The Distribution Right

Copyright Law – Professor Grimmelmann
Class 18 – November 2, 2008

VOTE!

HOPE

NOPE

DOPE

HOPE

GROPE
ThePeoplesCube.com

A NEW
HOPE

HOPE
FOR MELMAC
©ROBERLAN

FEAR

HOPELESS

why distribution (and not just reproduction)?

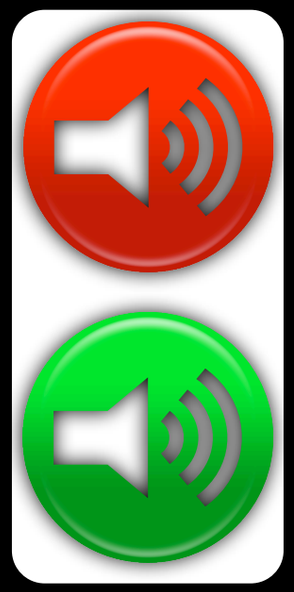
- in pirate business models, distribution is easier to police than reproduction
- controlled distribution chains can prevent many unauthorized reproductions
- perhaps distribution is the real right and reproduction is the redundant one
- copyright owners like any and all rights

three issues for today

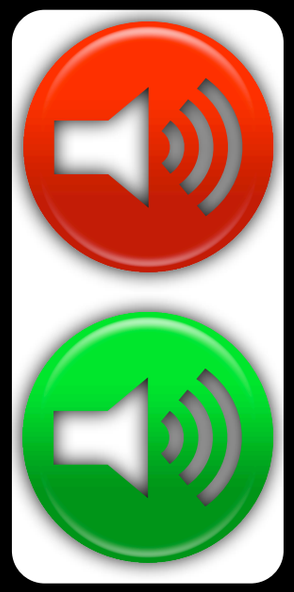
- when does a distribution take place?
- who engages in distribution online?
- how does the first sale defense work?

