CPTWG MEETING #122
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Legislative/Litigation Update
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BSQ

BOB SCHWARTZ QUARTET

proudly presents music from

'Tain't what'cha do (It's the way that'cha do it)

ROB ORWIN  SETH GREENSTEIN  STEVE OLSON  with COLIN COOK
The Bob Schwartz Quartet (BSQ), which performs at major Washington social venues and local jazz spots, returns to CES. This year, BSQ will be playing music from its new album, ‘TAIN’T WHAT ‘CHA DO.

‘TAIN’T WHAT ‘CHA DO celebrates the music of the Basie, Ellington, and Lunceford bands, and the lost or less appreciated works of our major songwriters of the golden age.

‘TAIN’T WHAT ‘CHA DO by the BSQ will be available worldwide on CD Baby, iTunes, AmazonMP3, and many other services. Come by, get on the mailing list, and say hello to the BSQ –

Bob Schwartz – tenor sax and flutes
Rob Orwin – piano
Seth Greenstein – bass
Steve Olson – drums
BSQ

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Litigation

- EMI v. Mp3Tunes
- MDY Industries v. Blizzard Entertainment
- Three First Sale Cases
- Two Video Re-transmission Cases
- Viacom v. YouTube
EMI v. MP3tunes (SDNY)

- EMI Music filed suit against MP3tunes three years ago, alleging that MP3tunes’ cloud-based storage system constitutes copyright infringement.

- MP3tunes has sought summary judgment, arguing:
  - DMCA Safe Harbor protection; and
  - No public performance of the underlying work.

- Decision expected soon.
MDY Industries v. Blizzard Entertainment (9th Cir.)

- **Facts:**
  - MDY developed a software program (a “bot”) that allowed individuals to play Blizzard’s “World of Warcraft” computer game on “auto-pilot.”
  - Blizzard sued MDY, alleging it circumvented Blizzard’s software controls which were intended to detect and prevent operation of “bots.”

- **Holding:**
  - Violation of DMCA anti-circumvention provisions & contract terms.
  - No nexus to copyright infringement required for violation of DMCA anti-circumvention provisions
    - Split with Federal Circuit. May need to be resolved by SCOTUS.
A Trio of Ninth Circuit “First Sale” Decisions

Vernor v. Autodesk,
MDY v. Blizzard, and
UMG Recordings v. Augusto

• Vernor v. Autodesk
  • Software distributed with shrink-wrap license, not subject to first sale doctrine.

• MDY v. Blizzard
  • Computer game software with restrictive terms is licensed not sold (and accordingly not subject to first sale doctrine.)

• UMG Recordings v. Augusto
  • Promotional CDs with restrictive labels are not licensed and thus subject to first sale doctrine.
Video Retransmission Cases

CBS et al. v. FilmOn.com
(SDNY)

WPIX et al. v. IVI, Inc.
(SDNY)

- Broadcasters have filed separate copyright infringement suits in federal court against two online video streaming services – FilmOn and ivi.

- FilmOn and ivi rebroadcast live over-the-air broadcasts via online streaming.
  - Both companies allege they have the right to stream the content under a compulsory license.

- Temporary injunction granted against FilmOn.

♀ DowLohnes
As widely expected, Viacom’s copyright infringement suit against YouTube continues. Viacom filed its appellate brief in December with the Second Circuit.

Numerous amicus briefs in support of Viacom have also been filed.
Administrative Action

- FCC Approves Net-Neutrality Rules
- Maria Pallante Appointed Acting Register of Copyrights Appointed
Legislative Developments

• “Combating Online Infringement and Counterfeits Act” ("COICA") Update
International

- ACTA Update
- UK Copyright Law Review
- Singapore: Internet DVR Legal
- European Union: “New Renaissance”
- France: HADOPI
- Germany: RapidShare
- India: Anticircumvention
- Japan: Toshiba Wins Unpaid Levy Case Re: DVD Recorders