

A BRAVE NEW WORLD? INTELLECTUAL PROPERTY LITIGATION IN THE MULTIMEDIA INDUSTRY

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Abstract

This paper analyzes a hypothetical multimedia copyright problem from the perspective of United States law. It reviews ownership, infringement, and remedies issues, and places them in the appropriate litigation context. The paper also touches on publicity rights. The paper concludes: (1) that multimedia developers must carefully clear the rights of the works they seek to use in their products; and (2) that multimedia does not present new intellectual property issues, but that the technology makes copying easier and therefore more likely to occur.

The coming revolution in the multimedia industry will present a host of thorny intellectual property issues to both content providers and multimedia developers. Rather than discuss these issues in the abstract, I will offer a hypothetical example and then analyze the intellectual property and litigation problems it presents. I will apply U.S. law, but many of the basic principles would apply under any intellectual property system. As I proceed through the hypothetical, it will become clear that, unlike computer programs, multimedia really does not pose new or different intellectual property issues. Rather, the multimedia technology simply makes it easier and more desirable to copy than ever before, and thus more likely that copying will occur.

I. "TANGIERS II"

My six year old son Jeremy enjoys synthesizing characters and scenes from different films and cartoons into original stories which he illustrates. Thus, he injects Abu, the monkey from

"Aladdin," and Michaelangelo (the Teenage Mutant Ninja Turtle, not the artist), into an amalgam of the politically correct story-lines of "Beauty and the Beast" and "Fern Gully." Imagine that in the year 2001 Jeremy is 25 (rather than just 15) and his taste has become somewhat more sophisticated. He has at his disposal a multimedia workstation which can access over 500 cable television channels. Because of the cost of developing new content, most of these channels are devoted to either old films or home video shows. While I'm away on an extended business trip, Jeremy decides to enter the booming multimedia industry by producing his own film using material from cable television as a base.

Jeremy intends his film to be a sequel to his favorite film, "Tangiers." The hero of the film is Dave, a cynical American who finds himself at the beginning of World War II owning a popular bar in Tangiers. With the software at his disposal, Jeremy can digitize Dave's facial and body movements, as well as his voice. This allows Jeremy to direct Dave's

