

Internet Content Application of International Copyright Law

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Abstract

Copyright ownership of literary or artistic work has been delineated through international laws for over three hundred years. The nature and design of reproduction methods implicating technology from the printing press to data file storage has been an important aspect of recording an original author ownership within this context. The interconnected computer system of the internet relates important issues of jurisdiction, identification of ownership, enforcement of ownership claims, and possible conflicting parameters in the international scenario of file data file storage and transmission. The feasibility of showing a direct traceable injury that can be redressed within sound and video or image formats of files and within live or recorded media is a significant factor in cases that have been filed with changes in future approach to these cases being a valuable aspect to plaintiffs.

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Introduction

The concept of ownership rights has evolved throughout time and greatly implicates current litigation and legal theory as a result of technological advancements. The development of products that could be distributed as copies of the original resulted in a further development of ownership rights into copyright theory. The subsequent increased production capability facilitated translation of products across national boundaries causing further diverse population and cultural interactions. International differences in law practice associated with copyright then found a major role in protecting rights of both producers and consumers.

The international concept of reciprocal protection initiated the legal methods of copyright protection. If written works were published simultaneously in the same context in another country in addition to the country of origin there would be an extension of material monitoring for prevention of unauthorized use. When multiple countries became involved it became necessary to create a treaty that would officially encompass copyright protection. The Berne Convention of 1886 created an official multinational treaty subsequent to attempts of starting universal copyright agreements such as in Rome and prior to regional bilateral agreements such as the International Copyright Protection Act or Chace Act of 1891 where the United States and United Kingdom started agreements. These initial developments were followed by a trend for increased producer or author predefined protection such as the 1908 Berlin Act and the 1971 Paris Act which focused on country of origin terms and literary content. Further specification to derivative works requiring the original author permission also became applicable in this practice.

The structural basis of internet function necessitates a re-examination of the basis of copyright applicability to demonstrated works. The jurisdictional complexity of a potential case whereby a product from a company that is illegally copied in another jurisdiction and then enabled for public access in a possible third jurisdiction implicates the idea of fair play when deciding legal venue and applicable doctrine. The interplay between author protection and consumer fair use results in conceptual and monetary damages that affect the unique and original production intended for public use in a managed context. Within a given country copyright violations arise under federal law when examining United States cases. The applicability of subject matter jurisdiction, personal jurisdiction, and forum selection clauses within international internet violation cases necessitates a further definition of the minimum contacts criteria and level of process to avail a given area when determining which legal doctrine to utilize.

Internet Jurisdiction with Geographical Jurisdiction

The progression of internet technology as a means for activity implicates the definition of physicality in determination of a court's jurisdiction over an individual. The transmission of information in the form of words, images, videos, and visual and/or audio designs can occur through an electronic medium that causes a perceptive dissociation between the source and receiver within any particular transaction. Over the last twenty years case law and statutes have evolved to address and account for the relative effect of a change in interaction methodology. (1) The assumption of legality in this format cannot be assured by the physical means chosen for transactions. The nature in quality and quantity of violations in copyright in electronic media includes cases involving information of literature, art, music, and data in formats of text, images, videos, and sound. The existence of copyright laws for the past three hundred years with

reference to technological production and distribution apply within this context in a similar manner.

U.S. Copyright Act

§ 102 of the U.S. Copyright Act in reference to subject matter states:

(a) Copyright protection subsists in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories: (1) literary works, (2) musical works, including any accompanying words, (3) dramatic works, including any accompanying music, (4) pantomimes and choreographic works, (5) pictorial, graphic, and sculptural works, (6) motion pictures and other audiovisual works, (7) sound recordings, and (8) architectural works

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

§ 106 of the U.S. Copyright Act in reference to exclusive rights in copyrighted works states that subject to sections 107 to 122, the owner of a copyright under this title has the exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies and phonorecords, (2) to prepare derivative works based upon the copyrighted work, (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending, (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures, and other audiovisual works to perform

the copyrighted work publicly, (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly, and (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

The Berne Convention Statutes - U.S. Statutory Provisions

The Berne Convention Implementation Act of 1988 under Title 17 § 101 of the United States Code has through Congressional declaration stated:

(1) The Convention for the Protection of Literary and Artistic Works signed in Berne, Switzerland on September 9th, 1886, and all acts provisions, and revisions thereto (hereafter in this work referred to as the Berne Convention) are not self-executing under the Constitution and laws of the United States.

