



IP Mississippi



Intellectual Property News for the
Higher Education Community of Mississippi

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Digital-Copyright Act Exemptions Enacted

Academics achieved an important victory with respect to the Digital Millennium Copyright Act (DMCA). The DMCA, which criminalized the production of technology intended to bypass protection mechanisms on copyrighted material, recently had several exemptions carved out. The DMCA created many problems for professors. For instance, one professor noted that because he was no longer allowed to create media compilations for in-class use under the DMCA, up to ten percent of his class time was now spent manually fast forwarding DVDs.

The United States Copyright Office recently handed down several exemptions to the DMCA which will give academics some breathing room with respect to access-controlled media. The exemption with the most applicability to the academic world allows film and media studies professors to bypass protective mechanisms on DVDs to make compilations. The six exemptions that were issued will expire after three years.

Protection of Trademark

The University of Wisconsin-Madison has dealt with over twenty incidents of unauthorized use of its famous logo, the "Motion W." Recently, a West Virginia high school's use of a similar symbol was brought to the University's attention. The high school plans to defend its use of the logo if an action is brought by the University; the University has not yet taken any action against the high school. The University noted, however, that trademark owners have an obligation to protect their marks.

Welcome

Welcome to "IP Mississippi," a new publication by the Intellectual Property Group 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. Each edition of this quarterly newsletter will contain summaries of newsworthy events that occur at the intersection of higher education law and intellectual property law and will also present a basic introduction to a relevant area in intellectual property law.

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State Immunity Weakened

The United States Court of Appeals for the Federal Circuit has lessened the ability of state universities to protect themselves from suit in federal courts. In a recent case, the Federal Circuit held that the University of Missouri had waived its immunity by initiating administrative patent proceedings against a private company. The Court held that using administrative proceedings to challenge the granting of patents to other parties constituted a voluntary invocation of federal jurisdiction.

Princeton Makes Deal for Free Tunes

Princeton recently made a deal with Ruckus, a company that caters specifically to college students, which will allow Princeton students to download free music tracks without breaking the law. Many universities have similar deals with various companies in an attempt to curb illegal file swapping by students. The service was met with generally positive reactions by students, though some have grumbled about the incompatibility of the downloaded tracks with iPods.

Legislation of Note

Higher Education Amendments of 2007

The United States Senate recently passed a bill that, among other things, would require universities to inform students annually of copyright law, penalties for violation of copyright law, and a description of the institution's policies concerning copyright violations that take place using university equipment. The bill, known as the Higher Education Amendments of 2007, was passed in the Senate in late July and is currently awaiting action in the House of Representatives.

Patent Reform Act of 2007

The U.S. House of Representatives recently passed a bill which would make sweeping reforms to the American patent system, including a transformation to first-to-file as opposed to first-to-invent. The Patent Reform Act of 2007 was passed by the House in September 2007 and is now in the United States Senate.

University Abandons Football Ritual over Copyright Worries

The University of Hawaii recently abandoned a pre-game ritual out of concern that copyright laws were being violated. Before games, the University of Hawaii would perform a specific kind of haka which was invented by New Zealand tribal leader Te Rauparaha. A haka is a war dance with involved choreography and chanting. The University ceased performing the haka after a professor expressed concern that the football team may be encroaching on intellectual property rights by performing the ritual without permission.

University Sues Artist

Daniel A. Moore, a highly successful artist who specializes in recreating famous moments in University of Alabama football history, was recently sued by the University of Alabama. Among other things, the University sought to have Moore enjoined from using its distinctive crimson and white color scheme. Moore has moved to have the case dismissed on First Amendment grounds; a decision is expected within a few months.

Texas Tech Wins Millions from Retailer

Texas Tech University recently sued Red Raider Outfitter, a Lubbock college apparel retailer, for trademark infringement. Red Raider Outfitter had been a licensed retailer of Texas Tech University goods for many years. That license was terminated, however, by the University. The retailer continued to sell unlicensed merchandise after the license was terminated. Texas Tech University successfully sued and recovered \$2.9 million in damages from Red Raider Outfitter.

