

From:

Subject:

Date:

Abusing trademark law to override copyright law.

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Section 120 of USC Title 17 clearly states that architecture which is visible from a public place is fair game for photographers, filmmakers, and other artists who wish to create pictorial representations of the architecture.

Large corporations have been abusing trademark law to override this section of copyright law, however.

While the sixth circuit ruled that pictures of buildings do not violate trademark http://biotech.law.lsu.edu/cases/ip/trademark/rock_and_roll.htm this ruling is not binding in other jurisdictions, and may also be superceded by new legislation enacted during the Bush administration which increased the protections available for "famous marks." As a result, corporations such as MGM Mirage are able to leverage trademark law to prohibit the sale of posters and prints of properties they consider "famous marks" such as the Bellagio in Las Vegas.

In my opinion, it's inherently wrong to prohibit an artist from utilizing the visible landscape in their works of art. Just as any person who is out in public may be photographed and filmed by dozens of traffic and security cameras, any structure which is out in public should be treated the same as a sunset or tree or any other part of the landscape. Especially since Section 120 of the US Copyright Act states this.

The writers of the copyright act foresaw that movie crews shooting a car chase scene or a photographer capturing a sunset should not have their art compromised by restrictions which exclude certain architecture. Wealthy corporations with their own legal departments are essentially bullying poor artists by what I perceive as a misuse of trademark law.

I suggest that trademark law be amended to comply with copyright law and should include the same language as Section 120 of USC 17, which reads:

"Sect. 120. Scope of exclusive rights in architectural works
(a) Pictorial representations permitted.

The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place."

The word "copyright" would be changed to "trademark" in the above paragraph.

Sincerely,

Vic Donato

