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Recent Developments in Copyright Law: Technology and International Trade Play Starring Roles

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By Mary LaFrance

The once staid field of copyright law has undergone a dramatic revolution in recent years, as new technologies and international trade pressures have spurred legislative change, while challenging the federal courts to find answers to those questions that Congress has not resolved or, in some cases, to questions that recent acts of Congress have created.

Liability for Digital Transmission of Copyrighted Works

In the now infamous case of *A&M Records Inc. v. Napster Inc.*,¹ the Ninth Circuit agreed with District Judge Marilyn Hall Patel that the plaintiff record companies were likely to succeed on their infringement claims where Napster's file-swapping software and search mechanisms facilitated the unauthorized copying and distribution of copyrighted musical recordings. The appellate court agreed with Judge Patel that Napster should be enjoined from engaging in or facilitating the unauthorized copying, downloading, uploading, transmission, or distribution of copyrighted sound recordings. The Ninth Circuit also rejected Napster's arguments that the copying that Napster facilitated was permitted under the Audio Home Recording Act² or the "fair use" privilege.³

However, the Ninth Circuit criticized Judge Patel's preliminary injunction as overbroad. That injunction had ordered Napster to "ensure that no work owned by plaintiffs which neither defendant nor Napster users have permission to use or distribute is uploaded or downloaded on Napster."⁴ The Ninth Circuit pointed out that contributory liability could be imposed only if Napster (1) knew or had reason to know that infringing files were being accessed through its system, and (2) failed to take action to prevent such access.⁵ On remand, Judge Patel modified her original injunction to require the record labels, as a condition of obtaining injunctive relief for each infringed recording, to notify Napster of the specific artist and title of that recording and to identify the name of at least one file containing that work on Napster's system.⁶

In the aftermath of the preliminary injunction, Napster was forced to block users' access to unauthorized copies of sound recordings that previously had been accessible through its file-sharing system. This has essentially decimated the inventory that attracted users in the first place. Napster has now suspended its users' unregulated file-swapping activities while it restructures its operation to become a membership service and negotiates licenses with record labels and music publishers in order to ensure that copyright owners will be compensated for the copying of their works by Napster users. Napster's users, in the meantime, have flocked to other unregulated peer-to-peer file-sharing systems. Undaunted, Napster has continued its legal battle, challenging the validity of the record labels' copyright ownership claims.⁷

Interpreting Old Contracts in Light of New Technology

In *New York Times Co. Inc. v. Tasini*,⁸ the Supreme Court held that a freelance writer's copyright was infringed by the electronic republication of an individual article that the plaintiff writer had licensed for inclusion in the defendant's print periodical.

The *Tasini* plaintiffs were freelance writers who had contributed articles to various print periodicals during the early 1990s. The writers retained their copyrights, and the licenses they granted to the publishers of these periodicals did not include the right to reproduce the in-

dividual articles in searchable electronic databases such as LEXIS/NEXIS or various CD-ROM compilations. Nonetheless, the periodical publishers later licensed the reproduction of the plaintiffs' articles in the defendants' searchable electronic databases. Users of any one of these databases could search for and read each of the individual articles contained in that database. They could not, however, view the other materials that had accompanied that article in the original periodical unless they conducted a separate search for each of those materials. Thus, each of the plaintiffs' articles could be viewed separately from the context that had surrounded it in the original print publication.

