits/

Litigation over allegedly stolen dance moves in the popular game Fortnite has been paused in the wake of a U.S. Supreme Court decision concerning copyright infringement.

MCGRAW-HILL CAN'T DQ PHOTOG'S COUNSEL IN NY LICENSING FIGHT
via Intellectual Property Law360 by Emma Cueto on 3/15/2019
URL: https://www.law360.com/ip/articles/1139285

McGraw-Hill Global Education Holdings LLC can't disqualify the attorneys representing a photographer who claims the textbook giant violated a licensing agreement for his photos, a New York federal judge has ruled,...

9TH CIRC. ENDS 'LOVE ME AGAIN' LYRICS COPYRIGHT SUIT
via Intellectual Property Law360 by Tiffany Hu on 3/15/2019
URL: https://www.law360.com/ip/articles/1139316

Generic words and short phrases like the line "I need to know now," which songwriter Alisa Apps claims Universal Music and British singer John Newman appropriated from her work for their...

STEVE PERRY'S LAWSUIT OVER UNRELEASED DEMO VOCALS MOVES FORWARD
URL: https://www.hollywoodreporter.com/thr-esq/steve-perrys-lawsuit-unreleased-demo-vocals-moves-forward-1195055

Perry and Phil Brown are battling over a series of recordings they made in the early '90s.
FALL OUT BOY EXPLOITING LLAMAS, PUPPET STUDIO SAYS IN IP SUIT
via Intellectual Property Law360 by Dave Simpson on 3/15/2019
URL: https://www.law360.com/ip/articles/1139674

Two llama puppets have become “de facto members of the band” Fall Out Boy, appearing on stage, album covers and merchandise — well beyond their agreed-upon usage for a single music...

9TH CIRC. UNDOES $4M AWARD IN ZILLOW PHOTO COPYRIGHT ROW
via Intellectual Property Law360 by Mike LaSusa on 3/15/2019
URL: https://www.law360.com/ip/articles/1139591

A Washington federal court will reconsider a $4 million copyright infringement award against the Zillow Group after the Ninth Circuit said Friday the lower court hadn't determined whether a real estate...

ARE COPYRIGHT LAWS OUTDATED? THE CHALLENGES OF THE DIGITAL AGE
via National Law Review by Jaliz Maldonado on 3/16/2019
URL: https://www.natlawreview.com/article/are-copyright-laws-outdated-challenges-digital-age

Copyright laws regarding its nature and utilization were instituted to protect and promote creativity among the American public. In many ways, this is ...

THE RISK IN THE FIGHT AGAINST PIRACY WEBSITES
via Japan Times on 3/17/2019
URL: https://www.japantimes.co.jp/opinion/2019/03/17/editorials/risk-fight-piracy-websites/

So far, it has been made illegal to download pirated music and video content, but the amendment would have expanded the ban to other copyrighted ...

“THE INTERNET HAS FAILED.”
via The Illusion of More by David Newhoff on 3/17/2019
URL: http://illusionofmore.com/the-internet-has-failed/

I have nothing to add … … except perhaps to tell everyone who would say T Bone Burnett is “clinging to old models” to go [...]
The puppets are copyright-protected sculptures under the registration numbers VAu001332963 and VAu001332960. “In fact, the widespread uses of ...

Disabling user access to offshore copyright-infringing websites (aka “site blocking”) is becoming an established practice in the UK (and in a number of other jurisdictions including Europe, Australia and elsewhere) where rights-holders can go to court, or use administrative means, to obtain an order requiring major ISPs to block access to specified offshore websites whose main purpose is to host and promote access to pirated content.

Hudson Yards, the largest private real estate development in the United States (by square footage) just opened to the public in New York City, and the ...

Texas A&M University has urged a Texas federal court to toss claims that the school’s athletics department stole copyrighted material from the author of a book on the football team’s “12th...
'MOCKINGBIRD' SPAT SHOWS BENEFITS OF LIGHT TOUCH ON COPYRIGHTS
via Bloomberg by Kyle Jahner on 3/19/2019

The episode shows how heavy-handed copyright enforcement tactics can backfire in the age of social media, intellectual property attorneys said.

THE RISE AND RISE OF TRANSFORMATIVE USE
via Written Description by Michael Risch on 3/19/2019
URL: https://writtendescription.blogspot.com/2019/03/the-rise-and-rise-of-transformative-use.html

I'm a big fan of transformative use analysis in fair use law, except when I'm not.

COOK ISLANDS JOINS FOUR KEY WIPO COPYRIGHT TREATIES
via YouTube by WIPO on 3/19/2019
URL: https://www.youtube.com/watch?v=I2Bl2w0Mit8

The Cook Islands deposited on March 19, 2019 its instruments of accession to four key copyright WIPO treaties with WIPO Director Francis Gurry (right). Mr. Gurry received the instruments of accession from Mrs. Repeta Puna, Director of Governance, Ministry of Cultural Development and welcomed the accessions which will benefit creators in the island nation. The Cook Islands becomes the 25th contracting party to the Beijing Treaty on Audiovisual Performances, the 55th member of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, the 101 member of the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonogram Treaty (WPPT).

MUSIC COS. SUE PELOTON OVER ARIANA GRANDE, RIHANNA SONGS
via Intellectual Property Law360 by Bill Donahue on 3/19/2019
URL: https://www.law360.com/ip/articles/1140521

More than a dozen music publishers hit Peloton Interactive Inc. with a copyright lawsuit Tuesday, accusing the trendy exercise bike company of willfully using more than 1,000 songs from Ariana Grande,...
MUSIC PUBLISHERS SUE PELOTON FOR USING UNLICENSED LADY GAGA, JUSTIN TIMBERLAKE SONGS
via Fortune by Emily Price on 3/19/2019
URL: http://fortune.com/2019/03/19/peloton-music-lawsuit/

Those require a license from music rights holders; however, the company does have the correct licenses for music from other copyright holders that...

KENDRICK LAMAR, ARTIST END IP SUIT OVER 'BLACK PANTHER' VIDEO
via Intellectual Property Law360 by Suzanne Monyak on 3/19/2019
URL: https://www.law360.com/ip/articles/1140678

Award-winning rapper Kendrick Lamar and visual artist Lina Iris Viktor have agreed to end a copyright dispute in Manhattan federal court, resolving Viktor’s claims that Lamar and others copied her artwork...

GETTY ACCUSED OF FAKING COPYRIGHTS OVER PUBLIC DOMAIN PICS
via Intellectual Property Law360 by Tiffany Hu on 3/19/2019
URL: https://www.law360.com/ip/articles/1139909

Getty has been slapped with a proposed class action in Washington federal court accusing it of tricking customers into buying fake copyright licenses for images in the public domain that can...

HELLS ANGELS SUFFER PARTIAL DEFEAT IN AUSTRALIAN INFRINGEMENT CASE
via World IP Review on 3/19/2019

According to the club, HAMC US is the rightful owner of the copyright, while the Australian branch was the exclusive licensee in that country.

STEPHEN KING WANTS $1.2M AFTER BEATING 'DARK TOWER' IP SUIT
via Intellectual Property Law360 by Dave Simpson on 3/19/2019
URL: https://www.law360.com/ip/articles/1140427

Stephen King asked a Florida federal court Monday to award him $1.17 million that he incurred fending off claims that his work "Dark Tower" ripped off a comic book series, saying...
EUROPE-WIDE STREET PROTESTS TO TAKE PLACE SATURDAY AGAINST ARTICLE 13 OF EU COPYRIGHT REFORM BILL (I'LL SPEAK AT THE MUNICH DEMONSTRATION) via FOSS Patents by Florian Mueller on 3/20/2019 URL: http://www.fosspatents.com/2019/03/europe-wide-street-protests-to-take.html

Tomorrow (Thursday, March 21), the Conference of Presidents (= political group leaders) of the European Parliament will set the schedule for next week's Strasbourg plenary session, with the plenary debate on the Directive on Copyright in the Digital Single Market ("EU Copyright Directive") most likely to take place on Tuesday (March 26) and the vote later that day or the next day.

‘WINNING THE FIGHT AGAINST AD-SUPPORTED PIRACY’ JUST GOT A LITTLE EASIER via CreativeFuture by Justin Sanders on 3/20/2019 URL: https://creativefuture.org/tag-vs-piracy/

In a world rife with existential threats to the creative economy, we tend to, by necessity, sound a lot of alarm bells here at CreativeFuture.


Patent litigation is known to hold inherent complexities and unpredictability linked with a claim under the Patent Act. Few understand obstacles linked with a claim under the U.S. Copyright Act. On...


Jerry Media, the ad agency behind the popular Fuckjerry Instagram account, is being sued for copyright infringement for allegedly stealing a social media meme and reposting it as an advertisement, echoing...
RNC USE OF PHOTO WITHOUT PERMISSION ON POLITICAL MAILER IS FAIR USE: JUDGE
via PetaPixel by Michael Zhang on 3/20/2019
URL: https://petapixel.com/2019/03/20/rnc-use-of-photo-without-permission-on-political-mailer-is-fair-use-judge/

... affect the market for Peterman's photo, a second factor considered when determining whether the unauthorized use of a copyrighted work is fair use.

HOW FAR IS HEAVEN FROM NIRVANA? (GUEST COLUMN)
URL: https://www.hollywoodreporter.com/thr-esq/how-far-is-heaven-nirvana-guest-column-1195456

To many, a t-shirt design by Marc Jacobs might scream "rip-off" of Kurt Cobain, but the legal analysis is more complex.

PHOTOGRAPHER LOSES LAWSUIT OVER USE OF HER PHOTO IN POLITICAL MAILER
via Ars Technica by Timothy B. Lee on 3/21/2019
URL: https://arstechnica.com/?p=1477499

When Erika Peterman saw photographs she had taken in a flyer put out by the Republican National Committee, she wasn't happy about it.

COALITION OF PUBLISHERS AND SONGWRITERS HAS EXPERIENCE NEEDED TO RUN THE NEW MECHANICAL ...
via Billboard by Danielle Aguirre on 3/21/2019
URL: https://www.billboard.com/articles/business/8503431/music-modernization-act-industry-consensus-group-mlc-nmpa-op-ed

Together these companies own millions of copyrights and administer millions more, while representing the vast majority of the music publisher market.

COURTS BEING LED DOWN RABBIT HOLE IN PHOTOGRAPH COPYRIGHT CASE
via The Illusion of More by David Newhoff on 3/21/2019
URL: http://illusionofmore.com/courts-being-led-down-rabbit-hole-in-photograph-copyright-case%ef%bb%bf/

Oral arguments were presented this week at the Fourth Circuit Court of Appeals in the case of Brammer v. Violent Hues Productions, Ltd. I first [...]

- 400 -
DIRECTOR OF MEL GIBSON'S 'MADMAN' DOESN'T OWN SCREENPLAY COPYRIGHT, JUDGE RULES
via Hollywood Reporter by Ashley Cullins on 3/21/2019

Director Farhad Safinia and Voltage Pictures have been embroiled in a war over the film, which stars Gibson who was also in the legal fray.

RULING IN EMOJI BEACH BALL IP CASE LEFT ME CONFUSED ??–KANGAROO V. AMAZON
via Technology & Marketing Law Blog by Eric Goldman on 3/22/2019
URL: https://blog.ericgoldman.org/archives/2019/03/ruling-in-emoji-beach-ball-ip-case-left-me-confused-%f0%9f%98%95-kangaroo-v-amazon.htm

This case involves the alleged counterfeiting of emoji beach balls on Amazon.

SKILLED IN THE ART: WILL SUPREME COURT DUNK ON NINTH CIRCUIT COPYRIGHT RULING + YOUR TAX DOLLARS AT WORK: U.S. ORDERED TO PAY $4.3 MILLION FEE AWARD
via Law.com by Scott Graham on 3/22/2019
URL: https://www.law.com/2019/03/22/skilled-in-the-art-will-supreme-court-dunk-on-ninth-circuit-copyright-ruling-your-tax-dollars-at-work-u-s-ordered-to-pay-4-3-million-fee-award/

With Oracle and Google on the horizon, SCOTUS may take up a more fun case involving a 35-year-old photo of Michael Jordan.

KEY TAKEAWAYS FROM COPYRIGHT REGISTRATION RULING
URL: https://www.law360.com/ip/articles/1141152

In Fourth Estate Public Benefit Corp. v. Wall-Street.com, the U.S. Supreme Court resolved a long-standing circuit split by unanimously holding a copyright owner of a United States work[1] may not file...

AIG CAN'T ESCAPE AMWAY'S BID FOR COPYRIGHT SUIT COVERAGE
via Intellectual Property Law360 by Jeff Sistrunk on 3/22/2019
URL: https://www.law360.com/ip/articles/1141977

A Michigan federal judge on Friday ruled that two American International Group units must face Amway’s suit seeking to force the insurers to fund its defense and settlement of a sprawling
copyright dispute with several major record labels, holding that the insurance policies at issue don’t foreclose coverage for the labels’ claims.

CHARTER PROFITED FROM USERS’ MUSIC PIRATING, MAJOR LABELS SAY via Intellectual Property Law360 by Hailey Konnath on 3/22/2019
URL: https://www.law360.com/ip/articles/1142130

Warner Bros. Records Inc., Atlantic Recording Corp., Sony Music Entertainment, Universal Music Corp. and a slew of other major record labels slapped Charter Communications with a lawsuit Friday blasting the internet...


New technologies create novel issues and inform our understanding of existing laws. The statutes that form the basis of the U.S. IP regime are decades old and, as such, could not have contemplated how technology (and technology-assisted infringement) would evolve. As a result, traditional methods of IP enforcement often lag behind the rapidly changing online environment. Though Congress has taken steps to modernize these sometimes antiquated laws—for example, the America Invents Act made...

"CONTENT CREATOR" DROPS COPYRIGHT INFRINGEMENT LAWSUIT AGAINST FJERRY AND CO. via Fashion Law on 3/24/2019
URL: http://www.thefashionlaw.com/home/content-creator-drops-copyright-infringement-lawsuit-against-fjerry-and-co

Within 48 hours of initiating a copyright infringement suit against FJerry LLC, Elliot Tebele, Jerry Media and Tebele's tequila venture JAJA Spirits for ...

HIGH COURT WON'T HEAR COPYRIGHT FIGHT OVER NIKE JUMPMAN via Intellectual Property Law360 by Bill Donahue on 3/25/2019
URL: https://www.law360.com/ip/articles/1142280

The U.S. Supreme Court on Monday said it would not hear a lawsuit that claimed Nike infringed a copyrighted image of Michael Jordan to create the iconic “Jumpman” logo.
DIRECTOR OF MEL GIBSON'S 'MADMAN' DOESN'T OWN SCREENPLAY COPYRIGHT, JUDGE RULES

Director Farhad Safinia and Voltage Pictures have been embroiled in a war over the film, which stars Gibson, who was also in the legal fray.

THE DEADLIEST ASPECTS OF COPYRIGHT
via Hugh Stephens Blog on 3/25/2019
URL: http://hughstephensblog.net/2019/03/25/the-deadliest-aspects-of-copyright/

According to Ben Franklin, the only certainties in this world are “death and taxes”.

LUMEN DATABASE (STILL) KEEPS PIRATE LINKS ALIVE…AND NOW HAS A HELPER
via Vox Indie by Ellen Seidler on 3/25/2019
URL: https://www.voxindie.org/lumen-database-still-keeps-pirate-links-alive-and-now-has-a-helper/

I’ve written about the Lumen, formerly “chilling effects” DMCA database in the past and how it “makes a mockery of the DMCA.” I’ve also pointed out that the site provides a repository for links to pirated downloads and streams even after they’ve been reported for copyright infringement. Now, with the release of a new […]

MUSIC LABELS SUE CHARTER, COMPLAIN THAT HIGH INTERNET SPEEDS FUEL PIRACY
via Ars Technica by Jon Brodkin on 3/25/2019
URL: https://arstechnica.com/?p=1481093

The music industry is suing Charter Communications, claiming that the cable Internet provider profits from music piracy by failing to terminate the accounts of subscribers who illegally download copyrighted songs.

THE EU VOTES ON A CONFUSING NEW COPYRIGHT LAW TUESDAY
via Ars Technica by Timothy B. Lee on 3/25/2019
URL: https://arstechnica.com/?p=1479641

On Tuesday, the European Parliament will vote on an overhaul of the EU's copyright system.
GIBSON DUNN SEEKS $18M IN FEES FOR HPE'S WIN OVER ORACLE
via Intellectual Property Law360 by Mike LaSusa on 3/25/2019
URL: https://www.law360.com/ip/articles/1142402

Gibson Dunn & Crutcher LLP lawyers have asked a California federal court to award Hewlett Packard Enterprise Co. nearly $18 million in attorney fees after the firm helped the tech giant...

MARVEL CALLS COMIC ARTISTS' IRON MAN IP CLAIMS 'WILLFULLY NAÏVE'
via Intellectual Property Law360 by Dave Simpson on 3/25/2019
URL: https://www.law360.com/ip/articles/1142710

Disney's Marvel Entertainment unit urged a New York federal court Monday to grant it a win in a copyright infringement suit accusing the studio of ripping off other artists' designs for...

EUROPE ADOPTS TOUGH NEW ONLINE COPYRIGHT RULES OVER TECH INDUSTRY PROTESTS
via NYT > Media & Advertising by Adam Satariano on 3/26/2019
URL: https://www.nytimes.com/2019/03/26/business/europe-copyright-internet.html

Media companies whose business models have been upended by the internet have long complained about Google and other online platforms profiting from their content without compensating them adequately.

EU APPROVES SWEEPING COPYRIGHT LAW CHANGES
via Intellectual Property Law360 by Bill Donahue on 3/26/2019
URL: https://www.law360.com/ip/articles/1142808

Lawmakers in the European Union on Tuesday voted in favor of sweeping changes to the bloc's copyright laws that would alter how technology companies such as Google police digital content....

EUROPE PASSES CONTROVERSIAL NEW COPYRIGHT LAW
via Law.com by Simon Taylor on 3/26/2019
URL: https://www.law.com/2019/03/26/europe-passes-controversial-new-copyright-law-292-42654/

Technology platforms such as Google, YouTube and Facebook had opposed the changes, which will require them to compensate publishers, artists and musicians.
FACING COPYRIGHT LAWSUIT, PELOTON WILL PULL SONGS
via Intellectual Property Law360 by Bill Donahue on 3/26/2019
URL: https://www.law360.com/ip/articles/1142890

Peloton on Monday announced that it will pull more than 1,000 songs by Ariana Grande, Rihanna and others from its high-end cycling service after being hit with a copyright lawsuit that...

SENATORS TILLIS AND COONS EXPRESS CONCERNS WITH FOURTH ESTATE IN LETTER TO COPYRIGHT OFFICE

On March 14, Senators Thom Tillis (R-NC) and Chris Coons (D-DE), respectively the Chairman and Ranking Member of the Senate Judiciary Committee’s Subcommittee on Intellectual Property, sent a letter addressed to Karyn Temple, Acting Register of Copyrights at the U.S. Copyright Office expressing concerns that Tillis and Coons share about the U.S. Supreme Court’s recent decision in Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC. As the letter from Sens. Tillis and Coons notes, it...

2ND CIRC. GIVES MADONNA SONGWRITER HOPE IN WARNER SUIT
via Intellectual Property Law360 by Pete Brush on 3/26/2019
URL: https://www.law360.com/ip/articles/1143114

The co-writer behind Madonna's hit song "Vogue" appeared to have allies in the Second Circuit as he pressed Tuesday to recoup about $500,000 of royalties withheld from him by Warner Music...

AFTER YESTERDAY'S ACCIDENTAL VOTE, EU COPYRIGHT BILL FACES THREE HUGE LEGITIMACY ISSUES--NOT COUNTING LOBBYING AND PUTIN'S PIPELINE
via FOSS Patents by Florian Mueller on 3/27/2019
URL: http://www.fosspatents.com/2019/03/after-yesterdays-accidental-vote-eu.html

The lesson from yesterday's European Parliament vote on copyright reform is that no one is ever beaten unless he gives up the fight.
It is an honor and pleasure to reintroduce myself to you as the United States Register of Copyrights.

We talk with Morrison & Foerster partner Julie O'Neill and associate Max Phillip Zidel on how companies can collect and use biometric data without becoming an easy target for litigation.

Oracle urged the U.S. Supreme Court on Wednesday not to wade into the company’s long-running copyright lawsuit against Google over smartphone software, mocking the “doomsday predictions” made by its rival.

Game designer GC2 Inc.'s misleading closing argument tricked a jury into awarding a too-high $16 million after finding International Game Technology PLLC had infringed its rival's slot game copyrights, IGT argued.

The Library of Congress has taken away the word "acting" from the front of Karyn A. Temple's title as register of copyrights for the federal agency, permanently placing her in the...
FRANCE WANTS URGENT IMPLEMENTATION OF INTERNET UPLOAD FILTERS: THREE GOVERNMENT AGENCIES TO COLLABORATE ON THIS via FOSS Patents by Florian Mueller on 3/28/2019
URL: http://www.fosspatents.com/2019/03/france-wants-urgent-implementation-of.html

Without going into details here in public, I am in a position to tell you that there are certain dynamics in German politics across multiple parties that ultimately might prevent the German government from allowing the EU Council, where there is no qualified majority without Germany's support, to rubberstamp the triply-illegitimate current version of the Directive on Copyright in the Digital Single Market ("EU Copyright Directive").

CAMBODIA JOINS BEIJING TREATY AS 26TH MEMBER via YouTube by WIPO on 3/28/2019
URL: https://www.youtube.com/watch?v=ZRnRam3sfzE

Cambodia deposited on March 27, 2019, its instrument of accession to the Beijing Treaty on Audiovisual Performances. WIPO Director General Francis Gurry received the document from SOM Sokun, State Secretary, Ministry of Culture and Fine Arts, Cambodia. Cambodia is the 26th contracting party to the Beijing Treaty, which requires 30 accessions or ratifications for entry into force.

AUSTRIA PLANS DE FACTO EXEMPTION OF ALL STARTUPS FROM SCOPE OF ARTICLE 13 (NOW 17) OF EU COPYRIGHT DIRECTIVE: USELESS UNLESS ENTIRE EU FOLLOWS SUIT via FOSS Patents by Florian Mueller on 3/28/2019
URL: http://www.fosspatents.com/2019/03/austria-plans-de-facto-exemption-of-all.html

What makes it hard for me to comment on some developments regarding the EU Copyright Directive as harshly as I'd like to is that there are some Members of the Europen Parliament (MEPs) involved with whom I got along very well in other contexts.

ORACLE ASKS SUPREMES TO SNUB GOOGLE'S JAVA API COPYRIGHT PROTEST – AND HAVE A NICE CUPPA TEA ... via Register by Shaun Nichols on 3/28/2019
URL: https://www.theregister.co.uk/2019/03/28/oracle_java_supreme_court/

Google and its pals say a lower court ruling in Oracle's favor on the fair use of Java APIs – that Android trampled Oracle's copyright by implementing ...
SWEDISH GOVERNMENT MAY HAVE TO VOTE AGAINST COPYRIGHT BILL IN EU COUNCIL: RIKSDAG COMMITTEE ON EU AFFAIRS WILL DECIDE
via FOSS Patents by Florian Mueller on 3/29/2019
URL: http://www.fosspatents.com/2019/03/swedish-government-may-have-to-vote.html

The triply illegitimate European Parliament vote in favor of a copyright bill requiring upload filters (as the French government, its #1 proponent, has since stated clearly and German EU commissioner Günther Oettinger considers "not entirely avoidable") should be repeated as Czech conservative MEP Tomáš Zdechovský formally proposes.

OTHER BARKS & BITES: NEW REGISTER OF COPYRIGHTS, WIN FOR QUALCOMM AT ITC AND BIG TECH UP IN ARMS OVER NEW EU COPYRIGHT RULES

This week in Other Barks & Bites: Karyn Temple is appointed Register of Copyrights; the International Trade Commission recommends excluding certain iPhone models for infringing Qualcomm patent claims; the EU approves new copyright rules which will affect online media platforms; Senators Tillis and Coons move forward with stakeholder discussions on a legislative fix to Section 101 of patent law; Peloton responds to copyright infringement suit by dropping online cycling classes; Amazon adds...

PLAYING TO WIN: HOW ATTORNEYS CAN HELP VIDEO GAME CLIENTS
URL: https://www.law360.com/ip/articles/1141678

The video game industry has exploded — surpassing even the film industry in terms of revenue — but all that growth comes with its own set of unique legal challenges. Here,...

IS TECH READY FOR EUROPE'S NEW COPYRIGHT LAWS?
via FindLaw Writ - Recent Articles by William Vogeler, Esq. on 3/29/2019

If you thought America's roll-back of net neutrality was the death of a free internet, you don't want to go to Europe. European lawmakers have approved new copyright laws that could change the internet there forever. Google, YouTube, and other major internet platforms have foreseen it. The new laws......
Oracle has accused Google of rehashing the same copyrightability arguments that the Supreme Court has already rejected.

I’ve been traveling and am, therefore, late to mention that the hotly-contested EU Copyright Directive passed last week. Not surprisingly, the usual critics have spared […]

It’s not easy to be a songwriter in the pop world these days. Listeners rarely see your name.
BEFORE YOU INSTALL AND USE A FANCY FONT
via Korea Times by Park Eun-ji on 4/1/2019
URL: http://www.koreatimes.co.kr/www/opinion/2019/04/726_266406.html

It is commonly thought that using proprietary fonts for non-profit, personal purposes does not constitute copyright infringement. However, the scope of ...

COPYRIGHT AND YOUR CARBON FOOTPRINT
via Hugh Stephens Blog on 4/1/2019
URL: http://hughstephensblog.net/2019/04/01/copyright-and-your-carbon-footprint/

Although I am posting this on April 1, it is not an April Fools’ joke. Copyright has a carbon footprint, just like practically everything else. And, like everything else, you can do something about it.

COPYRIGHT REGISTRATION, PUBLICATION ON THE INTERNET, AND THE REVOLVING “BACK DOOR TO BERNE” (GUEST BLOG POST)
via Technology & Marketing Law Blog by Marketa Trimble on 4/1/2019

Localization – the determination of where persons and things are deemed to be located and events are deemed to happen – is important for many legal purposes; decisions concerning personal jurisdiction and choice of applicable law are prime examples.

COPYRIGHT DIRECTIVE WILL PROTECT CREATIVES
via Guardian by Carole Tongue on 4/1/2019
URL: https://www.theguardian.com/media/2019/apr/01/copyright-directive-will-protect-creatives

I was most surprised that your newspaper carried a story about copyright (Controversial copyright laws backed by MEPs despite tech lobbyists, ...
THE EU'S NEW COPYRIGHT LAWS WON'T "WRECK THE INTERNET"
via Slate by Eleonora Rosati on 4/1/2019

On Tuesday, at the end of a process that lasted more than two and a half years, the European Parliament adopted the latest version of the EU Directive ...

NEW EUROPEAN COPYRIGHT RULES: 'BEST EFFORTS' MAY RENDER THEM INCONSEQUENTIAL
via Hill by Michael Rounds & Andrea LaFrance on 4/1/2019
URL: https://thehill.com/opinion/technology/436716-new-european-copyright-rules-best-efforts-may-render-them-inconsequential

For example, a YouTube user may upload a copyrighted song without obtaining authorization from the right holder. If the right holder discovers this ...

JUSTICES WON'T HEAR ART RESALE CASE AGAINST SOTHEBY'S, EBAY
via Intellectual Property Law360 by Bill Donahue on 4/1/2019
URL: https://www.law360.com/ip/articles/1144932

The U.S. Supreme Court on Monday refused to hear a failed case that had aimed to force Christie’s, Sotheby’s and eBay to pay royalties under California’s unique art resale law, leaving...

TEXAS A&M ESCAPES COPYRIGHT SUIT ON '12TH MAN' SENSATION
via Intellectual Property Law360 by Todd Hutchinson on 4/1/2019
URL: https://www.law360.com/ip/articles/1145031

Texas A&M University largely escaped a suit alleging it published on its website part of a book about the school's beloved "12th Man" tradition, though a school communications employee must still...

ARTIST OF IMAGE STEVE KING USED TO PROMOTE POTENTIAL CIVIL WAR MAY SUE HIM FOR COPYRIGHT INFRINGEMENT
via Hill by Justin Wise on 4/2/2019
URL: https://thehill.com/homenews/house/436855-artist-of-meme-steve-king-used-to-promote-potential-civil-war-may-sue-him-for

... a modern day civil war between red and blue states is vowing to sue the congressman for copyright infringement if he doesn't apologize for the post.
WIPO delegates celebrate U.S. ratification of Marrakesh Treaty via YouTube by WIPO on 4/2/2019
URL: https://www.youtube.com/watch?v=dxLrUxochH0

A celebration of the U.S. ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled took place at WIPO on April 1, 2019 on the sidelines of a meeting of WIPO's key copyright negotiating committee, the Standing Committee on Copyright and Related Rights (SCCR). The United States of America deposited its instrument of ratification earlier this year with WIPO Director General Francis Gurry, becoming the 50th member and adding a major global publishing center to the Treaty that promotes the increased worldwide availability of texts specially adapted for use by persons with visual or print impairments. The U.S. is home to the largest number of English-language texts in accessible formats, such as Braille, for use by people living with print or visual disabilities. The Treaty eases the creation and international transfer of accessible texts among its contracting parties. The Treaty enters into force for the U.S. on May 8, 2019.

Continued progress in developing the digital marketplace for copyrighted works
via National Law Review by Deborah M. Lodge on 4/2/2019

Not so, as was evidenced by the robust discussions at the third public meeting on Developing the Digital Marketplace for Copyrighted Works, hosted ...
BLOGGER’S SCREENSHOT OF A NEWSPAPER PAGE QUALIFIES AS FAIR USE—CLARK V. TRANSALT
via Technology & Marketing Law Blog by Eric Goldman on 4/3/2019

The photo at issue depicts a dockless bike on a sidewalk.

TEEFLII, 2 CHAINZ’S ’24 HOURS’ COPIES ’90S SONG, SUIT SAYS
URL: https://www.law360.com/ip/articles/1145926

TeeFLii and T-Chainz’s hit 2014 song "24 Hours" copied its music from Robin S.' 1993 song "Back It Up," the owners of the older song have alleged in a copyright infringement...

FOR SOME ROCK PIONEERS, WARNER MUSIC TREATS STREAMING ROYALTIES AS CHARITY

Defending an attempted class action, Warner says it shares revenues received from digital streaming even when it is not contractually obligated to do so.

BANANA COSTUME COPYRIGHT ASSAILED AT THIRD CIRCUIT
via Courthouse News Service by Emilee Larkin on 4/3/2019
URL: https://www.courthousenews.com/banana-costume-copyright-assailed-at-third-circuit/

Noting that it had a former business relationship with the founder of Kangaroo, Rasta says Kangaroo knew the costume was copyrighted and had even ...

THE WEEKND RIPPED OFF UK SONGWRITERS’ WORK, SUIT SAYS
via Intellectual Property Law360 by Dave Simpson on 4/3/2019
URL: https://www.law360.com/ip/articles/1146378

A trio of British songwriters on Wednesday accused R&B singer The Weeknd of infringing their song to make his track "A Lonely Night," which appeared on his Grammy award-winning album "Starboy."...
LIVE NATION, OTHERS CUT LOOSE FROM JUDY GARLAND IP FIGHT
URL: https://www.law360.com/ip/articles/1146392

A California federal judge has allowed a handful of defendants, including Live Nation, Madison Square Garden and the National Academy of Recording Arts & Sciences, to bow out of a suit...

MERCEDES-BENZ SUING GRAFFITI ARTISTS OVER ALLEGED SHAKEDOWN
via Page Six by Mara Siegler on 4/4/2019
URL: https://pagesix.com/2019/04/03/mercedes-benz-suing-graffiti-artists-over-alleged-shakedown/

... Mercedes claimed that Daniel Bombardier, James “Dabls” Lewis, Jeff Soto and Maxx Gramajo threatened the company with copyright infringement ...

PHOTOGRAPHER FINDS PHOTO STOLEN FOR A LUFTHANSA IN-FLIGHT MAGAZINE AD
via PetaPixel by Michael Zhang on 4/4/2019
URL: https://petapixel.com/2019/04/03/photographer-finds-photo-stolen-for-a-lufthansa-in-flight-magazine-ad/

... pursuing the never-ending line of copyright infringers can be these days. “It honestly doesn't bother me that my image was stolen,” Diamond says.

VINYL COMPANIES 'NOT LIABLE' FOR SALE OF UNLICENSED EMINEM RECORDS
via World IP Review on 4/4/2019

A vinyl manufacturer breached copyright by selling unlicensed vinyl copies of rapper Eminem's debut album, the English High Court said on Tuesday, ...

CREATORS ASK COPYRIGHT OFFICE TO WAIVE EXPEDITED REGISTRATION FEES
via The Authors Guild by Jennifer Simms on 4/4/2019
URL: https://www.authorsguild.org/industry-advocacy/creators-ask-copyright-office-to-waive-expedited-registration-fees/

The Supreme Court recently held that a copyright holder cannot bring an infringement lawsuit until the Copyright Office has finished processing the registration application. Since the only way to expedite the registration process (which can take up to 10 months) is to pay an additional fee, the Authors Guild, the American Society of Journalists and …
GIGI HADID WANTS COURT TO TOSS COPYRIGHT INFRINGEMENT CLAIM OVER INSTAGRAM PHOTO
via Forbes by Michelle Kaminsky on 4/4/2019
URL: https://www.forbes.com/sites/michellekaminsky/2019/04/04/gigi-hadid-wants-court-to-toss-copyright-infringement-claim-over-instagram-photo/#3a4932a520a1

In January, Xclusive sued Hadid, alleging she “copied and uploaded” its copyrighted photograph to her own social media account “without license or ...

CABO VERDE ACCEDES TO THREE KEY WIPO COPYRIGHT TREATIES
via YouTube by WIPO on 4/5/2019
URL: https://www.youtube.com/watch?v=ZfjC4j68nRA

WIPO Director General Francis Gurry welcomed on April 4, 2019, Cabo Verde’s recent accession to three key copyright treaties – the two so-called “Internet Treaties” and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. Cabo Verde’s Minister of Culture and Creative Industries Abraão Vicente expressed his country’s commitment to strengthening Cabo Verde’s copyright system to protect its creators. Cabo Verde’s instruments of accession to the three treaties, signed by President Jorge Carlos Fonseca, were formally deposited with WIPO on February 22, 2019. The treaties will enter into force for Cabo Verde on May 22, 2019. Mr. Vincente took advantage of his visit to Geneva to attend WIPO’s Standing Committee on Copyright and Related Rights and to meet with Mr. Gurry to discuss bilateral cooperation and implementation of the treaties.

COPYRIGHT REGISTRATION RULING CREATES INSURANCE RISKS
via Intellectual Property Law360 by Elizabeth Retersdorf on 4/5/2019
URL: https://www.law360.com/ip/articles/1144928

The U.S. Supreme Court recently resolved a circuit split regarding the registration requirement for copyright infringement lawsuits. In Fourth Estate Public Benefit Corp. v. Wallstreet.com LLC,[1] the court held that copyright...

NOW IN THE COURT OF A-PEELS: A COPYRIGHT DISPUTE OVER A BANANA COSTUME
via ABA Journal by Debra Cassens Weiss on 4/5/2019

But it can't make a banana costume because of a copyright injunction issued by a federal trial judge. A lawyer for Kangaroo Manufacturing, David ...
AMBALA SHOPKEEPER SELLING FAKE CLOTHES OF INTERNATIONAL BRANDS BOOKED UNDER COPYRIGHT ACT
via Times of India by Jaskaran Singh on 4/5/2019

The Ambala city police booked an Ambala based shopkeeper under the Copyright Act for allegedly selling fake clothes having the imprints ...

CAN NEW E.U. COPYRIGHT LAWS INSPIRE STATESIDE PROGRESS?
via The Authors Guild by Jennifer Simms on 4/5/2019
URL: https://www.authorsguild.org/industry-advocacy/can-new-e-u-copyright-laws-inspire-stateside-progress/

On March 26, the European Parliament approved a new copyright directive that, when implemented into E.U. members’ national laws, will help both to bolster journalism and to curtail internet piracy. The legislation, over two and a half years in the making, is a major victory for authors’ interests on the continent and globally. The Directive …

GRAND THEFT AUTO CHEATER ADMITS INFRINGEMENT, WILL PAY
URL: https://www.law360.com/ip/articles/1146805

A man accused of creating programs to cheat at Grand Theft Auto has admitted that he infringed Take-Two Interactive Software Inc.’s copyrights for the video game and will hand over an...

8 STATES SAY CODE COPYRIGHT CASE THREATENS LEGAL RESEARCH
via Intellectual Property Law360 by Dave Simpson on 4/5/2019
URL: https://www.law360.com/ip/articles/1146790

Eight states backed a bid to overturn an Eleventh Circuit ruling wiping out Georgia's copyright control over annotations to its official code, telling the U.S. Supreme Court the decision is an...

HOW HAVE SECTION 512(F) CASES FARED SINCE 2017? (SPOILER: NOT WELL)
via Technology & Marketing Law Blog by Eric Goldman on 4/6/2019
URL: https://blog.ericgoldman.org/archives/2019/04/how-have-section-512f-cases-fared-since-2017-spoiler-not-well.htm

On Monday, I’m participating in a Copyright Office workshop on Section 512.
AMERICAN MECHANICAL LICENSING COLLECTIVE TO HOST NASHVILLE EVENT REGARDING COPYRIGHT ROYALTY ...
via Billboard by Ed Christman on 4/6/2019

The American Mechanical Licensing Collective appears to be piggybacking on the Town Hall to be hosted by the National Music Publishers Assn. and ...

AUTHORS NEED PROTECTION FROM ONLINE PIRATES, PHILIP PULLMAN CLAIMS
via Telegraph by Izzy Lyons on 4/7/2019
URL: https://www.telegraph.co.uk/news/2019/04/07/authors-need-protection-online-pirates-philip-pullman-claims/

“The law of copyright is one of the bastions of civilized living, but the acid rain of online piracy is slowly dissolving something we thought was set in ...

IS “MACHINE LEARNING” COPYING OR READING?
via The Illusion of More by David Newhoff on 4/7/2019
URL: http://illusionofmore.com/is-machine-learning-copying-or-reading%ef%bb%bf/

I recently attended a round-table discussion on the subject of artificial intelligence and copyright. The first of several engaging topics I thought warranted a post [...]

GOOGLE VS. EQUUSTEK: UNFORTUNATE PRECEDENT OR POSITIVE DEVELOPMENT?
via Hugh Stephens Blog on 4/8/2019
URL: http://hughstephensblog.net/2019/04/08/google-vs-equustek-unfortunate-precedent-or-positive-development/

I have written about the case of Google Inc vs Equustek Solutions several times over the past couple of years (for example, here, here, and here).

VODAFONE AGREES 'CEASE AND DESIST' PROTOCOL OVER MUSIC COPYRIGHT PIRACY
via Irish Times on 4/8/2019

Vodafone Ireland has become the latest internet service provider to agree a “cease and desist” protocol aimed at tackling music copyright piracy, the ...
A sound engineer must pay Prince’s estate a nearly $4 million arbitration award for releasing an unauthorized EP using original recordings of the late artist, a Minnesota federal court ruled Monday...

Hip-hop artist TeeFLii and his collaborators on the 2014 single "24 Hours" have been hit with a copyright lawsuit alleging they ripped off Robin S.’s ...

According to the district court stipulation, Zipperer admitted that his actions infringed Take-Two's copyright and end-user license agreement, and that ...

Typically, describing an article as polarizing refers to two different groups having very different views of an article.

Mercedes has filed lawsuits against four artists after they accused the car company of infringing upon their copyright by including graffiti murals in the ...
FLICKR TEAMS UP WITH PIXSY FOR THE FIRST END-TO-END PHOTO THEFT SOLUTION
via PetaPixel by Michael Zhang on 4/9/2019
URL: https://petapixel.com/2019/04/09/flickr-teams-up-with-pixsy-for-the-first-end-to-end-photo-theft-solution/

We offer clear controls for privacy and copyright, and we stand by our photographers in asserting their rights in the case that theft occurs,” says Flickr ...

FLICKR ADDS PHOTO THEFT DETECTION TOOLS
via BBC by Chris Fox on 4/9/2019

Under the Digital Millennium Copyright Act (DCMA), companies such as Facebook and Twitter are obliged to remove any copyright-infringing material ...

SPOTIFY'S SECRET GENIUS SONGWRITERS PEN LETTER TO DANIEL EK OVER CRB RATE APPEAL: 'YOU HAVE ...
via Billboard by Harley Brown on 4/9/2019

But now some of those same honorees are speaking out about something much less celebrated -- Spotify's plan to appeal Copyright Royalty Board ...

WARNER BROS FILES COPYRIGHT CLAIM AFTER TRUMP SHares VIDEO WITH MUSIC FROM 'DARK KNIGHT'
via Hill by Justin Wise on 4/9/2019

Warner Bros files copyright claim after Trump shares video with music from 'Dark Knight'. By Justin Wise - 04/09/19 08:57 PM EDT 0. AddThis Sharing ...

DARK KNIGHT RISES' SCORE IN TRUMP VIDEO LEADS TO COPYRIGHT CLAIM
via Inquisitr by Stephen Silver on 4/9/2019

Throughout the Trump era, there have been numerous instances of musicians and bands asking Donald Trump and other politicians to cease playing ...
Joshua L. Simmons
joshua.simmons@kirkland.com

RECAP OF THE COPYRIGHT OFFICE’S SECTION 512 STUDY ROUNDTABLE
via Technology & Marketing Law Blog by Eric Goldman on 4/10/2019

On Monday, I participated in a Copyright Office roundtable regarding their long-delayed report on Section 512.

SEUSS-‘STAR TREK’ MASHUP CREATOR SEEKS ATTY FEES IN IP SUIT
via Intellectual Property Law360 by Lauren Berg on 4/10/2019
URL: https://www.law360.com/ip/articles/1148620

The creatives behind a Dr. Seuss-"Star Trek" mashup book asked a California federal judge Wednesday to award them attorney fees, saying a fizzled infringement case brought by the famed author's estate...

GOOGLE DOESN'T FOLLOW SHANMUGAM TO PAUL WEISS IN 'COPYRIGHT CASE OF THE DECADE'
via Law.com by Scott Graham on 4/10/2019

Google is sticking with Williams & Connolly in its high-stakes copyright showdown with Oracle Corp., notwithstanding the departure of a star Supreme ...

IMPLEMENTING THE MUSIC MODERNIZATION ACT: SPECIAL CONSIDERATIONS FOR PROMULGATING RULES ON PRE-1972 ETHNOGRAPHIC SOUND RECORDINGS
via Columbia Journal of Law and the Arts by Mari Hulbutta on 4/11/2019

The purpose of the blog post is to summarize the recent administrative actions involving the U.S. Copyright’s implementation of the 2018 Music Modernization Act’s provisions for pre-1972 sound recordings.
JUDGE DENIES STRIKE 3 HOLDINGS' REQUEST TO SERVE SUBPOENA IN COPYRIGHT CASE
via Northern California Record by John Severance on 4/11/2019
URL: https://norcalrecord.com/stories/512416589-judge-denies-strike-3-holdings-request-to-serve-subpoena-in-copyright-case

The plaintiff alleged that the defendant used BitTorrent to download and distribute its copyrighted motion pictures to others "on a grand scale," ...

APRIL 3: US DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA DOCKET FOR COPYRIGHT CASES
via Penn Record on 4/11/2019
URL: https://pennrecord.com/stories/512418454-april-3-u-s-district-court-for-the-western-district-of-pennsylvania-docket-for-copyright-cases

The following copyright-related cases were on the docket in the U.S. District Court for the Western District of Pennsylvania on April 3. All case details ...

CHINESE STOCK IMAGE SITE FALSELY CLAIMS COPYRIGHT ON BLACK HOLE PHOTO
via World IP Review on 4/12/2019

A Chinese stock images provider, Visual China Group (VCG) has closed down its website after it was criticised for falsely claiming copyright on the first ...

500PX OWNER SLAMMED FOR CLAIMING COPYRIGHT TO BLACK HOLE IMAGE
via PetaPixel by Michael Zhang on 4/12/2019
URL: https://petapixel.com/2019/04/12/500px-owner-slammed-for-claiming-copyright-of-black-hole-image/

Visual China Group, the “Getty Images of China” and owner of 500px, has sparked an outcry after it attempted to claim copyright to the first-ever black ...
A Chinese stock photo company has apologised for claiming copyright on the first photograph of a black hole. In a statement released by Visual China...

This week in other IP news, recently released data shows that worldwide revenues for music copyright exceeded $28 billion in 2017, up $2 billion over 2016; reports surface about the “reverse patent trolling” issue in China; Google retains Williams & Connolly for Supreme Court battle with Oracle despite Shanmugam exit; the Copyright Office holds roundtable discussions on detecting online copyright infringement; Twitter takes down a tweet from President Donald Trump after a copyright...

China's largest stock photo flinger has been forced to backtrack after it tried to put its own price tags on images of the first black hole and the Chinese...

"Stranger Things" creators Matt and Ross Duffer urged a California judge Friday to toss a suit accusing them of stealing the idea for their hit Netflix series from another writer, saying...
'LADY MARMALADE' WRITER LOOKS TO REVOKE SONY'S COPYRIGHTS
via Intellectual Property Law360 by Hailey Konnath on 4/12/2019
URL: https://www.law360.com/ip/articles/1149435

A songwriter behind hits including Patti LaBelle's "Lady Marmalade" and Frankie Valli's "My Eyes Adored You" slapped Sony/ATV Music Publishing LLC and several other music publishers with a $20 million suit...

EU COUNCIL ADOPTS COPYRIGHT DIRECTIVE
via World IP Review on 4/15/2019
URL: https://www.worldipreview.com/news/eu-council-adopts-copyright-directive-17807

The European Council has adopted the proposed copyright directive, which was given the go-ahead by EU parliament and lawmakers last month.

INFRINGING WEBSITE LISTS: ANOTHER VALUABLE TOOL IN THE ANTI-PIRACY TOOLBOX
via Hugh Stephens Blog on 4/15/2019

In March the Trustworthy Accountability Group (TAG), “an advertising industry initiative to fight criminal activity in the digital advertising supply chain”, released an update in its campaign against ad-supported pirate websites, called Winning the Fight Against Ad-Supported Piracy.

TWITTER BLOCKS EFF TWEET THAT CRITICIZED BOGUS TAKEDOWN OF A PREVIOUS TWEET
via Ars Technica by Jon Brodkin on 4/15/2019
URL: https://arstechnica.com/?p=1491165

Twitter and Starz have given us a new example of how copyright enforcement can easily go overboard.

WHEN FAIR USE THREATENS THE DERIVATIVE WORKS RIGHT
via The Illusion of More by David Newhoff on 4/15/2019
URL: http://illusionofmore.com/when-fair-use-threatens-the-derivative-works-right/

At the same AI and copyright round-table referred to in my last post, Stephen Carlisle of Nova Southeastern University posed this question: Is the application [...]

- 423 -
MSNBC TWEETED BOOK EXCERPT WITHOUT PERMISSION, SUIT SAYS
via Intellectual Property Law360 by Rick Archer on 4/15/2019
URL: https://www.law360.com/ip/articles/1150166

A sports psychologist filed a copyright infringement suit against MSNBC on Monday in New York federal court, claiming the network posted the best-known passage from one of his books on Twitter...

A MAJOR SHIFT FOR EU COPYRIGHT PROTECTION ONLINE
via Intellectual Property Law360 by Andrew Avsec & Tracey Starck on 4/16/2019
URL: https://www.law360.com/ip/articles/1150321

On March 26, 2019, the European Parliament adopted the Directive on Copyright in the Digital Single Market,[1] approving new copyright rules for materials posted on the internet. This new directive is intended...

JOKE EXPERTS AXED FROM CONAN O'BRIEN TRIAL
URL: https://www.hollywoodreporter.com/thr-esq/joke-experts-axed-conan-obrien-trial-1202462

A California federal judge vetoed two experts proffered by the man suing O'Brien for joke theft and granted the late-night host's request to close the court during testimony about confidential financial information.

MEME-IFICATION' ISN'T A THING, 'PEPE' ARTIST TELLS INFOWARS
via Intellectual Property Law360 by Dave Simpson on 4/16/2019
URL: https://www.law360.com/ip/articles/1150488

The creator of Pepe the Frog, which has become an online symbol of the alt-right, blasted InfoWars’ attempt to escape his infringement suit Monday, saying the far-right website’s argument that the...
'LADY MARMALADE' SONGWRITER KENNY NOLAN FILES $20M COPYRIGHT LAWSUIT AGAINST SONY/ATV
via Billboard by Chris Eggertsen on 4/16/2019

“Lady Marmalade” songwriter Kenny Nolan has filed a $20 million lawsuit against Sony/ATV Music Publishing for breach of contract and copyright ...

PHOTOGRAPHER LOSES PART OF COPYRIGHT WIN IN VERDICT REVERSAL (1)
via Bloomberg by Kyle Jahner on 4/17/2019

A photographer could lose most of a $450,000 jury award because he didn't establish that a business owner willfully infringed his copyrights by hiring ...

AVOIDING LICENSING FEES NOT GROUNDS FOR VICARIOUS LIABILITY IN COPYRIGHT INFRINGEMENT CASE
via Reuters by Barbara Grzincic on 4/17/2019

A federal appeals court on Tuesday overturned a jury's verdicts of vicarious and willful copyright infringement against a financial-services consultant ...

ZUCKERBERG’S REGULATION PROPOSAL DISTRACTS FROM THE SOLVABLE PROBLEMS ON HIS PLATFORM – LIKE PIRACY
via CreativeFuture by Justin Sanders on 4/17/2019
URL: https://creativefuture.org/facebook-regulation/

On March 30, in an op-ed published in The Washington Post, the man who once coined the phrase “Move fast and break things” made a very public about-face.
Shep Pettibone claimed the publisher was improperly withholding his royalties to pay its attorneys fees from a copyright fight over the song.

Following the adoption of the EU Copyright Directive, Germany has claimed that controversial online upload filters are likely to be required and can...

The upcoming trial between Conan O'Brien and a freelance comedy writer who says the late-night TV host stole his jokes promises to feature appearances from comics Patton Oswalt and Andy Richter,...

Motorola can’t get source code and sales data for one of Chinese radio manufacturer Hytera’s products, an Illinois federal judge ruled, finding that the discovery bid would have expanded an ongoing...

The plaintiff is a retailer of “motor vehicle accessories.”
NINTH CIRCUIT FLESHERS OUT STANDARDS FOR COPYRIGHT INFRINGEMENT
via Law.com by Scott Graham on 4/18/2019
Orrick's Christopher Cariello says the decision on vicarious liability and willful infringement provides breathing room for website owners who publish collaborative or user-generated content.

JUDGE TOSSES PROFORMA'S COUNTERCLAIM AGAINST FOTOHAUS IN COPYRIGHT ACTION OVER PHOTO USE
via Northern California Record by Scott Holland on 4/18/2019
A federal judge has dismissed a counterclaim in a legal dispute over rights to a photograph. Judge Beth Labson Freeman of the San ...