(2) The obligations of the United States under the Berne Convention may be only performed pursuant to appropriate domestic law.

(3) The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention and no further rights or interests shall be recognized or created for that purpose.

The provisions of the Berne Convention, in reference to relationship with domestic law:

(1) Shall be given effect under title 17, as amended by this Act, and any other relevant provision of Federal or State law, including the common law, and

(2) Shall not be enforceable in any action brought pursuant to the provisions of the Berne Convention itself

The provisions of the Berne Convention, in reference to certain rights not affected with the adherence of the United States thereto, and satisfaction of United States obligations thereunder, do not expand or reduce any right of an author of a work, whether claimed under Federal, State, or the common law when considering:

(1) To claim authorship of the work or

(2) To object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author's honor or reputation.

U.S. Copyright International Applicability

The subject matter of the U.S. Copyright Act as stated in Title 17 U.S.C.A 102 states that copyright protects original authorship that is present in a tangible medium with subsequent ability to experience directly or through a machine or device. Tangible examples include artistic text, picture, and sound audiovisual works specifically referring to musical sound recordings, pictographs, motion picture, and literary works. Copyright protection does not extend to intangible works or components of copyright protected works such as principles, ideas, methods of operation, or concepts. Copyright protected works under the U.S. Copyright Act may not extend, reduce, or rely on protectional provisions provided by the Berne Convention.

U.S. Copyright Act Case Jurisdiction

Under Title 17 U.S.C.A 106 a copyright owner has the ability to reproduce, make derivative works, and distribute copies of their work including artistic text, visual, and auditory

tangible authorship. Sound recordings are protected internationally through the Geneva Phonograms Convention and the WIPO Performances and Phonograms Treaty. The implication of liability in copyright violation examines the source of the copyright and the location of injury or violation. After a determination of valid copyright through holding of an original conceptualization and proper registration documentation a further evaluation of fair use by the alleged copyright infringer must occur. Subsequently, the choice of law determination depends on convention of national statutes and agreements between nations, which differ according to the use of copyright source or violation location.

Regional, such as state, differences in legal effect can determine the liability and enforcement of a copyright infringement case. In the United States, federal court applicability occurs through, diversity jurisdiction, personal jurisdiction, subject matter jurisdiction, and supplemental jurisdiction. Furthermore, states can have personal jurisdiction in another state if certain conditions exist in the case. If an individual has a minimum number of contacts within the forum state and has purposefully availed him/her self of the forum state advantageously the analysis of reasonableness in traditional notions of fair play can be applied to gain jurisdiction over an individual. Also, if a violation of law occurs in the forum state there can be jurisdiction over the individual causing the violation. The applicability of this concept to internet copyright violations implicates the format of a remote server holding information that is accessed by a user computer from any potential region.

Legal jurisdiction over a defendant in internet violations usually occurs at the federal level. When two or more countries are implicated within a case, an individual federal jurisdiction where a cause of action is filed or international law such as through a treaty can apply to the case facts. Federal jurisdiction in the United States can occur through subject-matter, diversity, or by

removal of a state filed case to a federal jurisdiction. A case filed within a state must have been capable of being filed federally or have a federal law issue within the state law cause of action to be removed to a federal jurisdiction. Jurisdiction for commerce generally is dependent upon physical presence, continuous and systematic contacts, purposely availing oneself of jurisdictional laws, and express or implied consent. Placing an object in the stream of commerce does not necessarily implicate the laws of any one jurisdiction in which a case arises but directing a product to a particular jurisdiction does implicate jurisdictional laws. A copyright violation that is intended for profit on a website accessible from any location implicates the physical presence of the copyright infringer such as through their server location or principle place of business.

In *Bensusan Restaurant Corp. v. King* there a redirecting of internet traffic from a Missouri restaurant to a New York restaurant initiated a cause of action by the New York restaurant of infringing activity in violation of name use permission and associated website utilization. The violation in this case represents a similar violation as present in copyright use infringement with use of a name. Although the defendant felt there could be no customer confusion between restaurant names the plaintiff indicated damages and injury in their cause of action. *Bensusan Restaurant Corp. v. King* 937 F. Supp. 295, 295 (1997). This type of violation can then be extended to more replicable forms of copyright infringement.

