A BRAVE NEW WORLD? INTELLECTUAL PROPERTY LITIGATION IN THE MULTIMEDIA INDUSTRY

Jonathan Band
Morrison & Foerster, Washington, D.C.

Abstract

This paper analyzes a hypothetical multimedia copyright problem from the perspective of United States law. It reviews ownership, infringement, and remedies issues, and places them in the appropriate litigation context. The paper also touches on publicity rights. The paper concludes: (1) that multimedia developers must carefully clear the rights of the works they seek to use in their products; and (2) that multimedia does not present new intellectual property issues, but that the technology makes copying easier and therefore more likely to occur.

The coming revolution in the multimedia industry will present a host of thorny intellectual property issues to both content providers and multimedia developers. Rather than discuss these issues in the abstract, I will offer a hypothetical example and then analyze the intellectual property and litigation problems it presents. I will apply U.S. law, but many of the basic principles would apply under any intellectual property system. As I proceed through the hypothetical, it will become clear that, unlike computer programs, multimedia really does not pose new or different intellectual property issues. Rather, the multimedia technology simply makes it easier and more desirable to copy than ever before, and thus more likely that copying will occur.

I. "TANGIERS II"

My six year old son Jeremy enjoys synthesizing characters and scenes from different films and cartoons into original stories which he illustrates. Thus, he injects Abu, the monkey from "Aladdin," and Michaelangelo (the Teenage Mutant Ninja Turtle, not the artist), into an amalgam of the politically correct story-lines of "Beauty and the Beast" and "Fern Gully." Imagine that in the year 2001 Jeremy is 25 (rather than just 15) and his taste has become somewhat more sophisticated. He has at his disposal a multimedia workstation which can access over 500 cable television channels. Because of the cost of developing new content, most of these channels are devoted to either old films or home video shows. While I'm away on an extended business trip, Jeremy decides to enter the booming multimedia industry by producing his own film using material from cable television as a base.

Jeremy intends his film to be a sequel to his favorite film, "Tangiers." The hero of the film is Dave, a cynical American who finds himself at the beginning of World War II owning a popular bar in Tangiers. With the software at his disposal, Jeremy can digitize Dave's facial and body movements, as well as his voice. This allows Jeremy to direct Dave's

movements and to have Dave recite new lines. Jeremy then inserts Dave into a variety of settings borrowed from the World War II film "The Desert Fox Meets His Match" with a variety of characters from the science fiction classic "Voyage to the Planet Under the Sea." Jeremy thinks up his own plot and dialogue; the characters move as Jeremy directs them, not as they moved in their original films; all the characters' faces and voices from "Voyage" have been altered so that they are no longer recognizable by the general audience; and the settings from "Desert Fox" have been similarly altered. Jeremy uses Jessie Taylor's recording of Barry Holly songs for the soundtrack.

Because his father is a copyright lawyer, Jeremy knows that verbatim copying is unlawful. He remembers reading that "Tangiers" had entered the public domain, and he assumes that if he sufficiently alters the material from the other sources he'll be safe. He also remembers hearing me say that it is lawful to videotape television shows and make audio tapes of sound recordings.

Once Jeremy finishes his film, he broadcasts it from his workstation through the cable television network to the 100,000 households served by our local cable television company. He receives favorable viewer response, so he makes his film available to viewers on a pay-per-view basis. He also sells three hundred copies of his film to friends and film buffs.

Soon thereafter, Jeremy finds himself sued by numerous parties, including the holders of the copyright in "Desert Fox," and "Voyage," the author of the short story upon which "Tangiers" is based ("Algiers"), the author of a novel purporting to continue the "Tangiers" story after the film ends ("The Road from Tangiers"), the estate of Hubert Bogard, the actor who portrayed Dave in "Tangiers," the singer Jessie Taylor, and the songwriter Barry Holly.

