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## "The Point" Makes Its Point

By Michael M. Ratoza

The animation feature "The Point," narrated by Ringo Starr and containing Harry Nilsson's hit song "Me and My Arrow," is a long beloved film that was first broadcast on the ABC television network in 1971. The movie concerns a boy named Oblio, the only rounded headed boy in the Pointed Village. The village law requires that everyone and everything must have a point.

"The Point" was created by Murakami-Wolf Productions, Inc. in 1970. Following ABC's 1971 broadcast, it was first offered for sale on videocassette in 1985 and a copyright application was filed in 1987, within five years of the first tape sale.

The current copyright owner, Murakami-Wolf-Swenson, Inc., brought a copyright infringement claim in federal court in Oregon against several Oregon defendants for claimed manufacturing and distribution of unauthorized videotape copies of "The Point."

There are three takeaways from this Oregon copyright case. A detailed explanation follows.

1. Mandatory statutory copyright notice remains an important issue, even following the Berne amendment, as to works first published prior to 1989.
2. Prompt filing of a copyright application following first publication is important and should not be ignored.
3. Publication requires the distribution of a physical copy. Ephemeral images won't do. This last point is front and center in the current debate over copyright protection for digital images and the first sale defense concerning distribution of digital images.

The court, in granting plaintiff's motion for partial summary judgment on liability, considered several interesting concepts of copyright law relating to the period prior to the Berne Convention Implementation Act of 1989. This Act eliminated the mandatory notice requirement in the Copyright Act. Prior to the 1989 Berne amendment, copyright notice in statutory form was required on the first publication of a work. Failure to apply the statutory notice could result in loss of copyright.

The defendants in the Oregon case argued that the notice appearing on the 1971 ABC telecast was defective and, as such, the copyright in "The Point" was lost. But the court held correctly that the 1971 telecast did not constitute a publication as the telecast is but the ephemeral display of an image on a television tube. By contrast, a publication requires that a physical copy must be made available to the general public.

The defendants also argued that the notice appearing on the 1985 videocassettes was defective and, they argued, the copyright was lost in 1985. But the court held that there was adequate statutory notice appearing on the cassette box housing the tape. The court determined that the placement of a copyright notice on videotape itself is not mandated and that the placement of the notice on the tape packaging was sufficient to provide reasonable notice of the copyright.

The court further observed that since the first publication occurred with regard to the sale of videotape in 1985, and since the copyright application was filed in 1987 – within five years of first publication – then Section 405(a)(2) of the Copyright Act excuses any defect in the copyright notice if registration occurs within five years of first publication.

A link to the Oregon opinion can be found here: [Murakami-Wolf-Swenson, Inc. v. Lawrence A. Cole, et al](#)