When the writers sued for the infringing reproduction and distribution of their individual articles, the defendants took the position that their electronic re-publication of the articles was privileged by 17 U.S.C. § 201(c), which provides:

In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

In a 7-2 decision, the Supreme Court upheld the Second Circuit's ruling in favor of the writers, holding that § 201(c) did not authorize the reproduction or distribution of the individual articles in the defendants' electronic databases. Specifically, the Court held that the manner in which each article appeared in these databases constituted neither a reproduction of the original print compilations nor a "revision" of those compilations. Instead, the Court held that the articles appeared in the databases simply as individual articles "standing alone."⁹ The Court distinguished microfilm and microfiche reproductions on the grounds that these formats involve a perceptible reproduction of the entire compilation in which an article appears.¹⁰

Tasini will have a significant effect on electronic republishers of collective works. In the past, many contributions to collective print publications were prepared under licensing agreements that did not expressly grant electronic re-publication rights. Yet many such works have been republished in searchable electronic databases such as those at issue in *Tasini*. Unless Congress provides a legislative solution, electronic republishers of such works must now consider whether to negotiate licensing agreements with the authors of each individual article or to delete those articles from their databases.¹¹ The potential cost of due diligence to identify such works that are already in electronic databases is staggering in itself, without even considering the cost of locating the authors and negotiating licenses for those works. This may lead some electronic publishers to take a wait-and-see attitude, hoping to work out reasonable settle-

ments with any authors who come forward to assert their rights. With respect to new publication contracts, of course, it has become standard to address electronic publication rights at the outset, thus avoiding future *Tasini* problems with respect to those contracts.

Sound Recordings: The Work-Made-for-Hire Question

In the late 1990s, several federal courts ruled that sound recordings do not qualify as “works made for hire” for copyright purposes unless the creative participants are bona fide employees of the party claiming authorship.¹² These decisions raised concerns in the recording industry, which had assumed until then that record labels were the “authors” of their recordings, rather than mere copyright assignees.

In a bizarre flip-flop, Congress legislatively overruled these holdings in 1999, then retroactively repealed this legislation in 2000, leaving the status of sound recordings even less certain than it was before the federal court decisions.

The saga began when Congress acceded to a request from the Recording Industry Association of America (RIAA) to add a “technical amendment” to the Intellectual Property and Omnibus Communications Reform Act of 1999, adding sound recordings to the list of works eligible for contractual work-made-for-hire status under paragraph 2 of the statutory definition of “works made for hire.”¹³ This amendment would, at least prospectively, have permitted record companies to eliminate the unwaivable termination rights that would otherwise have entitled the authors of sound recordings (typically musicians, producers, and possibly sound engineers) to reclaim the copyright in their recordings after a statutorily defined term of years, notwithstanding any copyright license or assignment they might have executed in favor of the record label.¹⁴ As a result of this legislative change, recording artists would forever have been barred from reclaiming authorship of their recordings.¹⁵

When recording artists and copyright scholars learned that this legislation had been enacted virtually overnight, without congressional hearings or debate and without opportunity for public comment, their resulting outrage led to the retroactive repeal of this amendment.¹⁶ Thus, sound recordings are once again conspicuously absent from the list of eligible works in paragraph 2 of the “work made for hire” definition. However, in an apparent effort to placate the RIAA, Congress added new language to the end of the “work made for hire” definition in order to dispel any suggestion that the repeal of the 1999 amendment signaled a decision that sound recordings are *not* eligible for work-made-for-hire status. The resulting statutory language seems more suited to *Alice in Wonderland* than the U.S. code:

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communi-

cations Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, nor the deletion of the words added by that amendment —

- (a) shall be considered or otherwise given any legal significance, or
- (b) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination,

by the courts or the copyright office. Paragraph (2) shall be interpreted as if both § 2(a)(1) of the Work Made for Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, were never enacted, and without regard to any inaction or awareness by the Congress at any time of any judicial determinations.¹⁷

What is the status of sound recordings today? Thanks to ineffectual policy-making by Congress, a simple question that can and should have a clear legislative resolution has once again been relegated to piecemeal litigation.¹⁸

World Trade Organization Dispute Panel Holds that 17 U.S.C. § 110(5)(B) Violates International Law

