CopyrightX Lecture 7: Rights of Reproduction and Modification

Selected Illustrations

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The following images appear in the background of the 7th lecture in the CopyrightX lecture series. A recording of the lecture itself is available at http://ipxcourses.org/lectures/. Removed from their original context, the images will not make much sense. The function of this collection of images is to enable persons who have already watched the lecture to review the material it contains.

The terms on which these materials may be used or modified are available at http://ipxcourses.org.
Set-top box

TV

Subscriber

DVR

Home

Cartoon Network

Warner Bros.

NBC

HBO

Cablevision

BMR

Arroyo Server

Primary buffer

Secondary buffer

hard drives

0.1 second buffer

1.2 second buffer

(1) Unauthorized reproduction?
No; too ephemeral

(2) Unauthorized reproduction?

(3) Public performance?
“Copies,” as defined in the Copyright Act, “are material objects . . . in which a work is fixed by any method . . . and from which the work can be . . . reproduced.” Id. § 101. The Act also provides that a work is “‘fixed’ in a tangible medium of expression when its embodiment . . . is sufficiently permanent or stable to permit it to be . . . reproduced . . . for a period of more than transitory duration.” Id. (emphasis added). We believe that this language plainly imposes two distinct but related requirements: the work must be embodied in a medium, i.e., placed in a medium such that it can be perceived, reproduced, etc., from that medium (the “embodiment requirement”), and it must remain thus embodied “for a period of more than transitory duration” (the “duration requirement”). Unless both requirements are met, the work is not “fixed” in the buffer, and, as a result, the buffer data is not a “copy” of the original work whose data is buffered.
Copying Nonliteral Features of Programs

• Whelan (CA3 1986)
• Plains Cotton (CA5 1987)
• *Altai (CA2 1992)
• Kepner-Tregoe (CA5 1994)
• Softel (1997)
Nichols “Pattern” Test

“Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about, and at times might consist only of its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of his "ideas," to which, apart from their expression, his property is never extended. Nobody has ever been able to fix that boundary, and nobody ever can. In some cases the question has been treated as though it were analogous to lifting a portion out of the copyrighted work; but the analogy is not a good one, because, though the skeleton is a part of the body, it pervades and supports the whole. In such cases we are rather concerned with the line between expression and what is expressed.”
Nichols “Pattern” Test
Nichols “Pattern” Test

Idea

Expression

Elements dictated by efficiency
Nichols “Pattern” Test

Expression

Idea

Elements dictated by external factors
Nichols “Pattern” Test

Elements taken from public domain
Comparison

Elements of defendant’s program

Protected Parts of Plaintiff’s program