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Questions & Answers -- Copyright Column

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Cases of Note
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White v. black combat a draw so far.
There are some scenes involving a fake bomb.

Hollywood's morbidity phobia of bomb detonating heartland militia nuts.

Dad returns home to find wife and an "oleaginous" divorced neighbor decorating the tree.

Dad is jealous.

Why is he overweight? Is this another cruel stock mockery of the avoidance challenged? Or would Camille Paglia say it symbolizes Venus of Willendorf female chthonian nature? He's in touch with his feminine side and can communicate readily with wife. Neighbor is Venus the good listener while Alpha-Mars hubby wants to prove his manhood by breaking down doors and solving the toy problem.

And sure enough, Dad breaks into neighbor's house to steal a Turbo Man where he is attacked by — get this — a pet reindeer — and manages to set several rooms on fire.

The big slapstick scene. Although you must admit that reindeer is as close to originality as Hollywood can achieve. They've boldly gone beyond football playing clowns. And the courage it took to face down PETA.

Neighbor and Dad's wife discover him and are disgusted.

A devastating commentary on the modern dysfunctional nuclear family and the non-heterosexual male.

Dad goes to a parade, is mistaken for an actor and shoved into a Turbo Man costume. He's given a Turbo Man action figure to present to the lucky child of his choice. Naturally he hands it to his kid.

Dad the modern day hero to his consumption glutted kid. And you'll note he didn't give it to a kid biding from chemotherapy or on one in a wheelchair. Very daring on the part of the writers. Socially Dad prioritizes otherwise wallowing in sensitivities.

Meanwhile our black man has stolen a Dementor costume and attacks the kid endeavoring to filch away the action figure. Turbo and Dementor battle like in a TV program. Incredibly for these racially sensitive times, the white man wins. But he is dressed as Turbo Man after all.

Dad reveals his true identity to his kid. With a real Turbo Man for a dad, kid gives the action figure to black man. Dad, mom and kid make up and hug.

Heartwarming. Pause to wipe the tear from your eye.

Now we need that yuk-yuk demoune.

Mom wonders out loud what Dad bought her for Christmas. He realizes in horror that he forgot her.

How do they dream up these zany plots?

Yes, Your Verdict Is They Both Reck and Who Cares

But there's big money at stake here. And Fox's appeal on substantial similarity as a matter of law which is "appropriate only when there is a complete absence of fact to support the verdict, so that no reasonable juror could have found for the nonmoving party." Fisher v. Ford Motor Co., 224 F.3d 570, 574 (6th Cir. 2000) (quoting Moore v. KUKA Welding Sys. & Robot Corp., 171 F.3d 1073, 1078 (6th Cir. 1999)).

Remember the JATW six page treatment? Fox had it before Murray Hill submitted their CTBC story. At trial, Murray Hill came up with some speculative ways that Fox could have seen their CTBC screenplay earlier, but those were of course ruled speculative.

They're lying on us all electronically. And Brian Webster talks in his sleep and ...

Murray Hill had an expert-prepared list of 24 similarities. However, all but six were in the screen treatment.

"Where defendant owns a prior work containing the same elements, he has no reason, beyond the illicit thrill of copyright infringement, to copy wrongfully from another what he could legally copy from himself." Finally, an original quote from the U-Mich law clerks of the 6th Cir. 361 F.3d at 323. But isn't it logically impossible? If I possess A, and B comes over the transom, I can't private A no matter how much pleasure it would give me.

Now, applying the 6th Cir's two-pronged test, you filter out unprotected elements and then look for substantial similarity.

Hence the district court should have filtered out the eighteen elements already owned by Fox. And hence a reasonable jury could not have found substantial similarity on those dicey remaining six.

And don't forget, JATW had that pet reindeer. You've never seen one of those before."

Questions & Answers — Copyright Column

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QUESTION: A librarian is giving a presentation at a professional conference and finds a cartoon on the Internet for which there is no copyright notice or other information. What are the risks and problems if he/she uses that cartoon in a PowerPoint for the conference? What if either the presenter or the conference organizers publish the presentation on the Web including the cartoon? Suppose that the librarian used the cartoon in the past without knowing that the cartoon was copyrighted?

ANSWER: The fact that the cartoon is found on the Internet does not alter the copyright status of the work in any way. It is a graphic work that in all likelihood is copyrighted. Since there is no longer any requirement of notice in the Copyright Act, the lack of a notice does not affect the status of the work. There is a slight possibility that the cartoon is public domain, but it is unlikely. So, assume that the cartoon is copyrighted.

If there is no identifying information, the first examination one should make is whether the style of the cartoon is such that its ownership can be traced. For example, New Yorker cartoons all have a particular style and Fairly Side cartoons are readily identifiable as such. Should there be no way from the style to trace copyright ownership, then one conducts a risk assessment. Using the cartoon creates some risk, but it may be slight depending on how widely the presentation is distributed. Including the cartoon in a PowerPoint for a live presentation at a conference with no other reproduction is not as risky as publishing the slides containing the cartoon in print. The risk for publishing them on the Web is even greater. One should evaluate how critical it is to use the work, how widely it will be reproduced and distributed and how much risk the librarian is willing to take.

