

Class 22: Fair Use, Search, And Google

Administrative

Next Time: 875-87; 903-12; sections 502-06

Office Hours end at 2:55pm today.

Trends

- <http://hand-drawngames.com/DesktopTD>
- Google Books
- Google Image Search

Last Time

American Geophysical v. Texaco

Basic Facts

83 Publishers of scientific journals sue Texaco for copyright infringement of articles by photocopying.

Texaco's 400-500 scientists

Texaco routes journals to scientists with an interest.

Chickering photocopied eight files on own or with other employees' assistance.

Odd Procedural approach: Pick one lucky scientist at random (Chickering) and dig through his files.

Facilitate current or future professional research. No immediate use -- placed in his files.

Held

1. Purpose and character of use.
2. Nature of Copyrighted Work
3. Amount and Substantiality of Portion Used

Reasoning

4. Effect upon potential market or value.

What market?

Current market for subscriptions, back issues, or back volume?

No appreciable effect. At best, Texaco could increase subscriptions somewhat if no photocopying allowed.

New markets

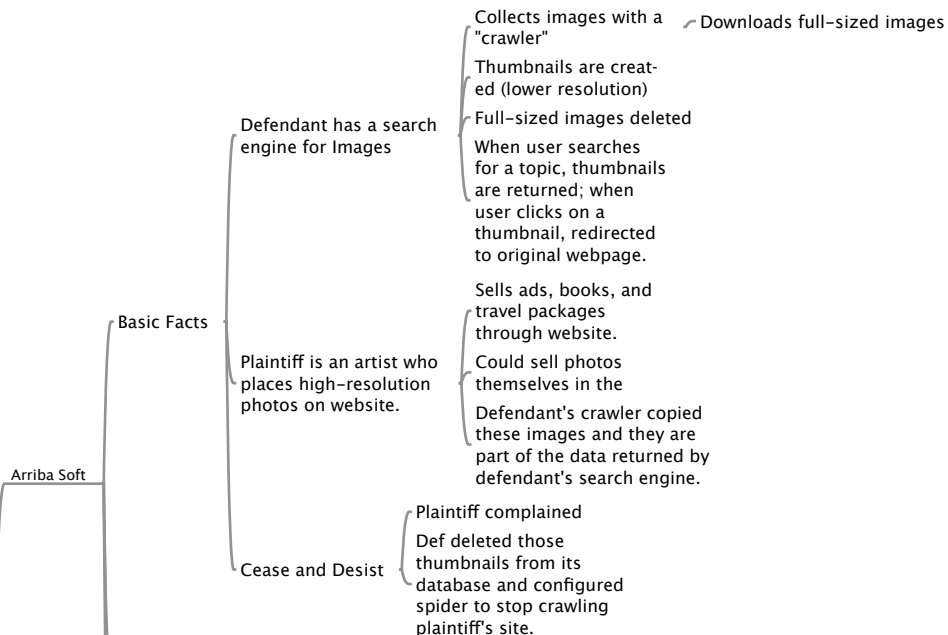
- Document delivery services (pay royalties for right to photocopy)
- New photocopy licenses negotiated with individual publishers.
- Copyright Clearance Center photocopying license.

The circularity problem.

Note 3
You are asked to decide whether publishers can demand a fee for permission to make photocopies. How can any part of that be based on the value of a license for permission to make photocopies?

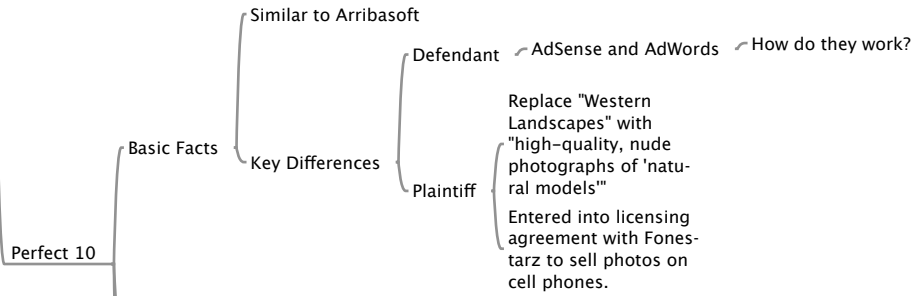
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Search Engines and Google



What are the potential copyright infringements here?
 Held → Fair use for thumbnails

- Reasoning
- Prima Facie infringement? ⊕
 - 1. Purpose and Character of Use
 - 2. Nature of the copyrighted work.
 - 3. Amount and substantiality of portion used.
 - 4. Effect on the Market



Held → Likely not a fair use; PI issued.

- Reasoning
- 1. Purpose and character of use
 - 2. Nature of Copyrighted Work
 - 3. Amount and Substantiality of Portion Used
 - 4. Effect on Market