Napster
TM

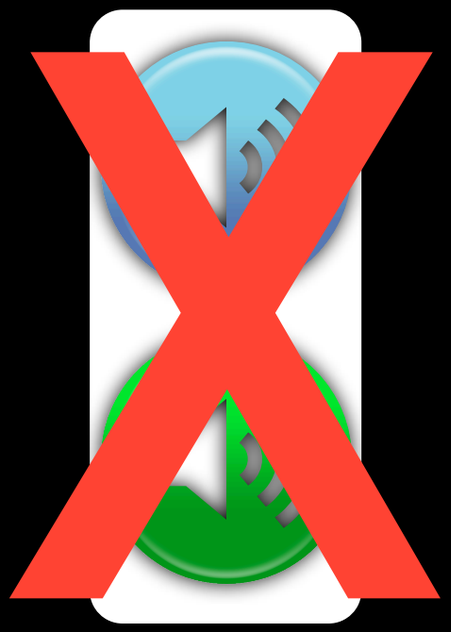
Napster
TM

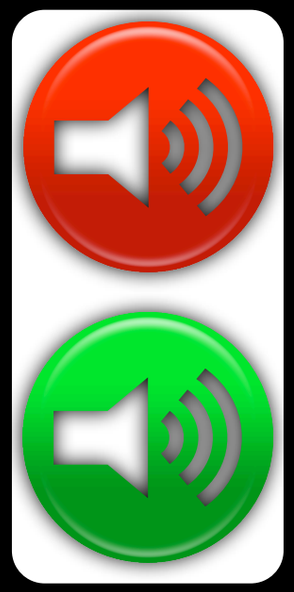


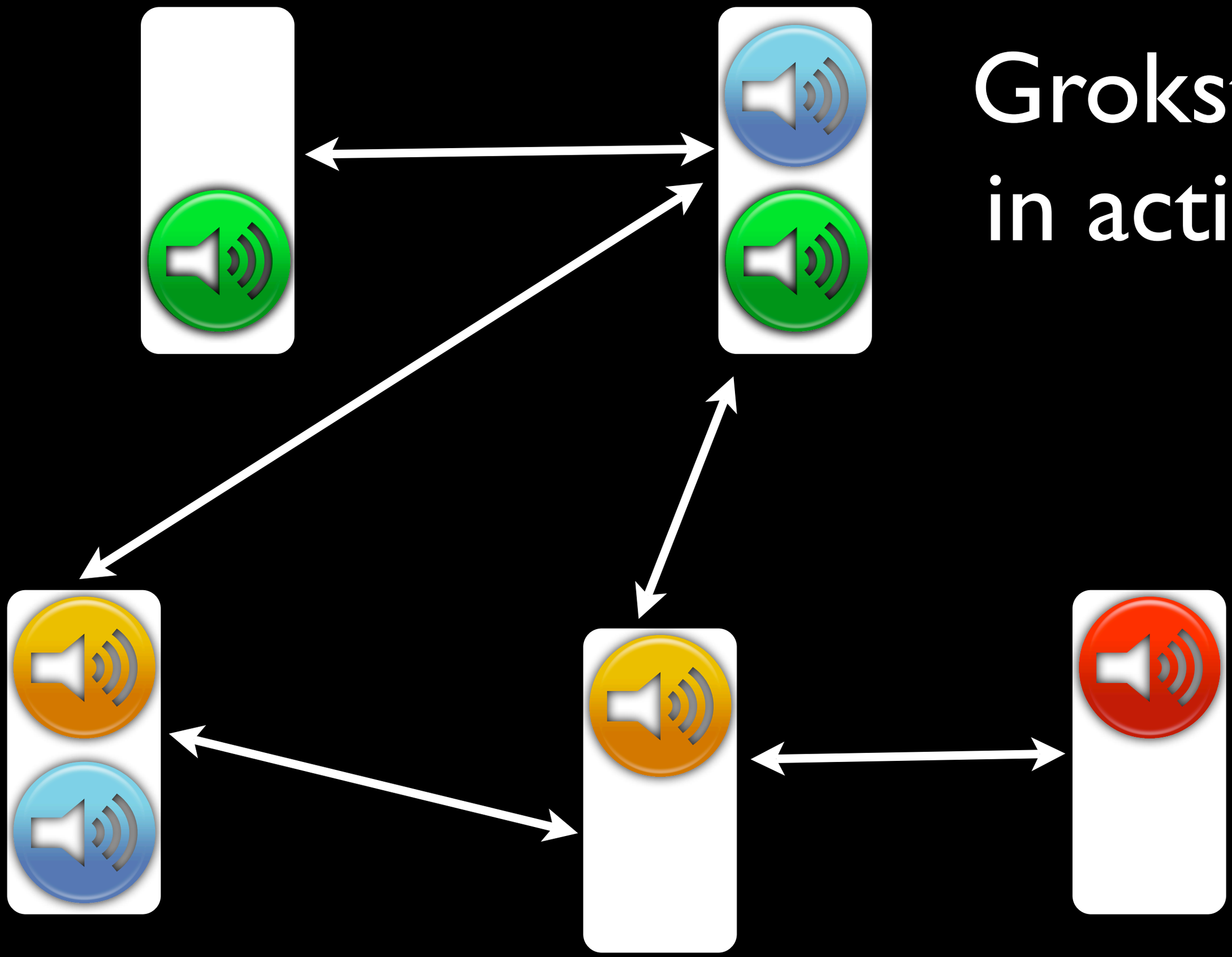
Napster
TM



Napster
TM







Grokster in action

London-Sire v. Does

- What happens to files in your shared directory?
- When you perform a search on a peer-to-peer network, what happens?
- When you click on a file, what happens?
- What does MediaSentry do?

what's the problem?

- if Mike downloads a "Tainted Love" MP3 from Rudy, unauthorized distribution?
  - does it violate any other exclusive rights?
  - what if Mike works for MediaSentry?
- can MediaSentry actually observe Mike downloading "Tainted Love" from Rudy?
- what *can* MediaSentry observe?

what does the court think of these theories?

