

ESCUELA DE  
DERECHO



Universidad de Puerto Rico

# Introducción al Derecho de Internet y Propiedad Intelectual Para la comunidad archivística y servicios de Información

Hiram A. Meléndez Juarbe

Escuela de Derecho

Universidad de Puerto Rico

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Centro Para Puerto Rico

# temas

1- Aspectos Básicos del Derecho de Internet

2- Intermediarios y Derechos de Autor

3- Derecho de Marcas en el Entorno Digital

4- Nombres de Dominio

5- Libertad de Expresión e Internet

6- Propia Imagen

7- Creative Commons

# Parte I: Aspectos Básicos Derecho de Internet

# i. distribuido











WIKIPEDIA

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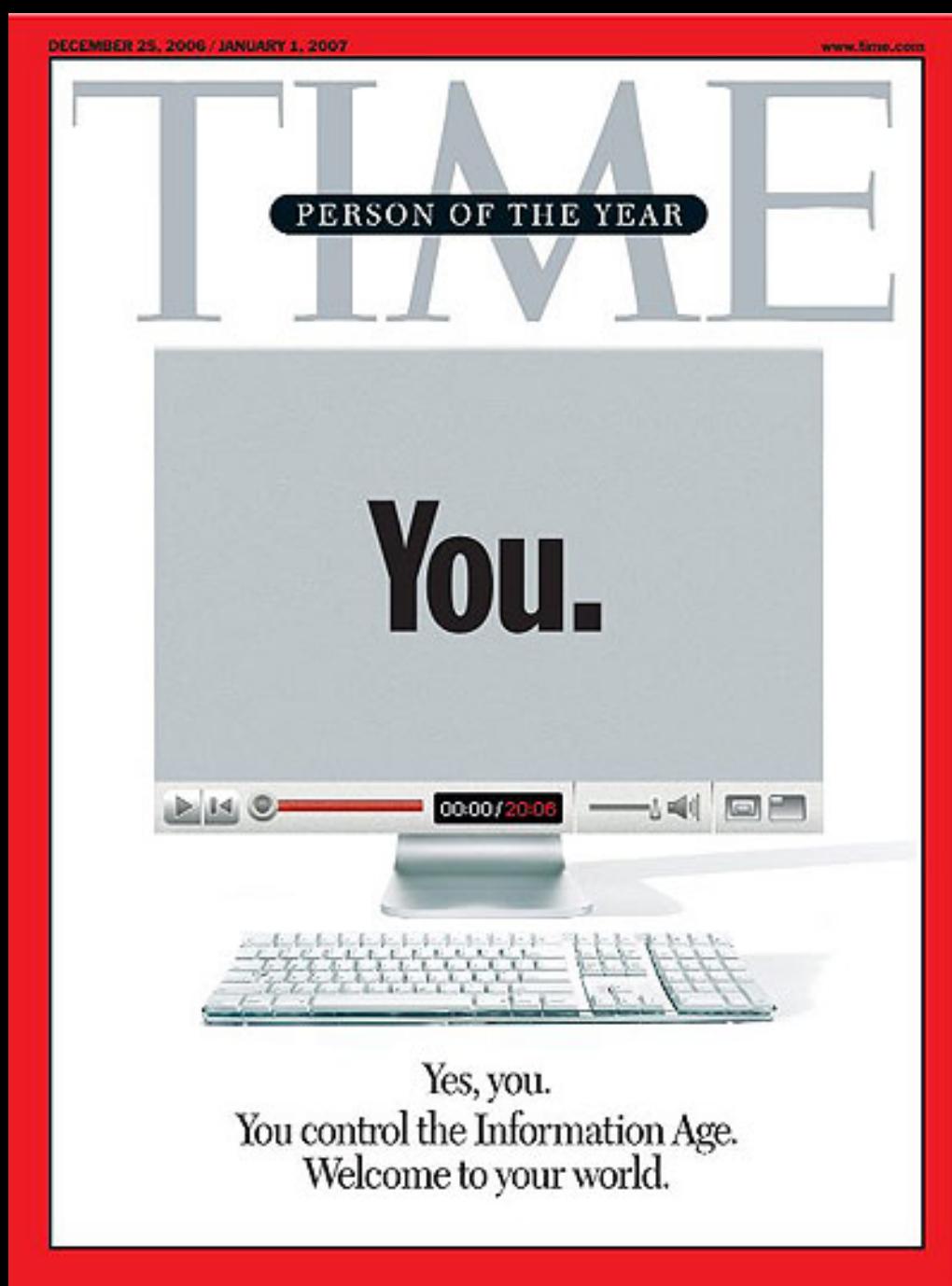