GIVE US YOUR HUDDLED MASSES, BUT NOT YOUR COPYRIGHT LAW
via Intellectual Property Law360 by Bill Donahue on 4/18/2019
URL: https://www.law360.com/ip/articles/1151175
Sweeping copyright changes finalized by the European Union this week are a stark departure from the way U.S. law has long governed the internet, but don’t expect similar legislation stateside anytime...

EU MOVES COPYRIGHT INTO 21ST CENTURY WHILE USA PREFERENCES TO REMAIN IN THE 20TH
via Vox Indie by Ellen Seidler on 4/20/2019
URL: https://www.voxindie.org/eu-moves-copyright-into-21st-century-while-usa-preferences-to-remain-in-the-20th/
Unlike their counterparts in the U.S. who seem content with a creaky DMCA law more than 2 decades old, members of the European Council passed a directive to move copyright law into the digital age: The Council today adopted a directive that modernises existing EU copyright law to pave the way towards a true digital […]
WILLFUL COPYRIGHT INFRINGEMENT REQUIRES PROOF OF INTENT IN THE NINTH CIRCUIT
via National Law Review by Rafael Langer-Osuna & Joseph A. Meckes on 4/21/2019

A court had found Kraig Kast liable for $450,000 for uploading three copyrighted photos to a website he had developed. The trial court instructed the ...

SECOND CIRCUIT JUDGES BRAWL OVER THE MEANING OF “VOLITION” IN COPYRIGHT CASES–BWP V. POLYVORE
via Technology & Marketing Law Blog by Venkat Balasubramani on 4/29/2019

This is an appeal of a summary judgment ruling in favor of Polyvore, an image clipping and sharing site, also known as a “mood board” app.

SUPREME COURT ASKS SG'S VIEWS ON ORACLE-GOOGLE COPYRIGHT CASE
via Law.com by Scott Graham on 4/29/2019
URL: https://www.law.com/2019/04/29/supreme-court-asks-sgs-views-on-oracle-google-copyright-case/

The Silicon Valley titans have been disputing for nine years whether Google violated Oracle's copyright by copying Java application programming interfaces into its Android operating system.

WEIGHING ORACLE-GOOGLE, SUPREME COURT WANTS GOV'T'S OPINION
via Intellectual Property Law360 by Bill Donahue on 4/29/2019
URL: https://www.law360.com/ip/articles/1154250

The U.S. Supreme Court on Monday asked the federal government to weigh in on whether the justices should take up Oracle’s blockbuster copyright lawsuit against Google over smartphone software.
READ THE COMPLAINT: SAXOPHONIST WHOSE VIDEO WENT VIRAL SAYS 'FORTNITE' GAME SWIPED HIS DANCE MOVES

via Law.com by Max Mitchell on 4/29/2019

A saxophone player whose music went viral in a 2014 YouTube video has sued Epic Games Inc. over claims that the company is using his "signature" dance moves in the "Fortnite Battle Royale" video game.

NORA ROBERTS TAKES A STAND AGAINST DIGITAL PLAGIARISM

via The Authors Guild on 4/29/2019
URL: https://www.authorsguild.org/industry-advocacy/nora-roberts-takes-a-stand-against-digital-plagiarism/

Bestselling author Nora Roberts has been taking a stand in recent months against the proliferation of digital plagiarism. Now she’s on the offense. On April 24 she filed a lawsuit in Brazil against one such alleged plagiarist, the Brazilian author Cristiane Serruya. Roberts is seeking at least $25,000 in damages and will donate any proceeds …

COURT VERDICT ON ILAIYARAJA’S COPYRIGHT ROW ON JUNE 4

via Hindu on 4/29/2019

The Madras High Court will deliver on June 4 its verdict on a civil suit preferred by music composer Ilaiyaraaja in 2014 to restrain Malaysia-based ...

FOURTH CIRCUIT IN BRAMMER: A WIN FOR COPYRIGHT SANITY. A GUIDE FOR USERS OF WORKS.

via The Illusion of More by David Newhoff on 4/29/2019

Visual artists should be very relieved by last week’s decision at the Fourth Circuit Court of Appeals, overturning the District Court’s finding of fair use […]
HOW A COPYRIGHT LOOPOLE GAVE BIRTH TO FASHION'S 'NAME AND SHAME' SOCIAL MEDIA PASTIME
via Observer by Sara Radin on 4/30/2019

Retailers like Zara, H&M and Forever 21 thrive on a consumer culture in which customers strive to look like they're wearing the runway's latest but at a ...

PELOTON HITS BACK AT MUSIC PUBLISHERS WITH ANTITRUST COUNTERSUIT

A tech unicorn and the National Music Publishers Association aren't in sync when it comes to the thousands of songs streamed to workout warriors.

NORA ROBERTS SUES BRAZILIAN AUTHOR FOR COPYRIGHT INFRINGEMENT OVER ALLEGED 'MULTI-PLAGIARISM"
via Forbes by Michelle Kaminsky on 4/30/2019

Less poetic, more legal translation: Roberts claims that Serruya has infringed on her copyrighted works and is requesting damages 3,000 times the ...

PELOTON SUES MUSIC PUBLISHERS, ALLEGING PRICE-FIXING
via Intellectual Property Law360 by Ryan Boysen on 4/30/2019
URL: https://www.law360.com/ip/articles/1154794

Home fitness startup Peloton hit back on Tuesday against a group of music publishers suing over alleged nonpayment of licensing fees, accusing the National Music Publishers’ Association of violating antitrust laws...
SPORTS INDUSTRY WARNS SENATE ABOUT COUNTERFEITS, PIRATING
via Intellectual Property Law360 by Mike Curley on 4/30/2019
URL: https://www.law360.com/ip/articles/1153125

The Senate Committee on the Judiciary held a hearing on intellectual property Tuesday, inviting sports and apparel industry professionals to discuss how counterfeit goods and pirated streaming harm the economy and...

YOUTUBE CEO SUSAN WOJCICKI RAMPS UP ARTICLE 17 OPPOSITION, PROMISES COPYRIGHT CLAIM CHANGES
via Billboard by Tatiana Cirisano on 4/30/2019
URL: https://www.billboard.com/articles/business/8509462/youtube-ceo-susan-wojcicki-opposition-article-13-copyright-claims

YouTube creators can expect to see a more balanced copyright claim process on the platform soon, as well as continued efforts from the company ...
May 2019
THE EU'S NEW COPYRIGHT LAW: CLARITY OR CHAOS?
via Law.com by Simon Taylor on 5/1/2019
URL: https://www.law.com/2019/05/01/the-eu-s-new-copyright-law-clarity-or-chaos-292-44933/

The new EU Copyright Directive, agreed to last month, has created a lot of legal uncertainty, lawyers say.

GOOGLE V. ORACLE AND THE BATTLE TO PROTECT SOFTWARE VIA COPYRIGHT
via IPWatchdog.com | Patents & Patent Law by Derek Handova on 5/1/2019
URL: https://www.ipwatchdog.com/2019/05/01/google-v-oracle-battle-protect-software-via-copyright/id=108753/

On Monday, the U.S. Supreme Court invited the United States Solicitor General to file a brief expressing its views in the long-running case of Google LLC v. Oracle America Inc. The case highlights the complexities of protecting software via IP rights. As with patents, the courts often struggle to apply copyright concepts to software, leaving companies bleeding time and resources. Determining what can be protected and what can’t be is complex—even for appellate courts. These software piracy...

TRADEMARKS, COPYRIGHTS AND PATENTS: SHOULD BUSINESS OWNERS REALLY CARE ABOUT IP?
via National Law Review by Timothy K. Kroninger on 5/1/2019

Copyrights can be used to protect your company's original creative works – sales brochures, advertising and promotional materials, videos, instruction ...

PROPOSED CHANGES TO THE SINGAPORE COPYRIGHT ACT - ENHANCING CREATORS' RIGHTS AND USERS...
via National Law Review by Xin Ya Tan on 5/2/2019

In this regard, the proposed amendments seek to enhance creators' rights and users' access to copyrighted works. This note summarises the key ...
WHAT HAPPENS WHEN THE COPYRIGHT PIRATE IS STATE GOVERNMENT?
URL: https://www.hollywoodreporter.com/thr-esq/what-happens-copyright-pirate-is-state-government-1206827

A documentary filmmaker says North Carolina posted his footage without permission. North Carolina claims immunity. Now the Supreme Court is being told that copyright infringement by states is "once again a very serious problem."

CASE ACT BILLS INTRODUCED IN CONGRESS TO CREATE COPYRIGHT SMALL CLAIMS
via PetaPixel by Michael Zhang on 5/2/2019
URL: https://petapixel.com/2019/05/02/case-act-bills-introduced-in-congress-to-create-copyright-small-claims/

Back in 2017, the CASE Act ("Copyright Alternative in Small-Claims Enforcement Act of 2017") was introduced to establish a copyright small claims ...

11TH CIRC. REVIVES DENTIST'S COPYRIGHT SUIT OVER PATIENT SHOTS
via Intellectual Property Law360 by Adam Lidgett on 5/2/2019
URL: https://www.law360.com/ip/articles/1155450

The Eleventh Circuit has revived a Florida dentist's suit claiming a medical website designer reposted before and after photos the doctor took of a patient's smile without permission, saying there were...

NEW HOUSE BILL WOULD CREATE COPYRIGHT SMALL CLAIMS COURT
via Intellectual Property Law360 by Matt Bernardini on 5/2/2019
URL: https://www.law360.com/ip/articles/1155571

Rep. Hakeem Jeffries, D-N.Y., and Rep. Doug Collins, R-Ga., introduced a bill Wednesday that would make it easier for writers, musicians and artists to sue for copyright infringement by establishing a...
COPYRIGHT SUIT AGAINST MICROSOFT IS PRECLUDED BY EARLIER PATENT SUIT
via Law.com by Scott Graham on 5/2/2019
URL: https://www.law.com/2019/05/02/copyright-suit-against-microsoft-is-precluded-by-earlier-patent-suit/

The Ninth Circuit ruled that both suits by Media Rights Technologies were based on the same nucleus of facts about alleged software misappropriation. That precludes all copyright claims that accrued before the filing of a 2013 patent suit.

JUST USE IT: CHANGE IN UC BERKELEY LIBRARY PERMISSIONS POLICY LOWERS BARRIERS FOR RESEARCHERS
via Berkeley Library by Tor Haugan on 5/2/2019
URL: https://news.lib.berkeley.edu/permissions-policy

If a library (or university) does not hold copyright over an item, requiring that researchers ask the library's permission to use images or excerpt from it in ...

9TH CIRC. PARTIALLY REVIVES COPYRIGHT FIGHT WITH MICROSOFT
via Intellectual Property Law360 by Hailey Konnath on 5/2/2019
URL: https://www.law360.com/ip/articles/1156058

Media Rights Technologies Inc. can't bring copyright infringement claims against Microsoft Corp. that could've been included in an earlier, ultimately unsuccessful 2013 patent suit, the Ninth Circuit ruled Thursday, although it...

DENTIST MAY PURSUE INFRINGEMENT CASE OVER CRIBBED BEFORE-AND-AFTER SMILE PHOTOS, 11TH CIRCUIT SAYS
via ABA Journal by Debra Cassens Weiss on 5/3/2019

Hollimon said the federal judge's decision tossing the case last year had the potential to significantly disrupt copyright protection as applied to ...

ORIGINAL AND CREATIVE DESIGNS CAN BE COPYRIGHTED: AG
via World IP Review on 5/3/2019

Original and creative designs can be copyrighted: AG ... its clothing line was an original intellectual creation and as such, a copyrighted design work.
YOUTUBE CALLS ON CREATORS TO LOBBY AGAINST ARTICLE 17
via World IP Review on 5/3/2019
URL: https://www.worldipreview.com/news/youtube-calls-on-creators-to-lobby-against-article-17-17940

France's minister responsible for copyright, Franck Riester, has already pledged that the government will introduce new anti-piracy legislation to ...

CASE ACT INTRODUCED, CRITICS SPIN TALES.
via The Illusion of More by David Newhoff on 5/5/2019

Last week, bills to create a new, small-claim copyright process were introduced in both the House and Senate. Generally referred to by the House name [...] 

THE CASE ACT: COPYRIGHT SMALL CLAIMS COURT
via Patent Law Blog (Patently-O) by Dennis Crouch on 5/6/2019
URL: https://patentlyo.com/patent/2019/05/copyright-small-claims.html

Few patent litigators would file a lawsuit if the potential payout is less than $1,000,000 — that amount ordinarily does not cover the expected cost of litigation and risk of loss.

PIRATE STREAMING BOXES: AN ABUSE OF LEGITIMATE TECHNOLOGY…IN CANADA AND ELSEWHERE
via Hugh Stephens Blog on 5/6/2019
URL: http://hughstephensblog.net/2019/05/06/pirate-streaming-boxes-an-abuse-of-legitimate-technologyin-canada-and-elsewhere/

The issue of pirate set-top boxes, AKA “Kodi Add-ons” or more accurately, “Illicit Streaming Devices” (ISDs) is back in the news.

UMG FIGHTS MUSICIANS WHO WISH TO TERMINATE COPYRIGHT GRANTS

The music label submits a bid to dismiss a class action and stave off mass termination from older recording artists.
"HAPPIER," A GLOBAL POP HIT, ALLEGED IN LAWSUIT TO COPY DJ'S REMIX

Marshmello faces a complaint from Arty.

MUSIC INDUSTRY GROUPS SQUARE OFF AGAINST SONGWRITERS, SMALL PUBLISHERS IN MECHANICAL LICENSING COLLECTIVE BATTLE
URL: https://www.ipwatchdog.com/2019/05/06/music-industry-groups-square-off-songwriters-small-publishers-mechanical-licensing-collective-battle/id=108982/

On October 11, the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (MMA) was enacted into law after passing both the U.S. Senate and House of Representatives. The bill was drafted in order to modernize U.S. copyright law as it relates to the licensing of copyright protected music for use in digital streaming services such as Spotify or Apple Music. Such digital service providers (DSPs) may obtain a new kind of license created by the law, known as a blanket license, which covers the...

FILMON AD DATA LIBEL SUIT CAN’T BE SLAPPED: CALIF. HIGH COURT
via Intellectual Property Law360 by Lauren Berg on 5/6/2019
URL: https://www.law360.com/ip/articles/1156879

The California Supreme Court on Monday revived FilmOn's suit alleging an online advertising data provider scared ads away by labeling the video distribution site a copyright infringer, finding that the commercial nature of the provider's allegedly libelous business reports don't count as speech protected by the state's anti-SLAPP law.

TUSSLE OVER PEPE THE FROG LIKELY HEADED TO TRIAL
via Courthouse News Service by Martin Macias Jr. on 5/7/2019
URL: https://www.courthousenews.com/tussle-over-pepe-the-frog-likely-headed-to-trial/

Furie only sought to enforce his copyright when Pepe the Frog's image was used by those whose political ideas he disagreed with, Randazza said.
NEW EU COPYRIGHT DIRECTIVE MAY FALL SHORT OF PROTECTING COPYRIGHT HOLDERS
via International Business Times by Laura Urquizu on 5/7/2019
URL: https://www.ibtimes.com/new-eu-copyright-directive-may-fall-short-protecting-copyright-holders-2790282

On March 26, the EU passed the controversial Article 17 of the Copyright Directive to standardize certain key components of copyright law among ...

JUDGE RULES AGAINST INDIAN STREAMING SERVICE WYNK IN CASE WITH BIG REPERCUSSIONS FOR SPOTIFY ...
via Billboard by Richard Smirke on 5/7/2019

In response, Wynk invoked Section 31-D of the Copyright Act, claiming ... streaming service was “knowingly infringing upon the Plaintiff's copyrights.”.

C-SPAN, OTHERS PUSH JUSTICES TO LIMIT COPYRIGHT OF LAWS
via Intellectual Property Law360 by Bill Donahue on 5/7/2019
URL: https://www.law360.com/ip/articles/1156992

C-Span and a dozen other advocacy and nonprofit groups are urging the U.S. Supreme Court to limit the ability of state and local governments to claim copyright control over legal texts,...

NO ONE HAS COPYRIGHT ON SAFFRON: DIGVIJAYA SINGH
via Hans India on 5/8/2019
URL: https://www.thehansindia.com/news/national/no-one-has-copyright-on-saffron-digvijaya-singh-527689

Former Madhya Pradesh Chief Minister Digvijaya Singh on Wednesday said that no one has the copyright on saffron after the sadhus, who took out a ...

SENATE IP SUBCOMMITTEE HEARS FROM SPORTS INDUSTRY REPS ON NEED TO STEP UP IP PROTECTIONS
via IPWatchdog.com | Patents & Patent Law by Michelle Sara King on 5/8/2019
URL: https://www.ipwatchdog.com/2019/05/08/senate-ip-subcommittee-hears-sports-industry-reps-need-step-ip-protections/id=109006/

Chairman of the Senate Judiciary Committeeee’s Subcommittee on Intellectual Property, Senator Thom Tillis (R-NC), said last week that the subcommittee will “explore increasing criminal
penalties and opportunities for stepped up intellectual property enforcement to prevent counterfeiting and piracy during a hearing titled “World Intellectual Property Day 2019: The Role of Intellectual Property in Sports and Public Safety.” The hearing followed from the theme of this year’s World IP Day, “Reach...

MARSHMELLO AND BASTILLE FRONTMAN HIT WITH COPYRIGHT LAWSUIT BY ARTY OVER HAPPIER
via IP Pro by Ben Wodecki on 5/8/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6700

Russian DJ and music producer Artem Stoliarov, better known as Arty, has filed a lawsuit against American DJ Marshmello and Bastille frontman Dan ...

LET IT GO: SINGER DROPS COPYRIGHT SUIT OVER 'FROZEN' SONG
via Variety by Gene Maddaus on 5/8/2019

A Chilean singer has dropped his suit claiming that “Let It Go,” the hit song from the movie “Frozen,” infringed on his own composition. Jaime Ciero ...

CHILEAN SINGER LETS DISNEY SKATE OFF 'FROZEN' IP SUIT
via Intellectual Property Law360 by Mike LaSusa on 5/8/2019
URL: https://www.law360.com/ip/articles/1157871

Chilean singer Jaime Ciero has dropped his copyright infringement suit against The Walt Disney Co. over the song "Let It Go" from the 2013 animated film "Frozen," according to a Wednesday...

OPT-OUT PROVISION COULD UNDERMINE CASE ACT’S SMALL CLAIMS SOLUTION FOR COPYRIGHT
URL: https://www.ipwatchdog.com/2019/05/09/opt-provision-undermine-case-acts-small-claims-solution-copyright/id=109037/

On May 1, Representatives Hakeem Jeffries (D-NY) and Doug Collins (R-GA) officially reintroduced H.R. 2426, the Copyright Alternative in Small-Claims Enforcement (CASE) Act, into the U.S House of Representatives. The bill was originally introduced in 2017 during the 115th Congress but expired after committee review. Along with the House bill, S. 1273, the U.S. Senate version of the bill, has been introduced by another bipartisan group including Senators John Kennedy (R-LA), Thom Tillis (R-NC),...
PUBLIC KNOWLEDGE WANTS TO SOLVE THE MISINFORMATION PROBLEM? THAT’S ADORABLE.
via The Illusion of More by David Newhoff on 5/9/2019
URL: http://illusionofmore.com/public-knowledge-wants-to-solve-the-misinformation-problem-thats-adorable/

On Tuesday, Meredith Filak Rose of Public Knowledge posted a blog suggesting that a solution to rampant misinformation is to “bring libraries online.” Not surprisingly, she [...]

CASE ACT PROMISES LONG-OVERDUE ACCESS TO JUSTICE FOR INDIVIDUALS AND SMALL BUSINESSES IN THE ARTS
URL: https://www.ipwatchdog.com/2019/05/09/case-act-promises-long-overdue-access-justice-individuals-small-businesses-arts/id=109040/

Jenna Close is a freelance commercial photographer and owner of a small business that licenses still images and videos to both domestic and international clients. She and her partner work 60-80 hours a week booking work, shooting, billing, accounting, marketing, and continuing to develop and maintain their skills. Jenna’s images are widely infringed online. She’s found exact reproductions of her work on competitors’ websites, on websites falsely advertising that the photographs are free to use,...

CALIFORNIA SUPREME COURT REVIVES LIBEL SUIT OVER WARNINGS OF CONTENT PIRACY

After five years, streamer FilmOn once again is able to take on DoubleVerify.

CONAN O'BRIEN JOKE THEFT LAWSUIT SETTLED BEFORE TRIAL
URL: https://www.hollywoodreporter.com/thr-esq/conan-obrien-joke-theft-lawsuit-settled-before-trial-1209231

Alex Kaseberg alleged that 'Conan' writers took material posted in tweets and on his blog.
CONAN O'BRIEN JOKE COPYRIGHT CASE SETTLES ON EVE OF TRIAL
via Intellectual Property Law360 by Bill Donahue on 5/9/2019
URL: https://www.law360.com/ip/articles/1158339

Late night TV host Conan O’Brien reached a settlement Thursday on the eve of trial to end a lawsuit that accused him of stealing jokes about Caitlin Jenner and Tom Brady....

LOUIS CK IS TRYING TO OUTLAW LEAKS. CAN HE DO THAT?
via New York Times by Reggie Ugwu on 5/9/2019
URL: https://www.nytimes.com/2019/05/09/arts/louis-ck-leaks-threat.html

Anyone can reproduce elements of a copyrighted work — even one owned by a famous comedian — so long as the copying is done for a limited and ...

JUDGE SAYS PORN COPYRIGHT CASES NEED MORE THAN IP ADDRESS
via Intellectual Property Law360 by Bill Donahue on 5/10/2019
URL: https://www.law360.com/ip/articles/1157712

Ruling against a pornography company that’s filed thousands of copyright lawsuits over the last two years, a Miami federal judge is refusing to let such cases move forward based on an...

TIMING QUESTIONS ARISE AFTER COPYRIGHT REGISTRATION RULING
via Intellectual Property Law360 by William Janicki on 5/10/2019
URL: https://www.law360.com/ip/articles/1158569

It appears that courts may now retroactively apply the completed copyright registration requirements of the U.S. Supreme Court's holding in Fourth Estate v. Wall-Street.com to pending actions, but it remains to be seen whether the standards may be different for actions filed before copyright registrations were completed, says William Janicki of LeClairRyan.

MICROSOFT: THE OPEN SOURCE COMPANY
via Ars Technica by Peter Bright on 5/10/2019
URL: https://arstechnica.com/?p=1503173

The news from Microsoft's Build developer conference that surprised me most was that Microsoft will ship a genuine Linux kernel—GPLed, with all patches published—with Windows.
OVER THE RAINBOW,' OTHER ARLEN HITS BEING INFRINGED, SUIT SAYS  
via Intellectual Property Law360 by Morgan Conley on 5/10/2019  
URL: https://www.law360.com/ip/articles/1158502

The son and estate of renowned Broadway and film composer Harold Arlen sued Amazon,  
Google, Apple and other entities in California federal court Thursday claiming dozens of Arlen's  
iconic tracks such as "Over...

PUBLIC CITIZEN FILES TEST CASE OVER COPYRIGHT LIABILITY FOR EMBEDDED IMAGES  
via Reuters by Alison Frankel on 5/10/2019  
URL: https://www.reuters.com/article/legal-us-otc-embedded-idUSKCN1SG2JE

(Reuters) - In 2007, a commenter on a knife aficionados' website called Blade Forums posted an  
image of a photograph of a redwood tree burl.

ACCUSED OF 'TERRORISM' FOR PUTTING LEGAL MATERIALS ONLINE  
via New York Times by Adam Liptak on 5/13/2019  
URL: https://www.nytimes.com/2019/05/13/us/politics/georgia-official-code-copyright.html

There is no question that judicial opinions cannot be copyrighted. The last time the Supreme  
Court addressed the matter, in 1888, it ruled that “the ...

ONLINE BOOK PIRACY: “AN OFFENCE AGAINST MORAL JUSTICE”  
via Hugh Stephens Blog on 5/13/2019  
URL: http://hughstephensblog.net/2019/05/13/online-book-piracy-an-offence-against-moral-justice/

These were the words used by Philip Pullman, President of the Society of Authors in Britain, in  
support of a letter to UK Business Secretary Greg Clark, co-signed by over thirty other  
prominent British authors.

US FEDERAL COURT TO RULE ON LIABILITY FOR IMAGE HYPERLINKS  
via World IP Review on 5/13/2019  
URL: https://www.worldipreview.com/news/us-federal-court-to-rule-on-liability-for-image- 
hyperlinks-17972

A federal court in California is being asked to rule on whether posting hyperlinks to images  
without a licence constitutes copyright infringement.
THE CASE ACT IS AN OPPORTUNITY FOR CREATORS TO HAVE RIGHTS AND REMEDIES
via Hill by Thomas Kennedy on 5/13/2019
URL: https://thehill.com/blogs/congress-blog/politics/443335-the-case-act-an-opportunity-for-creators-to-have-rights-and

Today, creative artists all too often find themselves at the mercy of a copyright system that gives them legal rights to fight back against copyright ... 

ACTIVIST GROUP WANTS HIGH COURT TO WEIGH GOV'T COPYRIGHTS
via Intellectual Property Law360 by Bill Donahue on 5/13/2019
URL: https://www.law360.com/ip/articles/1146528

A group called Public.Resource.Org is asking the U.S. Supreme Court to decide when state and local governments can claim copyright control over legal texts, saying clarity on the issue is “urgently”...

DISNEY WINS 'PIRATES OF THE CARIBBEAN' SCRIPT COPYRIGHT SUIT
via Intellectual Property Law360 by Dave Simpson on 5/13/2019
URL: https://www.law360.com/ip/articles/1159381

Treasure maps, skeletons and mutinies are par for the course in pirate movies, a California federal judge said Monday while shooting down copyright infringement claims from screenwriters alleging that Disney’s “Pirates...

BATTLE FOR MUSIC LICENSING OVERSIGHT CENTERS ON UNCLAIMED ROYALTIES
via Tennessean by Nate Rau on 5/14/2019
URL: https://www.tennessean.com/story/money/2019/05/13/music-licensing-unclaimed-royalties-oversight-mlc/1128801001/

As the U.S. Copyright Office nears a decision on which nonprofit group will operate the newly created digital licensing organization, the bid widely ...

US COPYRIGHT OFFICE TO 'STREAMLINE' ACCORDING TO STRATEGIC PLAN
via IP Pro by Ben Wodecki on 5/14/2019

Newly appointed register of Copyrights Karyn Temple called the office's proposed aims “critical to the continued development of our cultural and ...
ADIDAS VICTORIOUS FOLLOWING A MORE THAN 2-YEAR LONG FIGHT FOR YEEZY BOOST COPYRIGHT REGISTRATION
via Fashion Law on 5/14/2019

In the midst of increasing quantities for some of Kanye West's hot-selling Yeezy sneakers to meet unabated ...

MACKLEMORE WANTS FEES AFTER FAILED 'THRIFT SHOP' CASE
via Intellectual Property Law360 by Bill Donahue on 5/14/2019
URL: https://www.law360.com/ip/articles/1159526

Hip-hop duo Macklemore and Ryan Lewis want their legal bills reimbursed after beating an "objectively baseless" copyright lawsuit that claimed "Thrift Shop" and other hits featured illegal samples.

ARIANA GRANDE SUED FOR COPYRIGHT INFRINGEMENT OVER INSTAGRAM POSTS
via daily News by David Matthews on 5/14/2019

A New York-based photographer sued singer Ariana Grande after she allegedly posted two of his photos on Instagram without his permission.

MICROSOFT OPEN SOURCES ALGORITHM THAT GIVES BING SOME OF ITS SMARTS
via Ars Technica by Peter Bright on 5/15/2019
URL: https://arstechnica.com/?p=1505561

Search engines today are more than just the dumb keyword matchers they used to be. You can ask a question—say, "How tall is the tower in Paris?"—and they'll tell you that the Eiffel Tower is 324 meters (1,063 feet) tall, about the same as an 81-story building.

A FIGHT FOR AUTHORSHIP AND OWNERSHIP OF 150+ QUILT PATTERNS, AND BAD BUSINESS PLANNING (GUEST BLOG POST)
via Technology & Marketing Law Blog by Elizabeth Townsend Gard on 5/15/2019

Quilts are a little bit in the (copyright) news.
ADIDAS WINS COPYRIGHT ON KANYE'S YEEZY SNEAKERS
via Intellectual Property Law360 by Bill Donahue on 5/15/2019
URL: https://www.law360.com/ip/articles/1159977

Adidas AG has secured a copyright registration on the design of two of Kanye West's Yeezy sneakers, winning a reversal at the U.S. Copyright Office that pointed to a U.S. Supreme...

MUSIC PLUG-IN CREATORS LIKE POLYVERSE WANT TO HELP ARTISTS MAKE BETTER MUSIC. PIRACY ISN'T HELPING.
via CreativeFuture by Justin Sanders on 5/15/2019
URL: https://creativefuture.org/polyverse/

It’s official – computers have thoroughly democratized the act of making music. All you need to lay down some sweet melodies anymore is a laptop and a “digital audio workstation” (DAW) – also known as recording software.

EMBEDDED INSTAGRAM PHOTO OF JUSTIN BIEBER IS AT THE CENTER OF A NEW COPYRIGHT CASE
via Fashion Law on 5/15/2019

A photo of Justin Bieber is at the center of a new lawsuit that closely mirrors one involving a photo of Tom Brady. Photographer Robert Barbera, who ...

COPYRIGHTING LEAVES OF GRASS
via Copyright: Creativity at Work by Alison Hall on 5/15/2019
URL: https://blogs.loc.gov/copyright/2019/05/copyrighting-leaves-of-grass/

Not only is the Library of Congress celebrating the 200th anniversary of Walt Whitman’s birth all month, but May is also the anniversary of Leaves of Grass, one of Whitman’s best-known works.

MODERATION IN ALL THINGS. EXCEPT PERHAPS SOCIAL MEDIA.
via The Illusion of More by David Newhoff on 5/16/2019

Is it just me, or have the digital rights folks lately shifted the narrative on the subject of platform responsibility and content moderation? Where once they [...]
PIRATES OF THE CARRIBEAN COPYRIGHT LAWSUIT THROWN IN DAVY JONES' LOCKER
via IP Pro by Ben Wodecki on 5/16/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6719

He claimed that the Disney company willfully infringed his copyrighted screenplay, including the expression of themes, settings, dialogue and even ... 

MUSIC SERVICE ASKS JUSTICES FOR DIGITAL FIRST-SALE DOCTRINE
via Intellectual Property Law360 by Bill Donahue on 5/16/2019
URL: https://www.law360.com/ip/articles/1160434

ReDigi, an online music reseller shuttered by record label lawsuits, is asking the U.S. Supreme Court to save it by recognizing a digital version of copyright law's first sale doctrine....

NEW REPORT EXAMINES WEAK SPOTS IN CANADA'S COPYRIGHT ACT, URGES DSPS TO BE REGULATED LIKE ...
via Billboard by Karen Bliss on 5/16/2019

The Standing Committee on Canadian Heritage has released its report on remuneration models for artists and creative industries, as part of the ...

INFOWars HEADED TO COPYRIGHT TRIAL OVER USE OF "PEPE THE FROG"
URL: https://www.hollywoodreporter.com/thr-esq/infowars-headed-copyright-trial-use-pepe-frog-1211660

A jury will decide whether artist Matt Furie abandoned rights by telling media outlets how he was largely cool with how his popular anthropomorphic character had taken a life of its own.

IPEC FINDS FAULT WITH F1 TEAM SPONSOR IN COPYRIGHT BATTLE
via World IP Review on 5/17/2019

The UK's specialist IP court has sided with British cycle company Whyte Bikes in its copyright infringement dispute with the current title sponsor of the ...
COPYRIGHT BATTLE FOR WOLVES BADGE OVER
via IP Pro by Ben Wodecki on 5/17/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6726

A man who claimed the Wolverhampton Wanderers badge infringed his drawing from a 1960's art competition has lost his case at the UK High Court...

JUDGE RULES PEPE THE FROG COPYRIGHT LAWSUIT AGAINST INFOWARS WILL GO TO TRIAL
via Hill by Jacqueline Thomsen on 5/17/2019

A federal judge in California on Thursday ruled that a copyright infringement lawsuit filed against InfoWars by the creator of the "Pepe the Frog"...

'PEPE THE FROG’ CASE AGAINST INFOWARS HEADS TO TRIAL
via Intellectual Property Law360 by Bill Donahue on 5/17/2019
URL: https://www.law360.com/ip/articles/1160959

A copyright lawsuit filed by the creator of Pepe the Frog — a cartoon that's become an online symbol for the controversial "alt-right" movement — is headed for a jury trial in California federal court after a judge refused to rule that the far-right website InfoWars made fair use of the character.

AS 'JOHN DOE' COPYRIGHT CASES SPIKE, JUDGES PUSH BACK
via Intellectual Property Law360 by Bill Donahue on 5/17/2019
URL: https://www.law360.com/ip/articles/1159798

A surge in file-sharing cases from porn studios and others led to a spike in new copyright lawsuits in 2018, but the past year has also seen judges around the country attack key aspects of those cases. As the John Doe suits continue to pour in, here are four past rulings to know.

YOUTUBE CELEB LOGAN PAUL SUED OVER PARODY VIDEO
via Intellectual Property Law360 by Hannah Albarazi on 5/17/2019
URL: https://www.law360.com/ip/articles/1160697

Members of the alt-hip hop band Flobots slapped YouTube personality Logan Paul with a lawsuit Thursday claiming the release of his parody song "No Handlebars," which riffed on their hit song...
LOGAN PAUL SUED BY FLOBOTS FOR COPYRIGHT INFRINGEMENT OVER 2017 RAP SINGLE 'NO HANDLEBARS'
via Billboard by Chris Eggertsen on 5/17/2019
URL: https://www.billboard.com/articles/business/8512060/logan-paul-flobots-lawsuit-no-handlebars-copyright-infringement

They are seeking actual damages in addition to profits “that are attributable to the copyrighted material,” an accounting of “all profits, income, receipts, ...

FIFTY-FIVE YEARS OF SOFTWARE COPYRIGHT
via Mostly IP History by Zvi S. Rosen on 5/20/2019
URL: http://www.zvirosen.com/2019/05/19/fifty-five-years-of-software-copyright/

Greetings from INTA 2019 in Boston!

$16M COPYRIGHT VERDICT HOLDS UP, SLOT MACHINE CO. SAYS
via Intellectual Property Law360 by Dani Kass on 5/20/2019
URL: https://www.law360.com/ip/articles/1161264

An Illinois federal jury was well within its right to award $16 million to GC2 Inc. after finding that rival International Game Technology PLC had infringed its slot game copyrights, meaning...

PHOTOGRAPHER SUES CLOROX AND ITS AD AGENCY FOR COPYRIGHT INFRINGEMENT
via The Entertainment, Arts and Sports Law Blog by Marc Jacobson on 5/20/2019
URL: http://nysbar.com/blogs/EASL/2019/05/photographer_sues_clorox_and_i.html

A prominent photographer was engaged by the defendants to create images to use in a certain specified manner.

DID THE INTERNET GET WORSE, OR WERE YOU NOT PAYING ATTENTION?
via The Illusion of More by David Newhoff on 5/21/2019
URL: http://illusionofmore.com/did-the-internet-get-worse-or-were-you-not-paying-attention/

In Response to Angela Watercutter’s Grumpy Cat Article at Wired Dear Angela: First, forgive me for taking a bit too seriously your lighthearted article of [...]

- 447 -
ON MAY 15, THE STANDING COMMITTEE ON CANADIAN HERITAGE TABLED ITS REPORT, “SHIFTING PARADIGMS”, IN FULFILMENT OF ITS MANDATE TO STUDY REMUNERATION MODELS FOR ARTISTS AND CREATIVE INDUSTRIES.

A CALIFORNIA FEDERAL JUDGE ON TUESDAY DISQUALIFIED PIERCE BAINBRIDGE BECK PRICE & HECHT LLP FROM REPRESENTING A PRODUCTION COMPANY SUING A MANAGEMENT COMPANY FOR BARRY MANILOW OVER THE COPYRIGHTS OF TWO...

WHAT DO WE TALK ABOUT WHEN WE TALK ABOUT INTERMEDIARY LIABILITY?

THE CHALLENGE OF KEEPING HARMFUL AND ILLEGAL CONTENT OFF THE INTERNET IS AS OLD AS THE INTERNET ITSELF.

WIPO DIRECTOR GENERAL FRANCIS GURRY WELcomed THE KINGDOM OF MOROCCO’S RATIFICATION OF THE MARRAKESH TREATY IN A CELEBRATION HELD MAY 21, 2019, AT WIPO HEADQUARTERS IN GENEVA. MR. GURRY RECEIVED THE INSTRUMENT OF RATIFICATION ON MAY 15, 2019, FROM AMBASSADOR OMAR ZNIBER, PERMANENT REPRESENTATIVE OF MOROCCO TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA.
LEGAL FIGHT BETWEEN INFOWARS AND PEPE THE FROG CREATOR MAY DECIDE FATE OF INTERNET Memes
via Law.com by Richard Binder on 5/23/2019

A lawsuit involving controversial Internet character Pepe the Frog is going to trial, and the result may have ripple effects beyond the “chill frog dude.”

WHY CREATORS LIKE ME ARE LINING UP IN SUPPORT OF THE CASE ACT
URL: https://www.ipwatchdog.com/2019/05/23/creators-like-lining-support-case-act/id=109532/

I have heard it said that a right without a remedy isn’t really a right.

IT’S NOT ABOUT WHAT YOU KNOW: AN OVERVIEW OF HYPERLINK LAW’S TROUBLES
via Balkinization by Jacob Rogers on 5/24/2019
URL: https://balkin.blogspot.com/2019/05/its-not-about-what-you-know-overview-of.html

The law related to hyperlinks is breaking.

LAWSUIT TARGETING NETFLIX'S 'NARCOS' NARROWED TO PABLO ESCOBAR'S INTIMACY WITH A GUN

A judge rules on a complaint brought by Virginia Vallejo, the Colombian journalist who became close to Escobar and wrote a memoir about the relationship.

'WIZARD OF OZ' COMPOSER'S ESTATE IS OFF TO SEE THE JUDGE TO STOP ALLEGED MUSIC PIRACY
via Law.com by Richard Binder on 5/24/2019
URL: https://www.law.com/2019/05/24/wizard-of-oz-composers-estate-is-off-to-see-the-judge-to-stop-alleged-music-piracy/

The estate of Harold Arlen, the composer of “Over the Rainbow” and other classic songs, has dropped a house on the biggest tech companies in the form of a lawsuit over unauthorized recordings.
CBS SUED OVER 'ANDY GRIFFITH SHOW' THEME SONG
URL: https://www.hollywoodreporter.com/thr-esq/cbs-sued-andy-griffith-show-theme-song-1213484

The heirs of the song's creators claim CBS doesn't have a license to use the song in DVDs or on digital platforms.

NETFLIX CAN'T SHAKE COPYRIGHT SUIT OVER 'NARCOS' SERIES
via Intellectual Property Law360 by Nathan Hale on 5/24/2019
URL: https://www.law360.com/ip/articles/1162999

Netflix and producers of the series "Narcos" cannot escape a former Colombian journalist's claim that a scene infringed copyrights covering her best-selling memoir detailing her romantic relationship with drug kingpin Pablo Escobar, although a Florida federal court rejected her allegations regarding two other scenes and trimmed additional claims.

HOUSTON SCHOOL DISTRICT MUST PAY $9.2M IN COPYRIGHT SUIT
via Intellectual Property Law360 by Hailey Konnath on 5/24/2019
URL: https://www.law360.com/ip/articles/1163235

A Texas federal jury on Friday ordered Houston Independent School District to cough up $9.2 million after finding its employees willfully infringed an educational publishing company's copyrights when it distributed copies of its student course notes.

SNAP IS LOOKING INTO LICENSING MUSIC FOR USERS TO EMBED IN POSTS
via Verge by Dami Lee on 5/25/2019
URL: https://www.theverge.com/2019/5/24/18638984/snap-snapchat-music-licensing-copyright

As music copyright issues have been a point of contention between record labels and companies like YouTube and Peloton in recent months, it'll be in ...

PEPE THE FROG ARTIST MATT FURIE PREPARES FOR COURT BATTLE TO RECLAIM CREATION
via Washington Times by Alex Swoyer on 5/27/2019

Now Pepe and Mr. Furie are preparing for a court date this summer, with the artist saying white supremacists are violating the frog's copyright.
OBITUARY PIRACY PUNISHED: HAS INFRINGEMENT NO BOUNDS?
via Hugh Stephens Blog on 5/27/2019
URL: http://hughstephensblog.net/2019/05/27/obituary-piracy-punished-has-infringement-no-bounds/

A couple of months ago I put up a blog posting about copyright and its intersection with that most universal of human conditions, our finite time on this earth.

FEDERAL REPORT PUSHES FOR CHANGES TO COPYRIGHT ACT
via Law Times by Gabrielle Giroday on 5/27/2019

Lawyers who give advice to artists and copyright owners say a recent report by the federal standing committee on Canadian Heritage contains some ...

JURY ORDERS TEXAS SCHOOL DISTRICT TO PAY $9.2M IN COPYRIGHT CLAIM
via World IP Review on 5/28/2019

A US jury has ordered the Houston Independent School District, Houston's public school system, to pay $9.2 million to an educational publishing ...

US COPYRIGHT OFFICE DENIES GIVING COPYRIGHT PROTECTION TO 'FAKE' BITCOIN AUTHOR
via IP Pro by Ben Wodecki on 5/28/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6747&

The US Copyright Office has hit back at claims that it allowed copyright protection to an individual falsely claiming to be the original author of the white ...

BOY GEORGE INKS DEAL TO MARKET SONGS, RECOUP COPYRIGHTS
via New York Post by Alexandra Steigrad on 5/28/2019
URL: https://nypost.com/2019/05/28/boy-george-inks-deal-to-market-songs-recoup-copyrights/

Boy George believes he has lost of hundreds of millions in royalty fees over the decades and wants to stop the bleeding. The gender-bending pop star ...
TIME SETTLES EMBEDDED TWEET COPYRIGHT INFRINGEMENT SUIT
via Intellectual Property Law360 by Mike Curley on 5/28/2019
URL: https://www.law360.com/ip/articles/1163557

Time has settled a suit in New York federal court alleging it infringed on a photographer’s copyright by embedding a tweet with his photograph of New England Patriots quarterback Tom Brady in its online stories.

ROD STEWART WINS PHOTOGRAPH COPYRIGHT CASE
via BBC on 5/29/2019

A photographer who claimed Sir Rod Stewart used an image without her permission has had her case thrown out. Julia McLellan was seeking ...

JOURNALIST'S 'NARCOS' COPYRIGHT CLAIMS MOSTLY DISMISSED
via Bloomberg Law by Blake Brittain on 5/29/2019
URL: https://news.bloomberglaw.com/ip-law/journalists-narcos-copyright-claims-mostly-dismissed

Most of the journalist's claims didn't involve copyright-eligible expression, although it was plausible that a scene involving an intimate encounter with ...

TO MONITOR OR NOT TO MONITOR? THE UNCERTAIN FUTURE OF ARTICLE 15 OF THE E-COMMERCE DIRECTIVE
via Balkinization by Aleksandra Kuczerawy on 5/29/2019
URL: https://balkin.blogspot.com/2019/05/to-monitor-or-not-to-monitor-uncertain.html

Current policy discourse in the European Union is steadily shifting from intermediary liability to intermediary responsibility.

TIME SETTLES DISPUTE OVER EMBEDDED TOM BRADY PHOTO
via World IP Review on 5/29/2019

A photographer has settled a copyright infringement dispute with news outlet Time Inc. over a photo of National Football League star Tom Brady.
THE PELOSI “DRUNK” VIDEO IS NOT ONLY DISTURBING, IT’S PROBABLY ILLEGAL.
via The Illusion of More by David Newhoff on 5/29/2019
URL: http://illusionofmore.com/the-pelosi-drunk-video-is-not-only-disturbing-its-probably-illegal/

There should be little doubt that the video clip doctored to make Speaker Pelosi look drunk should be seen as a sign of new hazards [...]

POLAND CHALLENGES EU COPYRIGHT DIRECTIVE
via World IP Review on 5/29/2019

Poland has submitted an official complaint to the Court of Justice of the European Union (CJEU) over the recently-approved European Copyright ...

ARTISTS BATTLE MARVEL BID TO DESTROY IRON MAN INFRINGEMENT SUIT
URL: https://www.law360.com/ip/articles/1164149

Two comic book artists battled a bid by Disney's Marvel Entertainment to bring their copyright lawsuit over an "Iron Man 3" poster to an untimely end in Manhattan federal court on Wednesday, calling testimony from entertainment executives "very suspicious."

SUPER BOWL SHUFFLE’ IN BEARS FILM WAS FAIR USE, JUDGE SAYS
via Intellectual Property Law360 by Bill Donahue on 5/30/2019
URL: https://www.law360.com/ip/articles/1164328

The owners of the "Super Bowl Shuffle" — a song made famous by the 1985 Chicago Bears — cannot sue over its inclusion in a documentary about the Super Bowl-winning team, a federal judge ruled Thursday.

JUDGE DOESN'T SHOOT DOWN JOURNALIST'S 'NARCOS' LAWSUIT
via Law.com by Richard Binder on 5/30/2019
URL: https://www.law.com/2019/05/30/judge-doesnt-shoot-down-journalists-narcos-lawsuit/

Colombian media personality Virginia Vallejo’s copyright infringement suit against the Netflix show “Narcos” is going forward—and it’s all thanks to a love scene with a gun.
SECOND 'FAKE' BITCOIN AUTHOR FILES FOR US COPYRIGHT PROTECTION
via IP Pro by Ben Wodecki on 5/31/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6753

A second application for copyright protection covering the original Bitcoin white paper has been unearthed days after the controversial first filing was ...

US COPYRIGHT OFFICE APPROVES TWO NBA LOGOS, BUT DENIES ANOTHER
via World IP Review on 5/31/2019

The Review Board of the US Copyright Office yesterday, May 30, approved the registration of two logo designs for basketball teams the Detroit Pistons ...

WHISTLE STOP: 'ANDY GRIFFITH SHOW' THEME WRITERS' HEIRS SUE CBS OVER ALLEGED COPYRIGHT VIOLATION
via Law.com by Richard Binder on 5/31/2019
URL: https://www.law.com/2019/05/31/whistle-stop-andy-griffith-show-theme-writers-heirs-sue-cbs-over-alleged-copyright-violation/

“Simmer down,” Sheriff Andy Taylor would say when someone got overly excited on “The Andy Griffith Show.”

'FORTNITE' CREATOR WANTS 'RUNNING MAN' DANCE SUIT TOSSED
via Intellectual Property Law360 by Tiffany Hu on 5/31/2019
URL: https://www.law360.com/ip/articles/1164829

The creator of the video game "Fortnite" has asked a Maryland federal court to toss a suit brought by two former college basketball players over the popular “running man” dance, saying that the players cannot impose “unprecedented liability” based on rights that they do not hold.
SUPREME COURT AGREES TO REVIEW FILMMAKER'S COPYRIGHT LAWSUIT AGAINST NORTH CAROLINA

Rick Allen's Nautilus Productions says his footage of an 18th century pirate ship was posted online without permission and argues against state sovereign immunity from copyright lawsuits.

HIGH COURT TO TACKLE PIRATE SHIP COPYRIGHT FIGHT
via Intellectual Property Law360 by Bill Donahue on 6/3/2019
URL: https://www.law360.com/ip/articles/1165184

The U.S. Supreme Court agreed Monday to hear a case over whether a videographer can sue the state of North Carolina for using his copyrighted footage of a pirate shipwreck, giving the justices a chance to revive an obscure federal law that has repeatedly been ruled unconstitutional by lower courts.

THE LIFE OF A NEW REGISTRATION SPECIALIST
via Copyright: Creativity at Work by Ashley Tucker on 6/3/2019
URL: https://blogs.loc.gov/copyright/2019/06/day_in_the_life_registration_specialist/

I was very excited to be selected as one of the twenty-five examiners hired by the Copyright Office in September of 2018.

NBA STAR KAWHI LEONARD SLAMS NIKE WITH IP SUIT MID-FINALS
via Intellectual Property Law360 by Dave Simpson on 6/3/2019
URL: https://www.law360.com/ip/articles/1165615

Just hours after suffering a loss in Game 2 of the NBA Finals, Toronto Raptors superstar Kawhi Leonard hit Nike Inc. with a lawsuit in California federal court Monday seeking to deny the company the copyright to a logo that he claims he made by tracing his notably large hands.
WHEN CONGRESS CANCELLED STATE IMMUNITY FOR COPYRIGHT INFRINGEMENT, DID IT VIOLATE THE U.S. CONSTITUTION?
URL: https://patentlyo.com/patent/2019/06/copyright-infringement-constitution.html

The Supreme Court has granted certiorari in a sovereign immunity copyright case.

KAHWHI LEONARD SUES NIKE OVER 'FALSE COPYRIGHT' REGISTRATION
via World IP Review on 6/4/2019

An American basketball player has accused Nike of defrauding the US Copyright Office, alleging that the shoemaker made false claims about the ...

'FRIDAY THE 13TH' RULING WILL 'UPEND' MOVIES, PRODUCER SAYS
URL: https://www.law360.com/ip/articles/1165694

The producers of the “Friday the 13th” franchise on Monday launched an appeal to the Second Circuit in their closely watched copyright battle with the screenwriter of the original film, warning that a ruling last year for the author threatens to "upend" how movies are made.

COPYRIGHT OFFICE TO HILL: LET STELAR EXPIRE
via The Media Institute by John Eggerton on 6/4/2019
URL: https://www.medainstitute.org/2019/06/03/copyright-office-to-hill-let-stelar-expire/

In a letter to the chair and ranking member of the House Judiciary Committee, the Copyright Office has once again recommended that Congress let the satellite compulsory copyright license (STELAR Act) expire, saying the Section 119 copyright license “is more ripe for expiration than ever.”

NFL NEARS DEAL WITH AP PHOTOGRAPHERS IN COPYRIGHT FIGHT
via Intellectual Property Law360 by Mike Curley on 6/4/2019
URL: https://www.law360.com/ip/articles/1165810

The National Football League and a group of Associated Press photographers are close to settling a long-running dispute that alleged the NFL stiffed the photographers on royalties for photos they took while at the AP, according to a letter sent to the court.
HAS THE SERVER RULE REACHED ITS END OF SERVICE DATE?
via The Illusion of More by David Newhoff on 6/4/2019
URL: http://illusionofmore.com/has-the-server-rule-reached-its-end-of-service-date/

“Solicitude for certain current Internet practices fails to acknowledge the troubling effect the server rule has had on creators and copyright owners, particularly photographers, whose [...]”

KANYE WEST & KID CUDI ARGUE FAIR USE OVER KIDS SEE GHOSTS SAMPLE COPYRIGHT CLAIM
via Billboard by Chris Eggertsen on 6/4/2019
URL: https://www.billboard.com/articles/business/8514545/kanye-west-kid-cudi-kids-see-ghosts-sample-copyright-fair-use

Fair use is generally defined as the right to copy a portion of a copyrighted work without permission if it is for a limited purpose, such as educational ...

