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UCLA ENTERTAINMENT LAW REVIEW

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SPRING 2016

Sports, GIFs and Copyright: Is it a Draw Between Content Owners and Consumers in the Web 2.0 Era?

Michael McGregor 1

Since the 2012 Summer Olympics, the Graphics Interchange Format, better known as the GIF, has been used to capture and share moments from copyrighted broadcast of sporting events. The creation of GIFs has been either based on the recording of the copyrighted broadcast or the in-person taping of sporting events.

The GIFs, which can now be made via a host of applications, have proven to be quite popular in the online community. Such GIFs have been used in the following ways: as a means to provide viewers with lower quality, unauthorized versions of sporting event highlights, as a means to convey a particular emotion or expression about certain circumstances and as a piece of media associated with commentary about larger issues in sports or current events.

This work purports to engage in a dual faceted endeavor to explore the “history and sociology” of the GIF, which would analyze how the GIF has come to hold such a prominent position in popular culture and how fans and individuals interact with this medium, and to detail the copyright implications that the unauthorized uses of GIFs have, the damage that such uses of GIFs could have on copyright holders and determine if copyright law can sufficiently address the issue. Further, this work will outline the technological background of the GIF and differentiate this media form from still images and video. Substantively, this work will engage copyright law and evaluate whether various uses of GIFs constitute copyright infringement and, perhaps more interestingly, determine the role that fair use will play in concluding whether or not such uses are shielded from liability. This analysis will pay attention to various nuances such as whether GIFs have come to be understood and used as a sort of expression, whether GIFs are transformative pieces of art and whether they can viably be used to make political or social statements about current events. As of now, this work is set to focus primarily on copyrighted sports broadcasting but may in fact explore the use of GIFs made from movies or television broadcasts. Finally, this work will attempt to locate where the best solution to this issue rests for intellectual property rights holders, whether it be in business, the law or in some mixture of the two.

The Internet Doesn't Forget: Redefining Privacy Through an American Right to Be Forgotten

Demi Marks 41

In the 21st century, a large part of our identities exist on the Internet. When we apply for jobs, meet a new person, or make plans to go out to eat at a restaurant, one of the most accessible tools to use is Google. But who is monitoring this and how are people managing their online identities? In the European Union, there exists a “Right to be Forgotten”, which allows one to petition Google and other search engines to “unlink” one’s identity from a website under certain circumstances. Following this unlinkage, the website continues to exist with the same content, but it no longer exists when a search is performed linking the persona to the article. This article proposes solutions to the privacy problems presented by an unchecked World Wide Web, recognizing that while the EU’s system might not work in the US, a system needs to be implemented to deal with the fact that the Internet never forgets.

Uber Television: Internet-Only Television Stations

Henry H. Perritt, Jr. 65

Broadcast television in the United States is under siege. Viewers are jumping ship, finding their news and entertainment on the Internet. A thicket of intellectual property license restrictions makes it difficult for broadcasters to follow them. Some content producers limit distribution for the acknowledged purpose of slowing the migration to new technologies. The FCC’s Broadcast Incentive Auction provides an opportunity for TV stations to get a fresh start. By abandoning expensive transmitters and antennas, by embracing the Uber ride-sharing model of contingent work, by taking advantage of the creativity of indie video producers, by utilizing the full potential of targeted advertising, and by adopting best practices for Internet dissemination of news and entertainment, the FCC Incentive Auction can preserve what is best about television: on-the-spot journalism, careful analysis of public affairs, and compelling drama and comedy that make people think.

Moving Music Licensing into the Digital Era: More Competition and Less Regulation

Thomas M. Lenard and Lawrence J. White 133

The system for licensing music in the United States for public performances through radio, television, digital services, and other distribution media is complicated, arcane, and heavily regulated. Its basic structure is oriented toward transmitting music through analog channels. Although much of the pricing of music rights is supposed to be based on competitive prices, the current interdependent system of collective licensing of performing rights and widespread regulation of music prices (royalties) is inconsistent with the development of a competitive market and its associated efficiencies. Collective licensing by a handful of performing rights organizations (PROs) provides the current rationale for price regulation. However, the existence of price

regulation has entrenched collective licensing and the position of those PROs. Accordingly, a more competitive system entails moving away from collective licensing.

In this paper we review the current structure of the music licensing system and suggest ways of making it more competitive and less reliant on regulation. Central to our proposals are: a) a comprehensive, standardized database of musical compositions—including the specific sound recording version, where relevant—and their owners so that distributors and users can readily identify the rights-holder from whom they need to license rights, along with a safe harbor provision that would provide the appropriate incentives for rights-owners to contribute their information to the database; b) a greater ability of intermediaries to aggregate the various categories of music ownership rights; and c) the consequent development of more competitive negotiations and transactions between music rights-holders and music distributors.