In the 1998 Fairness in Music Licensing Act,¹⁹ Congress revised the old “homestyle exemption” of 17 U.S.C. § 110(5), which granted businesses in certain circumstances a limited privilege to publicly perform copyrighted works by making radio or television broadcasts of those works available to their customers at no charge.²⁰ This exception was most often invoked by restaurants and retail stores that aired radio or television programs for their customers. The amendment, which appears at 17 U.S.C. § 110(5)(B) (and redesignates the old § 110(5) homestyle exemption as new § 110(5)(A)), creates a safe harbor for audio or audiovisual public performances of nondramatic musical works at commercial establishments based on specific guidelines addressing the size of the establishment and the nature of the equipment used.²¹ According to one study, the new safe harbor has the effect of exempting the majority of bars and restaurants in the United States from liability for such performances.²²

In the summer of 2000, a World Trade Organization (WTO) Dispute Panel ruled that § 110(5)(B) violates Articles 9 and 13 of the TRIPs (Trade-Related Aspects of Intellectual Property) provisions of the WTO Agreement (previously known as the General Agreement on Tariffs and Trade, or GATT),²³ because it creates too broad an exception to the public performance right in musical compositions, a right that Article 9.1 of TRIPs requires all WTO countries to guarantee to the owners of such copyrighted works.²⁴ The requirements of Article 9.1 are subject to exceptions only in “certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of

the right holder,"²⁵ and the panel found that § 110(5)(B) exceeded the scope of this exception.

The panel rejected a similar challenge to the newly amended § 110(5)(A), concluding that the scope of the § 110(5)(A) privilege was sufficiently narrow that it did not unreasonably prejudice the rights of copyright holders.²⁶ However, in the pursuit of this favorable ruling, the U.S. representatives advanced a narrow interpretation of § 110(5)(A), suggesting that the enactment of new subsection (B) in 1998 (together with the addition to subsection (A) of the prefatory phrase "except as provided in subparagraph B"), had the effect of narrowing the scope of subsection (A) so that it applies only to works *other than* nondramatic musical works.²⁷

Thus, the homestyle exemption that the panel upheld in § 110(5)(A) is far narrower than its immediate predecessor, the original § 110(5) homestyle exemption. Pre-1998 case law had routinely applied the old homestyle exemption (that is, the version that predated the 1998 amendments) to transmissions of nondramatic musical works, and, indeed, such works were the subject of the vast majority of those cases.²⁸ However, after the 1998 amendments, the insertion of the prefatory "except as" language in subsection (A), coupled with the broad safe harbor in subsection (B) does seem to make subsection (A) largely irrelevant for establishments that perform nondramatic musical works, since it appears that most performances of such works that would be exempt under subsection (A) will also be exempt under the safe harbor of subsection (B). Thus, the safe harbor in most cases eliminates the need for a potential defendant to invoke subsection (A) with respect to performances of nondramatic musical works. As long as the subsection (B) safe harbor remains in effect, only in unusual situations will a potential defendant wish to argue for the application of subsection (A) with respect to nondramatic musical works. If the newly narrowed interpretation of subsection (A) is correct, of course, that defendant will ultimately be unsuccessful, because subsection (A) no longer applies to such works.

If Congress does not repeal or amend § 110(5)(B) in order to bring the United States into compliance with TRIPs, the WTO may impose trade sanctions on the United States. Although the WTO originally imposed a deadline of July 27, 2001, for the United States to amend § 110(5) to eliminate the conflict with Article 13,²⁹ it has twice extended that deadline.³⁰ In exchange, the United States submitted to binding WTO arbitration to determine the amount of damages to be paid to European copyright owners for the unlicensed performances that have been, and continue to be, permitted under § 110(5)(B).³¹ As a result of that arbitration, the United States is obligated to pay approximately \$1.1 million in damages per year until it brings § 110(5) into compliance with TRIPs.³²

If § 110(5)(B) is repealed, Congress will also have to consider the effect of this repeal on the scope of the original homestyle exemption that is currently embodied in § 110(5)(A). A simple repeal of the subsection (B) safe

harbor will once again make it necessary to include nondramatic musical works in subsection (A), thus largely restoring the pre-1998 homestyle exemption and all the ambiguities thereof. It would be far better for Congress to attempt another overhaul and update the entire 110(5) exemption in order to provide clearer guidelines to bars, restaurants, and other establishments.

