CPTWG MEETING
#120
July 21, 2010

Legislative/Litigation Update

Jim Burger
jburger@dowlohnese.com
Litigation

- Viacom, Inc. v. YouTube, Inc.
- Arista Records, LLC v. Lime Group, LLC
- Golan v. Holder
- Sony v. Tenenbaum
- MGE UPS Systems Inc v. Power Protec Svc LLC

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Viacom, Inc. v. YouTube, Inc. (SDNY)

- Facts:
  - Viacom sued YouTube three years ago, seeking more than $1 billion in damages

- Holding:
  - Mere knowledge of prevalence of infringing material not enough to remove YouTube from DMCA safe harbor
  - YouTube did not go beyond providing “storage” at the direction of users
  - YouTube not outside safe harbor under direct financial benefit provision because could not exercise “right & ability to control” without specific knowledge of infringement
**Arista Records v. Lime Group (SDNY)**

- **Facts:** Record industry plaintiffs sued LimeWire, alleging P2P software developer secondarily liable for users’ copyright infringement.

- **Holding:** LimeWire liable for inducement of copyright infringement
  - **Factors**
    - Knowledge
    - Designed
    - Failure to implement meaningful barriers
  - LimeWire owner personally liable for same set of infringement claims.

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**Golan v. Holder** (10th Cir.)

**Facts:**
- Group of plaintiffs that rely upon public domain works challenged constitutionality of Sect. 514 of Uruguay Round Agreements Act which reinstated copyright on certain public domain works.
- District Court: Statute violates First Amendment.

**Holding:**
- Tenth Circuit: Reverses - statute does *not* violate First Amendment
- Law constitutional as government demonstrated substantial interest in protection US interest abroad
Sony v. Tenenbaum (D. Mass.)

Facts:
- RIAA sued Joel Tenenbaum for downloading and sharing 31 copyrighted files on a P2P network.
- July, 2009: jury finds that Tenenbaum willfully infringed plaintiff’s copyrights; statutory damages of $675,000 awarded ($22,500/song)

Holding:
- Court: Statutory damages award was “grossly excessive” and therefore unconstitutional.
- Damages award reduced by 90% to $67,500 ($2,250/song)
MGE UPS Systems v. Power Protec Svc (5th Cir)

However, MGE advocates too broad a definition of “access;” their interpretation would permit liability under § 1201(a) for accessing a work simply to view it or to use it within the purview of “fair use” permitted under the Copyright Act. Merely bypassing a technological protection that restricts a user from viewing or using a work is insufficient to trigger the DMCA’s anti-circumvention provision. The DMCA prohibits only forms of access that would violate or impinge on the protections that the Copyright Act otherwise affords copyright owners.

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Administrative Action

- IP Czarina Releases Joint Strategic Plan for Enforcing IP Rights
- NTIA-PTO Online Copyright Symposium
- ICE Domain Seizures
International

- ACTA Update
- “Three Strikes” Laws Update
  - Ireland
  - France
  - United Kingdom
- Italian Court: ISPs Not Responsible for Subscriber Infringement
- Australian Filtering Delayed