



Volition as an Element of Direct Liability

Copyright
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Volition as an element of direct liability

- Copyright liability is considered to be “strict liability.” That is, liability attaches without intent to infringe, or recklessness or negligence with regard to whether infringement occurs.
- But there must be some “volition” on the part of the defendant and a causation relationship between that volition and the thing alleged to be within an exclusive right in order for there to be direct liability for copyright infringement.
- For instance, owning and making available a photocopy machine on which the general public is allowed to make copies does not implicate the requisite volition on the part of the photocopier owner/provider for the photocopier owner/provider to be directly liable for infringement where a member of the public uses the photocopier to make reproductions of a copyrighted work.

Volition as an element of direct liability

- But none of that speaks to the issue of **secondary liability** — where a copyright defendant is liable because of somehow encouraging, controlling, assisting, benefiting from, or otherwise participating in another party's infringing activity.
- Secondary liability is a separate topic ...