My first step (after telling Jeremy to stop distributing his film) is to analyze the situation to form a strategy. I would analyze: (1) the validity of the plaintiffs' claim of intellectual property ownership; (2) the degree to which Jeremy infringed the plaintiffs' intellectual property; and (3) the likely remedies the plaintiffs would receive for any infringement. Most of the intellectual property rights involved in this hypothetical are copyrights, but there are publicity rights at stake here too. We'll treat the copyright questions first, and look at the publicity rights.

II. COPYRIGHT OWNERSHIP

The first issue that needs to be sorted out here is who owns what. Ownership issues are particularly complex because Congress has amended the Copyright Act numerous times, and which provisions apply depend on when a work was first published.

Since the United States is now a signatory to the Berne Convention, the international copyright treaty, works published after March 1989 do not have to comply with statutory formalities to receive protection. All of the works Jeremy allegedly infringed, however, were published before March 1989, and thus had to be published with a proper **copyright notice**. The notice had to include a circled letter "c" or the word "copyright," the year of publication, and the author's name. 17 U.S.C. §§ 401, 405. You would be surprised how often

authors forgot to attach proper copyright notice to their works back in the days when notice was required. Under the 1976 Act, there is a provision permitting **cure** of omission of notice within five years of publication. 17 U.S.C. § 405(a)(2). The provision applicable to "Tangiers" in the 1909 Copyright Act is even more stringent. Omission of notice on a published work without cure results in the work entering the **public domain**.

Fortunately for Jeremy, the owners of "Tangiers," one of the hundreds of films churned out during World War II, omitted notice and failed to cure. Because "Tangiers" had been widely distributed during the War and then later on television, it probably was published, and thus the omission of notice placed it in the public domain. (Some cases, however, suggest that this wide dissemination would not constitute publication. If it was not published, then the omission of notice would not place it in the public domain.)

It should be noted that publication is a tricky issue. The Copyright Act defines **publication** as "distribution of copies . . . to the public . . . ." 17 U.S.C. § 101. The case law offers no bright lines on what constitutes distribution to the public. A computer program or training manual used by thousands of employees within a single company probably would be considered unpublished because although many copies had been made internally, none were distributed to the public. By the same token, a single sculpture standing in a heavily visited museum might also be considered unpublished because copies of it had not been distributed to the public. The omission of notice on these unpublished works would not put them in the public domain.

Because "Tangiers" had entered the public domain, those aspects of Dave's character which originated in the film are also in the public domain, and Jeremy was free to copy them. However, Jeremy did not realize that those aspects of the character which originated in the short story on which the film was based, "Algiers," might still be covered by the story's valid copyright. More on this below.

A different ownership issue concerns "The Desert Fox Meets His Match": **duration of ownership**. For works created before 1978, a copyright lasts for 28 years from the date copyright was secured. If the 28 years elapsed prior to 1992, the copyright could have been renewed during the 28th year for an additional 47 years. And if the 28 years elapse after 1992, the copyright will renew automatically for an additional 47 years. 17 U.S.C. § 304. (For works created after 1978, the duration of the copyright is life of the author plus fifty years, with no renewal requirement.)* For a variety of reasons, the copyrights on a surprisingly large number of films made prior to 1978 were not renewed at the end of the 28 year period, and have now entered the public domain.

We learn that the copyright in "Desert Fox" was renewed by its director, Billy Calmer, in 1980, 28 years after it was first copyrighted in 1952. We discover that Calmer was an employee of the studio that produced the film, TKO, and that he directed it under the tight supervision of the TKO Mogul,

---

** If the author is not an individual, e.g., a corporation, the duration of the copyright is 75 years from publication or 100 years from creation, which ever occurs first. 17 U.S.C. § 302.*

Louis Metro. We would argue that TKO, not Calmer, owned the copyright in the film, and thus that the renewal of the copyright in 1980 by Calmer, rather than TKO, was defective. Under the **work-made-for-hire doctrine**, a work created by an employee for an employer is owned by the employer, not the employee. 17 U.S.C. § 201(b). If, on the other hand, the author is an independent contractor commissioned by a third party, then the copyright resides with the author, not the third party. In many cases, the precise relationship between the author and the hiring entity is not clear. Because the renewal was defective, "Desert Fox" entered the public domain and Jeremy was perfectly free to copy its settings.

