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YEAR IN REVIEW
Copyright

PBI Intellectual Property Law Institute

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Copyrightability

Code Revision Commission v. Public.Resource.com, Inc. **906 F.3d 1229 (11th Cir. October 19, 2018)**

- Action brought on behalf of the General Assembly of Georgia and the State of Georgia alleging that the publication of an annotated compilation of Georgia statutes infringed on State's copyright in the work
- Georgia makes a simple text of its legal code available online, but hires a third party to create a more robust annotated version (which costs money to access)
- Public.Resource.Org Inc. published the annotated version without permission
- Court holds that the annotated version is sufficiently law-like that it was constructively authored by the People, and not copyrightable

Copyrightability

Ferguson/Ribeiro v. Epic Games, Inc.; Take-Two Interactive Software, Inc. (C.D. Cal.)

- “Pantomimes and choreographic works” are copyrightable; Simple dance moves are not (e.g., touchdown celebrations)
- Copyright Office refused registration for Ribeiro’s “Carlton Dance”; no decision yet on Ferguson’s “Milly Rock”
- Both dances used in video game
- Cases voluntarily dismissed (see prior discussion of registration requirements)



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Copyrightability

Google, LLC v. Oracle America, Inc.

Second Petition for a Writ of Certiorari (Supreme Court 2019)

- Petition to review judgement of Fed. Circuit decision applying 9th Circuit law
- Appellate Holding: A software interface is copyrightable and that use of a software interface in a new computer program cannot constitute fair use as a matter of law
- Questions Raised:
 - Whether copyright extends to a software interface
 - Whether, as the jury found, use of a software interface in the context of creating a new computer program constitutes fair use

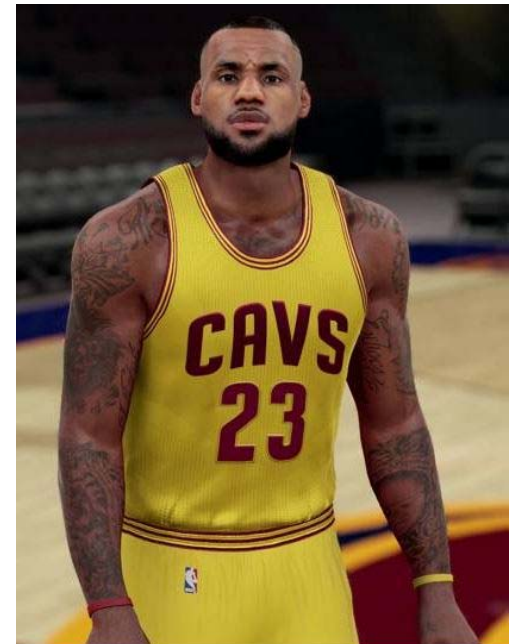
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Personality and Privacy

Solid Oak Sketches, LLC v. 2K Games, Inc. and Take-Two Interactive Software, Inc.

2018 WL 1626145 (S.D.N.Y. March 30, 2018)

- Alleging that tattoos displayed in video game infringe copyrights in tattoo art
- Defendants moved to dismiss, but motion was denied
- Copyright being used to limit athletes' ability to license their likenesses and, in effect, limiting personal freedom and personality rights



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Personality and Privacy

Jeff Bezos and National Enquirer

- National Enquirer obtained racy photos of Bezos and allegedly used those photos in an attempt to extort and blackmail Bezos
- Bezos responded publicly
- Copyright in the photos became point of discussion
- Bezos: “AMI has no right to publish photos since any person holds the copyright to their own photos, and since the photos in themselves don’t add anything newsworthy.”

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Legislation

Orrin G. Hatch–Bob Goodlatte Music Modernization Act

Update to music licensing landscape – compulsory licenses for streaming music (mechanical licenses only, songwriters); pre-1972 sounds recordings covered by copyright; SoundExchange to distribute royalties to producers/engineers

The Marrakesh Treaty Implementation Act

Eligible persons (e.g., blind, visually impaired, or otherwise reading disabled) to make free use of written works in accessible formats (e.g., braille, large print, or audiobook) and permits accessible works to be sent between countries that are signatories to the Marrakesh Treaty

Directive on Copyright in the Digital Single Market (EU Copyright Directive)

“Link Tax” – Gives publishers control over re-use of their content by Internet platforms

“Upload Filter” – Requires websites that display primarily user-generated content to take “effective and proportionate” measures to prevent the unauthorized posting of copyrighted content, or be liable for their users’ actions

Questions?



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Shaun Bockert focuses on intellectual property and technology matters with a special focus on software and technology transactions; copyright in the context of software and new media; digital advertising and marketing; and data aggregation and privacy issues.

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