TOPIC 1:

LIABILITY IN THE LIBRARY: RECENT CASES IN THE DIGITAL ENVIRONMENT

Topic question

How have general concepts of copyright liability and limitation on liability been applied to new technologies?

Overview

With digital technologies, copyright owners have numerous other rights to protect their work, such as the right to display, distribute, and make derivative works of copyrighted material. The addition of new technologies in the library only exacerbates the possible array of legal problems. Moreover, the emerging role of the library and librarian as information mediator means that more subtle and less well-known forms of copyright liability must be considered, such as contributory and vicarious copyright liability.

Contributory copyright liability exists in two situations. The first occurs when someone creates a technology that infringes on copyright when that technology has no other substantial noninfringing uses (this legal standard is created by U.S. Supreme Court). A seminal example is the VCR. Substantial noninfringing uses included viewing home movies or those rented from the local library.

A scanner can be used to infringe a photographer's copyright, but it does not mean the manufacturer is liable for contributory infringement. Scanners have many substantial noninfringing uses, such as scanning old copies of family vacation photographs you took before the advent of the digital camera.

A second form of contributory infringement occurs when an intermediary, such as a Web site operator or reference librarian, causes, induces, or substantially contributes to the infringement undertaken by another person. A teacher who orders each student to make a photocopy of a popular book to use as part of a reading project would be an example. Here, the contributory intermediary must also have knowledge (or constructive knowledge) of the infringing nature or use of the work. The focus is on conduct—linking the library Web site or referring a patron to a Web site known to contain infringing material both qualify as contributory infringement.

Vicarious infringement can occur when the intermediary has both the ability to control the actions of the supposed direct infringing actor and receives direct financial benefit from the infringing conduct. For example, a discussion board operator who has the ability to deny or disable the access of members who post infringing material (control) and sells membership to the board (financial benefit) vicariously infringes on copyright. Under basic legal

theory, an employer is vicariously liable for the acts of its employees; this concept applies to copyright as well.

Before a third party, such as a manufacturer or a library, is subject to secondary liability for copyright infringement (contributory or vicarious), there must be direct copyright infringement on the part of someone else. That is, the movies that the individual taped off the air from their favorite cable station or the copy of the book that the student made for class must be an unlawful copy.

What you need to know

Familiarity with the following is helpful to fully comprehend the discussion of this topic:

- Understand the basic rights of a copyright owner under Section 106.
- Understand the basic concept of fair use as it is expressed in Section 107.
- Understand the basic operation and application of Section 108(a).

Read Topic 6 for a discussion of how Section 512 affects the concept of secondary liability of intermediary service providers (that might be a qualifying library) in certain online settings.

A basic overview of these concepts is found in *Copyright Essentials for Librarians and Educators.*[1]

Why watch this topic?

- Based on cases such as *Intellectual Reserve, Inc. vs. Utah Lighthouse Ministry, Inc.*,[2] a library that refers (contributes) patrons to sources of infringing material, whether on or offline, or places infringing material in its collection (direct) (*Hotaling vs. Church of Latter Day Saints*[3]) could be found liable for copyright infringement.
- Under Section 504, any qualifying nonprofit educational institution, library, or archive may face reduced damages should it be liable for infringement.
- States appear to be immune from copyright infringement litigation, but this immunity should not be a signal for states to infringe the copyright law with reckless abandon.

Background: The Sony Betamax case

In *Sony Corporation of America vs. Universal Studios, Inc.*,[4] the Supreme Court of the United States concluded that the Betamax machine (precursor to the ubiquitous VHS VCR) was not an infringing technology as it was capable of substantial noninfringing uses. The court also concluded that individual users of video recording technology do not infringe (no direct infringement) on the copyrights of the owners of movies that were broadcast on network television. This conclusion was reached because the movies were broadcast on regular network television, without cost to whomever desired to view them,

and because the use of the recordings was of a limited personal nature. Viewers make recordings to watch the movies at a later time.

