Litigation

Copyright Law – Professor Grimmelmann
Class 12 – October 14, 2008

jurisdiction

jurisdiction: hypo 1

- Alice writes a book. Bob orders 100 copies, and never pays.
- who has what causes of action?
- what happens if Alice sues in federal court?
- what happens if Alice sues in state court?
- what if it were 100,000 copies?

jurisdiction: hypo 2

- Alice writes a book. Bob makes 100 copies.
- who has what causes of action?
- what happens if Alice sues in federal court?
- what happens if Alice sues in state court?
  - what are Bob's options?

jurisdiction: hypo 3

- Bob makes 100 copies and uses Alice's picture in advertising them.
- who has what causes of action?
- what happens if Alice sues in federal court?
- if she sues in state court, what are Bob's options? can Alice keep it in state court?

jurisdiction: hypo 4

- Bob has written an unauthorized biography of Alice that quotes from her letters
- can Bob get a declaratory judgment of noninfringement? what if Alice doesn't know about it? what if he hasn't written the biography yet?
- if you're Alice and you learn about the biography, should you send Bob a C&D?

jurisdiction: hypo 5

- Alice writes a book; Bob is her publisher at a 15% royalty. Alice thinks Bob has sold 10,000 copies but only paid for 9,000. Bob thinks Alice needs to return her advance.
- who has what causes of action? (tricky)
- where can Alice sue? what about Bob?
- this is the first prong of *T.B. Harms*

jurisdiction: hypo 6

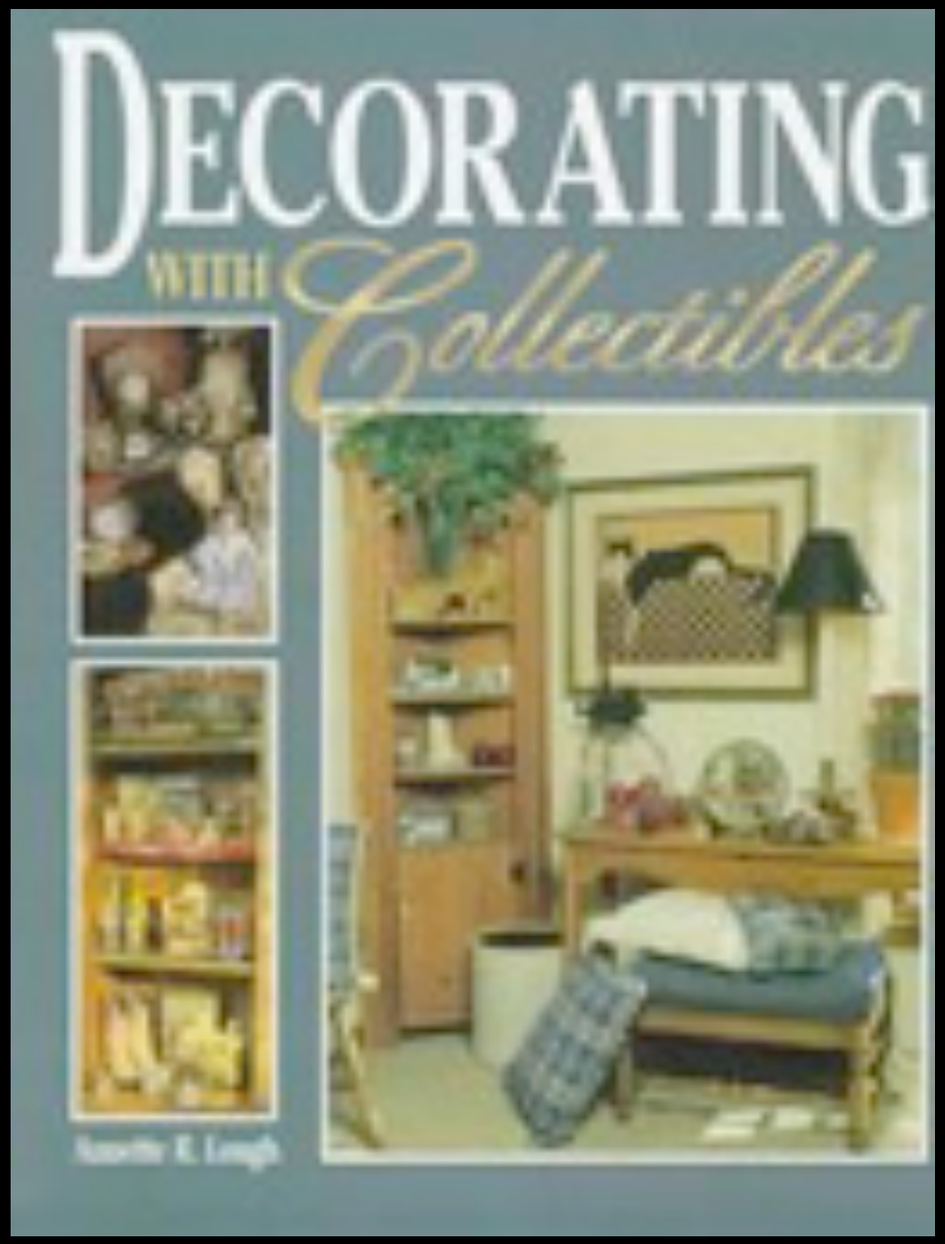
- Bob publishes a book. Alice believes she's a coauthor and entitled to half the royalties.
- who has what causes of action? (tricky)
- this is the second prong of *T.B. Harms*