Internet Jurisdiction with Subject Jurisdiction

The U.S. Copyright Act, generally with physical objects such as cassettes, has addressed international copyright violation cases with precedent stating that illegal reproduction and distribution cannot be pursued unless there is a domestic violation present. When specific proof of such domestic involvement cannot be presented, a cause of action cannot be filed under this

act. Some alternate procedural directions where the presence of an initial violation preceding transport or distribution such as burglary or illegal copying could present a cause of action that allows pursuit in international legal forums.⁽¹⁴⁾ Internationally, cases such as *J. McIntyre Machinery Co., Inc. v. Nicastro* have examined jurisdiction between countries where products have been placed in the stream of commerce without intent to avail the economy of a particular state and have depended upon the level of physical interactions in determining a legal jurisdiction. *J. McIntyre Machinery Co., Inc. v. Nicastro* 131 S. Ct. 2780 564 U.S. 873, 873 (2011). Other international cases such as *Graduate Management Council Admissions v. Raju and Pearson Educational Group v. Kumar* indicate intent to increase sales in a particular state and have found to substantiate legal jurisdiction. *Graduate Management Council Admissions v. Raju* 241 F. Supp. 2d. 589, 589 (2003), *Pearson Educational Group v. Kumar* 721 F. Supp. 2d. 166, 166 (2010). These cases involve a combination of electronic and physical aspects to a particular interaction allowing a clear legal jurisdiction over an individual.

The Zippo sliding scale approach from *Zippo Mfg. Co. v. Zippo Dot.com* can be used to determine if there is a reasonable nature of which a forum state or region is implicated examines the interactivity of a website. When a business transaction occurs to deliver a physical product there is a clear jurisdiction and when there is just a posting of information with no user interactivity there is no jurisdiction. When there is a combination of posting and viewing information there exists a case-by-case determination by the court to determine jurisdiction. Further methods have been developed to establish the role of jurisdiction within internet cases. The interactivity level of a website can be used as one factor of many to determine jurisdiction of a court over a defendant. These cases utilize constitutional principles where interactivity is not considered a sensitive indicator of use violation implicating presence of content as a determining

factor in the existence of a justified cause of action. *Zippo Mfg. Co. v. Zippo Dot.com* 852 F. Supp. 1119, 1119 (1997).

A specific aspect of these cases involves posting of copyrighted material without consent and at any level of interactivity in a jurisdiction where the initial server is in a different location than the copyright claim cause of action and the user of content. This scenario involves both differences in state law and international law. Generally, internet copyright violation cases arise under federal jurisdiction with most issues of copyright claim involving differences in international law. *Revisiting International Copyright Law Roberto Garza Barbosa Barry Law Review* (1997). The initial offering of copyright protection within the Berne Convention and UCC states that when a work is released simultaneously in member countries there will be the same level of protection in all the member countries. Legal protection in copyright claims includes notice to remove the content within a defined period of time and consequences of damages including monetary and criminal charge implications. The intent and feasibility of enforcement of a copyright claim in the international forum becomes the next aspect of addressing internet related copyright possession and distribution actions.

Internet Jurisdiction with Procedural Jurisdiction

A copyright claim in an international forum necessitates a compromise between the federal law procedure between any two or more nations. In *Murray v. British Broadcasting Corp.*, a character creator whose work had been unlawfully implemented in a British and American forum filed request for equitable relief. The doctrine of forum non conveniens was implicated where jurisdiction was not granted even though a valid request was submitted. This decision was substantiated by the reasoning that the plaintiff filing reason being that of affordability of court fees in a contingent fee-based system was insufficient to necessitate a

remedy in a foreign forum. Further internet based applications can be applied within a similar context. *Murray v. British Broadcasting Corp.* 81 F. 3d 287, 287 (1996).