- Rudy "distributed" "Tainted Love" by putting it in his shared folder
- Rudy "distributed" "Tainted Love" when MediaSentry downloaded it
- the jury is permitted to infer from MediaSentry's evidence that Rudy "distributed" "Tainted Love" when Mike (or someone else) downloaded it

Perfect 10 v. Amazon

perfect 10 - Google Image Search

http://images.google.com/images?hl=en&q=perfect%2010

perfect 10

G-Reader Subscribe | Get YouTube video | Post with MarsEdit | Mendik Catalog | Get YouTube video

Web | **Images** | Maps | News | Shopping | Gmail | more ▼ | **james.grimmelmann@gmail.com** | Web History | My Account | Sign out

Google

perfect 10 | Search Images | Search the Web | Advanced Image Search | Preferences

Moderate SafeSearch is on

Images Showing: All image sizes | Any content

Results **1** - **20** of about **78,500,000** for perfect **10**. (**0.05** seconds)

Related searches: perfect 10 **girls**

Perfect 10 Magazine sues Amazon for ...
394 x 500 - 46k - jpg
www.schwimmerlegal.com

THE **Perfect 10** Tel Aviv-Israel
300 x 446 - 55k - gif
profile.myspace.com

The New **Perfect** Ten on Infringing ...
195 x 255 - 24k - jpg
www.ipadrblog.com

... entry **Perfect 10** magazine ceased ...
243 x 320 - 21k - jpg
copyrightlitigation.blogspot.com

click on a result . . .

Google Image Result for http://a641.ac-images.myspace...om/images01/51/l_7f7fefae3cfab880168058a70e1e7b30.gif

http://images.google.com/imgres?imgurl=http://a641.ac-images.myspacecdn.c

perfect 10

G-Reader Subscribe | Get YouTube video | Post with MarsEdit | Mendik Catalog | Get YouTube video

Google

See full-size image.

a641.ac-images.myspacecdn.com/ images01/51/l_7...
300 x 446 - 55k
Image may be scaled down and subject to copyright.

Remove Frame

Image Results »

Below is the image in its **original context** on the page: profile.myspace.com/ index.cfm?fuseaction=user...

scroll down . . .

Google Image Result for http://a641.ac-images.myspace...om/images01/51/l_7f7fefae3cfab880168058a70e1e7b30.gif

http://images.google.com/imgres?imgurl=http://a641.ac-images.myspacecdn.c

perfect 10

G-Reader Subscribe | Get YouTube video | Post with MarsEdit | Mendik Catalog | Get YouTube video

Google

See full-size image.

a641.ac-images.myspacecdn.com/ images01/51/l_7...
300 x 446 - 55k
Image may be scaled down and subject to copyright.

Remove Frame

Image Results »

