Masthead Logo

DePaul Journal of Art, Technology & Intellectual Property Law

Volume 3
Issue 2 *Spring 1993*

Article 8

Mason v. Montgomery Data, 967 F.2d 135 (5th Cir. 1992)

Ann E. Dustman

Mason v. Montgomery Data,

967 F.2d 135 (5th Cir. 1992).

INTRODUCTION

The Plaintiff, Mason, sued the defendant, Montgomery Data, Inc ("MDI"), for copyright infringement of 233 real estate maps he created, published and copyrighted and sought statutory damages. The United States District Court for the Southern District of Texas held the maps were not copyrightable under the merger doctrine. On appeal, the United States Court of Appeals for the Fifth Circuit reversed, ruling Mason's maps were copyrightable because the underlying idea was independent from Mason's expression and the maps were sufficiently creative. The Appellate Court then remanded for the trial court to determine if infringement had, in fact, occurred.

Facts

In 1968, Mason registered the copyright for one of 118 real estate ownership maps which he created and published between 1967 and 1969. In 1987, Mason registered the copyrights on the remaining 117 maps and on 115 new maps which he created and published between 1970 and 1980. The maps displayed copyright notices and were pictorial portrayals of the location, size and shape of county surveys, land grants, tracks and topographical features. To make these maps Mason used substantial judgment and discretion in selecting, coordinating and arranging the available facts.

The defendants developed a geographical indexing system to update the information on Mason's maps. The system entailed using Mason's maps, reorganizing them and creating overlays displaying the updated information. Initially, the defendant requested Mason's permission to use his maps but Mason refused because the defendant would not pay him a licensing fee. Nevertheless, the defendant used Mason's maps for their indexing system. In response, Mason filed suit claiming infringement of all 233 copyrights[1] and seeking statutory damages[2].

The District Court ruled that the idea, creating maps based on legal and factual public information, was inseparable from Mason's expression of the maps themselves and, therefore, under the merger doctrine, Mason's maps could not be copyrighted.[3] The District Court also ruled that, when an act of infringement is just one in a series of ongoing infringements, Mason could recover statutory damages for the act only if the series commenced after copyright registration.[4]

ANALYSIS

On appeal, the Fifth Circuit reviewed whether the maps were copyrightable and whether Mason was entitled to statutory damages for each individual act of infringement. First, to determine copyrightability the court considered the merger doctrine and the maps' originality.

The Copyright Act protects all "original works of authorship fixed in any tangible medium of expression."[5] Although this section of the statute prohibits copying of another's original expression of an idea, it does not prohibit copying of the idea itself.[6] However, the merger doctrine states that when there is only one or a limited number of ways to express an idea, copying the expression is permitted.[7] This ensures one creator does not obtain a monopoly over the idea itself simply by copyrighting a few expressions of the idea.[8] Thus, a court must first identify the idea expressed in the work and then try to separate that idea from the author's expression of the idea.[9] If there are only a limited number of ways to express the idea, then the expression and the idea are inseparable and the expression will not be protected.[10] However, if the idea is one that might be expressed in any number of ways, the merger doctrine will not apply.[11] In drawing this line between idea and expression the main goal is preserving the balance between competition and protection.[12]

After considering each party's description of the underlying idea the court concluded "the idea here was to bring together the available information on boundaries, landmarks, and ownership and to choose locations and effective pictorial expression of the locations."[13] The court then cited the considerable discretion and creativity Mason used in creating the maps as evidence that this idea was capable of a variety of expressions. Thus, the Fifth Circuit disagreed with the district court and ruled Mason's expression and the idea were separable and the merger doctrine did not apply.

Next, the court considered whether the maps were sufficiently original to be copyrighted. Under 17 U.S.C. § 102(a) "'Originality' means only that the work was independently created by the author and possesses at least some minimal degree of creativity."[14] It does not require "novelty, ingenuity, or aesthetic merit."[15] In fact, the required level of creativity is extremely low; even a slight amount will suffice.[16] Thus, while bare facts are never copyrightable since they are not independently created by the author, a compilation of facts is entitled to protection if the author made independent and creative choices regarding, for example, the selection, coordination and arrangement of information.[17] By doing this the author creates a work that, as a whole, is an original work of authorship. The court found that Mason compiled information for his maps by making these types of independent and creative choices and ruled that, as a compilation of facts, each map involved creativity far beyond the required minimum level.

Most courts have historically treated maps as fac-