The Public Performance and Display Rights

Copyright Law – Professor Grimmelmann
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today

- “performance” and “display”
- “public”
- exclusions from the performance and display rights
- discussion: Google Book Search

why a public performance right?

- some categories of works are naturally exploited via performance, rather than sale
  - how significant is the reproduction right for a play? the public performance right?
- first introduced in 1897 Act
- 1976 Act drops "for profit" requirement (*but see* 17 U.S.C. § 110(4))

performance or display?

- how do you “perform” a play? how do you “display” a play? (which is more important?)
- how do you “display” a painting? can you “perform” one? (which is more important?)
- what’s a slideshow of still photos? what if those photos are taken from a movie?
- intuitively, what’s the distinction?

local and remote

- public performances?
  - a high-school theater puts on a production of *Rent*.
  - WCPY broadcasts *There Will Be Blood*.
  - joe's Chicken Hut turns on the TV and shows the broadcast.
- other countries disaggregate these rights.

“to the public”

- are these “public?”
  - I project a DVD on the side of a building,
  - I watch a DVD with my family
  - I invite a dozen friends to watch a DVD
  - I sell a dozen tickets to watch a DVD

Redd Horne

- what's Maxwell's business model?
  - if Maxwell's *just rents* tapes, infringement?
  - if Maxwell's *just offers rooms*, infringement?
  - what if it offers both?
- is Maxwell's or the booth the "place?"
- does the use of a single "copy" matter?

other intermediate cases

- does the result in *Redd Horne* change if the booths have *customer*-operated VCRs?
- hotels with On Command video systems have employee-operated VCRs at the front desk, connected to individual rooms.
- Inmotion Pictures rents DVD players and movies in airports (return in another)

Cartoon Network

- out there in Cablevision's network, there're hard drives with copies of TV programs, one copy per subscriber who asked to record it
  - don't worry about the legality of the copies—that's a topic for next time
  - when the subscriber pushes "play," the program streams from their hard drive

is *Cartoon Network* public performance?

- how does the court distinguish *Redd Horne*?
  - if you accept the distinction, are you troubled that Cablevision designed its network to use multiple copies?
  - if you reject it, where's the line? is it now infringement to rent hotel rooms with VCRs in them?

exclusions from display and performance rights

- § 110(1): face-to-face education
- § 110(2): distance education (TEACH Act)
- § 110(3): religious services
- § 110(4): noncommercial, free face-to-face performance
- § 110(5): "homestyle exception" for commercial establishments

more exclusions

- § 110(6)–(11): miscellaneous institutional exclusions
- §§ 111 (cable), 118 (public broadcasting), 119 (superstations), 122 (satellite): telecommunications policy exclusions

Google Book Search

- Google has been scanning books *en masse*
  - full-text PDFs of out-of-copyright ones
  - full-text *search* across all books
- of course the copyright owners sued
- just curious—do you think that the scanning and searching are fair uses?

GBS settlement (proposed)

- the scanning continues
- Google Book Search continues
- Google can sell full-text online versions of *all* books to colleges and individuals
- Google *gives* full-text access (in limited amounts) to public libraries
- authors can opt out completely

Book Rights Registry

- all authors and publishers are now part of a Book Rights Registry
- it forwards information about authors' requests on to Google
- it negotiates with Google over the terms of its various programs
- it processes payments to authors

your thoughts?

- should the settlement be approved?
- are there antitrust issues?
- what's the future of books?

next time

direct and indirect infringement
(lecture on music coming via audio)