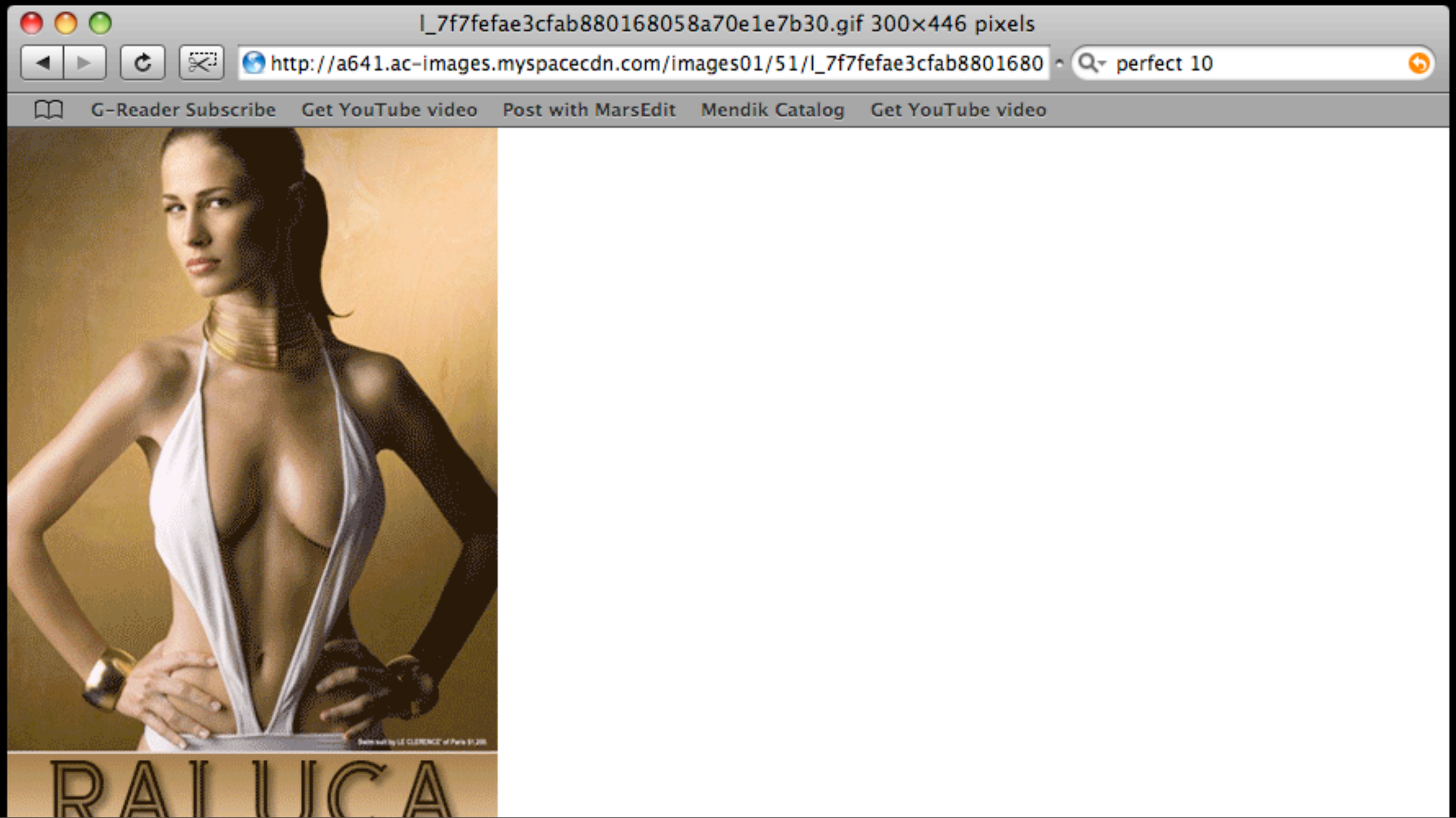
Below is the image in its **original context** on the page: profile.myspace.com/ index.cfm?fuseaction=user...

Raluca
THE Perfect 10
Tel Aviv-Israel

Julia Messenger
Support Julia's Music
Click Here

JULIA MESS
And We D
Julia will be releasing 2
music on itunes and other

Click “see full-size image” . . .



Perfect 10 and distribution

- this is a *display* case, but the logic is similar
- what is MySpace doing? is that a distribution of this image?
- what is Google doing? is that a distribution of the *thumbnail* image? of the *full-size* one?
- do our policy reasons for a distribution right favor imposing liability on Google?

first sale under § 109

- § 109(a): the "owner of a particular copy … lawfully made … is entitled … to sell or otherwise dispose of the possession of that copy"
- § 109(d): "[first sale] do[es] not … extend to any person who has acquired possession of the copy … without acquiring ownership of it"

first sale finger exercises

- I buy a book at Barnes and Noble. can I resell it on Craigslist? what if the copy was stolen from the publisher's warehouse?
- I buy a sculpture. can I rent it to you?
- I buy sheet music. can I sing the song in public? can I sell photocopies of it? if I make photocopies, can I resell the original?