The concept of recording now for watching later is called time shifting and is important for two reasons. First, the "time shift as a fair use" argument has been adopted by plaintiffs in support of the fair use of new technologies, such as MP3 and Napster, with users shifting the content from one medium (analog or digital) to another (cyberspace). The time-shifting fair-use argument of *Sony* becomes the space-shift rationale of cyberspace. Second, the *Sony* verdict is limited to time-shifting only and should not be read to allow the widespread making and retention of off-the-air tapes resulting in the creation of permanent home tape libraries.

Background: The limitation on liability of Section 108(f)(1)

Section 108 contains a general limitation on liability for certain types of libraries and archives (see Section 108(a)). Section 108(f)(1) indicates the other provisions in Section 108 should not "be construed to impose liability for copyright infringement on a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: Provided, that such equipment displays a notice that the making of a copy may be subject to the copyright law." This provision limits the liability of the library or archive for contributory and vicarious infringement when it supplies a contributory technology, that is, contributory when a patron makes an unlawful copy, vicarious when an employee makes an unlawful copy. Meeting the "unsupervised" requirement of Section 108(f)(1) is easy in the case of patron copying as the use of reproducing equipment normally is unsupervised. A library director, however, who in her capacity as director tells a librarian to make a copy of an article for each staff member to use at the upcoming meeting would not appear to qualify for the Section 108(f)(1) provision. Although the librarian might have made the copies while standing alone at the copy machine, its use was still supervised in the sense the library and its administrator directed the copies be made. The library in the latter case would be vicariously liable for any infringing reproduction made by the employee.

The plain language of the statute ("unsupervised use of reproducing equipment located on its premises") does nothing to protect the library against liability that might arise from the use of other technologies or conduct, such as the head children's librarian encouraging the new children's librarian to infringe copyright by showing a videotape as part of a story hour without first obtaining a necessary performance right or referring patrons to known or suspect sources of material on the Internet.

Commenting on the Section 108(f)(1) exemption, the authors of the white paper on intellectual property note that "no other provider of equipment enjoys any statutory immunity."[5] This immunity is a great privilege granted to qualifying libraries and archives. In return, libraries and archives must post a copyright warning on all equipment, photocopiers, computers, scanners, samplers, fiche readers or printers, and any equipment that allows patrons or staff to reproduce a copyright work.

Main discussion

A caveat about Section 108 exemption

Case law demonstrates that nonprofit organizations, including libraries, are increasingly the targets of infringement litigation. The expansion of library services into digital environments underscores this reality as the stakes are raised on both sides. Infringement is easier to accomplish, traces of the infringement are easier to discover, and digital or electronic information products and services make up an ever increasing portion of the library environment.

Libraries can be liable

Reproducing protected material without permission is a library's most common violation of direct infringement of a copyright owner's exclusive rights, such as when a reference librarian posts copyrighted material without permission and in excess of any fair-use right onto a Web site. Arguably, this situation qualifies as a display and violates exclusive right of the copyright owner. In *Marobie-FL vs. National Association of Firefighter Equipment Distributors*,[6] a tax-exempt organization that loaded several volumes of the plaintiff's clip art onto its Web site without permission violated not only the right of reproduction but also the right of display.

Consider the lesson of a recent case involving a nonprofit church library and an unlawful copy of a microfiche item. The library made the copy available for use in one of its branch genealogical libraries. The statute of limitations for copyright infringement is three years.[7] In *Hotaling vs. Church of Latter Day Saints,*[8] the complete reproduction of the fiche text was an unlawfully made copy, but the copy was made some time ago, so the statute of limitations had passed for purposes of the illegal reproduction. However, the plaintiffs argued that since an unlawful copy was available to members of the public through the holdings of the library an unlawful distribution was continuing to occur. The court observed that "[w]hen a public library adds a work to its collection, lists the work in its index or catalog system, and makes the work available to the borrowing or browsing public, it has completed all the steps necessary for distribution to the public."[9] Because the library copy of the fiche work was an unlawful copy, the distribution of that material was also unlawful.[10]

Existence as a nonprofit entity, such as the church library in the *Hotaling* case, does not insulate the library from liability for illegal acts. The lesson gleaned from this case, as applied to the Web environment, is that a library that improperly uploads or posts (copies) material onto its Web site and allows the material to reside there indefinitely is distributing the work. If the (reproducing) was done in excess of fair use, such as the holding in *Hotaling*, the library engages in an unlawful distribution of copyrighted material as long as the material is available to the public. The material in the collection for circulation or on-site access and use also qualifies under *Hotaling*.

