

Idea/Expression, Derivative Works

January 29, 2007
<http://wendy.seltzer.org/brooklaw/07copyright/>

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Cool Tools

- Get Copyright: jump to any section of the Copyright Act.
<<http://wendy.seltzer.org/getcopyright.html>>



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*)

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What's expression, what's idea? [Titler, *Wings of Mystery*]



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Idea v. expression

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

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• Satava jellyfish



Lowry jellyfish

Idea or expression?

- Taxonomy of dental procedures
- Plot outline: Star-crossed lovers try to end family feud, set in modern times
- "Star paging" inserted in reporter's court cases
- Baseball statistics used in newspaper form to rate pitchers
- Mountain lion at the edge of a precipice holding kitten in mouth

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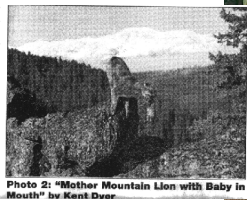


Photo 2: "Mother Mountain Lion with Baby in Mouth" by Kent Duse



Jason Napier, "Precious Cargo"

Copyright Requirements

Fixation

Originality

Expression
(not just idea)

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§ 102. Subject matter of copyright

- (a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:
 - (1) literary works;
 - (2) musical works, including any accompanying words;
 - (3) dramatic works, including any accompanying music;
 - (4) pantomimes and choreographic works;
 - (5) pictorial, graphic, and sculptural works;
 - (6) motion pictures and other audiovisual works;
 - (7) sound recordings; and
 - (8) architectural works.
- (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.

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§ 103. Derivative works

- (a) The subject matter of copyright ... includes compilations and derivative works, ...

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Derivative works

§ 103(a) The subject matter of copyright ... includes compilations and derivative works, ...

§ 101. A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, **as a whole, represent an original work of authorship**, is a "derivative work".

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§ 103. Compilations and derivative works

- (a) The subject matter of copyright ... includes compilations and derivative works, but **protection** for a work employing preexisting material in which copyright subsists **does not extend to any part of the work in which such material has been used unlawfully**.

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Pickett v. Prince

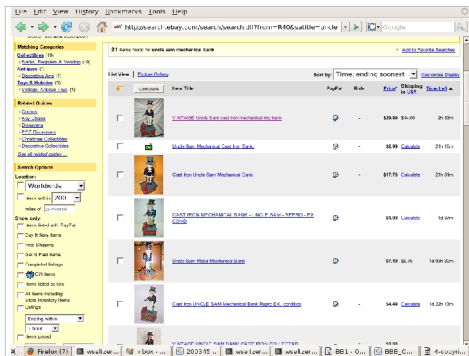


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§ 103. Compilations and derivative works: Extent of copyright

- (b) The copyright in a compilation or derivative work **extends only to the material contributed by the author of such work**, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

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Derivative work

- Addition of copyrightable expression
- If to a work under copyright, with lawful authorization
- Derivative copyright encompasses only the new expression

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Mona Lisa (Da Vinci, 1506)



Monica Lisa #1



Monica Lisa #2

Can the owner of image #1 claim copyright?
Can the owner of image #1 stop image #2? 20

Derivative works challenges

- Timothy Anderson sees Rocky I – III, and sends a proposed treatment for “Rocky IV” to MGM and Sylvester Stallone