CPTWG MEETING
#119
April 14, 2010

Legislative/Litigation Update

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Litigation

- **Maverick v. Harper**
- **Gaylord v. U.S.**
- **Lenz v. Universal**
- **Actuate Corp. v. IBM**
- **Sony Disco v. E.J.C. Family**
- **U.S. Copyright Group Mass Litigation**
- **Settlements**
  - **Real Networks v. DVD Copy Control Association**
  - **Amazon.com v. Perfect 10**
Maverick Recording Co. v. Harper
(5th Cir.)

- Facts:
  - Record companies sued Defendant for copyright infringement.
- Lower court:
  - Harper infringed by sharing files on P2P network.
  - Open question re: “Innocent Infringement.”
- Fifth Circuit Holding:
  - Innocent infringer defense is not available, as a matter of law, when proper copyright notice appears on the CDs containing the published songs.
Gaylord v. U.S. (Fed. Cir.)

- Facts: Sculptor sued U.S. government over Postal Service’s stamp featuring photo of Korean War Memorial sculptures
- Trial Court: Stamp a Transformative Fair Use
- Appeals Court Holding: Federal Circuit: Stamp was *not* Transformative & *not* a Fair Use

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**Lenz v. Universal Music (N.D. Cal.)**

- **Facts:** “The Dancing Baby Case”
- **Holding:**
  - Court held that mom of the dancing baby *may* receive damages from Universal Music for ordering YouTube to takedown 30-second clip of her child dancing to a Prince song.
  - Court has yet to rule on the merits of Lenz’s fair use claim.
Actuate Corp. v. IBM (N.D. Cal.)

- **Facts:**
  - Under software license, IBM obtained Actuate software and related materials, including license keys
  - IBM posted software & license keys on the Internet without authorization
  - Actuate sued for breach of contract & alleged violation of DMCA anti-trafficking provision

- **Holding:**
  - Denied motion to dismiss. Unauthorized distribution of usernames & passwords bypasses a tech measure in violation of §§ 1201(a)(2) and (b)(1) of DMCA
Sony Disco v. E.J.C. Family (SD Texas)

- **Facts**
  - Cole ran flea market
  - Sony complained to Cole re counterfeit CDs
  - Cole did nothing

- **Holding**
  - Judge Lynn Hughes questioned secondary liability
  - In this case applies secondary liability principles strictly
    - Found no knowledge of specific infringements
    - No direct income from infringement
    - No right and ability to control
    - “...attempt to pass the cost of protecting one's copyright to middlemen and, ultimately, to consumers”
U.S. Copyright Group Litigation

- **Achte/Neunte Boll Kino Beteiligungs GMBH & Co KG v. Does (D. D.C)**
  - Copyright infringement lawsuits initiated by the “U.S. Copyright Group” against thousands of “John Does”
  - U.S. Copyright Group:
    - “A collection of attorneys and IT consultants working together to monetize distribution channels”
  - Litigation brought on behalf of an ad-hoc coalition of small, independent film producers against BitTorrent users

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Settlements

- **Real Networks v. DVD Copy Control Association** (N.D. Cal.)
- **Amazon.com v. Perfect 10** (C.D. Cal.)
Administrative Action

• IP Czar Seeks Public Comments Regarding Joint Strategic Plan for Enforcing IP Rights
• NTIA-PTO Online Copyright Infringement Consultations
• FCC Releases National Broadband Plan
• GAO Study
Legislative Developments

- P2P Security Bill Update
  - House Passed H.R. 1319 in December.
International

- ACTA Update
- “Three Strikes” Laws Update
- U.K. Digital Economy Bill
- French Piracy Study
- iinet Decision: Australian ISP not liable for file-sharing by customers
- Spain: non-commercial file-sharing link sites and non-profit use of P2P networks are legal