registration

- § 411(a): "No action for infringement … shall be instituted until registration of the copyright claim has been made …"
  - is this a mistake you can recover from?
  - how long does registration take, and how much does it cost?
  - what if the Copyright Office refuses?

Gerig v. Krause

- does Gerig have his registration certificate? what does he have?
- what possible argument can there be that what he's done suffices?
- why does this issue even arise?



statute of limitations

- what's the statute of limitations for a civil action for infringement?
- how about for a criminal prosecution?
- where in the statute are the answers?

Roley v. New World

- 1985: Roley shows Coblenz the screenplay
- 1987: Coblenz screens "Sister, Sister" for Roley
- 1988 and 1992: "Sister, Sister" shown on TV
- Feb. 7, 1991: Roley files suit

Roley, cntd.

- what are the potentially-infringing acts, and which of them are within 3 years?
- what's a "continuing violation" theory, and would it really let Roley reach the screening? what if the movie was showing in theaters every day from 1987 to 1992?
- why does the court dismiss the case?

limitations doctrines

- can you think of *anything* that actually constitutes a "continuing" violation?
- might the result be different if Roley hadn't been invited to the screening?
- might the result be different if Roley were underage?

ownership

- § 501(b): (only) "the legal or beneficial owner of an exclusive right" may sue
  - what's a "beneficial owner?"
  - what should an exclusive licensee do?
  - what should a nonexclusive licensee do?

Eden Toys v. Florelee

- who are the parties? is the plaintiff the owner?
- why, nonetheless, does the court allow the suit to proceed?
- how many things are wrong with this approach?

sovereign immunity

- the complaint in *Cambridge University Press v. Patton* (Apr. 15, 2008) alleges that Georgia State's online coursepacks are infringing
- is Georgia State a proper defendant? how about its president, Carl Patton?
  - what about § 511?
- what remedies are available?

jury trial

- there's a right to a jury in copyright cases
- either plaintiff or defendant can ask for one
- triggered by legal remedies, i.e. damages
  - including statutory damages
  - but not if plaintiff seeks only equitable remedies (which are?)

judge and jury

- jury entitled to decide disputed facts and to determine the amount of damages
- under what circumstances can the judge keep an issue from the jury?
  - motion to dismiss, preliminary injunction, summary judgment, bench trial, judgment as a matter of law, &c.

next time

remedies