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on
Copyright

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NIMMER ON COPYRIGHT®

VOLUME 5

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MATTHEW  BENDER

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Preface to the Original Edition

The loyal reader, having steadfastly plodded through four volumes of text, may justly welcome this fifth volume consisting of litigation and transactional models with the question: "Why?" A brief answer is in order.

The first four volumes of *Nimmer on Copyright* have explicated the law of copyright. They address the questions of what U.S. copyright law is and what it should be. Their focus is juridical. Thus, their primary audience is a judge called upon to adjudicate a copyright case; concomitantly, they should ideally aid the litigator tasked with the chore of crafting an argument to a judge and the draftsman facing the question of how a judge might ultimately treat the clauses and provisions to be embodied in a contemplated contract.

By contrast, the instant volume addresses the questions of how copyright law operates in practice and what postures it assumes in the world outside judicial opinions and scholarly treatises. Its focus is practical. Thus, its primary audience is the practitioner who wishes to see an example of outstanding pleadings and state-of-the-art contracts implicating copyright concerns. Again, concomitantly, it is hoped that this material may also prove helpful to judges who are curious about the practical arena in which their rulings will reverberate. Nonetheless, citations will remain limited, it is to be hoped, to the commentary of volumes one through three.

In addition, there is another response to the patient reader's plaintive, "Why?" In contrast to the preceding four volumes of *Nimmer* prose, the instant volume is independently authored. It reflects the actual litigation papers and transactional forms drafted by some of the brightest stars in the copyright firmament. Although some of those do bear the *Nimmer* stamp, the vast bulk do not.

But how to winnow down an almost infinite corpus of potentially available material to fit into this single volume? In my office alone, an entire shelf is consumed by the closing documents from a transaction for the purchase of a film library consisting of 900 titles. Whole filing cabinets have surrendered to the documents from a single lawsuit. Given that the publisher has allocated but two volumes, rather than 40, to contain all litigation and transactional forms, the task of narrowing this vast bulk has been formidable.

Happily, two able and experienced practitioners have devoted their services to the project. In the litigation realm, Philip McAleer has reviewed the papers from scores of copyright infringement and cognate actions and has categorized some of the best pleadings by subject matter. Mr. McAleer has also offered commentary, based both on his own experience and on interviews with the pertinent litigators whose papers are reproduced herein. In the transactional realm, Victoria Rossellini has called upon her entertainment law background and contacts to furnish exemplars of many of the most essential agreements on which the copyright industries function. Her commentary should also prove illuminating to the uninitiated. I must also thank Don Biederman and Peter Nolan for their insights and suggested revisions.

Simultaneous with the gestation of this project, I have been blessed with the addition of Talia to our family. Her augmentation of the ranks of Avi and Jacob proves to me

Preface to the Original Edition

that an additional self-contained unit with a different orientation need not detract from the coherence of the original set; indeed, the whole may become even better. But without the unflagging support of my wife, Marcia, I never could have hoped to achieve the strength to embark upon an extra volume in addition to all my other commitments. Hers is therefore more than half the credit for this venture.

Final thanks to my editor, Chuck Knull, translator of vision into reality.

David Nimmer

Los Angeles, California
February 1992