SUPREME COURT TO REVISIT ABROGATION OF STATE SOVEREIGN IMMUNITY FROM IP INFRINGEMENT
via Patent Docs by James Lovsin on 6/5/2019

Under the Eleventh Amendment of the Constitution, States enjoy sovereign immunity from a wide variety of suits.

STREAMERS SADDLED WITH COPYRIGHT MESS + CRYPTO FIRM KIK TAKES ON THE SEC
via Law.com by Alaina Lancaster on 6/5/2019
URL: https://www.law.com/2019/06/05/streamers-saddled-with-copyright-mess-crypto-firm-kik-takes-on-the-sec/

Our inaugural issue of What’s Next in November 2017 began with a quote from the Hacker’s Manifesto.
SECOND CIRCUIT ASKED TO WEIGH IN ON STRUGGLE OVER 'FRIDAY THE 13TH' COPYRIGHT
via World IP Review on 6/5/2019

The director of the 1977 horror film “Friday the 13th” has asked the Second Circuit to overturn a district court ruling which stripped him of his rights to ...

MOVIE STUDIOS AIM FOR TENS OF MILLIONS OF DOLLARS AT VIDANGEL COPYRIGHT TRIAL

Disney, Fox and Warner Bros. will attempt to prove willful infringement while VidAngel is challenging chain of title on 'Casablanca' and other movies, plus hopes to show its "innocence" in launching a family friendly streaming service.

US COPYRIGHT OFFICE DIRECTOR REQUESTS STELAR ACT SECTION 119 REVOCATION
via IP Pro by Ben Wodecki on 6/5/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6765&

US Copyright Office director and register of Copyrights Karyn Temple has urged Congress not to renew the satellite compulsory copyright licence ...

CANADIAN PARLIAMENTARY COMMITTEE WARNS AGAINST SITE-BLOCKING
via World IP Review on 6/5/2019
URL: https://www.worldipreview.com/news/canadian-parliamentary-committee-warns-against-site-blocking-18169

The Standing Committee on Industry, Science and Technology published its report on June 3 after a year-long review of Canada's Copyright Act.
Like many public organizations with strong opinions, we find that our social media posts attract a lot of strong support as well as a number of misinformed, mean-spirited, and even downright crazy online comments.

The plot has thickened in the longest-running “whodunit” in the blockchain space: Who is Satoshi Nakamoto, the pseudonymous creator of Bitcoin and ...

The U.S. Department of Justice launched an official review Wednesday of the 75-year-old agreements governing music licensing groups BMI and ASCAP to see if they need to be modified or terminated in light of changes to the music industry.

The European Union's Directive on Copyright in the Digital Single Market ... sometimes blocking legal use of copyrighted works for review or parody.

Facebook Inc. and Princeton University illegally downloaded and exploited a trove of data belonging to a Lithuanian company in order to further projects aimed at teaching robots to recognize three-dimensional scenes, according to a lawsuit filed Wednesday in California federal court.
INVASION OF THE COPYRIGHT TROLLS: WHAT TO DO IF YOU HAVE BEEN SUED BY STRIKE 3 HOLDINGS OR MALIBU …
 via National Law Review by Gene Markin on 6/6/2019
URL: https://www.natlawreview.com/article/invasion-copyright-trolls-what-to-do-if-you-have-been-sued-strike-3-holdings-or

Usually, each of these copyright infringement matters filed against an IP address are privately settled without being litigated on the merits given the …

DISPUTE ARISES OVER 'NO-NO BOY,' A CLASSIC OF ASIAN-AMERICAN LITERATURE WITH A COMPLEX HISTORY
 via New York Times by Alexandra Alter on 6/7/2019
URL: https://www.nytimes.com/2019/06/06/books/no-no-boy-penguin.html

In 1971, shortly after Okada's death, Wong and several friends found a copy of the novel in a used bookstore and later had it copyrighted and …

SUPERMODEL GIGI HADID CALLS INSTAGRAM PHOTO AT CENTER OF PAPARAZZI LAWSUIT "FAIR USE"
 via Fashion Law on 6/7/2019

The second factor – which looks at “the nature of the copyrighted work” – “strongly” weighs in Hadid's favor, according to the motion to dismiss, for two …

US JUSTICE DEPARTMENT TO REVIEW 75-YEAR-OLD COPYRIGHT LICENCE DECREES
 via IP Pro by Ben Wodecki on 6/7/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6774

The US Department of Justice has opened a review into the consent decrees used by the American Society of Composers, Authors and Publishers …
NOT HERE TO START TROUBLE: COURT RULES DOCUMENTARY’S USE OF SUPER BOWL SHUFFLE WAS FAIR USE

The Eighties are in! A contagious wave of nostalgia has infected popular culture with period TV series, from shows like Stranger Things to rebirths and reboots of the era’s shows and movies. This retro cultural appropriation was bound to involve a copyright issue. Indeed, a dispute arose over a documentary on the 1985 Chicago Bears, which made an unauthorized use of the team’s landmark music video, The Superbowl Shuffle. The Shuffle’s owners claimed an infringement on the licensing market for...

KIM DOTCOM EXTRADITION: ‘CUT-AND-PASTE’ JUDGMENT BEHIND EXTRADITION FINDING FOR MEGAUPLOAD ...
via New Zealand Herald by David Fisher on 6/10/2019
URL: https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12238989

The United States has sought their extradition, alleging the copyright abuse through Megaupload - which was taken down in 2012 - cost movie and ...

COPYRIGHT REVIEW IN CANADA: THE SECOND SHOE DROPS
via Hugh Stephens Blog on 6/10/2019
URL: http://hughstephensblog.net/2019/06/10/copyright-review-in-canada-the-second-shoe-drops/

In the ongoing process of Canada’s copyright review, the “second shoe” has dropped and, as expected, the thud as it landed on the floor of the House of Commons was different from that of its companion report, Shifting Paradigms, the report of the Standing Committee on Canadian Heritage tabled on May 15 of this year.

INFOWARS PAYS $15K TO SETTLE ‘PEPE THE FROG’ COPYRIGHT LAWSUIT
URL: https://www.hollywoodreporter.com/thr-esq/infowars-pays-15k-settle-pepe-frog-copyright-lawsuit-1217193

The right-wing site agrees to stop using Pepe, although the trial-saving deal leaves open the question of whether Matt Furie abandoned his copyright.
'PEPE' CREATOR ENDS COPYRIGHT FIGHT AGAINST INFOWars
via Intellectual Property Law360 by Bill Donahue on 6/10/2019
URL: https://www.law360.com/ip/articles/1167604

The creator of Pepe the Frog — a cartoon that's become an online symbol for white nationalists — has reached a settlement to end a copyright lawsuit he filed against the far-right website Infowars.

'STAIRWAY TO HEAVEN' DISPUTE GETS REPLAY IN APPEALS COURT

Led Zeppelin will have another shot at avoiding a second trial over whether it copied the song.

FULL 9TH CIRC. WILL REHEAR 'STAIRWAY' COPYRIGHT CASE
via Intellectual Property Law360 by Bill Donahue on 6/10/2019
URL: https://www.law360.com/ip/articles/1167647

The full Ninth Circuit said Monday it would rehear a high-profile copyright lawsuit accusing Led Zeppelin of stealing the intro to "Stairway to Heaven" from an obscure song, wiping out a ruling last year that ordered a new jury trial in the case.

MASNICK CALLS CASE A BIG MEDIA BILL?
via The Illusion of More by David Newhoff on 6/10/2019
URL: http://illusionofmore.com/masnick-calls-case-a-big-media-bill/

From the Techdirt Sycophants Department In his post of May 28, Mike Masnick dutifully opened his hymnal and joined the chorus in a rendition of [...]}

VIDANGEL'S CLAIM STUDIOS DON'T OWN FAMOUS FLICKS FALLS FLAT
via Intellectual Property Law360 by Lauren Berg on 6/10/2019
URL: https://www.law360.com/ip/articles/1167711

There is “ample evidence” Warner Bros. and Turner Entertainment own such iconic films as “The Wizard of Oz,” “Casablanca” and “Lethal Weapon,” a California federal judge ruled Monday, one day before a jury trial begins to decide whether VidAngel Inc. owes damages for violating copyright law with its streaming service.
WHAT ALADDIN—AND NAPOLEON—TEACH US ABOUT COPYRIGHT
via NPR by Darian Woods on 6/11/2019

Editor's note: This is an excerpt of Planet Money's newsletter. You can sign up here. A whole new Aladdin is back at movie theaters. We went to see it ...

US COPYRIGHT OFFICE PROPOSES GROUP REGISTRATION OPTION FOR ALBUMS
via IP Pro by Ben Wodecki on 6/11/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6782&

The US Copyright Office is proposing a group registration option for musical works, sound recordings and graphic works contained on an album.

WAS MILEY CYRUS' “ABORTION IS HEALTHCARE” CAKE A RIP-OFF?
via Forbes by Oliver Herzfeld on 6/11/2019
URL: https://www.forbes.com/sites/oliverherzfeld/2019/06/11/was-miley-cyrus-abortion-is-healthcare-cake-a-rip-off/#471289e76909

In general, unless an intellectual property right such as a patent or copyright protects an item, it will be subject to copying. As the Court has explained, ...

PIRATING FILES NOT SO BAD, WITH ONE EXCEPTION, ACCORDING TO SURVEY OF HARVARD LLM STUDENTS
via ABA Journal by Debra Cassens Weiss on 6/11/2019

The only exception is copyright infringement for a commercial purpose, according to the study published by the Information Society journal, ...

TEXAS COURT AXES PHOTOGRAPHER'S SUIT AGAINST UNIVERSITY
via Intellectual Property Law360 by Michelle Casady on 6/11/2019
URL: https://www.law360.com/ip/articles/1167916

A Texas appellate court ruled Tuesday that a photographer couldn’t sue the University of Houston for unconstitutionally “taking” his image, rejecting an unusual effort to sue a state entity over copyrights.

- 463 -
HERE WE GO AGAIN: DOJ’S LATEST MUSIC LICENSING REVIEW
via Intellectual Property Law360 by Matthew Perlman on 6/11/2019
URL: https://www.law360.com/ip/articles/1167707

The U.S. Department of Justice’s antitrust division has embarked on its second review in less than four years of decades-old court orders governing a key aspect of music licensing in the country. The last review ended in a court battle without any changes to the orders, but a new administration in the White House could mean a different result.

'JERSEY BOYS' VERDICT AXED BY 'UPSET' JUDGE, 9TH CIRC. TOLD
via Intellectual Property Law360 by Dorothy Atkins on 6/11/2019
URL: https://www.law360.com/ip/articles/1168021

An author's widow urged the Ninth Circuit on Tuesday to revive a jury's verdict finding the creators of the hit Broadway musical "Jersey Boys" lifted material from her husband's unpublished book, arguing the trial judge who tossed the verdict didn't want her to win and was "extremely upset" when she did.

VIDANGEL COULD FACE $125 MILLION JUDGMENT IN COPYRIGHT TRIAL
via Variety by Gene Maddaus on 6/11/2019

In March, U.S. District Judge Andre Birotte ruled against VidAngel, finding that the company had violated the studios' copyrights, but left it up to a jury ...

HOLLYWOOD STUDIOS, VIDANGEL FACE OFF IN $125M DAMAGES TRIAL
URL: https://www.law360.com/ip/articles/1168150

Family-friendly streaming service VidAngel should pay the maximum legal penalty — an amount that could reach $125 million — for willfully infringing the copyrights of Walt Disney and other Hollywood heavyweights, the studios' attorney told a California federal jury during opening statements in a damages trial Tuesday.
VILLAGE ROADSHOW WINS COURT ORDER TO BLOCK 76 OVERSEAS VIDEO PIRACY WEBSITES
via ZDNet by Campbell Kwan on 6/12/2019

A series of music copyright holders have sought the block of sites that allegedly allow users to download YouTube videos and strip them down to ...

[STATUTE OF] QUEEN ANNE’S REVENGE? SUPREME COURT GRANTS CERTIORARI IN ALLEN V. COOPER
via Technology & Marketing Law Blog by Tyler Ochoa on 6/12/2019

If your literary or artistic work is copied by a state government or state officials, can you sue those defendants for copyright infringement?

GOOGLE’S ACADEMIC PUPPETS: THREE SCHOLARS WORKING TO HELP THE SEARCH GIANT CRUSH COPYRIGHT AND COMPETITION
via CreativeFuture by Justin Sanders on 6/12/2019
URL: https://creativefuture.org/google-academic-puppets/

Breaking their own exorbitant lobbyist-spending records has become a regular occurrence for Google – but that’s just one tool in their toolkit of political influence.

SUPREME COURT URGED TO MAKE OLD MOVIES DIGITALLY AVAILABLE

A new company called OmniQ says that compared to 20 years ago, consumers have fewer choices when it comes to movies. Seizing on a petition to the high court, OmniQ urges exploration of the First Sale Doctrine in the digital age.
UNITED STATES SAYS THE MEGAUPLOAD ACCUSED KNEW INTERNET PIRACY WAS AT THE HEART OF MAKING MONEY
via NZ Herald by David Fisher on 6/13/2019
URL: https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12240164

Megaupload's mode of operating showed there was an "executive conspiracy" to commit copyright violation, the United States has told the Supreme ... 

PHOTO CO. SUING GIGI HADID SAYS CO-AUTHORSHIP CLAIM IS "PREPOSTEROUS," IMPLIED LICENSE IS A ...
via Fashion Law on 6/13/2019

Gigi Hadid's response to a pending copyright lawsuit “tests the limits of cynicism because Hadid has gone out of her way to criticize photographers like ... 

MORE LAWMAKERS JOIN CRY AGAINST NEW LOCAL RADIO ROYALTIES
via Intellectual Property Law360 by Christopher Cole on 6/13/2019
URL: https://www.law360.com/ip/articles/1168924

Ten more U.S. lawmakers have voiced opposition to putting new performance royalty fees on local radio stations, giving additional support to the broadcast industry's perennial effort to combat new royalty obligations.

AGGREGATOR SAYS IT WAS ALLOWED TO SHARE BLOG POSTS
via Intellectual Property Law360 by Dani Kass on 6/13/2019
URL: https://www.law360.com/ip/articles/1168908

Subscription-based aggregator Newstex LLC has asked a Florida federal judge to find that it was allowed to share blog posts from MidlevelU, a website for nurse practitioners, as there's no copyright infringement when the posts were made widely available to the public for free.

VIDANGEL UNDERMINED STUDIOS’ LICENSING DEALS, JURY TOLD
via Intellectual Property Law360 by Lauren Berg on 6/13/2019
URL: https://www.law360.com/ip/articles/1168989

Walt Disney and other Hollywood heavyweights make hundreds of millions of dollars in licensing deals with streaming services like Netflix and Hulu, and family-friendly service VidAngel undermined those partnerships when it pirated films from DVDs to stream to its customers, a California federal jury heard Thursday.
PHOTO CO. ASKS HIGH COURT TO LOOK AT ZILLOW COPYRIGHT FIGHT
via Intellectual Property Law360 by Mike LaSusa on 6/13/2019
URL: https://www.law360.com/ip/articles/1169188

A real estate photo company asked the U.S. Supreme Court on Thursday to hear its appeal of a Ninth Circuit decision that upended a $4 million copyright infringement award against the Zillow Group, saying the ruling highlighted a circuit split on willful infringement that the high court should clear up.

COPYRIGHT DISPUTE OVER ABORIGINAL FLAG SPARKS DEBATE
via World IP Review on 6/14/2019

A dispute surrounding the copyright of the Australian Aboriginal flag has intensified after the exclusive rights-holder for the flag issued cease and ...

LAW STUDENTS PETITION US SUPREME COURT OVER EDUCATIONAL MATERIAL RESTRICTIONS
via IP Pro by Ben Wodecki on 6/14/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6792

Over 100 US law students have petitioned the US Supreme Court arguing that copyright laws and private firms are restricting their access to essential ...

PORNO TROLLING MASTERMIND PAUL HANSMEIER GETS 14 YEARS IN PRISON
via Ars Technica by Timothy B. Lee on 6/14/2019
URL: https://arstechnica.com/?p=1522669

A federal judge in Minneapolis has sentenced Paul Hansmeier to 14 years in prison for an elaborate fraud scheme that involved uploading pornographic videos to file-sharing networks and then threatening to sue people who downloaded them.

VILLAGE ROADSHOW WINS COURT ORDER AGAINST PIRACY WEBSITES
via World IP Review on 6/14/2019

In its complaint to the court, Village Roadshow said it owns the copyright to large numbers of films and TV programmes. It said that the websites ...
TEXAS CAN STEAL YOUR PHOTOS WITHOUT PAYING FOR 'TAKINGS': COURT
via PetaPixel by Michael Zhang on 6/14/2019
URL: https://petapixel.com/2019/06/14/texas-can-steal-your-photos-without-paying-for-takings-court/

Photographers were just dealt a big legal blow this week after a Texas state appeals court ruled that the state can infringe upon copyright without ...

THE USMCA/CUSMA AND INTELLECTUAL PROPERTY: CANADA WINS
via Hugh Stephens Blog on 6/17/2019
URL: http://hughstephensblog.net/2019/06/17/the-usmca-cusma-and-intellectual-property-canada-wins/

The government of Justin Trudeau is now moving quickly with legislation to ratify the new trilateral North American trade agreement in the wake of the announcement last month that the Trump Administration would lift the steel and aluminum tariffs that were imposed on Canada (and Mexico) in June 2018 on ostensible “national security” grounds.

'EMPIRE' COPYRIGHT CASE AGAINST FOX REJECTED FOR THIRD TIME
via Intellectual Property Law360 by Bill Donahue on 6/17/2019
URL: https://www.law360.com/ip/articles/1169642

A California federal judge has once again tossed a lawsuit claiming Fox ripped off an unproduced treatment to create the hit television show “Empire,” a year after the Ninth Circuit said the accuser should have been given another chance to prove his case.

COLOMBIAN 'NARCOS' PRODUCER OFF THE HOOK IN COPYRIGHT SUIT
via Intellectual Property Law360 by Hannah Albarazi on 6/17/2019
URL: https://www.law360.com/ip/articles/1169641

A Florida federal judge has allowed a Colombian production company to exit a former journalist's copyright suit claiming the Netflix series "Narcos" ripped off her memoir detailing her affair with drug kingpin Pablo Escobar, ruling she couldn't prove the court had jurisdiction over the company.

VIDANGEL OWES STUDIOS $62M FOR PIRATING FLICKS, JURY SAYS
via Intellectual Property Law360 by Lauren Berg on 6/17/2019
URL: https://www.law360.com/ip/articles/1169888

A California federal jury on Monday ordered VidAngel to pay Walt Disney and other Hollywood heavyweights $62 million for pirating hundreds of iconic films from DVDs and streaming them
to customers, delivering a crushing blow to the family-friendly streaming service following a weeklong damages trial.

POKÉMON GO MAKER SAYS 'HACKERS' BUILT IP INFRINGING CHEATS
via Intellectual Property Law360 by Dave Simpson on 6/17/2019
URL: https://www.law360.com/ip/articles/1169787

Niantic Inc., the company behind Pokémon Go and a similar forthcoming Harry Potter geolocation game, claimed in California federal court that hackers are infringing its copyrights by offering unauthorized versions of its games that are hacked to enable cheating.

HOLLYWOOD STUDIOS AWARDED $62M IN VIDANGEL FIGHT

A jury found the family-friendly streamer willfully infringed on the copyrights to Disney, Fox and Warner Bros. movies.

U.S. CHAMBER STUDY SHOWS SIGNIFICANT IMPACT OF DIGITAL PIRACY ON U.S. ECONOMY
via Global Innovation Policy Center by Diya Li on 6/18/2019

The U.S. Chamber of Commerce Global Innovation Policy Center (GIPC), in partnership with NERA Economic Consulting, today published a new study, Impacts of Digital Video Piracy on the U.S. Economy, detailing the economic impact digital video piracy has on the U.S. economy.

SUPREME COURT TO RULE WHETHER CONGRESS APPROPRIATELY ABROGATED STATE SOVEREIGN IMMUNITY FOR COPYRIGHT CLAIMS IN ALLEN V. COOPER

As we anxiously await a final decision from the U.S. Supreme Court in Iancu v. Brunetti, and decisions on pending petitions for certiorari in several other IP cases, the Court agreed to hear Allen v. Cooper on June 3.
PANDORA HIT WITH COPYRIGHT SUIT FOR DISPLAYING LYRICS
via Intellectual Property Law360 by Bill Donahue on 6/18/2019
URL: https://www.law360.com/ip/articles/1170190

A music publisher is suing Pandora in California federal court for copyright infringement for displaying the lyrics to songs by Tom Petty, Neil Young and many others, claiming the internet radio giant lacks the proper licenses to do so.

KEY DAMAGES QUESTIONS TO ASK IN COPYRIGHT MEDIATION
via Intellectual Property Law360 by Bruce Isaacs on 6/18/2019
URL: https://www.law360.com/ip/articles/1169941

In 2016, the jury ruled in favor of the defendant Led Zeppelin in the “Stairway to Heaven” case (Skidmore v. Led Zeppelin). In the fall of 2018, the U.S. Court of Appeals for the Ninth Circuit, in a controversial opinion, ordered a new trial. However, on June 10, 2019, the Ninth Circuit issued an order granting a rehearing of the case, en banc, and further ordered that the prior Ninth Circuit opinion may no longer be cited.

BARRY MANILOW'S MANAGEMENT CO. ESCAPES FILM COPYRIGHT SUIT
via Intellectual Property Law360 by Tiffany Hu on 6/18/2019
URL: https://www.law360.com/ip/articles/1170034

A management company for Barry Manilow has escaped litigation over copyrights for two films featuring the singer, after a California federal judge found that the production company bringing the suit failed to show how it qualified for authorship.

CARRIE UNDERWOOD, NBC SUED OVER SUNDAY NIGHT NFL SONG
via Intellectual Property Law360 by Bill Donahue on 6/19/2019
URL: https://www.law360.com/ip/articles/1170910

Carrie Underwood and NBC are facing a copyright lawsuit that claims the new theme song to the "Sunday Night Football" NFL broadcast was ripped off from a little-known track.

PETITIONER ASKS SCOTUS TO HEAR REDIGI CASE
via The Illusion of More by David Newhoff on 6/20/2019
URL: http://illusionofmore.com/petitioner-asks-scotus-to-hear-redigi-case/

A new business called OmniQ has filed an amicus brief urging the Supreme Court to grant cert in ReDegi v. Capitol Records, alleging that the Second [...]
TOP 7 COPYRIGHT RULINGS OF 2019: A MIDYEAR REVIEW
via Intellectual Property Law360 by Bill Donahue on 6/20/2019
URL: https://www.law360.com/ip/articles/1165980

From online pornography to Ed Sheeran to a Supreme Court decision on when you can sue, it's been a busy six months in the world of copyright law. As we head into the back half of the year, here are the seven big decisions you need to know.

ANOTHER MINOR HIT WITH COPYRIGHT SUIT OVER FORTNITE CHEATS
via Intellectual Property Law360 by Britain Eakin on 6/20/2019
URL: https://www.law360.com/ip/articles/1170509

Epic Games slammed another teen with a copyright infringement suit over cheat software for the popular game Fortnite, the latest in a series of suits in North Carolina federal court aimed at stopping cheaters from “ruining” the game.

JULIO IGLESIAS BEATS SONGWRITER'S COPYRIGHT SUIT AT 11TH CIRC.
via Intellectual Property Law360 by Carolina Bolado on 6/21/2019
URL: https://www.law360.com/ip/articles/1171530

The Eleventh Circuit has affirmed the dismissal of a copyright suit against Spanish crooner Julio Iglesias over his 1978 song "Me Olvidé de Vivir," saying the woman who brought the suit could not now claim that she wrote the song alone after testifying in previous litigation that she co-wrote it.

SPOTIFY SAYS THEY 'OVERPAID MOST PUBLISHERS IN 2018' — AND THEY WANT THEIR MONEY BACK
via Digital Music News by Paul Resnikoff on 6/22/2019
URL: https://www.digitalmusicnews.com/2019/06/22/spotify-overpaid-publishers/

“According to the new [Copyright Royalty Board] regulations, we overpaid most publishers in 2018,” Spotify stated. “While the appeal of the CRB ...

SUPREME COURT WILL HEAR CASE OVER COPYRIGHTS TO LEGAL TEXTS
via Intellectual Property Law360 by Bill Donahue on 6/24/2019
URL: https://www.law360.com/ip/articles/1172090

The U.S Supreme Court on Monday agreed to hear a case about the extent to which state and local governments can claim copyright control over legal texts.
COPYRIGHT REVIEW IN CANADA: INDU COMMITTEE ISSUES CLUMSY AND TONE-DEAF “WE’RE IN CHARGE” PRESS RELEASE
via Hugh Stephens Blog on 6/24/2019

In an extraordinary display of gamesmanship, (one might say one-upmanship) the Standing Committee on Industry, Science and Technology (INDU Committee) felt compelled to issue a clumsy and tone-deaf press release, titled “On Shifting Paradigms” on June 18 reminding the world that it has “sole responsibility” for the statutory review of the Copyright Act.

SUPREME COURT WON'T TACKLE DIGITAL FIRST-SALE DOCTRINE
via Intellectual Property Law360 by Bill Donahue on 6/24/2019
URL: https://www.law360.com/ip/articles/1172080

The U.S. Supreme Court said Monday that it wouldn't hear a case that asked the court to rule that consumers can resell digital copies of songs and other works without violating copyright law.

COPYRIGHTING THE OFFICIAL ANNOTATED STATUTES: GEORGIA V. PUBLIC.RESOURCE.ORG
via Patent Law Blog (Patently-O) by Dennis Crouch on 6/24/2019
URL: https://patentlyo.com/patent/2019/06/copyrighting-official-annotated.html

The Supreme Court has granted certiorari in the important public access case of Georgia v. PublicResource.org Inc.

HOW AMAZON BENEFITS FROM COUNTERFEIT BOOKS
via Vox by Kaitlyn Tiffany on 6/24/2019

In that case, it's protected by the Digital Millennium Copyright Act, which shields third-party platform providers like Amazon from liability so long as they ...
ARTIST'S WIDOW LOSES COPYRIGHT FIGHT OVER THELONIOUS MONK BEER LABEL
via Reuters by Dena Aubin on 6/24/2019

A federal judge in San Jose has dismissed a copyright lawsuit against North Coast Brewing Co by a woman whose late husband painted an image of ...

CEASE-AND-DESIST TRANSFORMS MARIO ROYALE INTO DMCA ROYALE
via Ars Technica by Kyle Orland on 6/25/2019
URL: https://arstechnica.com/?p=1526985

Web-based game Mario Royale attracted quite a bit of attention last week by taking Nintendo's well-known mascot and placing him next to 74 other human-controlled doppelgangers in a race through level designs taken directly from popular Mario games.

QUICK TAKE: YOUR PRIMER ON DIGITAL PIRACY AND ITS IMPACT ON THE U.S. ECONOMY
via Global Innovation Policy Center by Sophia Robichaux on 6/25/2019

Video streaming is one of the most popular forms of content consumption, with more than 500 licensed online video portals and more streaming subscribers than paid-TV subscribers.

MUSIC PUBLISHERS BASH PELOTON'S BOYCOTT CLAIMS IN IP SUIT
via Intellectual Property Law360 by Anne Cullen on 6/25/2019
URL: https://www.law360.com/ip/articles/1172586

A group of music publishers suing Peloton for streaming their songs are denying they conspired to deprive the fitness startup of music licenses, painting the fitness company's defense in the copyright case as simply a "timeworn tactic."

NINTENDO WARNING OVER 'MARIO ROYALE' SPAWNS 'DMCA ROYALE'
via Intellectual Property Law360 by Mike LaSusa on 6/25/2019
URL: https://www.law360.com/ip/articles/1172788

A YouTube personality has swapped out Mario and other elements from his unauthorized Super Mario Bros. spinoff after Nintendo sent him a Digital Millennium Copyright Act takedown, rebooting the game as "DMCA Royale" starring "Infringio."
GIGI HADID: I CAN USE A PHOTOGRAPHER'S PHOTO BECAUSE I SMILED
via PetaPixel by Michael Zhang on 6/25/2019
URL: https://petapixel.com/2019/06/25/gigi-hadid-i-can-post-a-paparazzi-pic-because-i-smiled-at-the-camera/

Famous model Gigi Hadid is being sued by a photo agency for posting a copyrighted photo of her on Instagram without permission. Hadid is now ...

THE KEY ISSUES WITH IMPLEMENTING THE MMA'S MECHANICAL LICENSING COLLECTIVE (GUEST OP-ED)
via Billboard by Caleb Shreve & Jon Siebels on 6/25/2019

Perhaps the most important issue on the table, and one that is expected to be a major focus of the Copyright Office oversight hearing of the House ...

THE LAW©?
via New York Times on 6/26/2019
URL: https://www.nytimes.com/2019/06/25/opinion/copyright-law.html

Org, a case about whether the State of Georgia can assert copyright in its annotated state code. This week, the Supreme Court agreed to hear the case ...

NMPA STRIKES BACK AT PELOTON'S COUNTER-CLAIM IN WORKOUT VIDEO LAWSUIT
via Billboard by Chris Eggertsen on 6/26/2019
URL: https://www.billboard.com/articles/business/8517636/nmpa-strikes-back-peloton-counter-claim-workout-video-lawsuit

In their original lawsuit filed back in March, the publishers alleged that Peloton had willfully infringed their copyrights by using over 1,000 copyrighted ...

HOUSE JUDICIARY HEARING ON COPYRIGHT OFFICE REVIEWS MUSIC MODERNIZATION ACT, BLACKBOX ROYALTY ...
via Billboard by Ed Christman on 6/26/2019

With many indie songwriters concerned about how the Mechanical Licensing Collective (MLC) created by the Music Modernization Act (MMA) will ...
JUST HOW MUCH MONEY IS THERE IN UNCLAIMED BLACK BOX ROYALTIES?
via Billboard by Ed Christman on 6/27/2019
URL: https://www.billboard.com/articles/business/8517816/unclaimed-black-box-royalties-how-much-money

Black box money was a big topic at Wednesday's (June 26) House Judiciary Committee hearing on oversight of the U.S. Copyright Office and that may ...

SOFTWARE CO. AWARDED $2.1M IN ATTY FEES IN COPYRIGHT SUIT
URL: https://www.law360.com/ip/articles/1173477

A software company has won nearly $2.1 million in attorney fees in its suit accusing a Mexico-based consulting firm of copying its software to dodge licensing fees, after a California federal judge found that the Mexican firm’s “on-and-off again participation” warranted the fees.

SPOTIFY SETTLES FOUR SEASONS LICENSING DISPUTE
via World IP Review on 6/28/2019

Robert Guadio, a founding member of American soul band The Four Seasons, has settled his copyright lawsuit with Swedish streaming service Spotify ...

MILEY CYRUS CAN'T DITCH 'WE CAN'T STOP' COPYRIGHT SUIT
via Intellectual Property Law360 by Bill Donahue on 6/28/2019
URL: https://www.law360.com/ip/articles/1174091

A Manhattan federal judge on Friday refused to toss a copyright lawsuit that claims Miley Cyrus' 2013 hit "We Can't Stop" ripped off an earlier reggae track, though he sharply limited the damages the pop singer may face.

FREE SPEECH CHALLENGE TO DMCA GETS PARTIAL GREEN LIGHT
URL: https://www.law360.com/ip/articles/1173775

An activist group can press forward on claims that the Digital Millennium Copyright Act's "anti-circumvention" provision violates the First Amendment rights of two researchers, but can't try to invalidate the provision altogether, a D.C. federal judge has ruled.
Two former college basketball stars suing over the use of their signature Running Man dance in the hugely popular video game Fortnite have hit back against creator Epic Games’ bid to toss their suit, accusing the gaming giant of using "the First Amendment as a sword to justify their blatant theft."

The Apache License 2.0 provides a broad set of guidelines that apply to both copyrights and patents. It's unusual for open source licenses to cover ...

The lawsuit says Irgit, 41, has passed off Ferrarini's design as her own, even submitting to the U.S. Copyright Office a photo of the Kiini bathing suit and ...

“With regard to defendants' third objection, Section 412 of the Copyright Act imposes a bright-line rule barring the recovery of statutory damages and ...
July 2019

SPOTIFY SETTLES COPYRIGHT LAWSUITS BROUGHT BY SONGWRITERS
URL: https://www.hollywoodreporter.com/thr-esq/spotify-settles-copyright-lawsuits-brought-by-songwriters-1221403

The two big copyright lawsuits alleged "staggering" infringement of thousands of song compositions.

MILEY CYRUS HAS COPYRIGHT INFRINGEMENT LAWSUIT DAMAGES LIMITED, BUT NOT DISMISSED
via Hollywood.com on 7/1/2019
URL: http://www.hollywood.com/general/miley-cyrus-has-copyright-infringement-lawsuit-damages-limited-but-not-dismissed-60755539/

The 26 year old denied any wrongdoing and insisted the turn of phrase isn't unique enough to be protected by copyright laws, but in February (19), ...

MARC JACOBS IS BEING SUED FOR POSTING A PHOTO OF BELLA HADID ON ITS INSTAGRAM
via Fashion Law on 7/1/2019
URL: http://www.thefashionlaw.com/home/marc-jacobs-is-being-sued-for-posting-a-photo-of-bella-hadid-on-its-instagram

Marc Jacobs has been hit with another lawsuit. Already in the midst of a copyright and trademark infringement lawsuit with Nirvana, LLC over its use of ...

TD BANK NOT HARMED BY PROMOTION OF INFRINGING BOOK, 3RD CIRCUIT RULES
via New Jersey Law Journal by Charles Toutant on 7/1/2019

Kugler found in 2015 that Hill's book infringed on TD Bank's copyright of a manuscript written by Hill in 2007 discussing his career in banking. Kugler ...
3RD CIRC. SCRAPS ‘SWEEPING’ ORDER BANNING EX-CEO’S BOOK
via Intellectual Property Law360 by Dorothy Atkins on 7/1/2019
URL: https://www.law360.com/ip/articles/1174653

The Third Circuit on Monday vacated an injunction that blocked a banking tycoon from distributing his business book, finding that although TD Bank owns the exclusive rights to some of his life story and business philosophy, the lower court's "sweeping conclusions" would justify an injunction in every copyright case.

ANDY WARHOL'S 'PRINCE' SERIES WAS FAIR USE OF PHOTO: JUDGE
via Intellectual Property Law360 by Hailey Konnath on 7/1/2019
URL: https://www.law360.com/ip/articles/1174838

A well-known Andy Warhol series in which the artist modified a photograph of legendary pop icon Prince doesn’t infringe the copyright of the photographer who took the photo, a New York federal judge ruled Monday, finding that Warhol’s works are “transformative” of the original photo and “add something new to the world of art.”

ANDY WARHOL’S ‘PRINCE SERIES’ IS FAIR USE, COURT RULES
via NYT > Media & Advertising on 7/2/2019
URL: https://www.nytimes.com/2019/07/02/arts/design/andy-warhol-prince-fair-use.html

Andy Warhol transcended a photographer’s copyright by transforming a picture of a vulnerable and uncomfortable Prince into an artwork that made the singer an “iconic, larger-than-life figure,” a judge ruled Monday.

WARHOL'S PRINCE WORKS DON'T INFRINGE ON PHOTOGRAPHER'S 1980S COPYRIGHT, JUDGE RULES
via Law.com by Jason Grant on 7/2/2019

In a copyright infringement lawsuit that could have potentially impacted thousands of Andy Warhol works found across the world, a federal judge on Monday ruled that the iconic artist made “fair use” of a 1981 photograph of Prince when he created a series of silkscreen images of the musician, including one that landed on the cover of Vanity Fair.
SUPREME COURT IP RECAP: COPYRIGHTS & TRADEMARKS
via Intellectual Property Law360 by Bill Donahue on 7/2/2019
URL: https://www.law360.com/ip/articles/1175117

The U.S. Supreme Court didn’t issue any landmark trademark or copyright rulings this term, but bigger decisions could be coming in the year ahead.

ED SHEERAN TRIAL ON HOLD FOR 9TH CIRC. LED ZEPPELIN RULING
via Intellectual Property Law360 by Pete Brush on 7/2/2019
URL: https://www.law360.com/ip/articles/1175255

A Manhattan judge has put off a September jury trial over whether Ed Sheeran's "Thinking Out Loud" infringes Marvin Gaye's "Let's Get It On," saying Tuesday that a coming decision by the full Ninth Circuit in a copyright appeal involving Led Zeppelin may be informative.

CHARTER TURNING BLIND EYE TO INFRINGEMENT, RECORD LABELS SAY
via Intellectual Property Law360 by Nadia Dreid on 7/2/2019
URL: https://www.law360.com/ip/articles/1174847

Charter Communications Inc. has been making millions by letting music piracy slide, a group of record labels told a Colorado federal judge Monday, and shouldn’t be able to avoid a claim now that it is vicariously liable for illegal downloading by its subscribers.

WHY THE US COPYRIGHT OFFICE CHOSE THE MECHANICAL LICENSING COLLECTIVE
via Billboard by Ed Christman on 7/5/2019

The Copyright Office said it chose the Mechanical Licensing Collective over the American Licensing Collective because the former fulfilled all the ...

ED SHEERAN COPYRIGHT TRIAL DELAYED UNTIL DECISION IN 'STAIRWAY TO HEAVEN' CASE IS REACHED
via Billboard by Bonnie Stiernberg on 7/5/2019

The jury trial for the plagiarism lawsuit against Ed Sheeran by Marvin Gaye co-writer Ed Townshend has been postponed until after a similar copyright ...
I'm a firm believer in the power of a live performance. A television broadcast or DVD doesn't capture the same thing as a theatrical production or a concert.

Holy whiplash segues, Batman. There I was reading a perfectly interesting article by Sarah Jeong on the potential hazards of selling one’s personal data, when […]

The US Copyright Office has chosen the Mechanical Licensing Collective as the designated licensee coordinator under the Music Modernization Act.

In light of the uncertainty surrounding Brexit, the UK should seek to implement the provisions of the EU Copyright Directive, said a panel of lawyers ...

As it prepares to take on the task of bringing forth amendments to Canada’s copyright legislation, the Canadian government will be digesting and assessing two recent Parliamentary reports dealing with copyright issues, Shifting Paradigms, the report of the Standing Committee
on Canadian Heritage and the INDU Committee Report, the report of the Standing Committee on Industry, Science and Technology.

PHOTOGRAPHER SUES UNIVERSAL MUSIC OVER SUN RA PHOTO via World IP review on 7/8/2019

American photographer Baron Wolman is suing Universal Music Group (UMG) for allegedly using his copyright-protected image of jazz musician Sun ...

RAPPER FAT JOE SUES INSURER FOR COVERAGE IN COPYRIGHT SUIT via Intellectual Property Law360 by Hannah Albarazi on 7/8/2019
URL: https://www.law360.com/ip/articles/1176092

The rapper Fat Joe sued Homeland Insurance Company of New York Monday in New York federal court, alleging that it wrongfully denied him coverage against a copyright infringement lawsuit by rapper Fly Havana that accused Fat Joe of denying him credit and compensation for the 2016 double platinum single "All the Way Up."

SECOND PRENDA 'PORN TROLL' ATTORNEY SENTENCED TO 5 YEARS via Intellectual Property Law360 by Bill Donahue on 7/9/2019
URL: https://www.law360.com/ip/articles/1176607

John Steele, an attorney who participated in an elaborate litigation scam over porn copyrights known as Prenda Law, was sentenced Tuesday to five years in prison.

BLOG HIT WITH COPYRIGHT SUIT OVER NFL CHIEF CLOWN IMAGE via Intellectual Property Law360 by Aaron Leibowitz on 7/9/2019
URL: https://www.law360.com/ip/articles/1176504

Sports and pop culture blog Barstool Sports Inc. was hit with a copyright infringement suit in New York federal court Monday alleging the site didn't have permission to repeatedly use a stylized image of National Football League Commissioner Roger Goodell donning a clown nose.
YOUTUBE UPDATES COPYRIGHT INFRINGEMENT CLAIMS SYSTEM
via World IP Review on 7/10/2019
URL: https://www.worldipreview.com/news/youtube-updates-copyright-infringement-claims-system-18326

YouTube has announced changes to its copyright claims process in a bid to protect creators and better manage infringement. Julian Bill, YouTube's...

YOUTUBE REVAMPS ITS COPYRIGHT CLAIM SYSTEM
via Billboard by Tatiana Cirisano on 7/10/2019
URL: https://www.billboard.com/articles/business/8519353/youtube-revamp-copyright-claim-system-requires-time-stamps

But in the past, YouTube hasn't required time-stamps to back up those claims, and even if creators made edits to remove the copyrighted content, the...

'PORN TROLL' LAWYER GETS 5-YEAR SENTENCE IN COPYRIGHT EXTORTION CASE
via Law.com by Raychel Lean on 7/10/2019

A federal judge in Minnesota sentenced 48-year-old Florida attorney John Steele to five years in prison and two years of supervised release Tuesday, for his role in extorting about $3 million from victims to settle bogus copyright infringement lawsuits over pornographic films.

LITIGIOUS COPYRIGHT ATTY HIT WITH LATEST SANCTIONS
via Intellectual Property Law360 by Bill Donahue on 7/10/2019
URL: https://www.law360.com/ip/articles/1177086

Richard Liebowitz, a New York attorney who has filed hundreds of copyright cases in recent years, was hit with sanctions Wednesday for disobeying court orders — a ruling that a judge said was part of "a growing body of law" devoted solely to punishing the litigious lawyer.

FOXTEL FILES LEGAL APPLICATION TO BLOCK PROXY WEBSITES
via ZDNet by Campbell Kwan on 7/11/2019
URL: https://www.zdnet.com/article/foxtel-files-legal-application-to-block-proxy-websites/

Prior to the amendments being made to Australia's copyright laws, Foxtel had already brought various legal actions to block websites that allegedly...
UNITED STATES TRADE REPRESENTATIVE LAUNCHES INVESTIGATION INTO FRANCE'S DIGITAL TAX FOR GOOD REASONS--AND SHOULD LOOK INTO COPYRIGHT LAW, TOO
via FOSS Patents by Florian Mueller on 7/11/2019
URL: http://www.fosspatents.com/2019/07/united-states-trade-representative.html

Yesterday the United States Trade Representative (USTR), Robert Lighthizer, announced, officially at the behest of President Donald Trump, the initiation of a Section 301 investigation (i.e., an analysis of whether a foreign government violates a trade agreement or acts unreasonably or discriminatorily against U.S. commercial interests) of France's digital services tax.

NOTORIOUS MANGA-MUA COPYRIGHT THIEF ARRESTED IN THE PHILIPPINES
via IP Pro by Ben Wodecki on 7/11/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6872

Manga-Mura is estimated to have caused JPY 320 billion ($2.9 billion) in damages, according to figures from the Association of Copyrights of Japan.

EFF SIDES WITH GOLIATH (AGAIN) IN OPPOSITION TO CASE ACT
via The Illusion of More by David Newhoff on 7/11/2019

Now that the bill creating a small claim provision for independent authors of works is making progress in Congress, EFF has pivoted to its standard […]

MESSAGE FOR SONGWRITERS: HOLD ON TIGHT TO YOUR COPYRIGHT
via NZ Herald by Sophie Smith on 7/11/2019
URL: https://www.nzherald.co.nz/entertainment/news/article.cfm?c_id=1501119&objectid=12248826

Paul McCartney once said to John Lennon before writing a song: "Let's write a swimming pool." He meant: "Let's write a song that will be so successful …
JUDGE SANCTIONS CONTROVERSIAL COPYRIGHT LAWYER, NOTES 'GROWING BODY OF LAW' ON WHEN TO PUNISH HIM
via ABA Journal by Debra Cassens Weiss on 7/11/2019

Liebowitz is a New York lawyer who has filed more than 700 copyrights ... his suit against NBCUniversal Media for alleged copyright infringement for ...

CASE TO WATCH: ORACLE, RIMINI TO SQUARE OFF ON $28.5M FEE AWARD IN COPYRIGHT CASE
via Reuters by Barbara Grzincic on 7/12/2019
URL: https://www.reuters.com/article/ip-oracle-fees/case-to-watch-oracle-rimini-to-square-off-on-28-5m-fee-award-in-copyright-case-idUSL2N24C1X1

Lawyers for software-support company Rimini Street will try to convince a federal appeals court on Friday that Oracle is entitled to no more than $2.1 ...

THE ROLE OF DICTIONARIES IN LAST TERM'S HIGH COURT DECISIONS
via Law360: Legal Industry by Bruce Wessel & Brian Weissenberg on 7/12/2019
URL: https://www.law360.com/legalindustry/articles/1177874

Of the 67 decisions from cases argued before the U.S. Supreme Court last term, 32 cite dictionaries.

CASE ACT WILL BE DEBATED BY THE SENATE ON JULY 18 2019
via The Authors Guild by Jennifer Simms on 7/12/2019

The Copyright Alternative in Small-Claims Enforcement (CASE) Act is scheduled to be debated by the U.S. Senate this Thursday, July 18. Now that the bill is starting to move, the tech sector is coming forward with its expected opposition. The Guild has sent a letter to the Senate confirming that all of these objections have …
USENET FILE-SWAPPING WAS ACCEPTABLE IN THE '80S – BUT NOT SO MUCH NOW: PIRATE PAIR SENT DOWN FOR ... via Register by Max Smolaks on 7/12/2019
URL: https://www.theregister.co.uk/2019/07/12/a_pair_of_usenet_pirates_get_66_months_behind_bar/s/

It started investigating the German Usenet scene back in 2015 and discovered that around 4.5 million people were downloading copyrighted movies, ...

RIMINI FIGHTS ORACLE INJUNCTION, $29M ATTY FEE WIN AT 9TH CIRC. via Intellectual Property Law360 by Dorothy Atkins on 7/12/2019
URL: https://www.law360.com/ip/articles/1177849

Rimini Street Inc. urged the Ninth Circuit on Friday to slash a $28.5 million attorney fee award and scrap an injunction barring the software support service from copying Oracle's software, arguing that it stopped infringing the software years ago and the injunction is "dramatic and broad."

"DARK HORSE" JURY WILL CONSIDER MYSPACE VIEWS DURING KATY PERRY COPYRIGHT TRIAL via Legal News & Entertainment Law - Hollywood, ESQ. | Hollywood Reporter by Ashley Cullins on 7/12/2019

Jurors will be asked to consider whether Myspace and YouTube plays are proof a Christian rap song was likely to have been heard by Katy Perry and her co-creators.

'DARK HORSE' JURY WILL CONSIDER MYSPACE VIEWS DURING KATY PERRY COPYRIGHT TRIAL via Billboard by Ashley Cullins on 7/13/2019

A copyright infringement trial over Katy Perry's "Dark Horse" is set to begin next week, and defendants want to ask potential jurors about their Myspace ...
KIM DOTCOM MAY BE GOING TO JAIL, BUT MEGA PIRACY STILL GOING STRONG
via Vox Indie by Ellen Seidler on 7/14/2019
URL: http://www.voxindie.org/kim-dotcom-may-be-going-to-jail-but-mega-piracy-still-going-strong/

It's been more than 7 years since cyberlocker piracy king Kim Dotcom was indicted for copyright infringement by U.S. authorities.

DEFENSE OF COPYRIGHT CLAIMS: DON’T LET YOUR PROOF GO POOF
via Intellectual Property Law360 by Evynne Grover on 7/15/2019
URL: https://www.law360.com/ip/articles/1177158

No matter how diligent media companies and other creators and publishers of content are in taking steps to ensure that content was independently created or properly licensed, and thus unlikely to give rise to a copyright violation, there is always a risk of a claim. Defense of these claims requires evaluating evidence that proves there was no wrongdoing.

HOW OUR VIEWS ON DIGITAL FILE SHARING AND PIRACY ARE CHANGING
via Forbes by Wayne Lonstein on 7/15/2019

This trend has continued, yet the legal regime governing copyright protection has not seen any major evolution in this arena. It would seem that, to a ...
family-friendly streaming service can't afford to pay a $62.4 million jury verdict against it and its piracy efforts won't stop without an injunction.

MARVEL BEATS COPYRIGHT SUIT OVER 'IRON MAN 3' MOVIE POSTER
via Intellectual Property Law360 by Bill Donahue on 7/15/2019
URL: https://www.law360.com/ip/articles/1178514

A Manhattan federal judge on Monday tossed out a lawsuit claiming Walt Disney's Marvel Entertainment ripped off the design of an "Iron Man 3" movie poster from an earlier comic book, ruling there was no proof that the studio had ever seen the comic.

'IN THE HEIGHTS' ACTRESS WANTS DEAL OK'D WITH VIRGIN FILM CO.
via Intellectual Property Law360 by Lauren Berg on 7/15/2019
URL: https://www.law360.com/ip/articles/1178631

A Broadway actress on Monday asked a California federal judge to sign off on a nearly $200,000 deal to resolve claims film company Virgin Produced used a rap she created without her permission in an airline safety video that went viral.

LITHUANIAN COURT BLOCKS RUSSIA'S SPUTNIK NEWS SITE OVER COPYRIGHT INFRINGEMENT
via IP Pro by Ben Wodecki on 7/16/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6893

The Lithuanian Radio and Television Commission (RTCL) has blocked Russian-state operated news agency and radio station Sputnik for copyright ...

DISNEY WARNS VIDANGEL WILL STILL INFRINGE COPYRIGHT DESPITE $62 MILLION COURT RULING
via IP Pro by Ben Wodecki on 7/16/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6894

Disney has warned that Christian streaming site VidAngel will not stop infringing copyrighted movies and tv shows, despite being ordered to pay $62 ...
MARVEL FINALLY BEATS A LAWSUIT OVER THE 'IRON MAN 3' POSTER
URL: https://www.hollywoodreporter.com/thr-esq/marvel-finally-beats-a-lawsuit-iron-man-3-poster-1224519

After four years in court, the studio convinces a judge there's no evidence of illicit copying and ample evidence of independent creation.

UNFRIENDLY COMPETITION: ILLEGAL STREAMING AND THE SPORTS INDUSTRY
via Global Innovation Policy Center by Sophia Robichaux on 7/16/2019
URL: https://www.theglobalipcenter.com/unfriendly-competition-illegal-streaming-and-the-sports-industry/

Online streaming has changed the way that consumers, especially sports fans, view content.

IP PROTECTION STILL ELUSIVE FOR DATA COMPILATIONS IN US AND EU
via Intellectual Property Law360 by Richard Assmus et al. on 7/16/2019
URL: https://www.law360.com/ip/articles/1176170

In many areas of research and development, businesses justifiably expect to be able to protect their innovations. In data projects, businesses today often pay dearly to license third-party data, collect data from their customers and business partners, organize that data into useful databases, improve the quality of the data and analyze those databases for business gain.