Courts favor transformative uses

In *UMG Recordings, Inc. vs. MP3.com, Inc.*,[11] the federal district court used the four-part fair-use analysis to determine whether reproducing copyrighted music using the MP3 technology was a fair use. The four fair-use factors are the nature and purpose of the use, the nature of the work, the amount and substantiality of the work, and the effect of the use on the market for the work. Considering the first fair-use factor, the nature and purpose of the use,

the space-shifting argument was rejected.

The space-shifting argument is an attempt to apply the *Sony* ruling[12] to the Internet, that is, MP3 technology allows users to listen to music that MP3 lawfully acquired through purchase but then unlawfully loaded (copied) onto its servers allowing its customers to access the music in a different space from the original compact disc technology, such as a the space of a personal computer music driver. The court commented that the space-shifting argument "is simply another way of saying that the unauthorized copies are being retransmitted in another medium—an insufficient basis for any legitimate claim of transformation."[13]

Since the works in questions were musical creative works and the entire work was copied, the second (nature of the work) and third (amount or portion of the work) factors also weighed against a finding of fair use. Finally, in assessing the negative impact of the space-shifting technology they observed an impact on the market, as the ability to have such songs available for free via MP3 technology greatly undermined the plaintiff's ability to attract paying customers.

In a separate opinion, the court determined the damages should be set at $25,000 per compact disc, at about 4,700 compact discs, that is, about $118 million.[14] The court observed that the amount "could be considerably more or less depending on the number of qualifying compact discs determined at the final phase of the trial scheduled for November of this year."[15] The parties agreed to settle their dispute in late 2000, with MP3.com agreeing to pay more than $50 million in damages.[16] The lesson of the case is: systematic unauthorized copying of protected works is not allowed just because the technology is capable of making a reproduction and distribution easy and seamless.

Active referral

Could a library be liable for contributory infringement? Contributory copyright infringement occurs when "one who, with knowledge of the infringing activity, induces or causes, or materially contributes to the infringement of another."[17] (Recall that Section 108(f)(1) limits library liability for the unsupervised use of reproducing equipment.) A disturbing development in the application of this concept in the digital environment is presented in *Intellectual Reserve, Inc. vs. Utah Lighthouse Ministry, Inc.*[18] The defendants initially posted to a Web site unpublished copyrighted material without permission (about 17 pages of a two-volume Mormon church handbook totaling about 330 pages, or 5% of the total work).

A temporary restraining order was issued against the defendants to cease display of the pages. The defendants complied and removed the infringing pages. The defendants next placed a note on their Web site that the handbook was nonetheless available elsewhere online, including a description and nonhotlinked URL so that visitors could locate three other sites where the full text of the handbook could be obtained. On their site, the defendants also included admonitions that encouraged subsequent browsing of the handbook by site visitors and implored its viewers to copy and send the handbook to others.

The significance lies in that the defendants indicated the infringing material was available elsewhere on the Web and provided three addresses (note that active links were not included) of the material. Here the actions of

the defendants went beyond any sense of passive unawareness or mere informational or directory service and approached the actual goading of others to infringe on the church's copyright. The court referred to one incident in particular when, "[I]n response to an e-mail stating that the sender had unsuccessfully tried to browse a Web site that contained the Handbook, defendants gave further instructions on how to browse the material."[19] The court concluded that the defendants materially contributed (contributory infringement) to the infringement by subsequent visitors (direct infringement) to the three other Web sites where the church's work was posted.

The *Intellectual Reserve, Inc.* court focused on the active encouragement of the defendants in the infringing activities of visitors to their site, when the defendant promoted the access, retrieval, and forwarding of the handbook from other sites where it was unlawfully posted.[20] The most disturbing aspect of this case is that the defendants did not have an active link between their site and the site where the infringing material resided. The defendants, however, either knew or had reason to know that the material to which site visitors were referred was infringing.

