THIS BOOKLET CONTAINS THE FILING INSTRUCTIONS AND PUBLICATION UPDATE

Nimmer on Copyright
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HIGHLIGHTS

The 3 chapters on infringement have been extensively updated:

- **Chapter 12:** Infringement Actions—Procedural Aspects
- **Chapter 12A:** Copyright Protection Systems and Management Information
- **Chapter 12B:** Liability for Online Copyright Infringement

CHAPTER 12  Infringement Actions—Procedural Aspects
Expands 12.01[A][1][a], Infringement (federal jurisdiction in contract law cases)
Expands 12.01[A][1][d], Removal and “Complete Preemption” (status of “law of removal” in courts of appeal and U.S. Supreme Court; impact in the state court of a federal court’s conclusion that state-law claims are not preempted)
Expands 12.02, Standing to Sue (advisory opinions)
Expands 12.04[A][1], Vicarious Liability

(infringing works sold at swap meets; whether financial benefit must be direct or may be indirect)
Expands 12.04[A][2][a], Participation in Infringement (Internet “swap meets” & contributory infringement);
Expands 12.04[A][2][b], Providing Means to Infringe (“capable of substantial noninfringing uses” concept & contributory infringement)
Expands 12.05[B], Tolling (statutes of limitations tolled by disabilities; statute of limitations also discussed under Fair Credit Reporting Act)
Replaces 12.06, Laches to add:
New [A], A Viable Defense?
New [B], Ingredients of Defense to Infringement Claim
[1], Delay
[2], For an Unreasonable Period
[3], Causing Prejudice
[4], Effect on Remedies
[5], Exception for Deliberate Piracy
Expands 12.07, Res Judicata and Collateral Estoppel (United Kingdom case)
Expands 12.09[A], The Complaint (cyberspace and representative acts)
Expands 12.11[B][1], *Originality* (burden of proof in respect of plaintiff’s originality if registration certificate exists)

Expands 12.12, *Appellate Review* (standard for consideration of “substantial similarity” on appeal)

**CHAPTER 12A**

*Copyright Protection Systems and Management Information*

Adds New 12A.06[D], *A Real World Application: DeCSS for DVDs* (fair use defense)

Expands 12A.03[A][1][a], *Effective Access Protections* (“effective control” where technology is deactivated)

Expands 12A.04[B][1], *Exemption from Basic Provision* (effect of §1201 “computer programs” limitation)

Expands 12A.06[B][2], *Impact* (DMCA anti-trafficking provision and technologically unsophisticated parties)

Expands 12A.10[B][1][a], *Actionable Conduct* (thumbnail sketches retrieved by search engine)

Expands 12A.12[A], *Powers of the Court* (attorney’s fees in test case)

Expands 12A.12[B], *Injunctions* (enjoining Internet activity)

Expands 12A.16[B], *Regulation of Devices* (analogizing DeCSS to plague and virus)

Expands 12A.16[E], *Fair Use Redux* (expertise requirement in Section 1201; fair use as defense for circumvention; fair use as defense for making copy in copier’s desired format)

Expands 12A.19[A], *Constitutional Base of DMCA* (first case addressing challenge to constitutionality of DMCA)

**CHAPTER 12B**

*Liability: Online Copyright Infringement*

Adds New 12B.05[C], *Napster* (extensive discussion of Napster is provided)

Expands 12B.01[A][1], *Leading Up to the 1998 Amendment* (DMCA’s impact on Frena and Netcom)


Expands 12B.02[B][1], *Distinctive Definition in Instant Context* (service provider safe harbor)

Expands 12B.02[B][2], *Anti-Infringement Policy* (period of conduct for Napster damages)

Expands 12B.04 [introduction], *Information Residing on System at Behest of User* (user uploads screened by humans)

Expands 12B.04[A][2], *Financial Benefit* (“right and ability to control” where there is limited monitoring)

Expands 12B.04[B][4][b], *No Effect of Defective Notice* (consequence of failure to meet prerequisites for valid notification)

Replaces 12B.07[D][2], *Information Location Tools and System Caching* (the effectiveness of suing the source versus the users)

**Appendices**


Appendix 3, *Copyright Office Regulations Promulgated under the Copyright Act of 1976 and Related Acts*, is current through the 11/07/02 issue of the Federal Register.

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