NETFLIX SETTLES COPYRIGHT FIGHT OVER FYRE FEST DOCUMENTARY
via Intellectual Property Law360 by Bill Donahue on 7/16/2019
URL: https://www.law360.com/ip/articles/1178776

Netflix has reached a settlement to end a copyright lawsuit filed against the streaming giant over footage used in a documentary about the failed Fyre Festival, according to court documents filed Tuesday.

LITHUANIA COURT BLOCKS RUSSIA-BACKED SPUTNIK OVER COPYRIGHT CLAIMS
via World IP Review on 7/17/2019

The Lithuanian arm of Russian news agency Sputnik is to be blocked in the country, the Lithuanian Radio and Television Commission has said.
THE PLAN TO MINE THE WORLD'S RESEARCH PAPERS
via Nature by Priyanka Pulla on 7/17/2019
URL: https://www.nature.com/articles/d41586-019-02142-1

He has spent decades publishing copyrighted legal documents, from building codes to court records, and then arguing that such texts represent ...

JAPANESE MUSIC INDUSTRY URGES APPLE TO STAMP OUT APP STORE PIRACY
via World IP Review on 7/17/2019

Groups representing the Japanese music industry have called for Apple to crack down on unauthorised music apps which infringe copyright.

JUSTICE STEVENS SOUGHT CAREFUL LIMITS ON REACH OF IP LAW
via Intellectual Property Law360 by Ryan Davis & Bill Donahue on 7/17/2019
URL: https://www.law360.com/ip/articles/1179473

Late Justice John Paul Stevens left his mark on intellectual property law with influential opinions that took a narrow view of the protection afforded by copyrights and patents, including a landmark ruling that effectively legalized the VCR.

THANK (OR BLAME) JOHN PAUL STEVENS FOR YOUR BINGE-WATCHING HABIT
via Washington Post by Charles Lane on 7/17/2019
URL: https://www.washingtonpost.com/opinions/2019/07/17/thank-or-blame-john-paul-stevens-your-binge-watching-habit/

Sensing, correctly, a threat to their absolute monopoly on copyrighted material, but unable to go after every homeowner in America, Hollywood took ...

GIGI HADID BEATS INSTAGRAM POST COPYRIGHT LAWSUIT
URL: https://www.hollywoodreporter.com/thr-esq/gigi-hadid-beats-instagram-post-copyright-lawsuit-1225393

The supermodel was sued for posting a picture of herself on social media, which has become a popular trend in copyright litigation.
SPorts Photogs' Claims Against Last Memorabilia Co. Tossed
via Intellectual Property Law360 by Ryan Boysen on 7/18/2019
URL: https://www.law360.com/ip/articles/1179815

A lawsuit launched by a pair of sports photographers against nearly two dozen companies and individuals accused of illegally reprinting and selling their photos has come to an end after a New York federal judge on Thursday dismissed claims against the last remaining defendant for lack of jurisdiction.

Fox Rothschild is Fully Out of the Porn Copyright Biz
via Intellectual Property Law360 by Bill Donahue on 7/18/2019
URL: https://www.law360.com/ip/articles/1179079

Following the exit of a partner who filed hundreds of cases over pornography, BigLaw giant Fox Rothschild LLP is no longer the most litigious copyright firm in the country, replaced by a New York attorney who was once labeled a "troll" by a federal judge.

Copyright Small Claims Court Bill Heads to Senate Floor
via Intellectual Property Law360 by Suzanne Monyak on 7/18/2019
URL: https://www.law360.com/ip/articles/1177362

A proposal to establish small claims courts to hear copyright disputes will head to the U.S. Senate floor after easily clearing the Senate Judiciary Committee on Thursday.

Nike Says Kawhi Leonard's Logo Suit Flouts Copyright Office
via Intellectual Property Law360 by Zachary Zagger on 7/18/2019
URL: https://www.law360.com/ip/articles/1179928

Nike Inc. shot back Wednesday at NBA Finals MVP Kawhi Leonard's federal lawsuit seeking to deny the shoe company the copyright to a "Claw" logo that Leonard says he designed based on his notably large hands, alleging the star player is trying to "re-write history" and "defraud" the U.S. Copyright Office.

Katy Perry Takes the Stand to Defend 'Dark Horse' Beat
via Intellectual Property Law360 by Lauren Berg on 7/18/2019
URL: https://www.law360.com/ip/articles/1179355

Katy Perry told a California federal jury Thursday that she's never heard the Christian rap song she's accused of ripping off to make her single "Dark Horse," kicking off an intellectual property trial over whether her songwriters listened to the rap before writing her hit.
NEXT STEPS IN THE MUSIC MODERNIZATION ACT
via Copyright: Creativity at Work by Karyn A. Temple on 7/19/2019
URL: https://blogs.loc.gov/copyright/2019/07/next-steps-in-the-music-modernization-act/

If asked, many of us would easily be able to identify our favorite song or tune, and often to even quote verbatim (e.g., sing embarrassingly off-key) the actual bridge, melody, or lyrics that made that song so special.

MODEL GIGI HADID ESCAPES COPYRIGHT SUIT OVER INSTAGRAM PIC
via Intellectual Property Law360 by Tiffany Hu on 7/19/2019
URL: https://www.law360.com/ip/articles/1180300

Supermodel Gigi Hadid has escaped a copyright suit against her for posting a paparazzi photo of herself on Instagram, after a New York federal judge on Thursday found that the company that owns the photo failed to obtain a registered copyright in the photo before bringing the suit.

KATY PERRY'S 'DARK HORSE' 'BORROWS' RAPPER'S BEAT, JURY TOLD
via Intellectual Property Law360 by Lauren Berg on 7/19/2019
URL: https://www.law360.com/ip/articles/1180186

Katy Perry's single "Dark Horse" uses a musical phrase that's substantially similar to that of a Christian rap song the pop singer is accused of ripping off, a California federal jury heard Friday in an intellectual property trial over whether Perry's songwriters listened to the rap before writing her hit.

HOW TO AVOID COPYRIGHT INFRINGEMENT
via The Illusion of More by David Newhoff on 7/21/2019
URL: http://illusionofmore.com/how-to-avoid-copyright-infringement/

After the CASE Act passed the Senate on Thursday last week, the critics hit “Publish” on the blogs they had written with the intent to […]

YOU CAN’T COPYRIGHT A COCKTAIL, SO WHAT’S A CREATIVE BARTENDER TO DO?
via Ars Technica by Nathan Mattise on 7/21/2019
URL: https://arstechnica.com/?p=1539447

Anyone who fancies themselves a fan of cocktails knows the names: the Manhattan, Old Fashioned, Martini, Margarita, on and on and on. In the drinks world, such recipes have stood the test of time and grown into industry icons over decades.
IT’S TIME FOR CONGRESS TO MODERNIZE THE UNITED STATES COPYRIGHT OFFICE  
via IPWatchdog.com | Patents & Patent Law by Senator Thom Tillis on 7/22/2019  
URL: https://www.ipwatchdog.com/2019/07/22/time-congress-modernize-united-states-copyright-office/id=111439/  

Every single day, millions of Americans enjoy the benefits of a robust copyright system that has been responsibly guided and carefully enacted by the U.S. Congress over the past two centuries. Indeed, only just recently, Congress updated the incredibly complex music provisions of the law, and we continue to have hearings on issues that show the deep regard of this Nation when it comes to incentivizing music, movies, books and art—works that speak to our values and progress as a Nation. By its...

TIKTOK TAKES LICENSING DISPUTE TO COPYRIGHT TRIBUNAL  
via World IP Review on 7/23/2019  

Chinese-owned social media app TikTok has referred a copyright dispute with three European music licensing bodies to the UK's Copyright Tribunal.

A QUESTION OF MORALS: THE U.S. APPROACH TO PLAGIARISM, ‘MORAL RIGHTS’, AND COPYRIGHT INFRINGEMENT  
via IPWatchdog.com | Patents & Patent Law by Dave Davis on 7/23/2019  

“It was a warm and pleasant day on the beaches of Rio de Janeiro. The waves lapped at the shore and far off a sea-bird raised its plaintive cries to the sky. She looked up from her book, thinking, ‘Wait, where have I read that that before? … ‘ ‘ Rather than an irksome daydream on the beach, an author’s nightmare is of having her works — or parts of them—lifted from her control and passed off as those of someone else. That is exactly the allegation that bestselling novelist Nora Roberts brings...

DR. LUKE DENIES SONG THEFT AS GUNSHOT RINGS OUTSIDE COURT  
via Intellectual Property Law360 by Lauren Berg on 7/24/2019  
URL: https://www.law360.com/ip/articles/1181410  

Songwriting titan Dr. Luke testified Tuesday that he'd never heard of the Christian rap song he and Katy Perry are accused of ripping off during a dramatic only-in-Hollywood day that saw a court security officer shoot a knife-wielding man outside the Los Angeles federal courthouse.
HEARST TO PAY LESS THAN $1K FOR TRUMP PHOTO INFRINGEMENT
via Intellectual Property Law360 by Bill Donahue on 7/24/2019
URL: https://www.law360.com/ip/articles/1181567

A federal judge on Wednesday hit Hearst with the lowest-possible damages for infringing a copyrighted image of President Donald Trump crashing a wedding, a ruling that came four months after the judge cautioned the plaintiff's attorneys against "overplaying their hands" during settlement talks.

GIGI HADID, HEROINE OF THE COPYRIGHT REVOLUTION? (GUEST COLUMN)
URL: https://www.hollywoodreporter.com/thr-esq/gigi-hadid-heroine-copyright-revolution-guest-column-1226378

Co-authorship of paparazzi pics could be a win-win for stars and photographers and bring an end to a rash of litigation arising from social media posts of unlicensed images.

APOLLO 11 AND THE COPYRIGHT CONNECTION
via Copyright: Creativity at Work by Steve Andreadis on 7/24/2019
URL: https://blogs.loc.gov/copyright/2019/07/apollo-11-and-the-copyright-connection/

Fifty years after astronauts returned to Earth from the moon, the Apollo 11 mission still grabs our attention and sparks our imagination.

U.S. COMPANIES HELP PIRACY WEBSITES EVADE THE LAW
via Vox Indie by Ellen Seidler on 7/24/2019

Web “security” provider Sucuri helps online pirates cloak criminal activities As piracy has evolved and enforcement efforts increase, pirate entrepreneurs have been forced to set up shop in far offshore to avoid the long arm of U.S. law. While not unexpected, what’s troubling is the fact that U.S. based companies assist these efforts by literally […]

THE GOOGLE TIMELINE OF SCANDAL AND STRIFE
via CreativeFuture by Justin Sanders on 7/24/2019
URL: https://creativefuture.org/google-scandal-timeline/

Since the 2016 Cambridge Analytica scandal, Facebook’s reputation has been on a much-deserved downward spiral, while Google has happily stepped back and watched Facebook grab the bulk of the bad news headlines.
KATY PERRY 'DARK HORSE' BEAT DIDN'T COPY RAP, NYU PROF. SAYS
via Intellectual Property Law360 by Lauren Berg on 7/24/2019
URL: https://www.law360.com/ip/articles/1181828

There are no significant similarities between Katy Perry's hit "Dark Horse" and the Christian rap song she's accused of plagiarizing, an NYU musicologist told a California federal jury Wednesday, saying the only shared patterns are so elementary they're found in many children's songs.

TIKTOK TURNS TO COPYRIGHT TRIBUNAL IN LICENSING DISPUTE WITH COLLECTING SOCIETIES
via Billboard by Richard Smirke on 7/25/2019
URL: https://www.billboard.com/articles/business/8523832/tiktok-copyright-tribunal-licensing-dispute-collecting-societies

Video-sharing app TikTok has applied to the British courts in an attempt to resolve one of several licensing battles it is currently engaged ... 

AZURE CONSULTANT TO SUE GOOGLE FOR... CACHING HIS WEBSITE? BREACH OF COPYRIGHT? EH?
via Register by Gareth Corfield on 7/25/2019
URL: https://www.theregister.co.uk/2019/07/25/azure_consultant_sues_google_for_caching_website/

London's High Court has given a Microsoft Azure consultant the go-ahead to sue Google because having the world's most widely used search engine ... 

FOX NEWS HIT WITH COPYRIGHT SUIT FOR USING AOC PHOTO
via Intellectual Property Law360 by Bill Donahue on 7/25/2019
URL: https://www.law360.com/ip/articles/1182108

Fox News Network is being sued for copyright infringement for allegedly using a photo of U.S. Rep. Alexandria Ocasio-Cortez in a television broadcast without the permission of the photographer.
LITIGIOUS COPYRIGHT ATTY WANTS TO UNDO LATEST SANCTIONS
via Intellectual Property Law360 by Emma Cueto on 7/25/2019
URL: https://www.law360.com/ip/articles/1181982

Prolific New York copyright attorney Richard Liebowitz is asking a federal court to withdraw a recent sanctions order against him in a case against NBC, saying that it was invalid because the defendant had already waived its right to collect attorney fees.

A COMPLETE GUIDE TO PROTECTING IMAGES FROM PHOTO THEFT

One of the first and easiest steps any photographer can take in protecting images against photo theft is to lower the resolution and size of their photos when posting them online. The Copytrack Global Infringement Report found that photos with a 16:9 aspect ratio were most likely to be stolen, while the most popular resolution for image theft in 2018 was Full HD, or 1920 x 1080 pixels.

KATY PERRY’S FATE WITH JURY AS ‘DARK HORSE’ IP FIGHT WRAPS
via Intellectual Property Law360 by Lauren Berg on 7/25/2019
URL: https://www.law360.com/ip/articles/1182137

Counsel for songwriters accusing Katy Perry of infringing their Christian rap beat told a California federal jury during closing arguments Thursday the tune was sufficiently complex for copyright protection, and pointed to millions of YouTube hits to show Perry and producer Dr. Luke could have heard it before writing "Dark Horse."

MACMILLAN ANNOUNCES NEW LIBRARY LENDING TERMS FOR EBOOKS
via The Authors Guild on 7/26/2019
URL: https://www.authorsguild.org/industry-advocacy/macmillan-announces-new-library-lending-terms-for-ebooks/

In response to the well-recognized impact of library e-lending on book sales, Macmillan Publishers is now changing the terms on which it sells ebooks to libraries. Since readers are able to borrow ebooks from libraries around the country (and in some cases, around the world), book sales—and authors’ royalties—have fallen. Last year, Macmillan tested a …
MEAT LOAF SETTLES 'I'D DO ANYTHING FOR LOVE' COPYRIGHT BATTLE
via Intellectual Property Law360 by Tiffany Hu on 7/26/2019
URL: https://www.law360.com/ip/articles/1182065

Singer Meat Loaf has reached a deal to end a copyright dispute over his hit single “I’d Do Anything For Love,” resolving allegations that he stole the tune more than 24 years ago.

LIL NAS X, SONY MUSIC HIT WITH $25M LAWSUIT OVER "CARRY ON" SAMPLE

The suit claims the "Old Town Road" rapper sampled an '80s R&B song without permission.

BIPARTISAN BILL WOULD OVERHAUL RETRANSMISSION CONSENT RULES
via Intellectual Property Law360 by Anne Cullen on 7/26/2019
URL: https://www.law360.com/ip/articles/1182407

A bipartisan pair of House lawmakers have floated legislation that would revamp the nearly three-decade-old regulations governing retransmission consent, drawing applause from the cable industry and disapproval from broadcasters.

NBA STAR'S NIKE SUIT COULD HELP ATHLETES CLAW BACK IP RIGHTS
via Intellectual Property Law360 by Zachary Zagger on 7/26/2019
URL: https://www.law360.com/ip/articles/1181658

An acrimonious legal fight between Nike and Kawhi Leonard over who owns a claw logo based on the NBA star's notably large hands could spur sponsors and athletes to be clearer about the ownership of specific logos and marks in contract negotiations as athletes increasingly look to develop their own personal brands.

EU TOP COURT RULES SAMPLING CAN INFRINGE COPYRIGHT
via Politico by Laura Kayali on 7/29/2019
URL: https://www.politico.eu/article/eu-top-court-rules-sampling-can-infringe-copyright/

According to the Court of Justice of the European Union, unauthorized inclusion of a sound sample can infringe the rights of the phonogram producer,...
LEGO WINS COPYRIGHT DISPUTE AGAINST BRITISH COMPETITOR
via World IP Review on 7/29/2019

It also said it is “beyond dispute” that Best-Lock had access to Lego's copyrighted work. The court referred to evidence of a 2012 interview of ...

COPYRIGHT PROTECTION OF MILITARY REPORTS IS NATIONAL ISSUE, CJEU SAYS
via World IP Review on 7/29/2019

Europe's highest court has delivered an opinion in a copyright dispute concerning confidential German military reports that were published by a ...

TOP EU COURT BOLSTERS MUSIC COPYRIGHT PROTECTION
via Courthouse News Service by Kevin Lessmiller on 7/29/2019
URL: https://www.courthousenews.com/top-eu-court-bolsters-music-copyright-protection/

German courts have found copyright infringement, overturned a judgment of infringement and found the shortness of the sample to be a factor. Finally ...

VIDANGEL FIGHTS INJUNCTION AFTER $62.4M INFRINGEMENT VERDICT
via Intellectual Property Law360 by Ryan Boysen on 7/29/2019
URL: https://www.law360.com/ip/articles/1182819

Bankrupt VidAngel Inc. is fighting back against a request by Walt Disney and other major entertainment studios for a permanent injunction that would prevent it from playing sanitized versions of their films, saying it had already changed its business model before that behavior led to a $62.4 million jury verdict.

KATY PERRY COPIED CHRISTIAN RAP FOR 'DARK HORSE,' JURY SAYS
via Intellectual Property Law360 by Lauren Berg on 7/29/2019
URL: https://www.law360.com/ip/articles/1182537

Katy Perry and her songwriting team copied a musical phrase from a 2008 Christian rap song for the pop star's 2013 hit single "Dark Horse," a California federal jury held Monday, finding the tunes are substantially similar and setting the stage for a trial on damages.
KATY PERRY'S "DARK HORSE" COPIED CHRISTIAN RAP SONG, JURY FINDS

After a weeklong trial, a California jury has concluded that the pop singer's song is a copyright infringement.

THE PEOPLE THE CASE ACT CRITICS DON'T WANT TO MENTION
via The Illusion of More by David Newhoff on 7/29/2019

“We are all authors now.” This has long been a talking point of anti-copyright organizations. I have credited it to Gigi Sohn, co-founder and former […]

INSTAGRAM'S ORIGINAL CONTENT CREATORS SPEAK OUT ABOUT THEIR COPYRIGHT FIGHT
via Forbes by Heather Leighton on 7/29/2019

Last week, Instagram stunned at least 30 meme accounts, with a combined 33 million following, after shutting down their accounts for allegedly ...

ARTISTS, SCHOLARS TAKE COPYRIGHT OFFICE ON A CREATIVE ADVENTURE
via Copyright: Creativity at Work by Anandashankar Mazumdar on 7/30/2019
URL: https://blogs.loc.gov/copyright/2019/07/artists-scholars-take-copyright-office-on-a-creative-adventure/

I grew up with adventures on my mind.

ARTIST SUES ELLEN DEGENERES, WALMART OVER "LOVE" LOGO ON EV1 APPAREL LINE
via Legal News & Entertainment Law - Hollywood, ESQ. | Hollywood Reporter by Ashley Cullins on 7/30/2019

"Nothing is more antithetical to a street artist’s credibility than association with mass-market consumerism — of which Walmart is the epitome."
ELLEN-BRANDED WALMART CLOTHES STOLE ‘LOVE’ LOGO, ARTIST SAYS
via Intellectual Property Law360 by Craig Clough on 7/30/2019
URL: https://www.law360.com/ip/articles/1183239

Walmart and Ellen DeGeneres were targeted in a lawsuit filed in California federal court Monday by a street artist who claims his signature logo was ripped off for a DeGeneres-branded clothing line sold by the retail giant, leading his fans to believe he had “sold out.”

KATY PERRY OWES CUT OF $41M 'DARK HORSE' REVENUE, JURY TOLD
via Intellectual Property Law360 by Lauren Berg on 7/30/2019
URL: https://www.law360.com/ip/articles/1183473

Katy Perry, her songwriters and Capitol Records owe a cut of the $41 million they made from "Dark Horse" as fair compensation for copying a musical phrase in a Christian rap song, a California federal jury heard Tuesday during opening statements of a damages trial following Monday's infringement verdict.

ABC, CBS, FOX AND NBC SUE OVER LOCAST, A FREE STREAMING APP
URL: https://www.hollywoodreporter.com/thr-esq/abc-cbs-fox-nbc-sue-locast-a-free-streaming-app-1228244

The broadcasters aim to shut down a service that has attracted tens of thousands of users and is threatening billions of dollars in retransmission contracts.

TV NETWORKS SUE AEREO-LIKE STREAMING SERVICE
via Intellectual Property Law360 by Bill Donahue on 7/31/2019
URL: https://www.law360.com/ip/articles/1183938

The major television networks filed a copyright lawsuit Wednesday over a streaming service called Locast that retransmits broadcast signals to internet users, setting the stage for a potential sequel to the cord-cutting legal battle over Aereo.

PHOTOGRAPHER SECURES PARTIAL COPYRIGHT VICTORY OVER HAWAIIAN SPRINGS PHOTO
via IP Pro by Ben Wodecki on 7/31/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=6975&

A Hawaiian landscape photographer has secured a partial victory in a copyright infringement dispute with bottled water company Hawaiian Springs.
CASE ACT GAINS MOMENTUM
via The Authors Guild by Jennifer Simms on 7/31/2019
URL: https://www.authorsguild.org/industry-advocacy/case-act-gains-momentum/

As part of the Guild’s lobbying efforts for the Copyright Alternative in Small-Claims Enforcement (“CASE”) Act of 2019, Executive Director Mary Rasenberger, Guild President Doug Preston, Authors Guild Foundation President Laura Pedersen, and Council Member W. Ralph Eubanks met with several dozen members of Congress and staffers. They were part of a creator “fly-in” on …

WHAT THE EFF – THEY’RE AT IT AGAIN!
via CreativeFuture by Justin Sanders on 7/31/2019
URL: https://creativefuture.org/eff-case-act/

The Electronic Frontier Foundation (EFF) is at it again – doing the bidding of their largest benefactors to the detriment of millions of American creatives who are looking toward their representatives in Congress to help them survive the scourge of digital piracy.

CBS, NBC, ABC AND FOX SUE TO STOP LOCAST, A FREE STREAMING SERVICE
via NYT > Media & Advertising by Edmund Lee on 7/31/2019

America’s four major broadcast networks joined forces on Wednesday to sue a little-known nonprofit organization that streams television signals at no charge, arguing that the service should be shut down for copyright violations and for failing to compensate them.

TV NETWORKS SUE NONPROFIT TO KILL FREE TV SERVICE
via Ars Technica by Jon Brodkin on 7/31/2019
URL: https://arstechnica.com/?p=1544045

The major broadcast networks today sued the makers of Locast, a nonprofit organization that provides free online access to broadcast TV stations.
On Tuesday, the Senate Judiciary Committee’s Subcommittee on Intellectual Property convened an oversight hearing of the U.S. Copyright Office featuring testimony from Karyn Temple, the Register of Copyrights and Director of the Copyright Office.
KATY PERRY'S 'DARK HORSE' COSTS DIMINISHED PROFITS, JURY TOLD
via Intellectual Property Law360 by Lauren Berg on 8/1/2019
URL: https://www.law360.com/ip/articles/1183950

The cost to promote Katy Perry's "Dark Horse" diminished any profits Capitol Records made from the hit single, a label executive told a California federal jury Wednesday in the damages portion of a copyright trial, while counsel for the rap artists suing Perry pointed out some of those costs included thousands of dollars for her hair styling.

3RD CIRC. RULES BANANA COSTUME IS COPYRIGHTED
via Intellectual Property Law360 by Bill Donahue on 8/1/2019
URL: https://www.law360.com/ip/articles/1184411

The Third Circuit ruled Thursday that a New Jersey costume maker could protect a banana costume with copyright law, saying the company was entitled to the "fruits of its intellectual labor."

KATY PERRY, OTHERS HIT WITH $2.7M 'DARK HORSE' IP VERDICT
via Intellectual Property Law360 by Lauren Berg on 8/1/2019
URL: https://www.law360.com/ip/articles/1184417

Katy Perry, her songwriters and Capitol Records must pony up a combined $2.7 million as fair compensation for copying a musical phrase in a Christian rap song for their own hit single "Dark Horse," a California federal jury ordered Thursday, three days after returning an infringement verdict.

CJEU BACKS KRAFTWERK IN MUSIC SAMPLING COPYRIGHT CASE
via IPWatchdog.com | Patents & Patent Law by James Nurton on 8/1/2019
URL: https://www.ipwatchdog.com/2019/08/01/cjeu-backs-kraftwerk-music-sampling-copyright-case/id=111807/

The Court of Justice of the European Union (CJEU) has ruled that a phonogram producer can prevent another person from taking a sample, even if it is very short, and including it in another phonogram, “unless that sample is included in a modified form unrecognisable to the ear.” The Court was interpreting certain provisions of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the...
KORN, TOOL ASK TO WEIGH IN ON ZEPPELIN'S 9TH CIRC. REHEARING
via Intellectual Property Law360 by Dorothy Atkins on 8/1/2019
URL: https://www.law360.com/ip/articles/1184216

Sean Lennon, musicians from Korn and Tool, and 120 other artists have asked the full Ninth Circuit to let them weigh in on a high-profile copyright lawsuit accusing Led Zeppelin of stealing the intro to "Stairway to Heaven" from an obscure song, saying its decision could impact artists around the world.

COPYRIGHT SMALL CLAIMS COURT RAISES BIG QUESTIONS
via Intellectual Property Law360 by Bill Donahue on 8/1/2019
URL: https://www.law360.com/ip/articles/1184398

Legislation to create a small claims court for copyright law could be gaining steam after winning approval last month from a Senate committee, but some copyright experts aren't so sure the new system would function as advertised.

KATY PERRY, CAPITOL RECORDS HIT WITH $2.78M IN DAMAGES OVER "DARK HORSE" TRIAL
URL: https://www.hollywoodreporter.com/thr-esq/katy-perry-dr-luke-hit-278m-damages-dark-horse-trial-1228548

A jury earlier this week found Perry's hit infringed on Christian rapper Flame's "Joyful Noise."

NBC PRESSES FOR SANCTIONS AGAINST LITIGIOUS COPYRIGHT ATTY
via Intellectual Property Law360 by Kevin Penton on 8/1/2019
URL: https://www.law360.com/ip/articles/1184492

NBC urged a New York federal court Thursday not to undo a sanctions order against prolific copyright attorney Richard Liebowitz, saying that settlements between parties may not revoke a judge's authority to punish lawyers.

THIRD CIRCUIT AFFIRMS COPYRIGHT FOR BANANA COSTUME
via World IP Review on 8/2/2019

A US federal court has ruled that elements of a costume are protectable by copyright, in a case involving a dispute over rival banana costumes.
VA. FILM FEST REACHES DEAL TO END 'GOOD FAITH' COPYRIGHT SUIT
via Intellectual Property Law360 by Khorri Atkinson on 8/2/2019
URL: https://www.law360.com/ip/articles/1184773

The organizer of a Virginia film festival has reached a deal to resolve a federal lawsuit by a photographer who accused it of infringing his copyrighted image of Washington, D.C., to promote the event.

THE PHILADELPHIA PHILLIES SUE TO KEEP THEIR MASCOT FROM BECOMING A FREE AGENT

The firm that helped design the "Phanatic" attempts to reclaim rights with a notice of copyright termination.

PHILLIES SUE TO STOP MASCOT FROM BECOMING 'FREE AGENT'
via Intellectual Property Law360 by Bill Donahue on 8/2/2019
URL: https://www.law360.com/ip/articles/1184925

Major League Baseball’s Philadelphia Phillies filed a preemptive copyright lawsuit Friday after the creators of the team’s Phanatic mascot threatened to make the beloved character a “free agent.”

2ND CIRC. REVIVES COPYRIGHT SUIT FROM FILM CRITIC’S ESTATE
via Intellectual Property Law360 by Britain Eakin on 8/2/2019
URL: https://www.law360.com/ip/articles/1184345

The Second Circuit on Thursday ruled that works produced by the late film critic Stanley Kauffmann belong to his estate, meaning it can now sue a New York college that published an anthology of his film reviews.

PHILLIES FILE SUIT TO KEEP THEIR BELOVED MASCOT PHILLIE PHANATIC
via Courthouse News Service by Levi Lass on 8/3/2019
URL: https://www.courthousenews.com/phillies-file-suit-to-keep-their-beloved-mascot-phillie-phanatic/

According to the 39-page complaint, the letter sent by Harrison/Erickson claimed the design company had “created the copyrighted character.
512(F) CLAIM TRIGGERS ANTI-SLAPP LAW & A FEE SHIFT–COMPLEX V. X17
via Technology & Marketing Law Blog by Eric Goldman on 8/3/2019

The plaintiff, Complex, runs a YouTube channel with 2.4M subscribers.

PRINCETON TRUSTEES DERIDE CLAIMS UNIVERSITY STOLE AI DATA
via Intellectual Property Law360 by Jeannie O'Sullivan on 8/5/2019
URL: https://www.law360.com/ip/articles/1185274

The trustees of Princeton University urged a California federal judge to toss a 3-D imaging firm's suit alleging the Ivy League school and Facebook stole its images for artificial intelligence projects, arguing Friday that the materials at issue aren't even copyrighted.

COPYRIGHT PROTECTION FOR BANANA COSTUMES IS, UH, BANANAS–SILVERTOP V. KANGAROO
via Technology & Marketing Law Blog by Eric Goldman on 8/6/2019

The Third Circuit has held that a banana costume qualified for copyright protection (the blog reference to the district court opinion).

POLLING DATA AND COPYRIGHT: WHO WILL WIN THE NEXT ELECTION?
via Hugh Stephens Blog on 8/6/2019

Who will win the next election?

CLARIFYING THE U.S. APPROACH TO COPYRIGHT AND PLAGIARISM
via IPWatchdog.com | Patents & Patent Law by Bob Zeidman on 8/6/2019
URL: https://www.ipwatchdog.com/2019/08/06/clarifying-u-s-approach-copyright-plagiarism/id=111892/

Copyright is one of the most important intellectual property rights for any individual in America. The power to grant protection of copyrights “by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” is given to Congress in Article 1, Section 8 of the U.S. Constitution. As an author and computer programmer, I find
that many of my colleagues misunderstand these rights and the protections that they afford. For this reason, I think...

A NOVEL THEORY OF IMPLIED COPYRIGHT LICENSE IN PAPARAZZI PICS
via Intellectual Property Law360 by Annemarie Bridy on 8/6/2019
URL: https://www.law360.com/ip/articles/1185445

Supermodel and social media influencer Gigi Hadid recently won a motion to dismiss a lawsuit alleging that she infringed a paparazzo’s copyright in a photo of her by posting it to Instagram without his permission.[1] The judge dismissed the case not on the merits of the infringement claim but because the plaintiff, copyright holder Xclusive-Lee Inc., failed to register the copyright before filing.

OLD SPICE FACING COPYRIGHT FIGHT OVER WHISTLE JINGLE
via Intellectual Property Law360 by Tiffany Hu on 8/6/2019
URL: https://www.law360.com/ip/articles/1185566

A composer who says he created the famous Old Spice whistling jingle is accusing Procter & Gamble of using a copyright-infringing tune to promote its products after their contract ended.

OPENING SHOTS FIRED IN PIRATE SHIPWRECK COPYRIGHT FIGHT
via Intellectual Property Law360 by Bill Donahue on 8/6/2019
URL: https://www.law360.com/ip/articles/1185750

A filmmaker urged the U.S. Supreme Court on Tuesday to rule that he can sue North Carolina for using his footage of a famous pirate shipwreck, warning that artists are “helpless as states continue to trample federal copyrights.”

COUNTRY RAPPER SHOT PAINTINGS WITH ASSAULT RIFLE, ARTIST SAYS
via Intellectual Property Law360 by Hailey Konnath on 8/6/2019
URL: https://www.law360.com/ip/articles/1185482

Country music performer Ryan Edward Upchurch — known by his fans simply as "Upchurch" — uploaded a video of himself shooting an artist's paintings with an assault rifle, scrawled an insult directed toward the artist on one of the paintings, and then auctioned the works off, according to a suit filed Monday in Florida federal court.
TV NETWORKS’ SUIT TEES UP BATTLE OVER NONPROFIT STREAMING
via Intellectual Property Law360 by Kelcee Griffins on 8/7/2019
URL: https://www.law360.com/ip/articles/1185914

The top four broadcast networks recently placed streaming startup Locast in their crosshairs, teeing up what’s likely to be a lengthy legal battle over whether the service can carry local stations without paying them retransmission consent fees.

DOJ URGED TO LEAVE INTACT MUSIC LICENSING ORDERS
via Intellectual Property Law360 by Anne Cullen on 8/7/2019
URL: https://www.law360.com/ip/articles/1186221

A dozen free market organizations pressed the U.S. Department of Justice on Wednesday to re-up sunsetting consent decrees governing music licensing groups BMI and ASCAP, arguing the "inherently anti-competitive" music industry still needs these regulations to keep the playing field even.

HBO CAN'T ESCAPE COPYRIGHT CLAIMS IN SLENDERMAN IP SUIT
via Intellectual Property Law360 by Tiffany Hu on 8/7/2019
URL: https://www.law360.com/ip/articles/1185745

HBO must face some accusations that it poached an artist's painting for the fictional character Slenderman in its 2016 documentary about the attempted murder of a child, a New York federal judge ruled Tuesday.

DR. SEUSS ESTATE TELLS 9TH CIRC. 'STAR TREK' MASHUP NOT FAIR USE
via Intellectual Property Law360 by Dave Simpson on 8/7/2019
URL: https://www.law360.com/ip/articles/1185901

A mashup of Dr. Seuss and "Star Trek" was not protected by copyright law's fair use doctrine because it did not transform the famed author's work, and instead merely "aped" it, Seuss' estate told the Ninth Circuit in a bid to revive an infringement suit.

OPEN SOURCE HAS NEVER BEEN STRONGER
via ITworld News by Matt Asay on 8/8/2019
URL: https://www.itworld.com/article/3410758/open-source-has-never-been-stronger.html

There has perhaps never been so much angst over whether open source software development is sustainable, and yet there has never been clearer evidence that we’re in the golden age of open source.
SONG OWNER GETS 3RD SHOT TO SUE ESPN, CHICK-FIL-A OVER AD
via Intellectual Property Law360 by Tiffany Hu on 8/8/2019
URL: https://www.law360.com/ip/articles/1186467

A Texas federal judge has tossed out a copyright lawsuit against ESPN Inc. and Chick-fil-A because the accuser cited the wrong version of the song in its complaint, but is also giving the plaintiff a third shot to refile the case.

CALIF. MUSEUM ACCUSED OF COPYING DIGITAL ART EXHIBITIONS
via Intellectual Property Law360 by Tiffany Hu on 8/9/2019
URL: https://www.law360.com/ip/articles/1186984

A Japanese art collective called TeamLab has accused a new Los Angeles-based museum of ripping off an experiential digital exhibition and passing it off as its own, saying that the new museum has even copped to using some of TeamLab’s images on social media.

LITIGIOUS COPYRIGHT ATTY CAN'T UNDO LATEST SANCTIONS
via Intellectual Property Law360 by Bill Donahue on 8/9/2019
URL: https://www.law360.com/ip/articles/1186951

A Manhattan federal judge isn't going to overturn a sanctions order against a copyright attorney who has filed hundreds of copyright cases in recent years, ruling Thursday that a challenge to the fine was "both too little and too late."

'GREASE' PARODY WRITERS SAY FAIR USE IS THE ONE THEY WANT
via Intellectual Property Law360 by Mike LaSusa on 8/9/2019
URL: https://www.law360.com/ip/articles/1187359

The Georgia-based comedians behind "Vape: The Musical" asked a New York federal court on Friday to declare their play eligible for protection from copyright infringement claims by the creators of "Grease," claiming their story is a parody of the iconic theatrical production.

CYNDI LAUPER AGREES TO SETTLE 'KINKY BOOTS' COPYRIGHT SUIT
via Intellectual Property Law360 by Hailey Konnath on 8/9/2019
URL: https://www.law360.com/ip/articles/1187468

Cyndi Lauper has agreed to settle a copyright lawsuit brought by pop singer Benny Mardones, who's claiming Lauper copied lyrics and music from his hit single "Into the Night" for a song in her Broadway musical "Kinky Boots."
ENTREPRENEUR IN £20M LEGAL FIGHT WITH GOOGLE OVER COPYRIGHT
via Times by Mark Bridge on 8/11/2019
URL: https://www.thetimes.co.uk/edition/news/entrepreneur-in-20m-legal-fight-with-google-over-copyright-kg258mzx1

An internet entrepreneur who believes Google's search algorithm cost him £20 million is taking on the tech giant in a legal battle over copyright.

MLB HIT WITH IP SUIT OVER BREWERS' '90S NIGHT WILL SMITH PHOTO
via Intellectual Property Law360 by Ryan Boysen on 8/12/2019
URL: https://www.law360.com/ip/articles/1187761

A German photographer is suing Major League Baseball's in-house media company for copyright infringement in New York federal court over a 2016 promotion that featured then-Brewers pitcher Will Smith reenacting a series of "Fresh Prince of Bel Air" photos featuring the actor of the same name.

$200K FEE AFTER $5K DEAL 'MAKES NO SENSE,' ILL. JUDGE SAYS
via Intellectual Property Law360 by Lauraann Wood on 8/12/2019
URL: https://www.law360.com/ip/articles/1187714

An Illinois federal judge on Friday granted photo agency FameFlynet Inc. $10,500 of its request for $241,000 in attorneys fees after settling a copyright suit for $5,000, saying awarding anything more after two-and-a-half years of avoidable litigation “makes no sense.”

'GUY WITH IPHONE' WANTS $60K IN ATTY FEES AFTER $750 TRIAL WIN
via Intellectual Property Law360 by Hailey Konnath on 8/12/2019
URL: https://www.law360.com/ip/articles/1187603

The man who took a viral photo of President Donald Trump crashing a wedding has asked for $60,000 in attorney fees after a New York federal court awarded him just $750 — the lowest-possible damages — for successfully showing Hearst infringed his copyrighted image.

A SMALL CLAIMS PROGRAM FOR COPYRIGHT VIOLATIONS? IT'S AN IDEA THE ABA SUPPORTS
via ABA Journal by Amanda Robert on 8/13/2019
URL: http://www.abajournal.com/news/article/resolution-110a

The ABA supports legislation that would create a new copyright small claims program within the U.S. Copyright Office to adjudicate copyright small ...
MEDIA INDUSTRY SLAMS 'BUNGLED' SEUSS-TREK MASHUP RULING
via Intellectual Property Law360 by Dani Kass on 8/13/2019
URL: https://www.law360.com/ip/articles/1187934

A California federal court "bungled the fundamentals of copyright law" when it said a mashup of Dr. Seuss and Star Trek was protected under fair use, movie studios and others are warning the Ninth Circuit.

YOUTUBE’S CONTENT ID IS GREAT COPYRIGHT PROTECTION BUT NOT FOR THOSE WHO NEED IT MOST (WHICH IS MOST OF US)
via CreativeFuture by Justin Sanders on 8/14/2019
URL: https://creativefuture.org/youtube-content-id/

Meet Mitchell Block. He is the owner of Direct Cinema Limited, a production and distribution company specializing in under-the-radar documentaries, shorts, and other independent films that are only available through the company’s catalog.

COPYRIGHT CAVALRY SUPPORTS PIRATE SHIP PHOTOG AT HIGH COURT
via Intellectual Property Law360 by Dani Kass on 8/14/2019
URL: https://www.law360.com/ip/articles/1188169

A slew of high-profile groups have jumped into a U.S. Supreme Court case over whether copyright owners can sue state governments for infringement, arguing that Congress had the right to override sovereign immunity and that states need to be held accountable.

FLEET OF COPYRIGHT GROUPS SUPPORT PIRATE SHIP PHOTOGRAPHER BEFORE SCOTUS
via World IP Review on 8/15/2019

Photographer and videographer Allen owns and commercialises copyrights in videos and still images of the wreck and salvage efforts of Queen ...

A DISTRICT COURT SPLIT ON CURING COPYRIGHT TIMING DEFECTS
via Intellectual Property Law360 by Adam Wolek & Rashad Simmons on 8/15/2019
URL: https://www.law360.com/ip/articles/1188726

Before the U.S. Supreme Court's holding in Fourth Estate Public Benefit Corp. v. Wall-Street.com LLC, [1] many circuit courts allowed plaintiffs to file copyright suits after merely filing copyright applications, without having to wait until the registrations actually issued. But
then the Supreme Court in Fourth Estate held that plaintiffs had to wait until they received the copyright registrations (or denials) to sue. However, the Supreme Court did not address whether a plaintiff, who filed suit before obtaining a copyright registration, may cure that defect by amending the complaint after it received the registration.

'CONFUSION & INCONSISTENCY': SPOTIFY, AMAZON MAKE CASE AGAINST ROYALTY BOARD RATE DETERMINATION
via Billboard by Ed Christman on 8/15/2019
URL: https://www.billboard.com/articles/business/8527519/digital-services-appeal-copyright-royalty-board-rate-determination-nmpa

Spotify, Amazon Music, Google Play and Pandora have filed their appeal of the Copyright Royalty Board's mechanical rate determination, which will ...

GOOGLE, SPOTIFY URGE DC CIRC. TO UNDO ROYALTY BOARD'S RATES
via Intellectual Property Law360 by Dani Kass on 8/15/2019
URL: https://www.law360.com/ip/articles/1189219

Pandora, Google, Spotify and Amazon have officially urged the D.C. Circuit to undo a Copyright Royalty Board ruling ordering streaming services to pay more in so-called mechanical royalties to songwriters and publishers.

APPLE SAYS SOFTWARE CO. COPIED 'EVERYTHING' IN ITS DEVICES
via Intellectual Property Law360 by Hailey Konnath on 8/15/2019
URL: https://www.law360.com/ip/articles/1189348

Apple Inc. on Thursday hit virtualization software company Corellium with a copyright infringement suit ripping into the developer's "illegal replication" of "everything" that makes up Apple's copyrighted operating system and applications.

YOUTUBE WILL STOP LETTING COPYRIGHT HOLDERS SEIZE REVENUE VIA MANUAL CLAIMS ON VERY SHORT ... 
via Variety by Todd Spangler on 8/16/2019

However, copyright holders will still have the ability to block or disable ... YouTube also pointed out that if creators feel their use of copyrighted material ...
PHOTOGRAPHER SUES ALEXANDER WANG OVER DUA LIPA SNAP
via World IP Review on 8/16/2019

A New York City-based photographer is suing fashion house Alexander Wang for using his copyright-protected work without a licence. In a complaint ...

THE TRUMP ADMINISTRATION PICKS A SIDE IN LED ZEPPELIN'S 'STAIRWAY TO HEAVEN' COPYRIGHT FIGHT
URL: https://www.hollywoodreporter.com/thr-esq/trump-administration-picks-a-side-led-zeppelins-stairway-heaven-copyright-fight-1232537

God save the Queen!

A CASE OF BANANAS: COSTUME COPYRIGHT INFRINGEMENT
via National Law Review by Gene Markin on 8/16/2019
URL: https://www.natlawreview.com/article/case-bananas-costume-copyright-infringement

Not all bananas are created equally. Rasta Imposta, a retail wholesaler of Halloween costumes, filed a claim for copyright and trade dress ...

US SIDES WITH LED ZEPPELIN IN 'STAIRWAY' COPYRIGHT FIGHT
via Intellectual Property Law360 by Bill Donahue on 8/16/2019
URL: https://www.law360.com/ip/articles/1189359

The federal government has jumped into a closely watched copyright case over "Stairway to Heaven," urging an appeals court to side with Led Zeppelin — and not to give the band’s accuser a “monopoly on a common musical convention.”

9TH CIRC. KEEPS ORACLE'S RIMINI INJUNCTION, $29M ATTY FEE WIN
via Intellectual Property Law360 by Dave Simpson on 8/16/2019
URL: https://www.law360.com/ip/articles/1189754

The Ninth Circuit said Friday that Rimini Street Inc. still must pay Oracle Corp. $28.5 million in attorneys' fees and largely affirmed an injunction that bars the software support service company from copying Oracle's software identified in the copyright infringement case.
DO YOUR YOUTUBE VIDEOS FEATURE NINTENDO MUSIC? MIGHT WANT TO CHANGE THAT
via PC Mag by Michael Kan on 8/16/2019

Earlier this week, the YouTube Channel "GilvaSunner" reported receiving 115 copyright complaints for videos that played music tracks from various ...

HOW GOOGLE HAS DESTROYED THE LIVES OF REVENGE PORN VICTIMS
via New York Post by Carrie Goldberg on 8/17/2019
URL: https://nypost.com/2019/08/17/how-google-has-destroyed-the-lives-of-revenge-porn-victims/

One of the few rules on the Internet is the sanctity of copyrights. Yet, when it comes to porn, Google sometimes defies its own terms of service and ...

JUDGE TOSSES 'NIGHTCRAWLER' COPYRIGHT LAWSUIT
URL: https://www.hollywoodreporter.com/thr-esq/judge-tosses-nightcrawler-copyright-lawsuit-1232946

Ending a four-year-old case that almost went to trial, a judge cites common elements of movies about freelance video news.

BLIZZARD SUES OVER 'WARCRAFT' COPYCAT GAME
via Intellectual Property Law360 by Tiffany Hu on 8/19/2019
URL: https://www.law360.com/ip/articles/1189833

Blizzard Entertainment has lodged a copyright suit accusing a Hong Kong game maker of ripping off its popular "Warcraft" games, telling a California federal court that the rival knew "exactly what it was doing" when it made the game.

NETFLIX HIT WITH ANOTHER COPYRIGHT SUIT OVER 'FYRE' VIDEOS
via Intellectual Property Law360 by Tiffany Hu on 8/19/2019
URL: https://www.law360.com/ip/articles/1189921

A New York attorney labeled a "copyright troll" by a federal judge has filed another infringement suit against Netflix over videos used in a documentary about the failed Fyre Festival, shortly after settling a similar case.
An energy industry technology company told the Fifth Circuit a jury that found the company's competitor profited from its stolen data should have been able to decide whether the rival violated its copyrights.

Neil deGrasse Tyson has defeated a copyright lawsuit brought by a photographer who co-founded a production company with the astrophysicist, with a New York federal judge saying the photographer had put forth a “frivolous” argument about the nature of a deal for his stake in the company.

Phrases like "if it bleeds, it leads" are commonplace in stringer films, a Utah federal judge ruled Monday, tossing a copyright suit alleging the 2014 Jake Gyllenhaal film "Nightcrawler" copied a lesser-known 2007 film called "Falling."

In order for copyright law to work for all the Whos in Whoville—the small and the tall—legal reasoning must apply equally whether the plaintiffs are major [...]

A California federal judge has tossed another copyright lawsuit claiming Walt Disney Co. stole its smash hit "Zootopia" from an unproduced screenplay, ruling that case was seeking "a monopoly over all animated films involving crime-fighting, talking animals."
ITALIAN FILM COMPOSER CAN RECLAIM COPYRIGHTS, 2ND CIRC. SAYS
via Intellectual Property Law360 by Bill Donahue on 8/21/2019
URL: https://www.law360.com/ip/articles/1191029

Famed Italian film composer Ennio Morricone won a key victory Wednesday at the Second Circuit that will allow him to reclaim the copyrights to his music: a ruling that he had not produced his scores as so-called works for hire.

ENNIO MORRICONE SCORES BIG APPELLATE WIN IN COPYRIGHT TERMINATION SUIT
URL: https://www.hollywoodreporter.com/thr-esq/ennio-morricone-scores-big-appellate-win-copyright-termination-suit-1233645

The composer can reclaim rights for six Italian film scores.

SCOTUS TO CONSIDER IF STATE LEGAL TEXTS MAY BE COPYRIGHTED IN GEORGIA V. PUBLIC.RESOURCE.ORG
via IPWatchdog.com | Patents & Patent Law by Kristin Lamb on 8/21/2019

That an open government is inseparable from a free society is one of the basic tenets supporting American democracy. If people are to be ruled by laws, they have a fundamental right to access those laws. To that end, in 17 U.S.C. § 105, the U.S. Copyright Office makes clear that binding and official government edicts may not be copyrighted by the United States government. However, the Supreme Court has not addressed the issue as it pertains to state governments since a series of cases in the...

ICE CUBE SONG STRAIGHT OUTTA COPYRIGHT, CRIES IP SUIT
via Intellectual Property Law360 by Christopher Cole on 8/21/2019
URL: https://www.law360.com/ip/articles/1191234

Ice Cube and his record label along with dozens of other individuals and businesses have been slapped with an infringement suit in Montana federal court claiming that one of the rapper’s recent songs rips 38 seconds of audio from a copyrighted video.
SPOTIFY INFRINGED EMINEM'S 'LOSE YOURSELF,' OTHER TRACKS: SUIT
via Intellectual Property Law360 by Lauren Berg on 8/21/2019
URL: https://www.law360.com/ip/articles/1191328

Spotify pretended to have a license to stream Eminem's hit "Lose Yourself" and the rapper's other works owned by his publisher Eight Mile Style even though it doesn't have the rights to do so, according to a copyright infringement lawsuit filed Wednesday in Nashville federal court.

JUDICIAL PROCESS FOR MUSIC COPYRIGHT MUST BE REINED IN
via Intellectual Property Law360 by Gerald Sauer on 8/22/2019
URL: https://www.law360.com/ip/articles/1191227

Popular singers and their songwriting teams are walking around with targets on their backs. Last month, in Gray v. Perry, a Los Angeles federal jury awarded $2.8 million to Christian rapper Marcus Gray after finding that Katy Perry and her “Dark Horse” songwriting team infringed his song “Joyful Noise.” In doing so, it continued a copyright trajectory that includes the U.S. Court of Appeals for the Ninth Circuit’s 2018 “Blurred Lines” decision, Williams v. Gaye, affirming a $5 million infringement judgment against Robin Thicke and Pharrell Williams in favor of heirs to Marvin Gaye.

7TH CIRC. VACATES ILLUSTRATOR’S $3.6M COPYRIGHT DAMAGES AWARD
via Intellectual Property Law360 by Sarah Jarvis on 8/22/2019
URL: https://www.law360.com/ip/articles/1191286

The Seventh Circuit has vacated a $3.6 million statutory damages jury verdict awarded to an illustrator who claims a natural supplements company infringed her work, saying the lower court needs to determine whether the 33 illustrations in question constitute separate works.

EMINEM PUBLISHER SUES SPOTIFY CLAIMING MASSIVE COPYRIGHT BREACH, "UNCONSTITUTIONAL" LAW

Eight Mile Style alleges "Lose Yourself" and many of the rapper's hits aren't licensed by the streamer. Now comes a suit eyeing Spotify's billions.
PUBLISHING GIANTS SUE AUDIBLE OVER TEXT CAPTIONS
via Intellectual Property Law360 by Bill Donahue on 8/23/2019
URL: https://www.law360.com/ip/articles/1191968

The country’s major book publishers are suing audiobook giant Audible over a planned feature that will allow listeners to read text captions, calling it “quintessential” copyright infringement.