The lesson for the library is one of common sense. Must the librarian review every source for potential copyright infringement on sites to which it links or refers patrons? No, but a librarian should be suspicious of links on the library Web page bookmarking or referring patrons to sites with offerings such as "a thousand theatrical movies downloadable for free." Common sense suggests a reasonable person has cause to suspect the legitimacy of the site, and to refer others to the site without further review or to encourage others to download or distribute movies located on that site is not prudent. This standard is the law imposed on all intermediary actors, including reference librarians.

A link may not trigger liability

What happens when a library site contains direct links to a site of infringing material and library personnel know the site contains such material? In a case similar to *Intellectual Reserve, Inc. vs. Utah Lighthouse Ministry, Inc.*, but involving a different provision of the copyright law, the federal court for the Southern District of New York issued a preliminary injunction to prevent posting of prohibited DVD decoding software.

The defendant posted links to other sites with the same infringing software.[21] In *Universal Studios, Inc. vs. Reimerdes*, the court, assessing contributory liability, applied the new antitrafficking provisions of the copyright law (See Topic 7). The court observed: "the antitrafficking provision of the DMCA (Digital Millennium Copyright Act) is implicated where one presents, holds out or makes a circumvention technology or device available, knowing its nature, for the purpose of allowing others to acquire it." The defendants linked to sites that contained de-encryption software and "urged others to post DeCSS in an effort to disseminate DeCSS and to inform defendants that they were doing so."[22]

So far, courts seem to require a link plus some affirmative inducement or contribution to the infringement. (Additional copyright implications of linking are also discussed in Topic 5.)

Is a link sufficient inducement to trigger liability for contributory infringement? Courts have yet to sort out the true nature of a link on the Web. LIkely only time need pass before a plaintiff will argue that a link is in and of itself

some sort of referral or endorsement. The cases above, however, suggest some sort of active encouragement to the infringing material is necessary. You could argue that a link on a library Web site, much like the other types of reader advisories librarians produce, such as reading lists and selected bibliographies, might be viewed as something more, perhaps as a recommendation or inducement. The implications of this argument for the library are discussed below.

Use caution when linking to other sites (use the "know" or "reason-to-know" test) and consider the context in which the link is presented to patrons—do not appear to be endorsing the copying, redistributing, and so on, of information at the linked site. Also consider including a disclaimer on your Web site that indicates that you are providing the reference for informational purposes only, and remind patrons of their copyright responsibilities.[23]

Is a link by itself an inducement?

In *Bernstein vs. J.C. Penney*,[24] celebrity photographer Gary Bernstein filed suit against J.C. Penney and others. The photographer claimed that J.C. Penney's Web site contained links to other sites that displayed archived copies of some of his copyrighted photographs. The court never ruled on the merits of the case (only whether to grant the defendants motion to dismiss), but the litigation brought attention to the ways in which complex linking arrangements or scenarios could extend potential (contributory) liability for infringing material on so-called downstream Web sites.

The court rejected the notion that the acts of downstream linkers (those who subsequently link to a site that links to a site that links to a site that contains infringing material) satisfy the requirements for contributory infringement.

Downstream Web sites are a series of successive sites, where the site visitor begins at one Web site, Site A, then follows a link to another Web site, Site B. Site B contains a link to Site C that is also followed, and C has a link to Site D and so on. The visitor to Site A eventually, through a series of these downstream links, makes his or her way to Site L, M, N, O, or P, where infringing material resides. Is Web site owner A responsible by contribution for infringement relating to material posted on Site P?

First, unlike the *Intellectual Reserve, Inc.* case, the *Bernstein* court concluded that subsequent viewers of the infringing material do not engage in direct infringement (one of the requirements of contributory infringement) when a copy of the downstream site is made on a the Web site visitor's own computer.

Second, the court observed that links are capable of substantial noninfringing uses and that "multiple linking does not constitute substantial participation in any infringement where the linking Web site does not mention that Internet users could, by following the links, find infringing material on another Web site."[25] The multiple or downstream chain of links is insufficient to meet the substantial contribution requirement of contributory copyright infringement.

