

<<美国知识产权法-第2版-英文版>>

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内容概要

《英美法案例精选丛书（英文版）：美国知识产权法（第2版）》是对外经济贸易大学法学院国家重点学科建设项目英美法案例精选丛书（英文版）中的一辑，选录了美国版权法、专利法、商标法三个领域中的一些经典案例，旨在通过研究原汁原味的案例，介绍美国知识产权法框架体系中的一些基本原则。

由于篇幅所限，《英美法案例精选丛书（英文版）：美国知识产权法（第2版）》难以对三大部门法中的相关经典案例作一个非常全面的介绍，因此，《英美法案例精选丛书（英文版）：美国知识产权法（第2版）》的重点主要是在版权法上。

读者在阅读案例时，可以跟随美国法官的思路，理解其如何在综合考虑多方因素的基础上，尽量维护多种利益的平衡，并得出最终的判决。

案例后面附有思考题，以帮助读者更快地理解每个案件的焦点问题。

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章节摘录

版权页： Leicester further maintains that the streetwall towers are a sculptural work which is "conceptually separate" from the building and thus independently entitled to copyright protection. Again , the district court found otherwise and we cannot say its finding lacks support. The streetwall towers were designed to extend the building visually , which they do along both Figueroa and Eighth. The Eighth Street smoke towers are equally integrated and serve the same purpose on Eighth as the Figueroa Street smoke towers do on Figueroa. This is powerful evidence that they (together with the additional two lantern towers on Figueroa) are part of the functional and architectural vocabulary of the building. Because the streetwall towers are part of the architectural work , 120 (a) applies. It allows the public the right to photograph public buildings including , in this case , the streetwall smoke and lantern towers unless , as Leicester contends , the 1990 amendments specifically provide for the continued separate protection of sculptural works attached to buildings. Leicester's position is that the Berne Convention did not require taking away copyright protection for PGS works , and Congress did not do so when it passed the AWPCA implementing the Convention. He relies in particular upon passages in the legislative history indicating that certain works of authorship which may separately qualify for protection as PGS works may be permanently embodied in architectural works , and that in such cases the author (if the same for both works) may elect whether to seek a remedy under 102 (a) (5) or 102 (a) (8) . Whether or not Leicester may have some other claim for a different infringement of his copyright in the Zanja Madre towers as a sculptural work , we believe he has none for a pictorial representation of the 801 Tower and its streetwall embodying a protected architectural work. Otherwise , 120 (a) 's exemption for pictorial representations of buildings would make no sense. When copyright owners in architectural works were given protection for the first time in 1990 , the right was limited by 120 (a) so that publicly visible buildings could freely be photographed. This reflected a shift from the prior regime of relying on "ad hoc determinations" of fair use. Having done this , it would be counterintuitive to suppose that Congress meant to restrict pictorial copying to some , but not all of , a unitary architectural work.

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