Notre Dame Law Review

Volume 14 | Issue 4 Article 5

5-1-1939

Recent Decision

Jack C. Hynes

stantial degree? Within the limits of such a rule, he should not have any difficulty determining how much he can quote, if he merely keeps in mind the rule that quoting is restricted to comment, criticism and explanation. It should be obvious to an author that he may safely use anything that is within the public domain, either by its nature, such as news items, historical facts, character traits of peoples, traditions, habits, customs of a locale, prejudices or race or religion, judicial and other public documents; or by running past the period of copyright; or by being published by the author without copyright, thus throwing it into the public domain. Of course the author cannot steal anything that could be thought of as an original arrangement of scenes or incidents, or the method of expression, for these are the very things that the copyright law protects from robbery for the statutory term of twenty-eight years with an equal renewal period.

With these general principles in mind, perhaps the author may forestall a suit for infrigement, or more importantly, he may be able to protect himself against some successful writer who has stolen his brain child and profited greatly thereby. Admittedly if this happened to a successful writer of long experience we would expect him to know these principles, but that seems to be presuming too much when so important a person as Adolf Hitler and his well-known publisher seem very likely to be without remedy while the book, "Mein Kampf" is printed without protection of the copyright law.

Frank J. Lanigan.

RECENT DECISION

COPYRIGHTS—LIABILITY OF HOTELS AND CAFETERIAS FOR RADIO RECEPTION OF PROTECTED PIECES.—The defendant, a hotel company, had a radio receiver in each room for the accommodation of its guests. A system of master receivers and wires controlled by the management and piped to each room-receiver gave the guest a choice of two stations, each representing the local outlet of competing national chains. The plaintiff complains that in making available in this manner a copyrighted piece, the defendants gave a "public performance" for profit within the meaning of the Federal Copyright Act, 17 U.S.C.A. 1 (e), which states: "Any person entitled thereto, [to a copyright] upon complying with the provisions of this title shall have the exclusive right . . . to perform the copyrighted works publicly for profit if it be a musical composition; and for the purpose of public performance for profit . . . ." This contention was supported by the court even in the face of the fact that the broadcasting station had been licensed to originate the song over the air. The court in holding for the plaintiff, also denied the contention of the defendant that the guests had a choice, and that there could be no public performance since they were separated. In negation the court said the act constituted a "public performance for profit" because it took place in a hotel, under the control of the management, and furnished part of the consideration for the room rental. *Society of European Stage and Composers v. New York Hotel Statler Co.*, 19 Fed. Supp. 1 (1937).

Slightly less strong but to the same effect is the decision in *Buck v. Jewel-La-Salle Realty Co.,* 283 U. S. 191, 51 Sup. Ct. 410 (1931), in which case the defendant was the owner of the LaSalle Hotel in Kansas City. This hotel had through its management, provided loud speakers and ear-phones in its rooms, for the entertainment of its guests. Through the medium of a master radio the defendant received programs from the broadcasting station of one Duncan. Both Duncan and the defendant were warned by the plaintiff's society, an organization of composers and authors, that any transmission of a copyrighted song owned by the society would be considered a violation of that body's copyright. Despite the warning Duncan continued to broadcast and on numerous occasions the defendant, to receive renditions of prohibited songs. These songs, as in the occasion in suit, were further amplified, and wired to the rooms where they were made audible to such guests as desired to hear them. The plaintiff claims that in receiving and making the songs available to the guests, the defendant was guilty of a "public performance" under the Federal Copyright Act, *supra.* The defendant denied that there was any "public performance" in their action and tried to persuade the court that the liability should be limited to the original broadcaster, the hotel being a mere passive listener. But the court rejected this contention and held that the wiring of the program to the rooms with increased amplification was an independent performance. They ruled that there could be innumerable separate "public performances" resulting from one broadcast. By dicta, however, they did somewhat confine their "Frankenstein," by saying reception in a private home for the benefit of guests would not be contrary to the statute. It will be noted that this case is distinguishable from *Society of European Stage Authors and Composers v. New York Hotel Statler, supra,* in the point of the license to the original broadcaster, which was not issued in the instant case.

Despite what one might think of the reasonableness of the previously stated cases, it seems that protection is not unreasonably extended in *Jerome Remick v. General Electric Co.,* D. C., 16 Fed. (2) 829 (1926) in which case the defendant owned a broadcasting station, the existence of which was posited on its value as an advertising medium for the defendant's products. In the operation of this station the defendant picked up and transmitted to its own listeners a program emanating from another station, which contained a copyrighted number owned by the plaintiffs, who brought an action for infringement of the Federal Copyright Act, *supra.* The defendant contended that it took no part in the original transmission, and hence its conduct was merely passive and did not constitute a "public performance for profit." The court in dicta implied that mere reception without retransmission would not be actionable but stated that the pick up and rebroadcast of the defendant was active. It denied that the defendant merely "opened the window" and allowed its listeners to hear a song emanating elsewhere. Does this decision not afford protection enough for the copyright owner, without extending liability to a mere unified system of private reception such as frequently exists in hotels and restaurants?

The only case answering this question in the affirmative is *Buck v. De Baum,* 40 Fed. (2) 734 (1929). There the plaintiff, as president of the Society of Composers, Authors and Publishers brought suit against the defendant a cafeteria owner, who had tuned in on a broadcast of "Indian Love Call" a copyrighted musical selection, the broadcasting of which had been licensed. The defendant merely turned the dial of a receiver, located in the cafeteria, and by this act made the song in suit audible to his guests. The plaintiff contended that in so doing the defendant violated the copyright by giving an unauthorized "public performance for profit." The court refused to accept this contention and absolved the defendant. The plaintiff, in the judge's contemplation, had by authorizing the broadcast impliedly assented to any pick-up of the program. He said that if the plaintiff wished to prevent reception of the selection it could very well have forbidden the broadcast. Particularly good was the court's closing reasoning: