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Symposium Introduction

Bertis Downs

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SYMPOSIUM

THE CHANGING FACE OF COPYRIGHT LAW: RESOLVING THE DISCONNECT BETWEEN 20TH CENTURY LAWS AND 21ST CENTURY ATTITUDES

SYMPOSIUM INTRODUCTION

Bertis Downs *

The papers in this Symposium address some of the issues surrounding copyright law and its abundant knock-on effects in the age of the “world’s biggest copy machine,” also known as the internet. In the issue you are holding in your hand, six authors present six diverse approaches to various aspects of the collision between real world, age-old rights, and new world, virtual channels of distribution and communication.

In the winter semester of 2006, I began teaching a class on Entertainment Law by informally polling my class of about thirty students about their digital habits, i.e., whether or not they utilized downloading/streaming applications, iTunes, subscription services, blogs, internet radio, social networks of that era, and the like. We all observed that of the handful of the technologies I had asked about, several had been nonexistent or unknown three years earlier when I had last taught

* Bertis Downs is general counsel for R.E.M. and adjunct professor at the University of Georgia School of Law, affiliations he has held since his graduation from law school in 1981. He is a graduate of Davidson College in Davidson, NC, and a former law clerk for Senior Judge Wilson Cowen of the United States Court of Appeals for the Federal Circuit of Washington, D.C. Downs is past chair of the Music and Personal Appearances Division of the American Bar Association Forum Committee on the Entertainment and Sports Industries and is a frequent panelist at various Continuing Legal Education programs in various state, law school and national settings. He has long been active as a boardmember of various charitable, legal, and political organizations, including Georgia Appleseed, People for the American Way, the Future of Music Coalition, and Athens-Clarke Heritage Foundation.

the course. Later that semester, I first heard of YouTube, and of course since then a proliferation of “*new new*” media have come along: Twitter, Spotify, BitTorrent, and many more that we haven’t heard of quite yet.

Against this backdrop of the blindingly-escalating dynamics of innovation and technological change, practitioners and theorists alike remember back to the old-school concept of copyright, a system purportedly developed in order to provide an incentive for creators to create, so that all of society is enriched by their creative output. But with the internet, which has been described as what else if not a vast file sharing system, so dominating of all of our time, attention, and wherewithal, where exactly do principles of copyright law fit in? And how can the law possibly keep up when technology and innovation always maintain the upper hand?

To put it another way, with people of all generations flocking to sites that promote free access to content all of the time, and in this cut-and-paste, on-demand, YouTube world we now live in, what role does copyright play? With content creators, and those who have traditionally funded them (record labels, publishers, movie studios, etc.), the challenge is to strike the correct balance between “giving it away” and gamely fighting the good fight to monitor and enforce laws designed in a time of scarcity and control, when in the digital present there is neither.

One thing just about everyone agrees with is the principle of “fair compensation for artists.” Of course we all agree that creators should be able to make a living if they produce works of quality that are valued by society. Yes, but what value is there in a digital world when a song, or a movie, or a book, seems worth about what an email is worth? And if ever the adage “the devil is in the details” was true, the best example of it has to be the current attempts to work out licensing terms given the complexities of the rights thicket characterizing the modern music business. “Fair compensation for creators,” sure, but who is to say what is “fair”?

The papers herein do not purport to answer all of the questions posed by the significant challenges facing content creators and owners in the internet age. But each author, and each paper, delves deeply into a corner of this looming debate. Represented in the Symposium are playful voices, forward-looking analytical examinations, and technical and thorough-going legal analyses, with each submission presenting a different strand of the puzzle. Together, these submissions discuss and offer potential solutions to help resolve some of the apparent disconnect between how we are living in our world and at our screens, and the traditional notions of copyright law, which seem quaint by the day. The tension between these two realities, and the importance of resolving them, is reflected in the magnitude of the depression currently underway in the content industries.

Regardless of whether or not you agree with any of the approaches advocated by any of the authors represented in this issue, I hope their unique viewpoints inform your own approach to the issue, and inspire you to think more about how we can monetize the daily online activities of millions of digital consumers.