Anti-Circumvention Provisions of 17 U.S.C. § 1201

Controversy continues to surround the anti-circumvention rules of the Digital Millennium Copyright Act (DMCA),³³ which have significant effects on the public's ability to access and use copyrighted works in a manner permitted by fair use³⁴ and the First Amendment.³⁵

The anti-circumvention provisions of 17 U.S.C. § 1201 give copyright owners a cause of action against persons who circumvent — or offer to others the means to circumvent — the technological measures (such as encryption) that copyright owners have begun to utilize to control access to their digitized works.³⁶ Section 1201 recognizes only certain narrow exceptions to these rules — for example, for certain activities related to law enforcement, encryption research, and reverse engineering.³⁷ In addition to these exceptions, the statute authorizes the U.S. Copyright Office to issue regulations exempting entire classes of works as to which enforcement of § 1201 would interfere with noninfringing uses of such works.³⁸

Pursuant to this statutory mandate, the U.S. Copyright Office conducted rulemaking hearings in the spring of 2000 to identify such classes of works and issued its regulations in October 2000.³⁹ The new regulations exempt only two narrowly defined classes of works: (1) compilations of Web site lists that are blocked by filtering software and (2) literary works with malfunctioning access-control mechanisms.

To the extent these exemptions apply, they will preclude a cause of action against those who circumvent technological protections to access copyrighted works of these particular types. However, as a practical matter, a user's ability to make noninfringing use of such works will still be hampered by the need to circumvent the anti-copying technology in the first place.

More important from a legal perspective, however, is the fact that the scope of both the statutory and regulatory exemptions from the § 1201 cause of action is significantly narrower than the scope of the fair use doctrine. Thus, certain fair uses of copyrighted works that are exempt from a § 106 infringement claim will, in effect, be actionable by copyright owners under § 1201 if the defendants accessed those works through prohibited circumvention. Criminal as well as civil penalties are possible,⁴⁰ and a federal grand jury has already indicted a "hacker" who allegedly wrote and offered for sale a program for decrypting electronic books.⁴¹

The technological ability of copyright owners to foreclose public access to their works, together with the additional legal protection afforded by § 1201, raises significant questions about the future of public access to copyrighted works. As digital communications technologies

replace print publications, and as electronic libraries replace physical libraries, what is the future of fair use? How can the public make fair use of materials to which they are denied access? Is the fair use of copyrighted materials a right, the exercise of which copyright owners should not be permitted to impede through copy-protection technology? Or is it merely a privilege, which insulates the user of copyrighted material from liability but does not guarantee that the user will have access to that material in the first place? Will § 1201 and the use of encryption technology and similar access-control devices — combined with the gradual demise of print publication as a significant mode of dissemination — effectively eliminate the public's ability to make fair use of copyrighted materials or even their ability to *access* such works?⁴²

This convergence of law and technology may significantly undermine the fundamental bargain that underlies federal copyright law. The limits that copyright law currently imposes (and has traditionally imposed) on the monopoly rights of copyright owners can now be largely circumvented through the use of technology that prevents access to those works in the first place.⁴³ In effect, works can now be created, copyrighted, and commercially exploited without ever requiring their owners to permit the degree of public access that would enable interested persons to read (or hear or view) the work and make fair use of it. At least with respect to works that lend themselves to access-protection technology, the development of these technological barriers to public access, combined with congressional endorsement of these barriers, potentially gives rise to a monopoly far greater than that traditionally associated with copyright. **TFL**

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Endnotes

¹239 F.3d 1004 (9th Cir. 2001).

²17 U.S.C. § 1008 *et seq.* (2001).

³17 U.S.C. § 107 (2001).

⁴*A&M Records Inc. v. Napster Inc.*, 114 F.Supp.2d 896, 927 (N.D.Cal. 2000).

