

Intellectual Property Law – Copyright

Joint Authorship – *Janky v. Lake County Convention and Visitors Bureau* (7th Cir. 2009)

A relatively minor contribution in terms of percentage of the total copyrightable work may still qualify the contributor for joint authorship where the contribution makes the work commercially viable. In *Janky*, a band member who suggested revisions to the lyrics of a previously-written song was held to be a joint author of the revised song, even though his revisions accounted for only roughly ten percent (10%) of the song's lyrical content. The band's copyright registration for the song identifying the contributor as co-author of a "joint work" was strong evidence of the parties' intent to share joint authorship. The Seventh Circuit noted the case was a close call: "Frag contributed ideas and gave expression to those ideas, but had he done much less, his work would not garner the protection of copyright."

Fair Use – *Salinger v. Colting* (2d Cir. 2010)

Overruling substantial precedent and a district court decision granting J.D. Salinger preliminary injunctive relief to prevent publication of *60 Years Later: Coming Through the Rye*, the Second Circuit held that Salinger had not satisfied the Supreme Court's requirements for preliminary injunctive relief in the context of a defense of fair use. The fair use defense considers four (4) factors: the purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and, the effect of the use on the potential market or value of the copyrighted work. Where the defendant raises a colorable claim of fair use, "courts should be particularly cognizant of the difficulty of predicting the merits of a copyright claim at a preliminary injunction hearing."

Statutory Damages for Registered Works – *Bryant v. Media Right Productions, Inc.* (2d Cir. 2010)

Even though individual songs were registered with the U.S. Copyright Office, a copyright owner was only entitled to one award of statutory damages for each *album* found to be infringed. The Court cited the Copyright Act's provision for "statutory damages for any 'work' infringed," and relied on the Act's definition of a "compilation" as an independent "work." The Court noted contrasting decisions in other circuits, and also noted that the result may have been different if the songs had been released individually before being compiled into an album.

Scope of Copyright Protection – *Bissoon-Dath v. Sony* (N.D. Cal. 2010)

Sony was awarded summary judgment on the plaintiffs' claim that Sony's "God of War" video game infringed the plaintiffs' written fictional works. The basic story lines, plots and themes of the works in question were generic expressions of Greek mythology that were not sufficiently original to obtain copyright protection. "Greek gods . . . rivalries among the gods, and mythical beasts . . . are unprotectable elements; it is uncontroversial that they have been used widely in both ancient and modern artistic works." The court's decision was based on the general premise that non-original expressions of common ideas are not protected under the U.S. Copyright Act.