

form in which the materials will appear, and other details are to be included. Failure to carry out the license as agreed constitutes breach of contract and infringement of copyright.

Copyright Cases

Definition

Copyright, by definition, is the right of an owner to a registered, original, and fixed document. *Curtis v. Benson et al.* (1997) and *Bouchat v. Baltimore Ravens Limited Partnership et al.* (2008) are examples of court decisions addressing the definition of copyright. Curtis, the original architect for the Superdome, sued the owner of the building and recent building architects for reproducing and using his original drawings, without permission, for future work. Defendants claimed that when Curtis gave his registered architectural plans to Tulane University Architectural Archives, including the 1967 Superdome original drawing and the 1987 drawings for the renovation/modification of the Dome, all plans became part of the public domain. The issues before the court:

- 1) whether plaintiff's state law claims are preempted by the Federal Copyright Act;
- 2) whether plaintiff's claim for statutory damages and attorney's fees pursuant to the Federal Copyright Act should be dismissed as a matter of law; and
- 3) whether Tulane University must be joined in these proceedings as a necessary or indispensable party. (*Curtis v. Benson et al.*, 1997, 2)

The Court dismissed the plaintiff's state law claims and struck the request for statutory damages and attorney fees. This case highlights the need for both a technical and legal understanding and awareness of ownership of architectural drawings and other copyrighted materials when drafting building contracts.

A more recent case involving complex copyright issues and architectural renderings of sport facilities is *Longhorn Locker Company v. Hollman* (2020), claiming that defendant stole their plans to remodel the New Orleans Saints' locker room from a failed bid. The court initially seemed to rule in plaintiff's favor, but a pending copyright application limited the potential legal impact.

The *Bouchat v. Baltimore Ravens et al.* (2008) case has an interesting historical background. When the Cleveland Browns moved to Baltimore in 1995, they were forced to leave their logo and brand in Cleveland. Upon settling in Baltimore, the team began to explore a new team name and brands (i.e., team logos) that might accompany the new name. Bouchat, a security guard and amateur artist, took a real interest in the team and began to draw various logos for the names the team was exploring, including a wing shield for the name "Ravens." A few months later, when the team elected that name, Bouchat sent his shield drawing to

the Maryland Stadium Authority, asking the authority to pass the drawing on to the Ravens' president. If the president decided to use the shield, Bouchat wanted a letter of recognition and a signed helmet. Bouchat received no response. "Through a series of misunderstandings, Bouchat's Shield Drawing was sent to the Stadium Authority Chairman's law office, forwarded to the Ravens' temporary headquarters, forwarded to the NFL in New York, and then to the commercial artists working on the Ravens project. There is no reason to believe that the Ravens or NFL intentionally caused the Shield Drawing to be provided to the artists. Nevertheless, the Shield Drawing was provided to the artists who eventually used Bouchat's drawing as the basis for the 'Flying B logo'" (*Bouchat v. Baltimore Ravens et al.*, 2008).

The Ravens' new logo, the "Flying B," created by the NFL Properties (NFLP), looked very similar, if not exactly identical, to Bouchat's submission. The Ravens were unaware that the NFLP had taken the work from a third party. Bouchat sued the Ravens and the NFLP for infringing his copyright on the shield drawing and asked for ten million dollars (*Bouchat v. Baltimore Ravens Football Club, Inc.*, 2003). A jury found for Bouchat because his shield drawing had been copied.

The Copyright Act (17 USC 504) entitled him to actual damages and any profits that were not taken into account in computing the actual damages. The jury had difficulty in arriving at the appropriate damage award and did not decide a damages award. Bouchat appealed the decision not to award him any damages. He stated that he should at least get the statutory damage allocated in federal copyright law. Bouchat was again not clear in his pleadings to establish with some specificity the direct economic losses he actually sustained from the copyright infringement, so the court denied his request. In 2007, Bouchat brought suit against all licensees of the NFLP. The Fourth Circuit affirmed no statutory damages since the artist "failed to register his copyright before the infringement began" (*Bouchat v. Bonton Department Stores, Inc. et al.*, 2007, 315).

In *Spinelli v NFL* (2018), a case involving the Associated Press sports photographers where the NFL sold their images in the online store, the appeals court reversed the lower court's dismissals of copyright infringement against Associated Press and the NFL over breach of good faith and fair dealing and fraud. Regarding the copyright claims, the Second Circuit held that a licensee with a sublicense right may not retroactively grant a sublicense to serve as a defense in an action for copyright infringement (Thomson Reuters, 2018).

Key Defenses to Rights of Copyright Owners: Fair Use

Fair use enables the public to use materials under copyright, particularly library holdings and music files, for research and education without a formal agreement and to escape any liability for copyright infringement. In *Author's Guild, Inc. v. HathiTrust*, 755 F.3d 87 (2d Cir. 2014), the 2nd circuit found fair use where the universities worked with Google to digitize their works and make them text searchable. The court employed a four-factor analysis to test fair use. The court found the use was transformative; downplayed the second factor; said the third factor, even though they used the entire work, was not excessive because they

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