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ARTICLES

The Law of Ideas, Revisited

Lionel S. Sobel 9

Forty years ago the young Melville B. Nimmer wrote an article for the *Southern California Law Review* entitled *The Law of Ideas*. That article formed the framework for chapter 16 in his subsequent copyright treatise, *Nimmer on Copyright*. Today, the revered treatise still follows the structure and theory of that original article.

In this Article, the author responds to the contentions raised in chapter 16 of Nimmer's treatise. The author argues that the organization of Nimmer's chapter is a function of the issues on the law of ideas that were important forty years ago, not today. Consequently, the chapter gives insufficient attention to the issues of current importance. This Article, therefore, explores these issues and respectfully takes exception to some of the conclusions in the treatise.

A Positive Economic Theory of the Right of Publicity

Mark F. Grady 97

The right of publicity allows entertainers and other celebrities to charge for the commercial use of their names, likenesses, and distinctive performance styles. Why, from an economic point of view, should celebrities have this right? This Article suggests that courts create liability in publicity cases so as to prevent too rapid a dissipation of the value of socially valuable publicity assets. The right of publicity privatizes a public good—publicity—and thus encourages a more sensible use of this type of social asset.

ESSAY

Corcovado: Renewal’s Second Coming or False Messiah?

David Nimmer 127

In *Corcovado Music v. Hollis Music*, the Second Circuit considered a foreign contract that assigned copyrights from one party to another. Although the contract was drafted in broad terms, it did not include an explicit mention of copyright renewal. The court concluded, therefore, that the grant did not convey American renewal rights. Notwithstanding the superficial congruence between that ruling and precedent, the author argues that *Corcovado* is both unprecedented and unfortunate because of the United States’ recent accession to the Berne Convention and the policy of relaxing formalities when addressing the copyright laws of foreign countries.

COMMENT

It’s A Wonderful Life - Motion Picture Studios Can Regain Control of Their Wayward Classics

Eric P. Early 139

Many of the copyrights to Hollywood’s classic films have lapsed, and thus have fallen into the public domain. This Comment suggests two ways for the studios that produced these “wayward classics” to recapture their copyrights. The first, the doctrine of derivative-work subordination, has been recognized by the United States Supreme Court in *Stewart v. Abend*. This doctrine states that the owner of the copyright to an underlying work—such as a short story—has lawful control over the use of that work even after a derivative work—such as the movie based on the short story—has been published.

The second way to recapture these “wayward classics” is by arguing that movies distributed prior to the effective date of the Copyright Act of 1976 were not “published” in the legal sense. If the system for exhibiting movies in the United States prior to the 1976 Act did not constitute “general publication,” then the classics themselves would not have been not invested with statutory protection until the effective date of the 1976 Act, at which time they would have been given protection until at least December 31, 2002.