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ARTICLES

is current law and closely tracks the language in the MPAA's model version of the legislation. Through this lens it is possible to see that there may be serious problems with SDMCA laws that critics have not fully addressed including potential unconstitutionality.

Dastar Through European Eyes: Effects of the Public Domain on Transatlantic Trade

The U.S. Supreme Court published its unanimous opinion in *Dastar Corp. v. Twentieth Century Fox Film Corp.* in June 2003. Claims of copyright infringement of public domain works based on the Lanham Act's designation of origin requirements henceforth fail as a matter of law because if they did not, the otherwise limited duration of copyright terms would be artificially extended. In effect, the Court delineated the boundary between trademark law and copyright law as they relate to unfair competition. As a result, public domain works are free to be used at will and without concern for attribution in the creation of derivative works.

The problem that arises out of this decision is that European law, as surveyed in the article, is incongruent. Based on relevant European Council Directives and key European Court of Justice decisions interpreting them, it appears that Europeans may find residual rights of authors of public domain works that would prohibit the use of these works in derivative works. Alternatively, differences in attitudes regarding authors' moral rights will yield the same result.

This disharmony of law may create diversionary trade effects, e.g. the movement of producers of such works to the United States from less public domain-friendly countries. Left unaddressed, market forces could cause the European Union to institute protectionist policies to keep out materials that violate its laws, even though – in fact *because* – they do not violate those of the United States. This is a realistic possibility, as the two entities are currently embroiled in a situation exactly mirroring that hypothesized: musical works falling into the public domain in the EU well before they do so in the United States, and the RIAA lobbying Congress to create barriers to trade in these works because their importation will undercut the prices on domestically-produced versions that still require the payment of royalties. In short, the trade effects of public domain law disharmony are reciprocal. Furthermore, while the United States and EU are still seized of the copyright issue, their tendencies seem diametrically opposed based on their respective attitudes towards the *Dastar* issue and recent legislative efforts.

From Superman to Anna Karenina, compelling characters are essential to fiction and are a valuable commodity in the entertainment industry. Although authors conceptualize characters differently, it is undeniable that "real life experiences are the source of all artistic inspiration." This Article investigates the current laws regarding defamation in fiction, describes the legal and business morass created by doctrinal inconsistencies, and offers a new, uniform standard by which courts can adjudicate such claims. Part I provides an overview of how authors create characters. Part II outlines the confused state of jurisprudence in this area, emphasizing the contradictions among different courts and the attendant ramifications on authors, publishers, and the public. Part III offers a new judicial standard for defamation in fiction based on previous scholarship. Part IV concludes that the current legal standard for defamation in fiction provides neither adequate "breathing space" for authors nor the constitutionally mandated First Amendment protection for entertainment speech.

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