AN INTRODUCTION TO COPYRIGHTS

What is a copyright?

A copyright is a way of protecting an author's original works. Copyright protection commences as soon as an author puts an original work into a "fixed medium of expression." In other words, authors whose original works have been captured in some way (on paper, video, compact disc, etc.) are entitled to certain rights.

Even if an author doesn't publish his or her work, the work is still protected under federal copyright law. It is commonly believed that an author can mail himself a copy of his work in order to secure a copyright. This process does not create a copyright in the author, however. The copyright was created as soon as the work was put down in a fixed form.

A copyright gives the author a certain amount (but not unlimited) control over how others use the copyrighted material.

What is covered by copyright? What can't be copyrighted?

Lots of different things can be copyrighted. Books, plays, songs, audio recordings, photographs, paintings and other creative works can be protected by copyright. Copyrights, however, cannot be given to *ideas*. Copyright is intended to protect a particular expression of an idea – not the idea itself. For instance, an author can get a copyright on a book he wrote discussing modern theories of philosophy. He cannot, however, copyright the theories themselves because those theories are ideas and are not allowed to be copyrighted.

How do you get copyright protection?

An original work is protected by copyright as soon as it is put down in a fixed form. Many people, however, gain an additional layer of protection for their works by registering them with the United States Copyright Office. By registering their copyrights, authors have more remedies available to them if they decide to sue a copyright infringer.

Copyright registration is not as complicated as it might sound. Applicants for registration must send a fee and two copies of their work to the United States Copyright Office. The fee for registration is currently forty-five dollars.

What does it mean to have a copyright?

A copyright owner gets to control many things about his work: the right to reproduce and adapt the work, the right to distribute and perform the work, and the right to display it in public places. A copyright owner also gets to sue those people who violate these exclusive rights without his permission.

What can you do with a copyrighted work if you're not the author?

Even though copyrighted works are given lots of protection, the public still has some freedom to utilize the copyrighted works in limited ways without getting permission from the owner. There are several exceptions, the most well-known of which is called "fair use." The exceptions allow the public to utilize copyrighted materials in very limited ways without being required to pay.

Fair use. Fair use is a very complicated legal area because courts examine a fair use defense on a case-by-case basis. Fair use is a defense against copyright infringement, and there is little concrete guidance on

what constitutes fair use. Generally, a court will consider whether the use is commercial or educational, the nature of the copyrighted work, the relative amount of the copied portion to the whole work, and the impact that the use will have on the copyrighted work's value. As you might imagine, this kind of legal analysis can get tangled fairly quickly. The legislature has, however, listed certain purposes which it deemed likely to constitute fair use. These purposes include "criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, [and] research."

Face-to-face teaching. Teachers and students have a special exception that allows them to perform or display a copyrighted work in the course of face-to-face teaching activities. There is one limit to this exception: the copy may not be shown if the person showing it *knows* that the copy was unauthorized or illegal. It is important to note that distance education courses (even courses that are just transmitted through a building or across campus) do not get to take advantage of the face-to-face teaching exception. Other complicated exceptions and rules apply to those types of courses.

Other exceptions. Many other exceptions also allow limited use of copyrighted works. For instance, librarians and archivists have an entire group of laws designed to permit certain copying. Also, as mentioned above, online education has its own rules which were established by the TEACH Act. Hotel and apartment managers are given limited permission to conduct secondary transmissions. Organizations which transmit sound recordings are allowed to maintain ephemeral recordings or copies of the licensed product in order to assist in the transmission process. Congress also created a process called "compulsory licensing." Under compulsory licensing, the owner of a copyright is required to allow others to use the copyrighted work for a set fee.

Remember: If in doubt about utilizing copyrighted material, it is better to secure permission from the copyright holder.

The information contained in this newsletter is intended for Mississippi universities and for informational purposes only. It is not intended as nor should it be relied on as legal advice. As with all legal issues, this area is complex, ever changing and fact specific. If you do require legal advice, please contact your University Attorney.