

Copyright Law Update

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YW&C

What we'll cover

Fair Use cases

Anti-piracy efforts here and abroad

Orphan Works legislation

DMCA cases

Downloaders face the music

Fair Use: Unauthorized Sequel Squelched

Salinger v. Colting, 2009 WL 1916354 (S.D. N.Y.)

- Unauthorized sequel to “*Catcher in the Rye*”
- Purports to pick up 60 years after book left off
- Court enjoined sequel’s release—not a fair use
 - Not a parody
 - Limited transformative content
 - Likely to harm market for deriv. works
 - Borrows much of *Catcher*, H. Caulfield character

Fair Use*: Google e-library dispute

The Author's Guild v. Google, 05-08136 (SDNY)

- **Google: digitizing books in major libraries**
 - Didn't ask book publishers for permission

- **October 2008: Settlement**
 - Google to pay \$125 million, attorney fees
 - Create royalty registry
 - Can sell digitized books, offer subscriptions

Fair Use*: Google e-library dispute

Court preliminarily approved settlement

Since then, 400 comments filed with court

Register of Copyrights

France, Germany

Department of Justice

Sept. 25: Court delays final hearing

P's to work with DOJ to revise settlement

Fair Use: Anti-Plagiarism Programs

***A.V. v. iParadigms, LLC*, 562 F.3d 630 (4th Cir.)**

- **Online plagiarism-detection system**
- **Compares student's work vs. archives**
- **Students sued for CR infringement**

- **Fourth Circuit found fair use**
 - **Archiving students' papers is transformative**
 - **Commercial aspect less significant**
 - **No harm to market for students' works**

Anti-piracy efforts: PRO-IP Act

Signed into law in October 2008

Copyright, trademark focus

Mitigates impact of registration errors

Enhances remedies (impoundment, forfeiture)

Creates exec branch Office of U.S. IP
Enforcement Representative

Anti-piracy efforts: U.S. / China WTO dispute

April 2007: U.S. challenges China in WTO

Contests China's entertainment, media policies

Goal: Get legitimate U.S. copyrighted works into China

2009: WTO panel issues ruling

**Ordered China to end restrictions on U.S. importers,
distributors of copyrighted works**

Ordered Chinese companies to JV with US co's

Sept. 2009: China appeals; resolution in 90 days

Orphan Works Legislation

Works whose CR owner can't be identified

Who's affected, and how?

Changes in CR law have exacerbated problem

Legislative efforts

DMCA

MDY v. Blizzard, 616 F.Supp.2d 958 (D. Ariz.)

- World of Warcraft multiplayer online game
- “Glider” software bot
 - Plays game for you; you rack up assets, exp., power
- “Warden” tech measure to detect bots
 - Controls access to WoW’s dynamic nonliteral env’t
 - A protected “access control measure” under DMCA
- MDY rev. engineered Warden; can’t find Glider
- Glider circumvents Warden; violates DMCA.

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Downloaders Face the Music

***Capitol Records, Inc. v. Thomas-Rasset* (D. Minn.)**

Jury found infringement

Verdict: \$1.92 million (\$80,000 per song)

***Sony BMG Music Ent'm't v. Tenenbaum* (D. Mass.)**

Directed verdict on infringement

Jury found infringement to be willful

Verdict: \$675,000 (\$22,500 per song)

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