The Jessie Taylor record has two layers of copyrights. She owns the copyright to the sound recording, i.e., her rendition of the Barry Holly songs. (In the U.S., the recording company typically holds the copyrights; Jessie Taylor is so popular that she has her own recording company.) Barry Holly, in turn, owns the copyright in the songs she sings. We will assume that both these copyrights are still valid.

As you can see, ownership issues often become exceedingly complex with works such as films, which contain many layers of rights. Because the status of these rights often differ, sorting out what belongs to whom can be a monumental task.

My analysis convinces me that we would probably prevail on the following issues: that "Tangiers" is in the public domain because of the omission of notice; and that the copyright renewal for the film "Desert Fox" was invalid because it was renewed by the director, who did not own it. I also conclude that the remaining plaintiffs probably could successfully establish their ownership of valid copyrights.

III. COPYRIGHT INFRINGEMENT

A copyright gives its owner a bundle of rights. The most basic right is exclusive control over the reproduction of the protected work. Other rights may include control over the performance of the work and the making of derivative works. 17 U.S.C. § 106. Let us first consider the reproduction right. To establish infringement of the reproduction right, the plaintiff must show (1) that the defendant copied from the plaintiff's work, and (2) that the copying constituted a misappropriation of protected expression.

To show copying, the plaintiff either introduces direct evidence of copying, or circumstantial evidence of copying. Probative circumstantial evidence includes the defendant's access to the plaintiff's work, and substantial similarity between the plaintiff's and the defendant's work.

Because Jeremy erased all the intermediate versions of his film, there is no direct evidence of copying. The circumstantial evidence of copying with respect to the characters from "Voyage" and the Jessie Taylor songs, however, is overwhelming. "Voyage" was broadcast numerous times on a cable station Jeremy receives, and the bodies of some of the monsters and humans in "Voyage" are clearly similar to the bodies in Jeremy's film. Similarly, Jeremy has a Jessie Taylor CD, and the songs on the soundtrack of "Tangiers II" are without question identical to those on the CD. (Indeed, because of the "striking similarity" between the soundtrack and

the CD, most courts would conclude copying occurred even if Jessie Taylor and Barry Holly did not prove Jeremy's access to the records.)

The short story on which "Tangiers" is based, "Algiers," has remained in the desk drawer of its author since the film was produced. Jeremy thus had no access to the story itself. Jeremy, however, did have access to "Tangiers" which derived from "Algiers," and therefore had access to all elements of "Algiers" included in "Tangiers." The author of "Algiers" alleges that Jeremy copied elements of the hero of "Algiers" appearing in "Tangiers." It turns out that the hero of "Tangiers," Dave, bears no resemblance to Craig, the hero of "Algiers." Dave is a short, hard-drinking cynical American, while Craig is a tall, tea-totalling British optimist. We could make a credible argument that Jeremy's film included aspects of the hero found only in the film version of "Tangiers," and no aspects of the hero in the short story "Algiers." In the absence of similarity between the hero of "Algiers" and the hero appearing in "Tangiers" and "Tangiers II," the author of "Algiers" cannot prove copying.

There remains the novel purporting to continue the story of "Tangiers" after the film ends: "The Road from Tangiers." Jeremy swears he has never seen or heard of this novel. Unfortunately for Jeremy, courts have a low standard of proof for access. It might be enough if the novel is in the local library Jeremy frequented. Moreover, with the technology of the future, it is conceivable that Jeremy had access to the novel via a network to which his multimedia workstation was linked. Alternatively, the novel could be loaded on a CD-ROM in his possession, and he didn't even know it. In a decade, so much information will be available to us in our homes that we will be aware of the existence of only a small fraction.