PHOTOGRAPHER SLAPS LAW FIRM WITH SUIT OVER WEBSITE PICTURE
via Intellectual Property Law360 by Kevin Penton on 8/23/2019
URL: https://www.law360.com/ip/articles/1191749

The law office of an estate planning attorney who also handles intellectual property matters infringed a copyright by posting on its website a photograph of a California pier without first obtaining permission from the copyright’s owner, the photographer who shot the image has alleged in California federal court.

AUDIBLE CAPTIONS FEATURE PROMPTS COPYRIGHT SUIT FROM TOP U.S. PUBLISHERS
URL: https://www.hollywoodreporter.com/thr-esq/audible-captions-prompts-copyright-suit-top-us-publishers-1234165

Publishers say Audible is creating error-ridden, unauthorized derivative copies of their work.

BOOK PUBLISHERS SUE AUDIBLE TO STOP NEW SPEECH-TO-TEXT FEATURE
via Ars Technica by Timothy B. Lee on 8/24/2019
URL: https://arstechnica.com/?p=1557181

Seven of the nation's top book publishers sued Amazon subsidiary Audible on Friday, asking federal courts to block the company from releasing a new feature called Audible Captions that's due out next month.

VIDEO POST: IRWIN KARP ON DRAFTING THE 1976 COPYRIGHT ACT
via Mostly IP History by Zvi S. Rosen on 8/24/2019

While everyone eagerly awaits the next full post here, I wanted to share a video I found of Irwin Karp, “legendary and curmudgeonly counsel for the Authors Guild and Authors League,” talking about the process of drafting and negotiating what would become the 1976 Copyright Act.
There’s extensive discussion in particular about the fair use provisions at what would become 17 USC 107, and the lack of a general exception for educational purposes. Digitization by Library of Congress Motion Picture Division.

TIGHTENING THE SCREWS ON PIRATE WEBSITES THROUGH DYNAMIC WEBSITE BLOCKING INJUNCTIONS
via Hugh Stephens Blog on 8/25/2019
URL: http://hughstephensblog.net/2019/08/25/tightening-the-screws-on-pirate-websites-through-dynamic-website-blocking-injunctions/

A pirate site is blocked through a court order yet like a chameleon it changes its colour (and IP address or URL) and is back up again tomorrow under a different guise.

GEORGIA SAYS IT’S NOT TRYING TO COPYRIGHT LAW ITSELF
via Intellectual Property Law360 by Bill Donahue on 8/26/2019
URL: https://www.law360.com/ip/articles/1192498

The state of Georgia has filed its opening shot in a U.S. Supreme Court case over whether annotations to legal texts can be protected under copyright law, stressing it was not asking the justices to rule that "the law can be copyrighted."

ONLINE COPYRIGHT ENFORCEMENT IS NOT JUST ABOUT “ARTISTS”
via The Illusion of More by David Newhoff on 8/27/2019
URL: http://illusionofmore.com/online-copyright-enforcement-is-not-just-about-artists/

Most conversations (i.e. arguments) about copyright tend to revolve around artists in the traditional sense—musicians, authors, filmmakers, photographers, etc.—wanting to make a living from their […]

ILLEGAL STREAMING SERVICES DWARFED NETFLIX AND HULU, FEDS SAY
via Intellectual Property Law360 by Lauren Berg on 8/27/2019
URL: https://www.law360.com/ip/articles/1193192

Eight people face federal charges alleging they ran massive illegal television and movie streaming services that cost TV and movie copyright owners millions of dollars and dwarfed the content of legitimate services such as Netflix, Hulu and Amazon Prime Video, the U.S. Department of Justice announced Tuesday.
ILLEGAL STREAMING SERVICES PROMPT MULTIPLE INDICTMENTS
URL: https://www.hollywoodreporter.com/thr-esq_ILLEGAL-STREAMING-SERVICES-PROMPT-MULTIPLE-INDICTMENTS-1235080

Eight individuals behind Jetflicks and iStreamItAll have been charged with conspiring to violate federal criminal copyright law.

TILLIS TO COPYRIGHT LEADERS: GET MODERN FASTER
via IPWatchdog.com | Patents & Patent Law by Eileen McDermott on 8/28/2019
URL: https://www.ipwatchdog.com/2019/08/28/tillis-copyright-leaders-get-modern-faster/id=112691/

Senator Thom Tillis (R-NC) sent a letter to Librarian of Congress Dr. Carla Hayden and Register of Copyrights Karyn Temple on Tuesday, August 27, asking that they help him to “speed up the modernization process” for the U.S. Copyright Office. Tillis posed seven pointed questions to Hayden and Temple, which in part implied that their agencies’ reliance on legacy contractors and internal staff to implement the pending IT updates could be the source of proposed timelines that Tillis characterized...

RECORD LABELS TARGET ANOTHER ISP OVER MUSIC PIRACY
via Intellectual Property Law360 by Bill Donahue on 8/28/2019
URL: https://www.law360.com/ip/articles/1193296

The major record labels have accused internet service provider RCN Corp. of turning its network into a "haven" for copyright infringement, the latest in a string of such cases aimed at holding ISPs liable for music piracy by their users.

COPYRIGHT OFFICE MUST HASTEN MODERNIZATION EFFORTS, SEN. SAYS
via Intellectual Property Law360 by Tiffany Hu on 8/28/2019
URL: https://www.law360.com/ip/articles/1193390

The chairman of the Senate intellectual property subcommittee is pushing the U.S. Copyright Office to speed up efforts to modernize its information technology systems, expressing concern that its reliance on internal staff members and legacy contractors is holding the process back.
Our music copyright law is out of tune in several ways. The recent multi-million-dollar jury verdict this summer against Katy Perry and Capitol Records illustrates a lack of harmony between music creation and the copyright law that is designed to “protect” it. According to a California jury, Perry’s runaway smash hit “Dark Horse” infringed a Christian rap “Joyful Noise” by the rapper, Flame. The jury awarded Flame nearly $2.8 million in damages. If that verdict withstands an appeal, it will be...

A New York developer on Friday argued a lower court erred in hitting him with $6.75 million in damages for painting over aerosol art on property he wanted to convert to apartments, as the Second Circuit wrestled with the scope of a law designed to protect the rights of visual artists.
COPYRIGHT INFRINGEMENT OF KOREAN CONTENTS ON YOUTUBE RISING: LAWMAKER
via Korea Herald by Yeo Jun-suk on 9/1/2019

About 9,000 YouTube contents distributed in South Korea have been accused of copyright infringement since January this year, a lawmaker said ...

SUPREME COURT IP REVIEW
via Patent Docs on 9/1/2019

The Program in Intellectual Property Law, Center for Empirical Studies of Intellectual Property, and Institute on the Supreme Court of the United States at the Chicago-Kent College of Law will be holding its tenth annual Supreme Court IP Review (SCIPR) on September 21, 2018 from 8:30 am to 5:30 pm (Central) at the IIT Downtown Campus - Chicago-Kent College of Law in Chicago, IL.

RECORD LABELS FILE COPYRIGHT INFRINGEMENT SUIT
via IP Pro by Rebecca Delaney on 9/2/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=7062&

A group of music recording companies have filed a complaint for copyright infringement against several branches of RCN Telecom Services at the US ...

REMINDER: THE COPYRIGHT OFFICE WILL BE YANKING ELIGIBILITY FOR THE DMCA ONLINE SAFE HARBOR (AGAIN)
via Technology & Marketing Law Blog by Eric Goldman on 9/2/2019

In 2016, the Copyright Office rejiggered how it handles DMCA Online Safe Harbor agent designations.
ARIANA GRANDE SUES FOREVER 21 FOR USING A "LOOK-ALIKE MODEL" ON SOCIAL MEDIA

The pop superstar alleges in a $10 million suit that the retailer stole her likeness after failing to come to an endorsement deal.

ARIANA GRANDE SUES FOREVER 21 FOR USING LOOK-ALIKE MODEL
URL: https://www.law360.com/ip/articles/1194690

Pop singer Ariana Grande has lodged a $10 million suit against fast-fashion chain Forever 21 for allegedly using a "strikingly similar" model to promote its brand on social media after an endorsement deal with the pop star fell through.

CONGRESS MEMBERS ASK TO GRILL GOOGLE IN ROUNDTABLE ON CONTENT ID TOOL
URL: https://www.ipwatchdog.com/2019/09/04/congress-members-grill-google-roundtable-content-id-tool/id=112908/

Eight members of Congress have sent a letter to Google Chief Executive Officer Sundar Pichai requesting that the company participate in “a roundtable with Congressional offices and members of the creative community” to discuss its responses to a series of questions relating to Google-owned YouTube’s Content ID tool. The tool is meant to prevent copyright infringing material from appearing on YouTube but has come under scrutiny for its failings in recent years. In the letter sent September 3,...

DEBUNKING COPYRIGHT MYTHS
URL: https://www.natlawreview.com/article/debunking-copyright-myths

These days it seems that copyright law is everywhere, from lawsuits alleging that the multiplayer online battle game Fortnite infringed popular dance ...
2ND CIRC. SAYS BIGGIE'S 'PARTY AND BULLSHIT' IS FAIR USE
via Intellectual Property Law360 by Bill Donahue on 9/4/2019
URL: https://www.law360.com/ip/articles/1195229

The Second Circuit on Wednesday rejected an infringement lawsuit filed over a snippet of spoken-word poetry sampled in Notorious B.I.G.'s 1993 hit "Party and Bullshit," ruling it protected by copyright law's fair use doctrine.

THERE IS ESSENTIALLY NO STATUTE OF LIMITATIONS FOR ONLINE COPYRIGHT INFRINGEMENT–APL V. US
via Technology & Marketing Law Blog by Eric Goldman on 9/4/2019
URL: https://blog.ericgoldman.org/archives/2019/09/there-is-essentially-no-statute-of-limitations-for-online-copyright-infringement-apl-v-us.htm

This case involves a photo of stem cells, which allegedly used to be quite uncommon and therefore allegedly commanded a premium license fee.

THE JETFLICKS INDICTMENT: TALK ABOUT CRIME NOT PAYING.
via The Illusion of More by David Newhoff on 9/4/2019
URL: http://illusionofmore.com/the-jetflicks-indictment-talk-about-crime-not-paying/

After reading the indictment that was handed down last week against the eight men who allegedly ran the pirate streaming service called Jetflicks, all I […]

NETFLIX AGAIN ACCUSED OF STEALING FOOTAGE OF FYRE FESTIVAL
via Intellectual Property Law360 by Bill Donahue on 9/4/2019
URL: https://www.law360.com/ip/articles/1195067

Netflix and Jerry Media are facing another copyright lawsuit over footage used in a documentary about the failed Fyre Festival, this time from a former college basketball player who says he was "scammed" by the film's producers.

'FRIDAY THE 13TH' WRITER RIDICULES NOTION THAT WINNING BACK RIGHTS MEANS WGA'S DEMISE

Are scriptwriters employees or independent contractors? The 2nd Circuit Court of Appeals hears debate.
'FRIDAY THE 13TH' WRITER WARNS OF 'ABSURD CONSEQUENCES'
via Intellectual Property Law360 by Bill Donahue on 9/4/2019
URL: https://www.law360.com/ip/articles/1180679

The writer of "Friday the 13th" is urging the Second Circuit let him to regain the rights to his screenplay, saying arguments rooted in labor law from the movie's producers would lead to "absurd consequences."

'DRAG RACE' STAR FARRAH MOAN ACCUSES ARIANA GRANDE OF INTENTIONALLY STEALING HER LOOK IN
via Click 2 Houston by Meredith B Kile on 9/5/2019

Grande is suing for at least $10 million in damages for copyright and trademark infringement, false endorsement and violating her right of publicity.

SHOULD OPEN SOURCE SOFTWARE ADVERTISE?
via ITworld News by Matt Asay on 9/5/2019
URL: https://www.itworld.com/article/3435114/should-open-source-software-advertise.html

Given how dependent we’ve become upon open source software, one would think that we would have a bevy of options for supporting the developers who write the code, but we don’t. Oh, sure, if it’s a big project with big money involved, like Kubernetes, funding is not too hard to find.

FACEBOOK, REDDIT ILLEGALLY USED PHILLY ANCHOR'S PHOTO: SUIT
via Intellectual Property Law360 by Hailey Konnath on 9/5/2019
URL: https://www.law360.com/ip/articles/1195841

A "Good Day Philadelphia" co-anchor on Wednesday hit Facebook, Reddit, Imgur and Giphy with a $10 million suit alleging the social networking and image sharing sites violated Pennsylvania publicity law by posting erectile dysfunction and dating website advertisements that featured her photo.
NETFLIX'S "SCAM" FYRE FEST DOCUMENTARY CONTINUES TO UNRAVEL, HIT WITH 3RD COPYRIGHT INFRINGEMENT ...
via Fashion Law on 9/6/2019

When Netflix's documentary Fyre: The Greatest Party That Never Happened debuted in January, it came under fire almost immediately. A bit of ... 

VIDANGEL BANNED FROM STREAMING CLEANED-UP DISNEY MOVIES
via Intellectual Property Law360 by Ryan Boysen on 9/6/2019
URL: https://www.law360.com/ip/articles/1196121

A California federal judge has barred VidAngel Inc. from playing sanitized versions of movies by Walt Disney and other studios that sued the family-friendly streaming service into bankruptcy, rejecting its pleas the punishment was too harsh.

PUBLISHERS V. AUDIBLE: VCRS AND DVRS TO THE RESCUE?
via Center for the Protection of Intellectual Property by Devlin Hartline on 9/7/2019


BATTLE BETWEEN MERCEDES-BENZ AND STREET ARTISTS COULD REDRAW COPYRIGHT LANDSCAPE
URL: https://www.hollywoodreporter.com/thr-esq/mercedes-benz-street-artists-fight-could-redraw-copyright-landscape-1229543

A lawsuit involving a series of Detroit murals may define how much protection artists have if their work is in plain sight on the exterior of a building.
THE INTERACTION OF INTERNATIONAL LAW & U.S. COPYRIGHT-ASSIGNMENT TERMINATIONS
via Law.com by Stan Soocher on 9/9/2019

That U.S. copyright-assignment termination issues are among the most complex in the copyright field becomes even more apparent when attempts to reclaim copyrights involve aspects of international law. Few courts have ruled, however, on the impact of international law on U.S. copyright-assignment terminations.

MURAL, MURAL ON THE WALL: WERE THEY COMMISSIONED, ONE AND ALL?
via Hugh Stephens Blog on 9/9/2019
URL: http://hughstephensblog.net/2019/09/09/mural-mural-on-the-wall-were-they-commissioned-one-and-all/

Maybe you remember the story of the Canadian muralist Michelle Loughery who painted many of the wall murals that adorn the walls of buildings in Merritt, BC, the self-proclaimed “country music capital of Canada”?

RECENT COPYRIGHT CLAIMS FILED IN SDNY SHOULD BE CONSIDERED FAIR USE
via New York Law Journal by Wendy R. Stein on 9/9/2019

Recent cases filed in the Southern District of New York (SDNY) challenge as copyright infringement the reprinting of previously published newsworthy ...

NINTH CIRCUIT SAYS LINKEDIN WRONGLY BLOCKED HIQ’S SCRAPING EFFORTS
via Technology & Marketing Law Blog by Venkat Balasubramani on 9/9/2019

Fans of scraping cases may rejoice.
LINKEDIN CAN'T HALT STARTUP'S INFO SCRAPING, 9TH CIRC. SAYS
via Intellectual Property Law360 by Hailey Konnath on 9/9/2019
URL: https://www.law360.com/ip/articles/1196884

Professional networking site LinkedIn Corp. can't stop a data analytics startup from scraping publicly available member profiles for information, the Ninth Circuit ruled Monday, affirming a lower court's preliminary injunction blocking LinkedIn from denying access to the company.

NINTH CIRCUIT TELLS JOHN STEINBECK'S FAMILY TO STOP LITIGATING THE SAME COPYRIGHT CLAIMS
via Recorder by Alaina Lancaster on 9/9/2019

In a nearly half-century-long legal dispute over the rights to John Steinbeck's works, an appellate court affirmed a district court's $5 million ...

NINTH CIRCUIT TOSSES $8M AWARD IN DECADES-LONG STEINBECK WAR
via Courthouse News Service by Martin Macias Jr. on 9/10/2019

A Ninth Circuit panel on Monday threw out a jury award of $8 million in punitive damages to John Steinbeck's stepdaughter over a copyright ...

WILLIE NELSON PHOTOGRAPHER DUE ATTORNEYS' FEES IN COPYRIGHT CASE
via Bloomberg Law by Blake Brittain on 9/10/2019

A photographer whose picture of Willie Nelson was misused by a radio station is owed attorneys' fees, the Sixth Circuit said Sept. 9. Larry Philpot was ...

AG SAYS COPYRIGHT EXHAUSTION DOES NOT APPLY TO E-BOOKS
via World IP Review on 9/10/2019

The Court of Justice of the European Union (CJEU) has been advised that copyright is not exhausted when it comes to the re-sale of e-books.
COFC CASE REVEALS LONGEVITY OF ONLINE COPYRIGHT CLAIMS
via Intellectual Property Law360 by Eric Goldman on 9/10/2019
URL: https://www.law360.com/ip/articles/1196660

The recent U.S. Court of Federal Claims case APL Microscopic LLC v. United States[1] involves a photo of stem cells, which allegedly used to be quite uncommon and therefore allegedly commanded a premium license fee. The photographer took the photo in 1996. For unspecified reasons, the National Aeronautics and Space Administration posted the photo to its website in August 2004. NASA last updated that page in November 2007.

NINTENDO GETS UK ISPS TO BLOCK SWITCH PIRACY SITES
via Ars Technica by Kyle Orland on 9/10/2019
URL: https://arstechnica.com/?p=1564785

Nintendo has obtained a court order from the England and Wales High Court requiring five major ISPs in the country to block access to four sites that it says promote Nintendo Switch software piracy.

H&M TAKES COPYRIGHT RULING TO SUPREME COURT
via Intellectual Property Law360 by Bill Donahue on 9/10/2019
URL: https://www.law360.com/ip/articles/1196831

H&M is asking the U.S. Supreme Court to overturn a Ninth Circuit ruling that revived a textile company's copyright lawsuit over floral lace designs, warning that the decision would make it "dramatically" easier to sue for infringement.

MIRAMAX SAYS THERE’S NO PROOF IT STOLE ‘AMITYVILLE HORROR’ IP
via Intellectual Property Law360 by Britain Eakin on 9/10/2019
URL: https://www.law360.com/ip/articles/1197137

Miramax asked a California federal judge Monday to nix three remaining claims that it stole intellectual property to help produce the 2017 sequel to “The Amityville Horror,” telling the court there is no evidence that the company had a hand in making the film.

COPYRIGHT SMALL CLAIMS COURT BILL ADVANCES IN HOUSE
via Intellectual Property Law360 by Tiffany Hu on 9/11/2019
URL: https://www.law360.com/ip/articles/1197658

A proposal to establish a small claims courts to hear copyright disputes is a step closer to becoming law after clearing the House Judiciary committee, sending the legislation for a full House vote.
DOES GRAFFITI ART ENJOY EQUAL COPYRIGHT PROTECTION?
via The Illusion of More by David Newhoff on 9/11/2019
URL: http://illusionofmore.com/does-graffiti-art-enjoy-equal-copyright-protection/

As with so many copyright questions, the answer is “it depends.” I stumbled into a discussion on Twitter last week that included some fairly cynical […]

MERCEDES BENZ GRAFFITI LAWSUIT ROLLS PAST MOTION TO DISMISS

The luxury carmaker's argument that its depiction of a series of Detroit murals in G 500 ads could be protected from a copyright claim by the Architectural Works Copyright Protection Act is enough to survive a motion to dismiss the lawsuits.

MERCEDES GETS GREEN LIGHT TO PREEMPTIVELY SUE STREET ARTISTS
via Intellectual Property Law360 by Mike LaSusa on 9/11/2019
URL: https://www.law360.com/ip/articles/1198022

Mercedes-Benz USA LLC can seek a court ruling saying the automaker didn’t infringe the intellectual property rights of several street artists by advertising with photographs containing images of murals they painted in Detroit, a Michigan federal judge decided on Wednesday.

AUDIBLE’S PLANNED CAPTION SERVICE IS NOT FAIR USE
via Mister Copyright by Kevin Madigan on 9/11/2019
URL: http://mistercopyright.org/audible-s-planned-caption-service-is-not-fair-use

Late last month, a group of publishers filed a complaint against Audible in the Southern District of New York asking the court to enjoin the audiobook distributor’s launch of a new audio-to-text transcription service.

ATTY SAYS DEGRASSE TYSON'S CLAIMS IN FEE ROW 'LUDICROUS'
via Intellectual Property Law360 by Britain Eakin on 9/12/2019
URL: https://www.law360.com/ip/articles/1198134

The lawyer for a photographer who unsuccessfully sued Neil DeGrasse Tyson over alleged copyright infringement told a federal court that he would step aside as the parties battle over attorney fees, but called the astrophysicist's allegations of attorney misconduct "ludicrous."
ZIMBABWE JOINS MARRAKESH AND BEIJING TREATIES via YouTube by WIPO on 9/13/2019
URL: https://www.youtube.com/watch?v=1p24-3aMGTo

Zimbabwe joined on September 12, 2019, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled and the Beijing Treaty on Audiovisual Performances as the 58th and 27th member, respectively. In a short video, WIPO Director General Francis Gurry congratulates Zimbabwe for joining the treaties and explains why it is significant.

URL: https://www.hollywoodreporter.com/thr-esq/ascap-bmi-consent-decrees-review-expected-conclude-year-1239501

U.S. Department of Justice assistant attorney general Makan Delrahim said the DOJ has 850 comments to review before it reaches a decision.

CONTRACTOR SHOULD FACE EX-NFLER'S 'DREAM HOUSE' SUIT: JUDGE via Intellectual Property Law360 by Mike Curley on 9/13/2019
URL: https://www.law360.com/ip/articles/1198830

A Massachusetts federal judge has recommended that a contractor should not escape a former NFL player's suit alleging it infringed on his copyright after building his dream home, saying the record suggests the player still owned the rights to the house when the contractor moved to sell it.

MUSIC PUBLISHERS DOUBLE CLAIMS AGAINST PELOTON TO $300 MILLION via New York Post by Richard Morgan on 9/13/2019
URL: https://nypost.com/2019/09/13/music-publishers-double-claims-against-peloton-to-300-million/

Music publishers who sued Peloton for copyright infringement in March are now doubling their demand for damages to $300 million, claiming they've ...
FRENCH ORDER ON PICASSO PICS 'REPUGNANT' TO US LAW: JUDGE
via Intellectual Property Law360 by Tiffany Hu on 9/13/2019
URL: https://www.law360.com/ip/articles/1198694

A French court's €2 million judgment in a suit over copyrighted photographs of Pablo Picasso's artwork "is repugnant to U.S. policy," a California federal judge has ruled, finding the decision conflicts with the fair use doctrine.

SCOTUS SETS DECEMBER ARGUMENTS FOR COPYRIGHT, PATENT CASES
via Reuters by Jan Wolfe on 9/13/2019
URL: https://www.reuters.com/article/ip-scotus/scotus-sets-december-arguments-for-copyright-patent-cases-idUSL2N2641J7

The U.S. Supreme Court on Friday scheduled oral arguments for December in two of the intellectual property cases on its docket, including a dispute ...

GIGI HADID IS BEING SUED FOR A THIRD TIME FOR POSTING ANOTHER'S PHOTO ON HER INSTAGRAM
via Fashion Law on 9/13/2019
URL: http://www.thefashionlaw.com/home/gigi-hadid-is-being-sued-for-a-third-time-for-posting-anothers-photo-on-her-instagram

Just two months after prevailing in a copyright infringement lawsuit for ... of a copyrighted photograph of English singer and songwriter Zayn Malik.

APPLE SLAMMED AS 'MODERN TAPE PIRATE' IN NEW COPYRIGHT SUIT
via Intellectual Property Law360 by Mike LaSusa on 9/13/2019
URL: https://www.law360.com/ip/articles/1198981

The rights-holder to the works of a renowned composer called Apple and two other companies “modern tape pirates” in a copyright suit filed Friday in California federal court, saying the iTunes store sources music from distributors and record companies that don’t own the rights.

NEW COPYRIGHT LAW WILL BENEFIT SOUTH AFRICANS WITH DISABILITIES
via Conversation by Denise Rosemary Nicholson on 9/15/2019

Copyright permission has to be obtained before the works can be made accessible via Braille or other accessible formats. Rights-holders do not ...
These days, though, what comes trickling back are mostly email alerts about websites in brazen violation of copyright law, offering free downloads of ...

“The writ has dropped”. I am not sure where that arcane term comes from but in Canada it means that the electoral campaign to decide which party and leader will form the next government has begun.

E-Trade is off the hook in a copyright suit brought by an Italian Instagram influencer who purports to be an “extravagant millionaire dancing with beautiful ladies in exotic locations,” after a New York federal judge found that E-Trade did not rip off his online persona for its commercials.

A Fifth Circuit panel quashed a Canadian oil exploration company’s bid to sue a U.S. competitor for copyright infringement over seismic data submitted to Canadian oil regulators, finding the regulator had an implied license to distribute the reports.

'Love, Gilda' used taped interviews of the SNL comedian conducted by Hillary Johnson. A lack of registration dooms the case.
MUSIC PUBLISHERS V. PELOTON: CLAIMED COPYRIGHT DAMAGES DOUBLE TO $300 MILLION
URL: https://www.hollywoodreporter.com/thr-esq/music-publishers-v-peloton-claimed-copyright-damages-double-300-million-1239448

After analyzing thousands of recorded workout classes, music publishers discover an additional 1,200 songs allegedly infringed and file an amended complaint.

DESTROYED-MURAL SUIT CAN PROCEED, BUT ARTIST NEEDS CONTRACTS
via Intellectual Property Law360 by Matthew Santoni on 9/17/2019
URL: https://www.law360.com/ip/articles/1199612

A Pittsburgh mural artist can proceed with his claims that several of his projects destroyed by redevelopment were works of art protected by federal law, but he needs to come up with copies of his contracts if he wants to pursue contract-breach claims against various developers and landlords, a Pennsylvania federal judge ruled Monday.

IN SUIT WITH PUBLISHERS, AUDIBLE’S DEFENSES RAISE QUESTIONS
via The Illusion of More by David Newhoff on 9/17/2019

Last Monday, the world’s largest distributor of audiobooks, Audible, had intended to launch a new service called Caption, a feature that uses voice-to-text transcription technology [...]
6TH CIRC. BACKS STEVE WINWOOD'S WIN OVER 50-YEAR-OLD SONG
via Intellectual Property Law360 by Tiffany Hu on 9/17/2019
URL: https://www.law360.com/ip/articles/1199948

A split Sixth Circuit affirmed a victory for the Spencer Davis Group and Steve Winwood in a copyright suit over their iconic 1966 song "Gimme Some Lovin'," finding Tuesday that the lower court did not err in finding the accusers' evidence inadmissible in court.

PUBLISHERS V. AUDIBLE: AN ARMY OF RED HERRINGS
via Center for the Protection of Intellectual Property by Devin Hartline on 9/17/2019
URL: https://cpip.gmu.edu/2019/09/18/publishers-v-audible-an-army-of-red-herrings/

Audible has now filed its response to the publishers’ request for a preliminary injunction—twice.

THE MUSIC BUSINESS WANTS TO BLOW UP COPYRIGHT—AND THE TRUMP ADMINISTRATION IS ON BOARD
via Bloomberg Businessweek by Vernon Silver on 9/18/2019

Most Monday mornings, a cheery cabal of Hollywood-area music makers meets at a private club on the beach in Malibu. They call themselves the ...

ALWAYS CHECK THE COPYRIGHT DATE: ROCKS, RIVERS, AND THE CHANGING EARTH
via Scientific American by Dana Hunter on 9/18/2019

I hadn't thought to look closely at the copyright page before I dove in, unfortunately. And since so many kids' books oversimplify things to the point of ...

E*TRADE BEAT THE COPYRIGHT, FALSE DESIGNATION CASE FILED AGAINST IT BY INSTAGRAM'S "COOLEST MAN"
via Fashion Law on 9/18/2019

Five months ago, Instagram's "coolest man" Gianluca Vacchi filed a copyright infringement and false designation of origin lawsuit against E*Trade in a ...
EX-ARMS DEALER HIT WITH SANCTIONS BID IN MEMOIR IP SUIT
via Intellectual Property Law360 by Emma Cueto on 9/18/2019
URL: https://www.law360.com/ip/articles/1200254

The co-writer of the memoir "Once a Gun Runner" who is embroiled in a copyright dispute with the book's subject — a former international arms dealer — over ownership of the work, told a Florida federal court it should sanction the former arms dealer and his attorneys for continuing to pursue the case in federal court.

MOTORSPORT NETWORK PICKS IMAGERIGHTS TO SUPPORT ITS PHOTOGRAPHY AGENCY
via IPPro Magazine by Jenna Lomax on 9/19/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=7089

Motorsport Network has chosen ImageRights’ image search and copyright enforcement services to support its Motorsport Images photography agency

LED ZEPPELIN'S 'STAIRWAY' COPYRIGHT BATTLE, EXPLAINED
via Intellectual Property Law360 by Bill Donahue on 9/19/2019
URL: https://www.law360.com/ip/articles/1198408

Led Zeppelin will head to the Ninth Circuit on Monday to defend against claims that the band stole the intro to "Stairway to Heaven" from an obscure song, setting the stage for a ruling with huge implications for music copyright law.

'COPYRIGHT TROLL' AT IT AGAIN, NY JUDGE SEETHES IN PHOTO ROW
via Intellectual Property Law360 by Tiffany Hu on 9/19/2019
URL: https://www.law360.com/ip/articles/1200580

A New York attorney labeled a "copyright troll" in court must pay fines in a case over paparazzi photos of the model Emily Ratajkowski after a federal judge blasted his "slap dash approach" to filing lawsuits.
WILL A FEDERAL JUDGE UNLEASH HACKERS ON THE TV INDUSTRY?
URL: https://www.hollywoodreporter.com/thr-esq/will-a-federal-judge-unleash-hackers-tv-industry-1241329

Streaming was merely the beginning. Here's a First Amendment case that survived initial judicial review and has the Trump administration fighting an electrical engineer over technology with broad applications.

NETFLIX SLAMMED FOR LAST-DITCH BID TO ESCAPE 'NARCOS' SUIT
via Intellectual Property Law360 by Nathan Hale on 9/20/2019
URL: https://www.law360.com/ip/articles/1201220

Former Colombian journalist Virginia Vallejo has urged a Florida federal judge to deny a motion to dismiss her copyright suit claiming the Netflix series "Narcos" ripped off her memoir detailing her affair with drug kingpin Pablo Escobar, calling it a last-ditch effort to delay next month's scheduled trial.

HIGH COURT GIVING MUCH-NEEDED EAR TO COPYRIGHT, EX-SG SAYS
via Intellectual Property Law360 by Celeste Bott on 9/20/2019
URL: https://www.law360.com/ip/articles/1201199

The U.S. Supreme Court's upcoming term is stacked with copyright cases that will give practitioners a welcome opportunity to get the court's take on the "essence of copyright," former U.S. Solicitor General Donald B. Verrilli Jr. said Friday.

ORIGINAL OR COPIED? ‘STAIRWAY TO HEAVEN’ IS BACK IN COURT
via NYT > Media & Advertising by Ben Sisario on 9/22/2019

It seems only fitting that the most epic and dramatic of rock songs has resulted in one of the music industry’s most epic copyright fights.
'HAMILTON' PRODUCER FIGHTS COPYRIGHT CLAIMS TO ALEXANDER HAMILTON’S LIFE

Here’s what happened after a hit musical became a troubled museum exhibition.

PUBLISHERS FIGHT AUDIBLE’S BID TO NIX SUIT OVER TEXT CAPTIONS
URL: https://www.law360.com/ip/articles/1201620

A group of major book publishers is urging a New York federal judge to reject a bid by Amazon’s Audible to toss a copyright suit over a planned speech-to-text feature, saying the audiobook giant’s arguments are based on a misunderstanding of copyright law.

9TH CIRC. SKEPTICAL JURY HAD TO HEAR 'TAURUS' IN 'STAIRWAY' CASE
URL: https://www.law360.com/ip/articles/1201554

An attorney accusing Led Zeppelin of stealing the intro to ‘Stairway to Heaven’ from an obscure song faced resistance from the Ninth Circuit on Monday to his argument that the jury should have heard the recorded version of the less-famous song during a trial.

SHOULD OPEN SOURCE LICENSES FIGHT EVIL?
via ITworld News by Matt Asay on 9/24/2019
URL: https://www.itworld.com/article/3440557/should-open-source-licenses-fight-evil.html#tk.rss_news

Open source has come under fire in recent years, with companies like MongoDB hoping to shift its very definition to include proprietary software. But it’s the more recent, and more well-intentioned, salvo that could do the most damage.
The estate of the late Randy Wolfe of Spirit sued and lost at a 2016 trial that included testimony from Led Zeppelin guitarist Jimmy Page and singer Robert Plant.

My wife and I recently visited Denmark, a country we had only briefly stopped in years ago in order to take our (then) very young daughter to the Tivoli Gardens in Copenhagen.

The company that owns the Pac-Man video game franchise is suing over a retro game maker’s versions of the iconic pastime, telling a California federal court that the allegedly unapproved games have permanently damaged its brand.

A professional photographer is suing the U.S. Olympic Committee for copyright infringement, claiming it used a picture she took of pregnant gold medal gymnast Shawn Johnson on its website without permission.

The U.S. Copyright Office is inviting musicians, producers, and others to help it develop regulations guiding the implementation of a new digital music ...
GOOGLE REFUSES TO PAY FOR NEWS LINKS IN FRANCE
via WSJ.com: Technology by Sam Schechner on 9/25/2019

Google said it would refuse to pay for licenses for French news articles when the European Union’s new copyright directive goes into effect here next month, the first concrete signal for how the Alphabet Inc. unit plans to implement the divisive measure.

THE EFF THINKS PEOPLE ARE TOO STUPID TO UNDERSTAND THE CASE ACT
via The Illusion of More by David Newhoff on 9/25/2019
URL: http://illusionofmore.com/the-eff-thinks-people-are-too-stupid-to-understand-the-case-act/

As the copyright small claims provision, the CASE Act, continues to acquire congressional sponsors—96 House Members and 14 Senators to date—the EFF is amping up the scare-tactics with blunt messages asking the average internet user if they could afford a $30,000 fine for copyright infringement.

GOOGLE TAKES HARD LINE, REFUSES TO PAY FRENCH NEWS SITES DESPITE NEW LAW
via Ars Technica by Timothy B. Lee on 9/25/2019
URL: https://arstechnica.com/?p=1574343

Google won't pay anything to French news organizations for the privilege of linking to their articles, the search giant announced on Wednesday.

AUTHORS GUILD AND AAR BACK PUBLISHERS IN AUDIBLE CAPTIONS LAWSUIT
via Bookseller by Katie Mansfield on 9/25/2019

“Audible completely ignores the Copyright Act's explicit recognition of the divisibility of the bundle of exclusive rights," the brief states. "Audible's ..."

SOFTWARE CO.'S PERMISSION DOOMS $596M IP SUIT AGAINST NAVY
URL: https://www.law360.com/ip/articles/1202768

The U.S. Navy may have made more than 400,000 copies of a Bitmanagement Software GmbH 3D virtual reality software when it only bought 38 licenses, but the company authorized it to do so, the U.S. Court of Federal Claims has ruled, ending a $596 million infringement suit.
PARAMOUNT, BET STOLE 'WHAT MEN WANT' PREMISE, SUIT SAYS
URL: https://www.law360.com/ip/articles/1203040

The Paramount Pictures Corp. and Black Entertainment Television LLC movie "What Men Want" features a plot stolen from a screenplay that never got made titled "What The F Is He Thinking?," a screenwriter told a California federal court Wednesday.

HJC IS RIGHT TO WANT INTERNET SAFE HARBORS OUT OF USMCA
via The Illusion of More by David Newhoff on 9/26/2019
URL: http://illusionofmore.com/hjc-is-right-to-want-internet-safe-harbors-out-of-usmca/

Remember the Trans Pacific Partnership? The twelve-nation trade agreement that became an eleven-nation trade agreement when the U.S. pulled out? As a general opinion, I will propose [...] 

'FRIDAY THE 13TH' OWNER CITES GIG ECONOMY IN SCRIPT FIGHT
via Intellectual Property Law360 by Bill Donahue on 9/26/2019
URL: https://www.law360.com/ip/articles/1203218

Amid a closely watched copyright battle at the Second Circuit with the screenwriter of "Friday the 13th," the producers of the franchise are now citing recent efforts by Uber drivers and other gig economy workers to secure formal employee status.

PELOTON MUSIC SUIT NOW CLAIMS $300M DAMAGES ON 2K SONGS
via Intellectual Property Law360 by Frank G. Runyeon on 9/26/2019
URL: https://www.law360.com/ip/articles/1203465

A Manhattan federal judge on Thursday approved a refreshed infringement complaint by more than 30 music publishers against home-fitness titan Peloton that added plaintiffs and 1,000 songs and doubled damage claims to $300 million.

LOCAST, A FREE STREAMING SERVICE, SUES ABC, CBS, NBC AND FOX
via NYT > Media & Advertising by Edmund Lee on 9/27/2019

Locast, a little-known nonprofit behind a free streaming service, sued ABC, NBC, CBS and Fox on Friday, alleging that the television networks colluded in an effort to chill its business.
LOCAST ACCUSES THE MAJOR BROADCASTERS OF ANTITRUST VIOLATIONS
URL: https://www.hollywoodreporter.com/thr-esq/locast-accuses-major-broadcasters-antitrust-violations-1243822

The streamer alleges that ABC, CBS, Fox and NBC are engaged in sham copyright litigation and are colluding to deny consumers over-the-air signals they once committed to make freely available.

TV STREAMER LOCAST HITS BACK AT 'SHAM' BROADCASTER LAWSUIT
via Intellectual Property Law360 by Bill Donahue on 9/27/2019
URL: https://www.law360.com/ip/articles/1203565

Facing a lawsuit filed by the major television networks, a free streaming service called Locast is accusing the broadcasters of misusing their copyrights and violating federal antitrust laws by colluding to shut down a legal competitor.

STAN LEE'S DAUGHTER SUES TO RECLAIM HIS INTELLECTUAL PROPERTY
URL: https://www.hollywoodreporter.com/thr-esq/stan-lees-daughter-sues-reclaim-his-intellectual-property-1243840

A new lawsuit alleges that the late comic book legend's IP was "looted" from 2001 forward.

THE RIGHTS TO MS. PAC-MAN ARE CAUGHT UP IN A MESSY LEGAL BATTLE
via Ars Technica by Kyle Orland on 9/27/2019
URL: https://arstechnica.com/?p=1575947

The complicated rights situation behind Ms. Pac-Man is at the heart of a legal battle between Bandai Namco—which owns the Ms. Pac-Man trademark and copyright—and retro hardware maker AtGames—which has now purchased the separately held royalty rights to the game.

'WAR DOGS' ARMS DEALER WINS COPYRIGHT FIGHT OVER MEMOIR
via Intellectual Property Law360 by Tiffany Hu on 9/27/2019
URL: https://www.law360.com/ip/articles/1203532

The former arms dealer who inspired the 2016 film “War Dogs” won a copyright lawsuit against the co-writer of his memoir after a Florida federal judge on Friday found that the co-writer clearly had no ownership rights in the work.
GOOGLE REFUSES TO PAY FOR FRENCH NEWS SNIPPETS DESPITE EU REQUIREMENT
via Law.com by Hannah Lang on 9/27/2019

Google has announced that it will not pay French publishers to display extracts from their news articles. The technology company and other republishers of online news in France will shortly be required to do so under French law implementing a new EU copyright directive.

MICROSOFT GETS QUICK WIN IN SUIT OVER GEARS OF WAR CHARACTER
URL: https://www.law360.com/ip/articles/1203459

Microsoft Inc. did not steal the likeness of a former pro wrestler who claims a character in its popular Gears of War video game was modeled after him, a Pennsylvania federal court has found, ending a case that’s played a key role in several other contentious suits involving his attorneys at Pierce Bainbridge.

COX CAN'T GET DISCOVERY SANCTION IN PIRATING FIGHT WITH LABELS
via Intellectual Property Law360 by Nadia Dreid on 9/27/2019
URL: https://www.law360.com/ip/articles/1203905

There is no evidence the major record labels suing Cox Communications for turning a blind eye to pirating got rid of any data they were bound to keep in anticipation of litigation, a Virginia federal magistrate said Friday.

STAN LEE'S DAUGHTER SAYS BIZ PARTNERS 'LOOTED' IP ASSETS
via Intellectual Property Law360 by Mike LaSusa on 9/27/2019
URL: https://www.law360.com/ip/articles/1203556

Business partners of the legendary superhero creator Stan Lee orchestrated a scheme to "loot" his intellectual property through a bankruptcy proceeding, according to a lawsuit filed Thursday in California federal court by the late comic book icon’s daughter.
SG TURNS THUMBS DOWN AGAIN ON GOOGLE V. ORACLE
via Law.com by Scott Graham on 9/27/2019
URL: https://www.law.com/therecorder/2019/09/27/sg-turns-thumbs-down-again-on-google-v-oracle/

The office rejected Google LLC's arguments that the declaring code that organizes Java application programming interfaces can not be copyrighted.

GOOGLE AND COPYRIGHT 'BLACKMAIL'—DATA SHEET
via Fortune by Jeff John Roberts & Robert Hackett on 9/30/2019
URL: https://fortune.com/2019/09/30/google-copyright-law-france-eu/

French publishers are seething over Google's decision to stop including snippets in its search results for news. Google made the decision it would ...

JERRY SEINFELD BEATS LAWSUIT CLAIMING HE STOLE 'COMEDIANS IN CARS'

Christian Charles, who directed the pilot, waited too long to sue over ownership, rules a judge.

THE RISE OF VIRTUAL INFLUENCERS: KEY LEGAL ISSUES FOR BRANDS
via Intellectual Property Law360 by Reena Jain & Carly Kessler on 9/30/2019
URL: https://www.law360.com/ip/articles/1203400

Is traditional advertising dying in the digital era? Not only is offline marketing facing a slow death (goodbye, classifieds!), but companies are coming to the realization that traditional online advertising may not be as powerful as it once was. In fact, it has been reported that more than 70 million internet users block ads.
A Manhattan federal judge on Monday rejected a lawsuit that claimed Jerry Seinfeld stole the concept for his “Comedians in Cars Getting Coffee” series from a onetime collaborator, ruling the accuser waited too long to sue.

An attorney who has filed hundreds of lawsuits over a photo he supposedly took of the Indianapolis skyline didn’t actually snap the picture, an Indiana federal jury has ruled.

The federal government wants the U.S. Supreme Court to pass on Oracle and Google's multibillion-dollar copyright battle, calling the blockbuster case too "idiosyncratic" for a landmark decision on software.
October 2019

BLOOMBERG BEATS LAWSUIT FOR ALLEGEDLY RIPPING OFF "HOT NEWS"

A D.C. court was tasked with deciding whether news organizations could be stopped from "free riding" on other publishers' scoops.

BLOOMBERG BEATS RIVAL'S 'HOT NEWS' COPYRIGHT CASE
via Intellectual Property Law360 by Bill Donahue on 10/1/2019
URL: https://www.law360.com/ip/articles/1204659

A federal judge has tossed out a copyright lawsuit that claimed Bloomberg LP was "free riding" on a DC newsletter’s "hot news," rejecting a case that relied on a century-old legal doctrine Bloomberg warned could "chill legitimate news reporting."

US SMALL COPYRIGHT CLAIMS BILL FollowS IN CHINA'S FOOTSTEPS
via Intellectual Property Law360 by Kory Christensen on 10/1/2019
URL: https://www.law360.com/ip/articles/1204686

Frequently, an individual or small business will ask me for advice on enforcing their intellectual property rights. In the case of a patent, I must deliver the often shocking news that they will need to spend a substantial amount of money — over $3 million through trial — to receive a court decision, which quickly dampens their enthusiasm.

JUDGE TOSSES COPYRIGHT SUIT AGAINST JERRY SEINFELD OVER 'COMEDIANS IN CARS' SERIES
via Law.com by Tom McParland on 10/1/2019
URL: https://www.law.com/2019/10/01/judge-tosses-copyright-suit-against-jerry-seinfeld-over-comedians-in-cars-series/

Jerry Seinfeld has won a copyright lawsuit from a former collaborator who claimed to have come up with the idea for the hit series “Comedians in Cars Getting Coffee.”
PHOTOG ASKS TO DROP IP SUIT AGAINST ‘DISGRACED’ EX-GOP REP.
via Intellectual Property Law360 by Tiffany Hu on 10/1/2019
URL: https://www.law360.com/ip/articles/1204125

A photographer is looking to drop his copyright suit accusing a former Republican congressman of using an image of the Mexican border for an anti-immigration ad, saying it is a waste of resources to fight the “disgraced” former lawmaker who has no campaign funds.

ANNIE LEIBOVITZ SAYS UNIVISION SWIPED CAITLYN JENNER PHOTOS
via Intellectual Property Law360 by Mike LaSusa on 10/1/2019
URL: https://www.law360.com/ip/articles/1204904

Famed photographer Annie Leibovitz sued Univision Communications Inc. in New York federal court on Tuesday, alleging the Latino-focused media company used her photos of transgender icon Caitlyn Jenner without permission.

TEMPLE AND HAYDEN RESPOND TO TILLIS ON COPYRIGHT MODERNIZATION EFFORTS
via IPWatchdog.com | Patents & Patent Law on 10/2/2019
URL: https://www.ipwatchdog.com/2019/10/02/temple-hayden-respond-tillis-copyright-modernization-efforts/id=114153/

In August, amid growing concern that the U.S. Copyright Office has become antiquated and out of touch with the needs of modern users, Senator Thom Tillis sent a letter to Librarian of Congress Dr. Carla Hayden and Register of Copyrights Karyn Temple asking them to answer a number of questions relating to the timeline for their efforts to modernize the Copyright Office. Hayden and Temple submitted their responses Monday, noting that the modernization effort is “one of the most significant...”

“COPYRIGHT TROLL” LAWYER GETS SANCTIONED (AGAIN)–SANDS V. BAUER MEDIA
via Technology & Marketing Law Blog by Eric Goldman on 10/2/2019

Attorney Richard Liebowitz has filed more than 1,100 lawsuits since the beginning of 2016, a campaign this judge calls a “downpour.”
WHAT THE EFF! DID YOU TURN THE ACLU AGAINST CREATIVES?
via CreativeFuture by Justin Sanders on 10/2/2019
URL: https://creativefuture.org/aclu-case-act/

Over the last few months, various committees in Congress have been considering a Bill called the CASE Act.

COPYRIGHT AND THE SPEECH RIGHT: ARE THEY IN CONFLICT?
via The Illusion of More by David Newhoff on 10/2/2019
URL: http://illusionofmore.com/copyright-and-the-speech-right-are-they-in-conflict/

It remains a popular talking point among copyright skeptics to say that copyright limits free speech. When this refrain was played about a little over a [...] 

RIAA'S ANNUAL LIST OF 'NOTORIOUS' COPYRIGHT OFFENDERS INCLUDES STREAM-RIPPERS, TELEGRAM
via Billboard by Marc Schneider on 10/3/2019

The RIAA's recommendations for this year's “Notorious Markets List” has a lot of familiar names and themes as in previous years, with stream-ripping ...

SPANISH-LANGUAGE RADIO GIANT SUED FOR PLAYING SPRINGSTEEN, METALLICA SONGS

Irving Azoff's Global Music Rights has a new copyright target.

KAFFAGA V. ESTATE OF STEINBECK: COPYRIGHT AND DAMAGES IN THE LATEST LITIGATION ROUND OVER JOHN STEINBECK'S WORKS
via JOLT Digest RSS Feed by Inés O'Farrell on 10/3/2019

Kaffaga v. Estate of Thomas Steinbeck, No. 18-55336, (9th Cir. Sept. 9, 2019). On September 9, 2019, the United States Court of Appeals for the Ninth Circuit reviewed a decision...
FULL 6TH CIRC. URGED TO REVIVE 'GIMME SOME LOVIN'' IP CASE
via Intellectual Property Law360 by Dani Kass on 10/3/2019
URL: https://www.law360.com/ip/articles/1205416

The Sixth Circuit erred when it said an interview with a member of the Spencer Davis Group couldn't be used to prove the British band's hit song "Gimme Some Lovin’" had a bass line ripped from another song, the copyright owners said in a bid for rehearing.

TWITTER AND YOUTUBE REMOVE TRUMP'S NICKELBACK MEME OVER COPYRIGHT COMPLAINT
via Slate by Marissa Martinelli on 10/4/2019

Twitter has removed a video posted by Donald Trump that featured a snippet of the song “Photograph” by Nickelback following a copyright complaint ...

NEW ZEALAND JOINS MARRAKESH TREATY
via YouTube by WIPO on 10/4/2019
URL: https://www.youtube.com/watch?v=UklNWa9yeOY

WIPO Director General Francis Gurry welcomed New Zealand's October 3, 2019, accession to WIPO's Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. New Zealand is the 60th contracting party to the Marrakesh Treaty, which now covers 87 countries. The meeting took place on the margins of the Fifty-Ninth Series of Meetings of the Assemblies of WIPO Member States, which are meeting in Geneva from September 30 to October 9, 2019.

THE AI AUTHORSHIP QUESTION UNDER CURRENT COPYRIGHT LAW
URL: https://www.law360.com/ip/articles/1205494

As companies are investing more and more into artificial intelligence, and AI technologies become more sophisticated, the outputs of those AI technologies are looking (and sounding) ever more human-like. Particularly in the area of audio (music) or visual (art) outputs, questions have been more frequently raised over whether works created using AI technologies are protected under current intellectual property laws.
VOX MEDIA ACCUSES 'COPYRIGHT TROLL' ATTY OF FORGERY
via Intellectual Property Law360 by Tiffany Hu on 10/4/2019
URL: https://www.law360.com/ip/articles/1206126

Vox Media is claiming that a New York attorney who's been labeled a "copyright troll" forged his client's signature in a case he filed against the company.

COURT DENIES AUDIBLE REQUEST FOR SETTLEMENT CONFERENCE IN 'CAPTIONS' CASE
via Publishers Weekley by Andrew Albanese on 10/4/2019

... conditioned upon Audible extending its agreement not to include the publishers' works in Captions until the publishers' copyright claim is resolved.

PHOTOGS SUE NYC PARKS DEPT. OVER 1970S IMAGES OF CITY LIFE
via Intellectual Property Law360 by Bill Donahue on 10/4/2019
URL: https://www.law360.com/ip/articles/1206461

Two former New York Times photographers are suing New York City's Parks Department for publicizing a long-lost trove of 1970s images of city life without permission.