Another court also refused to enjoin third-party linking to a site containing information that violated a trade secret in *DVD Copy Control Association Inc. vs. McLaughlin, et al.*[26] The court stated that "[l]inks to other Web sites are the mainstay of the Internet and indispensable to its convenient access to the vast world of information. A Web site owner cannot be held responsible for all the content of the sites to which it provides links. Further, an order prohibiting linking to Web sites with prohibited information is not necessary since the Court has prohibited the posting of the information in the first place." In *DVD Copy Control,* however, active promotion of the infringing site was not evident. Furthermore, the court was confident that enjoining the infringing site from continued

posting of the infringing material would cure the problem—eliminating the need to curtail the conduct of intermediaries such as third-party linkers.

Patrol your library's links

In the *Intellectual Reserve, Inc.,* case, the defendant did not provide the locations of the infringing material through the use of active links. The defendant's directions still required users to manually cut and paste or enter URL location information. The message, however, is clear: do not steer patrons or students to a source or site of infringing material, or encourage patrons or students to visit and download information from infringing sites.

How does a library or educational institution know if another site infringes on someone's copyright? In the *Intellectual Reserve, Inc. vs. Utah Lighthouse Ministry, Inc.,* case, the defendants knew that any source of the handbook was an infringing source of material, as the Mormon Church never publicly released the handbook. In other less obvious instances, some commentators[27] suggest that in today's litigious environment a familiarity with the nature and content of the site you link to is prudent, if not a legal necessity.

The case also appears to have implications for curtailing the conduct of over-eager reference staff who direct patrons to known or likely sources of infringing material. "Even though the Tanners [the defendant third-party linkers in *Intellectual Reserve, Inc. vs. Utah Lighthouse Ministry, Inc.*] had not provided actual links to the infringing material, the decision certainly cautions against actual linking to material known to violate a copyright or other proprietary right and raises further questions about the degree of care that must be exercised before a link is created and the degree of monitoring that must be maintained during the lifetime of the link."[28]

Liability for vicarious infringement

Several ways exist for infringing someone's copyright: direct, contributory, and vicarious. Vicarious copyright infringement requires some sort of control by the defendant over the direct infringement and some sort of financial gain flowing back to the defendant as a result of infringement. A typical relationship is one of employment; libraries and educational institutions can be liable for the infringement of their staff and faculty under a theory of vicarious liability. (A limited immunity exists under 17 U.S.C. §512(e) for institutions of higher education.)

Certain libraries and archives have no secondary or intermediary liability (contributory or vicarious) for the unsupervised use of reproducing equipment by its employees, provided the appropriate warning notices are placed on that equipment.[29] Supervised infringement triggers vicarious liability, as does infringement that did not involve the Section 108(f)(1) limitation regarding reproductions of copyrighted material, such as an unauthorized performance or display. But other ways of infringing someone's copyright might occur in the library, such as the performance of a copyrighted musical or dramatic work (such as "Amal and the Night Visitors") or another similar work in excess of fair use as part of a story hour. This infringing act affects the library as whole under the vicarious theory of liability.

Vicarious liability is imputed from employee to employer, that is, the employer is responsible for acts of its employee, but not vice-versa. Vicarious

liability is grounded in the tort concept of respondeat superior, which means "let the superior answer." Under vicarious liability theory, the employer answers for the acts of its employees, but contributory infringement is founded in the tort concept of enterprise liability: "Benefit and control are the signposts of vicarious liability, [whereas] knowledge and participation [are] the touchstones of contributory infringement."[30]

Vicarious liability in employment settings does not require knowledge of the infringement by the vicarious defendant.[31] A direct infringement, as a result of the librarian-employee's action, must underlie the vicarious liability. Vicarious infringement also is applicable in independent contractor settings, that is, the acts of the independent contractor are imputed to the contracting institution.[32]

Vicarious liability for acts of patrons

An employment setting is not always required for vicarious infringement, as shown in the case *Fonovisa, Inc. vs. Cherry Auction, Inc*, where a swap meet purveyor was liable for infringing acts to booth renters who bought and sold bootleg tapes, and in *Columbia Pictures Industries vs. Redd House*,[33] in which a shop owner that allowed customers to view copyrighted videocassettes was liable for the infringing acts of it customers. The 9th Circuit articulated the standard for vicarious infringement in a leading case, *Fonovisa,*[34] declaring that vicarious infringement is found when one has the "right and ability to supervise the infringing activity and also has a direct financial interest in such activities."[35] Most librarians are not in a position to exercise a right and ability over patrons regarding infringing activity, but a school librarian might be, over her students. The lack of financial return or revenue stream flowing from the patron to the library, however, makes a vicarious scenario unlikely.

