

Class 14: Music

Administrative

Next Time: 599-616; section 501(a)

Making Up Today's original assignment: We will fill in the pages later in the semester.

Open Source De-brief — Makeup assignment

Joyce Dutton -- Amateur Pianist 🤖

BitTorrent enters rental/sale TV/Movies market 🤖

mp3 Lawsuits galore { Mostly patent suits
MS slapped with 1.52B verdict
"mp3 Technologies" sued Apple, SanDisk, Samsung.

Fair Use Act 🤖

Pelosi v. CSPAN 🤖

The In-Class Assignment

Materials

paulohm.com/classes/copr07/orphan.html

Handouts { Exercise Instructions
Copyright Office Report

Other Resources { Copyright Office Comments Page

Orphan Works — Basic Idea

Due Monday, 4/9/07 by start of class.

5-10 pages { Prefer printed copy, handed to me.
If impossible, for some reason, I will accept e-mailed copies.

Written Component

Letter from your identity to subcommittee, recommending next steps and/or commenting on proceedings. { "Evolving Advocacy"
Dispense with too much background.
Name and role at top of page one.

Assignment { Grade depends on four factors { 1. Persuasiveness / strength of arguments
2. Consistency with role
3. Writing clarity and style
4. Creativity

Reminder about effect on final grade.

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The In-Class Assignment

In-Class Component

- List of Roles → To Highlight
 - Congressmen
 - Imagery Alliance / ASMP
 - Lessig
 - Public Knowledge
- Basic Mechanics
 - U.S. House Judiciary Committee, Subcommittee on Courts, the Internet, and IP
 - Entire class will be devoted to subcommittee markup.
 - What does that mean?
 - Not a realistic example, because of interest group presence.
 - Probably will divide class in two parts
 - Debate, grouped by topics
 - Proposed amendments
- The Congressmen
 - Possibly the most important role.
 - They'll run the show.
 - Meet with me twice before day.
 - Decide how to group topics
 - Decide what parts of statute to focus on.
 - Must read entire report.
 - Quo for the quid: Not required to write the report.
 - Grade based on in-class performance only.
- Before the Day
 - By 5pm TOMORROW (Thursday, 3/8), you must e-mail me a list of preferred three roles.
 - NOTE CHANGE IN DATE! ***
 - I will post roles to website by Friday at Noon.
 - Before class on 3/19: Do everything listed in instructions.
 - Additionally: Sign up for a Google account and e-mail me your userid
- During the session
 - Everyone should try to speak.

Music

Basics

- Recap the Difference Between Musical Work and Sound Recording
- What is a "Phonorecord"?

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.

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

- Max owns MW; Anna owns SR
- No other facts implicate copyrightability
- Literal reproduction
- Both Max and Anna have infringement claims.

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

- Max
 - Section 115 Compulsory license to make and distribute.
 - Mechanical license; statutory license.
 - section 115(b): Procedural hurdles
 - Within 30 days and before distribution.
 - Rate currently set at 9.1 cents/copy.
- Anna
 - Conclusion: No permission necessary. Compulsory license if E&T comply with formalities.
 - No infringement possibilities.
 - 114(b): Rights in SR extend ONLY to actual sounds recaptured.
 - 114(b): Even if sounds are imitated or simulated.

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

- 115(a)(2)
 - You cannot avail yourself of a compulsory license if you change the "basic melody or fundamental character of the work"
 - But, you can make "a musical arrangement" and you can change the "style or manner of interpretation of the performance involved."
 - So, the question here is, is a shift from blues to reggae a change to "basic melody or fundamental character"? Or is it instead a shift in "style or manner of interpretation"?
 - My reaction: blues->reggae with no changes to basic melody or lyrics seems to be an interpretation not a change in the fundamental character.
 - But reasonable minds may differ.

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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.

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".

Problem assumes lots of new lyrics.
Same analysis as previous.
Seems to be too much of a change. Fundamental character changed.

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

Facts are a bit confusing: Better: E&T (with their compulsory license requirements satisfied) go on tour and perform their song live.

Max - Infringement of Public performance right.
Anna - Gets nothing.

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

Max - Infringement of Public performance right.
Anna - Gets nothing.
114(a) and 106(4) exclude SR owner from public performance rights.
I gave the wrong answer in class. This is the right answer.

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.