

Class 21: Fair Use Part II

Administrative

Next Time

Guest lecture: Wendy Seltzer
 Assignment as on syllabus, with one addition
 501-11, Supp. 434-42, Section 512
 (Read carefully!) and the Viacom
 complaint (on website).

Drafting Exercise

Due in nine days

Last Time: Traditional Secondary Liability

- Vicarious Liability
- Contributory Infringement
- Note 6: Corporate Veil Piercing?
- Today: Four Technologies

Issue presented: When is the creator of a technology liable for the infringing acts of the purchasers/users of that technology?

Jack Valenti (MPAA) to the House Subcommittee: "The VCR is to the American film producer and the American public as the Boston strangler is to the woman home alone."

Sony sells VCRs.

Sued by TV and movie producers because shows were being taped by purchasers of the VCRs.

Survey's of how users used VCRs

- 7.3% of users record some sports events
- 75%: Time-shifting
- 96%: Caught a show I would've missed.
- 70% of total programs only watched once. Archiving

VCRs

Sony

Facts



Advertising

Held

On third-party liability

Reasoning

On direct infringement by users

1. Authorization
2. Time-shifting

Class 21: Fair Use Part II

p2p

- P2P Network Technology Primer
- Grokster v. MGM
- Napster
 - Facts, as above
 - Held
 - Reasoning

Search Engines

The Photocopying Cases

American Geophysical Union v. Texaco

Facts

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

Texaco's 400-500 scientists

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

Texaco routes journals to scientists with an interest.

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

Facilitate current or future professional research.

No immediate use -- placed in his files.

Held

Reasoning

Princeton U. Press v. Michigan Document Svcs

Facts

Copyshop in college town (UMich)

Professors give master "coursepacks" to shop

Copyshop sells copies to students

No royalties paid to copyright owners, and no royalties passed along to students.

District Court: No Fair Use

En banc CA6 Held

Reasoning