The infringement of copyright in another public format with similar implications can be seen within internet examples such as *The Football Ass'n Premier League, Ltd. v. Youtube, Inc.* where posting of a live broadcast was exempted from fair use practices with damages awards designated but the failure to register the broadcast prior to the violation prevented this case result. *The Football Ass'n Premier League, Ltd. V. Youtube, Inc.* 633 F. Supp. 2d. 159, 159 (2009). The interactive nature of the website within the Zippo sliding places it in a mid-range position requiring judicial discretion regarding the ability for jurisdictional forum claim ascertainment. The progression from literary publications simultaneously in multiple countries to broadcast violations and next to interactive public violations demonstrates a continued complexity and challenge to legal definition and regulation in copyright protection. Further jurisdictional examples can be referenced, such as in *Liberty Media Holdings LLC v. Vinigay.com*, where a server located within a particular state implicated the laws within that state for liability of copyright infringement although the website could be accessed from anywhere. *Liberty Media Holdings LLC v. Vinigay.com* WL 2011 74300062 (2011).

Internet Contextual Jurisdiction

Copyright Ownership

Copyright ownership claims require a proof of authorship and registration to be a basis of a cause of action. *SHL Imaging Inc. v. Artisan House, Inc.* addresses the analysis of the originality of a work where the difference between creative and technical processes implicates the authorship requirement when describing the steps in creating a photograph and associated

effects within the photograph and the final product of intention as a whole. Further analysis discusses the originality of nature photographs as being a work of original art or technical processing when filing an authorship claim. The court validation of the plaintiff's argument for authorship indicates a liability to the distributor for use of the work. *SHL Imaging, Inc. v. Artisan House, Inc.* 117 F.Supp. 2d. 301, 301 (2000). *O'Reilly v. Valley Entm't* describes a case implicating unauthorized music file distribution of an unregistered work but still found valid secondary to U.S. Copyright and Berne Convention law agreements protecting the work based on location of production. *O'Reilly v. Valley Entm't, Inc* 2011 U.S District LEXIS 15826. The specificity of copyright claims can influence the ability to find infringement liability. *Bridge Publs., Inc. v. F.A.C.T.Net* describes a case where the Church of Scientology educational program information was displayed on an information provision site with a subsequent finding of infringement. The fact application to copyright registration elements was able to provide significant basis of an unauthorized use of information. *Bridge Publs., Inc. v. F.A.C.T.Net.* 183 F.R.D. 254, 254 (1998).

Copyright claims over internet broadcasting further contribute to the complex nature of accommodating a legal structure based on low frequency signal transmission through a physical medium to a receiver as compared to over a closed fiber optics network or wirelessly to website based servers that allow both a combination of live and rebroadcast formats. The standing to file a claim is addressed in *Garcia v. Google* where a plaintiff who posted a movie trailer in which they had an acting role was found to not be sufficient to substantiate a claim of infringement. *Garcia v. Google* 786 F.3d. 733, 733 (2015). The court considered the time length of the plaintiff's role and the level of production responsibility in determining the ability to qualify as a valid copyright holder. *Video Pipeline, Inc. v. Buena Vista Home Entm't, Inc.* addressed the

distribution of movie trailers online and found that a production company qualified as a valid copyright holder that suffered injury in sales from infringement by a distributor. In *United States v. Am. Soc’y of Composers*, an authorship claim for music files downloaded as an unauthorized public performance was invalid when analysis of terms “to play” and “publicly” indicated a difference in contextual similarity. *United States v. Am. Soc’y Composers* 627 F.3d. 64, 64 (2010). The requirement for a valid copyright claim by an author under the statute determines the likelihood of success in recovery of damages. *Elektra Entm’t Group, Inc. v. Barker* indicates a case where music file distribution and provision enforcement after filing a copyright violation claim was able to prevent unauthorized file use. *Elektra Entm’t Group, Inc. v. Barker*. 551 F. Supp. 2d. 234, 234 (2008).

Copyright infringement defense protections refer to immunity from liability under factors referred to as safe harbor provisions. In these types of statutes, a service provider can prevent penalties or sanctions for identified infringement activity secondary to implementation measures that mitigate liability. In *Perfect 10 v. CCBILL, Inc.* the nature of internet searching and posting of information was found to reviewable as an affirmative safe harbor defense and validating a claim of copyright ownership by the plaintiff. *Perfect 10 v. CCBILL, Inc.* 448 F.3d. 1102, 1102 (2007).

