Preemption

Copyright Law – Professor Grimmelmann
Class 28 – December 4, 2008

§ 301(a) and preemption

- "all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright [i.e., in § 106] in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright [i.e., in § 102]" are preempted
- § 301(b) is just the negative version of this

a preemption test

- the "102 test": does the state law regulate copyright subject matter?
- the "106 test": does the state law give copyright-like rights?
- if yes on BOTH, the state law is preempted
- NB: states may give copyright in pre-1972 sound recordings until 2067, and some do

Harper and Row (again)

- why do these non-copyright claims fail? do they fail on their elements, or because they're preempted?
  - conversion of the manuscript
  - conversion of the manuscript's *contents*
  - tortious interference with contract

Video Pipeline

- what's going on here?
- first, 102: are these trailers copyrightable?
- second, 106: is there an "extra element?"
  - unfair competition
  - unjust enrichment
  - replevin

contracts vs. copyrights

- how are they different? when might an ambiguity between the two arise?
- Q1: I own a pie; you sign a contract to pay me $10,000 for the pie. you eat the pie without paying, and I sue. what result?
- Q2: I own a pie; you sign a contract that eating the pie constitutes infringement. you eat it, and I sue. what result?

ProCD v. Zeidenberg

- has Zeidenberg infringed on any of ProCD's copyrights? on what basis is ProCD suing?
- as for preemption:
  - how does the 102 analysis come out?
  - how does the 106 analysis come out?
- both of these holdings are important; both are subtle; both are controversial

that’s all folks

do good