facebook®

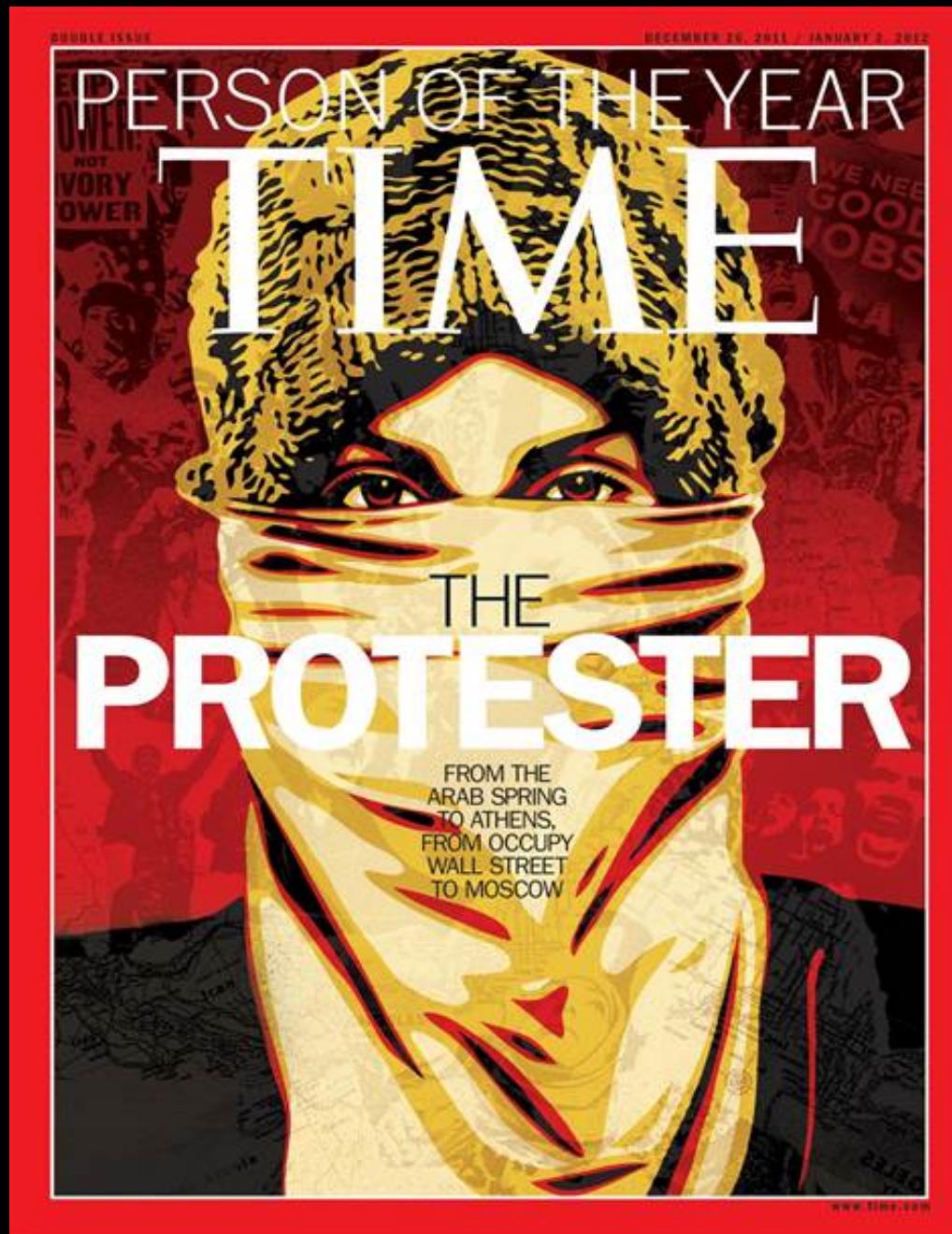
SETI HOME



2006



2011



## ii. regulable





“Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather...”

John Perry Barlow

A Declaration of the Independence of  
Cyberspace (1996)

Excep**c**ional

Inmune

Directa

Desconocimiento

Analogías

Caut**e**la



This domain name has been seized by U.S. Immigration and Customs Enforcement, Special Agent in Charge New York Office in accordance with a seizure warrant obtained by the United States Attorney's Office for the Southern District of New York and issued pursuant to 18 U.S.C. §§ 981 and 2323 by the United States District Court for the Southern District of New York.

*It is unlawful to reproduce or distribute copyrighted material, such as movies, music, software or games, without authorization. Individuals who willfully reproduce or distribute copyrighted material, without authorization, risk criminal prosecution under 18 U.S.C. § 2319. First-time offenders convicted of criminal felony copyright laws will face up to five years in federal prison, restitution, forfeiture and a fine.*

## *Será extraditado a EEUU por delitos de piratería informática*



Megaupload supuestamente forma parte de una red de piratería informática

Por Servicios combinados

El fundador de Megaupload, Kim Schmitz, y tres directivos del portal de descargas fueron encarcelados hoy de forma preventiva en Nueva Zelanda, mientras Estados Unidos tramita sus extradiciones por piratería informática.

La fiscalía estadounidense mantiene que Megaupload forma parte de una red de piratería informática mundial

**José A. Fusté, 9 Feb., 2011**

“Further, the Court hereby ORDERS GoDaddy.com, Inc., Domains by Proxy, Inc., and SiteGround.com Inc. to TAKE DOWN the website

**[www.yonosoydelaclase.com](http://www.yonosoydelaclase.com)** immediately.

Also, on or before February 16, 2011, GoDaddy.com, Inc., Domains by Proxy, Inc., and SiteGround.com Inc. SHALL provide the Court with the name and address of the individual(s) who contracted their services in relation to the website **[www.yonosoydelaclase.com](http://www.yonosoydelaclase.com)**.”

### iii. Intermediarios

*intermediarios de conexión*, como los Proveedores de Servicio de Internet, artefactos móviles

*intermediarios de información*, como los motores de búsqueda, plataformas de redes sociales

*intermediarios financieros*, como tarjetas de crédito y PayPal, entre otros.

