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SUBJECT INDEX

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Copyright – Artificial Intelligence, Copyright Trolls Strange, Louise, Note, <i>Just a Generative AI User, Standing in Front of a Copyright Troll, Asking it to Love Her: Generative AI, Copyright Trolls, and the Statutory Damages Regime</i> Copyright trolls have been on the rise for the last few decades, capitalizing on the statutory damages scheme offered in the Copyright Act. While the main arena for copyright trolls has generally been within peer-to-peer file sharing, the inception and popularization of generative artificial intelligence (“Generative AI”) may present a new frontier for copyright trolls. With the massive amounts of data contained in training sets for Generative AI models, some degree of copyright infringement in both the input and output of these engines is all but assured. End-users may not know it, but their actions in using Generative AI may open them up to the predatory litigation tactics of these trolls. The solution can be found in taking away the monetary incentive for copyright trolls to behave as they do; by applying a presumption of innocent infringement, end-users of generative artificial intelligence may be better shielded from forced settlements, while willful infringers can still be held accountable.	53	4	659	2025
Copyright – Choreography Peraza, Danielle, Note, <i>Bouree-ing Between Copyrighted Choreography and Uncopyrighted Dance: Where Do We Draw the Line?</i> While copyright law purports to protect choreography, choreographers and legal scholars face problems. Choreographers have rights pertinent to public performance and the public display of their work, but the law provides no helpful guidance when distinguishing between mere inspiration and outright copying. Choreography in copyright law has remained a largely undefined area. Very few courts have considered the scope of copyright protections for choreographic work. This Note proposes rethinking how we define “choreographic work” and moving towards a broader definition of choreography so that courts and parties may better distinguish protected elements and expression, such that	53	1	179	2025

alleged defendants cannot hide behind the excuse that their copying was mere “inspiration.”

**Copyright – Digital Millennium
Copyright Act, Artificial
Intelligence**

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Witcher, Wade,
DMC-AI: An Antivenom

The Digital Millennium Copyright Act (DMCA) emerged as a cornerstone of early Internet policy, designed to foster electronic commerce through safe harbor provisions for online platforms. However, after nearly three decades, the Internet landscape has transformed dramatically—now dominated by sophisticated AI algorithms that automatically curate, promote, and moderate user content across social media platforms. Although AI has generated unprecedented user engagement and revenue streams, it has also intensified copyright infringement challenges, leaving copyright holders overburdened with enforcement efforts. Today’s AI-driven Internet environment has rendered the original justifications for the DMCA’s safe harbor provisions obsolete. A balanced approach to copyright protection and electronic commerce demands affirmative obligations from social media platforms that deploy AI-driven personalization algorithms. Just as these platforms harness sophisticated technologies to maximize engagement and profits, they must proactively leverage these same capabilities to detect and prevent copyright infringement.

**Copyright & Patents – Recording
Statutes**

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Mann, Ronald,
*As Rare As Hen’s Teeth?: The Pervasive Dysfunctionality of IP Recording
Systems*

This Article considers the dysfunctional nature of the existing systems for recording notice of security interests in patents and copyrights. It starts by discussing how the relevant recording statutes came into being, deriving in the 19th century from real-property recording statutes, but frozen at that stage. It then considers the leading cases for assessing priority of security interests in copyrights and patents, and then discusses practical and interpretive problems with those systems as those cases leave them. The Article closes by suggesting reforms that could be implemented by the courts in some cases, but by Congress in most.

Copyright – Small Claims Court 53 3 385 2025

Web, K.C.,
Small Claims, Big Problems: A Critical Look at the Copyright "Small Claims Court"

Copyright has a “small claims” problem. The cost of formal legal action often exceeds potential damages amounts. Copyright owners are deprived of any meaningful remedy, and infringement goes undeterred. To address this, the United States created a voluntary, low-cost quasi-court (the Copyright Claims Board, "CCB") within the Copyright Office to adjudicate claims involving damages up to \$30,000. However, after looking over the first 250 cases filed, it seems the problem is far from fixed. Perhaps with some legislative tweaking, it may improve enough to justify the cost imposed on taxpayers. This paper takes a critical look at the CCB's first 250 cases to determine whether it is living up to the policy goals, and what may be done to improve, taking lessons from other copyright small-claims projects abroad.