⁵*A&M Records*, 239 F.3d at 1027.

⁶*A&M Records Inc. v. Napster Inc.*, 2001 U.S. Dist. LEXIS 2186, at *4 (N.D.Cal. 2001).

⁷*In re Napster Inc.*, Copyright Litigation, N.D. Cal., No. MDL 001368 MHP (Feb. 22, 2002). One of Napster's new arguments is that the record labels are improperly claiming ownership of the sound recording copyrights as works made for hire. The theory underlying this claim is discussed later in this article.

⁸__ U.S.__, 121 S.Ct. 2381, 150 L.Ed.2d 500 (2001) (affirming 206 F.3d 161 (2d Cir. 2000)).

⁹121 S.Ct. at 2384.

¹⁰*Id.* at 2391–92.

¹¹Shortly before the Supreme Court decided *Tasini*, the Eleventh Circuit reached a similar conclusion in *Greenberg v. National Geographic Society*, 244 F.3d 1267

(11th Cir. 2001), *cert. denied*, 2001 WL 914313, 70 USLW 3092 (U.S. Oct. 9, 2001), in which the defendant republished the plaintiff's photographs in a searchable CD-ROM compilation of 1,200 back issues of the defendant's magazine. The Eleventh Circuit also held that the defendant's use of the plaintiff's photograph in a photo-montage that "morphed" from one NGS cover photo to another infringed the plaintiff's exclusive right to create derivative works under 17 U.S.C. § 106(2). *Id.* at 1274. The Supreme Court has declined to review the *Greenberg* decision.

¹²*Lulirama Ltd. v. Access Broadcasting Services Inc.*, 128 F.3d 872 (5th Cir. 1997); *Ballas v. Tedesco*, 41 F. Supp. 2d 531 (D.N.J. 1999); *Staggers v. Real Authentic Sound*, 77 F. Supp. 2d 57 (D.D.C. 1999).

¹³Only certain categories of copyrightable works — motion pictures, for example — are eligible for contractual work-made-for-hire status under paragraph 2 of this definition. 17 U.S.C. § 101 (2001) ("work made for hire" definition). When a person creates a copyrightable work under a work-made-for-hire contract with the party commissioning the work, the latter, rather than the former, is considered the author of work for copyright purposes. *Id.* §§ 101, 201(b). The actual creator of the work enjoys only such rights as are specifically granted in the work-made-for-hire contract — typically, a right to receive compensation either in a lump sum or as royalties.

Prior to the 1999 amendment, sound recordings had never been explicitly included in the list of eligible works in paragraph 2 of § 101's "work made for hire" definition. Eligibility was limited to "a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas." The 1999 amendment simply inserted the phrase "as a sound recording" after "audiovisual work." Satellite Home Viewer Improvement Act of 1999, § 1011(d), Title I of S. 1948, Intellectual Property and Communications Omnibus Reform Act (IPCORA), Pub. L. No. 106-113, 113 Stat. 1536 (1999) (amending 17 U.S.C. § 101).

¹⁴17 U.S.C. §§ 203, 304(c) (2001). This right to terminate is, however, subject to the grantee's right to continue to exploit any derivative works created under the terms of the original copyright assignment or license. *Id.* § 203(b), 304(c)(6).

¹⁵Uncertainty over the copyright status of sound recordings affects not only termination rights but also the duration of copyright. *See* 17 U.S.C. § 302(b)-(c) (2001) (assigning different copyright terms to works made for hire than to other works).

¹⁶Work Made for Hire and Copyright Corrections Act of 2000, Pub. L. No. 106-379, 114 Stat. 1444 (2000).

¹⁷17 U.S.C. § 101 (2000), *as amended by* Pub. L. No. 106-379, § 2(a), 114 Stat. 1444 (2000).

¹⁸For a more detailed examination of this problem, and a proposed solution, *see* Mary LaFrance, *Authorship and Termination Rights in Sound Recordings*, 75 S. CALIF.

