

Copyright Update

Marketa Trimble

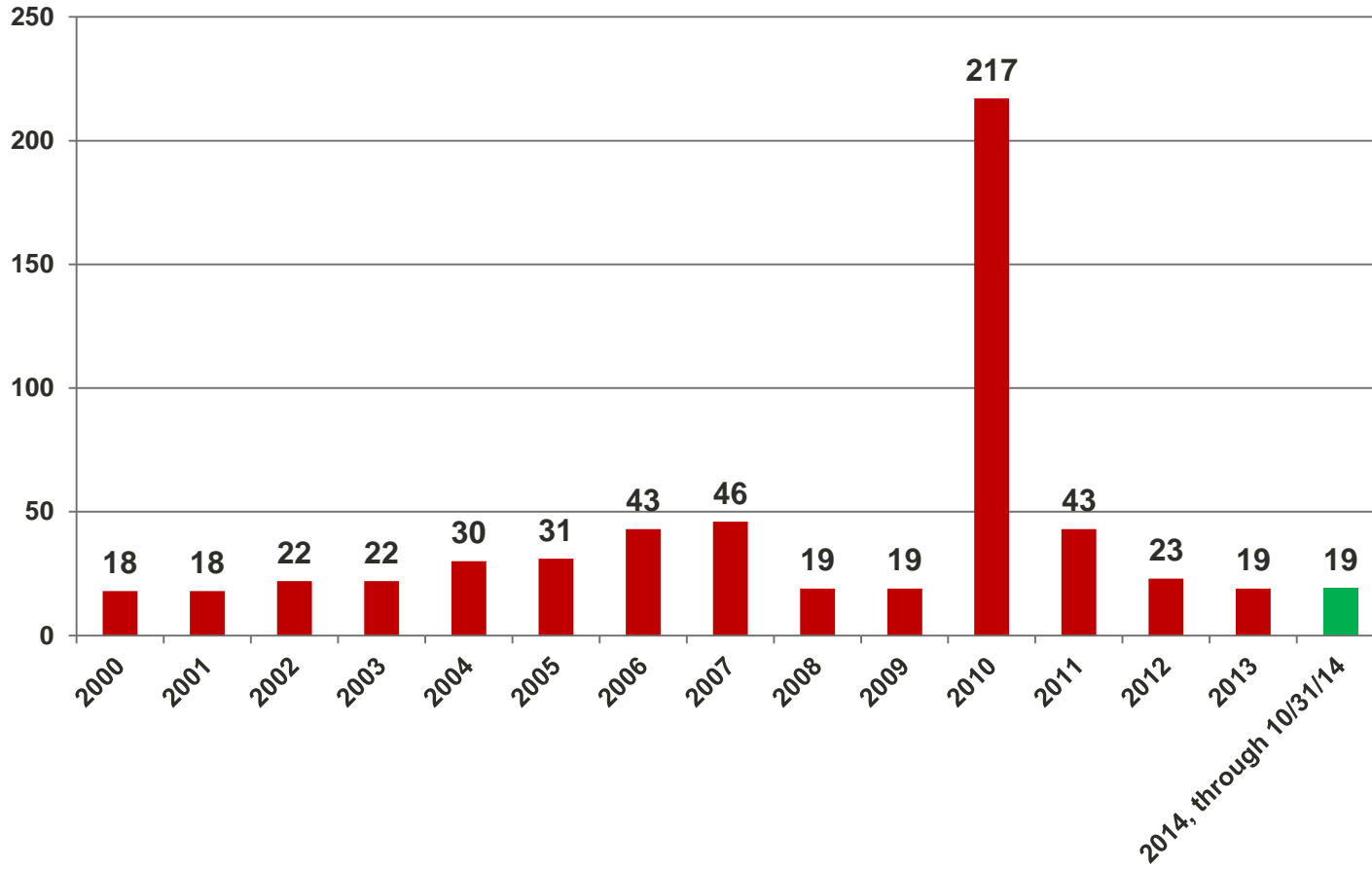
Associate Professor of Law
William S. Boyd School of Law

Nevada Bar Intellectual Property Law Section
Intellectual Property Law Conference
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- 1. Statistical Update**
- 2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year**
- 3. Pending Legislation**
- 4. Pending Initiatives of the U.S. Copyright Office**
- 5. Cross-Border Enforcement**