THE CASTAWAY

HALLIE·ERMINIE·RIVES

Digitized by Google

COPYRIGHT 1904
THE BOBBS-MERRILL COMPANY

MAY

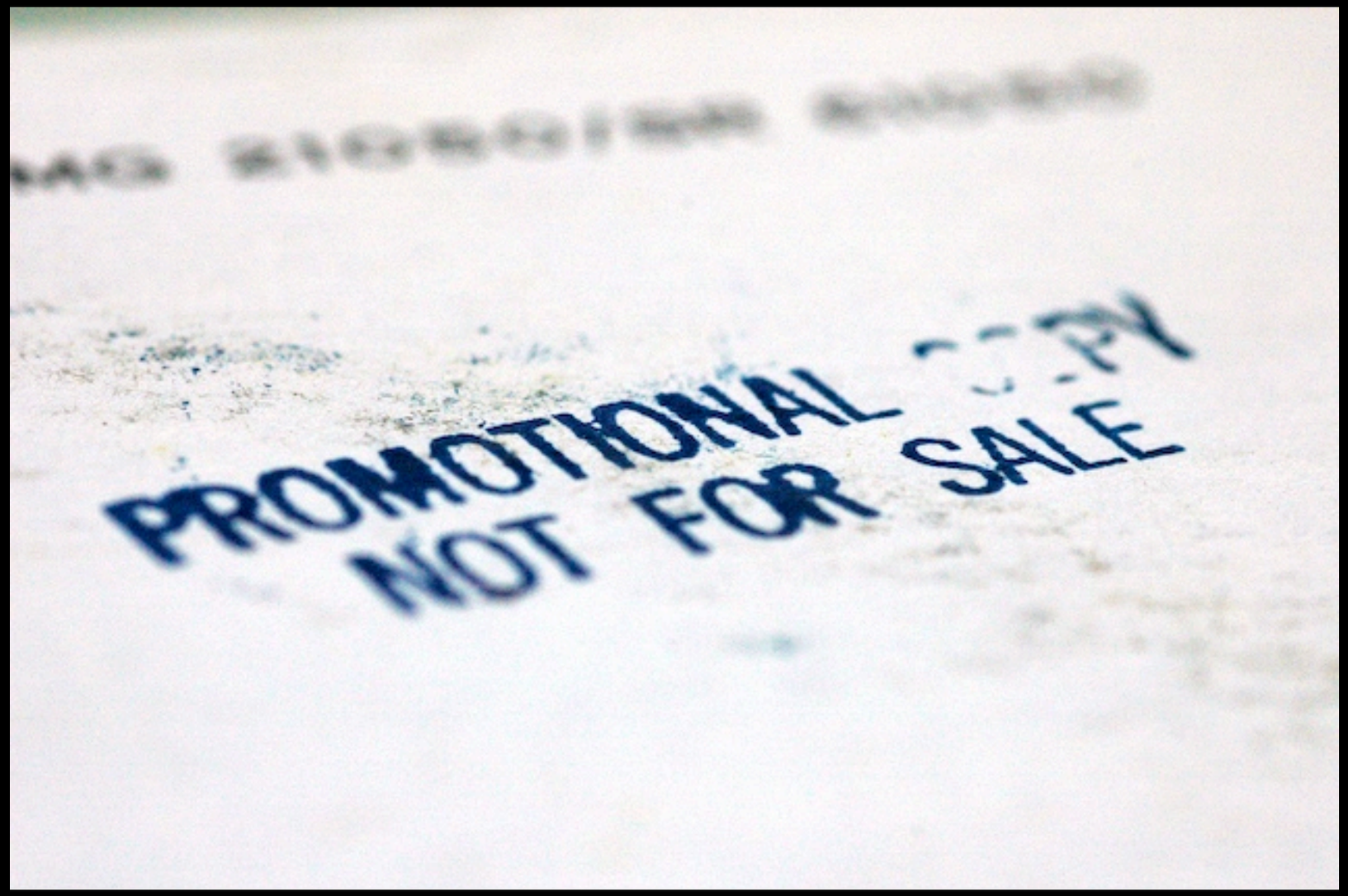
The price of this book at retail is One Dollar net. No dealer is licensed to sell it at a less price, and a sale at a less price will be treated as an infringement of the copyright.

THE BOBBS-MERRILL COMPANY.

Bobbs-Merrill

- what is it that Macy's did here?
- if Macy's had been buying its wholesale copies from B-M, could the contract have included a minimum retail price term?
- what damages would be available in a contract action? in a copyright one?
- is this a privity case, or something more?

UMG v. Augusto



UMG v. Augusto

- why doesn't *Bobbs-Merrill* resolve this case?
- is Augusto the "owner"
  - right to regain possession?
  - ongoing benefits?
  - unordered merchandise law?
- what do you think?

next time

public performance and display