

Class 13: Music And Adaptation

Administrative

- Next Time: Open Source Conference
 - Reading Now posted on pauohm.com 🌐
 - 3 Sessions (Choose 2)
 - 3:10 - 4:10pm
 - 4:10 - 5:10pm
 - 5:30 - 6:30pm
 - Thursday at Noon: Brief Primer.
- A little more on the in-class assignment
 - We're not going to assign identities on 3/7. Rather, reading will be handed out, assignment will be explained.
- News 🌐

Last Time

- More on Distribution
 - Napster
- First Sale Doctrine
 - 109(a) Policy
 - Does not privilege reproduction or adaptation
 - Hoteling, if it involved one copy of the microfiche with a black background.
 - Hypos
 - You "sell" software to someone on eBay or Craig's.
 - With sale of your computer.
 - By sending them CD-ROMs.
 - By uploading the programs to their computer.
 - "Lawfully made under this title"
 - 109(d)
 - Music and Software rental provisions of 109(b).

Adaptation Right

- Basics
 - 106(2) Prepare Derivative works
 - 101 Derivative works
 - A "derivative work" is a work based upon one or more preexisting works such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.
 - A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work".
 - Important Point: Reproductions need not be literal. 🌐

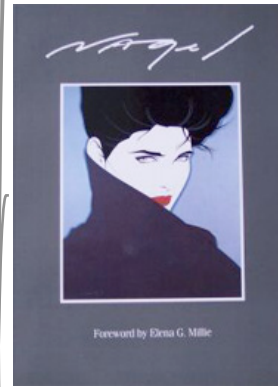
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Adaptation Right

Lee v. A.R.T. Company

Basic Facts

One in series involving A.R.T.
 Business model: Legitimately buy prints of famous art. Mount on tiles with Epoxy. Resell
 Relying on 109(a) first sale rights.



District Court
 Held (CA7 1997)
 Reasoning

Who has better reading of Originality Requirement

Originality isn't required to constitute a production of a DW
 Originality IS required to constitute a production of a DW
 Mirage Editions (CA9), Plaintiff in Lee, Professor Goldstein (471)
 Lee Trial Court, Nimmer, Maybe Lee Appellate court

More Adaptation

Note 2: Point: incentive to exploit other markets.
 Don't forget 103(a), second sentence.
 Fixation Required?
 Note 8: Cross-Media Infringement
 Translations
 Real-time modifications of A/V works

Music

Basics

Recap the Difference Between Musical Work and Sound Recording

What does each cover?
 Who Owns Each?

What is a "Phonorecord"?

101 definition.
 A bit cumbersome.
 General idea: Copies are for the eyes, phonorecords are for the ears.
 Point: A bit of an artificial distinction, but it turns out it makes a difference in many statutes.

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Music

Problems (Assume all facts are independent, unless otherwise specified).

Max writes a song entitled, "It's 4:30am, and I want to go down to the kitchen and have a Muffin with Butter" (blues). Anna, his songwriting partner, records the song on her computer and begins selling CDs online.

(458): Register of Copyright recommended getting rid of it.

Ringtones Opinion

Eleanor buys Anna's CD, copies it using her computer, and gives the copy to her friend, Tad.

Eleanor and Tad enter the studio and record their own version of "4:30am", creating a pretty faithful "cover version" Sell 1000 copies online.

E&T enter the studio and record a new, reggae version of "4:30am", keeping lyrics, but changing tempo, beat, some of the notes.

Weird AI enters the studio and records his version called "It's 4:30am, and I'm sleeping peacefully, and I'll probably not wake anyone in the family up until at least 8:45am".

Weird AI and E&T go on tour together, and during the encore, the crowd, lighters aglow, begin to chant, "4:30! 4:30!" All three go on stage and play a stirring rendition

Before the show, they play Anna's CD to the waiting crowd.

Note 17 (477): Famed hip hop sensation Polar Bear samples Anna's voice singing "4:30" (three notes/syllables) and loops it in the background of his new hit single. Millions of sales.

