

Class 14: Right to Prepare Derivative Works

Administrative

Next Time

408-26; 101 ("work of visual art"); 106A

News Wednesdays

Last Time

Last Thoughts on Jammie Thomas / RIAA lawsuits?

Section 109

Only for "owners"

Amazon's TOS

Rationale for Rule?

Music and Software Rentals

Movie Rentals

From Blockbuster to Netflix to Redbox

First Sale

Point: Can you copy your iTunes purchases or software you've purchased online to another person?

Electronic Transfers

Other Battlefields

Libraries

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Right to Prepare Derivative Works

Review

- Definition of Derivative Work [III](#)
- Section 103 [III](#)
- Section 106 [III](#)

Policy

- Adds to author's incentives
 - Action figures from movie
 - Movies from novel
- Test: DW if you've created a new work for a new market
- Goldstein
 - Broad conception of DW right.
 - Creator gets returns from *all markets*

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Today is the hard cases

Not-so-hard examples

Cupcakes

Shining

Unauthorized sequels

Avatar, the Bootleg

Shepard Fairey / AP Contest

Separate Copr fight: Lego refused

to allow it on Spinal Tap DVD

Lego animation



Renoirs Luncheon at the Boating Party



Johnson & Johnson Heir

Monet's Terrace at the Sainte Adresse



<http://www.washingtonpost.com/ac2/wp-dyn/A62842-2003Sep11?language=printer>

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Must D contribute original changes to qualify as DW?

Dam Things from Denmark

Facts

Restoration

We skipped this material
Once US acceded to Berne, problem remained: all of the foreign works that had fallen into the public domain for lack of notice or other formalities

Solution: Restoration of copyright

But for all those who had relied on the public domain status, special rules for "reliance parties"

104A: For those who merely reproduced, you have one year to sell your goods

BUT: if you made a derivative work, mandatory license

"reasonable compensation"

So, this is starkly presented

Troll Dolls (page 393)

While original troll in public domain, D started manufacturing and selling them

Molds based on originals

Molds based on photos

Held

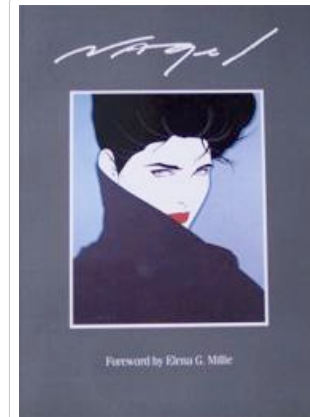
Reasoning

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Must D contribute original changes to qualify as DW?

Business model: Legitimately buy prints of famous art. Mount on tiles with Epoxy. Resell



Mirage Editions v. A.R.T.

Facts



District Court

Held

Reasoning

Same defendants, different plaintiff

Lee v. A.R.T. Company

Facts



Held

Reasoning

Other examples

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Must D's work be fixed in a tangible medium?

Test for proving preparation of DW?

Market considerations?