Copyright claims can also occur in the context of website software that creates a program for interactive use. An example includes online videogame websites that allow users to play with other users. *Davidson & Assocs.* presents a case with the website, Battle.net, which, along with other games, comprised a set of games produced by Blizzard, a subsidiary of Vivendi. *Davidson & Assocs. V. Jung*. 422 F. 3d. 630, 630 (2005). A competing game producer formed the website, www.bnetd.org, which utilized the software produced by Blizzard resulting in a copyright

violation that was not covered under terms of fair use. This verdict examined the effects of anti-circumvention and anti-trafficking whereby a defendant has caused or distributed means to bypass copyright controls. The Digital Millennium Copyright violation found here refers to such anti-circumvention acts and reflects the intent of the World Intellectual Property Organization “to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with their rights under the Treaty of the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.” WIPO Treaty April 12, 1997, art. 11, S. Treaty Doc. No. 105-17 (1997).

Sometimes there are preliminary injunctions filed to prevent a copyright owner from filing a claim in court at a future time. *Online Policy Group v. Diebold* involved incriminating evidence against a defendant that was made available online by students using college internet access and a cease and desist letter by the defendant asking internet service providers to remove the material was thought to interfere with full access to information on the internet. The judgment in the case prevented defendant liability for this action as the issue of copyright claims in the future was considered moot. *Online Policy Group v. Diebold* 337 F. Supp. 2d. 1195 72 U.S.P.Q. 2d. 1200, 1200 (2004). There can also be defendant arguments of subject matter jurisdiction and proper copyright registration claim such as in *Moberg v. 33T L.L.C.*, where incomplete image removal from a request by a copyright owner was unable to prevent the plaintiff’s valid claim of infringement. *Moberg v. 33T L.L.C.* 666 F. Supp. 2d. 415, 415 (2009).

Copyright Enforcement

Other examples of copyright infringement enforcement cases include validity of copyright ownership and extend through internet service contributory and vicarious liability that implicate

the knowledge of infringement instances and the effectiveness of enforcement. Although a valid copyright claim is filed, the liability for infringement can variably apply such as to internet service providers which necessitates an evaluation of control measure protocols.

Internet copyright infringement cases generally include content retransmission in a number of forms such as pictures, video, software, or information in general. *WPIX, Inc. v. ivi, Inc.* addresses specifically the issue of internet retransmission in a cable broadcast context but is applicable to other cases examining the rights of copyright holders to ensure content and financial enforcement of validly registered copyright products. A general implied license to create greater efficiency with respect to individual licenses for each product was not considered valid in the cable programming retransmission context over the internet. *WPIX, Inc. v. ivi, Inc.* 691 F.3d 275 2012 Copr.L.Dec. P 30 307 104 U.S.P.Q. 1071 40 Media l. Rep. 2439, 2439 (2012). Congressional examination and agency interpretation reasonableness of cable television operations in internet communications context identified a lack of clear applicability based on definitions and examples of copyright validity preventing the legal authorization for rebroadcast rights. *Chevron U.S.A., Inc. v. Natural Res. Def. Council Inc.* 467 U.S. 837 104 S.Ct.2778 81 L.Ed.2d. 694, 694 (1984). In *Filmon X, LLC v. Window to the World Communications, Inc.*, the legal equivalency between internet and cable system transmission mediums was addressed in a context examining ability to enforce copyright violations and was also subject to an argument that equivalency would enable authorization through a compulsory license. The inability to find authorization was validated by the court but the nature of broadcast medium differences was found to be unclear and interconnected in various ways. *Filmon X, LLC v. Window to the World Communications, Inc.* 2016 WL 1161276 2016 Copr.L.Dec. P 30 906 (2016).

Internet broadcast streaming of music content in live or retransmitted format also has been addressed by US courts. The difference in ability to provide one original live and continuous broadcast emitted through the air compared to an original live continuous or retransmitted broadcast over an interconnected computer network line can affect the determination of copyright element violation. *Bonneville Int'l Corp. v. Peters* implicated the extent of the ability of a radio broadcaster to copy music content based upon type of signal transmission and potential to retransmit in the future and held that there would be no separate exemption allowing increased copy number. *Bonneville Int'l Corp. v. Peters*. 153 F. Supp. 2d. 763, 763 (2001). The effect of this decision would be to cause the signal type to be an elemental factor in determination of ownership rights relative to distributor rights.