1. Statistical Update

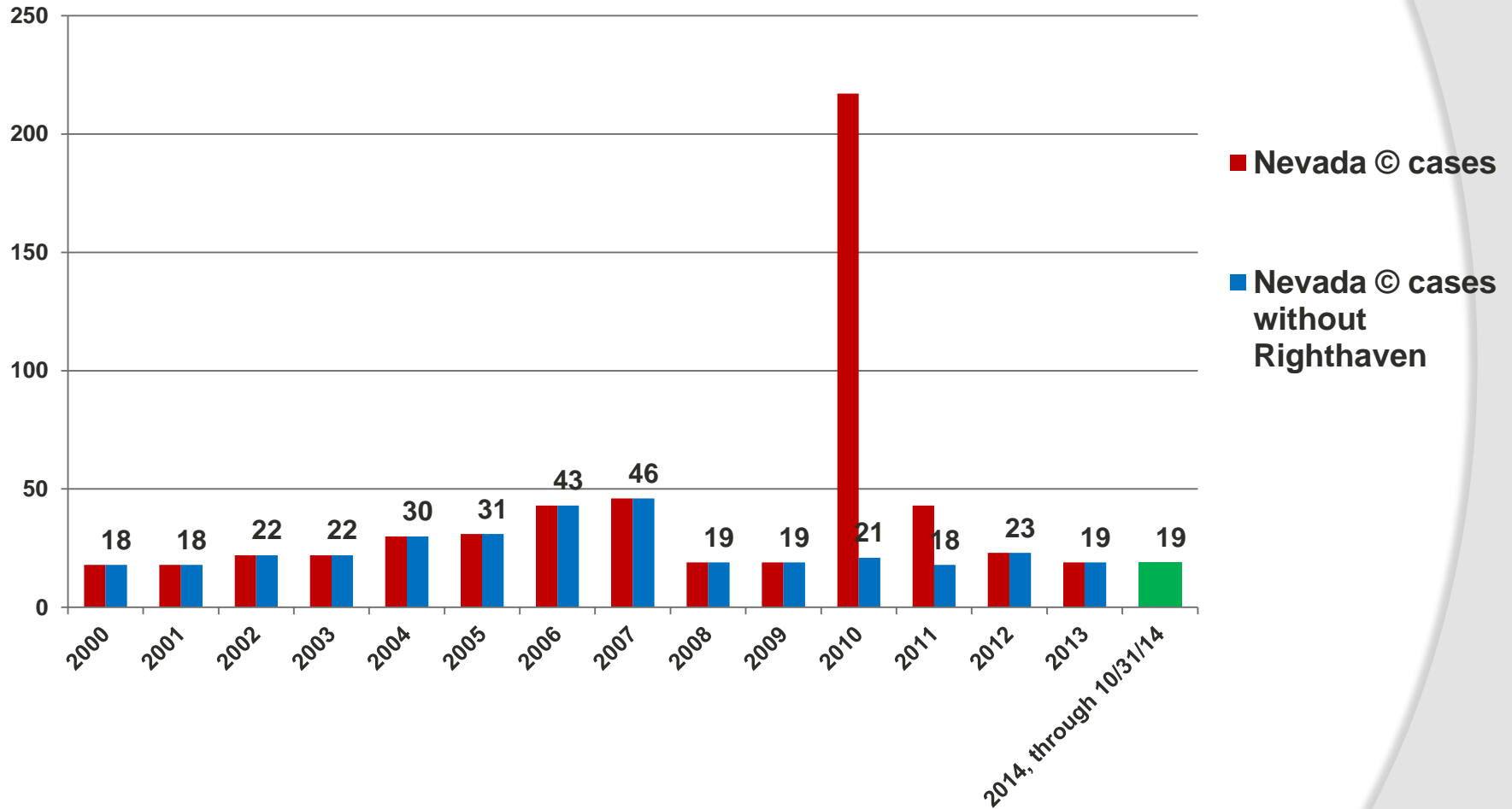
Copyright Cases Filed in the U.S. District Court for the District of Nevada January 1, 2000 – October 31, 2014



