

SUPREME COURT RULES FOR SONY IN BETAMAX CASE

In the U.S. the copyright of a work is intended as an incentive for creative and intellectual activity, but limited in duration to guarantee the circulation of ideas and information in the public domain. This uneasy balance between private gain and public good is regulated and adjudicated by the courts and Congress. Ruling on a major copyright dispute recently the Supreme Court decided that consumers who use home video recorders to copy broadcast programs for personal use do not violate copyright law, nor do manufacturers violate the law by making the equipment available to the public.

The suit brought by Universal Studios and Walt Disney Productions against Sony Corporation of America and other manufacturers and distributors of home video recorders (VCRs) first came to trial in 1976 (the same year that Congress revised the copyright law without mentioning VCRs). The California District Court hearing the case found that, according to both the plaintiffs and defendants, the average consumer uses a VCR in order to record a program for later viewing—a practice called "time-shifting."

Copyright law gives the copyright owner limited exclusive rights regarding the reproduction and distribution of an intellectual creation (poem, book, photograph, videotape, etc.). There are exceptions to these rights which are considered "fair use." The determination of fair use depends on four factors: the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used; the effect of the use upon the potential market for or value of the copyrighted work.

Sony argued that the sale and use of VCRs constitutes fair use. The plaintiffs contended that they should be entitled to royalties from

the manufacturers and users of VCRs. The District Court ruled for the defendants, holding that time-shifting should be considered fair use, even though all of a work is copied, due to the non-commercial nature of the copies and that the market value of the work is not affected. Another factor was testimony of copyright holders who approve of time-shifting because it enlarges the total viewing audience (Fred Rogers of *Mr. Rogers' Neighborhood* testified for the defendants).

In October 1981 a U.S. Court of Appeals overturned the District Court decision. In 1982 the Supreme Court agreed to hear the case, and after more than a year of deliberation, reversed the Appeals court decision by a narrow margin—five to four. The decision applies only to noncommercial, home use of video recorders, and does not address related copyright issues such as recording cablecast programming or building libraries of tapes for repeated viewing.

Both the majority opinion, written by Justice John Paul Stevens, and the dissenting opinion, written by Justice Harry Blackmun, hinge on the interpretation of fair use. The dissenting opinion held that fair use, as defined by Congress in the Copyright Act is consistently a productive use, "resulting in some added benefit to the public beyond that produced by the first author's work." Blackmun stated that time-shifting is non-productive, ordinary use, and to consider it as fair use risks "eroding the very basis of copyright law, by depriving authors of control over their works and consequently of their incentive to create." The majority opinion emphasized the noncommercial character of time-shifting, concluding that in this case the market value of the copyrighted work is not affected, and, therefore, time-shifting is fair use. However, Stevens added that copyright law is subject to amendment, and "it may

well be that Congress will take a fresh look at this new technology, just as it so often has examined other innovations in the past. But it is not our job to apply laws that have not yet been written."

There are a number of bills currently under consideration in the House and Senate—exempting home taping from copyright liability; exempting consumers from copyright liability, but imposing a tax on the manufacture of tape and equipment; modifying copyright law to allow the payment of royalties to copyright owners by retailers who rent video recordings. Robert Kastenmeier, chair of the House Judiciary subcommittee which has

jurisdiction over copyright, believes that in light of the Supreme Court's decision it is unlikely that Congress will enact legislation to impose royalties on home taping (especially in an election year). Congress, however, might consider legislation requiring royalties from retail videotape rentals.

Needless to say this is not the end of the debate. On one side is the home recording industry with a revenue of \$3-billion a year (there are 10 million VCRs now in use). On the other side is the entertainment industry. In the balance are the interests of consumers.

—Rebecca Lewis

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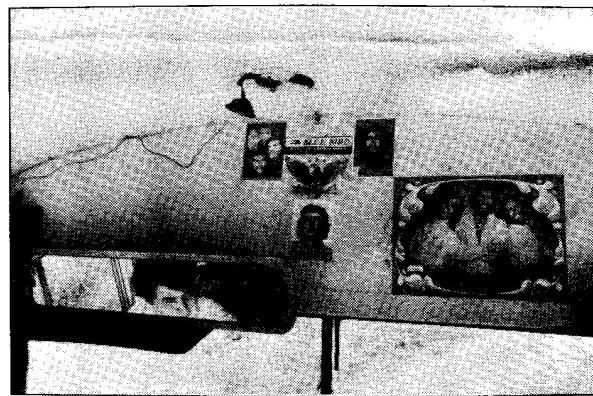
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Photograph by Margaret Randall. Images of entertainers, political and religious figures, in this case Che Guevara and the Bee Gees, are typical of the Nicaraguan graphic landscape.

