

Counting the Traps

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Reformalizing Copyright for the Digital Age
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“Trap for the Unwary”

SUPREME COURT OF THE UNITED STATES

Syllabus

GOLAN ET AL. v. HOLDER, ATTORNEYS
ET AL.

of copyrighted status. The formalities drew criticism as a trap for the unwary. See, *e.g.*, 2 Nimmer §7.01[A], p. 7–8; Doyle, Cary, McCannon, & Ringer, Notice of Copyright, Study No. 7, p. 46 (1957), reprinted in 1 Studies on Copyright 229, 272 (1963).

STUDY NO. 7

NOTICE OF COPYRIGHT

BY VINCENT A. DOYLE, GEORGE D. CARY,
MARJORIE McCANNON, AND BARBARA A. RINGER

November 1957

really equipped to handle. In their opinion the copyright notice was not a real advantage to legitimate users and the public, since it could not be relied upon for determining the facts of copyright protection, but simply provided a trap for the unwary. One of the opponents



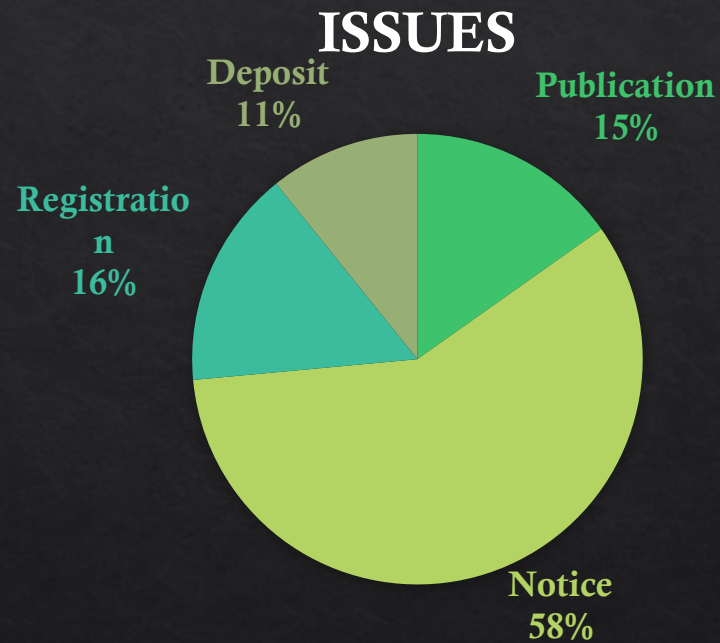
Methodology / Caveats

- ◆ Goal was to get a rough estimate, not comprehensive review
- ◆ All opinions before 12/31/77 in LEXIS/NEXIS
“Formalities/Registration” and “Formalities/Notice”
- ◆ Reviewed LEXIS “Overview” field for assignment to category
- ◆ 848 opinions collected and reviewed, 204 determined relevant
- ◆ Major categories: publication, notice, registration, deposit
- ◆ On the margin but left out: abandonment, transfer, renewal



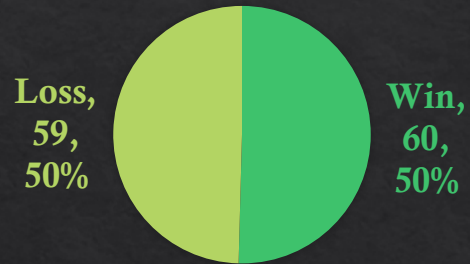
Cases by Issue

Issue	Opinions	Pct.
Publication	31	15%
Notice	119	58%
Registration	32	16%
Deposit	22	11%