Data by Lex Machina, <https://lexmachina.com/>

1. Statistical Update

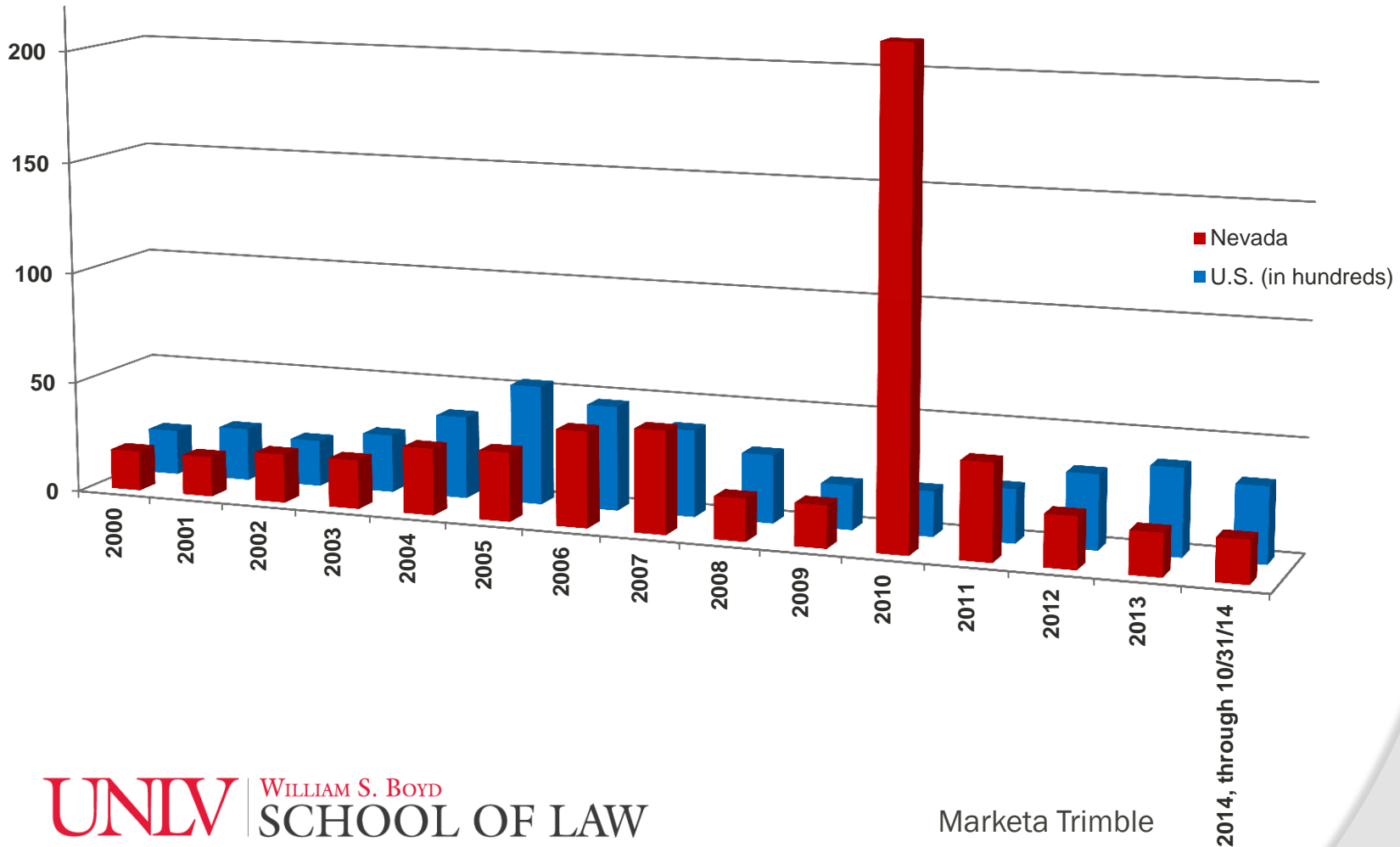
Copyright Cases (with and without Righthaven) Filed in the U.S. District Court for the District of Nevada January 1, 2000 – October 31, 2014



