

Copyright Hypotheticals

Google Glass is a wearable computer with an optical head-mounted display developed by Google in the Project Glass research and development project, with a mission of producing a mass-market ubiquitous computer. Google Glass displays information in a smartphone-like hands-free format that can communicate with the Internet via natural language voice commands.

Google Glass runs the Google Android operating system and supports applications built by Google. In addition, Google has released an API (application programming interface) and an SDK (software development kit) that can be used by third party developers to create apps that will work with Google Glass.

The following apps have been proposed for Google Glass, and you have been asked to evaluate whether they are permitted under Copyright law.

App #1: Amazon.com Kindle Classnotes

Traditional college textbooks are rapidly transitioning to e-books. But there are many students who find it hard to focus and learn effectively from an e-book.

Kindle Classnotes bridges the gap between the physical and the virtual. Here's how it works: Students who have purchased a Kindle e-book title and have Google Glass look down at the book on their e-reader and Kindle Classnotes instantly displays an image of the physical book and all its pages laid out like the physical book. Students can highlight and markup the book, make marginal notes, and associate virtual notes with specific pages.

Amazon has introduced the Kindle Classnotes app without obtaining any additional permissions or licenses from book publishers reasoning that since an e-book purchase is required no copyright concerns are raised.

Does Kindle Classnotes raise copyright concerns for Amazon? Is a fair use defense available to Amazon? How would you decide the case of *Pearson v. Amazon*?

App #2: MAT Maker

The non-profit Museum of Art and Technology (MAT) in Miami has commissioned artist Richard Prince to stage an exhibition designed to take the concept of “mashups” in new directions. Prince’s work questions the notions of authorship by creating collages that combine images and photographs from advertising and popular culture into new “transformative” works.

Prince’s unique approach to his art has sometimes landed him in hot water when the artists and photographers whose work he reuses sue him for copyright infringement. However, to date Prince has managed to successfully assert a fair use defense in these cases.

For his MAT exhibit, Prince believes he has devised a way to insulate himself from lawsuits. Instead of doing the mashups himself, Prince will invite museum patrons to do the mashups for him by creating transformative works using Google Glass and an app created especially for the exhibit called MAT Maker.

Here’s how the MAT Maker app works: MAT patrons enter the exhibit and pay a fee of \$100. In exchange they get the use of a Google Glass and are given a link to download the MAT Maker app. Patrons wander the exhibit viewing works by contemporary artists chosen specially by Prince, including Jeff Koons and Janine Gordon, two artists known for suing copyright infringers. Patrons use Google Glass to view the works however they wish. Then, using the MAT Maker app, patrons can combine two or more works in infinite ways. Upon exiting the gallery, patrons receive an 18x24” poster of their favorite mashup. All proceeds benefit the museum.

What copyright issues does MAT Maker present? Who owns copyright? Who is an infringer? Who can claim fair use? How would you decide *Koons v. MAT*?