A court probably would conclude that Jeremy had access to "The Road from Tangiers." Additionally, Jeremy's film is similar to the novel in several respects. In both works, Dave, the hero from "Tangiers," has a series of experiences in World War II, including war scenes, being captured and interrogated by the Germans, and falling in love with a beautiful French partisan. Both works contain numerous episodes not found in the other (notably, in "Tangiers II" Dave encounters an undersea monster), but courts focus on the similarities, not the differences. There probably are enough similarities here to cause a court to conclude that Jeremy copied from the novel.

This leads us to the next test of infringement: misappropriation of protected expression. This test has two prongs: (1) elements in defendant's work are similar to protected expression in plaintiff's work; and (2) intended audiences will perceive substantial similarities between defendant's work and plaintiff's protected expression. Let us look at the first prong. Copyright does not protect ideas, only the expression of ideas. We refer to this as the **idea/expression dichotomy**. U.S. courts for years have wrestled with how to separate ideas from expression. Unfortunately, the courts have found no bright lines; rather, they proceed case by case on an ad hoc basis.

Because Jeremy copied the Jessie Taylor songs verbatim, there is no need to determine where the idea ends and the expression begins -- he obviously took some expression. The situation is less

clear with respect to the novel, so we must determine whether the similarities are in protected expression or unprotected ideas.

The overarching similarity is that both concern the adventures of Dave after the closing scene of "Tangiers." Courts would consider this scenario too abstract to receive copyright protection. What about the war scenes, the capture and interrogation by the Germans, and the falling in love with a beautiful French partisan? Although these plot elements are fairly concrete, we would argue that they are **scenes a faire**: stock scenes that flow necessarily from common unprotectable ideas. Because "Tangiers" takes place at the outset of World War II, a sequel to "Tangiers" necessarily takes place during World War II, and many films of the World War II genre contain these stock scenes. Under copyright law, **scenes a faire** cannot be protected. So long as the details in these scenes differ between the novel and in Jeremy's film, I would guess that we have a good chance of convincing a court that Jeremy did not take protected expression from the novel.

That leaves the characters from the film "Voyage to the Planet Under the Sea." Jeremy took submarine crew members and a monster from "Voyage," and altered them digitally before placing them in his film. The owner of a copyright controls the right to make **derivative works** -- a work based on the copyrighted work, in which the copyrighted work is recast, transformed, or adapted. 17 U.S.C. §§ 101, 103, 106(2). If Jeremy altered the characters to a limited degree, he would infringe the derivative right in "Voyage." At some point, however, the alteration may be so radical that the second work is no longer viewed as a derivative work, but as an original work of authorship.

The question here is whether Jeremy altered the "Voyage" character enough to escape liability. With visual images, courts tend to find the protected expression in the "total concept and feel" of the image, rather than in its individual elements. Thus, even if some of the monster's features remain the same, Jeremy may escape liability if the total concept and feel of his monster is different from that of the monster in "Voyage." Similarly, if he places new, uncopyrighted faces on the crew members, that may be enough to change the total concept and feel, particularly if the crew members are wearing simple military fatigues.

It should be noted, however, that in some jurisdictions courts look at similarities in individual elements rather than at the visual image as a whole. If we were in one of those jurisdictions, we would try to argue that there is not enough **originality** in any individual element to rise to the level of protectability (e.g., the crew's uniforms are ordinary military fatigues and thus not protectable). Because the threshold for originality under the Copyright Act is extremely low, this argument would afford us little protection.

How much change in the total concept and feel is enough to escape liability? This is where the second prong comes in; would the intended audience perceive substantial similarities between defendant's work and the protected expression (the total concept and feel) of plaintiff's work? In a jury trial, this **audience reaction test** is left to the jury. The intended audience would not be film experts, or science fiction experts, but

the general audience that attends such films.