Data by Lex Machina, <https://lexmachina.com/>

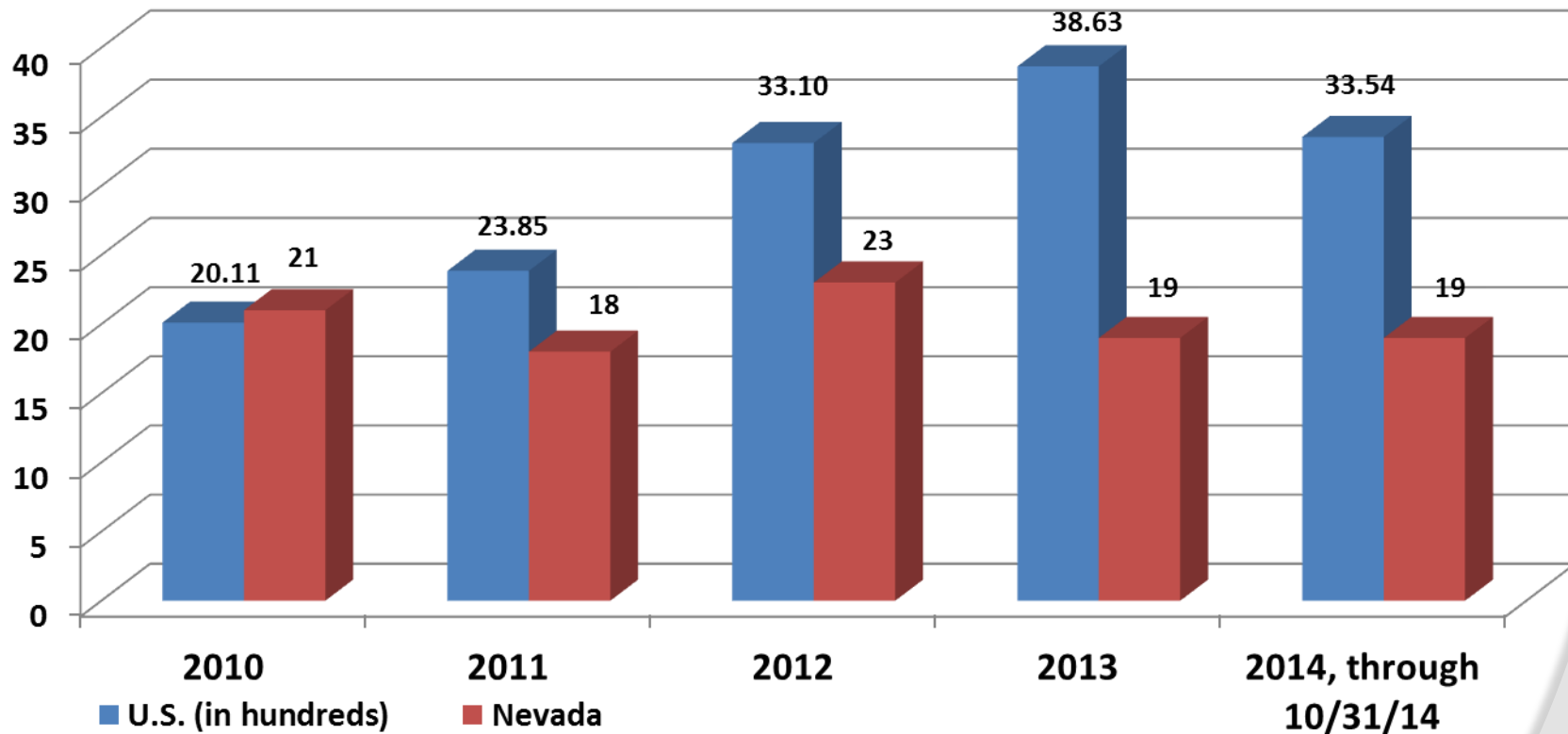
1. Statistical Update

Copyright Cases Filed in all U.S. District Courts and the U.S. District Court for the District of Nevada January 1, 2000 – October 31, 2014



1. Statistical Update

Copyright Cases Filed in U.S. Federal District Courts and in the U.S. Federal District Court for the District of Nevada (without Righthaven) January 1, 2010 - October 31, 2014



2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year

Petrella v. MGM, 134 S.Ct. 1962 (2014)

- **Laches v. the statute of limitations**
- **Laches v. continuing infringement v. separate-accrual rule**
- **Potential effect of laches on injunctive relief**

2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year

ABC v. Aereo, Inc., 134 S.Ct. 2498 (2014)

- **Right to perform publicly**
 - **Is Aereo “performing?”**
 - **v. only a provider of equipment**
 - **Is Aereo performing “publicly?”**
 - **The Transmit Clause**
- **Aereo as a cable TV provider?**
 - **An application for a compulsory license under 17 U.S.C. §111**
- **Effect on cloud computing?**

2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year

Oracle America, Inc. v. Google, Inc., 750 F.3d 1339 (Fed. Cir. 2014)

