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COPYRIGHT LAW: THE LAST FIVE YEARS OF JOURNAL COVERAGE

Tyler T. Ochoa†

Five years ago, I was asked to write an essay to celebrate the 20th anniversary of the Santa Clara Computer and High Technology Law Journal. In that essay, I surveyed the major developments in copyright law during the previous twenty years and documented how those developments had been chronicled (or foreshadowed) in the Journal.¹ Today, as the Journal publishes the first issue of its 25th volume, I take this opportunity to look back at the Journal’s coverage of copyright law during the past five years.

Articles published in the Journal in the past five years both correctly predicted the outcome of,² and commented on,³ the U.S. Supreme Court’s ruling in Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.⁴ The first empirical study of takedown notices under § 512 of the Digital Millennium Copyright Act was published in the Journal.⁵ Three articles analyzed the controversy over the editing of Hollywood motion pictures to remove or skip over what some viewers believed to be objectionable content.⁶ Other articles


6. See Nikki D. Pope, Snipping Private Ryan: The Clean Flicks® Fight to Sanitize Movies, 20 SANTA CLARA COMPUTER & HIGH TECH. L.J. 1045 (2004); Tyler T. Ochoa, Copyright, Derivative Works and Fixation: Is Galoob a Mirage, or Does the Form(Gen) of the
commented on the fair use doctrine, the anti-circumvention provisions of the Digital Millennium Copyright Act, and the intersection between them. Articles in the *Journal* have anticipated and discussed the enforcement of open-source software licenses, and the potential application of copyright law to user-created avatars and other forms of user-generated content.

The status and reputation of the *Journal* has grown and developed during the past five years. The number of citations made during the past five years to articles published in the *Journal* was over half as many as were made during the previous twenty years. Court citations to articles published in the *Journal* showed a similar increase in frequency. Finally, an important step was taken last year when all

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12. This ratio was discovered through a search, performed on Oct. 30, 2008, for “Santa +1 Clara +5 (computer comp tech)” in the Westlaw JLR database. The number of documents retrieved with this search for the years prior to 2004 was 1,165, and the number of citations for the years after 2003 was 895. No attempt was made to eliminate the few documents where those words appeared by coincidence, rather than because of a citation to the Journal.

13. The same search described supra in note 12 was performed in the Westlaw “ALLCASES” database on Oct. 30, 2008. This yielded forty-four documents, of which eleven
of the current and back issues of the Journal were made available online for free,\(^\text{14}\) utilizing the privilege given to collective work publishers in § 201(c) of the Copyright Act,\(^\text{15}\) as interpreted in recent court decisions.\(^\text{16}\)

Accordingly, at the dawn of the Journal's 25th year, I would like to congratulate and thank all of the editors and staff members of the Journal, past and present, for the tremendous job they have done in raising the Journal from its modest beginnings to its current position among the premiere law-and-technology and intellectual property journals in the United States. I also would like to give the editors and staff of Volume 25 my best wishes for another productive year. I am confident that, under their leadership, the Journal will continue to add to its rich legacy of intellectually stimulating, cutting-edge scholarship.

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\(^\text{15}\) See 17 U.S.C. § 201(c) (2000).

\(^\text{16}\) See New York Times Co. v. Tasini, 533 U.S. 483 (2001) (stating that § 201(c) does not permit publishers to include individual articles in computer databases for individual retrieval; distinguishing microfilm and microfiche in \textit{dicta}); Faulkner v. Nat’l Geographic Enters., Inc., 406 F.3d 26 (2d Cir. 2005) (holding that CD-ROM containing full-page displays of entire archive of National Geographic Magazines falls within § 201(c) privilege under \textit{Tasini}); Greenberg v. Nat’l Geographic Soc’y, 533 F.3d 1244 (11th Cir. 2008) \textit{(en banc)} (agreeing with Faulkner).