Thumbnail Photos and Fair Use June 2005, Volume 3, Issue 2. ISSN 1545-777X by Dr. Fritz Dolak Copyright and Intellectual Property Manager

In 1999 and again in 2002, the case of *Kelly vs. Arriba Soft Corporation* provided direction on the issue of "thumbnails" used on the Internet. Many consider the case to be a landmark case. It concluded that the use of thumbnails is a fair use of another person's graphic, intellectual property under very strict and limited conditions. This interpretation of fair use, in regards to thumbnail images, applies when thumbnails are used in an indexing system.



## Transformative Use of Intellectual Property

Thumbnails used in an indexing system are seen as a transformative use of someone else's intellectual property. A transformative use is one that, for example, provides a benefit to society. In our case, this is a benefit to the Ball State community. The use of thumbnails in an indexing system does not affect Fair Use Factor #4, known as the *Market Effect*. In order to be certain that thumbnails do not effect sales, thumbnails should be sizes that are of a low resolution and low quality. The size of a thumbnail in an indexing system should

not substitute for the original aesthetic work nor should it take any monetary gain away from the rights owner of the graphic.

## **Copyright Infringement**

Another issue involving thumbnails addressed in *Kelly vs. Arriba Soft Corporation* was whether clicking on a thumbnail and taking the user to the larger version of that image would be copyright infringement. It very well can be, and in most cases, is infringement. Because of this, the University Libraries have obtained permission to display larger images in CONTENTdm. That permission can be in the form of licensing and/or written permission from the rights owner. Ball State University has obtained many of these types of permissions for the use of larger

images in CONTENTdm. Furthermore, Ball State University owns the copyright to substantial collections. Ball State ownership of these collections allows a thumbnail to be linked to a larger, high resolution graphic.

## Thumbnail Size for Use in an Index

The consensus is that 125x100 pixels for landscape-sized images and 100x125 pixels for portrait-sized images should be used. The book

covers used at **Amazon.com** are a good example of the use of this size of thumbnails. Google, on the other hand, has stretched the size to 150x150 pixels

and they haven't been sued yet.



A practical example of the use of thumbnails is in CONTENTdm. The University Libraries' CONTENTdm with Digital Rights Management impacts Ball State University. The use of thumbnails and the rights we have for larger images greatly enhance the mission of the University Libraries in providing a visual representation of new materials that can be discovered

and used for classroom enhancement, instructional objectives, new knowledge creation, and research.

The photo above is the original with the photo on the left adhering to the pixel size of a thumbnail

For additional information on an array of intellectual property issues, please visit the Copyright and Intellectual Property Office Homepage:

http://www.bsu.edu/library/collections/copyright/