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Digital Technology and Copyright: A Threat or a Promise - Introduction

Michael J. Meurer

Boston University School of Law

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FRANKLIN PIERCE LAW CENTER'S SEVENTH BIENNIAL INTELLECTUAL PROPERTY SYSTEM MAJOR PROBLEMS CONFERENCE

DIGITAL TECHNOLOGY AND COPYRIGHT: A THREAT OR A PROMISE?

I. INTRODUCTION

A. *Conference Background*

On November 14, 1998, Franklin Pierce Law Center (FPLC), in cooperation with the Kenneth J. Germeshausen Center for the Law of Innovation and Entrepreneurship and the PTC Research Foundation, both of which are headquartered at FPLC, held its Seventh Biennial Intellectual Property System Major Problems Conference. While noteworthy for a broadening in scope over previous conferences — from “patent system major problems” to “intellectual property system major problems” — the seventh biennial conference continues a tradition of scholarship and discussion begun in 1987 by former FPLC professor Homer O. Blair.

The discussions in Professor Blair’s inaugural major problems conference focussed on such varied topics as new forms of patents, litigation cost reduction measures, and first-to-file versus first-to-invent systems.¹

The 1989 conference was devoted primarily to patent trial simplification and dispute resolution.²

¹ *Franklin Pierce Law Center's First Biennial Patent System Major Problems Conference*, 28 IDEA 61 (1987) and 28 IDEA 117 (1987).

² *Franklin Pierce Law Center's Second Biennial Patent System Major Problems Conference*, 30 IDEA 107 (1989).

The 1991 conference took up the issue of patent-law harmonization, with a particular focus on secret prior art, prior user rights 35 U.S.C. § 104, and publication of pending applications.³

The principal topics for the 1993 conference included abolition of jury trials in patent cases, a new specialized patent court in England, prior user rights, and the U.S. Patent and Trademark Office as an independent government corporation.⁴

The 1995 conference covered patent costs, the future of the U.S. Patent and Trademark Office, and prior user rights.⁵

The most recent prior conference, in 1997, discussed medical procedures patents, software protection and the Doctrine of Equivalents, and featured remarks by the Deputy Assistant Commissioner of Patents.⁶

B. *Conference Design*

As in previous years, the 1998 conference was designed to bring together a significant number of invited scholars, industry representatives, practicing attorneys, and government officials for a roundtable discussion. The conference was designed to encourage in-depth discussion and exchanges among the attendees, without formal, prepared presentations other than the prefatory comments offered by the moderators to introduce new topics.

The conference's principal objective was to have knowledgeable and influential participants explore the conference's principal topics with each other, with an eye toward enabling each participant to leave at the end of the day with a better understanding of the viewpoints of others, and, ideally, with knowledge of some newly discovered — or perhaps newly created — common ground.

The theme of the 1998 conference was "Digital Technology and Copyright: A Threat or a Promise?" In the letter that invited participants to attend the conference, the following five issues were identified as the principal subject matter of the conference:

³ *Franklin Pierce Law Center's Third Biennial Patent System Major Problems Conference*, 32 IDEA 7 (1991).

⁴ *Franklin Pierce Law Center's Fourth Biennial Patent System Major Problems Conference*, 34 IDEA 67 (1994).

⁵ *Franklin Pierce Law Center's Fifth Biennial Patent System Major Problems Conference*, 36 IDEA 345 (1996).

⁶ *Franklin Pierce Law Center's Sixth Biennial Patent System Major Problems Conference*, 37 IDEA 623 (1997).

1. The capabilities of digital technology. What can digital technology really do? Now and in the near future, what threat does it actually pose for owners and users? (We intend to have engineers with relevant experience present to serve as continuing “guides” on this subject.)
2. The implementation of technological protection. What is the history to date, and what are the pros and cons, of various implementation approaches, e.g., industry-negotiated versus government-imposed?
3. Technological protection and public policy. What are the merits and disadvantages of proposed anti-circumvention and copyright information management approaches? What is the potential significance of technological protection and remedies in the context of copyright licensing?
4. Digital technology and copyright liability. What is the copyright significance of temporary copying, the proper role and responsibility of Internet service providers and the relationship of technological protection to the foregoing?
5. Alternatives to technological protection. If technological protection is limited, inherently or by law, to what extent, if any, should copyright owners receive alternative forms of protection, such as compulsory license fees, equipment levies and the like?

In addition to being asked to consider the issues outlined above, participants were provided with the following documents, to facilitate their preparation for the conference:

1. WIPO Copyright Treaty.
2. WIPO Performances and Phonograms Treaty.
3. Conference Report on H.R. 2281, the Digital Millennium Copyright Act (“DMCA”).⁷

⁷ H.R. REP. 105-796.