Alternative dispute resolution methods are also utilized when addressing the nature and implications of copyright ownership. Cases involving advertising and identification of entertainment from plays to movies such as in *Kuklachev v. Gelfman* and *Films by Jove v. Berov*. *Films by Jove v. Berov* addresses international application of copyright laws whereby the ownership of a group of films from the United States and subsequently acquired by a Russian company required determination of applicable law. The Berne Convention provisions state that participating countries within the treaty provide simultaneous copyright ownership for valid registration which can determine the laws under which subsequent claims are determined. United States copyright law was the basis of review as the where the films were originally registered although the claim was filed when ownership existed within the Soviet Union jurisdiction. *Films by Jove Inc. v. Berov* 341 F. Supp. 2d. 199, 199 (2004). *Kuklachev v. Gelfman* addressed use of entertainment designs and registered names of the Moscow Cats Theater where valid basis of dispute resolution was agreed upon as through arbitration allowing both parties in the conflict to

present arguments to the neutral mediation arbitrator. *Kuklachev v. Gelfman* 600 F. Supp. 2d. 437, 437 (2009). Arbitration agreements through international treaty organization also occur for numerous types of agreements such as in *Corporacion Mexicana de Mantenimiento Integral S. De R.L De C.V. v. Pemex* 832 F. 3d. 92, 92 (2016).

International Copyright Law Application

The role of the internet in interconnecting numerous areas that exist beyond geographically delineated boundaries can create numerous complexities when considering legal principles of specific jurisdictions. The legal principles include examination of proper plaintiff claim validity, proof of defendant illegal conduct, and means of law enforcement in assessing liability and punishment. The distribution of information on the internet through text, design, image, video, or formatting methods involves fundamental and statutory rights that can become distorted when international differences in approach and context cause variable application of defined law and police enforcement procedure. Copyright ownership originates from registration of a novel idea conceptualization and ensures the validity and security of owner investment. The copyright concept existing in numerous national and international agreements allows legal overlap of law applicability for numerous jurisdictions enabling proper implementation of safeguards against infringement. There still exists, within this framework of legal protection, the existence of copyright infringement in evolving forms whereby registration, monitoring, and enforcement mechanisms must apply new concepts and information to the existing standard of review in prevention of injury from intent or negligence.

The structure of treaty agreements encompassing U.S. Copyright Law, the Berne Convention, and the World Intellectual Property Organization enables an overlapping time and jurisdictional regime to ensure copyright protection throughout most of the world's treaty

participating countries. The original law statutes ensuring such protection secondary to increased productivity of authorship material copies and distribution throughout international regions still applies with great significance to the changing nature of media content. The extension of copyright infringement to methods of combinations of electronic and physical mediated violations can further challenge the protection of law which can adapt statutory applicability through directed and informed legislation and review. The ability to prevent future infringement depends on numerous factors of information accuracy and applicability to copyright infringement methods.

Numerous experiences of text, music, image, and video distribution have provided important precedent for executive agency action based on judicial branch determinations of factors of contributory and vicarious liability. Such factors can play an important role in law detection and enforcement for future copyright infringement cases. Copyright infringement occurs in many contexts. A possible greater prevalence in entertainment based authorship can be indicative of greater population based knowledge and experience. Conceptual and design features of entertainment media can many times be associated with infringement. The Moscow Cats Theater production which owned a particular play story concept and advertising design features was subject to copyright infringement which it was able to prove as violating established registration rights. *Kuklachev v. Gelfman* 600 F. Supp. 2d. 437, 437 (2009). Arbitration and litigation both play a significant role within the liability determination stages of post enforcement legal framework. These methods involve the pre-determined contract agreement that can be explicitly or implicitly made in company or author registration of ownership. A defendant when subject to such agreements can sometimes be required to participate in a particular legal determination format. *Films by Jove Inc. v. Berov* implicates the difference in international

jurisdiction in the basis of copyright ownership with a difference between subsequent sales and the initial registration pertaining to Berne Convention treaty agreements. A copyright infringement case here was determined by post enforcement litigation in determining the country specific laws that apply to the case. The specific entertainment context that underlies the infringement can become increasingly complex when authorship registration is questioned or infringement liability source or methods are concealed. The nature of internet copyright infringement can greatly contribute to such factors within the area of legal enforcement and liability determination.