Hiram A. Meléndez Juarbe, *Intermediarios y libertad de expresión: apuntes para una conversación*, Centro de Estudios en Libertad de Expresión y Acceso a Información, Universidad de Palermo, Buenos Aires, 2011

## Anonimato

*Protections for anonymous speech are vital to democratic discourse. Allowing dissenters to shield their identities frees them to express critical minority views . . . Anonymity is a shield from the tyranny of the majority. . . . It thus exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation . . . at the hand of an intolerant society.*

**McIntyre v. Ohio Elections Commission**, 514 U.S. 334 (1995).



*"On the Internet, nobody knows you're a dog."*

## Anonimato

The Court will consider four factors in determining whether the subpoena should issue. These are whether:

- (1) the subpoena seeking the information was issued in good faith and not for any improper purpose,
- (2) the information sought relates to a core claim or defense,
- (3) the identifying information is directly and materially relevant to that claim or defense, and
- (4) information sufficient to establish or to disprove that claim or defense is unavailable from any other source.

**Doe v 2themart.com**, 140 FSupp2d 1088 (WD Wash 2001)

# Parte II: Derecho de Autor en el Entorno Digital



## Base Constitucional

Art. I, § 8 de la Constitución de los Estados Unidos

“Congress shall have power... to **promote the progress of science** and useful arts, by securing **for limited times** to **authors** and inventors the **exclusive right to their respective writings** and discoveries...”.

## **Objetivos del Sistema de derechos de autor:**

### **Incentivos**

“By establishing a marketable right to the use of one’s expression, copyright supplies the economic incentive to create and disseminate ideas.”

**Eldred v. Aschcroft, 537 U.S. 186 (2003)**

### **Propiedad**

“ ‘Thou shalt not steal’ ” ... The conduct of the defendants ... violates not only the Seventh Commandment, but also the copyright laws of this country.”

**Grand Upright v. Warner, 780 F. Supp. 182 (S.D.N.Y. 1991)**

### **Expresión**

“The Copyright Clause and the First Amendment, while intuitively in conflict, were drafted to work together to prevent censorship.”

**Suntrust Bank v. Houghton Mifflin, 60 U.S.P.Q. 2d 1225 (11th Cir. 2001)**

## Obras susceptibles de protección 17 U.S.C. § 102.

**“original works of authorship fixed in any tangible medium of expression**, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device”.

## – Requisitos para la protección

- Fijación
- Originalidad
- No formalidades

## Derechos

- reproducción de la obra;
- preparación de un trabajo **derivado** basado en el trabajo original;
- **distribución** de copias o grabaciones del trabajo al público;
- realización de una interpretación pública (“**public performance**”) del trabajo;
- **exhibición** pública del trabajo.

## Tipos de obras

- trabajos literarios;
- trabajos musicales;
- trabajos dramáticos;
- pantomimas y coreografías;
- trabajos pictóricos, gráficos y esculturales;
- películas y otros trabajos audiovisuales;
- grabaciones de sonidos; y
- trabajos arquitectónicos.

## Límites y Excepciones:

- Duración
- Fair Use
- La dicotomía Idea/Expresión
- Los Hechos

*¿Es relevante?*

*Trancados*

*Cerrajeros*

*Subvertidores*

*Exploradores*

Hiram A. Meléndez Juarbe, *Creative Copyright for Creative Business*, 1 UPR Business Law Journal 35 (2010) (categorías de Diane Zimmerman)

# Protecciones Tecnológicas de Derechos de Autor



# Protecciones Tecnológicas de Derechos de Autor

1201

- (A) No person shall **circumvent** a technological measure that effectively controls **access** to a work protected under this title.
- (2) No person shall **manufacture**, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—  
(A) is **primarily designed** or produced for the purpose of circumventing a technological measure **that effectively controls access** to a work protected under this title;

[or that]

...is primarily designed or produced for the purpose of circumventing protection afforded by a **technological measure that effectively protects a right** of a copyright owner under this title in a work or a portion thereof;"

# Protecciones Tecnológicas de Derechos de Autor

1201

(d) Exemption for Nonprofit Libraries, Archives, and Educational Institutions. -

(d) (1) A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1)(A).

A copy of a work to which access has been gained under this paragraph -  
(A) may not be retained longer than necessary to make such good faith determination; and

(B) may not be used for any other purpose.

(2) The exemption made available under paragraph (1) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

Protecciones Tecnológicas de Derechos de Autor

Intermediarios

# Responsabilidad de Intermediarios por actos de terceros

## Teorías generales de responsabilidad:

1. **Responsabilidad vicaria** se impone cuando el demandado tiene “**the right and ability to supervise** the infringing activity and also has a **direct financial interest in the activity**”.
  
2. **Responsabilidad secundaria en modalidad de “contributory infringement”**, atiende situaciones en que el demandado “directly contributes to another’s infringement”. En general, “one who with **knowledge** of the infringing activity, induces, causes or **materially contributes to** the infringing conduct of another, may be held liable as a ‘contributory’ infringer”. **Gershwin Publishing Corp. v. Columbia**, 443 F.2d 1159 (2d Cir. 1971).

# Tecnología que facilita la violación de Derechos de Autor

## Peer to Peer Filesharing

La distinción entre el artefacto y el servicio



# Tecnología que facilita la violación de Derechos de Autor

## Peer to Peer Filesharing

La distinción entre el artefacto y el servicio

*A&M Records v. Napster*, 239 F3d. 1004 (9th Cir. 2001)

“We are compelled to make a clear **distinction** between the **architecture** of the Napster system and **Napster’s conduct** in relation to the operational capacity of the system”

...

