

Who is suing whom, and (why) does it matter? An analysis of the classes of plaintiffs and defendants in copyright lawsuits across time

Robert A. Heverly

Visiting Professor of Law

Michigan State University College of Law

368 Law College Building

East Lansing, MI 48824-1300

Office: 517 432-6902*

Home: 517 580-5067

rheverly@law.msu.edu

Abstract

There seems to be a feeling today that the copyright industries – made up of those firms involved in the centralized production of information goods and their supporting institutions – are more active than ever in suing those who engage in allegedly infringing activities. Equally present is the notion that these same industries are more inclined than ever before to sue not only competitors but also users and consumers of their goods, as well as producers of technologies that allow for re-use or consumption of creative or cultural goods. These perceptions are used to argue against many varieties of increased copyright protection for creative works, based on the notion that others involved in creating outside the copyright industries mold will be dissuaded from producing when law can be and is being used to protect the industrial production model of information goods. This paper undertakes an empirical investigation of these intuitions to either confirm or deny their accuracy, while searching for insights that might be missed if they are simply accepted as rhetorical or practical truths.

The paper starts with a review of current literature, court decisions and popular sentiment on the subject of copyright infringement lawsuits. It turns then to conducting an empirical review of copyright infringement lawsuits for five separate ten year periods at fifty year intervals: 1800-1809; 1850-1859; 1900-1909; 1950-1959; and, 2000-2009. Plaintiffs and defendants in the cases found during these periods are grouped into classes, such as text authors, graphic artists, music producers, publishing companies, etc., and the number and percentage of classes appearing in each period are calculated. The results are then compared across time, allowing for the identification of trends in the kinds of people and entities bringing and defending such lawsuits. The results are then placed in the context of current legal doctrines, popular perceptions, and legal scholarship, where the implications of the identified trends are more fully explored. Possibilities for future use of this technique, both within and outside of copyright or even intellectual property law, are identified as the piece concludes.

* This phone number will likely be available to me only through the end of June, and may be reassigned before even then. Given this, E-mail is most likely the most reliable way to reach me.