On the other hand, when the library charges the patron per use of display (bulletin board or display case) or performance space (meeting room), the act could supply the necessary financial gain required. If the patron performed a work without permission and in excess of fair use, and the library obtained some financial benefit (such as a rental fee) for the use of the space or a percentage of the gate receipts, then the financial gain is established. The owners or controllers of the premises on which the infringement occurs are thought to have the ability to control its use (premise liability), so the second element of the vicarious liability standard is met.

Libraries can limit liability

Envision situations where a library employee infringes the copyright. He or she could make copies of fiche work (such as in the *Hotaling* case) and then have the direct liability of that librarian imputed upward to the library through a theory of vicarious liability. Employers of infringing librarians can take some solace in Section 504, which limits damages "in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under Section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords."[36]

For an infringer to avail itself of the provision, an infringer must have a reasonable belief that the use or act triggering the claim of infringement was fair use. If so, statutory damages are waived and the library is liable only for actual damages. These damages would be the value of a second or third copy of a reproduced book or fiche or the royalty due the performance of a video shown in the library meeting room. To qualify for the Section 504 damage limitation, the reproductions, performance, display, and so on, must be done within the scope of employment, and not for personal use (for example, making copies for the church social committee while at work).

With the increased awareness of copyright violations in all library settings coupled with the availability of new cases providing judicial insight into the application of copyright law in new environments, the standard for arguing what is a reasonable belief may be higher than in the past.

Although Section 512(e) may provide an additional limitation on liability for institutions of higher education for the teaching and research of its faculty and graduate staff, it does not apply to the academic library in general.[37] Moreover, this limitation does not apply to "the provision of online access to instructional materials that are or were required or recommended with the preceding three-year period, for a course taught at the institution by such faculty member or graduate student."[38]

Suppose a library or school with an extensive music collection or program made about 4,700 compact discs available to patrons on its server (about the same number as the defendants in the *MP3* case). At a value of $15 per compact disc, that is about $70,500 to pay if the library is found liable, a far cry from the estimated $17.5 million the *MP3* court hypothesized might be awarded under a statutory damages scheme (the court in *MP3* setting statutory damages at $25,000 per work infringed). But the library or school is required to demonstrate a reasonable belief that the use was fair. A claim of a misinformed or uninformed belief will not suffice.

State entities are immune so far

Anyone who violates one of the exclusive rights of the copyright identified in Section 106 can be sued for copyright infringement. "As used in this subsection, the term 'anyone' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity."[39]

The law in this area is undergoing development. In *Florida Prepaid Postsecondary Education Expense Board vs. College Savings Bank*[40] and *College Savings Bank vs. Florida Prepaid Postsecondary Education Expense Board*[41] the U.S. Supreme Court ruled that states cannot be sued in federal court for patent or trademark infringement, as Congress overstepped its bounds by passing legislation making states subject to such lawsuits. The immunity only applies to a state law library, state university library, or other state actor, since municipalities, counties, and other political subdivisions, such as a public school district, do not partake in a state's 11th Amendment immunity.[42]

The concept of **sovereign immunity** under the 11th Amendment means that states cannot be sued.

They remain liable for copyright infringement. *Florida Prepaid* and *College Savings Bank* opened the judicial door for the recognition of other forms of intellectual property immunity. The 5th Circuit expanded the concept to include claims of copyright infringement.[43] A district has also held that 11th

Amendment immunity applies to misappropriation claims.[44] This decision does not mean state's libraries and archives should infringe copyright with reckless abandon. Senator Leahy and others in Congress have vowed to close this gap.[45] Several bills have since been introduced to restore the liability of states,[46] but these bills did not pass. Similar versions will likely be reintroduced in the 107th Congress. Even without this legislation, states may still find themselves liable. Immunity can always be waived, by the terms of a license agreement, for example. [47]

Unresolved points or issues

- The nature of a link and its use in a sequence imposing secondary (contributory or vicarious) copyright liability.
- The immunity of states for copyright infringement.
- Further court cases applying copyright law to the actions of intermediaries in digital environments.
- Federal legislation that restores or clarifies the liability that state actors have with respect to copyright and other intellectual property rights, such as trademark and patent.