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POTS OF DOLLARS

Judges for the Sixth Tokyo Video Festival, sponsored by the Victor Company of Japan (JVC), awarded the Video Grand Prix to Reynold Wiedenaar for his *Love of Line, of Light and Shadow: The Brooklyn Bridge*. Receiving Work of Special Distinction awards were: Jon Alpert for *American Survival: Philadelphia Story*; producer Deanna Kamiel and cameraperson Peter Brownscombe for *Nuclear Outpost II*; Richard Bioes for *Shifts*. The Festival received 1,176 entries from 18 countries.

The Corporation for Public Broadcasting (CPB) has recently announced funding in two program categories, Children's and Family proposals and Open Solicitation. In the former, "designed to stimulate the social, emotional and intellectual growth of America's children and provide a bridge of interests to span the generations," Martin Tahase received full production funds for *Words by Heart*. Development funds were awarded to: Shep Morgan, of Past America, Inc., for *Zeely*; David Crippens, of KCET-TV, for *Journey Home*. Sixteen projects have been awarded a total of \$2-million in the Open Solicitation category. They are:

The Press and the Public Project, Inc., *Latin American Series*, by Ned Schnurman; The Disability Rights Education and Defense Fund, *The Integra-*

tion of Disabled People, by Peter Weinberg; International Women's Film Project, Inc., *Latin America: The Awakening Colossus*, by Helena Solberg Ladd; The Ginger Group, *Woody Guthrie: A Musical Biography*, by Jim Brown; Guggenheim Productions, Inc., *America by Design*, by Charles Guggenheim; WETA-TV/Smithsonian Institution, *Smithsonian World*, by Martin Carr; Lincoln Center for the Performing Arts, Inc., *Live from Lincoln Center*; Churchill Films, *Lily Tomlin*, by Joan Churchill and Nicholas Broomfield; The Primal Mind Foundation, *Native Lands: Sagas of the Indian Americans*, by Alvin Perlmutter and Jamake Highwater; RKB productions, *The Life and Times of Huey P. Long*, by Ken Burns and Richard Kilberg; Music Project for Television, Inc., *Aaron Copland*, by Rugh Leon, Allan Miller, and Vivian Perlis; Pennebaker Associates, Inc., *Dance Black America*, by D.A. Pennebaker; Stevenson Productions, Inc., *Setting the Record Straight*, by Stevenson Palfi; Children's Television Workshop, *3-2-1 Contact*; and *Channels of Communication, The Invisible Revolution*, by WGBY-TV.

In photography, John M. Hall has received a \$2,000 fellowship from The Southeastern Center for Contemporary Art (SECCA) in Winston-Salem, N.C. Hall was one of seven regional artists to receive this award, which is sponsored jointly by the National Endowment for the Arts and SECCA. Milton Rogovin received the 1983 W. Eugene Smith Memorial Award, an annual prize administered by the Smith estate.

LETTERS

To the editor:

I want to add a point to Diane Neumaier's very supportive and useful discussion of photo/text works in the P.S. 1 and 1199 shows ("Postdocumentary," *Afterimage*, January 1984, pp. 15-17).

Any extensive text with photographs, of course, presents serious problems of readability wherever it appears. On the wall, more so. However, for myself and others working with texts, this problem is exacerbated by the circumstances of gallery viewing as it now exists. Though a show typically lasts a month, members of the audience usually go once or twice for less than an hour. This is not a cause but an effect of the kind of art we have become

habituated to: at once profound and easy.

The ideal (not always achieved) for showing socially engaged photo/text work elsewhere is to exhibit it over a period of time, in places where its audience returns regularly and frequently, as a matter of course. This also assumes that much in the text as well as in the images is compelling. Under these conditions, rather lengthy texts can be and are read, often producing discussions among those present. Community reading and response is very limited by book or magazine formats; this is a major political reason for commitment to wall installations.

Neumaier was correct to criticize these shows for failing to provide any information about the artists' non-art contexts. But then there would have been even more to read. Group shows of large, complex works present yet another problem. If these are shown in entirety, viewers are overwhelmed by the mass of information. As fragments, the art works may not explain themselves very well.

If galleries and museums are to maintain some credibility as detached sites for theoretical displays and contention, they will have to take into account the special exhibition requirements of engaged work. Otherwise our work looks like a strange version of the other art commodities on the shelf but with an absence of anything to buy.

—Fred Lonidier
San Diego, Calif.

COVER: collage by Esther Parada. The 1928 photograph shows U.S. Senator Burton Wheeler arriving in Managua, disembarking from a U.S. Marine Corps Fokker airplane; from left to right: American minister Eberhardt, Wheeler, two friends of his, and General Logan Feland, commander of the U.S. invading forces in Nicaragua. See, "C/OVERT IDEOLOGY: Two Images of Revolution," by Esther Parada, p. 7.

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