- **Copyrightability of an “application programming interface” (“API”)**
- **Declaring codes v. the “merger doctrine”**
- **Declaring codes v. “short phrases”**
- **API v. “scènes à faire”**
- **API packages v. “method of operation”**
- **“Interoperability exception”**

- **Cert. filed**

2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year

Authors Guild, Inc. v. HathiTrust, 755 F.3d 87 (2d Cir. 2014)

- **Fair use v.**
 - **Full-text search**
 - **“quintessentially transformative use”**
 - **Access to the Print-Disabled**
 - **Archival copies**

2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year

Authors Guild, Inc. v. Google, 954 F.Supp.2d 282 (S.D.N.Y. 2013)

- **Google Book Project v. public display of scanned texts on the Internet**
- **“Snippets” display v. fair use**

2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year

White v. West Publishing, 12 Civ. 1340 (JSR) (S.D.N.Y. 2014)

- **Full texts of attorneys' briefs reproduced on West and Lexis v. fair use**
- **Transformative use**

2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year

Klinger v. Conan Doyle Estate, Ltd., 755 F.3d 496 (7th Cir. 2014)

- **Leslie S. Klinger co-edited the anthology *A Study in Sherlock: Stories Inspired by the Sherlock Holmes Canon* (2011)**
- **Klinger planned a sequel entitled *In the Company of Sherlock Holmes***
- **Klinger filed a declaratory judgment suit**
- **Actual controversy existed**
- **Klinger free to use material in Sherlock Holmes stories and novels that are no longer under copyright**
- **Cert. filed**

2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year

Garcia v. Google, ... (9th Cir. July 11, 2014)

- **Performer's protectible interest in the performance**
- **No work for hire**
- **Implied license to use the performer's work**
- **Preliminary injunction**
- **Rehearing en banc**

2. Supreme Court Decisions and Other Significant Copyright Decisions in the Last Year

AF Holdings, LLC v. Does 1-1058, 752 F.3d 990 (DC Cir. 2014)

- **1,058 alleged copyright infringers**
- **Alleged illegal sharing of a copyrighted pornographic film**
- **Discovery sought from the ISPs unduly burdensome**
- **Joinder of the unknown individuals as defendants was improper**

3. Pending Legislation

- “Unlocking Consumer Choice and Wireless Competition Act,” H.R. 1123
- “Public Access to Public Science Act,” H.R. 3157
- “Free Market Royalty Act,” H.R. 3219
- “Affordable College Textbook Act,” H.R. 3538
- “Next Generation Television Marketplace Act,” H.R. 3720
- “Songwriter Equity Act of 2014,” H.R. 4079
- “American Royalties Act of 2014,” H.R. 4103
- “Electronic Books Opening Opportunity for Knowledge Act of 2014,” H.R. 4259
- “Learning Opportunities With Creation of Open Source Textbooks,” H.R. 4455
- “Respecting Senior Performers as Essential Cultural Treasures Act,” H.R. 4772
- “Satellite Television Access Reauthorization Act of 2014,” H.R. 5036
- “You Own Devices Act,” H.R. 5586
- “Consumer Choice in Online Video Act,” S. 1680

4. Pending Initiatives of the U.S. Copyright Office

➤ **Forthcoming Reports and Studies:**

- Orphan works/mass digitization
- Making available report
- Music licensing report

➤ **Issues of Focus:**

- Orphan Works
- Exceptions & Limitations
(incl. fair use, libraries, preservation, statutory licenses for satellite and cable distribution)
- Resale Royalty Right
- Effective technological protection measures (TPMs)
- Online service provider liability
- Remedies

5. Cross-Border Enforcement

- **Litigating multiple-country copyrights in a single court**
 - London Film Productions Ltd. v. Intercontinental Communications, Inc., 580 F.Supp. 47 (S.D.N.Y. 1984)
 - Lucasfilm Ltd. v. Ainsworth, [2011] UKSC 39

- **Online enforcement**

- **Extraterritorial profits**
 - Los Angeles News Service v. Reuters Television Int'l, Ltd., 340 F.3d 926 (9th Cir. 2003)

- **Choice-of-law rule for copyright ownership**
 - Itar-Tass Russ. News Agency v. Russ. Kurier Inc., 153 F.3d 82 (2d Cir. 1998)
 - Cour de Cassation [Cass.] [Supreme court for judicial matters], 1e civ., April 10, 2013, Bull. civ. I, No. 11-12508 and 11-12509 (Fr.)

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Associate Professor of Law
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