Resources

Helpful URLs

www.iupui.edu/~copyinfo is the home site of the Copyright Management Center at Indiana University-Purdue University. Directed by copyright scholar Kenneth D. Crews, the site contains practical and scholarly information, including articles, guidelines, and issues lists.

From the library literature

R. Coyne. (1992) The myth of library immunity from copyright infringement. *Bookmark, 50*(2), 129-131. This article appears as part of an issue on libraries, users, and copyright, and it examines the reality of library liability for copyright infringement by employees and users. Coyne reveals that the risk of liability is not as remote as it once was and explains the vicarious liability and contributory infringement doctrines of copyright law and their effect on libraries.

From the legal literature

Charles S. Wright. "Notes & Comments: Actual Versus Legal Control: Reading Vicarious Liability for Copyright Infringement into the Digital Millennium Copyright Act of 1998," 75 *Washington Law Review* 1005 (2000).

Peter S. Menell. "Symposium on New Directions in Federalism: Economic Implications of State Sovereign Immunity from Infringement of Federal Intellectual Property Rights," 33 *Loyola of Los Angeles Law Review* 1399 (2000).

Sovereign Immunity Precludes State Copyright Action, as Courts React to Florida Prepaid Ruling, *The Intellectual Property Strategist*, March 2000, at 8.

ENDNOTES

[1] Kenneth D. Crews, Copyright Essentials for Librarians and Educators (2000).

[2] *Intellectual Reserve, Inc. vs. Utah Lighthouse Ministry, Inc.*, 75 F. Supp. 2d 1290 (D. Utah 1999).

[3] *Hotaling vs. Church of Latter Day Saints*, 118 F.3d 199 (4th Cir. 1999).

[4] *Sony Corporation of America vs. Universal Studios, Inc*., 464 U.S. 417 (1984).

[5] Information Infrastructure Task Force, Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights 111, n. 357 (1995).

[6] *Marobie-FL vs. National Association of Firefighter Equipment Distributors*, 983 F. Supp. 1167 (N.D. Ill. 1997); 2000 U.S. Dist. LEXIS 1022 (N.D. Ill. 2000).

[7] 17 U.S.C. § 507.

[8] *Hotaling vs. Church of Latter Day Saints*, 118 F.3d 199 (4th Cir. 1999).

[9] *Hotaling vs. Church of Latter Day Saints*, 118 F.3d 199, 203 (4th Cir. 1999).

[10] *Hotaling vs. Church of Latter Day Saints*, 118 F.3d 199, 203 (4th Cir. 1999).

[11] *UMG Recordings, Inc. vs. MP3.com, Inc.*, 92 F. Supp. 2d 349 (S.D.N.Y. 2000).

[12] *Sony Corporation of America vs. Universal Studios, Inc*., 464 U.S. 417 (1984).

[13] *UMG Recordings, Inc. vs. MP3.com, Inc.*, 92 F. Supp. 2d 349, 351 (S.D.N.Y. 2000).

[14] *UMG Recordings, Inc. vs. MP3.com, Inc.*, 2000 U.S. Dist. LEXIS 13293 (S.D.N.Y. 2000).

[15] *UMG Recordings, Inc. vs. MP3.com, Inc.*, 2000 U.S. Dist. LEXIS 13293, at *18 (S.D.N.Y. 2000).

[16] IP Roundup: UMG and MP3.com Agree to Work in Harmony, *The National Law Journal*, Dec. 14, 2000, at B11.

[17] *Gershwin Publishing Corp. vs. Columbia Artists Management, Inc*., 443 F.2d 11 59, 1162 (2d Cir. 1971).

[18] *Intellectual Reserve, Inc. vs. Utah Lighthouse Ministry, Inc.*, 75 F. Supp. 2d 1290 (D. Utah 1999).

[19] *Intellectual Reserve, Inc. vs. Utah Lighthouse Ministry, Inc.*, 75 F. Supp. 2d 1295 (D. Utah 1999).

