

More Exclusive Rights: Distribution, Performance, Display

<http://wendy.seltzer.org/brooklaw/07copyright/>

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§106. Exclusive rights in copyrighted works

- 1) Reproduction
- 2) Derivative works
- 3) Distribution of copies
- 4) Public performance
literary, musical, dramatic, and choreographic works, and motion pictures and other audiovisual works
- 5) Public display
literary, musical, dramatic, and choreographic works, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work,
- 6) Digital performance of sound recordings

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Sharing tangible objects

- LaLa or Peerflix are CD and DVD swap services, respectively. Members pay fees for the services, which facilitate the exchange of used CDs or DVDs.
 - Are these services “distribution”?
 - Do they infringe the distribution right?

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Protozoa Records

- Protozoa Records runs a used CD store, purchasing CDs from sellers, marking them up, and re-selling.
 - Can Protozoa make extra money by renting those CDs?
 - Can it sell CDs, then offer purchasers 75% back if they return the CDs within a week of purchase?

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§106. Exclusive rights in copyrighted works

- (2) to prepare derivative works based upon the copyrighted work;

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§ 101 “derivative work”

- A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”.

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- We looked earlier at one component what it takes to make a derivative work:
 - original work of authorship
 - based upon a preexisting work
- To whom does the right to create that work belong?
- Why? What policy goals are served?

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Castle Rock v. Carol Publishing



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Are these derivatives?



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Trolls



- Note: I'm not holding you responsible for the details of 104A restoration.

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Artworks



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Albuquerque A.R.T.

Mirage v. A.R.T.



Lee v. A.R.T.



- Are tiles derivative works?
- Depends on the Circuit. If you're a tile-maker, go East!

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What's a derivative work of a video game?

Lewis Galoob v. Nintendo

Microstar v. Formgen



What's the relevant difference between them?

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101. definitions

- To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.
- To perform or display a work "publicly" means
 - (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
 - (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

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Watch Movies Here!

- *Columbia Pictures v. Redd Home*
- Maxwell's Video Showcase allows customers to screen movies in private rooms.
 - Does it matter whether Maxwell's rents the rooms and movies or puts the videos into a viewer it controls?
 - Does this differ from renting videos for customers to watch elsewhere?

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Derivative works?

- A movie studio wants to film a new movie on Jonathan Lethem's latest novel.
- A team of youngsters decides to film a recreated "Indiana Jones" in their backyard. It takes them several years.
- A modern composer writes a musical composition inspired by Margaret Mitchell's "Gone with the Wind."

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More hypos

- Country Bed and Breakfast wants to enhance its guest experience with more than just a Franklin stove. It proposes to offer:
 - A lending library of books and board games
 - A videotape and CD lending library
 - or a central server that streams movies to televisions in rooms.
- How do you advise Country?

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