“We agree that if a computer system operator learns of specific infringing material available on his system and fails to purge such material from the system, the operator knows of and contributes to direct infringement.”



# Tecnología que facilita la violación de Derechos de Autor

## Peer to Peer Filesharing

**MGM v. Grokster**, 125 S.Ct. 2764 (2005)

“where evidence goes beyond a product’s characteristics or the knowledge that it may be put to infringing uses, and shows statements or actions directed to promoting infringement, Sony’s staple-article rule will not preclude liability. ...

Evidence of “active steps taken to encourage direct infringement,”...such as advertising an infringing use or instructing how to engage in an infringing use, show an affirmative intent that the product be used to infringe, and a showing that infringement was encouraged overcomes the law’s reluctance to find liability when a defendant merely sells a commercial product suitable for some lawful use.”

# Responsabilidad de Intermediarios por actos de terceros

La **Intervención Estatutaria**: Sección 512 del Digital Millennium Copyright Act

Inmunidad Condicionada a Intermediarios

## Responsabilidad de Intermediarios por actos de terceros

§512

Distingue entre:

- (a) Transitory Digital Network Communications.
- (b) System Caching
- (c) Information Residing on Systems or Networks at Direction of Users.
- (d) Information Location Tools.

## Responsabilidad de Intermediarios por actos de terceros

§512(i)

Obligaciones aplicables a todos para ganar la inmunidad

Accommodation of technology.

- (A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and
- (B) accommodates and does not interfere with standard technical measures.

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Jurisprudencia interpretativa:

- Estas disposiciones no imponen obligación **afirmativa** del ISP de investigar

c) Information Residing on Systems or Networks at Direction of Users.—

(1) In general. — A service provider **shall not be liable for monetary relief, ... if the service provider**

(A)

(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

(ii) in the absence of such actual knowledge, **is not aware of facts or circumstances** from which infringing activity is apparent; or

(iii) upon obtaining such knowledge or awareness, **acts expeditiously to remove**, or disable access to, the material;

(B)

**does not receive a financial benefit directly attributable to the infringing activity**, in a case in which the service provider has the right and ability to control such activity; and...

c) Information Residing on Systems or Networks at Direction of Users.—

...

(C) upon notification of claimed infringement as described in paragraph (3), responds **expeditiously to remove**, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

## Notice & Take Down

c) Information Residing on Systems or Networks at Direction of Users.—

(3) Elements of **notification**. —

(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

- (i) A physical or electronic **signature**...
- (ii) **Identification of the copyrighted work** claimed to have been infringed, ...
- (iii) Identification of **the material** that is claimed to be infringing ...
- (iv) Information reasonably sufficient to permit the service provider **to contact the complaining party**, ...
- (v) A statement that the complaining party has a **good faith belief** that use of the material ... is not authorized by the copyright owner...
- (vi) A statement that the information in the notification is accurate, **and under penalty of perjury**, that the complaining party is **authorized** to act on behalf of the owner of an exclusive right that is allegedly infringed.

c) Information Residing on Systems or Networks at Direction of Users.—

(3) Elements of **notification**. —

(B)

- (i) Subject to clause (ii), **a notification from a copyright owner** or from a person authorized to act on behalf of the copyright owner that **fails to comply substantially** with the provisions of subparagraph (A) shall not be considered under paragraph (1) (A) in determining whether a service provider has actual knowledge or is aware of **facts or circumstances** from which infringing activity is apparent.
- (ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but **substantially complies with clauses (ii), (iii), and (iv)** of subparagraph (A), clause (i) of this subparagraph applies only if **the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification** that substantially complies with all the provisions of subparagraph (A)

c) Information Residing on Systems or Networks at Direction of Users.—

**Counter Notification**

- (A) takes reasonable steps **promptly to notify** the subscriber that it has removed or disabled access to the material;
- (B) upon receipt of a counter notification ... **promptly provides the person who provided the [original] notification ... with a copy of the counter notification**, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and
- (C) **replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice**, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

c) Information Residing on Systems or Networks at Direction of Users.—

### Counter Notification

[www.chillingeffects.org](http://www.chillingeffects.org)

- 30% de los requerimientos para retirar contenido son solicitudes basadas en reclamos legales débiles,
- muy pocos usuarios aprovechan el procedimiento de respuesta

Urban, Jennifer, «Efficient Process or “Chilling Effects”? Takedown Notices under Section 512 of the Digital Millennium Copyright Act, en *Santa Clara Comp. & High Tech L. Journal*, 22 (2006), p. 621

c) Information Residing on Systems or Networks at Direction of Users.—

### Counter Notification

[www.chillingeffects.org](http://www.chillingeffects.org)

En dos estudios separados, en 2007 y 2008, unos investigadores introdujeron «usuarios» con direcciones IP de la Universidad de Washington, tales como impresoras, en redes Bit-Torrent para monitorear el tráfico. Aun cuando esos «usuarios» no descargaron archivos, más de 400 notificaciones fueron recibidas.