[20] *Intellectual Reserve, Inc. vs. Utah Lighthouse Ministry, Inc.*, 75 F. Supp. 2d 1290, 1294 - 1295 (D. Utah 1999).

[21] *Universal City Studios vs. Reimerdes*, 82 F. Supp. 2d 211 (S.D.N.Y. 2000); 111 F. Supp. 2d 294, 325 (S.D.N.Y. 2000) (permanent injunction).

[22] *Universal City Studios vs. Reimerdes*, 111 F. Supp. 2d 294, 325 (S.D.N.Y. 2000) (permanent injunction).

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[24] *Bernstein vs. J.C. Penney*, 1998 U.S. Dist. Lexis 19048, 50 U.S.P.Q. 2d (BNA) 1063 (C.D. Cal. 1998).

[25] *Bernstein vs. J.C. Penney*, 1998 U.S. Dist. Lexis 19048, at *3, 50 USPQ 2d (BNA) 1063 (C.D. Cal. 1998).

[26] *DVD Copy Control Association Inc. vs. McLaughlin, et al*, No. CV 786804 (Cal. Super. Ct., Santa Clara County, Jan. 20, 2000).

[27] Richard Raysman and Peter Brown, "Recent Linking Issues," *New York Law Journal*, Feb. 8, 2000, at 3.

[28] Richard Raysman and Peter Brown, "Recent Linking Issues," *New York Law Journal*, Feb. 8, 2000, at 3.

[29] 37 C.F.R. § 201.14 (Warnings of copyright for use by certain libraries and archives).

[30] *Demetriades vs. Kaufmann* 690 F. Supp. 289, 293 (S.D.N.Y. 1988).

[31] John W. Hazard Jr., Copyright Law in Business and Practice ¶7.08, at 7-72—7-75 (2000).

[32] *Southern Bell Telephone and Telegraph vs. Associated Telephone Directory*, 756 F.2d 801 (11th Cir. 1985).

[33] *Columbia Pictures Industries vs. Redd Horne, Inc.*, 749 F.2d 154 (3rd Cir. 1984).

[34] *Fonovisa, Inc. vs. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996).

[35] *Fonovisa, Inc. vs. Cherry Auction, Inc.*, 76 F.3d 259 at 262 (9th Cir. 1996).

[36] 17 U.S.C. § 504(c)(2) (2000).

[37] Jay Dratler Jr., Cyberlaw: Intellectual Property in the Digital Millennium § 6.06, at 6-138 (2000); Tomas A. Lipinski, "Legal Issues in the Development and Use of Copyrighted Material in Web Based Distance Education," in *Handbook of Distance Education* (Michael G. Moore, ed. 2001) (forthcoming).

[38] 17 U.S.C. § 512(e)(1)(A) (2000).

[39] 17 U.S.C. § 501 (2000).

[40] *Florida Prepaid Postsecondary Education Expense Board vs. College Savings Bank*, 527 U.S. 627 (1999).

[41] *College Savings Bank vs. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666 (1999).

[42] *Mt. Healthy School District Board of Education vs. Doyle*, 429 U.S. 274, 280 (1977).

[43] *Rodriguez vs. Texas Commission on the Arts*, 871 F.3d 552 (5th Cir. 2000).

[44] *Boyd vs. University of Illinois*, 1999 U.S. Dist. LEXIS 15348 (S.D.N.Y. 1999).

[45] Brenda Sandburg, "Universities May Lose IP Immunity," *The Legal Intelligencer*, Sept. 13, 2000, at 4.

[46] S.1259, 106th Congress, 1st Session (1999) (Trademark Amendments Act of 1999, restoring liability for trademark dilution); S. 1835; 106th Congress, 1st Session (1999) (Intellectual Property Protection Restoration Act of 1999, restoring the remedies for violations of intellectual property rights by States, and for other purposes).

[47] Michael J. Mehrman, "IP Decisions: Strip owners of Claims Against States," *The National Law Journal,* Oct. 25, 1999, at C10 (also indicating that a private suit or other legal remedies are available); see also, Molly Buch Richard, "Developments in the Substantive Law: No Ticket to Infringe," *Texas Ławyer*, Dec. 20, 1999 (no pagination, available in the LEXIS LegNew Library).