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ARTICLES

Protecting Copyrights at the "Backbone" Level of the Internet

Joseph D. Schleimer 139

The potent combination of high speed Internet access, personal computers, and devices like the iPod, has placed the technology of mass copyright infringement at the at the disposal of hundreds of millions of consumers. As a result, the incentive structure of intellectual property law developed over the centuries is in jeopardy. The law of copyright must be enforced electronically, by the Internet Service Providers ("ISPs") who operate the Internet and its Backbone. The purpose of this article is to explore some of the legal and technical issues likely to arise in the use of measures to bring intellectual property and order to the Internet.

Copyright and Creativity

Dennis S. Karjala 169

In order for a work to enjoy copyright protection, the Supreme Court concluded in *Feist Publications* that a modicum of creativity is required for originality. This article addresses how the *Feist* approach is problematic both practically and theoretically. Practically, this article finds that the *Feist* decision has simultaneously led lower courts in diverging directions of either overprotection or under-protection when identifying whether a work, or portions thereof, are copyrightable. To treat creativity as a sufficient condition for copyright protection allows copyright to arrogate subject matter that properly belongs either under patent or trade secret or outside intellectual property protection altogether. This article suggests that the *Feist* decision also interferes with the general policy goals of copyright, specifically the use of copyright to avoid market failure.

As a result, this article concludes that functionality and not creativity should be the touchstone of copyright. Accordingly, *Feist* should be narrowed to its holding regarding compilations, and that a requirement of creativity should not be extended to all works seeking copyright protection.

A Wakeup Call for a Uniform Statute of Limitations in Art Restitution Cases

Lauren F. Redman 203

In line with the notion of restorative justice is the idea to correct some of the wrongs of the Holocaust. Restitution of art looted during the Holocaust is an important part of this idea. One such case, *Orkin v. Taylor*, recently made its way through the federal court system involving both art and the heirs of a Holocaust survivor. The controversial result rested on an issue over California's statute of limitations. The United States denied certiorari, however the unresolved issues regarding California's statute of limitations for art restitution for Holocaust victims is the subject of this article. This article argues that uniformity in the area of art restitution is necessary and proposes a solution: amendment of the Holocaust Victims Redress Act to create a private right of action for art restitution claims and a uniform statute of limitations that would preempt the application of state statutes of limitation in art restitution cases. As the head of the House Banking Committee, who introduced the bill, stated "[t]he operative principle [of the Act] is simple: stolen property must be returned. Pillaged art cannot come under a statute of limitations."

The NCAA's Academic Performance Program: Academic Reform or Academic Racism?

Phillip C. Blackman 225

This article addresses the direct impact of the APP and APR on student-athletes and member institutions. The APP needs critical scrutiny because it appears that a disproportionate level of punishment is being levied against Historically Black Colleges and Universities ("HBCUs") and African-American males. This potentially discriminatory result leads to inevitable comparisons between this current academic reform package and one of the NCAA's previous reform packages, Proposition 16 ("Prop. 16"). Although the two academic reform packages differ in fundamental ways, there is an eerie corollary. Ironically, when President Brand introduced the APP, APR, and GSR he heralded the programs as "well-thought-out." However, it appears the NCAA's current academic reform package was not as "well-thought-out" as President Brand would have liked.

The Chronicles of *Grokster*: Who is the Biggest Threat in the P2P Battle?

Alvin Chan 291

Grokster was heralded as the most important copyright case in decades for good reason. Even before the Supreme Court reached its decision, the

American public exhibited an unprecedented degree of interest towards the controversy. Discussion of its potential chilling effects on innovation continues to pervade the technology industry, while the place of the decision in the international context has generated incremental interest in academic literature. Despite the doctrinal significance of the decision, *Grokster*'s practical impact on innovation may have been overrated. Further, the potential for its international entrenchment, whether via its exportation or a process of organic harmonization, means that the Court's failure to consider its extraterritorial scope should not give rise to the proliferation of the threat of forum-shopping. Bearing this in mind, perhaps the time has come for *Grokster* to be neatly chronicled such that it can take its rightful place in legal history.