

Originality, Idea/Expression

January 22, 2007
<http://wendy.seltzer.org/brooklaw/07copyright/>

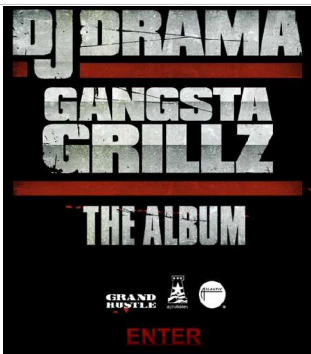
1

XM inno Satellite radio / MP3 recorder



Record labels sued for copyright infringement.
XM lost its motion to dismiss last week.

2



3

Originality

- Constitutional limit: "authors ... writings"
- Statutory limit:
§ 102(a) Copyright protection subsists, in accordance with this title, in **original works of authorship** fixed in any tangible medium of expression...

4

"Oscar Wilde No. 18," Napoleon Sarony



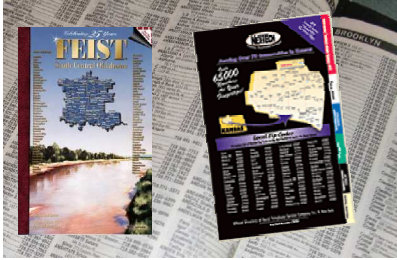
5

"The Celebrated Stirk Family"



6

Feist Publications v. Rural



7

Feist Publications v. Rural (1991)

To qualify for copyright protection, a work must be original to the author. Original, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity. To be sure, the requisite level of creativity is extremely low; even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, "no matter how crude, humble or obvious" it might be. ...

Originality is a constitutional requirement.

8



Mezzotint of a Turner painting

9



Monet's Waterlily Pond, from the Bridgeman Art Library

10

Ansel Adams, *Moonrise from Glacier Point*



- Can another artist copy this image?
- Can another artist go to the same spot to photograph or paint?
- What's the difference?

11

Originality challenges

- "Kubla Khan," written as Coleridge awoke from a dream
- Scriptures, transcribed by church founder as "dictation from a higher being"
- Nature photograph aiming to capture the precise appearance of a bird
- Digitization of a public domain artwork
- Drip painting by a blindfolded artist

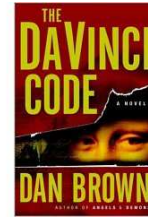
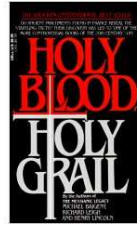
12

Idea/Expression Dichotomy

- Constitutional limit:
Ideas are the domain of *patent*, not copyright
- Statutory limit:
§ 102(b): In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

13

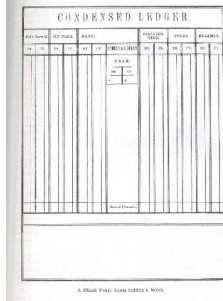
Fact and theory or expression?



14

Baker v. Selden

- Can Baker copy Selden's accounting methods?
- ...his forms?
- ...his introductions?



15

Idea/Expression

102(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

- sub-doctrines and interpretations
 - Merger
 - "Thin" copyright
 - "Stock" scenes and characters (*scenes à faire*)

16

Morrissey v. Procter & Gamble

"1. Entrants should print name, address and social security number on a boxtop, or a plain paper. Entries must be accompanied by *** boxtop or by plain paper on which the name *** is copied from any source. Official rules are explained on *** packages or leaflets obtained from dealer. If you do not have a social security number you may use the name and number of any member of your immediate family living with you. Only the person named on the entry will be deemed an entrant and may qualify for prize.
"Use the correct social security number belonging to the person named on entry *** wrong number will be disqualified."
(Plaintiff's Rule)

"1. Entrants should print name, address and Social Security number on a Tide boxtop, or on (a) plain paper. Entries must be accompanied by Tide boxtop (any size) or by plain paper on which the name "Tide" is copied from any source. Official rules are available on Tide Sweepstakes packages, or on leaflets at Tide dealers, or you can send a stamped, self-addressed envelope to: Tide "Shopping Fling" Sweepstakes, P.O. Box 4459, Chicago 77, Illinois.
"If you do not have a Social Security number, you may use the name and number of any member of your immediate family living with you. Only the person named on the entry will be deemed an entrant and may qualify for a prize.
"Use the correct Social Security number, belonging to the person named on the entry -- wrong numbers will be disqualified."
(Defendant's Rule)

17



• Satava jellyfish



Lowry jellyfish

18

What's expression, what's idea?

[Tittler, *Wings of Mystery*]



19

We'll be back here later

- compilations of fact
- substantial similarity

20

Idea v. expression

- Textured painting
 - Van Gogh's "Sunflowers"
- Jellyfish in glass
 - Satava's jellyfish sculpture
- 12-tone music
 - Schoenberg's *Variations for Orchestra*

21