Copyright – Takings Clause, 53 1 149 2025

Music
Greenberg, Hunter,
Note, The Eminem Show(Down): Legal Face-Off Among Music Publishers, Streaming Services, and the Fifth Amendment

Vested in copyright owners is the right to file an infringement suit when an unlicensed party infringes on the copyright owner’s original work of authorship. However, an amendment to the Copyright Act of 1976 removes this right from copyright owners of musical works (predominantly songwriters and music publishers) when a streaming service infringes upon their music. The problem with this amended provision is that it possesses characteristics suggesting it may be a regulatory taking under the Fifth Amendment. By applying the ad hoc takings analysis to this Limitation on Liability provision, this Note concludes that the provision in question can constitute a regulatory taking. Then, several recommendations are suggested to remedy this finding.

Patents – Artificial Intelligence 53 2 247 2025

Bargmann, Brendan; Bohrer,
Robert A.,

inquiry under Graham does not adequately capture the extent to which a skilled person in the art can judge the obviousness of such inventions. This Note thus addresses the impact of generative AI on the level of ordinary skill in the art and the person having such skill in the art. It also discusses the need for a separate disclosure requirement for patent applications that claim AI-assisted inventions. Next, it proposes a set of criteria that augments the obviousness inquiry into AI-assisted inventions. Finally, it applies the proposed criteria to evaluating the obviousness of a controversial AI-assisted invention that was once rejected by the USPTO for listing AI as its sole inventor.

Patents – Prior Art, Novelty 53 2 277 2025

Ball, Haley; Goldstein, Jorge,

Prima Facie Lack of Novelty: When Prior Art Ranges Give Rise to Rebuttable Anticipation

The Court of Appeals for the Federal Circuit has long- and well-established standards for determining whether a claimed numerical range is prima facie obvious over a prior art reference disclosing a similar range, or whether the claimed range is conclusively anticipated by a narrower range or a point. It is fair to say that this area of the law is stable. However, until relatively recently, such has not been the case with the doctrine of rebuttable anticipation. This article provides a contextual and historical survey of decisions in the area of claimed and prior art ranges. It then focuses in detail on the younger doctrine of prima facie anticipation and reaches conclusions as to its application and scope.

Patents – Prior Art, Prior Users 53 2 325 2025

Lemley, Mark A.,

Where are all the Prior Users in Patent Cases?

The adoption of prior user rights in U.S. patent law was a big deal, largely aligning the U.S. with the rule in other countries. Simultaneous or near-simultaneous invention is extremely common, so prior use should be as well. But a surprising thing has happened in the last thirteen years: virtually nothing. Only three decisions in those thirteen years involve substantive claims of prior use. All are by district courts, and two of those decisions were made on largely procedural grounds. Only a single case actually finds prior use by another under the statute. I document the surprising absence of prior user right litigation. I consider a number of reasons for the missing caselaw, none entirely satisfactory. I consider and (mostly) reject explanations that are a function of when and how cases are litigated, the difficulty of detecting

trademark law often operates to preference certain religious groups at the expense of others and to burden the free exercise of religion when one group sues another to protect the exclusive use of a religious mark in a trademark infringement dispute. Accordingly, this Note proposes a novel fair use defense—religious fair use—to trademark infringement claims in an effort to achieve a better balance in the public interest in protecting trademark rights against the public interest in protecting religious freedoms.

Trademark – Supreme Court 53 3 483 2025
Precedent

Juliano Jr., Louis T.

Note, *The Dewberry Dilemma: How the Supreme Court has Created a Freeway for Infringement Under the Lanham*

Trademark law is the fundamental protection for a commercial businesses’ brand. By creating a trademark for goods and services, consumers can identify the brand, which discourages confusion of the source of the mark while simultaneously protecting the reputation of the company. When a second company violates the trademark of the first, the second company is not only confusing the consumer, but also unjustly takes potential profits from the registered trademark owner. The consequences of violating another brand’s trademark typically include monetary damages, as well as injunctive relief. But can injunctive relief accurately remedy missed sales due to trademark infringement for a company that claims no profits? This Note focuses on the Supreme Court’s decision in *Dewberry Group v. Dewberry Engineers*; a long-standing trademark dispute, resulting in Dewberry Group being found liable for trademark infringement, before the Supreme Court vacated the decision for remand. Finding that a company’s affiliates, when unnamed as a party, do not constitute “defendant’s profits”, the Supreme Court has essentially created a pathway for infringers to avoid monetary liability. This Note discusses the issues with the case, the problems with the Supreme Court’s ruling, and possible negative outcomes stemming from this decision.