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ARTICLES

Mickey and the Mouse: The Motion Picture and Television Industry's Copyright Concerns on the Internet

Mark S. Torpoco 1

Opening with the chess match between IBM's Deep Blue and Garry Kasparov monitored on the Internet, the author explores the Motion Picture and Television Industry's copyright concerns on the Internet. The analysis begins with a concise and informative history of the Internet. The author then explores the Motion Picture and Television Industry's current and potential uses of the Internet as a medium for both advertising and providing content for sale. These uses on the unsecured but heavily traveled Internet, have created serious copyright concerns for the Motion Picture and Television Industry as it seeks to extend its use of such media. The author discusses how the Internet and its current uses enhance the potential for copyright infringement. The author asserts that this is a result of the ease of infringement on the Internet due to constantly advancing technology coupled with a lack of technological safeguards, and current ambiguities in copyright law on the Internet. The author concludes with a six-fold plan of action for future protection of entertainment works on the Internet. This includes: the need for public education, NII legislation, approval of the WIPO Copyright Treatises, an enforcement campaign, notices and contracts, and technological protections.

Non-Deductibility Is a Wonderful Thing: Federal Income Taxes Should Not Be Deductible When Calculating Net Profits in a Copyright Infringement Suit

Matthew McNicholas and John P. McNicholas 71

Under section 504 of the Copyright Act, a prevailing copyright owner may elect either statutory damages or actual damages and profits of the infringer that are attributable to the infringement. This article discusses the inter-circuit split on the issue of whether federal income taxes, that have been paid or incurred by the defendant, should be deductible in the calculation of net infringing profits. The author evaluates the Sixth Circuit's approach of not allowing a deduction under any circumstances and the Second Circuit's approach of allowing a deduction in non-willful infringement cases. The author argues that the non-deductibility approach is more consistent with a related Supreme Court decision and represents a more equitable and better reasoned approach.

COMMENTS

The Future of Cable Regulation Under the First Amendment: The Supreme Court's Treatment of Section 10(a) of the Cable Television Consumer Protection and Competition Act of 1992

Jeffrey D. Kaiser 103

This Comment analyzes and criticizes the Supreme Court's most recent First Amendment decision in the area of cable television, Denver Area Educational Telecommunications Consortium, Inc. v. FCC, 116 S. Ct. 2374 (1996). The author focuses on the plurality opinion upholding section 10(a) of the Cable Consumer Protection and Competition Act of 1992, and suggests that this portion of the decision departs substantially from precedent and fails to properly consider the important technological difference between cable and broadcast media. The author argues that the Court should have struck the provision as unconstitutional using either strict scrutiny (because the provision is an impermissible content-based speech regulation) or common carrier doctrine (because the provision concerns leased access channels, which Congress designated common carrier). Further, the author

challenges the Supreme Court to confine Denver to its facts, and adopt a new bright line rule that properly reflects the technological uniqueness of the cable medium.

Total Concept and Feel: A Proper Test for Children's Books

Andrew C. S. Efaw 141

In the modern literary publishing context, it has become increasingly obvious that an individual may plagiarize a children's story without being liable for copyright infringement. The author argues that the traditional infringement standards for literary works, rooted in *Arnstein* and *Krofft*, are patently inadequate in the context of children's stories. Children's stories are by definition uncomplicated with regard to both the expressive language of the story and the development of the plot. In fact, successful children's stories are often simple versions of loosely tied-together ideas because that style is necessary for their unique audience. In the literary area of copyright infringement, however, a plot consisting of a simple grouping of ideas is fatal to a plaintiff author's claim. Therefore, the author argues that the "total concept and feel" test should become the specific standard for copyright infringement in the area of children's stories. Even though this test has developed slowly and has come under attack for being too subjective and general compared to other copyright infringement tests currently being used by the courts, it provides a better fit for children's stories than the traditional copyright infringement tests and allows the children's story author to build a case against the copyright infringer.

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