



IP Mississippi



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Higher Education Community of Mississippi

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RapidShare Ordered to Prevent Illegal Sharing

RapidShare, a file-sharing website, has been ordered to employ more aggressive tactics to prevent the unauthorized exchange of 148 copyrighted books. The order, issued by a German court in early February, was sought by six major textbook publishers, including McGraw-Hill, Pearson, and John Wiley & Sons. If RapidShare violates the injunction, it faces potential penalties of up to \$340,000 per copyright violation.

The publishers had contended that many books are frequently exchanged unlawfully on the website. RapidShare, which intends to appeal the ruling, argued that German privacy laws prevent the use of filters which would check for potential copyright violations. The Association of American Publishers, which had called for a crackdown on illegal textbook sharing over internet sites, applauded the decision.

GMAC Suit Settles for Fine, Apology

The Graduate Management Admission Council, which administers the GMAT, has settled a copyright infringement case against Beijing Passion Consultancy Ltd, a Chinese test-preparation company. The GMAT is an admissions test used by business schools throughout the world. The GMAC accused Beijing Passion of selling copyrighted test questions from materials published by the Council. As part of the settlement, Beijing Passion Consultancy will issue a public apology, pay of fine of almost \$80,000, and warn students about the consequences of cheating.

“IP Mississippi” is a publication of the Mississippi Law Research Institute designed to keep educators and administrators at Mississippi universities aware of current happenings in the world of intellectual property.

The Mississippi Law Research Institute is a division of the University of Mississippi School of Law. The IP Group is composed of two attorneys, William T. Wilkins and A. Meaghin Burke. For more information, please visit the website at <http://www.mlri.olemiss.edu>, or feel free to contact the IP Group at (662) 915-7775.

UF Patent Held Invalid

Federal law prohibits the granting of a patent to an inventor if the invention was published more than a year before the application was filed. The United States Court of Appeals for the Federal Circuit applied this law to invalidate a University of Florida patent application because an earlier advertisement in a body-builder magazine revealed important information about the invention. The Court of Appeals held that the advertisement described the product in sufficient detail to constitute an “anticipatory printed publication.”

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IP News of Note

- In late December 2009, the University of Iowa recently settled a lawsuit against Abbott Laboratories involving two patents: a gene expression patent and a protein production patent. The University of Iowa's lawsuit claimed that Abbott's highly successful anti-arthritis drug Humira infringed the two patents. The terms of the settlement are confidential, though an Abbott spokesperson described the settlement as "reasonable."
- A federal magistrate judge ordered Pfizer Inc. to pay over \$850,000 to Brigham Young University for causing unnecessary delays in their ongoing patent litigation. Brigham Young University filed suit against Pfizer Inc., claiming that a BYU professor helped invent Celebrex (a highly successful Pfizer drug).
- Spoon River College, an Illinois community college, has abandoned its "Mudcats" nickname after the Carolina Mudcats, a minor-league North Carolina baseball team, threatened to sue over the name. The college had only used the nickname for three years and was unwilling to bear the costs of protracted trademark litigation.
- In October 2009, on the eve of trial, the University of Wisconsin-Madison settled its lawsuit against Intel Corp. The University's lawsuit claimed that some of Intel's processors contained technology that infringed on a University patent. The terms of the settlement are confidential.
- In November 2009, a federal district judge ruled that the University of Alabama's football uniforms are not protected by trademark law. The ruling emerged from the University's lawsuit against Daniel Moore, a popular sports artist who has produced many realistic paintings of University of Alabama football players. The federal district judge also ruled, however, that Moore may owe royalties to the University for smaller reproductions of those paintings on merchandise such as cups, mugs, and T-shirts. Moore has already had one appeal rejected by a higher court; the University still plans to appeal.

University of Southern California Wins TM Dispute

The University of Southern California recently won an important trademark victory against another university. The University of South Carolina had attempted to register an interlocking "SC" trademark with the United States Patent and Trademark Office. The University of Southern California opposed South Carolina's registration, arguing that the mark was confusingly similar to Southern Cal's own interlocking "SC" logo. South Carolina, in reaction to the opposition filing, moved that the Southern Cal mark should be cancelled because it suggested a false connection to the state of South Carolina.

The Trademark Appeal Board agreed with the University of Southern California that the marks were confusingly similar, especially since the marks are used on such similar types of merchandise. The TTAB also dismissed South Carolina's cancellation argument, finding that South Carolina lacked standing to bring a claim for cancellation. The Appeal Board noted that Southern Cal's mark had priority because South Carolina had abandoned its use of the "SC" mark for much of the 1980s. The University of South Carolina appealed the ruling to the federal circuit, which affirmed the Trademark Appeal Board's decision, though (partly) on different grounds.

AN INTRODUCTION TO LIBRARY COPYING

Do libraries have special permission to use copyrighted works?

Lawmakers are aware that libraries have special needs that would be hard to fill if a fair use analysis had to be done every time something was photocopied. The law therefore offers special treatment to libraries. Generally (and slightly simplified), libraries are allowed to copy copyrighted material in the following situations:

1. Library employees are allowed to make or distribute one copy of a copyrighted work if the copying is not done for the purpose of gaining a commercial advantage, the library's collection is open to the public, and the copyright notice of the work is included on the copy.
2. If a library currently holds an unpublished work, the library may make three copies of the work in order to preserve it or deposit it in another library.
3. A library may make three copies of a published work in order to replace a damaged, deteriorated, lost or stolen work. To take advantage of this allowance, however, a library must make reasonable effort to secure a new replacement. If the library cannot secure a new replacement at a fair price, it may utilize this exception.
4. Libraries may make or secure copies of small parts of copyrighted material if the copy becomes the property of the user and the library has no notice that the copy will be used for anything other than private research or study.
5. If a user requests the entire copyrighted work, or a large part of it, a library may secure or make the requested copies if the work is not available at a fair price and the copy becomes the property of the user for private study.

What can a library do to protect itself against liability for any unauthorized copying by its patrons?

The Copyright Code contains a provision that protects libraries against liability for unsupervised patron use of copying equipment in the library, provided that the library prominently displays a sign advising patrons that the making of copies may be subject to copyright law. This warning does not have to contain particular language as long as patrons are adequately advised that the copying, displaying, or distributing of copyrighted works may infringe the owner's rights.

What is a library allowed to copy in response to a patron's request?

If a patron asks the library to supply a copy of an article or section of a book that is in the library's collection, the library can supply the copy to the patron provided that three requirements are met. First, the patron must become the owner of the copy. Second, the library must not have notice that the copy is intended to be used for any purpose other than private study, research, or scholarship. Finally, the library must both display and supply the following warning verbatim:

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

If a patron requests the copying of an entire work, the same three requirements must be met, with one additional requirement. The library must determine that a copy of the work cannot be obtained at a fair price.

Remember:

- If in doubt about utilizing copyrighted material, it is better to secure permission from the copyright holder.
- This brochure is intended to introduce the reader to the world of library copying. It is not, nor is it intended to be, a substitute for legal advice.