Jeremy did a good job altering the crew members and the monster, and I'm starting to feel better about his predicament. Then I realize the nature of the technology we're dealing with. This is not a situation where Jeremy had a picture of the monster before him, and altered it with his own hand as he copied it. Rather, Jeremy copied the entire film "Voyage" in digital form into the memory of his work-station before he began altering the images of the monster. (In a decade, cable signals will be digital.) This act of reproduction, regardless of how many alterations he subsequently makes, may itself be a copyright infringement.

Jeremy's possible defense against this claim of infringement would be the fair use doctrine. The fair use doctrine allows a court to excuse an otherwise infringing use of a copyrighted work if the circumstances surrounding the use are fair. The Copyright Act sets forth four non-exclusive factors courts should consider in assessing fair use: (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used; and (4) the effect of the use upon the potential market for or value of the copyrighted work. 17 U.S.C. § 107.

Although one should never predict how a court will apply the fair use doctrine, the calculus appears to tip against Jeremy. With respect to the first factor, the purpose and character of the use, we can argue that Jeremy's use was productive; that is, Jeremy made his own contribution to the copied work. Jeremy can also argue that his work parodied the original, and thus was a form of literary criticism. On the other hand, Jeremy's use appears commercial, and thus presumptively unfair. (The commercial purpose of Jeremy's use distinguishes it from the home copying of a television program on a VCR for time-shifting.)

The second factor, the nature of the copyrighted work, clearly cuts against Jeremy. The scope of the fair use defense is narrowest against fictional works such as "Voyage." The third factor, the amount and substantiality of the portion used, also leans against Jeremy. Jeremy loaded the entire film into memory, and then selected particular clips which he subsequently altered. Even if Jeremy had only copied the few segments involving the monster, a court could consider those segments to be qualitatively significant. The fourth factor, the effect of the use on the market for the copyrighted work, probably favors Jeremy. The initial loading of "Voyage" into memory had virtually no impact on the market for "Voyage." Even if the ultimate product of the copying -- Jeremy's film -- is factored in, there still is virtually no harm done to the market for "Voyage." The films are just too different.

It's a close call, but I think a court is more likely than not to rule against Jeremy's fair use defense because of the commercial nature of the exercise. Just as the commercial nature of his use of "Voyage" is fatal to his fair use defense, so too is it fatal to his defense that home-copying of sound recordings (the Jessie Taylor records) is permitted. A 1992 amendment of the Copyright Act permits the home copying of sound recordings, but only for non-commercial use.

Another provision of the Copyright Act came close to giving Jeremy a compulsory license in Barry Holly's musical compositions, but the provision

applies only to the making of phonorecords, not the making of audio-visual works such as Jeremy's film. 17 U.S.C. § 115.

To recap, a court would probably find that Jeremy copied Jessie Taylor's sound recording of Barry Holly's music, "The Road from Tangiers," and "Voyage." Jeremy did not take any protected expression from "The Road to Tangiers" because of the scenes a faire doctrine, but he did take expression from Jessie Taylor's sound recording and Barry Holly's music. Although the images taken from "Voyage" were so altered that they themselves were non-infringing, in the process of making them Jeremy copied all of "Voyage," and this copy probably would not be considered a fair use. Thus, Jeremy's film infringed the reproduction right in Jessie Taylor's sound recording, Barry Holly's songs, and "Voyage to the Planet Under the Sea." Jeremy also infringed Jessie Taylor's and Barry Holly's reproduction rights when he sold copies of his film. These copies, however, probably did not violate the reproduction rights in "Voyage." "Tangiers II," in its finished form, does not include any protected material from "Voyage," and thus making additional copies of "Tangiers II" does not result in additional infringements of the "Voyage" copyright.

Jeremy, however, did not stop with making and copying his own film; he also broadcast it over the cable network. For many types of works, the bundle of rights included within the copyright includes the public performance right. What public performance rights did he violate when he broadcast it over the cable network? There are public performance rights in musical compositions. Accordingly, Jeremy violated Barry Holly's rights. There are also public performance rights in audio-visual works such as films. But Jeremy so radically altered the characters from "Voyage" that his broadcast of his film did not violate the public performance rights in "Voyage." Finally, there are no public performance rights in sound recordings. Thus, the broadcast of "Tangiers II" did not violate Jessie Taylor's rights.