L. REV. 375 (2002). As mentioned in note 7, *supra*, *Napster* has capitalized on this ambiguity by challenging the validity of the record labels' claims of copyright ownership in the sound recording files that have been "swapped" by Napster users.

¹⁹Pub. L. No. 105-298, 112 Stat. 2830 (1998) (codified at 17 U.S.C. § 110(B)(5) (2001)).

²⁰Prior to the 1998 amendments, § 110(5) (the original "homestyle exemption") read as follows:

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(5) communication of a transmission embodying a performance or display of a work by the public reception on a single receiving apparatus of a kind commonly used in private homes, unless —

(A) a direct charge is made to see or hear the transmission, or

(B) the transmission thus received is further transmitted to the public.

17 U.S.C. § 110(5) (1994) (prior to 1998 amendments).

²¹The 1998 amendments and subsequent technical amendments in 1999 revised § 110 by redesignating the existing language (*supra* note 20) as § 110(5)(A), inserting at the *beginning* of that provision the phrase "except as provided in subparagraph (B)," redesignating old subsections (A) and (B) as (i) and (ii), and adding a new (and lengthy) subsection (B), which exempts public performances of licensed transmissions of nondramatic musical works, if there is no direct charge or further transmission, *provided* that the establishment conforms to certain statutory square footage restrictions or to certain statutory restrictions on the number and size of performance devices (loudspeakers or audiovisual devices). See 17 U.S.C. § 110(5)(B) (2001) (setting forth those statutory restrictions in detail), *amended by* Title II, § 202, Pub. L. No. 105-298, 112 Stat. 2830 (1998), *and* § 1(a), Pub. L. No. 106-44, 113 Stat. 221 (1999).

²²A 1999 study by Dun & Bradstreet (commissioned by the American Society of Composers, Authors and Publishers (ASCAP)) estimated that 70 percent of bars and restaurants qualify for the safe harbor, as do 45 percent of retail establishments. *WTO Adopts Ruling that U.S. Law on Music Licensing Violates TRIPs*, 60 PAT. TRADEMARK & COPYRIGHT J. (BNA) No. 1485, at 282 (Aug. 4, 2000).

²³WTO, *Report of the Panel, United States — Section 110(5) of the U.S. Copyright Act*, WT/DS160/R, 2000 WL 816081 (June 15, 2000) (adopted by WTO Dispute Settlement Body on July 27, 2000) (hereinafter *Panel Report*).

²⁴Article 9.1 of TRIPs incorporates most of the 1971 version of the Berne Copyright Convention, which requires member countries to protect, *inter alia*, public performance rights in musical compositions.

²⁵TRIPs, Art. 13.

²⁶*Panel Report, supra* note 23, at *40.

²⁷*Id.* at *39.

²⁸*E.g., Cass County Music Co. v. Muedini*, 55 F.3d 263, 265 n.5 (7th Cir. 1995) (listing various pop tunes allegedly infringed by the defendant restaurant); *Broadcast Music Inc. v. Claire's Boutiques Inc.*, 949 F.2d 1482, 1484 n.2 (7th Cir. 1991) (similar), *cert. denied*, 504 U.S. 911 (1992).

²⁹WTO, *Award of the Arbitrator, United States — Section 110(5) of the U.S. Copyright Act*, WT/DS160/12, 2001 WL 32556 (Jan. 15, 2001).

³⁰WTO, *Action by the Dispute Settlement Body*, WT/DSB/M/107 (July 24, 2001) (adopting U.S. proposal contained in WT/DS160/14, 2001 WL 810146 (July 18, 2001)). For further discussion of the issues related to this ruling, see Mary LaFrance, *Congress TRIPs Over International Law*, 11 DEPAUL-LCA J. ART & ENT. L. & POL'Y 397 (2001).

