

**IM 450-01**  
**Intellectual Property Law and New Media**  
**Fall 2022**  
**Class 6**  
**September 13, 2022**

**Elisa Marie Lopez**  
**then**  
**Mr. Baron on Copyright cases**

Ed Lamoureux, Ph. D.

Steve Baron, B.A., J.D.

Baron Harris Healey

# Elisa Marie Lopez

After surviving both IM 250/355 and IM 350/450-IP law, Elisa Marie Lopez graduated from BU in 2013, IM major and Music Business minor.

In Los Angeles since, she is now Sr. Coordinator, Sync Clearance at Warner Chappell Music

[https://en.wikipedia.org/wiki/Warner\\_Chappell\\_Music](https://en.wikipedia.org/wiki/Warner_Chappell_Music)

Warner Chappell Music, Inc. is an American music publishing company and a subsidiary of the Warner Music Group. Warner Chappell Music's catalogue consists of over 1.4 million compositions and 65,000 composers, with offices in over 40 countries.<sup>[2]</sup> It was ranked in 2010 by *Music & Copyright* as the world's third-largest music publisher.<sup>[20]</sup> Among the songs in the company's library are "Winter Wonderland" and formerly "Happy Birthday to You" until the copyright of the song was invalidated in 2015 and put in the public domain the next year.<sup>[21]</sup>

- 1) Spend most of your time doing?**
- 2) % of time spent with WCM clients, WCM lawyers, WCM co-workers on the project, entities outside WCM**
- 3) Most interesting project of late?**
- 4) What would you tell BU self?**
- 5) What do you wish you had most gotten that you didn't get?**

# **Copyright Checklists**

**A lawyer's perspective**

A person enters my office and says:

“Help! (1) I’ve been sued (or threatened with suit) for copyright infringement! OR (2) My work has been copied! OR (3) I want to protect my work before someone copies it!”

- What is the work?
- Who is the copyright holder?
- Has the copyright owner registered the work?
- How was the work used/misused (or might be)?
- Is a third party responsible for the infringement (i.e., indemnity)?
- Is there “substantial similarity” between the works?
- Is there/was this a “fair use”?
- How has/might the use impacted the market?
- What’s your goal (e.g. stopping infringement? forcing a license?)

# Before we go any further, remember:

- All the basic stuff about copyright that Lamoureux's 450-IP students have already learned.
- There's a difference between **attribution** and **permission**.
- Works accessible on the internet are not necessarily in the public domain.
- You are expected to have read the “fine print” (in terms of service or EULA) on copyright permission.

# Tattoos and Video Games

- Solid Oak v. Sketches v. 2K Games, Inc. (S.D.N.Y. 2020)

Figure 1 – 330 and Flames<sup>6</sup>



Figure 2 – Script with a Scroll, Clouds, and Doves<sup>8</sup>



Figure 3 – Child Portrait<sup>10</sup>



# Solid Oak Sketches v. 2K Games

- [https://scholar.google.com/scholar\\_case?case=2561246136859511135&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=2561246136859511135&hl=en&as_sdt=6&as_vis=1&oi=scholar)
- Court finds in favor of 2K:
  - De minimus use
  - Implied License
  - Fair use



# Tattoos and Video Games

*Alexander v. Take-Two Interactive Software, Inc.* (S.D. Ill. 2020)

[https://scholar.google.com/scholar\\_case?case=5865443281383537263&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar\](https://scholar.google.com/scholar_case?case=5865443281383537263&hl=en&as_sdt=6&as_vis=1&oi=scholar)



# Tattoos & Copyright Take-Aways

- Tattoos are original works of authorship that may be protected under copyright.
- The Tattoo artist, not the customer, owns the tattoo, unless the parties agree otherwise.
- Gaining permission from a sports figure or celebrity to use their name and likeness in a game does not necessarily cover their body art, which may be owned by others.
- Fair Use (as a defense to copyright infringement) is a murky and ever-evolving standard, and Courts can rule inconsistently. We may (or may not) get more clarity this term from the U.S. Supreme Court.

# Andy Warhol Foundation for the Visual Arts, Inc. v. Lynn Goldsmith, et al., U.S. Supreme Court Case No. 21-869



Goldsmith photo



Vanity Fair issue – November 1984



Warhol's "Prince Series"

# *Andy Warhol Foundation for the Visual Arts, Inc. v. Lynn Goldsmith, et al.*, U.S. Supreme Court Case No. 21-869

**Question:** Did Warhol make fair use of Goldsmith's photograph of Prince?

**Answer in Trial Court:** Trial Court says yes. Warhol made a "transformative" use of the photo. Transformed Prince from a vulnerable, uncomfortable person to an iconic, larger-than-life figure.

**Answer in Appeals Court:** Appellate Court (Second Circuit) reverses and says the Warhol works are not transformative: "the Prince Series retains the essential elements of the Goldsmith Photograph without significantly altering those elements."

[https://scholar.google.com/scholar\\_case?case=7970767190766207698&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=7970767190766207698&hl=en&as_sdt=6&as_vis=1&oi=scholar)

**Answer in the Supreme Court:** ?????? Case will be heard this term