Many of the cases referenced address the difficult aspects of clearly identifying infringement and subsequently enforcing a law or statute of a given jurisdiction. Furthermore, the jurisdictional basis for internet based infringement violations can be questionable. The general guideline is that federal jurisdiction based on the single location of the domain registry server applies for a case. In the United States, differences in state jurisdiction can influence based on differences in law the existence of infringement and the level of liability. Also, the type of website interactivity can determine if jurisdiction exists dependent upon minimal interactivity such as information listing, intermediate interactivity such as through the ability to post comments, and full interactivity such the ability to make purchases of goods or services. These factors refer to the Zippo sliding scale approach, which has been further modified in given contexts to address different levels of complexity in infringement or infraction determination. *Zippo Mf. Co. v. Zippo Dot.com Inc.*, 852 F. Supp. 1119, 1119 (1997).

The area of copyright authorship, which is protected by international treaties that permit multiple countries to record registration upon initial approval, extends from literary works to electronic media involving text, images, sound, and video. Numerous cases describe copyright

registration validity when examining the claim filed by a plaintiff where elements must be satisfied to allow standing for a case. These factors affecting registration may be more complex for media involving numerous people such as video format directed or produced by a single individual. *Garcia v. Google, Inc.* 786 F. 3d. 733, 733 (2015). Once copyright ownership establishment elements have been established, the defendant liability for infringement can be difficult to prove. Numerous cases proving the copyright ownership registration and subsequent infringement through the internet by a third-party have been successful in litigation. Case complexity increases with electronic media copyright claims including music and video. Photographs copyright infringement can also be difficult to prove in cases where registration has not been recognized or properly approved. *Rundquist v. Vapiano* SE 798 F. Supp 2d. 192, 192 (2011). Numerous cases of music file sharing services have proven that vicarious and contributory liability against peer based file sharing services are successful in litigation. *Elektra Entm't Group v. Barker* 551 F. Supp 2d. 234, 234 (2008). These cases can also occur with software distribution. *MGM Studios, Inc. v. Grokster, Ltd* 545 U.S. 943, 943 (2005).

The methods of video and sound transmission through internet means can occur in a posting or transmission format both of which involve cases of copyright claims infringement. Internet sports video posting was addressed in a case where the Premier League for soccer filed a claim of infringement against Youtube, which allows for posting of video of various content and length on its website. Although registration factors affected the verdict in this case the nature of copyright ownership can become increasingly complex given the content possibly intended for live broadcast but subsequently allowed for multiple viewing potential. *The Football Ass'n Premier League Ltd. v. Youtube.com Inc.* 633 F. Supp. 2d. 159, 159 (2009). News broadcasts intended for live single broadcasts that can be distributed through streaming format on the

internet has also been addressed where a federal licensing requirement was violated and a verdict found for *WPIX, Inc. v. WPIX Inc. v. ivi Inc.* 691 F. 3d. 275, 275 (2012). Cable broadcast licensing requirements have also been shown to require approval when considering internet transmission. *Filmon X v. Window to the World Communications Inc.* (2016) WL 1161276. Radio broadcasting over the internet is also subject to the same licensing requirements. *Bonneville Int'l Corp. v. Peters* 153 F. Supp 2d. 763, 763 (2001).

The important concepts of copyright ownership can occur through the display of numerous contextual formats. The legal considerations of subject matter jurisdiction and personal jurisdiction play a significant role when determining the liability in a given case. Enforcement involves both the apprehension of a defendant and their determination of guilt or innocence for an alleged infringement. Internet stream of commerce copyright infringement can be addressed with validation of statutory law preventing illegal copy and distribution. Previous cases have examined international manufacturing product distribution, which can be applied in this context. *McIntyre Machinery Ltd. V. Nicastro* 131 S. Ct. 2780, 2780 (2011). Constitutional protections that a defendant could extend to a court such as implications of freedom of association or expression may not be applicable given the difference in legal basis of different countries and the balance with plaintiff claims of injury secondary to criminal statute violation. The role of internet copyright infringement prevention will be interesting in the future when specific legal means are applied to the facts of new cases.

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Definitions:

17 US.C.A. § 101-Definitions provides definitions of key terms in the Berne Convention agreement for international copyright protection.