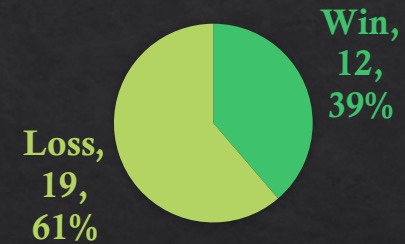




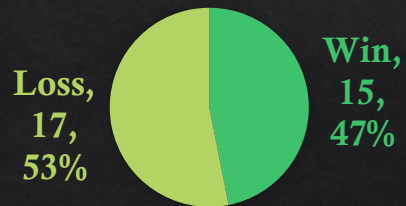
NOTICE CASES



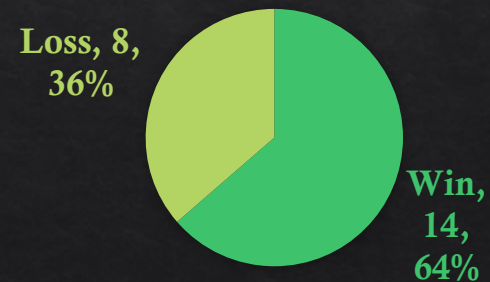
PUBLICATION CASES



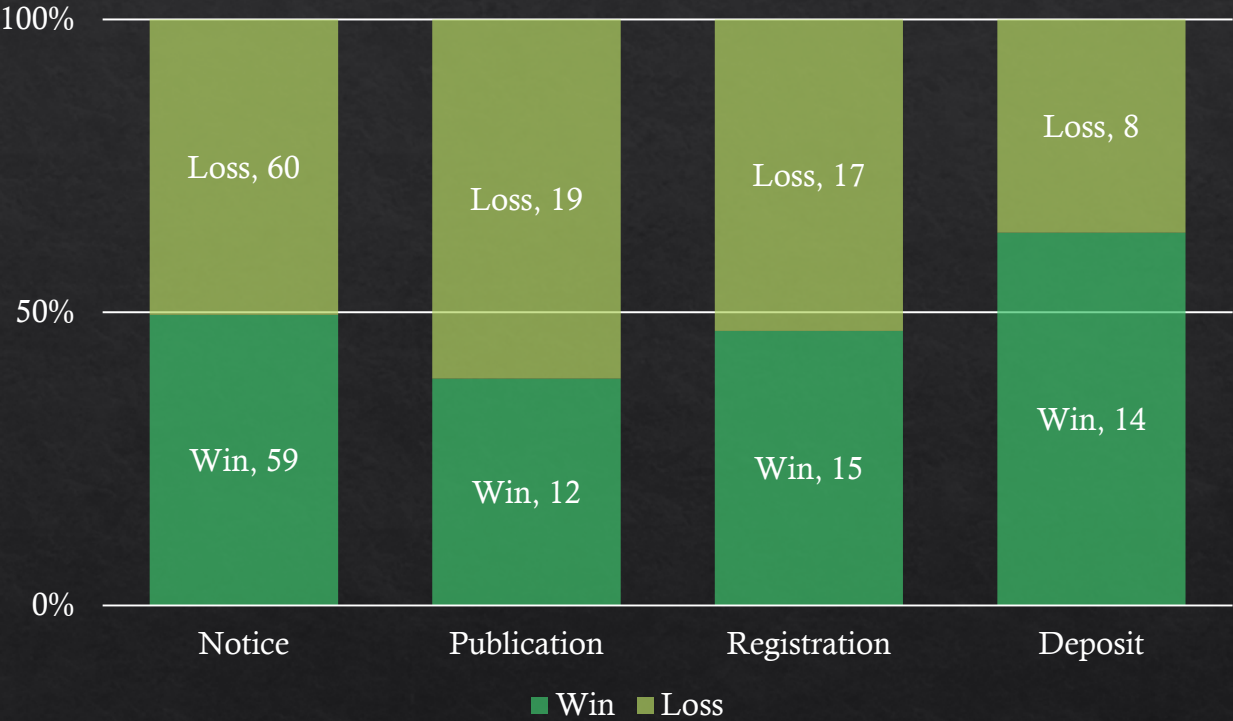
REGISTRATION CASES



DEPOSIT CASES



ISSUE COMPARISON



Takeaways

- ◇ Publication without notice was the strongest “trap”, deposit the weakest
- ◇ Not as one-sided as I thought
- ◇ The 1909 Act formality concepts are too rigid and ill-suited for the digital age
- ◇ A more functional, resilient set of “formalities” would be more useful

Suggestions

- ◆ From “obtaining something from the government” to “generate information to allow users/owners/authors to order their affairs”
- ◆ Sweet spot: consistent with ordinary practice of creators/publishers but accessible to users at network speed and ease



Copyright Controversy After Appropriated Photo Used to Win Art Contest

Michael Zhang · Apr 02, 2013

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