Piatek, Michael, Tadayoshi Kohno y Arvind Krishnamurthy, «Challenges and Directions for Monitoring P2p File Sharing Networks -or- Why My Printer Received a DMCA Takedown Notice Why My Printer Received a DMCA Takedown Notice», en *University of Washington Technical Report, uw-cse-08-06-01*

c) Information Residing on Systems or Networks at Direction of Users.—

**Counter Notification**

(f) **Misrepresentations.** - Any person who knowingly materially misrepresents under this section —

- (1) that material or activity is infringing, or
- (2) that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

OPG v. Diebold, 337 F. Supp. 2d 1195 (N.D. Cal. 2004),

# Parte III:

# Derecho de Marcas en el

# Entorno Digital

**Lo Básico:**

**Lanham Act y la Ley de Marcas de Puerto Rico, Ley Núm. 169 del año 2009, según enmendada.**

**Ley de Marcas de 2009, enmiendas de 2011, y Reglamento**

**Objetivos del Sistema de Marcas:** la protección al consumidor y el flujo de bienes y servicios en el mercado.

**Marcas susceptibles de protección**

- El amplio concepto de lo que constituye una “marca”
- La imagen o estilo comercial (“Trade Dress”) y el límite de la Funcionalidad
- Trade Dress de una página de internet: el concepto del “look and feel”

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\$23

Comprar

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\$225	90%	\$202

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07:32:01

Más de 40 comprados

Groupon activo!



## Destacados

- El ajuste se realiza desde el cuello hasta el área de la espalda baja.
- Incluye terapia eléctrica ultrasónica para disminuir inflamaciones y mejorar la tolerancia al dolor.
- Todos los procedimientos se realizan en una sola sesión de
- Válido para personas de todas las edades. Menores deben ser acompañados por sus padres o un adulto.
- Aplica solo para pacientes nuevos.
- No requiere plan médico.
- Cancelaciones con mínimo 24 horas

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\$ 100

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San Juan

• \$ 35

\$ 100



http://www.ofertadeldia.com/puerto-rico-ofertas/oferta/Casa-Azul... — Certificado de \$30 para consumir en menú abierto

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Certificado de \$30 para consumir en menú abierto

precio \$15.00 comprar

Valor Ahorro

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\$19

[COMPRAR!](#)

\$21

DESCUENTO

\$40

VALOR

53%

AHORROS



¡Regala esta Oferta!

Marullo  
BAR & TAPAS



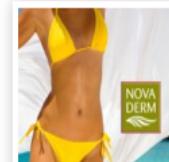
**¡Comparte y Gana \$5!**



Comparte esta oferta con tus amigos usando el link a continuación o los icons arriba y recibirás \$5.00 de crédito a tu cuenta por cada persona que compre la oferta. ¡Comártelas todas y gana! Recuerda estar registrado antes de compartir el link. ¡Woot Woot!

<http://groopanda.com>

**Más Groopandas**

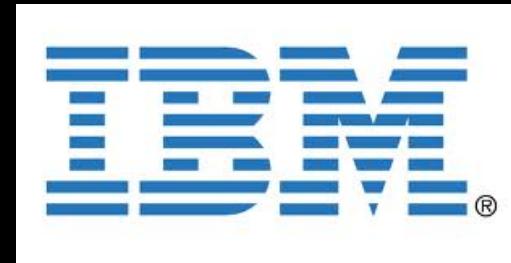
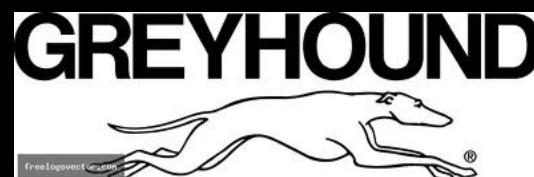


3 sesiones de depilación con laser en el bikini line por sólo \$99 en vez de \$450 @ Nova Derm

## Lo Básico: ... cont.

- Requisitos para la protección

- Arbitrarias
- Sugestivas
- Descriptivas
- Genéricas



## **Lo Básico: ... cont.**

- El concepto del “Secondary Meaning” o “significación secundaria”
- El rol central del consumidor y la Probabilidad de Confusión
- Blurring y Tarnishment
- Fair Use

## Lo Básico: ... cont.

### El Derecho de marcas y los **Intermediarios** tecnológicos: responsabilidad por actos de terceros

El criterio de Inwood Labs, 456 US 844 (1982)

“Even if a manufacturer does not directly control others in the chain of distribution, it can be held responsible for their infringing activities under certain circumstances. Thus, if a manufacturer or distributor intentionally induces another to infringe a trademark, or if it continues to supply its product to one whom it knows or has reason to know is engaging in trademark infringement, the manufacturer or distributor is contributorially responsible for any harm done as a result of the deceit.” **Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 853-54, (1982)**

## Marcas en internet

El Derecho de marcas y los **Intermediarios tecnológicos: responsabilidad por actos de terceros**

Tiffany Inc. v. eBay Inc., 600 F.3d 93 (2d Cir. 2010).

