Fixation

Copyright Law – Professor Grimmelmann
Class 9 – September 25, 2008

the road to fixation

the 1909 Act

- Two systems of copyright:
  - State common-law
  - Federal statutory
- *Publication* was (mostly) the dividing line
  - Divests state-law copyright
  - Federal copyright might attach (why not?)

Estate of MLK v. CBS

- Why is the 1909 Act even relevant?
- Informally, was the speech "published?"
- Legally, was the speech "published?"
- What accounts for the difference?

the 1976 Act

- fixation replaces publication
  - preempts state common-law copyright
  - Federal copyright (definitely) attaches
- what's the policy reason for the change?
- publication still relevant for pre-1978 works and here and there in the 1976 Act

human-intelligibility

- in *White-Smith v. Apollo*, the Supreme Court (1908) held that piano rolls aren't "copies" because no human can read them
- the 1909 Act distinguished "copies" (of all works) from "mechanical reproductions" (of musical works)
- what language in § 102(a) abolishes this distinction?

“fixed in a tangible medium of expression”

warm-up: fixed?

- a song sung on the street corner
- a diagram on the blackboard
- a sonnet in my mind
- a photograph
- Laser Floyd
- this lecture

Williams v. Artic

- What kinds of copyrights does Williams have?
- What did Artic copy? How?
- "Not fixed b/c the display is recreated each time." Critique.
- "Not fixed b/c the display is different each time." Critique.
- Are Artic's arguments troubling or insipid? I can't decide.

what's "more than transitory duration?"

Cartoon Network facts

- How does the Cablevision "DVR" work?
- Part I is about the buffer
  - How long is the data stored there?
  - What happens after that?

is the buffer a fixation?

- This is a case about an alleged *infringer*'s fixations. Why is fixation relevant at all?
- A document on a hard drive is fixed. Why?
- *MAI*: documents in memory are fixed.
- How does this court distinguish *MAI*?

Consequences

- When you write a document in Word, is it fixed after you hit "save?"
  - How about before?
- When you browse to a web page, are you fixing a copy?
  - What if you make a printout of the page?
- Last year, the answers were easy!

live performances
and broadcasts

two boundary cases

- live broadcast of a baseball game. fixed?
  - what if CBS is also recording to tape?
  - what if they're not, but I am?
- live concert. fixed?
  - what if the band is also recording?
  - what if they're not, but I am?

next time

formalities and term