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## Cases of Note-When Copyright Act Doesn't Preempt

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# LEGAL ISSUES



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## Cases of Note — When Copyright Act Doesn't Preempt

Column Editor: **Bruce Strauch** (Retired, The Citadel) <strauchb@citadel.edu>

**Loretta Lynn v. Sure-Fire Music Company.** United States Court of Appeals for the Sixth Circuit. 2007 U.S. App. LEXIS 14050.

*"My daddy worked all night in the Van Lear coal mines*

*"All day long in the field a hoin' corn"*

Ah yes, **Loretta Lynn**, coal miner's daughter from Butcher Hollow, Kentucky. And Daddy indeed died of black lung.

And she married at 15, launched her career in 1953 with a \$17 Harmony guitar, became a Nashville fixture with 16 number-one hits.

In 1961, **Lynn** contracted with **Sure-Fire Music Company**, giving them world-wide copyright interests in her songs in exchange for royalties. In 1966, they re-executed with one big difference. If there was a change of ownership of **Sure-Fire**, the contract "shall be null and void."

*i.e., better the bandits you know ...*

By 2003, the original **Sure-Fire** owner brothers were out and other family members in. **Lynn** filed in state court for a whole bunch of stuff.

To wit: declaratory judgment that contract void; recover master recordings; breach of contract for failing to renew copyrights and failing to collect foreign royalties and other injuries, all of which were contract or tort claims.

The state court said it had no subject matter jurisdiction as the **Copyright Act** preempted the claims. She had to go to federal court.

So **Lynn** refiled in federal court asserting the same claims.

*Of course the opinion says "Lynn." It was her lawyer. She was busy writing "Don't Come Home A'Drinkin'." And I'm sure her lawyer had a delightful time explaining what happened next because clients are always so reasonable.*

**Sure-Fire** moved to dismiss on the grounds that **Lynn** was asserting state law claims and she should be arguing copyright. And the federal district court dismissed saying Copyright did not preempt and they had no subject matter jurisdiction.

**Sure-Fire** then appealed, insisting that **Lynn's** claims lay in copyright. And we go to the Sixth Circuit which hears appeals from Kentucky, Michigan, Ohio and Tennessee. It sits in Cincinnati in solemn, black-robed majesty at the Potter Stewart U.S. Courthouse.

A federal court has jurisdiction if the complaint invokes federal law. **Caterpillar, Inc. v. Williams**, 482 U.S. 386, 392 (1987).

*Duh.*

**Lynn's** complaint had no federal law. It was all contract law. But is the complaint, as **Sure-Fire** insisted, preempted by Copyright Law?

*And what was Sure-Fire's strategy? Were they so insistent on copyright because they hadn't violated copyright?*

*As you're about to see, Lynn's lawyer did the thing right from the get-go and has gotten totally jerked around and stalled.*

Preemption can only happen if (1) the work is within the scope of the "subject matter of copyright" which the songs were; and (2) her state law rights are equivalent to any exclusive

rights within copyright per 17 U.S.C. § 106. **Wrench LLC v. Taco Bell Corp.**, 256 F.3d 446, 453 (6th Cir. 2001).

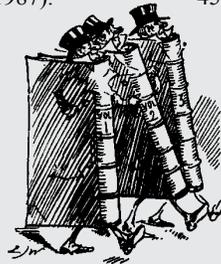
Rights protected under Copyright are to: (1) reproduce the work; (2) prepare derivative works; (3) distribute copies; (4) in the case of music, to perform it; (5) in the case of sound recordings, to perform by digital audio transmission.

**Lynn** wanted her recordings back and her foreign royalties paid over. She had to prove the formation and breach of a contract.

So the Sixth Circuit affirmed the district court's dismissal.

But back in state court, she would have to appeal their dismissal. Ye-gads.

Perhaps inspiring her to write "Full Circle." And for her attorney, "All I Want From You Is Away." 🐻



## Questions & Answers — Copyright Column

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**QUESTION:** *A university librarian asks about linking to copyrighted content and whether there is any liability when a library provides such links.*

**ANSWER:** In the United States, it is settled law that a search engine's linking to copyrighted content is not infringement. A couple of cases from the 9th Circuit U.S. Court of Appeals settled the matter. See **Kelly v. Arriba Soft Corp.**, 336 F.3d 811 (9th Cir. 2003) and **Perfect 10, Inc. v. Amazon.com, Inc.**, 508 F.3d 1146 (9th Cir. 2007). The cases held that the links actually direct searchers to the copyright holder's website where the full-size photographic image is stored. Google did not store the images. Therefore, linking is not direct infringement. The **Perfect 10** court also found that a search engine's link-

ing could be contributory infringement if the search engine's owners had knowledge that the infringing **Perfect 10** images were on its website and did nothing to take simple steps to prevent further damage to the plaintiff. The court went on to find that there was no vicarious liability because the search engine had no ability to police the infringing activities of third-party websites.

The situation is less clear in Europe, however, where some courts have held that linking is not copyright infringement, but other courts have disagreed. The distinction appears to be whether the link is to the copyright owner's own website or is to a third party's infringing website. The critical issue is whether the person providing the link knew or should have

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