The final part of this question asks whether past use of a cartoon creates liability. Ignorance of the law is no excuse, and copyright law does not have an intent requirement, so one infringes even if she did not mean to do so. If the infringement occurred during the last three years, the answer is yes. The statute of limitations in the Copyright Act is three years. The owner of a registered copyrighted work may file suit for infringing activity going back three years.

QUESTION: When seeking permission to use a copyrighted work for an electronic reserve system, is email permission sufficient?

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ANSWER: Yes, email is considered to be a writing even though there are ways to fake email. Permissions should be maintained either online or in an analog file so that they can be retrieved. More difficult is telephone permission—verbal permission is worth the paper it is printed on. If permission is obtained over the telephone, one should follow up with a memo sent to the copyright owner summarizing the permission received, and maintain a copy of this in the permissions file. Fax permissions also should be maintained in this file.

QUESTION: If a library has a large collection of sheet music that is deteriorating, may it digitize the collection and make it available on the Web?

ANSWER: The term “old sheet music” does not really define whether the music is in the public domain or is still under copyright. If it is still protected, then under section 108(c), a library is permitted to reproduce deteriorating works but only after it makes a reasonable effort to purchase another copy at a fair price. The library may make up to three copies of the work after this effort. One of these copies may be digital, and the library may make it available within the library but only on a library intranet. It cannot make the material available on the Web without permission of the copyright owner.

QUESTION: From an institutional point of view, should universities encourage faculty to register their copyrighted works?

ANSWER: This question assumes that the institution has some interest in the faculty member’s copyrighted works. Only the copyright owner can register the copyright; if it is the institution that owns the copyright in the work, then only it can register the work. Registration of the work gives the owner the ability to file suit in federal court as well as access to certain remedies. If the faculty member owns the copyright, then why the university should care about registration is unclear other than wanting its faculty to be able to enforce their rights.

QUESTION: PowerPoint Viewer is a free download. A librarian wants to put the program on a CD and distribute it at no charge. Does it require permission to do so?

ANSWER: Yes, permission is required. Only the copyright holder has the right to distribute a work whether in analog copies or by permitting downloads and regardless of whether or not there is a charge. Others may not distribute the work absent permission from the owner.

QUESTION: Are Web links (just the urls) copyrightable?

ANSWER: Individual links are not copyrightable. They represent a Web address which is a fact, and facts are not copyrightable. Compilations of URLs would be copyrightable if the compilation is not a total universe of data and there is sufficient originality/creativity in the selection, arrangement or value adding, such as annotating the URLs.

Biz of Acq — Function and Friction

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Column Editor’s Note: At the Stanford University Libraries, three separate units were consolidated to form the Acquisitions Department. A managers group chose a function-based organizational model for the new department. Christa Easton, Head of Acquisitions at SUL, describes this structure and the new division of work within the merged department. — AF

The Acquisitions Department of the Stanford University Libraries (SUL) was formed on January 3, 2003 of the merger of three units: Monographic Order Services, Monographic Receiving, and Serial and Digital Acquisitions. The three units had formerly been part of a single department that was divided in 1995 as part of SUL Technical Services Re-engineering process. That department was called Serials and Acquisitions. As the head of the new department, I deliberately left the word “serials” out of the department name, with a goal of focusing on our work rather than on a given format.

The Acquisitions Department is comprised of fifty-four staff (46.75 FTE) who are responsible for ordering, receiving, and copy cataloging of monographs, ordering and receiving of serials, and acquisition of electronic resources.

The department managers soon began a strategic planning process as a means of determining the direction of the new department. Our strategic priorities were:

1. Implement the best methods to create efficient and effective operations, including:
   • Clear responsibilities
   • Effective methods to resolve problems
   • A plan to address employee and management competencies
2. Develop methods to align group and individual performance with SUL organizational needs
3. Design the acquisitions organizational structure to best support our mission and vision
4. Find most effective methods to strengthen relationships with partners, create informed consumers, and create respect for our expertise

In August, 2003 we considered several organizational models to determine which would best meet our strategic priorities as well as the following organizational imperatives:

1. Provide comprehensive support for purchase of and access to commercial electronic products.
2. Maintain a backlog-free environment despite cuts in staffing.
3. Prepare for Acquisitions’ role in the Stanford Digital Repository and other electronic archiving work, such as LOCKSS.
4. Based on these criteria, the managers group selected from several potential organizational models. The model that best met our strategic priorities and organizational needs is one that focuses on function and reduces emphasis on format. We selected this organization in part because of its transparency to those outside and to foster cross training and deployment of staff. We identified three core functions: ordering, receiving, and fiscal activities. Staff and tasks were arrayed in the following units:

Ordering

The Ordering unit will place all orders regardless of format and claim new orders. The staff will also be responsible for all cancellations and for renewal verifications, as necessary.