- Responsabilidad secundaria, Inwood
- Willful blindness

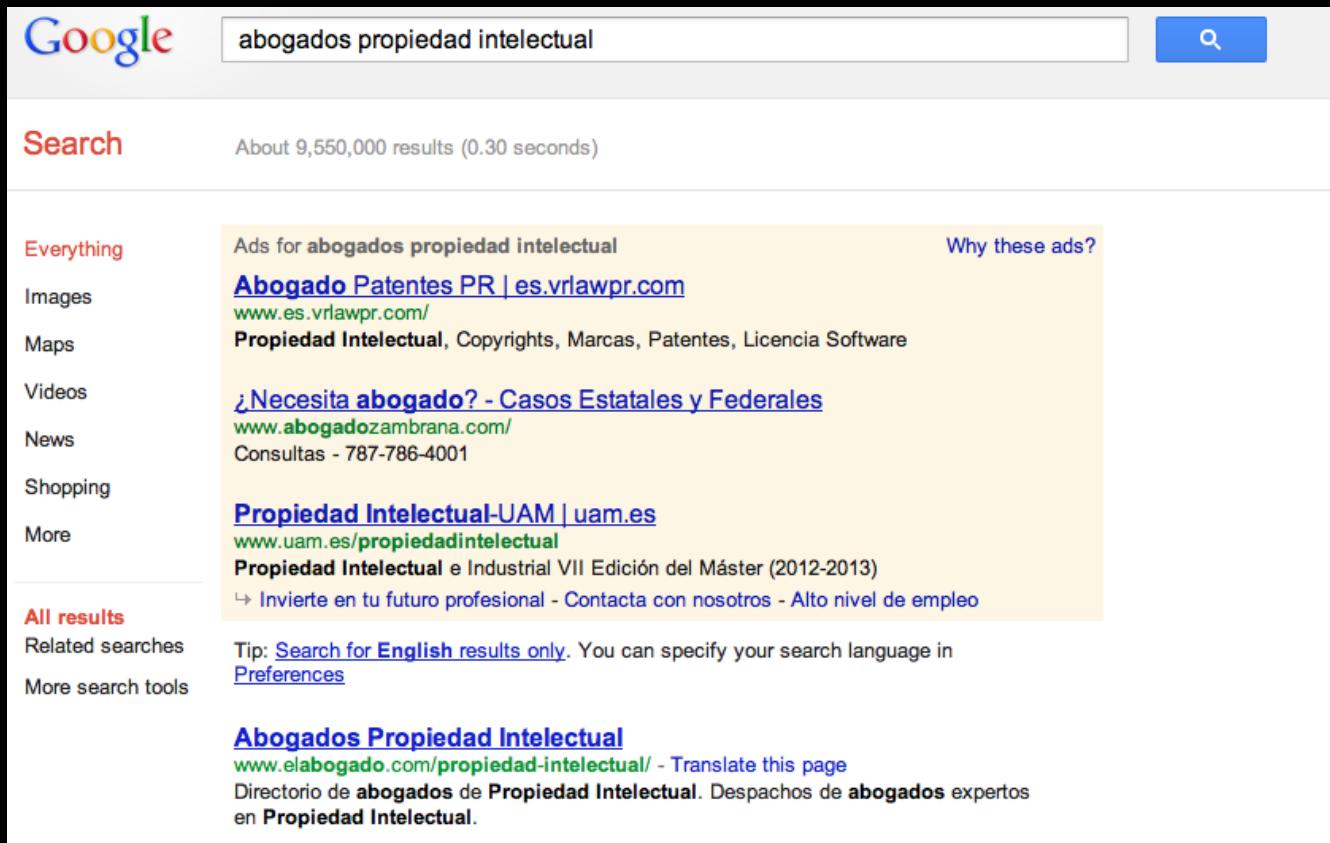
# **Marcas en internet**

## **El Derecho de Marcas y la Publicidad Digital**

El litigio de Rosetta Stone v Google, Civ No  
10-2007, Cuarto Circuito, 9 de abril de 2012

# Marcas en internet

## El Derecho de Marcas y la Publicidad Digital



A screenshot of a Google search results page. The search query "abogados propiedad intelectual" is entered in the search bar. The results are categorized under "Search". The first result is an advertisement for "Abogado Patentes PR | es.vrlawpr.com" with the URL "www.es.vrlawpr.com/". Below it is another advertisement for "Propiedad Intelectual, Copyrights, Marcas, Patentes, Licencia Software" with the URL "www.abogadozambrana.com/". A third result is a link to "Propiedad Intelectual-UAM | uam.es" with the URL "www.uam.es/propiedadintelectual". The page also includes a sidebar with links for "Everything", "Images", "Maps", "Videos", "News", "Shopping", "More", "All results", "Related searches", and "More search tools". A tip at the bottom suggests searching for English results only.

abogados propiedad intelectual

Search About 9,550,000 results (0.30 seconds)

Everything Ads for abogados propiedad intelectual Why these ads?

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Maps [Propiedad Intelectual, Copyrights, Marcas, Patentes, Licencia Software](#)

Videos [¿Necesita abogado? - Casos Estatales y Federales](#)  
[www.abogadozambrana.com/](http://www.abogadozambrana.com/)  
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All results Tip: Search for English results only. You can specify your search language in Preferences

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Directorio de **abogados** de Propiedad Intelectual. Despachos de **abogados** expertos en Propiedad Intelectual.