³¹WTO, *Communication from the Permanent Mission of the United States and the Permanent Delegation of the European Commission, United States — Section 110(5) of the U.S. Copyright Act*, WT/DS160/15, 2001 WL 874574 (Aug. 3, 2001); WTO, *Note by the Secretariat, United States — Section 110(5) of the U.S. Copyright Act*, WT/DS160/16 (Aug. 13, 2001).

³²Daniel Pruzin, *WTO Names Arbitrators for Music Licensing Compensation Claim*, PAT. TRADEMARK & COPYRIGHT LAW DAILY (BNA) (Feb. 21, 2002).

³³Pub. L. No. 105-304, 112 Stat. 2860 (1998).

³⁴17 U.S.C. § 107 (2001) (exempting certain uses of copyrighted works from infringement liability).

³⁵See *Universal City Studios Inc. v. Reimerdes*, 111 F. Supp. 2d 346 (S.D.N.Y. 2000) (permanently enjoining defendants from posting on the Internet (or linking to other Web sites that post) a copy of decryption software — DeCSS — that permits copying of movies on DVD), *aff'd* 273 F.3d 429 (2d Cir. 2001) (rejecting defendant-appellants' First Amendment defenses).

³⁶17 U.S.C. § 1201 *et seq.* (2001).

³⁷*Id.* § 1201 (d)-(j).

³⁸*Id.* § 1201 (a)(1)(B)-(D).

³⁹65 Fed. Reg. 64556 (Oct. 27, 2000).

⁴⁰17 U.S.C. §§ 1203-04 (2001).

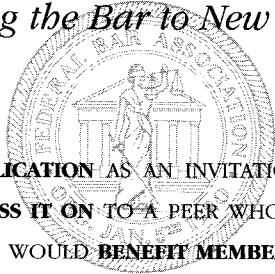
⁴¹*Accused Hacker Sklyarov Indicted on Five Counts of DMCA Violations*, 62 PAT. TRADEMARK & COPYRIGHT J. (BNA) No. 1538 (Aug. 31, 2001).

⁴²Professor Pamela Samuelson, one of the nation's leading intellectual property scholars, has also noted that the anti-circumvention rules threaten the right of privacy by interfering with a person's ability to read anonymously; now, such electronic browsing can be tracked. *Intellectual Property: Rep. Boucher, New Law Clinic Benefactors Pledge "Public Interest" Focus on IP Policy*, 61 PAT. TRADEMARK & COPYRIGHT J. (BNA) No. 1517, at 521 (March 30, 2001).

⁴³For an excellent discussion of this topic, see Glynn S. Lunney Jr., *The Death of Copyright: Digital Technology, Private Copying, and the Digital Millennium Copyright Act*, 87 VA. L. REV. 813 (2001).

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- Criminal Law**\$5
- Environment, Energy, & Natural Resources**\$15
- Federal Litigation**\$10
- Financial Institutions and the Economy**N/C
- General Counsels**.....N/C
- Government Contracts**.....\$10
- Health Law**\$10
- Immigration Law**\$10
- Indian Law**.....\$5
- Intellectual Property & Communications Law**\$10
- International Law**\$10
- Labor and Employment Law**\$10
- Social Security**\$10
- State and Local Government Relations**.....\$5
- Taxation**\$10
- Transportation Law**\$15
- Veterans Law**\$10

Dues Total Please enter amount in line 5C of the Dues Worksheet.\$ _____

5. DUES WORKSHEET

FBA Dues **5A** \$ _____

Local Chapter **5B** \$ _____

Section or Division Dues **5C** \$ _____

Total Amount Enclosed (Add 5A, 5B, 5C)\$ _____

6. PAYMENT INFORMATION

- Check payable to Federal Bar Association
- VISA MasterCard Diners Club American Express

Card No. _____ Exp. Date _____

X
Signature _____ Date _____

The undersigned hereby applies for membership in the Federal Bar Association and agrees to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its National Council.

X
Signature of Applicant _____ Date _____