IV. COPYRIGHT REMEDIES

The next step in the analysis is to determine what remedies are available to the parties whose works Jeremy infringed. Oceanic (the studio that owns the copyright in "Voyage"), Jessie Taylor, and Barry Holly probably will all seek to **enjoin** Jeremy from making further copies of their works. 17 U.S.C. § 501. Because Jeremy's film contains verbatim reproductions of Barry Holly's songs and Jessie Taylor's sound recording, they both would also be able to enjoin Jeremy from making further copies of his film. Oceanic's ability to enjoin Jeremy from making of further copies of his film, however, is more problematic. Although Jeremy copied "Voyage" in the process of making his film, Jeremy's film in its finished form does not include any expression from "Voyage." We therefore could argue that there is no basis for granting Oceanic an injunction. For the same reason, we would argue that Oceanic is not entitled to an injunction on the further broadcast of "Tangiers II." Although I think this argument is correct, I could not confidently predict how a court would rule on it.

I can with greater confidence predict that a court would not grant Jessie Taylor an injunction on the broadcast of "Tangiers II" because she has no performance rights in her sound recording. Barry Holly does have such performance rights, so a court likely would grant him an injunction preventing Jeremy from further broadcast of "Tangiers II."

The Copyright Act also provides for **impoundment** and **destruction** of infringing copies. 17 U.S.C. § 503. The Copyright Act leaves this relief to the discretion of the court.

The plaintiffs could also pursue compensation for **actual damages** they suffered plus the infringer's **profits** attributable to the infringement, to the extent they are not taken into account in computing the plaintiff's actual damages. 17 U.S.C. § 504. There are numerous methodologies for calculating actual damages, but here we will mention two: lost sales and license rate. Because the plaintiffs would have great difficulty demonstrating that Jeremy's film caused them to lose any sales, they would probably seek a reasonable license fee for the use of their works. With respect to Jeremy's profits, the plaintiffs would have to show his gross revenue, and then the burden would shift to Jeremy to show his expenses and elements of profit attributable to factors other than the copyrighted work. Assuming Jeremy had any profits, we would argue that none were attributable to the works of Oceanic, Taylor or Holly. Because these works play such a small role in Jeremy's film (indeed, no protectable expression from "Voyage" appears in "Tangiers II"), a court might not award the plaintiffs any of Jeremy's profits.

In lieu of compensatory damages, the plaintiffs could seek **statutory damages**. 17 U.S.C. § 504(c). The court awards each plaintiff the amount it considers just, between $500 and $20,000. If the court finds that the infringement was willful (he knew or should have known that he was infringing a copyright), it can award up to $100,000; if, on the other hand, the infringer was not aware and had no reason to believe that his or her acts constituted copyright infringement, the court can award as little as $200. Was Jeremy's infringement willful? He in fact believed that he was free to use the works he included in his film. Was his belief reasonable? Should he have known that his loading "Voyage" into the memory of his workstation was not a fair use? Should he have known that the compulsory license for musical works applied only to the making of sound recordings, and not films? Should he have known that the copying of sound recordings was permitted only for non-commercial home use? These issues are so technical that I doubt a court would find Jeremy's infringement to be willful.

The U.S. Attorney theoretically could pursue **criminal sanctions**. 17 U.S.C. § 506, 18 U.S.C. § 2319. If within a 180 day period Jeremy willfully made 10 or more infringing copies with a total retail value of more than $2,500, he could be subject to felony penalties. Because the retail value of a Jessie Taylor record is $10, Jeremy's sale of 300 copies of his film may meet the threshold, assuming he meets the willfulness standard. As noted above, the willfulness of Jeremy's infringement is far from clear, so it is unlikely that the Feds would go after Jeremy.

