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Cases of Note

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Cases of Note

Column Editor: **Anne F. Jennings** (Sinkler & Boyd) (jenningsa@cofc.edu)

In this issue we examine two recent copyright decisions. One, LaMacchia, undoubtedly represents a sign of things to come and perhaps, a sign of more changes to present copyright law. The second case, CCC et. al v. Maclean Hunter, et. al, offers an excellent discussion of the application of the law of copyright. This latter case was recently reversed by the 2nd Circuit Court of Appeals, the same court responsible for the Texaco opinion.

We also include a discussion of the pending Matthew Bender and Hyperlaw, Inc. v. West Publishing Co., which was placed back on the trial docket after settlement discussions proved unsuccessful.

Decided:

Wire Fraud / Copyright / Computer Hacker

United States of America v. LaMacchia, 871 F. Supp. 545, (D. Mass. 1994).

This case involves a student from MIT who used the university's computer network to set up an electronic bulletin board which he used to encourage correspondents to upload software programs which were subsequently downloaded by other users through the bulletin board system. The student, LaMacchia, was indicted in April 1994 on a single count of conspiracy to violate the wire fraud statute. The indictment stated that LaMacchia was involved in the "illegal copying and distribution of copyrighted software" without paying the appropriate fees or royalties to manufacturers. It was not alleged that LaMacchia received or sought personal benefit.

In September 1994, LaMacchia moved for a dismissal of the case based on the assertion that the government had "improperly resorted to the wire fraud statute as a copyright enforcement tool." Judge Sterns of the United States District Court granted the defendant's motion stating that "while the government's objective is a laudable one," its use of the wire fraud statute was not appropriate and would only serve to

criminalize individuals who succumbed to the temptation to duplicate even a single software program. Sterns also mentioned the possibility of a future amendment to the copyright law which would allow prosecution for similar violations, but he asserted that "it is the legislature, not the court, which is to define a crime, and ordain its punishment."

Copyright / Idea-Expression Dichotomy / Public Domain

CCC Information Services, Inc. (Plaintiff-Appellee) v. Maclean Hunter Market Reports, Inc. (Defendant-Appellant), 44 F.3d 61 (1994).

This is the afore-described case handed down by the 2nd Circuit Court of Appeals. It involves somewhat complicated circumstances wherein the Appellant, Defendant **Maclean**, attempted to establish copyright infringement on the part of **CCC Information Services**, a competitor which acknowledged duplicating a substantial portion of **Maclean's** compendium into **CCC Information Service's** computer database for use by **CCC's** customers.

Maclean has published, since 1911, the **Automobile Red Book—Official Used Car Valuations**, which details editor's projections of used car valuations for the forthcoming six weeks. The projections are made by using a wide variety of resources together with professional judgment. However, an introduction to users states "you, the subscriber, must be the final judge of the actual value of a particular vehicle."

CCC Information Services provides its customers with automobile valuation information through a computer database. Since 1988, CCC Information Services has been including, as a part of its service, major portions of the Red Book data, both alone and together as a Red Book/Bluebook (another separate valuation publication) average. Also since 1988, numerous Red Book subscribers have canceled in favor of the CCC Information Services product. Interestingly, **CCC Information Services instituted this action in 1991 seeking a declaratory judgment that it (CCC) could not be liable to Maclean for any copyright violation.** Maclean then counterclaimed for infringement. CCC Information Services pleaded the following affirmative defenses, upon which the district court's decision on Summary Judgment, the basis for this appeal by Maclean, was rendered:

- * That CCC Information Services used the Red Book for its **intended purpose**.
- * That such use is considered **fair use**.
- * That as a result of its adoption into statutes regulating insurance payments, the Red Book has come into the public domain.

The appellate court **reversed** summary judgment and **remanded** the case back to district court for further proceedings. The relevant findings and conclusions by the 2nd Circuit are:

1. Contrary to CCC Information Services' contention and the findings by the district court, the appellate court found that the Red Book was essentially an original work and therefore protected by copyright law. While CCC Information Services contended that the Red Book was nothing more than a compilation, Maclean was able to demonstrate, without rebuttal, that

its valuations were predictions by the Red Book editors and were not historical or mechanical derivations. The predictions were based on both numerous data sources together with professional judgment and expertise. As such, the court found the Red Book to display "sufficient originality to pass the low threshold requirement to earn copyright protection."

2. CCC Information Services' assertion of the idea-expression dichotomy and the argument that it took nothing more than the Red Book's "ideas", described by the court as being appellee's strongest argument, was also reversed. In doing so the court repeated the fundamental principle of copyright, which dates back to the early 18th century, which is "to promote the advance of knowledge by granting authors exclusive rights to their writings." Later, the theory of ideas as being too important to the advancement of knowledge to afford private ownership protection, was judicially created and came to be known as the "idea-expression dichotomy". In the case at hand, however, the court found implementation of the doctrine to be "destructive of the protection the Act intends to confer." Reasons included the finding that CCC takes virtually all of the information provided by the Red Book, so much so that "CCC effectively offers to sell its customers Maclean's Red Book through CCC's database." Additionally, the court opined that the valuations were not ideas but rather "statements of opinion by the Red Book editors" and because of that, Maclean includes the clause which advises that subscribers must be the final judge of valuation.

3. Lastly, CCC Information Services claimed that the information was within the public domain. Again, the court

disagreed stating that "a state's reference to a copyrighted work as a legal standard for valuation" does not result in the loss of copyright. Such an action, asserted the court, would raise substantial issues under the Takings Clause of the United States Constitution.

Pending: Copyright / Page Numbers / Public Domain

Matthew Bender and Hyperlaw, Inc. v. West Publishing Co.

The case instituted by **Matthew Bender** against **West Publishing** has been on hold since June 1994 in an attempt to resolve through settlement Bender's claim that it should be permitted to publish court decision page numbers originally printed by West. West claims ownership of the page numbers and asserts that they may not be used by other legal publishers. Bender has been joined in the suit by **Hyperlaw, Inc.**, a CD-ROM publisher. As a result of the negotiation breakdown, Bender and West will now exchange briefs in April 1995 discussing the claim by West that the suit fails to raise a "justiciable issue." (Information obtained from press release by the **American Association of Legal Publishers**, 2/13/95).

This case has been the source of much discussion among publishers, law librarians and those interested in the copyright law. West has come under severe criticism for its alleged "monopoly" of legal opinion publishing. The outcome of this case will be an interesting chapter in the ongoing battle among legal publishers. We will keep you informed. ☛

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