



CPTWG MEETING #119

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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.”

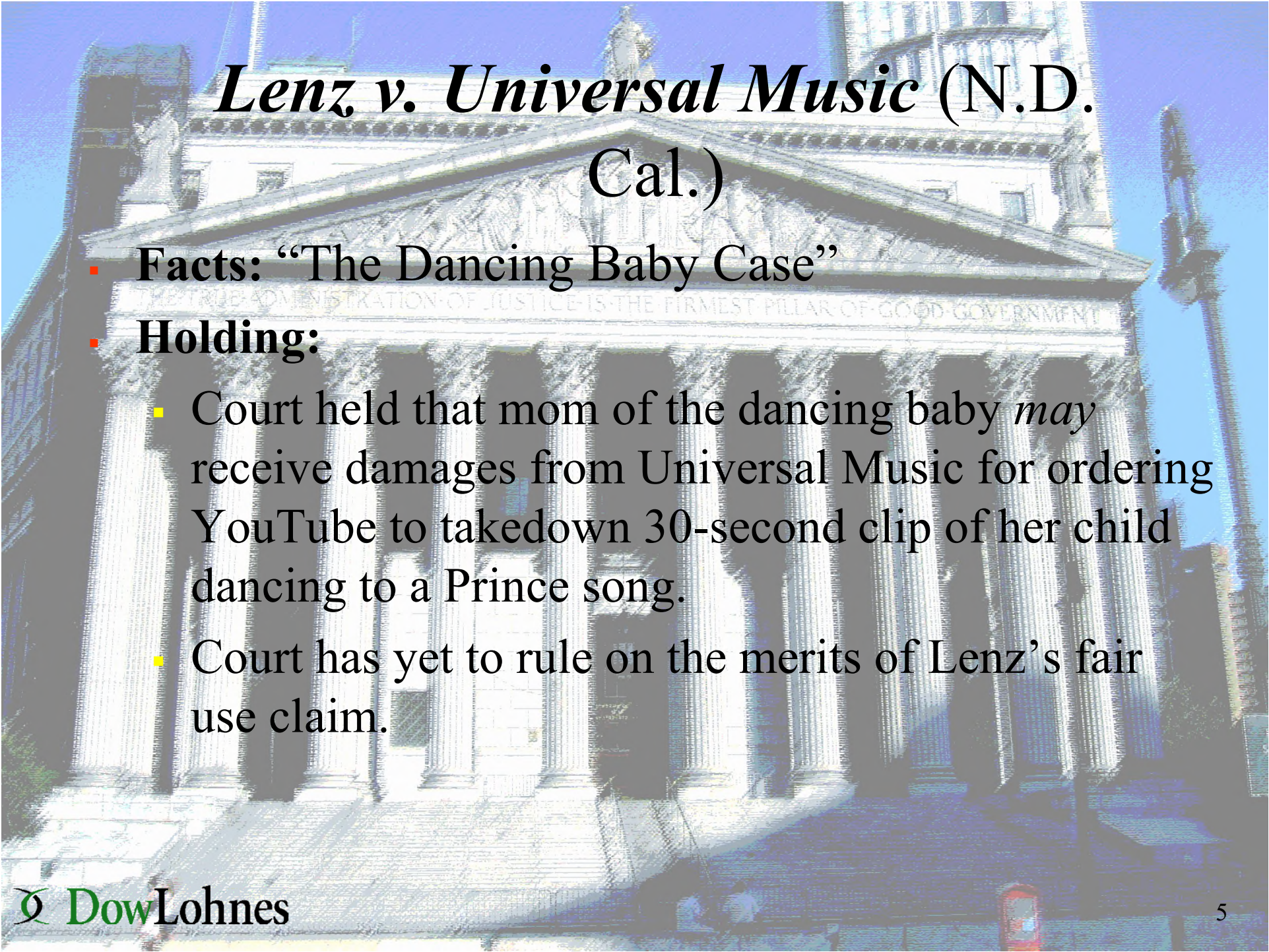
- **Fifth Circuit Holding:**

- 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



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



Settlements

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

A photograph of the White House in Washington, D.C., featuring the iconic portico with columns and a large American flag flying in front. The sky is blue with some clouds, and there are green lawns and red flower beds in the foreground.

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**
 - **Bill introduced in Senate S.3027: P2P Cyber Protection and Informed User Act.**
 - **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