CopyrightX Lecture 8: Rights of Distribution and Performance

Selected Illustrations

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February 27, 2014
The following images appear in the background of the 8th 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.

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Opposed Forces

Interests of Copyright Owners

1) Leverage over Intermediaries
2) Maximize demand for copies
3) Restrict Arbitrage and thus facilitate differential pricing

Attitudes resistant to restrictions on distribution

1) Resentment of greed
2) Skepticism concerning continuing control over objects
3) Hostility to differential pricing

106(3) 602(a) 109(a) 109(b)(1)(B) 109(b)(1)(A) 602(a)(1-3) 109(b)(1)(A) Quality King Kirtsaeng Omega Autodesk
Market Windows for Major Films from Release Date, circa 1990.

- Domestic theatrical
- Foreign theatrical
- Pay per view
- Home video
- Pay TV
- Foreign TV
- Network TV
- Syndication

Time in years

0 1 2 3 4 5 6 7
Vernon v Autodesk: Vernon’s narrative

Vernon's narrative

Authorized Copy Autodesk

sale

Authorized Copy Autodesk

resale 109(a)

Authorized Copy Vernon

Ebay

resale 109(a)

Authorized Copy Buyer
Vernon v Autodesk: Autodesk’s narrative

Authorized Copy Autodesk

Authorized Copy Vernon

Resale 109(a) n.a.

Resale 109(a) n.a.

Purported resale 109(a) n.a.

Lessee

Ebay

Authorized Copy Buyer

Copy

Authorized Copy Autodesk

Authorized Copy CTA

Copy
Vernon v. Autodesk: Holding

We hold today that a software user is a licensee rather than an owner of a copy where the copyright owner
(1) specifies that the user is granted a license;
(2) significantly restricts the user's ability to transfer the software; and
(3) imposes notable use restrictions
Violations of § 106

Cable TV & Radio System

Internet

Digital broadcast

Restaurant

E

F

G

H

January 14, 2021
Set-top box

TV

Subscriber

Cablevision

Warner Bros.

NBC

HBO

Cartoon Network

BMR

1.2 second buffer

Primary buffer
Secondary buffer
hard drives

0.1 second buffer

Arroyo Server

(1) Unauthorized reproduction?

(2) Unauthorized reproduction?

(3) Public performance?
“[I]n light of the purpose and text of the [Transmit] Clause, we conclude that when an entity communicates the same contemporaneously perceptible images and sounds to multiple people, it transmits a performance to them regardless of the number of discrete communications it makes.”
Aereo (2014)

“[A]n entity that transmits a performance to individuals in their capacities as owners or possessors does not perform to ‘the public,’ whereas an entity like Aereo that transmits to large numbers of paying subscribers who lack any prior relationship to the works does so perform.”
Aereo (2014)

“[T]he doctrine of ‘fair use’ can help to prevent inappropriate or inequitable applications of the [Transmit] Clause.”