

Compilations, Authorship

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<http://wendy.seltzer.org/brooklaw/07copyright/>

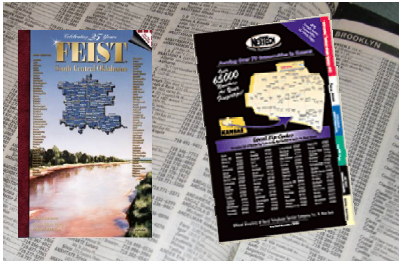
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§ 101: Collective and Compilation

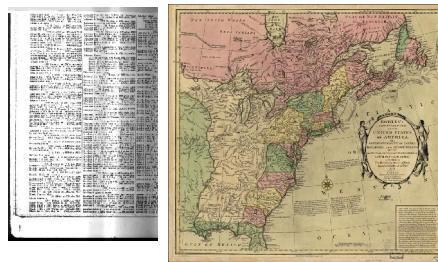
- A “collective work” is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.
- A “compilation” is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

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Feist Publications v. Rural



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Are the white pages copyrightable? Are maps? If so, why?

Roth Greeting Cards v. United

- Roth makes a line of greeting cards bearing slogans such as “I wuv you,” and “I miss you already ... and you haven’t even left,” and images to match.
 - Are the cards copyrightable?
 - Are the slogans copyrightable?

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Roth Greeting Cards v. United

- Roth makes a line of greeting cards bearing slogans such as “I wuv you,” and “I miss you already ... and you haven’t even left,” and images to match.
- United makes a line of cards with similar slogans and its own images
 - Do they copy copyrightable expression individually?
 - What is “total concept and feel”?
 - What’s the distinction between the majority and the dissent?

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Compilation challenges

Is it copyrightable?

Under what circumstances could you claim copyright protection? over what?

- Directory of all the restaurants in New York
- Stock exchange price feed
- Catalog of part numbers of mechanical fasteners
- "Blue book" of used car valuations
- Compendium of "all of Emily Dickinson's writings"?
- Collection of the "greatest poetry of all time"?
- Selection of "my favorite poetry"?

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Should we have a *sui generis* database protection right?

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§ 201. Ownership of copyright

- (a) Initial Ownership. Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.

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CCNV v. Reid



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What's required for joint authorship?

- § 101: A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

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Aalmuhammed v. Lee

- Jefri Aalmuhammed consults on script, language, and thematic elements.
- Is he a joint author?



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Aalmuhammed v. Lee

- Joint work requires
 - Copyrightable work
 - 2 or more authors
 - Intent to merge contributions
- and
 - Joint intent that each should be co-author



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§ 201

- (b) Works Made for Hire. In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

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“Work made for hire”

- A “work made for hire” is—
- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendices, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

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- If CCNV had just asked Reid to sign a “work for hire” agreement before he began the sculpture, would that have cleared everything?

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Work made for hire

- (1) Prepared by employee within scope of employment
- or
- (2) specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas

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CCNV v. Reid

- In determining whether a hired party is an employee under the general common law of agency, we consider
 - the hiring party’s right to control the manner and means by which the product is accomplished.
- Among the other factors relevant to this inquiry are
 - the skill required;
 - the source of the instrumentalities and tools;
 - the location of the work;
 - the duration of the relationship between the parties;
 - whether the hiring party has the right to assign additional projects to the hired party;
 - the extent of the hired party’s discretion over when and how long to work;
 - the method of payment;
 - the hired party’s role in hiring and paying assistants;
 - whether the work is part of the regular business of the hiring party;
 - whether the hiring party is in business;
 - the provision of employee benefits;
 - and the tax treatment of the hired party.

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CCNV v. Reid



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La Bohème -> Rent



1896



1996

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La Bohème -> Rent

- In 1896, Puccini composes *La Bohème*, an opera about the lives and loves of young artists in Paris, based on Henri Murger's 1840s "Scenes from Bohemian Life."
- A year later, Leoncavallo composes another *La Bohème*. Does he need Puccini's permission?
- In 1996, Jonathan Larson's *Rent* updates *La Bohème* to modern New York, where AIDS and drugs replace consumption.

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Rent

- Jonathan Larson produces an initial script for *Rent* for theater workshops. NYTW convinces him to work with Lynn Thomson, whose help he accepts as "dramaturg."
- Who is the author of *Rent*?

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