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ARTICLES

Copyright protects various species of works, including musical compositions and sound recordings, as well as literary works, sculptures, and a host of other productions. As to almost all of those works, the Copyright Act of 1976 accords five exclusive rights: reproduction, adaptation, public distribution, public performance, and public display. Instead of simply including sound recordings within the public performance right protected by the 1976 Act, Congress added a new sixth right to the Act. That right, unlike the five rights that preceded, is limited to one type of work — sound recordings. In addition, unlike the other five rights, it is not a general right; instead, it is limited to the domain of "digital audio transmission." The vehicle that Congress chose to effect that change bears the ponderous caption of Digital Performance Right in Sound Recordings Act of 1995. Congress revisited the terrain again in 1998, amending that 1995 amendment via the Digital Millennium Copyright Act. The resulting framework is frightfully complex. This article describes the twists and turns in that right of digital audio transmission. The very process of doing so will illustrate how tortured this application is. In future installments to this series, the impact on the public interest will be explicitly weighed. For the present, the enterprise is to grasp the impact of this most complex statutory scheme.

ment provides an overview of the new media licensing obligations for webcasters and examines how digital distribution of sound recordings brings about a new commercial convergence of separate rights under copyright. The roles of licensing organizations in the age of the Internet and the new digital music performance licensing landscape are also analyzed. From the perspective of the musician, the comment asks whether the Internet shift in commercial models indicates similar shifts in royalty percentages. Finally, the issue of whether new and pre-existing performing artists contracts include rights to the new digital transmission exploitations is discussed in light of "new use" copyright case law. Practical solutions proposed include proactive examination of existing and future recording contracts to confirm they include new use rights.

Finalists

Music in the Digital Millennium: The Effects of the Digital Millennium Copyright Act of 1998

David Balaban 311

The expansion of the Internet has begun a shift in the music industry from the sale of physical recordings of music to the distribution of music over the new medium in the form of sound files, such as MP3s. However, performers have encountered difficulty in receiving compensation for songs transmitted over the Internet. This Comment examines the Digital Millennium Copyright Act of 1998 (DMCA), recent legislation that further limits the liability of Internet Service Providers (ISPs) for their participation in the transfer of music. However, the DMCA does extend important protection to the owners of sound recordings in its "black box" provision, which protects technological methods, such as watermarking, that may be used to track and identify illegal copies of music distributed over the Internet.

The No Electronic Theft Act: The Music Industry's New Instrument in the Fight Against Internet Piracy

Karen J. Bernstein 325

Recently, federal prosecutors gained their first conviction under the 1997 No Electronic Theft Act, which makes it a crime to upload more than ten digital copies of phonorecords regardless of profit motive. The conviction, which fell short of jail time, may not have been enough to deter Internet pirates who do not derive private financial benefit or commercial gain (the so-called "non-profit" Internet pirate). This Note argues that money is not enough to deter non-profit Internet pirates. Accordingly, an increase in the base offense level for a NET Act violation may be the only way. Moreover, the music industry can take a more proactive approach by (1) lobbying the Sentencing Commission to increase the base offense level under the NET Act, (2) funding training programs so prosecutors will more effectively convict Internet pirates, and (3) educating the public about Internet piracy.

overview of music royalty securitization, with a particular emphasis on how copyright law makes such deals more complex than the securitization of tangible assets. The author concludes that while there are indeed millions to be made in the capital markets, very few musicians have a secure enough copyrightable interest in their royalties or a proven track record to make it on the Street.