PARTIAL SCREENSHOT QUALIFIES AS FAIR USE (ON A MOTION TO DISMISS)–YANG V. MIC
via Technology & Marketing Law Blog by Eric Goldman on 10/5/2019
URL: https://blog.ericgoldman.org/archives/2019/10/partial-screenshot-qualifies-as-fair-use-on-a-motion-to-dismiss-yang-v-mic.htm

We’ve blogged about a few cases involving screenshots of newspaper pages consisting of copyrighted photos, including Clark v. TransAlt and Hirsch v. Complex Media.

SHOWTIME BEATS 'BILLIONS' LAWSUIT
via Legal News & Entertainment Law - Hollywood, ESQ. | Hollywood Reporter by Ashley Cullins on 10/7/2019
URL: https://www.hollywoodreporter.com/thr-esq/showtime-beats-billions-lawsuit-1245844

A performance coach claimed one of the characters is based on her, but the court isn't convinced.
CBS, SHOWTIME DEFEAT CONSULTANT'S 'BILLIONS' COPYRIGHT CLAIMS
via Bloomberg Law by Blake Brittain on 10/7/2019
URL: https://news.bloomberglaw.com/ip-law/cbs-showtime-defeat-consultants-billions-copyright-claims

CBS, Showtime Defeat Consultant's 'Billions' Copyright Claims ... series “Billions” infringed her copyrights, because she failed to demonstrate that the ...

SHAKE OFF SWIFT'S LED ZEPPELIN COMPARISONS, 9TH. CIRC. URGED
via Intellectual Property Law360 by Dani Kass on 10/7/2019
URL: https://www.law360.com/ip/articles/1206624

An en banc Ninth Circuit case over whether Led Zeppelin stole the intro to "Stairway to Heaven" has no bearing on whether Taylor Swift stole lyrics for "Shake It Off," songwriters suing the pop star for infringement have told the appeals court.

LIBRARY OF CONGRESS DEFENDS COPYRIGHT OFFICE IT UPGRADE WORK (1)
via Bloomberg Law by Kyle Jahner on 10/8/2019

Librarian of Congress Carla Hayden and Register of Copyrights Karyn Temple justified decisions to develop much of a new IT system in-house as part ...

CANADIAN SUPREME COURT ISSUES FIRST CROWN COPYRIGHT RULING
via World IP Review on 10/8/2019

The Canadian Supreme Court has held that the state owns the copyright on works produced under the direction of its contractors, bringing to an end a ...

E*TRADE DEFEATS COPYRIGHT CLAIM OVER DANCING OLD MAN IN COMMERCIAL–VACCHI V. E*TRADE
via Technology & Marketing Law Blog by Eric Goldman on 10/8/2019

Gianluca Vacchi is an Italian entrepreneur.
ACLU MAKES CASE AGAINST CASE ACT'S COPYRIGHT SMALL CLAIMS COURT
via Broadcasting and Cable by John Eggerton on 10/8/2019

“We welcome and support the goal of removing some of the barriers that prevent rights holders from protecting their copyrighted works,” said ACLU ...

PHANATIC CREATORS BLAST PHILLIES' COPYRIGHT SUIT
via Intellectual Property Law360 by Bill Donahue on 10/8/2019
URL: https://www.law360.com/ip/articles/1207519

The creators of the Philadelphia Phillies' Phanatic mascot are firing back at a lawsuit the team filed this summer over the rights to the furry green character, accusing the ballclub of using baseless litigation as a "weapon."

CAN COPYRIGHT LAW PROTECT INDIGENOUS CULTURE? IF NOT, WHAT IS THE ANSWER?
via Hugh Stephens Blog on 10/8/2019
URL: http://hughstephensblog.net/2019/10/08/can-copyright-law-protect-indigenous-culture-if-not-what-is-the-answer/

This is one of the questions that arose during the recent review of Canada’s Copyright Act by two Parliamentary Committees, the Standing Committee on Canadian Heritage and the Standing Committee on Industry, Science and Technology (INDU Committee).

CHICAGO CUBS HIT WITH IP SUIT OVER WORLD SERIES COLLECTIBLE
via Intellectual Property Law360 by Celeste Bott on 10/8/2019
URL: https://www.law360.com/ip/articles/1207548

A Chicago Cubs fan claimed Tuesday that the team infringed his copyrighted design with a sculpture that commemorates the team’s 2016 World Series victory and that he says is substantially similar to one he made to celebrate the Cubs’ 1984 season.
JENNIFER LOPEZ IS BEING SUED FOR COPYRIGHT INFRINGEMENT OVER INSTAGRAM POST OF HERSELF
via Fashion Law on 10/9/2019
URL: http://www.thefashionlaw.com/home/jennifer-lopez-is-being-sued-for-copyright-infringement-over-instagram-post-of-herself

After New York-based brand Monse landed on the receiving end of a copyright infringement lawsuit for posting a photo of Jennifer Lopez in one of its ...

PORN CO. SLAMS 'SALEM WITCH TRIAL TACTICS' IN COPYRIGHT SUIT
via Intellectual Property Law360 by Tiffany Hu on 10/9/2019
URL: https://www.law360.com/ip/articles/1207673

An adult entertainment company is decrying the use of “Salem witch trial tactics” in a copyright lawsuit over pornographic movies filmed without permission at an artist's rental home in Martha’s Vineyard.

GOOGLE-FUNDED GROUPS DETERMINED TO SINK THE CASE ACT
via The Illusion of More by David Newhoff on 10/9/2019
URL: http://illusionofmore.com/google-funded-groups-determined-to-sink-the-case-act/

A recent anti-CASE Act post by Daniel Takash of the Niskanen Center once again demonstrates why the tentacles of Google-funded “think tanks,” are the informational [...] 

BEOUTQ SELLER CONVICTED OF FRAUD AND COPYRIGHT OFFENCES
via IPPro Magazine by Jenna Lomax on 10/10/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=7104

This is the first case of its kind, with the Premier League arguing that in selling the set top boxes, Al-Silawi was guilty of the offence of communicating infringing copies of copyright works to the public

COPYRIGHT IN STATE LEGAL MATERIALS – LOOKING BACK TO 1888
via Mostly IP History by Zvi S. Rosen on 10/10/2019

The U.S. Supreme Court is set to hear argument in Georgia v. Public.Resource.Org Inc. in about two months, with petitioner’s briefs already in, and respondent’s briefs were submitted yesterday.
KATY PERRY WANTS OUT OF $2.8M 'DARK HORSE' IP VERDICT
via Intellectual Property Law360 by Mike LaSusa on 10/10/2019
URL: https://www.law360.com/ip/articles/1208114

Katy Perry, her songwriters and Capitol Records asked a California federal court Wednesday to upend a jury’s $2.8 million verdict against them in a case alleging their hit single “Dark Horse” swiped a musical phrase from a Christian rap song.

YES, THAT IS MY SONG, ZAC BROWN TELLS ONEREPUBLIC SINGER
via Intellectual Property Law360 by Lauren Berg on 10/10/2019
URL: https://www.law360.com/ip/articles/1208533

The lead vocalist of pop band OneRepublic has wrongly accused musician Zac Brown of stealing the song “Nowhere Left To Go” for his new solo album “The Controversy,” the Zac Brown Band leader alleged in a lawsuit filed Thursday in California federal court.

AS 'COPYRIGHT TROLL' TURNS NATIONAL, WILL BLOWBACK FOLLOW?
via Intellectual Property Law360 by Bill Donahue on 10/11/2019
URL: https://www.law360.com/ip/articles/1208101

Richard Liebowitz, an attorney who has filed more than 1,600 copyright lawsuits over the past four years, is quietly spreading his mass litigation operation from New York to the rest of the country — and judges in those other courts are starting to notice.

STATES CAN'T MONETIZE POWER OF LAW, GROUP TELLS JUSTICES
via Intellectual Property Law360 by Bill Donahue on 10/11/2019
URL: https://www.law360.com/ip/articles/1208483

A group called Public.Resource.Org has filed its opening shot in a U.S. Supreme Court case over whether states like Georgia can claim copyright ownership of legal texts, saying private publishers shouldn’t be allowed to monetize the value of legal authority.

KATY PERRY ASKS JUDGE TO THROW OUT $2.78 MILLION 'DARK HORSE' VERDICT
via Billboard by Tatiana Cirisano on 10/11/2019
URL: https://www.billboard.com/articles/business/8532770/katy-perry-appeals-dark-horse-copyright-ruling

As expected, Katy Perry, her collaborators and Capitol Records have begun the process of asking to appeal the verdict in July that found them guilty of swiping a beat from a Christian rap song for her 2013 hit "Dark Horse."
Copyrights protect original works of authorship fixed in a tangible medium of expression.

It makes sense that the government cannot use Copyright to keep the law out of the hands of the general public.

Weeks after the Ninth Circuit heard oral arguments in a closely watched copyright case over Led Zeppelin’s "Stairway to Heaven," the appeals court on Tuesday refused a request to sanction the band's attorney over statements made during the hearing.

For millions of listeners, Lizzo’s hit “Truth Hurts” has been more than just the No. 1 song in the country, the position it held on Billboard’s Hot 100 chart for six weeks this summer and fall.

Renowned Public Enemy rapper Chuck D sued a business partner and his music publishing company in California federal court Tuesday, accusing them of fraudulently taking control of copyrights to 28 songs and reaping illicit profits for years without the rapper's consent.
DC CIRC. DIVIDED OVER COPYRIGHT SUIT AGAINST FORD, GM
via Intellectual Property Law360 by Khorri Atkinson on 10/15/2019
URL: https://www.law360.com/ip/articles/1209841

Two D.C. Circuit judges on Tuesday appeared divided in the music industry's dispute against General Motors Co., Ford Motor Co. and two electronics manufacturers over allegedly unpaid music royalties after examining whether certain in-vehicle entertainment systems qualify as digital recording devices under federal law.

JUDGE'S CREATIVITY BASHED AT 9TH CIRC. TAYLOR SWIFT HEARING
via Intellectual Property Law360 by Dorothy Atkins on 10/15/2019
URL: https://www.law360.com/ip/articles/1209297

Two songwriters urged the Ninth Circuit Tuesday to revive their lawsuit alleging Taylor Swift’s hit song “Shake It Off” ripped off their work, arguing that a district judge prematurely dismissed the case without hearing expert testimony and asking “what does a trained jurist know about creativity?”

MUSICIAN WANTS OUT OF SUIT ALLEGING HE DESTROYED PAINTINGS
via Intellectual Property Law360 by Nathan Hale on 10/15/2019
URL: https://www.law360.com/ip/articles/1209344

A country music performer is seeking to squash an artist's lawsuit accusing him of mutilating two paintings with an assault rifle, arguing to a Florida federal court that the complaint fails to establish a valid claim under the Visual Artists Rights Act.

LAW PROFS, NONPROFITS BACK CREATORS OF SEUSS-TREK MASHUP
via Intellectual Property Law360 by Mike LaSusa on 10/15/2019
URL: https://www.law360.com/ip/articles/1209700

A number of prominent law professors, as well as the Electronic Frontier Foundation and other advocacy groups, told the Ninth Circuit that a California federal court had been right to rule earlier this year that a mashup of Dr. Seuss and Star Trek was protected under fair use.

IN 2019, MULTIPLE OPEN SOURCE COMPANIES CHANGED COURSE—IS IT THE RIGHT MOVE?
via Ars Technica on 10/16/2019
URL: https://arstechnica.com/?p=1503799

Free and open source software enables the world as we know it in 2019.
BIEBER SUED FOR POSTING PAPARAZZI PHOTO OF HIMSELF
via Intellectual Property Law360 by Bill Donahue on 10/16/2019
URL: https://www.law360.com/ip/articles/1210229

Justin Bieber is being sued for copyright infringement for reposting a paparazzi image of himself to Instagram, the latest in a string of such cases against oft-photographed celebrities.

GOOGLE SAYS FEDS ARE WRONG ABOUT ORACLE COPYRIGHT CASE
via Intellectual Property Law360 by Bill Donahue on 10/16/2019
URL: https://www.law360.com/ip/articles/1210206

Google filed an extra brief Wednesday pressing the U.S. Supreme Court to tackle the company’s multibillion-dollar copyright battle with Oracle, sharply criticizing the U.S. solicitor general for urging the justices to avoid the case.

THE CHANGING LANDSCAPE OF COPYRIGHTS PART II: THE WARHOL CASE CONTINUES TREND IN FAVOR OF FAIR USE
via IPWatchdog.com | Patents & Patent Law by Lee Burgunder on 10/17/2019

In my previous post, I explored how times have changed for photographers who once appeared to have the upper hand in copyright infringement disputes with appropriation artists and others. As discussed there, the high-water mark for photographers may have been several years ago, when the Associated Press used its leverage to reach a settlement with Richard Fairey regarding his Obama Hope poster. However, since then, photographers have suffered a series of losses, beginning in 2013 with Cariou v....

TRUMP ADMINISTRATION STAYING OUT OF CHALLENGE TO MUSIC LICENSING LAW FOR NOW

Justice Department lawyers address possible intervention down the road in a lawsuit from an Eminem publisher against Spotify.
IT MAY BE TIME TO RENEW YOUR DMCA AGENT REGISTRATION
via Copyright: Creativity at Work by Mark Gray on 10/17/2019
URL: https://blogs.loc.gov/copyright/2019/10/it-may-be-time-to-renew-your-dmca-agent-registration/

The deadline for the first wave of DMCA agent renewals is almost here. This post will explain what service providers need to know to maintain active agent registrations with the Copyright Office, and it will also answer some common questions.

SELF-DRIVING VEHICLES' NEURAL NETWORKS PRESENT IP CONUNDRUM
URL: https://www.law360.com/ip/articles/1208959

Artificial intelligence has been dubbed the fourth industrial revolution. In part, the development of AI has been spurred by our desire for automation, and there is no better nexus of these two areas than in the automotive industry, where the holy grail of automation is self-driving, or autonomous, vehicles.

WHAT 2ND CIRC. BIGGIE CASE MEANS FOR MUSICAL ARTISTS
via Intellectual Property Law360 by Staci Riordan & Sydney Pritchett on 10/17/2019
URL: https://www.law360.com/ip/articles/1208992

Most musical artists can rattle off a list of their musical influences and inspirations, but when does drawing from works of the past cross the line into copyright infringement? Late last month, the U.S. Court of Appeals for the Second Circuit in Oyewole v. Ora upheld a New York federal court’s decision allowing musical artists greater leeway when reusing the copyrighted works of others.

MONARCH OF ALL I SURVEY…COPYRIGHT EXCEPTED (WHAT ARE THE PURPOSES AND LIMITS OF GOVERNMENT COPYRIGHT?)
via Hugh Stephens Blog on 10/17/2019

“I am monarch of all I survey” is a quote attributed to the English poet William Cowper (1731-1800), and has become a well-known phrase.
APPEALS COURT GIVES PANDORA NEW HOPE FOR ESCAPING CLASS ACTION OVER PRE-1972 RECORDINGS

A lawsuit led by Flo & Eddie of The Turtles is endangered because Congress passed the Music Modernization Act.

THE CASE ACT: YOUR QUESTIONS ANSWERED
via The Authors Guild by Jennifer Simms on 10/17/2019
URL: https://www.authorsguild.org/industry-advocacy/the-case-act-your-questions-answered/

The Authors Guild has been actively advocating for a small copyright claims court since 2006, when we testified before the House Judiciary Committee about the need for such a venue. Copyright is the very foundation of the publishing economy authors’ ability to earn income. It is so important to democracy that our founders put in …

NEW FEES PROPOSED FOR U.S. COPYRIGHT OFFICE SERVICES
via Copyright: Creativity at Work by Karyn A. Temple on 10/18/2019
URL: https://blogs.loc.gov/copyright/2019/10/new-fees-proposed-for-u-s-copyright-office-services/

Let’s talk about fees. Not everyone’s favorite topic, I’ll admit, but it’s something the Copyright Office could not operate without. Yesterday, the Copyright Office delivered our Fee Schedule and Analysis to Congress. Every three to five years, the Office engages in an in-depth study of our fees to determine whether to adjust them. To be […]

HOW ARTISTS CAN CURTAIL ONLINE IP THEFT DEFENDED BY FAIR USE
via Intellectual Property Law360 by Debra Doby & Michael Siem on 10/18/2019
URL: https://www.law360.com/ip/articles/1209656

Society, as never before, communicates through photographs on social media platforms like Facebook Inc., Twitter Inc. and Instagram Inc.. With barely a thought, individuals snap, post and share photographs online for the world’s consumption and collectively forget that social media posts are in the public domain, susceptible to being easily copied and used without permission.
BANDAI WANTS TO PULL PLUG ON RETRO MS. PAC-MAN GAME
via Intellectual Property Law360 by Matthew Perlman on 10/18/2019
URL: https://www.law360.com/ip/articles/1210945

Bandai Namco Entertainment America Inc. has asked a California federal court to temporarily stop a maker of retro game systems from selling and developing products that use its Ms. Pac-Man property.

9TH CIRC. WON’T REHEAR STEINBECK FAMILY COPYRIGHT FIGHT
via Intellectual Property Law360 by Tiffany Hu on 10/18/2019
URL: https://www.law360.com/ip/articles/1210840

The Ninth Circuit on Friday said it won't reconsider its decision in the decadeslong litigation between John Steinbeck's heirs over the rights to his award-winning literary works, setting the stage for a possible appeal to the U.S. Supreme Court.

9TH CIRC. WANTS NOVEL RULING ON MUSIC MODERNIZATION ACT
via Intellectual Property Law360 by Tiffany Hu on 10/18/2019
URL: https://www.law360.com/ip/articles/1210806

The Ninth Circuit wants a trial court to figure out whether the new Music Modernization Act spells defeat for a long-running lawsuit filed against internet radio giant Pandora over songs recorded before 1972.

YU IDEAS: INTELLECTUAL PROPERTY IN THE DIGITAL AGE
via zzzGoogle Alert - Copyright by Michael Bettencourt on 10/20/2019

Let's not talk about legal ownership, copyright law or rabbinic injunctions ..... Copyrights and patents are provided for explicitly in Article I, Section 8, ...

REVIEWING THE BASICS OF THE CASE ACT
via The Illusion of More by David Newhoff on 10/21/2019
URL: http://illusionofmore.com/reviewing-the-basics-of-the-case-act/

This week, the Copyright Alternative in Small-Claim Enforcement (CASE Act) will very likely pass the House. Like a quiet tidepool of bipartisanship in otherwise raging waters, [...]
JUSTIN BIEBER REACHES DEAL TO SETTLE PAPARAZZI COPYRIGHT SUIT
via Intellectual Property Law360 by Dani Kass on 10/21/2019
URL: https://www.law360.com/ip/articles/1211515

Justin Bieber has settled a newly filed copyright infringement lawsuit accusing him of wrongly posting a paparazzi image of himself to Instagram, although it was unclear if the “Sorry” singer actually had to apologize or hand over money.

COPYRIGHT OFFICE SOFTENS FEE HIKES IN PROPOSAL TO CONGRESS
via Bloomberg Law by Kyle Jahner on 10/21/2019

The U.S. Copyright Office has softened some of its planned fee increases and eliminated plans to nearly double fees to register groups of photos, in a ...

CHARTER SHOULD FACE RECORD LABELS’ IP SUIT, JUDGE SAYS
via Intellectual Property Law360 by Mike LaSusa on 10/21/2019
URL: https://www.law360.com/ip/articles/1211874

A Colorado federal judge recommended Monday that the court reject an attempt by Charter Communications Inc. to kill a lawsuit brought by a group of record labels claiming the internet service provider has been making millions by letting music piracy slide.

NO, MIKE, IT’S THAT YOU’RE JUST WRONG ABOUT THE CASE ACT.
via The Illusion of More by David Newhoff on 10/22/2019
URL: http://illusionofmore.com/no-mike-its-that-youre-just-wrong-about-the-case-act/

I had to stop myself from responding on Twitter to Masnick’s comments about the CASE Act because I do not like to devolve to pure [...]

WHAT THE EFF! THE CASE ACT WILL RESCUE CREATIVES FROM COSTLY COPYRIGHT INFRINGEMENT LITIGATION— WHY ARE YOU FIGHTING IT?
via CreativeFuture by Justin Sanders on 10/22/2019
URL: https://creativefuture.org/eff-case-act-2/

Imagine you are an influential nonprofit, well-funded by some of the world’s wealthiest companies, with the noble goal of “defending digital privacy, free speech, and innovation.”
JUSTIN BIEBER QUICKLY SETTLES COPYRIGHT LAWSUIT OVER PAPARAZZI PHOTO
via Billboard by Tatiana Cirisano on 10/22/2019
URL: https://www.billboard.com/articles/business/8533732/justin-bieber-settles-copyright-lawsuit-paparazzi-photo-instagram

Justin Bieber has settled a copyright lawsuit with a photographer whose paparazzi shot the singer posted on Instagram. After Bieber posted the photo ...

EPIC GAMES SETTLES COPYRIGHT CLAIMS AGAINST 'FORTNITE' HACKER
via Bloomberg Law by Blake Brittain on 10/22/2019
URL: https://news.bloomberglaw.com/ip-law/epic-games-settles-copyright-claims-against-fortnite-hacker

“Fortnite” maker Epic Games settled copyright claims it brought against a minor who used and sold software to hack the popular multiplayer game.

COPYRIGHT SMALL CLAIMS COURT BILL SAILS THROUGH HOUSE
via Intellectual Property Law360 by Bill Donahue on 10/22/2019
URL: https://www.law360.com/ip/articles/1211559

Legislation to create a small claims court for copyright law was approved overwhelmingly by the U.S. House of Representatives on Tuesday, sending the bill to the Senate.

VIDANGEL SLAMS DISNEY SUIT, $62.4M JURY VERDICT AS ‘FARCE’
via Intellectual Property Law360 by Hailey Konnath on 10/22/2019
URL: https://www.law360.com/ip/articles/1212201

VidAngel Inc. on Monday asked for a reduced judgment and a new trial in its battle with Walt Disney and other major studios, arguing the now-bankrupt streaming service was “forced to play its part in a farce” and the resulting $62.4 million jury verdict blatantly violates due process.

MERCEDES CASE REVEALS INTEGRATED-WORK COPYRIGHT STOPGAP
via Intellectual Property Law360 by Mitch Tuchman on 10/23/2019
URL: https://www.law360.com/ip/articles/1212334

Stripped, the Mercedes-Benz USA LLC G500 runs $124,000 (manufacturer's suggested retail price) and comes in 24 colors.
MULBERRY BAGS WIN IN COPYRIGHT DISCRIMINATION CLAIM (UK)
via National Law Review by David Whincup on 10/23/2019
URL: https://www.natlawreview.com/article/mulberry-bags-win-copyright-discrimination-claim-uk

If you want to push the concept of protection for philosophical belief under the Equality Act 2010 way beyond its sensible limit. Here is just the case for ...

CONTROVERSIAL COPYRIGHT BILL INCHES CLOSER TO BECOMING LAW AS HOUSE APPROVES
via Ars Technica by Kate Cox on 10/23/2019
URL: https://arstechnica.com/?p=1589963

In a change of pace for the modern era, the House of Representatives yesterday agreed on a bill and passed it by an overwhelming majority. Unfortunately, the bill in question, known as the CASE Act, is a controversial measure that critics argue could penalize ordinary Americans as much as $30,000 for something as simple as photo sharing, while also emboldening copyright trolls.

HC TO HEAR ANOTHER COPYRIGHT VIOLATION CASE AGAINST BIGIL
via The Hindu on 10/23/2019

Actor Vijay starrer Bigil has run into one more trouble with the Madras High Court on Wednesday agreeing to hear on Thursday a plea by another ...

LIZZO FIGHTS 'TRUTH HURTS' PLAGIARISM CLAIMS WITH LAWSUIT
via Intellectual Property Law360 by Bill Donahue on 10/23/2019
URL: https://www.law360.com/ip/articles/1212776

The singer Lizzo filed a preemptive lawsuit Wednesday in California federal court aimed at disproving recent accusations that several other songwriters deserve credit for her chart-topping "Truth Hurts."
MINI-POST: A BRIEF AND NOTES OF THE ARGUMENT IN WHEATON V. PETERS VIA JUSTICE BALDWIN
via Mostly IP History by Zvi S. Rosen on 10/24/2019

I posted recently about Banks v. Manchester and Callaghan v. Myers, the two 1888 cases about copyright in judicial opinions.

ARTIST CAN'T TAKE PORN VIDEOS OFF MARKET IN COPYRIGHT SUIT
via Intellectual Property Law360 by Tiffany Hu on 10/24/2019
URL: https://www.law360.com/ip/articles/1213010

An artist suing over pornographic videos filmed without permission at her rental home lost a bid Thursday to stop the videos from spreading after she failed to convince a Massachusetts federal judge that she would be harmed without an injunction.

QUAINT AND CURIOUS FORGOTTEN (COPYRIGHT) LORE
via Copyright: Creativity at Work by Alison Hall on 10/25/2019
URL: https://blogs.loc.gov/copyright/2019/10/quaint-and-curious-forgotten-copyright-lore/

As we approach October, thoughts often turn to colorful foliage, cozy hoodies, and pumpkin spice everything. Some thoughts also drift toward the spooky season, bringing to mind scary stories and maybe even “many a quaint and curious volume of forgotten lore.” Nothing in literature is as spooky or as culturally relevant as the afore-quoted Edgar Allan Poe.

LIEBOWITZ SAYS VOX'S FORGERY CLAIM DRIVEN BY 'BLOOD LUST'
via Intellectual Property Law360 by Tiffany Hu on 10/25/2019
URL: https://www.law360.com/ip/articles/1213520

Prolific copyright attorney Richard Liebowitz is pushing back on accusations that he forged his client's signature in a case he filed against Vox Media, saying the web media giant's bid for sanctions is motivated by "blood lust" against him.

JUDGE WON'T LET LITIGIOUS PORN CO. UNMASK DOWNLOADERS
via Intellectual Property Law360 by Bill Donahue on 10/25/2019
URL: https://www.law360.com/ip/articles/1213323

Ruling against a porn studio that has filed thousands of copyright lawsuits over the past three years, a New Jersey federal magistrate on Thursday became the latest judge to sharply criticize the company's mass litigation tactics.
On February 2, 2016 U.S. District Court – Southern District of New York received a lawsuit filed by tattoo parlor Solid Oak Sketches in relation to ...

PELOTON COPYRIGHT CASE ISN’T A CONSPIRACY, MUSIC COS. SAY
A group of music publishers say they didn’t violate antitrust laws by teaming up to sue Peloton for failing to properly license music, calling the accusation a “baseless” last resort from the cycling startup.

'NARCOS' COPYRIGHT TRIAL APPROACHES AS JUDGE REJECTS NETFLIX DISMISSAL BID
A judge rules that the plaintiff's movie deal didn't divest her of standing to bring a lawsuit.

HISD SETTLES COPYRIGHT CASE FOR $7.8M AFTER 'UNEXPECTED' JURY VERDICT
The cost of Houston ISD employees intentionally and repeatedly violating an Austin-based company's copyrights on study guides is now final: $7.8 ...

COPYRIGHT SUIT TARGETING TAYLOR SWIFT'S "SHAKE IT OFF" REVIVED BY APPEALS COURT
The Ninth Circuit says that judges shouldn't be arbiters of the worth of art — even for what's expressed in short phases (haters gonna hate).
9TH CIRC. SAYS TAYLOR SWIFT CAN'T SHAKE OFF COPYRIGHT SUIT
via Intellectual Property Law360 by Bill Donahue on 10/28/2019
URL: https://www.law360.com/ip/articles/1214374

The Ninth Circuit on Monday revived a lawsuit accusing Taylor Swift of ripping off lyrics for “Shake It Off” from an earlier song, citing a century-old ruling that says it's “dangerous” for judges to quickly toss copyright suits.

NETFLIX CAN'T DITCH 'NARCOS' SUIT AHEAD OF TRIAL
via Intellectual Property Law360 by Hailey Konnath on 10/28/2019
URL: https://www.law360.com/ip/articles/1214205

A Florida federal judge on Monday shut down a motion to dismiss a copyright suit claiming the Netflix series “Narcos” ripped off a Colombian journalist’s memoir, ruling that the journalist has standing to sue because she assigned away her rights only after the series had already aired.

CANADA’S ELECTION AND THE ELECTION COPYRIGHT CONTROVERSIES…WERE THERE ANY ACTUAL “WINNERS”?
via Hugh Stephens Blog on 10/28/2019

Here I am a couple of days after the Canadian election, sifting through the results, trying to figure out who really won—politically and in terms of the copyright controversies that came out of the campaign.

FACEBOOK USES COPYRIGHT LAW TO TACKLE HACKING OPERATIONS AND PHISHING WEBSITES
via Forbes by Kris Holt on 10/28/2019

Facebook has filed a lawsuit in an attempt to take down websites it says offer tools to hack Facebook accounts and/or attempt to obtain the login ...
INSIGHT: INTELLECTUAL PROPERTY CHALLENGES DURING AN AI BOOM
via Bloomberg Law by Yohan Liyanage & Kathy Berry on 10/29/2019

The software code underlying the AI system may be protected by literary copyright, although its functionality and underlying algorithms may not (as ...
FLORIDA COURT TO TACKLE COPYRIGHT QUESTION OVER EMBEDDED TWEETS
via Law.com by raychel Lean on 10/30/2019

A New York plaintiff who settled a copyright lawsuit against several news outlets, including Time Inc., Breitbart News Network, Vox and Yahoo, over a ...

KEEPING UP WITH COPYRIGHT INFRINGEMENT: COPYRIGHT, CELEBRITIES, PAPARAZZI, AND SOCIAL MEDIA
via IPWatchdog.com | Patents & Patent Law by Meaghan Kent on 10/30/2019
URL: https://www.ipwatchdog.com/2019/10/30/keeping-copyright-infringement-copyright-celebrities-paparazzi-social-media/id=115456/

Just two months after the end of her second copyright infringement lawsuit, fashion model Jelena Noura “Gigi” Hadid was sued for a third time, on September 13, for copyright infringement for posting paparazzi photos to her social media accounts without the license or permission of the photographer. Other celebrities, including Jennifer Lopez, Victoria Beckham and, most recently, Justin Bieber, have made news for the same situation. This trend falls into an interesting intersection of two...

USPTO ISSUES SECOND FEDERAL REGISTER NOTICE ON ARTIFICIAL INTELLIGENCE AND INNOVATION
via Director's Forum: A Blog from USPTO's Leadership by Andrea Iancu & Laura Peter on 10/30/2019
URL: https://www.uspto.gov/blog/director/entry/uspto_issues_second_federal_register

Article 1, Section 8, Clause 8 of the U.S. Constitution states that Congress has the power “[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

MUSIC TO OUR EARS: SOME CLARITY ON JOINT AUTHORSHIP OF COPYRIGHT
via National Law Review by Serena Totino & Georgina Rigg on 10/30/2019
URL: https://www.natlawreview.com/article/music-to-our-ears-some-clarity-joint-authorship-copyright

In the recent decision of the case Kogan v Martin, the UK Court of Appeal overturned an Intellectual Property Enterprise Court (IPEC) decision and ...
A Florida software company facing copyright infringement claims brought by Apple Inc fired back on Wednesday, saying the iPhone maker's lawsuit ...

Just when you thought the Electronic Frontier Foundation (EFF) couldn’t possibly hate creatives more than they already do, they’ve now appointed one of the greatest anti-copyright champs of them all: UC Berkeley professor Pamela Samuelson.

Richard Liebowitz, an attorney who has filed more than 1,600 copyright lawsuits over the past four years, is now demanding the recusal of a New York federal judge who "viciously" labeled him a "copyright troll."

The U.S. Patent and Trademark Office filed a notice in the Federal Register on Wednesday seeking comments focused on the policy implications associated with extending copyright protections to artificial intelligence-created works, and whether AI might also impact trademark law and trade secret law

Paparazzi powerhouse Backgrid USA is suing sports and pop culture blog Barstool Sports for using unlicensed photos of NFL star Tom Brady, singer Justin Bieber and actress Brie Larson, calling the oft-criticized publication a "notorious infringer of copyright" that should know better by now.
KATY PERRY SUED OVER HILLARY CLINTON COSTUME PAPARAZZI PIC
via Intellectual Property Law360 by Hailey Konnath on 10/30/2019
URL: https://www.law360.com/ip/articles/1215162

A celebrity news agency has sued Katy Perry in California federal court, alleging that she violated federal copyright law by posting a paparazzi photo of herself dressed up as Hillary Clinton on Instagram without paying to license the photo from the agency.

SELLER OF ILLEGAL STREAMING DEVICES PROSECUTED IN PREMIER LEAGUE CASE
via IPPro Magazine by Jenna Lomax on 10/31/2019
URL: http://www.ippromagazine.com/ippromagazinenews/article.php?article_id=7118

An electronics retailer in Singapore has been convicted of selling illegal streaming devices, which provided access to illegal broadcasts of Premier League football and other entertainment content.

JUDGE CRITICIZES PORN COMPANY’S FREQUENTLY FILED COPYRIGHT SUITS
via Law.com by Charles Toutant on 10/31/2019
URL: https://www.law.com/njlawjournal/2019/10/31/judge-criticizes-porn-companys-frequently-filed-copyright-suits/

Litigation tactics employed by a frequent filer of copyright infringement suits faced heavy criticism in a new ruling by a federal judge in New Jersey.

3 THINGS TO KNOW ABOUT TAYLOR SWIFT’S COPYRIGHT DEFEAT
via Intellectual Property Law360 by Bill Donahue on 10/31/2019
URL: https://www.law360.com/ip/articles/1215271

The Ninth Circuit shook things up this week and revived a copyright lawsuit against Taylor Swift over the lyrics to “Shake It Off,” sending the pop star back to court for more litigation.
November 2019

DECREASED PROCESSING TIMES FOR COPYRIGHT REGISTRATIONS
via Copyright: Creativity at Work by Robert J. Kasunic on 11/1/2019
URL: https://blogs.loc.gov/copyright/2019/11/decreased-processing-times-for-copyright-registrations/

At the beginning of October, the Copyright Office updated our Registration Processing Times and FAQ, found on our registration portal, to reflect significant decreases in the time it takes us to review copyright registration applications.

TUNEIN RADIO INFRINGED SONY & WARNER’S COPYRIGHTS, HIGH COURT RULES
via TorrentFreak by Andy Maxwell on 11/1/2019

TuneIn is one of the most prominent and recognizable providers of radio content in the world.

A PLAN FOR WHEN AI USERS’ WORKS INFRINGE HUMAN WORKS
via Intellectual Property Law360 by Jonathan Purow on 11/1/2019
URL: https://www.law360.com/ip/articles/1215425

Artificial intelligence has arrived. We are long past the novelty of IBM Corp.’s Watson winning on Jeopardy in 2011 and have entered an era in which artificial intelligence has innumerable impacts on our daily lives. We are constantly aided by Amazon.com’s Alexa and Siri, guided by Uber Technologies Inc.’s AI, and flown on planes predominantly piloted by AI.

RAPPER CAM’RON SETTLES COPYRIGHT SUIT OVER ICONIC HARLEM PIC
via Intellectual Property Law360 by Tiffany Hu on 11/1/2019
URL: https://www.law360.com/ip/articles/1215705

A photographer widely known for his photos depicting the black experience in America has agreed to settle a copyright lawsuit against rapper Cam’ron, resolving accusations that the rap artist ripped off his iconic photo of 1980s Harlem.
COPYRIGHT REGISTRATIONS PICKED UP PACE IN 2019, AGENCY REPORTS
via BloombergLaw by Kyle Jahner on 11/1/2019

Average processing times for reviewing applications fell from seven months to four, Associate Register of Copyrights Robert J. Kasunic said in a blog ... 

STRIKE 3’S COPYRIGHT LITIGATION CAMPAIGN COMPLETELY STRIKES OUT
via Technology & Marketing Law Blog by Eric Goldman on 11/2/2019

Another judge denies an unmasking subpoena to Strike 3, even though the judge has previously issued subpoenas to Strike 3, and even though it may mean that Strike 3’s infringement case will fail and Strike 3 will be left without any remedy for the alleged infringement.

THE HISTORY OF IP ILLUSTRATED
URL: https://lareviewofbooks.org/article/the-history-of-ip-illustrated/

Warner Bros. copyright infringement lawsuit involving Mike Tyson's tattoo in the movie The Hangover in a surprisingly fresh new way with new details ...

THE CASE ACT: GOOD INTENTIONS BUT BAD POLICY

On October 22, the U.S. House of Representatives passed, by a vote of 410-6, the Copyright Alternative in Small-Claims Enforcement Act (the “CASE Act”). The Act proposes to set up what is in essence a voluntary administrative procedure conducted in the U.S. Copyright Office whereby artists and other copyright holders can protect their copyrights without the cost, expense and difficulty associated with filing a full-blown copyright infringement litigation in federal court. Based on the vote in...
In 1718 Edward Teach, better known as the pirate Blackbeard (or Black Beard), deliberately beached and sank his iconic ship, the Queen Anne’s Revenge.

War, unfortunately, is as old as history.

In an outdoor area of the Shangri-La recording studios in Malibu, two titans of hip-hop—rapper/singer/producer/November GQ cover star Pharrell ...

The U.S. Supreme Court on Monday refused to hear a case accusing H&M of copying a textile company's copyrighted floral lace designs, leaving in place a ruling that the fast-fashion giant warned would make it "dramatically" easier to sue for infringement.

The Supreme Court has a chance to end the double standard that allows state institutions to run roughshod over copyrights, the legal fountainhead of ...
CASE ACT NOISE GETS LOUDER. AND SILLIER.
via The Illusion of More by David Newhoff on 11/5/2019

After the CASE Act passed the House (410-6) on October 22 and moved onto the Senate, the various groups opposed to this copyright small-claim bill [...] 

PIRACY CRACKDOWN MAY BE NEXT FRONT IN STREAMING WARS 
URL: https://www.hollywoodreporter.com/thr-esq/piracy-crackdown-may-be-next-front-streaming-wars-1252309

Controlling user access to platforms (password sharing) will be a priority as major conglomerates bet on new direct-to-consumer digital services.

JUSTICES FEAR LETTING STATES INFRINGE TO 'HEART’S CONTENT'
via Intellectual Property Law360 by Bill Donahue & Jimmy Hoover on 11/5/2019
URL: https://www.law360.com/ip/articles/1216831

The U.S. Supreme Court suggested Tuesday that precedent bars a filmmaker from suing North Carolina for using footage of a famous pirate shipwreck, though the justices expressed concern that giving states full immunity against copyright lawsuits would let them infringe to “heart’s content.”

SUPREME COURT WRESTLES WITH CONSEQUENCES FOR PIRACY BY STATE GOVERNMENTS

North Carolina tells the high court that the 11th Amendment provides a shield to claims it took a filmmaker's copyrighted images.
SPARKS FROM EN BANC ARGUMENTS IN SONG SUIT AGAINST LED ZEPPELIN
via Law.com by Scott Graham on 11/5/2019

There was much harmony along with a few discordant notes as an en banc panel of the U.S. Court of Appeals for the Ninth Circuit took up the copyright case involving Led Zeppelin’s “Stairway to Heaven.”

DENTIST WHO HID EMAIL CAN DROP IP SUIT IF HE PAYS DEFENSE BILL
via Intellectual Property Law360 by Nathan Hale on 11/5/2019
URL: https://www.law360.com/ip/articles/1217266

A Florida federal judge said Monday that he would grant a dentist's motion to voluntarily dismiss his copyright case against a website design company, but only if he pays the defense's legal expenses after it was revealed he had not produced a crucial email message.

ARGUMENT ANALYSIS: JUSTICES PILLAGE STATE ARGUMENTS FOR SOVEREIGN IMMUNITY FOR COPYRIGHT INFRINGEMENT
via SCOTUSblog by Howard M. Wasserman on 11/6/2019

Blackbeard went unmentioned in Tuesday’s arguments in Allen v. Cooper.

ALLEN V. COOPER: SUING STATES FOR IP INFRINGEMENT
via Patent Law Blog (Patently-O) by Dennis Crouch on 11/6/2019

In this copyright case, the Supreme Court is wrestling with the question of sovereign immunity.

JUDGE THREATENS TO JAIL COPYRIGHT ATTY OVER NO-SHOW EXCUSE
via Intellectual Property Law360 by Bill Donahue on 11/6/2019
URL: https://www.law360.com/ip/articles/1217643

A New York federal judge is threatening to have embattled copyright attorney Richard Liebowitz arrested if he cannot prove that he’s telling the truth about a death in the family that caused him to skip a hearing.
RIMINI HEADS TO HIGH COURT OVER ORACLE COPYRIGHT, AGAIN
via Intellectual Property Law360 by Dani Kass on 11/6/2019
URL: https://www.law360.com/ip/articles/1217666

Technical support service Rimini Street has brought its copyright dispute with Oracle back to the U.S. Supreme Court, asking the justices to help it dodge an injunction just months after it was able to get litigation costs trimmed back.

REMINDER: RENEW/UPDATE YOUR DMCA AGENT DESIGNATION
via Plagiarism Today by Jonathan Bailey on 11/7/2019

Consider this a brief reminder, if you operate a website or service that hosts content uploaded by third parties (namely users), the time to renew your Digital Millennium Copyright Act (DMCA) agent designation is likely approaching fast.

COPYRIGHT OFFICE MODERNIZATION PILOT ON TRACK FOR SPRING
via Bloomberg Law by Kyle Jahner on 11/7/2019
URL: https://news.bloomberglaw.com/ip-law/copyright-office-modernization-pilot-on-track-for-spring

The Copyright Office is on track to roll out a pilot for a digital program to replace its paper-based system for recording copyright ownership changes in ...

MOTOROLA TELLS JURY RIVAL NEEDED ITS SECRETS TO MAKE RADIO
via Intellectual Property Law360 by Lauraann Wood on 11/7/2019
URL: https://www.law360.com/ip/articles/1217572

Hytera Communications Corp. Ltd. poached several of Motorola Solutions LLC's former engineers to make a competing two-way digital radio using decades' worth of stolen private product information and computer code, a lawyer for Motorola told an Illinois federal jury during opening statements Thursday.

CHARTER SAYS PIRACY CASE WILL PUSH 'MASSIVE LIABILITY' ON ISPS
via Intellectual Property Law360 by Bill Donahue on 11/7/2019
URL: https://www.law360.com/ip/articles/1217082

Charter Communications is warning a federal judge that a copyright case filed by record labels could "open the floodgates for massive liability" by blaming internet service providers for online piracy simply because they advertise fast download speeds.
On October 30, 2019, the U.S. Patent and Trademark Office released a Federal Register Notice requesting comments on issues of artificial intelligence (AI) and intellectual property, the second such request in the past three months.

While there are a number of falsehoods being spread about the CASE Act by those who philosophically oppose any legislation that will help the creative community, there are a few honest critiques that are based on simple misunderstandings about the bill rather than malice.

Just days before trial, a federal judge concludes that the show isn't sufficiently similar to Virginia Vallejo's memoir.

A California federal judge shot down an attempt by The Weeknd to trim a suit accusing the Canadian R&B artist of ripping off a song by a trio of British songwriters to make his track "A Lonely Night," which appeared on his Grammy Award-winning 2016 album "Starboy."
NETFLIX SHAKES JOURNALIST'S COPYRIGHT SUIT OVER 'NARCOS' SERIES
via Intellectual Property Law360 by Hannah Albarazi on 11/8/2019
URL: https://www.law360.com/ip/articles/1218561

A Florida federal judge has thrown out a copyright suit against the makers of the Netflix series “Narcos” by a well-known Colombian journalist who claimed the show ripped off scenes from her memoir involving her romantic relationship with Pablo Escobar, ruling that historical facts cannot be copyrighted.

NETFLIX, NEWS OUTLETS HIT WITH 2ND 'WILD WILD COUNTRY' SUIT
URL: https://www.law360.com/ip/articles/1218318

The controversial religious group that was the subject of Netflix’s “Wild Wild Country” hit the acclaimed documentary’s makers with a second copyright infringement suit Thursday, slamming the series as “little more than a repackaging of content purloined from other authors and filmmakers.”

SHOULD THE COPYRIGHT OFFICE’S BEST PRACTICES SHINE SUNLIGHT ON THE UNMATCHED?
in Music Technology Policy by Chris Castle on 11/5/2019
URL: https://musictechpolicy.com/2019/11/05/should-the-copyright-offices-best-practices-shine-sunlight-on-the-unmatched/

The Music Modernization Act is a litigation magnet because of its failure to mandate a wholistic solution to the controversial black box. There are two commercially available systems that can address the problem.

ORAL ARGUMENTS IN ALLEN V. COOPER PIT COURT PRECEDENT AGAINST RISING TIDE OF STATE COPYRIGHT INFRINGEMENT
via IPWatchdog.com | Patents & Patent Law by Margaret Esquenet on 11/11/2019

The Supreme Court heard oral argument in Allen v. Cooper (Case No. 18-877) on Monday, November 5, 2019.
SOUTH AFRICAN COPYRIGHT PROPOSALS ANGER HOLLYWOOD
via World IP Review on 11/12/2019

The US film and music industry is putting pressure on the South African and US governments to axe the African country's proposed copyright.

RULES ON COPYRIGHT INFRINGEMENT FOR INLINE LINKING DEVELOPING IN THE UNITED STATES AND ABROAD
via IPWatchdog.com | Patents & Patent Law by Ross Bagley on 11/12/2019

As the relationship between copyright and the internet continues to develop and technical distinctions are increasingly cast aside for more practical perspectives, new licensing opportunities are becoming available for content owners and creators.

MIGOS BEAT COPYRIGHT SUIT OVER 'WALK IT TALK IT' LYRICS
via Intellectual Property Law360 by Bill Donahue on 11/12/2019
URL: https://www.law360.com/ip/articles/1219117

A Manhattan federal judge on Tuesday tossed a lawsuit accusing the rap group Migos of stealing the central lyric to their hit "Walk It Talk It" from an earlier song, ruling that such a short phrase couldn't be monopolized under copyright law.

A NEW LAWSUIT OVER A PHOTO OF JUSTIN BIEBER BRINGS EMBEDDING BACK INTO THE SPOTLIGHT
via Fashion Law on 11/12/2019
URL: https://www.thefashionlaw.com/home/a-new-suit-over-a-justin-bieber-photo-brings-embedding-back-into-the-spotlight

Unbeknownst to Goldman, in posting the photo, he would have a hand in giving rise to a significant question in connection with copyright law and the...
PEPSI DIDN'T STEAL SUPER BOWL AD, JUDGE SAYS
via Intellectual Property Law360 by Bill Donahue on 11/13/2019
URL: https://www.law360.com/ip/articles/1219500

Pepsi won a ruling Wednesday ending a copyright lawsuit that claimed it stole the idea for a Super Bowl commercial from an ad agency’s unused pitch, a decision that said the two had “few, if any similarities.”

HALL V. SWIFT: NINTH CIRCUIT REVIVES “SHAKE IT OFF” COPYRIGHT LAWSUIT
via JOLT Digest by Julian Rotenberg on 11/13/2019
URL: http://jolt.law.harvard.edu/digest/hall-v-swift-ninth-circuit-revives-shake-it-off-copyright-lawsuit


$30,000 FOR A MEME?: IMPLICATIONS OF THE CASE ACT
via JOLT Digest by Leslie Liu on 11/13/2019
URL: http://jolt.law.harvard.edu/digest/30-000-for-a-meme-implications-of-the-case-act

Copyright Alternative in Small-Claims Enforcement Act of 2019, H.R. 2426, 116th Cong. (as passed by House, Oct. 22, 2019). On October 22, 2019, the House passed the Copyright Alternative in...

NIRVANA MAY PROCEED WITH COPYRIGHT CLAIMS AGAINST MARC JACOBS
via Bloomberg Law by Peter Hayes on 11/14/2019
URL: https://news.bloomberglaw.com/ip-law/nirvana-may-proceed-with-copyright-claims-against-marc-jacobs

Nirvana LLC beat a bid to dismiss claims against Marc Jacobs International LLC alleging trademark infringement of the “Happy Face” logo after the ...

ELEVENTH CIRCUIT TAKES A BITE OUT OF ORIGINALITY IN DENTIST PHOTOGRAPHER CASE
via IPWatchdog.com | Patents & Patent Law by Cole Carlson on 11/14/2019

Ownership of a valid copyright requires that the work be independently created by the author and have some “minimal degree of creativity,” as required by Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., Inc. The Eleventh Circuit recently waded into this area of law in May of 2019 when it
decided Pohl v. MH Sub I LLC. The question is: did they get it right? Dr. Mitchell Pohl is a dentist based in Florida who took before and after photographs of his patient’s teeth to show his efforts in cosmetic...

NEW LEARNING EDGE SERIES VIDEO: WHAT IS COPYRIGHT?
via Copyright: Creativity at Work by Steve Andreadis on 11/14/2019
URL: https://blogs.loc.gov/copyright/2019/11/new-learning-edge-series-video-what-is-copyright/

In the short time I’ve been part of the U.S. Copyright Office, I’ve had several conversations that follow this same general scenario: “You work for the Copyright Office? Isn’t that where every copyright in America is registered? Should I go there with my idea that I want to protect? Will they take a family recipe?” I’ve been most surprised by how often I get asked that last question.

MARC JACOBS CAN’T EVADE NIRVANA'S LAWSUIT OVER 'HEAVEN' T-SHIRT
via Legal News & Entertainment Law - Hollywood, ESQ. | Hollywood Reporter by Ashley Cullins on 11/14/2019

The band is suing the designer over an item in its Bootleg Redux Grunge collection.

COPYRIGHT PROFESSORS RAISE ALARM OVER CHARTER PIRACY CASE
via Intellectual Property Law360 by Bill Donahue on 11/14/2019
URL: https://www.law360.com/ip/articles/1219881

Law professors from Stanford, Harvard and other elite schools are sounding the alarm over a potential ruling against Charter Communications in a copyright case filed by record labels, saying it could force internet service providers to take draconian actions against users.

OHHH NOOOO! NBC SUED AFTER GOLF CHANNEL FEATURES MR. BILL
via Intellectual Property Law360 by Hailey Konnath on 11/14/2019
URL: https://www.law360.com/ip/articles/1220120

The company that owns Mr. Bill, the fictional clay character that rose to fame after appearing on “Saturday Night Live” in the 1970s, on Thursday sued NBCUniversal Media LLC and the Golf Channel over a recent video featuring the character, claiming NBCUniversal has illegally treated Mr. Bill as its property for decades.
LIEBOWITZ'S ATTORNEY PLEADS FOR LENIENCY OVER LIES TO JUDGE
via Intellectual Property Law360 by Bill Donahue on 11/14/2019
URL: https://www.law360.com/ip/articles/1220168

Weeks after a federal judge threatened to imprison lawyer Richard Liebowitz for lying about the death of his grandfather, a criminal defense attorney and family friend sent the judge a letter begging her to forgive the embattled copyright litigator for his “inexcusable falsity.”

REDBOX AGREES TO NEVER AGAIN SELL DISNEY'S MOVIE DOWNLOAD CODES

A settlement finishes a legal dispute analyzing codes disassembled from "combo packs."