## Marcas en internet

### El Derecho de Marcas y la Publicidad Digital

Rosetta Stone v Google, Civ No 10-2007, Cuarto Circuito, **9 de abril de 2012**

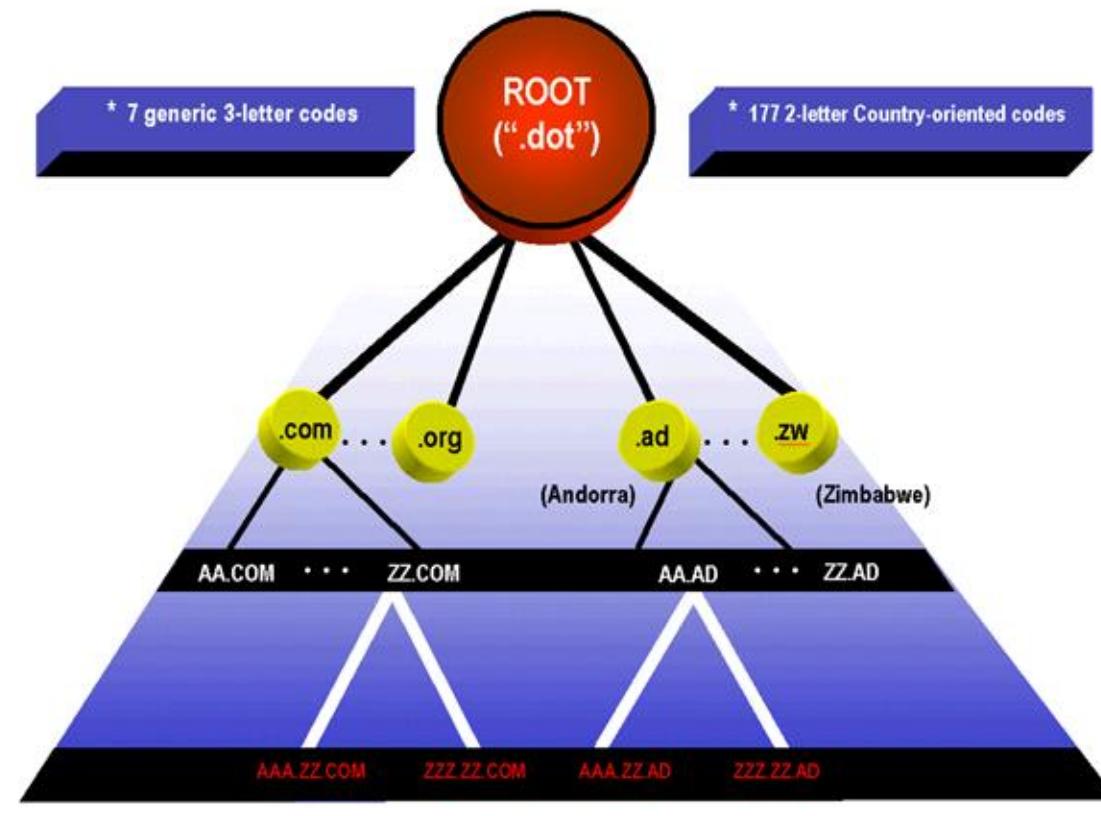
- 2004 Trademarks como “keywords”
- 2009 Trademarks en anuncio en 4 casos (a) reventa, (b) venta de partes, (c) venta de partes compatibles, (d) información o reseñas de productos.
  - Nominative Fair Use
  - Verificado por algoritmo que examina “landing page”
- **Probabilidad de Confusión**, quaere. Sentencia Sumaria no permite adjudicar.

# Parte IV: Nombres de Dominio

# Domain Name System (DNS) Hierarchical Structure

Chart Five

**What is DNS? An arbitrary, hierarchical naming convention, primarily based on geographical designations.**



\*TLDs in use Jan. 1997



## A. UDRP

a. **Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- (i) **your domain name is identical or confusingly similar** to a trademark or service mark in which the complainant has rights; and
- (ii) you have **no rights or legitimate interests** in respect of the domain name; and
- (iii) your domain name has been registered and is being **used in bad faith.**

In the administrative proceeding, the complainant must prove that each of these three elements are present.

## A. UDRP

- b. Evidence of Registration and Use in Bad Faith.** For the purposes of Paragraph 4(a) (iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:
- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
  - (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
  - (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
  - (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

c. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint. ....:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

# Parte V: Libertad de Expresión

# **La difamación en línea: responsabilidad del Proveedor de Internet por expresiones de terceros.**

El Common Law:

**La responsabilidad de publicadores y distribuidores por difamación.**

- » Cubby v. CompuServe, 776 FSupp 135 (1991) (no responsable por falta de “conocimiento”)
  
- » Stratton v Prodigy, 1995 WL 323710 (NY Supreme Court)  
(control editorial le expuso a responsabilidad)

# **La difamación en línea: responsabilidad del Proveedor de Internet por expresiones de terceros.**

La Intervención Estatutaria

**Sección 230 del Communications Decency Act**

“No provider or user of an interactive computer service shall be treated as **the publisher or speaker** of any information **provided by another** information content provider”

\*\*\*

**“The term “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.”**

## **La difamación en línea: responsabilidad del Proveedor de Internet por expresiones de terceros.**

La Intervención Estatutaria

Sección 230 del Communications Decency Act

Zeran v. AOL, 129 F3d 327 (1997)

"Congress' purpose in providing the § 230 immunity was thus evident. Interactive computer services have millions of users...The amount of information communicated via interactive computer services is therefore staggering. Congress considered **The specter of tort liability in an area of such prolific speech would have an obvious chilling effect.** It would be impossible for service providers to screen each of their millions of postings for possible problems. Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages posted. the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect."

# Parte VI: Propia Imagen

**Ley del Derecho sobre la Propia Imagen, Ley Núm. 139 del año 2011 (ANEJO, pág. 596)**

“Cualquier persona natural o jurídica que utilice la imagen de otra persona con **fines o propósitos comerciales, mercantiles o publicitarios**, sin el consentimiento previo de ésta, de la persona que posea una licencia sobre tal imagen, de los herederos en caso de haber fallecido o del agente autorizado de uno de éstos, responderá por los daños causados.

