

Copyrights in the Digital Millennium

Kenneth P. Mortensen, Esq.

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Contact Info

- Kenneth P. Mortensen
- 610-408-8388
- ken@harveymortensen.com

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Copyright

- Work created when *fixed*.
 - *fixed* means perceptible for more than a transitory period.
- Derivative work if based upon existing work or works
- No Copyright available for:
 - idea, procedure, process, system, concept, principle, or discovery

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Copyright Rights

- Owner may:
 - reproduce, prepare derivative works, distribute, perform, or display
- Fair Use Doctrine
 - May copy work for:
 - criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research

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Feist v. Rural Telephone

- Issue: When is a work, not a work?
- Can facts be copyrighted?
- Need for originality?

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Feist v. Rural Telephone

- Held: Factual compilation is eligible for copyright if it features original arrangement.
- But: Underlying facts cannot be copyrighted.
 - Statutory duty could defeat copyright.

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Digital Millennium Copyright Act

- The Digital Millennium Copyright Act, signed into law on October 28, 1998, amended the copyright law to
- provide limitations for service provider liability relating to material online.

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Digital Millennium Copyright Act

- New subsection 512(c) of the copyright law provides limitations on service provider liability with respect to information residing,
- at direction of a user, on a system or network that the service provider controls or operates,
- if the service provider has designated an agent for notification of claimed infringement by providing contact information to the Copyright Office and through the service provider's publicly accessible website.

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Digital Millennium Copyright Act

- Sec. 512 (i) Conditions for eligibility.
- (1) Accommodation of technology.
The limitations on liability established by this section shall apply to a service provider only if the service provider--

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Digital Millennium Copyright Act

- (A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

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Digital Millennium Copyright Act

- (B) accommodates and does not interfere with standard technical measures.

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Digital Millennium Copyright Act

- ☀ (2) Definition. As used in this subsection, the term "standard technical measures" means technical measures that are used by copyright owners to identify or protect copyrighted works and--

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Digital Millennium Copyright Act

- ☀ (A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

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Digital Millennium Copyright Act

- ☀ (B) are available to any person on reasonable and nondiscriminatory terms; and
- ☀ (C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

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Digital Millennium Copyright Act

- Sec. 512(h) Service provider.
- (A) As used in subsection (a), the term "service provider" means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

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- (B) As used in this section, other than subsection (a), the term "service provider" means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

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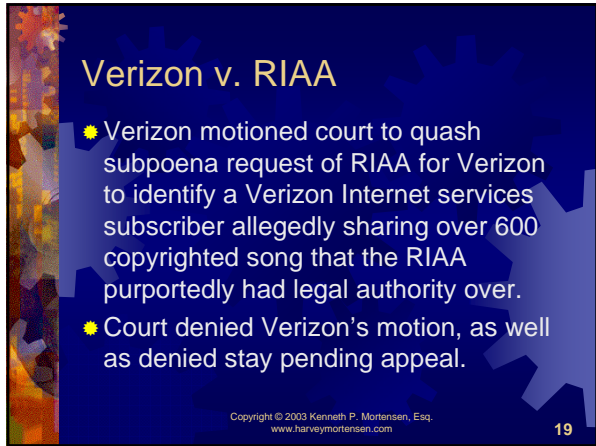
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Costar v. Loopnet

- Costar owned copyright in photos of property
- Loopnet was service provider of commercial rental property online web-catalog.
- Costar claimed "no harbor" because Loopnet did not "remove" infringing images.

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Verizon v. RIAA

- Verizon motioned court to quash subpoena request of RIAA for Verizon to identify a Verizon Internet services subscriber allegedly sharing over 600 copyrighted song that the RIAA purportedly had legal authority over.
- Court denied Verizon's motion, as well as denied stay pending appeal.

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