HIGH COURT TO HEAR GOOGLE-ORACLE SMARTPHONE WAR
via Intellectual Property Law360 by Bill Donahue on 11/15/2019
URL: https://www.law360.com/ip/articles/1220465

The U.S. Supreme Court agreed Friday to tackle a yearslong copyright battle between Google and Oracle over smartphone software, setting the stage for a potential landmark decision on intellectual property.

SUPREME COURT, FINALLY, TAKES UP GOOGLE V. ORACLE
via Law.com by Scott Graham on 11/15/2019
URL: https://www.law.com/2019/11/15/supreme-court-finally-takes-up-google-v-oracle/

The court's involvement is sure to reignite a 50-year-old debate over how much, if any, software should be subject to copyright, and the contours of the fair use defense in the digital age.

SPOTIFY, APPLE AGREE TO FUND NEW MUSIC ROYALTIES COLLECTIVE
via Intellectual Property Law360 by Tiffany Hu on 11/15/2019
URL: https://www.law360.com/ip/articles/1220041

Spotify, Apple and other major music streaming services have agreed to fund a new licensing collective created by the Music Modernization Act to collect and distribute so-called mechanical royalties to songwriters and publishers.
REDBOX WON’T SELL DISNEY MOVIE DOWNLOAD CODES ANYMORE  
via Intellectual Property Law360 by Lauren Berg on 11/15/2019  
URL: https://www.law360.com/ip/articles/1220613

Redbox has agreed to stop selling "codes" that allow owners of Disney DVDs to access the movies online, according to a stipulated injunction filed in California federal court as part of a settlement resolving Disney's two-year-old lawsuit.

BIG BIG BIG CASE: ORACLE V. GOOGLE  
via Patent Law Blog (Patently-O) by Dennis Crouch on 11/16/2019  

Odds are good that the biggest patent case of the year will be a copyright case.

WHEN COPYRIGHT MEETS PATRIOTISM: WHO OWNS THE COPYRIGHT TO NATIONAL ANTHEMS?  
via Hugh Stephens Blog on 11/17/2019  

We are all familiar with national anthems although most of us don’t get to sing them much except when we belt them out, to various forms of accompaniment, at sports events.

HIGH COURT THIS TIME GRANTS GOOGLE’S PETITION ON COPYRIGHT FOR SOFTWARE INTERFACES  
via IPWatchdog.com | Patents & Patent Law on 11/18/2019  

The Supreme Court has agreed to hear Google’s petition for a writ of certiorari in its long-running case with Oracle.

IS THE EFF’S NEW BOARD CHAIR ANTI-COPYRIGHT? WE STAND BY OUR FACTS.  
via CreativeFuture by Cesar Fishman on 11/18/2019  
URL: https://creativefuture.org/pamela-samuelson-response/

One thing became clear in the wake of our recent article on Pam Samuelson – she has a number of fans on “academic Twitter.”
SCOTUS ACCEPTS CERT. IN LONG-RUNNING ORACLE V. GOOGLE BATTLE OVER JAVA APIs
via The Entertainment, Arts and Sports Law Blog by Barry Werbin on 11/18/2019

On Friday, November 15th, the Supreme Court agreed to hear the long-running Oracle v. Google case, which addresses whether software application program interfaces (APIs) are subject to copyright protection and if Google was otherwise entitled to a fair use defense for copying portions of Oracle's JAVA declaring code and the structure/sequence/organization (SSO) of Oracle's Java APIs.

YOUTUBE ADPOCALYPSE IS NO SURPRISE
via The Illusion of More by David Newhoff on 11/19/2019
URL: http://illusionofmore.com/youtube-adpocalypse-is-no-surprise/

YouTubers call it the adpocalypse. It’s a word is used to describe the steady erosion of YouTube’s support for small and independent creators by demoting or demonetizing [...]

BARBARA RINGER: BEYOND THE ©
via Copyright: Creativity at Work by Alison Hall on 11/19/2019
URL: https://blogs.loc.gov/copyright/2019/11/barbara-ringer-anniversary/

Today we celebrate the forty-sixth anniversary of Barbara Ringer’s appointment as the first female Register of Copyrights.

MORE EVIDENCE THAT IP LAW PROTECTS INDIVIDUAL EMOJI DEPICTIONS–NIRVANA V. MARC JACOBS
via Technology & Marketing Law Blog by Eric Goldman on 11/19/2019

This case involves the well-known “Nirvana Happy Face” drawn by Kurt Cobain in 1991 and registered in 1993.

DISNEY FIGHTS TO KEEP $62.4M JURY VERDICT AGAINST VIDANGEL
via Intellectual Property Law360 by Tiffany Hu on 11/19/2019
URL: https://www.law360.com/ip/articles/1221388

Disney is urging a California federal court to leave in place a $62.4 million jury verdict it won in a copyright lawsuit against VidAngel, saying the now-bankrupt streaming service's bid for a new trial is "meritless" and should be denied.
YOU WOULDN’T PLAGIARIZE AN AIRPORT
via Plagiarism Today by Jonathan Bailey on 11/20/2019
URL: https://www.plagiarismtoday.com/2019/11/20/you-wouldnt-plagiarize-an-airport/

In what has to be one of the more bizarre plagiarism stories in recent memory, Qatar Airways accused Singapore’s Changi Airport Group of plagiarizing not a paper, an idea or a proposal, but an airport.

SCHOOL TEXT BOOKS ARE PROTECTED BY COPYRIGHT
via YouTube by WIPO on 11/21/2019
URL: https://www.youtube.com/watch?v=L_w6DeOICKc

In this awareness-raising video from Botswana, secondary school student Millie learns that school text books are protected by copyright

COPYRIGHT OFFICE’S LEARNING ENGINE VIDEO SERIES ON YOUTUBE
via Copyright: Creativity at Work by Steve Andreadis on 11/21/2019
URL: https://blogs.loc.gov/copyright/2019/11/copyright-offices-learning-engine-video-series-on-youtube/

When I first arrived at the U.S. Copyright Office back in June 2019, I spent some time getting up to speed on what exactly copyright is.

TAKE-TWO WANTS WWE GAME TATTOO IP SUIT PAUSED
via Intellectual Property Law360 by Ryan Boysen on 11/21/2019
URL: https://www.law360.com/ip/articles/1222374

Take-Two Interactive Software Inc. has asked an Illinois federal court to pause a tattoo artist's lawsuit alleging it infringed her copyright by depicting a wrestler she inked in a video game, arguing that a pending motion could decide the matter once and for all.

PINTEREST PROMOTES COPYRIGHT VIOLATIONS, PHOTOGRAPHER SAYS
via Intellectual Property Law360 by Mike LaSusa on 11/21/2019
URL: https://www.law360.com/ip/articles/1222359

A photographer sued Pinterest Inc. on Wednesday in California federal court, claiming the social media company promotes copyright infringement by encouraging users to share protected images without obtaining the permission of the artists who create them.
9TH CIRC. RESTORES JURY AWARD AGAINST ZAZZLE IN COPYRIGHT SUIT
via Intellectual Property Law360 by Tiffany Hu on 11/22/2019
URL: https://www.law360.com/ip/articles/1222060

The Ninth Circuit has reinstated a jury award against Zazzle in a copyright lawsuit over custom prints sold on its website after ruling a jury could find that Zazzle's failure to improve its "obviously insufficient" oversight system constituted willful infringement.

GOOGLE-ORACLE HIGH COURT FIGHT THREATENS FAIR USE ECOSYSTEM
via Intellectual Property Law360 by Brandon Butler on 11/22/2019
URL: https://www.law360.com/ip/articles/1222446

The arc of fair use may have been long, but in the last few decades it has bent decisively toward information justice. Those of us who rely on fair use every day (which is all of us) have got a very good thing going. That's why I am worried about the U.S. Supreme Court's taking the Google LLC v. Oracle America Inc. case: The current situation is quite good, and any change could easily be for the worse.

PRINCETON, FACEBOOK DODGE IP SUIT OVER AI DATA, FOR NOW
via Intellectual Property Law360 by Dani Kass on 11/22/2019
URL: https://www.law360.com/ip/articles/1222579

A 3-D imaging firm hasn't shown that it has a copyright that Facebook and Princeton University can be accused of violating, or proven that they stole trade secrets from the firm's website to use in artificial intelligence projects, a California federal judge said Thursday while dismissing the suit.

BROADCASTERS SAY NEW RADIO ROYALTIES BILL WOULD KILL STATIONS
via Intellectual Property Law360 by Anne Cullen on 11/22/2019
URL: https://www.law360.com/ip/articles/1222455

The National Association of Broadcasters pushed back on legislation introduced Thursday that would require radio stations to pay musicians and record labels for playing their music, arguing it could "decimate" broadcast radio.

SOUL ARTIST HITS TAYLOR SWIFT WITH FOURTH 'SHAKE IT OFF' IP SUIT
via Intellectual Property Law360 by Dorothy Atkins on 11/22/2019
URL: https://www.law360.com/ip/articles/1222851

A Los Angeles soul artist has hit Taylor Swift with a copyright infringement lawsuit for the fourth time in California federal court after his previous suits were tossed, renewing claims that
the pop artist owes him more than $42 million for ripping off his earlier song "Haters Gone Hate" to create "Shake It Off."

CANADIAN COURT’S GROUND-BREAKING SITE BLOCKING DECISION: MEAT OR POISON?
via Hugh Stephens Blog on 11/25/2019
URL: http://hughstephensblog.net/2019/11/25/canadian-courts-ground-breaking-site-blocking-decision-meat-or-poison/

There is an old saying that “one man’s meat is another man’s poison”, something that came to mind the other day when I read two very different accounts of the Canadian Federal Court decision reached on November 15 granting blocking orders against two sites (GoldTV.biz and GoldTV.ca) that were providing pirated streaming content to Canadian households from offshore servers.

PHOTOG ACCUSES PRINCE’S ESTATE OF COPYRIGHT INFRINGEMENT
URL: https://www.law360.com/ip/articles/1222940

A photographer who worked closely with Prince says the late artist’s estate has been using her photography without permission, prioritizing “corporate interests over artists’ rights, in direct contravention of Prince’s well-known principles and legacy,” according to a suit filed Friday.

ARGUMENT PREVIEW: JUSTICES TO CONSIDER COPYRIGHTABILITY OF STATE LEGISLATIVE CODES
via SCOTUSblog by Ronald Mann on 11/26/2019

The Supreme Court will hear oral argument in Georgia v Public.Resource.Org next week, on the first day of its December argument session.

ROASTED ZUCK, A SMALL-CLAIMS COPYRIGHT BILL, AND YOU: 4 THINGS WE’RE THANKFUL FOR IN 2019
via CreativeFuture by Justin Sanders on 11/26/2019
URL: https://creativefuture.org/4-reasons-thankful-2019/

We do a lot of railing against the mammoth internet platforms (Google and Facebook) and other internet companies that are harming not just the creative industries but society at large.
ALLEGED MUSIC HACKER INDICTED FOR IMPERSONATING A PRODUCER TO STEAL UNRELEASED MUSIC

The 27-year-old man is also facing charges for allegedly hacking the cloud accounts of two management companies — and leaking more than 50 gigabytes of stolen music.

HOW OPEN SOURCE CHANGED EVERYTHING — AGAIN
via ITworld News by Matt Asay on 11/27/2019
URL: https://www.itworld.com/article/3481661/how-open-source-changed-everything-again.html

We’re about to conclude another decade of open source, and what a long, strange trip it has been. Reading back through predictions made in 2009, no one had the foggiest clue that GitHub would change software development forever (and for everyone), or that Microsoft would go from open source pariah to the world’s largest contributor, or a host of other dramatic changes that became the new normal during a decade that was anything but normal.

MARC JACOBS COUNTERSUES NIRVANA OVER SMILEY FACE DESIGN
URL: https://www.hollywoodreporter.com/thr-esq/marc-jacobs-countersues-nirvana-smiley-face-design-1258256

On the defensive for allegedly ripping off a design for a T-shirt, the fashion designer seeks to cancel the band's copyright registration.

JUDGE DECLINES RECUSAL BID OVER 'COPYRIGHT TROLL' COMMENTS
via Intellectual Property Law360 by Dave Simpson on 11/27/2019
URL: https://www.law360.com/ip/articles/1224043

A New York federal judge has declined to recuse himself after criticizing Richard Liebowitz, an attorney who has filed more than 1,600 copyright lawsuits over the past four years, noting that he never actually called the attorney a "copyright troll" and that he's shown neither favoritism nor antagonism.
MARC JACOBS SAYS NIRVANA SMILEY FACE ISN’T COPYRIGHTABLE
via Intellectual Property Law360 by Hannah Albarazi on 11/27/2019
URL: https://www.law360.com/ip/articles/1224074

Fashion designer Marc Jacobs International LLC pushed back Tuesday against claims that it ripped off Nirvana’s iconic “smiley face” logo, arguing that it had not infringed the defunct band’s logo because the image allegedly drawn by Nirvana’s late frontman Kurt Cobain isn’t copyrightable.

PROMOTING PROGRESS IN THE DIGITAL AGE
via The Illusion of More by David Newhoff on 11/29/2019

Over the past three years since the internet industry first had to respond to the so-called “Techlash,” various comments on the theme that “the internet didn’t turn out like we expected” have generally shared one common flaw—a failure to acknowledge that the expectation itself was folly.
CREATESPACE ISN’T LIABLE FOR PUBLISHING ALLEGEDLY INFRINGING UPLOADED BOOK–KING V. AMAZON
via Technology & Marketing Law Blog by Eric Goldman on 12/1/2019

King wrote a book, From Brooklyn to the Grave. King asked his ex-girlfriend, Thomas, to help edit and publish the book.

COPYRIGHT IN STATE GOVERNMENT WORKS IN THE INFORMATION AGE
via Patent Law Blog (Patently-O) by Dennis Crouch on 12/1/2019
URL: https://patentlyo.com/patent/2019/12/copyright-government-information.html

On December 2, 2019, the Supreme Court is set to hear oral arguments in Georgia v. Public.Resource.org, Inc. 18-1150 on the question of whether the state of Georgia can obtain and protect a copyright on the “Official Code of Georgia Annotated.” Or, is copyright protection prohibited by the government edicts doctrine as the 11th Circuit held.

COPYRIGHT, STATE SOVEREIGNTY, AND PIRATES: SOME THOUGHTS ON ORAL ARGUMENT IN ALLEN V. COOPER (GUEST BLOG POST)
via Technology & Marketing Law Blog by Glynn Lunney on 12/2/2019

When our country was founded, one of the central issues was how much of their sovereignty the states would cede to the new federal government and how much they would retain for themselves.

COPYRIGHTED ARTWORK CAN'T BE RESOLD IN PIECES, DANISH COURT SAYS
via Bloomberg Law by Marcus Hoy on 12/2/2019

A company that bought the painting “Paris Chic” can't sell pieces of it in the faces of wristwatches because the artist still retains the copyright to the ...
JUSTICES WEIGH COPYRIGHT 'PAY WALL' FOR LEGAL TEXTS
via Intellectual Property Law360 by Bill Donahue on 12/2/2019
URL: https://www.law360.com/ip/articles/1224471

The U.S. Supreme Court voiced concerns Monday with allowing states like Georgia to claim copyright ownership over certain legal texts, at one point asking why the court should allow laws to be "hidden behind a pay wall."

COPYRIGHT: WHEN THE CASE SUMMARIES ARE “OFFICIAL” WORKS AUTHORED BY THE STATE
via Patent Law Blog (Patently-O) by Dennis Crouch on 12/2/2019
URL: https://patentlyo.com/patent/2019/12/copyright-summaries-official.html

Georgia’s counsel Joshua Johnson began his oral arguments by drawing the Supreme Court’s attention to its 19th Century case-law regarding the judicially-created government edicts doctrine:

ARGUMENT ANALYSIS: JUSTICES DEBATE COPYRIGHTABILITY OF STATE LEGISLATIVE ANNOTATIONS
via SCOTUSblog by Ronald Mann on 12/3/2019

The Supreme Court brought a surprising amount of attention to the second argument yesterday morning, in Georgia v Public.Resource.Org.

PROCEDURAL IMPLICATIONS OF GOOGLE OBTAINING CERTIORARI FOR ITS APPEAL OF ORACLE’S JAVA-ANDROID COPYRIGHT VICTORY
via FOSS Patents by Florian Mueller on 12/3/2019

Last January (2019) I wrote that I wanted Google to be granted certiorari (Supreme Court review) of Oracle's copyright win(s) in the Federal Circuit, but I also made it clear I wanted affirmation (no surprise to anyone who knows what I wrote about the case in previous years).
ARTWORK CANNOT BE CUT UP TO REALIZE WATCH FACES, DANISH COURT RULES
via At last ... the 1709 Copyright Blog by Angela Saltarelli on 12/3/2019
URL: http://the1709blog.blogspot.com/2019/12/artwork-cannot-be-cut-up-to-realize.html

Copenhagen's maritime and commercial court was recently asked to decide whether Dann Thorleifsson and Arne Leivsgard - a duo of Faroese art provocateurs and founders of Kankse and Letho watch brands - could cut up Tal R's artwork "Paris chic", which the duo had purchased last August for 70,000 £ at the Victoria Miro Gallery in London.

JUSTICES DEBATE ALLOWING STATE LAW TO BE “HIDDEN BEHIND A PAY WALL”
via Ars Technica by Timothy B. Lee on 12/3/2019
URL: https://arstechnica.com/?p=1627091

The courts have long held that laws can't be copyrighted.

MUSIC SITE GENIUS SAYS GOOGLE IS STEALING SONG LYRICS
via Intellectual Property Law360 by Bill Donahue on 12/3/2019
URL: https://www.law360.com/ip/articles/1224876

Lyrics website Genius sued Google on Tuesday over accusations that the tech giant "misappropriates" lyrics for its search results, claiming in New York state court the practice is anti-competitive and deprives the smaller company of revenue.

MAJOR STUDIOS INK $50M DEAL WITH OMNIVERSE OVER PIRATING
via Intellectual Property Law360 by Mike LaSusa on 12/3/2019
URL: https://www.law360.com/ip/articles/1224588

Omniverse One World Television has agreed to shut down its operations and pay $50 million to Disney, Paramount and other Hollywood heavyweights to resolve a case accusing Omniverse of illegally selling copyrighted content to streaming services, according to a judgment entered Tuesday in California federal court.

COPYRIGHT ON THE INTERNET
via Copyright: Creativity at Work by Steve Andreadis on 12/4/2019
URL: https://blogs.loc.gov/copyright/2019/12/copyright-on-the-internet/

One of the biggest lessons I learned as a young child was the importance of sharing. Share your toys. Share your treat with your sister. Share the TV time. Nothing wrong with sharing, right?
HIGH COURT MAY ALLOW GEORGIA TO COPYRIGHT LEGAL ANNOTATIONS
via Law360: Legal Industry by Fabio Marino on 12/4/2019
URL: https://www.law360.com/legalindustry/articles/1225238

On Monday, the U.S. Supreme Court heard oral arguments in the Georgia v. Public.Resource.Org Inc. case. Based on the justices’ questions, it appears the court is inclined to let Georgia’s practice of adopting an annotated code as its official code stand, while clarifying that because the annotations added to the actual language of the statute do not have the force of law, they are, therefore, eligible for copyright protection.

LAWMAKERS 'DEEPLY CONCERNED' ABOUT COPYRIGHT RESTATEMENT
URL: https://www.law360.com/ip/articles/1225223

Lawmakers on Wednesday said they were "deeply concerned" over the American Law Institute's plan to draft a restatement of U.S. copyright law to be cited in legal documents, warning that courts should not be able to rely on "novel interpretations" of law created through federal statutes.

MEMBERS OF CONGRESS THE LATEST TO QUESTION ALI’S RESTATEMENT OF COPYRIGHT
via Center for the Protection of Intellectual Property by Devlin Hartline on 12/5/2019
URL: https://cpip.gmu.edu/2019/12/05/members-of-congress-the-latest-to-question-alis-restatement-of-copyright/

As copyright wonks are surely aware, the American Law Institute (ALI) has been busy with its first foray into restating a body of federal statutory law, the Restatement of Copyright. Restatements have traditionally covered state common-law topics, such as employment, property, trusts, and torts, which are primarily governed by some combination of state statutory and judge-made law.

LAWMAKERS URGE AMERICAN LAW INSTITUTE NOT TO PUBLISH NEW COPYRIGHT RESTATEMENTS
via Billboard by Claudia Rosenbaum on 12/5/2019
URL: https://www.billboard.com/articles/business/8545498/lawmakers-american-law-institute-copyright-restatements

4) sent a stern letter to the director of the American Law Institute expressing their concerns with a planned Copyright Restatement Project that they ...
ALEX KOZINSKI SET TO RETURN TO 9TH CIRCUIT AS ORAL ADVOCATE
via Law.com by Ross Todd on 12/5/2019
URL: https://www.law.com/2019/12/05/alex-kozinski-set-to-return-to-9th-circuit-as-oral-advocate/

A little less than two years after Alex Kozinski abruptly retired from the bench amid allegations of harassment and sexual misconduct, the former chief judge of the U.S. Court of Appeals for the Ninth Circuit is set to return to the court as an advocate.

FILMMAKER WINS COPYRIGHT CASE AGAINST YOUTUBE
via Economic Times by Gaurav Laghate on 12/6/2019
URL: https://economictimes.indiatimes.com/industry/media/entertainment/filmmaker-wins-copyright-case-against-youtube/articleshow/72395412.cms

MUMBAI: Indian filmmaker Suneel Darshan has won a copyright ... the “unauthorised exploitation” of the copyrighted works, causing huge financial ...

MRAZ SUES COORS – INSTRUCTIVE TO COPYRIGHT SMALL-CLAIM ALTERNATIVE
via The Illusion of More by David Newhoff on 12/6/2019
URL: http://illusionofmore.com/mraz-sues-coors-instructive-to-copyright-small-claim-alternative/

When it comes to copyright infringement, the internet—namely social media platforms—has taught even very large commercial entities some very bad habits.

9TH CIRC. DELETES BIG PARTS OF TAYLOR SWIFT COPYRIGHT RULING
via Intellectual Property Law360 by Bill Donahue on 12/6/2019
URL: https://www.law360.com/ip/articles/1226066

The Ninth Circuit on Thursday made unusual edits to a high-profile copyright ruling the court issued earlier this year against Taylor Swift, deleting entirely a colorful paragraph about how "dangerous" it is for judges to assess art.

WE COMMITTED COPYRIGHT INFRINGEMENT AND WANT TO BE SUED BY DISNEY'
via Fortune by David Z. Morris & Aaron Pressman on 12/6/2019
URL: https://fortune.com/2019/12/06/we-committed-copyright-infringement-and-want-to-be-sued-by-disney/

This is the web version of Data Sheet, Fortune's daily newsletter on the top tech news. To get it delivered daily to your in-box, sign up here.
SENATORS HAMMERING OUT COMPROMISE ON COPYRIGHT TRIBUNAL BILL
via Bloomberg Law by Kyle Jahner on 12/6/2019
URL: https://news.bloomberglaw.com/ip-law/senators-hammering-out-compromise-on-copyright-tribunal-bill

Sen. Ron Wyden, who has held up legislation that would create a small-claims tribunal in the Copyright Office, is working with the bill's sponsors to ...

MARVIN GAYE FAMILY CLAIMS IN COURT THAT PHARRELL WILLIAMS COMMITTED PERJURY

A huge copyright lawsuit assumed finished explodes again after Williams recently talked about reverse engineering Marvin Gaye during the creation of "Blurred Lines."

THE ALI RESTATEMENT OF COPYRIGHT LAW IS A POLITICAL PROJECT WITHOUT A POLITICAL PROCESS
via The Illusion of More by David Newhoff on 12/9/2019
URL: http://illusionofmore.com/the-ali-restatement-of-copyright-law-is-a-political-project-without-a-political-process/

Assuming the Republic survives the present era, I think the retrospective phrase we might use to describe the spirit of the last two decades might be If it ain’t broke, hold my beer.

MPA TAPS COPYRIGHT OFFICE DIRECTOR KARYN TEMPLE AS GENERAL COUNSEL

Charles Rivkin announces the top Hollywood trade group's new hire.
INSURER SAYS RAPPER FAT JOE'S COPYRIGHT SUIT ISN'T COVERED
via Intellectual Property Law360 by Dani Kass on 12/9/2019
URL: https://www.law360.com/ip/articles/1226268

Homeland Insurance Co. of New York has told a New York federal court it doesn't have to cover the rapper Fat Joe in a copyright infringement lawsuit related to the 2016 double-platinum single "All the Way Up," as the suit doesn't fall under their agreement.

SEAN HALL V. TAYLOR SWIFT 9TH CIRCUIT REVERSAL AND REMAND
via The Entertainment, Arts and Sports Law Blog by Shanti Sadtler Conway on 12/9/2019
URL: http://nysbar.com/blogs/EASL/2019/12/sean_hall_v_taylor_swift_9th_c.html

The Ninth Circuit recently amended its order in the Sean Hall v. Taylor Swift case, which had accused Swift's song "Shake It Off" of infringing a six-word phrase and four-part lyrical sequence from Hall's "Playas Gon' Play" song.

'FORTNITE' STUDIO SUES OVER DANCE INFRINGEMENT THREATS
via Intellectual Property Law360 by Bill Donahue on 12/9/2019
URL: https://www.law360.com/ip/articles/1226447

The creator of the video game "Fortnite" is again fighting in court over “emote” dance moves, filing a preemptive lawsuit aimed at proving that a Halloween-themed move didn’t infringe a viral video called “Dancing Pumpkin Man.”

EPIC GAMES ASKS COURT TO DECLARE 'FORTNITE' DANCING PUMPKIN DOESN'T INFRINGE ON VIRAL CHARACTER

A former news anchor who licensed his "Dancing Pumpkin Man" dance moves to Epic Games threatened to sue the company for also using his viral character's likeness without permission.

HIGH COURT TOLD 9TH CIRC. RULING PUTS COPYRIGHTS AT RISK
via Intellectual Property Law360 by Britain Eakin on 12/9/2019
URL: https://www.law360.com/ip/articles/1226419

A Ninth Circuit ruling invalidating of a fabric designer's copyright registration based on an "inadvertent" mistake endangers hundreds of thousands of copyrights, the company is warning the U.S. Supreme Court.
KOZINSKI RETURNS TO 9TH CIRC., ON OTHER SIDE OF THE BENCH
via Intellectual Property Law360 by Lauren Berg on 12/9/2019
URL: https://www.law360.com/ip/articles/1226400

Former Judge Alex Kozinski on Monday returned to the Ninth Circuit for the first time since stepping down over accusations of lewd behavior, arguing as an attorney to revive a copyright infringement suit against the makers of the Oscar-winning film "The Shape of Water."

ANNOUNCED DEPARTURE OF REGISTER TEMPLE PROVOKES TIRED ANTI-COPYRIGHT RHETORIC
via The Illusion of More by David Newhoff on 12/10/2019

I know it seems like we have ample government shenanigans to watch on TV right now, but in case you missed the real barn-burner yesterday, it was announced that Register of Copyrights Karyn Temple has been named as the next Senior Executive Vice President and Global General Counsel at the Motion Picture Association (MPA).

BATTLING THE COPYRIGHT-INFRINGEMENT T-SHIRT BOTS
via Plagiarism Today by Jonathan Bailey on 12/11/2019

Last week, artists of all types launched an attack on unscrupulous websites and clothing retailers that sold t-shirts, as well as other products, with their artwork without permission, attribution or any form of payment.

HOW TO MITIGATE COPYRIGHT RISKS OF VIDEO GAME STREAMING
URL: https://www.law360.com/ip/articles/1226202

Streaming platforms, such as Twitch, Mixer and YouTube Gaming, are quickly becoming household names, with daily viewership rates that rival those of more traditional media outlets, including cable channels like CNN and ESPN.[1] As video game streaming increases in popularity, more and more individuals are trying to gain notoriety, along with a lucrative living, by creating content to feature on these platforms.
US COPYRIGHT CHIEF TO LEAD MOTION PICTURE ASSOCIATION LEGAL TEAM
via Law.com by Dan Clark on 12/11/2019

The Motion Picture Association announced this week that the register of copyrights and the director of the U.S. Copyright Office will become its general counsel.

APPLE USED THE DMCA TO TAKE DOWN A TWEET CONTAINING AN IPHONE ENCRYPTION KEY
via Vice by Lorenzo Franceschi-Bicchierai on 12/11/2019
URL: https://www.vice.com/en_ca/article/pkeeay/apple-dmca-take-down-tweet-containing-an-iphone-encryption-key

Security researchers are accusing Apple of abusing the Digital Millennium Copyright Act (DMCA) to take down a viral tweet and several Reddit posts ...

4 REASONS SOFTWARE COPYRIGHT LAWSUITS ARE ON THE RISE
via Intellectual Property Law360 by Hugh Marbury & Armeen Mistry on 12/13/2019
URL: https://www.law360.com/ip/articles/1226198

Proprietary software can be one of the most valuable assets that technology companies have, and protecting that intellectual property should be a priority. Given the more limited protection that patents offer in this space, companies are increasingly turning to the Copyright Act to protect their rights.

2 PLEAD GUILTY TO CHARGES IN ILLEGAL STREAMING SERVICES CASE
via Intellectual Property Law360 by Tiffany Hu on 12/13/2019
URL: https://www.law360.com/ip/articles/1228320

Two computer programmers behind massive illegal television and movie streaming services that cost TV and movie copyright owners millions of dollars have pled guilty to criminal copyright infringement charges, the U.S. Department of Justice announced Friday.

MAKING SCENTS OF COPYRIGHT AT CHRISTMAS
via Hugh Stephens Blog on 12/16/2019
URL: http://hughstephensblog.net/2019/12/16/making-scents-of-copyright-at-christmas/

Since we are close to Christmas, I thought it would be appropriate to post a blog about a popular gift product that often finds its way under the tree at this time of year, and—as always—consider its copyright dimensions.
GUARD YOUR GOLDMINE WITH BASIC COPYRIGHT LAW PRINCIPLES
via Forbes by Henry DeVries on 12/16/2019
URL: https://www.forbes.com/sites/henrydevries/2019/12/16/guard-your-goldmine-with-basic-copyright-law-principles/

To paraphrase country music songwriter Jerry Reed, be sure to guard your goldmine so you don't get the shaft. “If you have a website, blogs, ...

COPYRIGHT, ROYALTIES AND CHRISTMAS MUSIC
via Plagiarism Today by Jonathan Bailey on 12/17/2019
URL: https://www.plagiarismtoday.com/2019/12/17/copyright-royalties-and-christmas-music/

For the first time since its release in 1994, Mariah Carey’s song All I Want for Christmas is You has hit No. 1 on the Billboard Hot 100 chart.

DOES ‘SCRAPING’ DATA VIOLATE THE COMPUTER FRAUD AND ABUSE ACT?
via IPWatchdog.com | Patents & Patent Law by Peter J. Toren on 12/17/2019

We live in a world where data has become an increasingly valuable asset and huge companies are built on the collection and analysis of publicly available data. Yet, there is no federal statute that directly protects this type of information or even directly addresses how this information should be treated. Instead, businesses are often forced to rely on the Computer Fraud and Abuse Act (CFAA) in order to protect this valuable asset or commodity, which originally only provided criminal sanctions...

GOOGLE V. ORACLE PART I: OR WHY YOU REALLY DON’T HAVE TO KNOW WTF AN API IS
via The Illusion of More by David Newhoff on 12/17/2019
URL: http://illusionofmore.com/google-v-oracle-you-really-dont-have-to-know-wtf-an-api-is/

I freely admit that one reason I procrastinated when it came to digging into Oracle v. Google (now Google v. Oracle) is the fact that this nine-year litigation, now headed to the Supreme Court, deals with software.
AIG UNIT MUST COVER MCGRAW-HILL’S COPYRIGHT SUIT COSTS
via Intellectual Property Law360 by Jeff Sistrunk on 12/17/2019
URL: https://www.law360.com/ip/articles/1229134

A New York state appeals court ruled Tuesday that an AIG unit must help cover McGraw-Hill Education Inc.’s costs to defend and settle a slew of copyright infringement suits alleging the book publisher has misused photos in its publications.

DOES AI GENERATED WORK GIVE RISE TO A COPYRIGHT CLAIM?
via National Law Review by Sunny J. Kumar & Niall J. Lavery on 12/18/2019
URL: https://www.natlawreview.com/article/does-ai-generated-work-give-rise-to-copyright-claim

The right to intellectual property protection in “Artificial Intelligence” generated work gives rise to numerous legal, economic and moral issues. “Artificial ...

LITIGIOUS COPYRIGHT ATTY HIT WITH $28K IN FEES IN PHOTO SUIT
via Intellectual Property Law360 by Dani Kass on 12/18/2019
URL: https://www.law360.com/ip/articles/1229294

A New York federal judge has ordered copyright attorney Richard Liebowitz to pay more than $28,000 in attorney fees as a sanction in his suit accusing Bauer Media Group USA LLC of illegally publishing photos of model Emily Ratajkowski.

COPYRIGHT OFFICE NAMES POLICY DIRECTOR AS ACTING HEAD
via Intellectual Property Law360 by Tiffany Hu on 12/18/2019
URL: https://www.law360.com/ip/articles/1229449

The U.S. Copyright Office said Wednesday that it has tapped its policy and international affairs director to temporarily lead the agency in January after its current director leaves the post to join the Motion Picture Association as global general counsel.

FOUR ISSUES HIGHLIGHTED IN THE SUPREME COURT ORAL ARGUMENT ON COPYRIGHTABILITY OF STATUTORY ANNOTATIONS
via IPWatchdog.com | Patents & Patent Law by Mitchell Stein on 12/19/2019
URL: https://www.ipwatchdog.com/2019/12/19/four-issues-highlighted-supreme-court-oral-argument-copyrightability-statutory-annotations/id=117213/

On December 2, the U.S. Supreme Court heard oral argument in the matter of Georgia v. Public.Resource.Org, Inc. The issue on appeal was on whether annotations to the Official Code of the State of Georgia, which were prepared by Mathew Bender & Co under the supervision of
Georgia’s Code Revision Commission, which was itself created by Georgia’s General Assembly, were capable of copyright protection, or whether they were an integral part of the laws of the State of Georgia, which, like all...

E-BOOK RESALES VIOLATE EU COPYRIGHT LAW, BLOC'S TOP COURT SAYS
via Bloomberg Law by Kyle Jahner on 12/19/2019

Reselling electronic books violates EU copyright law because the public can access them anywhere and anytime unlike paper books, a European ...

MICHAEL JACKSON ESTATE SETTLES COPYRIGHT FIGHT WITH DISNEY
via Variety by Gene Maddaus on 12/19/2019

The Michael Jackson Estate has reached a confidential settlement with Disney over a 2018 TV special that included numerous clips from Jackson's ...

RESALE OF E-BOOKS VIOLATES COPYRIGHTS, EU HIGH COURT RULES
via Courthouse News Service by Molly Quell on 12/19/2019

E-books are not physical objects and therefore cannot be resold in Europe without the consent of the author, the European ...

COX COMMUNICATIONS HIT WITH $1B JURY VERDICT IN MUSIC PIRACY SUIT
via Legal News & Entertainment Law - Hollywood, ESQ. | Hollywood Reporter by Ashley Cullins on 12/19/2019

The major labels and publishers sued the cable and internet giant in 2018.
MUSIC LABELS DEFEAT COX TO THE TUNE OF $1B IN PIRATING SUIT
via Intellectual Property Law360 by Mike LaSusa on 12/19/2019
URL: https://www.law360.com/ip/articles/1230123

Sony, Universal, Warner and other major music labels won a $1 billion verdict against Cox Communications on Thursday when a Virginia federal jury found that the telecom behemoth turned a blind eye to the pirating of more than 10,000 musical works.

RESALE OF E-BOOKS REQUIRES COPYRIGHT AUTHORIZATION, RULES CJEU

In a boost to copyright owners, the Grand Chamber of the CJEU has agreed with copyright owners that an online seller of second-hand e-books was making an unauthorized communication to the public.

TOP 10 COPYRIGHT RULINGS OF 2019
via Intellectual Property Law360 by Bill Donahue on 12/20/2019
URL: https://www.law360.com/ip/articles/1222478

From Jerry Seinfeld to Taylor Swift to a pair of U.S. Supreme Court decisions, 2019 saw a slew of rulings on important copyright cases. To keep it all straight, here's a breakdown of the 10 biggest ones you need to remember, plus 10 more you should know that didn't make the cut.

KANYE SEEKS QUICK WIN IN 'LIFE OF PABLO' PRAYER SAMPLE SUIT
via Intellectual Property Law360 by Lauren Berg on 12/20/2019
URL: https://www.law360.com/ip/articles/1230219

Kanye West and his record label have urged a South Carolina federal judge to grant them a quick win in a copyright infringement lawsuit that accuses him of not paying for an audio sample of a young girl praying in his 2016 song “Ultralight Beam.”

INTERNATIONAL COPYRIGHT HIGHLIGHTS OF 2019
via Hugh Stephens Blog on 12/22/2019
URL: http://hughstephensblog.net/2019/12/22/international-copyright-highlights-of-2019/

Every year at this time I take a peek in the rear view mirror and look back at the main copyright highlights of the past year, at least the ones that I have written about in my blog.
A jury in Virginia awarded some of the largest names in the music recording industry a whopping $1 billion in damages from Cox Communications, finding that the ISP did not act sufficiently to curb music piracy on its platform.

As the holiday season approaches, consumers purchase many games as gifts. Of all the games I’ve played, Bingo stands out as a favorite.

A Paris appeals court has upheld a 2017 ruling which found Jeff Koons guilty of plagiarism. It determined that Naked, a sculpture Koons created in ...

When it was announced last week that a jury awarded the major record labels a one billion-dollar-damage award in its copyright infringement case against COX Communications, certain anti-copyright voices were predictably shrill in their astonishment at such a stratospheric number.
PARIS COURT OF APPEAL CONFIRMS THAT KOONS’S 'NAKED' SCULPTURE INFRINGES COPYRIGHT IN 'ENFANTS' PHOTOGRAPH, REJECTING FREEDOM OF THE ARTS AND PARODY DEFENCES
via At last ... the 1709 Copyright Blog by Eleonora Rosati on 12/26/2019
URL: http://the1709blog.blogspot.com/2019/12/paris-court-of-appeal-confirms-that.html

Last week, the Paris Court Appeal ruled (decision No 152/2019) in favour of the estate of late French photographer Jean-François Bauret in proceedings brought against, inter alia, US artist Jeff Koons (an artist who, as readers will know, has been sued a few times for copyright infringement: see, eg, here, here, and here).

HOLLYWOOD DOCKET: LIAM HEMSWORTH, REBEL WILSON SIMULTANEOUSLY SUED OVER INSTAGRAM POSTS
URL: https://www.hollywoodreporter.com/thr-esq/liam-hemsworth-rebel-wilson-sued-instagram-posts-1255173

A roundup of Hollywood legal news involving the 'Isn't It Romantic' co-stars as well as Jay-Z, Dr. Luke, Netflix, ESNP and more.

WANT A CAREER AS AN ANTI-COPYRIGHT ZEALOT?
via The Illusion of More by David Newhoff on 12/27/2019
URL: http://illusionofmore.com/want-a-career-as-an-anti-copyright-zealot/

Posted for the purpose of satire. Any resemblance to actual persons or entities you may know is both intentional and entirely their fault.

OFFICE DEPOT DIDN'T INFRINGE COPYRIGHTS BY COPYING FOR SCHOOLS
via Bloomberg Law by Blake Brittain on 12/27/2019

Great Minds argued that Office Depot infringed its copyrights by “actively soliciting customers for commercial reproduction of Eureka Math” when it ...
YOUTUBE ROLLS OUT NEW COPYRIGHT MANAGEMENT TOOLS FOR CREATORS
via Forbes by Johan Moreno on 12/27/2019

However, some creators may find choppy edits made throughout their videos, as YouTube system removes any occurrence of the copyrighted content.

1924 COPYRIGHTED WORKS TO BECOME PART OF THE PUBLIC DOMAIN
via NPR on 12/30/2019
URL: https://www.npr.org/2019/12/30/792302139/1924-copyrighted-works-to-become-part-of-the-public-domain

A number of important literary and musical works are headed for the public domain on New Year's Day — including George Gershwin's "Rhapsody in ..."

TWO VANISHED PARAGRAPHS MUDDY TAYLOR SWIFT 'SHAKE IT OFF' RULING
via Bloomberg Law by Kyle Jahner on 12/30/2019

The Ninth Circuit's order reviving a copyright infringement lawsuit against music superstar Taylor Swift was startlingly brief: four paragraphs.

INTERNET ACCESS PROVIDER GETS ANOTHER DEVASTATING RESULT IN A SECONDARY COPYRIGHT INFRINGEMENT CASE—SONY V. COX
via Technology & Marketing Law Blog by Eric Goldman on 12/30/2019

In a recent post, I lamented how courts are exposing IAPs to secondary copyright liability for their subscribers’ activities.

THE COPYRIGHT IN “LITTLE WOMEN”
via Mostly IP History by Zvi S. Rosen on 12/30/2019
URL: http://www.zvirosen.com/2019/12/30/copyright-in-little-women/

With a new movie version coming out, Louisa May Alcott’s novel Little Women is once again in the news, often with some conversation of how Alcott’s publisher urged her to keep the copyright in her work, earning her a fortune.
The Rolling Stones, Elton John and U2 are just a few of the artists whose works are alleged to be infringed in a series of documentaries.
VII. COPYRIGHT BOOKS

ADVENTURES OF A JAZZ AGE LAWYER
by Gary A. Rosen
URL: https://jazzagelawyer.com/

Adventures of a Jazz Age Lawyer is the lively story of legal giant Nathan Burkan, whose career encapsulated the coming of age of the institutions, archetypes, and attitudes that define American popular culture. With a client list that included Charlie Chaplin, Al Jolson, Frank Costello, Victor Herbert, Mae West, Gloria Morgan Vanderbilt, Arnold Rothstein, and Samuel Goldwyn, Burkan was “New York’s Spotlight Lawyer” for more than three decades.
VIII. COPYRIGHT LAW JOURNAL ARTICLES: JOURNAL OF THE COPYRIGHT SOCIETY OF THE USA

Vol. 65, No. 1 (Winter 2019)

INTELLECTUAL PROPERTY AS SEEN BY BARBIE AND MICKEY: THE RECIPROCAL RELATIONSHIP OF COPYRIGHT AND TRADEMARK LAW
by Jane C. Ginsburg
URL: https://ssrn.com/abstract=3078944

Some years ago, case law 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.

NO COUNTRY FOR OLD MEDIA?
by Chris Hubbles
URL: https://digital.lib.washington.edu/researchworks/handle/1773/42419

The philosophical defense of intellectual property theory has become a significant, and growing, area of inquiry over the past several decades. Copyright, in particular, has been a volatile flashpoint for rival theorizations, and never more so than in the midst of changes to copyright law enacted during the late twentieth and early twenty-first centuries. Modern intellectual property thought is extrapolated primarily from seventeenth- and eighteenth-century paradigms,
which relied upon reasonable but implicit assumptions about durability of material substrates and expected length of intellectual property coverage. Changes in how intellectual works are fixed physically, as well as practical experience with copyright implementation in the late nineteenth and twentieth centuries, challenge these assumptions about durability and duration. Yet these changes have gone largely unconsidered by recent theorists. As a result, modern adaptations of intellectual property theory drawn from Enlightenment-era models have failed to afford sufficient value to the preservation of creative works.

Many important nineteenth- and twentieth-century media illustrate problems with the archetype of the long-term information carrier — for instance, newspaper and acidic paperback books in the print realm. The impact of American copyright policy on sound recording preservation is used as an illustrative example, since sound recording copyright is inordinately long, and because many sound recordings are fragile and in need of preservation care. This historical analysis is employed to suggest revisions to modern copyright theories, offering a more robust conceptualization of what copyright is for and what it should accomplish in practice.

IMPLEMENTATION OF THE MARRAKESH TREATY — AN INPUT INTO DISCUSSION FROM THE PERSPECTIVE OF THE EUROPEAN UNION
by Joanna Banasuik

International intellectual property law has long recognized the special needs of persons with disabilities. On December 13, 2006, international stakeholders signed the Convention on the Rights of Persons with Disabilities at the United Nations Headquarters in New York (“CRPD”). The CRPD introduced legal provisions to protect the ability of persons with disabilities to participate on an equal basis in cultural life through access to cultural materials in accessible formats. At the same time, the signing states committed, in accordance with international law, to ensuring that their laws protecting intellectual property rights did not constitute an unreasonable or discriminatory barrier to cultural materials for persons with disabilities. The above-mentioned standard became a starting point for international consultation on specific requirements referring to various forms of disabilities.

One recent example of this is the issue of access to cultural materials in regards to blind and visually-impaired persons. The discussion centered around the need to facilitate access to published works for those with visual impairments. In March 2013, a bipartisan group of five United States senators introduced legislation to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (the “Treaty”).

According to Senator Robert Menendez, one of the sponsors of the bill: “The United States must continue to be a leader in protecting and advancing the rights of roughly 1 billion people with disabilities to have equal and predictable access — no matter where they live, or what language they speak — so they can live productive, full lives with dignity and pride.” Menendez further stated: “Individuals with disabilities should not be barred from opportunities others take for granted. That’s why I am proud to join my colleagues in introducing this legislation to join the
global effort to help promulgate literary works in a format accessible to visually-impaired persons across the world.”

The European Union (“EU”) signed the Treaty in April 2014 and started its transposition process to bring it into EU law. The negotiations resulted in the adoption of two secondary law acts within the EU. The first act, Directive (EU) 2017/1564 (the “Directive”), pertains to permitted uses of certain works and other subject matter protected by copyright. It also outlines related rights for the benefit of persons who are blind, visually-impaired, or otherwise print-disabled.

The second act, Regulation (EU) 2017/1563, related to the cross-border exchange between the EU and non-EU countries of copies of these works and other subject matter in accessible formats for the benefit of the above-mentioned. These newly adopted legal acts are effective as of October 12, 2018.

The aim of this article is to present the EU legal provisions on recently introduced copyright exceptions to copyright law in favor of blind and visually-impaired persons, which will contribute to the U.S. discussion of the same issue. This topic is especially important as the Treaty requires cross-border cooperation. Knowledge about legal solutions coming into force in the EU may widen the scope of discussions on American law in this area. First, the EU legal provisions de lege lata will be reviewed. Second, the newly adopted legislative solution will be analyzed with respect to:

• Legal justification for the newly adopted rules;
• the scope of the law in question;
• permitted uses of works; and
• cross-border exchange.
COPYRIGHT LAW AND ARTIFICIAL INTELLIGENCE: EMERGING ISSUES
by Katherine B. Forrest

This article discusses a topic in copyright law that is rightly receiving increased attention: the implications of artificial intelligence ("AI") on copyright law. Two areas in particular are examined in depth: authorship and ownership, and defining the actor in creating a reproduction or display of a work. This is by no means the first, second, or even the third article to be raising such issues. Rather, it is intended to add to what is becoming a robust discussion.

RELATED RIGHTS IN THE UNITED STATES LAW
by Daniel J. Gervais

The article defines the notion or related (or neighboring) rights. These are rights granted to categories of persons involved in the production and dissemination of musical, audiovisual and other copyrighted works, in particular, performers, producers of sound recordings and broadcasters. It is widely thought that US law contains no such rights because sound recordings have "normal" copyright protection. The Article describes US law and explains why the conclusion that related rights do not exist in US law may be misguided.
IX. COPYRIGHT LAW JOURNAL ARTICLES

ARTIFICIAL INTELLIGENCE AND COPYRIGHT PROTECTION
in Regulating Industrial Internet through IPR, Data Protection and Competition Law by Tanya Aplin & Giulia Pasqualetto on 5/1/2019
URL: https://ssrn.com/abstract=3419481

The proliferation of cultural creations using AI, and their increasing commodification, raises interesting questions from a copyright perspective. This paper addresses the copyright issues raised by works that are generated by AI. In particular, it assesses whether AI generated content may constitute an original, copyright protected work, and who is the author and owner of copyright in such a work, if at all. This is done from the perspective of international, EU and domestic copyright law (UK, France and US). The paper suggests that there is sufficient copyright protection for AI generated content such that reforms to the system are probably not needed.

ARTIFICIAL STUPIDITY
in William & Mary Law Review by Clark D. Asay on 6/4/2019
URL: https://ssrn.com/abstract=3399170

Artificial intelligence is everywhere. And yet, the experts tell us, it is not yet actually anywhere. This is so because we are yet to achieve true artificial intelligence, or artificially intelligent systems that are capable of thinking for themselves and adapting to their circumstances. Instead, all the AI hype — and it is constant — concerns rather mundane forms of artificial intelligence, which are confined to performing specific, narrow tasks, and nothing more. The promise of true artificial intelligence thus remains elusive. Artificial stupidity reigns supreme.

What are the best set of policies to achieve true artificial intelligence? Surprisingly, scholars have paid little attention to this question. Scholars have spent considerable time assessing a number of important legal questions relating to artificial intelligence, including privacy, bias, tort, and intellectual property issues. But little effort has been devoted to exploring what set of policies are best suited to helping artificial intelligence developers achieve greater levels of innovation. And examining such issues is not some niche exercise, since artificial intelligence has already or soon will affect every sector of society. Hence, the question goes to the heart of future technological innovation policy more broadly.

This Article examines this question by exploring how well intellectual property rights promote innovation in artificial intelligence. I focus on intellectual property rights because these are often viewed as the most important piece of United States innovation policy. Overall, I find that intellectual property rights, particularly patents, are ill-suited to promote radical forms of artificial intelligence innovation. And even the intellectual property forms that are a better fit for artificial intelligence innovators, such as trade secrecy, come with problems of their own. In fact, the poor fit of patents in particular is likely to contribute to heavy industry consolidation in the
AI field, and heavy consolidation in an industry is typically associated with lower levels of innovation than ideal.

I conclude by arguing, however, that neither strengthening AI patents rights nor looking to other forms of law, such as antitrust, holds much promise in achieving true artificial intelligence. Instead, as with many earlier radical innovations, significant government backing, coupled with an engaged entrepreneurial sector, is at least one key to avoiding enduring artificial stupidity.

DECIPHERING THE 'RIGHT TO READ' UNDER INTERNATIONAL HUMAN RIGHTS LAW: A NORMATIVE FRAMEWORK FOR EQUAL ACCESS
in Wisconsin International Law Journal by Lida Ayoubi on 5/18/2019
URL: https://ssrn.com/abstract=3390344

While much has been written about the Marrakesh Treaty, its legal standing, and its content, a detailed analysis of the human rights principles that it encompasses is not available. Furthermore, even though the Marrakesh Treaty was adopted nearly five years ago, the pace of its ratification remains low. Therefore, this paper analyzes the normative and legal foundations for the validity of the claim that lack of satisfactory access to copyrighted material is discriminatory and a violation of the visually impaired persons’ human rights. This analysis highlights the need for the implementation of the Marrakesh Treaty as a key step towards provision and facilitation of better access to copyrighted works for the print-disabled.

