

Copyright, 2

“original works of authorship”

1

Copyright

- Protects “original works of authorship fixed in a tangible medium of expression”
- Doesn't protect
 - Ideas
 - Facts or discoveries
 - Merged expression
 - Theories
 - Functions, methods, processes
 - Useful articles

2

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)

3

Merger

- Where there is only one or a limited number of ways of expressing an idea, that idea “merges” with the expression so the whole is uncopyrightable.

4



Satava jellyfish

5



Satava jellyfish



Lowry jellyfish

6

Originality challenges

- “Kubla Khan,” written as Coleridge awoke from a dream
- Nature photograph aiming to capture the precise appearance of a bird
- NOT. Digitization of a public domain artwork
- Drip painting by a blindfolded artist

7

What is a protectible compilation? What’s protected?

- Collection of the “greatest poetry of all time”?
- Compendium of “all of Emily Dickinson’s writings”?
- Selection of “my favorite poetry”?
- Listing of final trade prices on a stock exchange?
- Dictionary? Selection (and arrangement)
Should we have a database right?

8

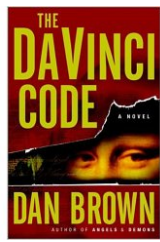
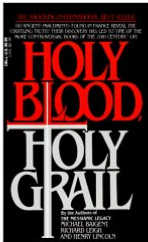
Idea v. expression

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

9



Fact and theory or expression?



11

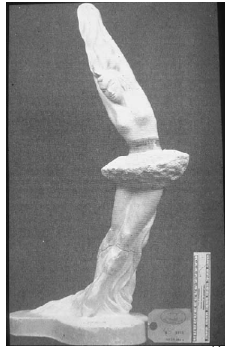
§ 101. A “useful article” is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a “useful article”.

12

Mazer v. Stein

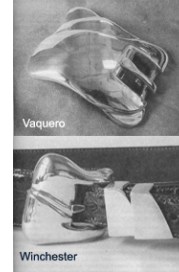
physical separability

The sculptural lamp base can be separated from the light source



Kieselstein-Cord v. Accessories by Pearl, Inc.

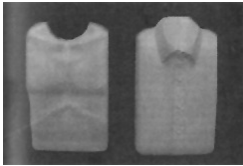
conceptual separability:



14

Carol Barnhart Inc. mannequin forms

- no physical or conceptual separability



15

Brandir Int'l v. Cascade Pacific



separable?



From photos by gordasm, voxipsa, on flickr

Excluded from copyright protection

- Ideas
- Facts
- Words and short phrases
- Processes, systems, or methods of operation
- Useful articles
- Government works

17

United States Government works

- § 105.
- Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

18

CCNV v. Reid



§ 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.

20

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.

21

Aalmuhammed v. Lee

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



22

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



23