En el evento de no obtenerse el consentimiento requerido en esta Ley, la persona afectada podrá presentar una acción para detener la utilización de dicha imagen y para recobrar los daños causados, incluyendo regalías dejadas de devengar o cualquier pérdida económica resultante de la violación del derecho aquí establecido”.

## **Ley del Derecho sobre la Propia Imagen, Ley Núm. 139 del año 2011**

Esta Ley no aplicará bajo las siguientes circunstancias:

- (a) Cuando se utilice la imagen de una persona en cualquier medio como parte de un reportaje noticioso, expresión política, transmisión de evento deportivo o artístico, o una presentación que tenga un interés público legítimo, y en donde no sea utilizada con propósitos comerciales o publicitarios.
- (b) Cuando se utilice la imagen de una persona como parte de una sátira o parodia, en donde el propósito principal del uso de la imagen no sea uno comercial o publicitario.
- (c) Cuando se utilice la imagen con propósitos de crítica o comentario, académicos o investigativos, siempre que dicha utilización no constituya una explotación encubierta de la imagen protegida.
- (d) Cuando se utilice la imagen de una persona accesoria.

## **Ley del Derecho sobre la Propia Imagen, Ley Núm. 139 del año 2011**

### Artículo 10. – Inmunidad Limitada

“Los dueños o empleados de cualquier medio, incluyendo pero sin limitarse a, periódicos, revistas, vallas publicitarias, **internet** y estaciones de radio o televisión, en el que aparezca la imagen de una persona en violación de esta Ley, no será responsable excepto en el caso que **se establezca que tenían conocimiento de que el uso de esa imagen se hizo sin la autorización requerida por esta Ley.**”

## **Ley del Derecho sobre la Propia Imagen, Ley Núm. 139 del año 2011 (ANEJO, pág. 596)**

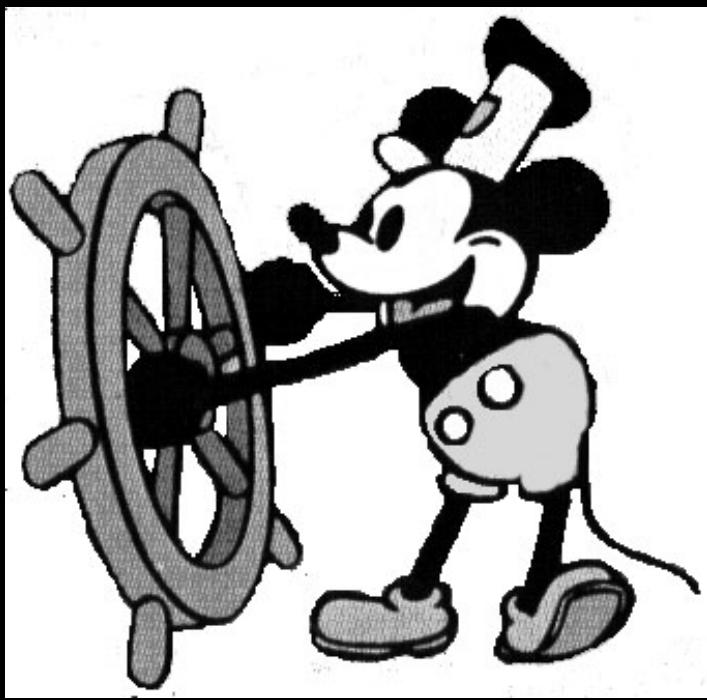
### Artículo 6. – Extensión

El derecho a la propia imagen se **extenderá hasta 25 años después** de la muerte de la persona, independientemente de si se utilizó para propósitos comerciales durante su vida.

# Parte VII: La alternativa abierta a los Derechos de Autor

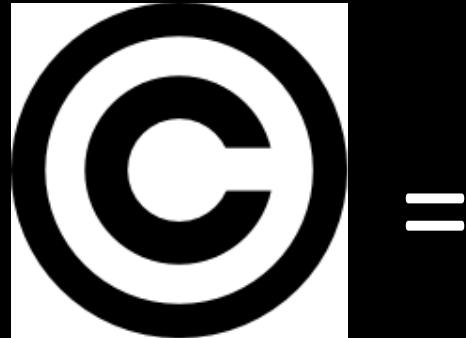
- Hiram A. Meléndez Juarbe, Creative Copyright for Creative Business, 1 UPR Business L. J. 137 (2010)
- Hiram A. Meléndez Juarbe, Creative Commons y la Agenda de Contenido Abierto, 69 Rev Jur Col Abog. 151 (2008)
- [www.creativecommonspr.org](http://www.creativecommonspr.org)





## Derechos de Autor y Primera Enmienda

- Eldred v Ashcroft, 537 U.S. 186 (2003)
- Golan v Holder, 565 U.S. \_\_\_\_ (2012)



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More information about the DJ Vadim contest...

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 <b>Heavy Mellow</b> (New Age)	 <b>Suzanne Teng</b> (New Age)	 <b>Brad Sucks</b> (Rock)	 <b>Monks and Choirs of Klev Pechersk Lavra</b> (Classical)	 <b>Artemis</b> (Pop)

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2- Intermediarios y Derechos de Autor

3- Derecho de Marcas en el Entorno Digital

4- Nombres de Dominio

5- Libertad de Expresión e Internet

6- Propia Imagen

7- Creative Commons



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