V. PUBLICITY RIGHTS

In addition to liability under the federal Copyright Act, Jeremy also has to worry about state publicity rights. Publicity rights give a person control over the commercial use of his or her identity. Although "Tangiers" had entered the public domain, and thus Jeremy could copy images from the film with copyright impunity, the actor who portrayed Dave, Hubert Bogard, has publicity rights apart from the studio's copyright in "Tangiers." The nature of these rights varies from state to state. Although Bogard died in 1985, in most states his estate could prevent the commercial use of his likeness without authorization for a specified number of years after his death. Because Jeremy's use of Bogard's likeness would probably be considered commercial, Jeremy would be liable in many states under a publicity rights theory.

VI. RECOMMENDATION

My analysis concludes that Jeremy is likely to prevail with respect to all plaintiffs except Oceanic, Barry Holly, Jessie Taylor, and Bogard's estate. In a rational world, my advice to Jeremy would be to work out a license arrangement with these four plaintiffs, resist the claims of the other plaintiffs, and continue to sell and broadcast his film. In a rational world, Oceanic, Barry Holly, and Jessie Taylor would agree to reasonable license terms because of the small contribution of their works to Jeremy's. In a rational world, Bogard's estate would also agree to a reasonable license fee because Bogard was a forgotten actor in whom no one had shown any commercial interest in years. Finally, in a rational world a court would recognize that the other plaintiffs' claims have no merit.

As we all know, however, this is not a rational world. At least one of the four plaintiffs with strong claims will demand exorbitant license fees. Moreover, there is always a chance that one of the other plaintiffs will prevail on its claims. Beyond the likely injunctive relief and damages, the prevailing plaintiff may recover its attorneys fees. 17 U.S.C. § 505. Given the state of litigation in America, these fees in even a relatively simple case can run into the hundreds of thousands of dollars. Thus, they often far exceed the damages awarded the plaintiff. Because I am providing my services to Jeremy pro bono, he doesn't have to worry about my fees, but most defendants don't have the fortune of having a copyright lawyer in the family. In short, litigation is a very risky and costly alternative.

Accordingly, I would recommend that Jeremy work out an arrangement with all the plaintiffs whereby he agrees: (1) to recall all copies of his film; (2) to refrain from further distribution of his film; and (3) to refrain from further broadcasting of his film, in exchange for the plaintiffs not pursuing damages or attorneys fees. This is one of those situations where discretion is the better part of valor.

VII. INTERNATIONAL ISSUES

In the brave new world of multimedia, intellectual property problems are likely to be even more complicated than in my hypothetical because of the ease of international communication. In 2001, Jeremy might be able to broadcast his film not only

over the local cable system, but over cable systems in other countries as well. I will not examine this issue in detail, but just mention some of the complexities.

I would have to reexamine the ownership status of the works in question in each country in which "Tangiers II" is seen. Because the U.S. was not a signatory to the Berne Convention when all the allegedly infringed works were created, the ability of the U.S. creators to own copyrights in France, for example, depends on whether at the time of the work's publication France was either a signatory of the Universal Copyright Convention or party to a bilateral copyright treaty with the U.S. Because France did ratify the UCC, and previously had entered into a bilateral copyright treaty with the U.S., the U.S. creator would receive **national treatment**, i.e., would receive the same copyrights as a French citizen. In France, the creator has moral rights and does not have to meet notice requirements or other formalities. On the other hand, on the Continent there are no copyrights in sound recordings (just "neighboring rights") and the work-made-for-hire doctrine is less developed. This makes the ownership of films a troublesome question (is it owned by the director or the studio?).

VIII. CONCLUSION

There are two morals to this story. First, multimedia developers must take the time to clear the rights of the works they seek to use in their products. It is always less expensive to obtain a license in advance than litigate after the fact.

Second, the copyright issues here are really no different from the kinds of copyright issues arising with more traditional works. The technology, however, makes copying so easy that multimedia developers are likely to find themselves enmeshed in costly litigation if they're not careful. Additionally, with international communication networks, multimedia developers may find themselves in foreign courts as well.