CENSORIAL COPYRIGHT
in Vanderbilt Law Review by Shyamkrishna Balganesh on 2/10/2019
URL: https://ssrn.com/abstract=3361422

Censorial copyright claims are infringement actions brought by authors for the unauthorized public dissemination of works that are private, unpublished, and revelatory of the author’s personal identity. Driven by considerations of authorial autonomy, dignity, and personality rather than monetary value, these claims are almost as old as Anglo-American copyright law itself. Yet, modern thinking has attempted to undermine their place within copyright law, and sought to move them into the domain of privacy law. This Article challenges the dominant view and argues that censorial copyright claims form a legitimate part of the copyright landscape. It shows how censorial copyright claims derive from considerations that are genuinely authorial and seek to redress a form of harm that is unique to the nature of the work involved, best described as disseminative harm. Tracing the historic evolution of censorial copyright claims in Anglo-American copyright law, it develops a theoretical basis for understanding the working of these claims and offers a framework for courts to deploy in adjudicating them, which addresses the concerns about free speech and censorship that have contributed to the ignominy that censorial copyright claims continue to encounter in modern copyright jurisprudence.

UTILITARIANISM V. DEONTOLOGY: A PHILOSOPHY FOR COPYRIGHT
The Anglosaxon copyright system is founded upon theories of utilitarianism, whereas the European system, generally upon deontology. A series of particular traits aid us at the identification of which theory a copyright system supports. For example, the management of the moral rights of authors and creators shows this difference very eloquently. In Europe, starting with the Berne Convention of 1886, authors and creators enjoy a right to paternity, a right to first publication and a right to integrity of the work; in the US, it is mainly visual artists only who enjoy similar protection, under the Visual Artists Rights Act of 1990. In the last decade or so, the European Union has proceeded with a number of copyright Directives which approach the American system much more than in the past ever thought possible. Whereas national legislations on moral rights remain intact, the 1991 Directive on Computer Programs, the 1996 Database Directive, the 2001 Information Society Directive of 2001 and the 2001 Resale Right Directive lean strongly towards the economic rationale of copyrights. The work attempts to show how this approach has occurred, at a time where no major change in philosophical thought of copyright in the European Union appears sustainable. This work also attempts to explain why the economic rationale seems to have superseded the deontological one in the EU, stressing the impact of lobbying by the copyright industries and pressure from forces outside the European Union. The work, finally, arrives at a conclusion founded upon the supremacy of the deontological reasoning behind copyright.

LOCKEAN COPYRIGHT VS. LOCKEAN PROPERTY
by Mala Chatterjee on 7/20/2019
URL: https://ssrn.com/abstract=3423423

John Locke’s labor theory of property remains the most persistent and well-known of property theories; but it has also been repeatedly and compellingly challenged by philosophers as implausible for hundreds of years. Nonetheless, in recent decades, a number of legal scholars have sought to connect Lockean theory to the question of what justifies intellectual property rights, all while largely ignoring these aforementioned philosophical critiques or their implications when applied to intellectual rather than physical objects. Philosophers, on the other hand - and notwithstanding spending centuries theorizing about property - have remained almost entirely absent in the debate surrounding intellectual property’s theoretical foundations. Those philosophers who have criticized Lockean property theory have thus not asked whether the otherwise resilient Lockean intuition might be salvaged in the domain of copyright, or whether a Lockean theory of the latter might avoid the problems faced by Locke himself while retaining the theory’s intuitive appeal. The normative questions surrounding Lockean copyright theory, though increasingly of scholarly interest, thereby remain largely unanswered by the existing efforts of scholars.

Going against the state of legal and philosophical discourse and bridging an important dialectical gap between the two, the present Article defends the view that a Lockean copyright theory is in fact far more plausible than such a theory of property, for it avoids the most devastating
objections that Locke’s property theory has been faced with. In other words, this Article demonstrates that theorists who embrace Lockean property theory but have never taken seriously Lockean copyright are mistaken, as well as that theorists who reject Lockean property theory must nonetheless begin taking Lockean copyright seriously. In so doing, this Article further demonstrates the doctrinal and practical significance of this theoretical conclusion: for if a Lockean copyright emerges as favorable, then it has profound and surprising revisionary implications for our thinking about and designing of copyright law, in particular by requiring copyright grants to be far more limited than they presently are under U.S. law. The Article outlines and defends three such revisionary doctrinal implications: namely, a) that transformative fair use must be regarded as a robust limitation on copyrights rather than an affirmative defense to claims of infringement; b) that the derivative right must be abolished; and c) that the moral right of integrity must be abolished. The Article thereby demonstrates that – in order to determine the correct scope and structure of copyright law – we must tackle the philosophical questions surrounding copyright theory and Lockean rights far more carefully than they have yet been explored.

THE DEATH OF THE AI AUTHOR
by Carys J. Craig & Ian R. Kerr on 3/25/2019
URL: https://ssrn.com/abstract=3374951

Much of the second-generation literature on AI and authorship asks whether an increasing sophistication and independence of generative code should cause us to rethink embedded assumptions about the meaning of authorship, arguing that recognizing the authored nature of AI-generated works may require a less profound doctrinal leap than has historically been suggested. In this essay, we argue that the threshold for authorship does not depend on the evolution or state of the art in AI or robotics. Instead, we contend that the very notion of AI-authorship rests on a category mistake: it is not an error about the current or potential capacities, capabilities, intelligence or sophistication of machines; rather it is an error about the ontology of authorship.

Building on the established critique of the romantic author figure, we argue that the death of the romantic author also and equally entails the death of the AI author. We provide a theoretical account of authorship that demonstrates why claims of AI authorship do not make sense in terms of 'the realities of the world in which the problem exists.' (Samuelson, 1985) Those realities, we argue, must push us past bare doctrinal or utilitarian considerations of originality, assessed in terms of what an author must do. Instead, what they demand is an ontological consideration of what an author must be. The ontological question, we suggest, requires an account of authorship that is relational; it necessitates a vision of authorship as a dialogic and communicative act that is inherently social, with the cultivation of selfhood and social relations as the entire point of the practice. Of course, this ontological inquiry into the plausibility of AI-authorship transcends copyright law and its particular doctrinal conundrums, going to the normative core of how law should — and should not — think about robots and AI, and their role in human relations.
COPYRIGHT ENFORCEMENT IN THE DIGITAL AGE: WHEN THE REMEDY IS THE WRONG
in UCLA Law Review by Ben Depoorter on 4/17/2019
URL: https://ssrn.com/abstract=3374048

Statutory damage awards are controversial in copyright law. To some, statutory damages are indispensable to enable the pursuit of meritorious copyright infringement claims that otherwise are too costly to pursue. Others are convinced that the availability of statutory damages tempts plaintiffs into asserting dubious infringement claims in order to obtain generous settlement concessions from risk averse defendants. In light of these contrasting viewpoints, we face the important policy question whether statutory damages should be redesigned for the digital age or, to the contrary, be retained in their current form, given the difficulties of enforcing copyrights online.

This Article conducts a comprehensive empirical study of copyright statutory damages. An extensive examination of docket entries and case law reveals a widespread practice of overclaiming of remedies in copyright litigation. Although 80 percent of plaintiffs in all disputes claim that they suffered conduct that constitutes willful infringement, courts find willful infringement in just 2 percent of cases where plaintiffs obtain a favorable verdict.

The findings suggest that remedy overclaiming in copyright serves strategic purposes. For instance, by highlighting the outer range of enhanced statutory awards in complaints, plaintiffs leverage the risk aversion of defendants to induce generous settlement concessions. In order to curb opportunistic uses of the statutory damages, I provide policy suggestions that would make remedy overclaiming more costly to plaintiffs and less threatening to defendants.

EMPIRICAL APPROACHES TO INTERMEDIARY LIABILITY
in The Oxford Handbook of Intermediary Liability Online by Kris Erickson & Martin Kretschmer on 6/6/2019
URL: https://ssrn.com/abstract=3400230

Legal theory has failed to offer a convincing framework for the analysis of the responsibilities of online intermediaries. The debate is characterised by a wide range of contested issues. This paper considers what empirical evidence may contribute to these debates. What do we need to know in order to frame the liability of intermediaries and, a fortiori, what does the relationship between theory and empirics imply for the wider issue of platform regulation? The core of the paper is a systematic review of existing empirical research on the copyright liability regime established with the Digital Millennium Copyright Act (DMCA 1998) and the EU E-Commerce Directive (2000). Issues examined include the number and accuracy of takedown notices, over-enforcement and abuse, transparency and due process, and finally the allocation of responsibilities and costs.
COPYRIGHT PROTECTION FOR CONCEPTUALLY SEPARABLE ARTISTIC FEATURES
POST-STAR ATHLETICA: A USEFUL ARTICLE ON USEFUL ARTICLES
URL: https://scholarship.kentlaw.iit.edu/ckjip/vol18/iss1/3/

In the wake of the U.S. Supreme Court’s ruling in Star Athletica v. Varsity Brands in 2017, U.S. federal district courts and the Copyright Office Review Board have grappled with the Supreme Court’s reimagined conceptual separability test for determining the copyrightability of artistic aspects of useful articles. An examination of the decisions in the first eighteen months post-Star Athletica reveals district courts have interpreted the Supreme Court’s guidance inconsistently, with some courts adding language to the test and even using overruled portions of previous tests. The author takes an empirical approach to evaluating such decisions and the trends that emerge from them. The examined range begins at the issuance of the Star Athletica decision in March 2017 and ends in mid-October 2018. Because courts continue to struggle to define protectable elements of useful articles despite the Supreme Court’s guidance, the author proposes that Congress should enhance the conceptual separability test in the Next Great Copyright Act. In the meantime, litigants may take some lessons from Star Athletica, such as to examine whether the object even constitutes a useful article and to disregard artistic judgment and the remainder of a useful object aside from the separable design. Also, litigants may consider the guidance that emerges from lower court cases, such as the “primary function” test from Judge Forrest of the Southern District of New York.

THE LAW AS UNCOPYRIGHTABLE: MERGING IDEA AND EXPRESSION WITHIN THE ELEVENTH CIRCUIT’S ANALYSIS OF ‘LAW-LIKE’ WRITING
in University of Miami Law Review by Christina Frohock on 6/25/2019
URL: https://ssrn.com/abstract=3410664

The Eleventh Circuit recently issued an opinion in Code Revision Commission v. Public.Resource.Org, Inc. that meditates on the law as much as resolves a dispute. For that reason alone, attention should be paid. A commission acting on behalf of the Georgia General Assembly and the State of Georgia filed a copyright infringement action against a nonprofit organization that had disseminated annotated state statutes. The Eleventh Circuit took these modest facts and delivered a philosophical analysis of the nature of law, finding that statutory annotations are outside copyright protection because the true author of such “law-like” writing is “the People.” The court’s opinion respects democracy by amplifying the voice of the People. Such amplification works best, however, on narrow facts. Applied broadly, in line with the scope of the court’s philosophy, the opinion risks distorting the People’s voice by muting intragovernmental disagreements. That voice is more often cacophony than clarion call, and the loudest strain comes from the least representative branch. Focusing on the exercise of sovereign authority, a different area of copyright law supports the same case outcome. The law, along with law-like annotations, is uncopyrightable because its idea and its official expression merge.
WHO HOLDS THE RIGHT TO EXCLUDE FOR MACHINE WORK PRODUCTS?
by Garry Gabison on 12/5/2019
URL: https://ssrn.com/abstract=3498941

This article investigates whether the inventions and works created by Artificial Intelligence should be patent-able and copyright-able and if so, who should be assigned these rights. This article uses US case law and incentive economics to answer these questions. This article discusses who of the machine, its creators, owners, or operators should be assigned the rights to exclude others if policymakers want to promote the progress of science and useful arts. All four candidates raise legal problems. Based on current law, the users may be able to patent their invention but other works would fall into the public domain. Assigning exclusion rights to any party distorts the incentives of the other parties. The Intellectual Property system is maladapted to deal with these intelligent machines. Instead, these inventions and works should fall into the public domain. The four candidates can use alternative business models to profit from the machine’s creations.

OWNERSHIP OF UNIVERSITY INTELLECTUAL PROPERTY
in Cardozo Arts & Ent. L.J. by Jon Garon on 6/4/2018
URL: https://www.ssrn.com/abstract=3431752

Every university needs a comprehensive set of written policies communicating the development of intellectual property resources in the context of its educational and research mission. Patent policies, copyright and trademark management, ownership guidelines, usage policies, and many other issues need to be carefully developed by each school.

These policies are not the same among the various forms of intellectual property and need to specify those rights assigned to the university and those rights retained by the student with specificity and detail. And even this is not enough. Students are often employees, a status that has a very different legal and contractual right under the university policies. Some students are also instructors and researchers. Similarly, faculty status does not convey the same rights for all individuals, so the policies must capture the distinctions between full-time faculty, visitors, adjuncts and those with other status.

By using the legal and business guidelines in copyright, patent, and other laws more carefully, schools can begin to tailor a usage and implementation policy that meets the educational and pedagogical goals of the classroom and research. Because the goals of academic instruction vary from school to school and even from class to class, there is no one-size-fits-all solution. Instead, the law provides a framework against which an academically sound policy can be developed.

This article highlights the role of copyright, patent, publicity rights, and trademark as they impact the teacher, researcher, student employee, student entrepreneur, and student athlete. It provides a framework for universities and their stakeholders to better understand the rights and responsibilities they have to each other regarding intellectual property rights and how best to draft policies and agreements within the context of those responsibilities.
TOWARDS A EUROPEAN 'FAIR USE' GROUNDED IN FREEDOM OF EXPRESSION
in American University International Law Review by Christophe Geiger & Elena Izyumenko on 4/26/2019
URL: https://ssrn.com/abstract=3379531

It is often claimed that an open-ended provision for copyright limitations such as the US fair use clause would be unfit for civil law countries because of their author-centered traditions of copyright law and their traditional skepticism towards “judge made law” encouraged by open norms. However, the rising application in those countries of fundamental rights by the judiciary to solve copyright cases (mainly based on freedom of expression and information) and the balancing of interests it requires resemble in many aspects the practice of common law jurisdictions and the weighing of factors typically done in the context of a fair use analysis. As a consequence, this article argues that some sort of “fair use” is already a reality in Europe; therefore, the debate should shift from the question of the compatibility of an open-ended copyright limitation with the European legal system to the question on how to draft a “fair use” provision that would better fit the European legal tradition. In order to do so, the paper analyses in detail the judicial application of the freedom of expression’s test of proportionality to IP disputes. It further demonstrates that, by providing for a developed list of fairness factors analogous to those of the US fair use, the courts have developed appropriate and functioning criteria to assess the legality of a copyright use, which, once systematized, could serve as a European open-ended copyright limitation.

Since in Europe a clause analogous in openness and flexibility to the US fair use provision is lacking, the article advocates the legislative incorporation of an open-ended clause grounded in freedom of expression in EU copyright law in order to enhance clarity, transparency and legal security, and concludes with a drafting proposal for such a provision.

EXPLORING THE INTERFACES BETWEEN BIG DATA AND INTELLECTUAL PROPERTY LAW
URL: https://ssrn.com/abstract=3360344

This article reviews the application of several IP rights (copyright, patent, sui generis database right, data exclusivity and trade secret) to Big Data. Beyond the protection of software used to collect and process Big Data corpora, copyright’s traditional role is challenged by the relatively unstructured nature of the non-relational (noSQL) databases typical of Big Data corpora. This also impacts the application of the EU sui generis right in databases. Misappropriation (tort-based) or anti-parasitic behaviour protection might apply, where available, to data generated by AI systems that has high but short-lived value. Copyright in material contained in Big Data corpora must also be considered. Exceptions for Text and Data Mining (TDM) are already in place in a number of legal systems and likely to emerge to allow the creation and use of corpora of literary and artistic works, such as texts and images.
In the patent field, AI systems using Big Data corpora of patents and scientific literature can be used to expand patent applications. They can also be used to “guess” and disclose future incremental innovation. These developments pose serious doctrinal and normative challenges to the patent system and the incentives it creates in a number of areas, though data exclusivity regimes can fill certain gaps in patent protection for pharmaceutical and chemical products. Finally, trade secret law, in combination with contracts and technological protection measures, can protect data corpora and sets of correlations and insights generated by AI systems.

IMPROPER APPROPRIATION
URL: https://ssrn.com/abstract=3361747

The traditional (Arnstein) test for copyright infringement is satisfied when the owner of a valid copyright establishes unauthorized copying by the defendant. To demonstrate unauthorized copying, one of the major tests is that the plaintiff must first show that her work was actually copied; second, she must establish substantial similarity and/or that the copying amounts to an improper or unlawful appropriation. The second prong is satisfied when (i) protected expression in the earlier work was copied and (ii) the amount of the copyrighted work that is copied must be more than de minimis. This Article examines, first, how impropriety has been applied in copyright infringement cases, and, second, whether the test could (doctrinally) and should (normatively) perform additional work as we move ever more into an era of massive creative reuse of existing works, whether as appropriation art, user-generated content or otherwise. The Article suggests that the notion of propriety should play an enhanced role, especially in cases of reuse of pre-existing copyrighted works.

THE MACHINE AS AUTHOR
in Iowa Law Review by Daniel J. Gervais on 3/25/2019
URL: https://ssrn.com/abstract=3359524

The use of Artificial Intelligence (AI) machines using deep learning neural networks to create material that facially looks like it should be protected by copyright is growing exponentially. From articles in national news media to music, film, poetry and painting, AI machines create material that has economic value and that competes with productions of human authors. The Article reviews both normative and doctrinal arguments for and against the protection by copyright of literary and artistic productions made by AI machines. The Article finds that the arguments in favor of protection are flawed and unconvincing and that a proper analysis of the history, purpose, and major doctrines of copyright law all lead to the conclusion that productions that do not result from human creative choices belong to the public domain. The Article proposes a test to determine which productions should be protected, including in case of collaboration between human and machine. Finally, the Article applies the proposed test to three specific fact patterns to illustrate its application.
EMBEDDING CONTENT OR INTERRING COPYRIGHT: DOES THE INTERNET NEED THE 'SERVER RULE'?
URL: https://www.ssrn.com/abstract=3383656

The “server rule” holds that online displays or performances of copyrighted content accomplished through “in-line” or “framing” hyperlinks do not trigger the exclusive rights of public display or performance unless the linker also possesses a copy of the underlying work. As a result, the rule shields a vast array of online activities from claims of direct copyright infringement, effectively exempting those activities from the reach of the Copyright Act. While the server rule has enjoyed relatively consistent adherence since its adoption in 2007, some courts have recently suggested a departure from that precedent, noting the doctrinal and statutory inconsistencies underlying it.

Authors and copyright owners have long lamented that the server rule’s immunization of certain online activities eviscerates their ability to control how their works are disseminated on the Internet. But many Internet users and commercial actors have incorporated the rule’s liability shield into their expectations about how the Internet does (and should) function. Accordingly, while authors and copyright owners foresee improved prospects for remuneration, many commentators and advocacy groups have expressed concerns regarding the recent judicial doubt about the validity of the server rule. They contend that, without the server rule, the Internet would cease to function as it does today.

However, these concerns overlook the applicable defenses—in particular, the defenses of safe harbor under § 512 of the Digital Millennium Copyright Act and express license—which, we expect, would take on a more significant role in a postserver rule world. In this Article, we explore the likely effect of the potential reversal of the server rule, taking into account these defenses. We conclude that the principal difference between copyright law with and without the server rule comes down to the author’s ability to obtain the removal of links to infringing content, and to authorize embedding of content from a source to which the public had lawful access.

Moreover, while the reversal of the server rule may interrupt a handful of online services that rely entirely on the unauthorized appropriation of copyrighted works, most online practices would likely continue unaltered in the post-server rule world.

COPYRIGHT’S MEMORY HOLE
URL: https://ssrn.com/abstract=3351348

There is growing interest in using copyright to protect the privacy and reputation of people depicted in copyrighted works. This pressure is driven by heightened concerns about privacy and reputation on the Internet, plus copyright’s plaintiff-favorable attributes compared to traditional privacy and reputation torts.
The Constitution authorizes copyright law because its exclusive rights benefit society by increasing our knowledge. Counterproductively, to advance privacy and reputation interests, copyright law is being misdeployed to suppress socially valuable works. This results in “memory holes” in society’s knowledge, analogous to those discussed in George Orwell’s dystopian novel 1984.

By referencing Constitutional considerations, the Article identifies some limited circumstances where copyright’s goals are benefited by considering privacy and reputational interests. In other circumstances, treating copyright law as a general-purpose privacy and reputation tort harms us all.

GORGEOUS PHOTOGRAPH, LIMITED COPYRIGHT
by Justin Hughes on 10/29/2019
URL: https://ssrn.com/abstract=3477628

This chapter explores how copyright protection of photographs is shaped by the dual nature of photography as both creative expression and a system of recording reality. Starting with the Supreme Court’s 1884 Burrow-Giles Lithographic Co. v. Sarony opinion, the chapter explains how under American copyright law a photograph will have copyright protection only if it has original expression; that original expression can take the form of composition, selection of background, lighting, angle, shading, positioning of subjects, and a whole variety of “inputs” in the process of creating the photograph. Indeed, reading court decisions carefully it is clear that courts look for creativity less in the final photographs and more in the process of photography (including choice of camera, filters, lenses, and processing techniques, both analog and digital).

The chapter describes how we can generally organize the recognized sources of copyrightable expression in a photograph into three categories:

[a] creative choices in constructing the scene;

[b] creative choices in initial image capture, and

[c] creative choices in manipulating the image.

The chapter then explores what this legal framework means for modern practices, concluding that many photographic and audiovisual records do not merit copyright protection; that photojournalists will often have only “thin” copyright protection over their work; that copyright law is only a very limited tool against “deep fakes;” and that most selfies do get at least some copyright protection.

The chapter concludes with a discussion of the fair use doctrine and how the emergence of “transformative use” analysis threatens the work of freelance photographers far more than other
creative professionals. Fortunately, it appears that appellate courts have recognized that concern and have appropriately dialed back “transformative use” analysis as it applies to photography.

Global intellectual property rules have had adverse consequences for the promotion and protection of a range of human rights, including the rights to food, health, water, culture, equality and non discrimination, and freedom of expression. Nonetheless, these issues have been framed in human rights terms primarily at the international and regional levels. Domestic human rights advocates have largely not taken up the issue of how intellectual property law affects the enjoyment of human rights.

This Article argues that this incomplete translation is due to widespread reliance on a fairly narrow understanding of human rights. Human rights, when understood only as a set of legal rules and institutions, inevitably devolves into a debate about reconciling conflicting rights. This is an important conversation, but it is also a limiting one. The emancipatory potential of human rights often lies not in its power as a set of legal rules but in the way in which those rules can be employed by affected individuals to make claims and demand political change.

Using the case study of law and politics around intellectual property mobilization, the Article argues that framing intellectual property in more robust human rights terms is important for challenging the fundamental power structures that undergird the intellectual property regime. The Article then argues that the Marrakesh Treaty — a new treaty that requires states to create mandatory exceptions to copyright to protect the rights of individuals with disabilities — charts a new path for human rights advocacy on intellectual property. This treaty has the potential to lay a foundation for better translation of intellectual property issues into human rights advocacy by identifying a clear violation and by activating domestic human rights advocates. Creating a foundation for affected individuals and human rights advocates to participate in intellectual property lawmaking is essential to realizing the potential of human rights for revising the essential bargains of the international intellectual property system.

The remix has emerged as a dominant force of creation in the digital and Internet age. The solutions under the current copyright law such as fair use as well as voluntary, compulsory and public licensing have failed to adequately protect remix works and remixers, and as a result, hampered the creativity of remix artists. New approaches are needed to cope with the challenges. This article proposes to add remix as a protectable subject matter; create a right to remix and
grant it to remixers; obligate remixers to attribute source works to copyright holders and remuneration them for remixing; require the same remix rights and obligations to be passed on to future remixers; and impose a statutory levy on social media for using remixes. It is argued that the proposed approach can better protect remix creation and help achieve an optimal balance of interests between copyright holders, social media and users.

TOWARD THE PERSONALIZATION OF COPYRIGHT LAW
in University of Chicago Law Review by Adi Libson & Gideon Parchomovsky on 3/2/2019
URL: https://ssrn.com/abstract=3332961

In this Article, we provide a blueprint for personalizing copyright law in order to reduce the deadweight loss that stems from its universal application to all users, including those who would not have paid for it. We demonstrate how big data can help identify inframarginal users, who would not pay for copyrighted content, and we explain how copyright liability and remedies should be modified in such cases.

AN EMPIRICAL STUDY OF TRANSFORMATIVE USE IN COPYRIGHT LAW
URL: https://ssrn.com/abstract=3330236

This article presents an empirical study based on all reported transformative use decisions in U.S. copyright history through January 1, 2017. Since Judge Leval coined the doctrine of transformative use in 1990, it has been gradually approaching total dominance in fair use jurisprudence, involved in 90% of all fair use decisions in recent years. More importantly, of all the dispositive decisions that upheld transformative use, 94% eventually led to a finding of fair use. The controlling effect is nowhere more evident than in the context of the four-factor test: A finding of transformative use overrides findings of commercial purpose and bad faith under factor one, renders irrelevant the issue of whether the original work is unpublished or creative under factor two, stretches the extent of copying permitted under factor three towards 100% verbatim reproduction, and precludes the evidence on damage to the primary or derivative market under factor four even though there exists a well-functioning market for the use.

Although transformative use has harmonized fair use rhetoric, it falls short of streamlining fair use practice or increasing its predictability. Courts diverge widely on the meaning of transformative use. They have upheld the doctrine in favor of defendants upon a finding of physical transformation, purposive transformation, or neither. Transformative use is also prone to the problem of the slippery slope: courts start conservatively on uncontroversial cases and then extend the doctrine bit by bit to fact patterns increasingly remote from the original context.

This article, albeit being descriptive in nature, does have a normative connotation. Courts welcome transformative use not despite, but due to, its ambiguity, which is a flexible way to implement their intuitive judgments yet maintain the impression of stare decisis. However, the rhetorical harmony conceals the differences between a wide variety of policy concerns in
dissimilar cases, invites casual references to precedents from factually unrelated contexts, and substitutes a mechanical exercise of physical or purposive transformation for an in-depth policy analysis that may provide clearer guidance for future cases.

A NATURAL RIGHT TO COPY
by Glynn S. Lunney, Jr. on 8/17/2019
URL: https://ssrn.com/abstract=3438625

In this symposium, we gather to celebrate the work of Wendy Gordon. In this essay, I revisit her article, A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property. In the article, Professor Gordon first used the "no-harm" principle of John Locke to justify copyright as natural right and then used his “enough-and-as-good” proviso to limit that right. Her second step turned natural rights approaches to copyright on its head. Through it, she showed that even if we accept copyright as natural right, that acceptance does not necessarily lead to a copyright of undue breadth or perpetual duration. Rather, even a natural rights framework leads to a copyright regime shorter and narrower than we presently have.

While I agree that copyright should be shorter and narrower, I worry that Professor Gordon conceded too much in her first step. Neither Locke’s reasoning nor Professor Gordon’s reading of it can justify a right to prohibit copying as a matter of natural law. It is not the right to prohibit copying to which we have a natural entitlement. It is the right to copy.

THE PARODY EXCEPTION: GUARANTEEING HUMAN RIGHTS WITHIN COPYRIGHT
in Journal of Intellectual Property Law & Practice, 2019 on 11/30/2019
URL: https://ssrn.com/abstract=3498951

Published in March 2019, ‘The Parody Exception in Copyright law’ presents itself as the first book fully dedicated to this topic written in English. It represents an accomplished attempt by the author Sabine Jacques to outline the scope of the parody exception in copyright law, using a comparative methodology and examining the law on the books and the law in action in Australia, Canada, France, United Kingdom and the United States of America.

KEEPING IP REAL
in Houston Law Review by Irina D. Manta on 12/16/2019
URL: https://ssrn.com/abstract=3504885

This symposium contribution analyzes the relationship between intellectual property and tangible property, focusing on four types of intellectual property: copyrights, trademarks, patents, and trade secrets. It posits that—contrary to popular conceptions—the question of rivalrousness should be viewed as central both to owners’ use of IP-protected goods and to others’ infringement of the underlying IP rights (just as that attribute lies at the heart of the concept of real and other tangible property). Rivalrousness typically arises where consumption of a good by
a consumer prevents simultaneous consumption of that good by other consumers or, in the tangible property context, where simultaneous physical occupation of the same space is impossible. This symposium piece, however, adopts an understanding of rivalrousness that rests on economic rather than physical conceptions of rivalrousness. Previous scholarship, including my own, has questioned the boundary between intellectual property and tangible property by examining binary conceptions of rivalrousness, whereby physical goods (including real property) are understood to be completely rivalrous, and intangible goods completely nonrivalrous. This piece studies in depth how “(real) property-like” the different forms of intellectual property are when it comes to economic rivalrousness, and concludes that most trademarks and trade secrets hew quite closely to our understanding of real property and other tangible property as far as economic rivalrousness is concerned. There is more variance in that respect within copyrights and patents (with the associated goods often ranging from not rivalrous at all to highly rivalrous), which suggests that there may be more flexibility in those areas when granting rights to third parties. For copyright and patent rights, economic space might be more shareable than for trademarks or trade secrets, in the sense that the goods can sometimes more easily coexist in the market without the owner of the original intellectual property suffering profit losses.

Historically, and consistently, direct copyright infringement has been understood to be a strict liability tort. Unfortunately, some recent lower court decisions addressing infringement of copyrighted content on online platforms could be read, wrongly, to require copyright owners to prove "volitional conduct" by alleged infringers. Yet the Copyright Act nowhere contains any such volitional conduct requirement and the U.S. Supreme Court has never recognized such requirement in direct infringement cases. Lamentably, any uncertainty regarding a potential volitional conduct requirement makes it more difficult to ensure accountability by online platforms for mass infringement taking place on user-upload websites.

The principle that volition (or intent) has no role to play in determining whether copyright infringement has occurred is long-standing and well established in both English and American jurisprudence.

To increase platform accountability for online infringement, both the courts and Congress need to ensure that there are clear, strict liability rules regarding direct copyright infringement. Attention, deservedly, has been placed on refining statutory safe harbors from legal liability in order to ensure online platforms take more responsibility for infringing activities on their sites. But even when online platforms are ineligible for safe harbor treatment, copyright owners still have the burden of proving direct copyright infringement. This paper therefore focuses on direct infringement in the context of online platform accountability.
There would be a beaten path to the maker of software that could reliably state whether a use of a copyrighted work was protected as fair use. But applying machine learning to fair use faces considerable hurdles. Fair use has generated hundreds of reported cases, but machine learning works best with examples in greater numbers. More examples may be available, from mining the decision making of web sites, from having humans judge fair use examples just as they label images to teach self-driving cars, and using machine learning itself to generate examples. Beyond the number of examples, the form of the data is more abstract than the concrete examples on which machine learning has succeeded, such as computer vision, viewing recommendations, and even in comparison to machine translation, where the operative unit was the sentence, not a concept that could be distributed across a document. But techniques presently in use do find patterns in data to build more abstract features, and then use the same process to build more abstract features. It may be that such automated processes can provide the conceptual blocks necessary. In addition, tools drawn from knowledge engineering (ironically, the branch of artificial intelligence that of late has been eclipsed by machine learning) may extract concepts from such data as judicial opinions. Such tools would include new methods of knowledge representation and automated tagging.

If the data questions are overcome, machine learning provides intriguing possibilities, but also faces challenges from the nature of fair use law. Artificial neural networks have shown formidable performance in classification. Classifying fair use examples raises a number of questions. Fair use law is often considered contradictory, vague, and unpredictable. In computer science terminology, the data is “noisy.” That inconsistency could flummox artificial neural networks, or the networks could disclose consistencies that have eluded commentators. Other algorithms such as nearest neighbor and support vectors could likewise both use and test legal reasoning by analogy. Another approach to machine learning, decision trees, may be simpler than other approaches in some respects, but could work on smaller data sets (addressing one of the data issues above) and provide something that machine learning often lacks: transparency. Decision trees disclose their decision-making process, whereas neural networks, especially deep learning, are opaque black boxes. Finally, unsupervised machine learning could be used to explore fair use case law for patterns, whether they be consistent structures in its jurisprudence, or biases that have played an undisclosed role. Any possible patterns found, however, should be treated as possibilities, pending testing by other means.
excess inertia, and balancing consumer welfare, competition, and innovation. This Article surveys and integrates the economic, business strategy, and legal literatures relating to network effects and intellectual property. Part I introduces the topic of network effects and provides an overview of the Article. Part II describes the functioning of network markets. Part III examines the interplay of business strategy, contract, standard setting organizations, intellectual property, and competition policy. Part IV presents three principles for tailoring intellectual property regimes and competition policy to network technologies. Part V traces the evolution of intellectual property protection for network features of systems and platforms. Part VI discusses the interplay of intellectual property protection and competition policy. Part VII assesses the extent to which intellectual property protection and competition policy align with the normative design principles. Part VIII identifies promising areas for future research.

MEMES TO MOVEMENTS: HOW THE WORLD’S MOST VIRAL MEDIA IS CHANGING SOCIAL PROTEST AND POWER
by An Xiao Mina
URL: https://www.penguinrandomhouse.com/books/567159/memes-to-movements-by-an-xiao-mina/

A global exploration of internet memes as agents of pop culture, politics, protest, and propaganda on- and offline, and how they will save or destroy us all.

Memes are the street art of the social web. Using social media–driven movements as her guide, technologist and digital media scholar An Xiao Mina unpacks the mechanics of memes and how they operate to reinforce, amplify, and shape today’s politics. She finds that the “silly” stuff of meme culture—the photo remixes, the selfies, the YouTube songs, and the pun-tastic hashtags—are fundamentally intertwined with how we find and affirm one another, direct attention to human rights and social justice issues, build narratives, and make culture. Mina finds parallels, for example, between a photo of Black Lives Matter protestors in Ferguson, Missouri, raising their hands in a gesture of resistance and one from eight thousand miles away, in Hong Kong, of Umbrella Movement activists raising yellow umbrellas as they fight for voting rights. She shows how a viral video of then presidential nominee Donald Trump laid the groundwork for pink pussyhats, a meme come to life as the widely recognized symbol for the international Women’s March.

Crucially, Mina reveals how, in parts of the world where public dissent is downright dangerous, memes can belie contentious political opinions that would incur drastic consequences if expressed outright. Activists in China evade censorship by critiquing their government with grass mud horse pictures online. Meanwhile, governments and hate groups are also beginning to utilize memes to spread propaganda, xenophobia, and misinformation. Botnets and state-sponsored agents spread them to confuse and distract internet communities. On the long, winding road from innocuous cat photos, internet memes have become a central practice for political contention and civic engagement.
Memes to Movements unveils the transformative power of memes, for better and for worse. At a time when our movements are growing more complex and open-ended—when governments are learning to wield the internet as effectively as protestors—Mina brings a fresh and sharply innovative take to the media discourse.

ART AS TECHNÉ AND PRODUCTION: RATIONAL METHODS FOR PRODUCING EFFECTS
in The Means of Innovation by Sean M. O'Connor on 11/26/2018
URL: https://ssrn.com/abstract=3290761

This Chapter tracks changes in the term and concept of art around four themes. First, the techné sense dominated for over two thousand years, from the initial use of techné itself by the Greeks, through its translation into ars by the Romans—a total period stretching from roughly 500 BCE to 1800 CE. Second, the use of art to mean only aesthetic “creative self-expression,” has existed only since the late nineteenth century and was the result of Romantic-era rhetoric advocating intuition and passion over rational scientific progress. This modern meaning is both hopelessly mystical (e.g., deep rumination over “what is art?”) and perpetuates negative gender stereotypes (art is feminine while science and technology are masculine). Third, the techné sense of art is central to understanding modern patent systems. And fourth, this techné sense of art provides the basis for any serious understanding of Production, and thus properly belongs as one of the meta-methods while also being foundational to understanding the means of innovation.

COPYRIGHT POLICY AS CATALYST AND BARRIER TO INNOVATION AND FREE EXPRESSION
in Catholic University Law Review by Amanda Reid on 3/2/2019
URL: https://ssrn.com/abstract=3345684

At its core, copyright is an innovation policy, a competition policy, and a free expression policy. Copyright seeks to balance incentivizing a public good with providing a private interest. Copyright’s purpose to catalyze creative expression and innovation is canonical; creativity and innovation are synergetic. Copyright is a means of promoting progress; copyright is not an end in itself. Much like freedom of expression and new innovations are not ends in themselves, copyright protection is not for its own sake. Freedom of expression is often heralded as a means of fostering democratic self-governance, truth, and happiness. Innovation is seen as a means of fostering economic growth, prosperity, development, and happiness. Similarly, copyright is a means of fostering human progress and enriching the public domain from which others can freely draw. The ultimate beneficiary of copyright policy should be the public interest. This Article offers a broad-minded assessment of copyright policy’s effects on innovation and free expression before offering some sensible areas for reform.
AN EMPIRICAL STUDY OF 225 YEARS OF COPYRIGHT REGISTRATIONS
in Tulane Law Review by Zvi S. Rosen & Richard Schwinn on 7/1/2019
URL: https://ssrn.com/abstract=2643075

This project provides the first comprehensive empirical study of copyright registrations and renewals over the entire scope of American History since the Constitution. Relying on our a newly developed dataset of copyright registration filings, including data for the years before 1870 that has never been seen before, as well as renewal filings from 1909–2005, we provide a history of copyright registration in America and make a number of new findings about the trajectory of copyright registrations over a 225 year period. In addition to these new findings, we engage longstanding questions about the effectiveness of copyright law and the effects of statutory, economic, and technological changes on the maintenance of federal copyrights. The project builds on existing research into the effectiveness of copyright law, including studies by William Landes and Richard Posner as well as more recent work by Raymond Ku. It also complements ongoing work by Robert Brauneis and Dotan Oliar on copyright registrations since 1978 and provides an increasingly holistic picture of the development of U.S. copyright in the modern age.

FAIR USE AS RESISTANCE
U.C. Irvine L. Rev. by Elizabeth Rosenblatt on 1/29/2019
URL: https://ssrn.com/abstract=3348551

Making fair use of copyrighted material can, itself, be a form of resistance, upending traditional hierarchies and disrupting the creator/consumer dichotomy that copyright law otherwise presumes. Using the theoretical framework of Mikhail Bakhtin, one may frame the doctrine of fair use as enabling the “carnivalesque,” in which free expression facilitates interaction among disparate groups, eccentric behavior is permitted, participants are considered equal in a way that defies socioeconomic and political expectations, and transgressive or subversive behavior can occur without punishment. Fair use is a right, permitting all to resist the dominance of exclusive rights-holders, and marginalized groups often employ fair use practices to “talk back” to dominant culture and to establish communities of belonging that strengthen their identities and senses of self. However, framing fair use practices as carnivalesque also reveals underlying hierarchies implicit in copyright law. Indeed, discourse surrounding fair use often relies on hierarchical notions of authenticity and power, and fair use jurisprudence often reflects hierarchical assumptions regarding the corporate/personal divide and regarding race, class, and gender. This Article explores the theoretical and discursive implications of framing fair use as a mechanism for resistance.
HOW THE UNITED STATES STOPPED BEING A PIRATE NATION AND LEARNED TO LOVE INTERNATIONAL COPYRIGHT
in Pace Law Review by John Rothchild on 3/10/2019
URL: https://ssrn.com/abstract=3373042

From the time of the first federal copyright law in 1790 until enactment of the International Copyright Act in 1891, U.S. copyright law did not apply to works by authors who were not citizens or residents of the United States. U.S. publishers took advantage of this lacuna in the law, and the demand among American readers for books by popular British authors, by reprinting the books of these authors without their authorization and without paying a negotiated royalty to them.

This Article tells the story of how proponents of extending copyright protections to foreign authors—called international copyright—finally succeeded after more than fifty years of failed efforts. Beginning in the 1830s, the principal opponents of international copyright were U.S. book publishers, who were unwilling to support a change in the law that would require them to pay negotiated copyright royalties to British authors and, even worse from their perspective, would open up the American market to competition from British publishers. U.S. publishers were quite content with the status quo—a system of quasi-copyright called “trade courtesy.” That system came crashing down in the 1870s, when non-establishment publishers who did not benefit from trade courtesy decided to ignore its norms, publishing their own cheap, low-quality editions of books by British authors in competition with the editions published by the establishment publishers. As a result, most U.S. publishers came to support extending copyright to foreign authors as a means of preventing competition from publishers of the cheap editions.

Once the publishers withdrew their opposition, another powerful interest group came to the fore: typesetters, bookbinders, printers, and other workers in the book-manufacturing industries. These groups opposed international copyright unless it were accompanied by rules assuring that they would not be thrown out of work by a transfer of book manufacturing from the United States to England. In the 1891 Act, the typesetters achieved what they sought: a provision requiring books to be typeset in the United States as a condition of copyright. In this way, U.S. copyright law implemented an element of U.S. trade policy.

The manufacturing clause, as this requirement was called, was gradually watered down over the succeeding decades and lingered in the copyright law until 1986. Yet the entanglement of copyright law with trade policy continued, in the World Trade Organization treaty system and elsewhere.

As a major exporter of books, software, movies, and other articles embodying copyrighted works, the United States has sought in multiple forums to strengthen the protections those works receive under the laws of other nations, sometimes provoking pushback from countries that are net importers of intellectual property goods. When pursuing these goals in the twenty-first century, U.S. policymakers would do well to bear in mind this country’s forgotten history as the greatest copyright pirate nation of the nineteenth century.
EXPERIMENTING WITH STATE-ENACTED RESALE RIGHTS
in Kent L.J. by Guy A. Rub on 6/20/2019
URL: https://ssrn.com/abstract=3413846

Current federal law does not require sellers of fine art to pay a share of the sale price to the artists, although Congress and federal agencies have been debating the advantages and disadvantages of such a duty, commonly referred to as Artists’ Resale Rights (ARR), since the 1970s. What is often missing from this discourse is the role that state law might play in this ecosystem. This issue, and especially California’s 1976 ARR law, the only state-enacted ARR to date, is the focus of this Article.

States are often said to be the laboratories of democracy as they can experiment with various legal rules and produce rich comparative empirical data. The Article explores whether states can be the laboratories of ARR as well. It reaches three conclusions: First, there is a vibrant debate concerning the impacts and overall desirability of resale royalties, but that debate is driven by relatively scarce empirical data. Second, if states decide to adopt ARR they can provide some of that missing information. Third, subject to minor restrictions, states are allowed to enact ARR legislation, and the recent Ninth Circuit decisions that held the California ARR act unconstitutional are, for the most part, misguided, as it does not fully recognize the important role that states play in the markets for creative goods.

THE NEW LEGAL LANDSCAPE FOR TEXT MINING AND MACHINE LEARNING
by Matthew Sag on 2/9/2019
URL: https://ssrn.com/abstract=3331606

Individually and collectively, copyrighted works have the potential to generate information that goes far beyond what their individual authors expressed or intended. Various methods of computational and statistical analysis of text — usually referred to as text data mining (“TDM”) or just text mining — can unlock that information. However, because almost every use of TDM involves making copies of the text to be mined, the legality of that copying has become a fraught issue in copyright law in United States and around the world. One of the most fundamental questions for copyright law in the Internet age is whether the protection of the author’s original expression should stand as an obstacle to the generation of insights about that expression. How this question is answered will have a profound influence on the future of research across the sciences and the humanities, and for the development of the next generation of information technology: machine learning and artificial intelligence.

This Article consolidates a theory of copyright law should that I have advanced in a series of articles and amicus briefs over the past decade. It explains why applying copyright’s fundamental principles in the context of new technologies necessarily implies that copying expressive works for non-expressive purposes should not be counted as infringement and must be recognized as fair use. The Article shows how that theory was adopted and applied in the recent high-profile test cases, Authors Guild v. HathiTrust and Authors Guild v. Google, and
takes stock of the legal context for TDM research in the United States in the aftermath of those decisions.

The Article makes important contributions to copyright theory, but is also integrates that theory with a practical assessment various interrelated legal issues that text mining researchers and their supporting institutions must confront if they are to realize the full potential of these technologies. These issues range from the enforceability of website terms of service, the effect of laws prohibiting computer hacking and the circumvention of technological protection measures (i.e., encryption and other digital locks), and cross-border copyright issues.

SCOPE & JUSTIFICATION OF THE RIGHT OF PUBLICITY
in Columbia Journal of Law & the Arts by Jeremy N. Sheff on 4/8/2019
URL: https://ssrn.com/abstract=3367980

These transcribed symposium comments discuss various normative justifications for the right of publicity, including copyright-like incentive theories, trademark-like false endorsement theories, and theories resting on the moral claims of labor. I discuss how each of these theories is a poor fit for at least some and perhaps most right of publicity cases, particularly insofar as rights of publicity and rights of privacy have been lumped together but their respective justifications are not compatible. I further argue that such normative justifications founder when it becomes necessary to consider the proportionality of a right-of-publicity plaintiff’s interest to legitimate interests of their defendants. Finally, I propose that the way to avoid these challenges of justification is to seek alternative accounts of publicity and privacy claims, with publicity claims grounded in values pertaining to the relationship between people and their labor, and privacy claims grounded in our sense of what we have a right to expect of one another as human beings as a matter of reciprocal social obligations.

COPYRIGHT IN CULINARY PRESENTATIONS
in Non-Conventional Copyright: Do New and Atypical Works Deserve Protection? by Cathay Smith on 5/6/2019
URL: https://ssrn.com/abstract=3323780

This chapter explores culinary presentations and copyright law, including the creative designs, plating, or presentations of food to be eaten, with an up-to-date analysis of this issue under the recent U.S. Supreme Court's decision on copyright of useful articles in Star Athletica, L.L.C. v. Varsity Brands, Inc. To explore copyright in culinary presentations and illustrate the copyright hurdles for culinary presentations, this chapter uses examples of three different styles of culinary presentations as case studies: Duff Goldman's presidential inaugural cake, Thomas Keller's famous salmon cornets, and a bowl of Vietnamese pho.
This article examines the tailoring of remedies in cases involving potential monetary compensation and both lawful and unlawful conduct, especially in online infringement disputes. When websites communicate copyrighted works to members of the public or use trademarks unlawfully, domestic requirements of equitable relief come into tension with global enforcement cultures. Courts are sometimes persuaded to enjoin entire websites or to order the defendant and its cloud service providers to end any use of the copyrights or trademarks at issue, while other courts limit their injunctions to the adjudicated conduct and the parties before them. The question sometimes arises whether a site-killing or device-killing order should issue in light of the defendant's infringement and third parties' facilitation of it, or whether the defendant should simply be ordered to desist from the infringing acts (and related parties from facilitating those specific acts). An increasingly prominent alternative is to withhold an injunctive remedy in view of the potential recovery of monetary relief. This article explores why, despite statutory language, case law precedent, and political consensus that website blocking should not occur, the sweeping remedy of site blocking (enjoining any facilitation of site access) continues to be available. It argues that site-blocking and orders to third parties not to index or provide services to a website are in tension with the Supreme Court's decision in eBay, the First Amendment case for narrowly targeted remedies when publishing and digital communication are at stake, the Digital Millennium Copyright Act's limiting language, remedial proportionality doctrine, and the failure of the Stop Online Piracy Act of 2011 in Congress. Remedial inequities are also emerging as between patent and copyright or trademark holders, because the bare loss of control of intellectual property is justifying copyright and trademark injunctions despite patent law cases suggesting that impaired exclusivity and negotiating leverage are not necessarily "irreparable" injury.

Geoblocking has become a common companion of copyrighted content on the internet; even streaming services can make streamed copyrighted content available or unavailable according to the location of their users. There are various reasons for geographical restrictions on access to content; copyright issues are not the only reasons, but territorial limitations associated with copyright are significant – and sometimes the primary – reasons for implementing geoblocking. This article reviews the current relationship between copyright and geoblocking, particularly the role attributed to geoblocking in copyright law and law of personal jurisdiction in the United States and the European Union; it considers whether geoblocking is an inevitable part of the future of copyrighted content on the internet, particularly in light of recent attempts in the European Union to eliminate geoblocking for copyrighted content; and suggests some possible
consequences that might result from eliminating geoblocking within the European Union or on a
global or large territorial scale.

RECONCEPTUALIZING COMPULSORY COPYRIGHT LICENSES
in Stanford Law Review by Jacob Victor on 5/31/2019
URL: https://ssrn.com/abstract=3397352

United States copyright law generally assumes that by providing property entitlements in
creative works, the free market will balance between two competing priorities: incentivizing
creators to produce works and providing the public with access to this content. But the Copyright
Act also outlines several detailed compulsory licensing schemes requiring the owners of certain
copyright interests, musical works in particular, to license to anyone at government-set prices.
Consistent with broader property theory concepts, scholars tend to treat compulsory copyright
licenses as liability rules used only to address market failures caused by transaction costs. This
Article questions that account, arguing that compulsory licensing also plays an important and
underexplored role in furthering copyright’s specific goals. A close analysis of the music
regulatory regime and its history shows that its primary function has been to recalibrate the
balance between creators’ financial incentives and public access to expressive works in situations
where free market licensing would yield problematic outcomes. Unlike liability rules designed
only to address transaction costs, for which regulators generally try to mimic market rates using
market proxies, the compulsory music licensing regime traditionally used copyright policy-
oriented rate-setting criteria. Applying these criteria, regulators often chose below-market royalty
rates in order to allow access-expanding music dissemination technologies—from the player
piano to digital radio—to flourish.

In recent years, however, policymakers have begun to lose sight of this access-encouraging role.
A series of legislative changes, including the recent Music Modernization Act (“MMA”), have
made the compulsory music licensing regime increasingly inconsistent and ill-equipped to
handle new forms of music dissemination. Policymakers now seem to view compulsory licensing
as only justified in the face of transaction costs-based market failures and, accordingly, have
begun privileging market mimicking over copyright policy when choosing royalty rates. This
shift has yielded increasingly high royalty rates, which have made it more difficult for new
disseminators, such as streaming services, to facilitate access to music.

The Article argues that this shift away from policy-focused compulsory licensing prevents the
regime from maintaining balance in the copyright system, a problem that is especially apparent
in the experience of the burgeoning music streaming industry. In particular, a copyright policy-
based approach is necessary to prevent the subjectivity and manipulability of market-mimicking
rate-setting standards from yielding royalty rates that are unworkable for streaming services.
Although the MMA has pushed the existing regime even further away from its original role by
implementing a market-focused rate-setting standard, the Article suggests how regulators could
still further copyright policy goals in future rate-setting proceedings.
BRIEF THOUGHTS ABOUT IF VALUE/THEN RIGHT
in Boston University Law Review by Alfred C. Yen on 12/17/2019
URL: https://ssrn.com/abstract=3505448

This brief essay offers thoughts about the so-called if value/then right principle in copyright, a principle often used to argue that authors must pay any time that they borrow from others before them. In particular, it uses the ultimatum game to explain why the principle has appeal despite its occasional negative effects on social welfare.

After this, the essay explores whether the if value/then right principle necessarily leads to broader copyright rights. The essay argues that principle could be used to justify limits on copyright rights once society recognizes that most authors derive benefit from others before them without paying. Because it is impossible to identify all of these borrowings or to arrange payment for them, society is better off forgiving (i.e. making non-actionable) certain borrowings.