



Copyright offense and defense

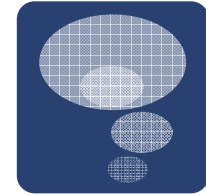
Protecting your work and staying out of trouble

Doomsday Edition

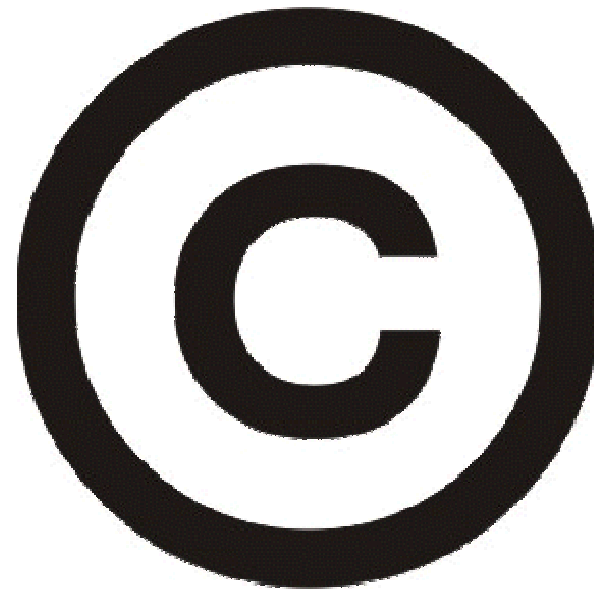


Offense

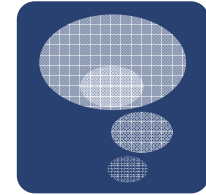
What is copyright?



- Original works of authorship fixed in a tangible medium of expression.”
- NOT the idea itself or the name/brand
- “modicum of creativity”

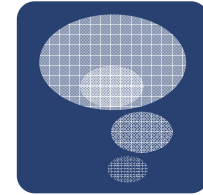


How do I get copyright?

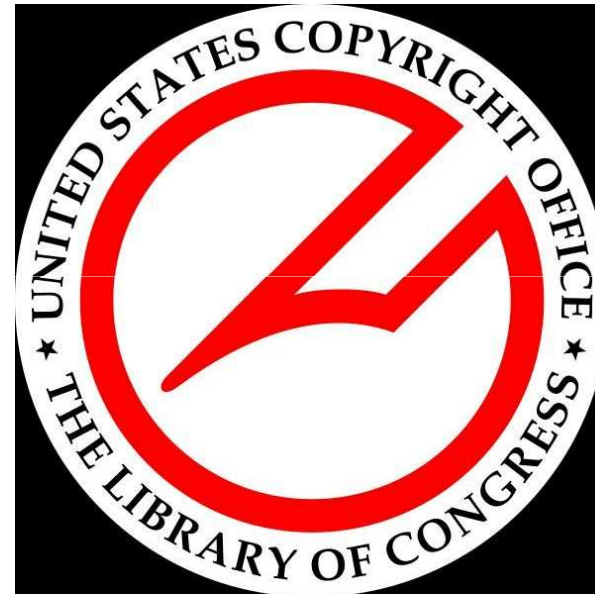


- Upon expression in a tangible medium.
- Examples

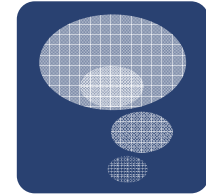
Is that all I have to do?



- Registration required for enforcement.
- Bonus rights for registering before infringement.
- Expensive to register after infringement, and you lose you “bonus” rights.



Enforcement of your rights

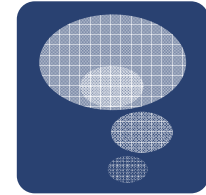


- Much easier if you've registered your copyright.
- There is help for artists!
- An attorney may help on her own if there are damages to be had.

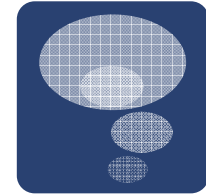


Defense

What does copyright protect?



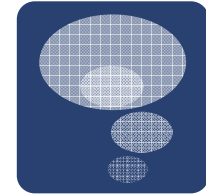
- The “bundle of rights”
 - Reproduce/copy
 - Make derivative works
 - Publicly perform
 - Publicly display
- Most of the time, copying or creating a derivative work is at issue.



What constitutes making a copy?

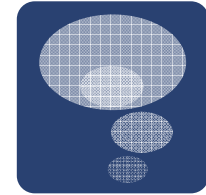
- The easy case: someone intentionally copies something else.
- The harder case: actual copying can't be shown.
- The test: substantial similarity.
- Literal similarity vs. comprehensive non-literal similarity.

What is a “derivative work?”



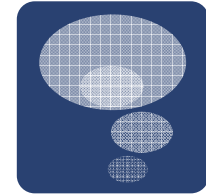
- A derivative work is a work based upon another work.
- Famous example: the tile case.
- Typically, if there is no derivative work then there is no copying.

How do I avoid problems?



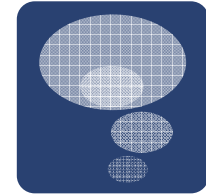
- Is there suitable material in the public domain?
 - Archive.org
 - Check the date!
- Is there a license available?
 - Creative Commons
 - Flickr, etc.
 - Permission!
- Is the use a fair use?

What is “fair use?”

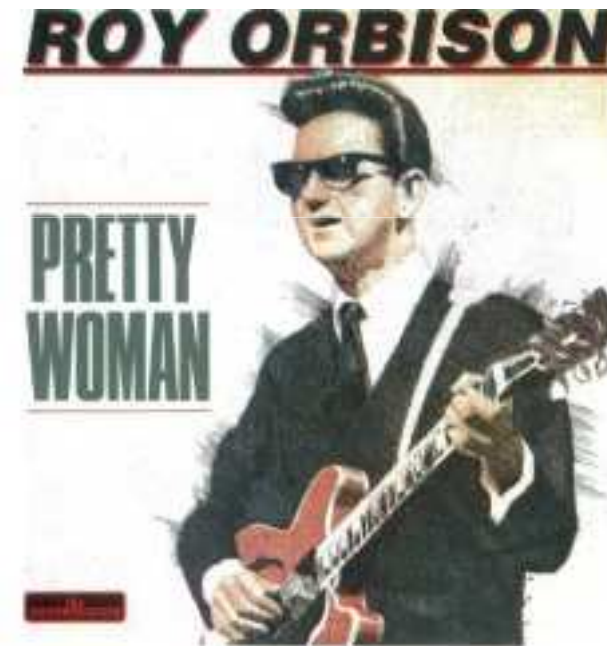


- The biggest exception to infringement, but not as big as commonly thought.
- Allows use of copyrighted works under certain circumstances.
- The test is multi-factor:
 - Purpose and character of use.
 - Nature of copyrighted work.
 - Amount and substantiality of work used.
 - Effect on market.

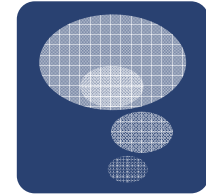
Examples of fair use



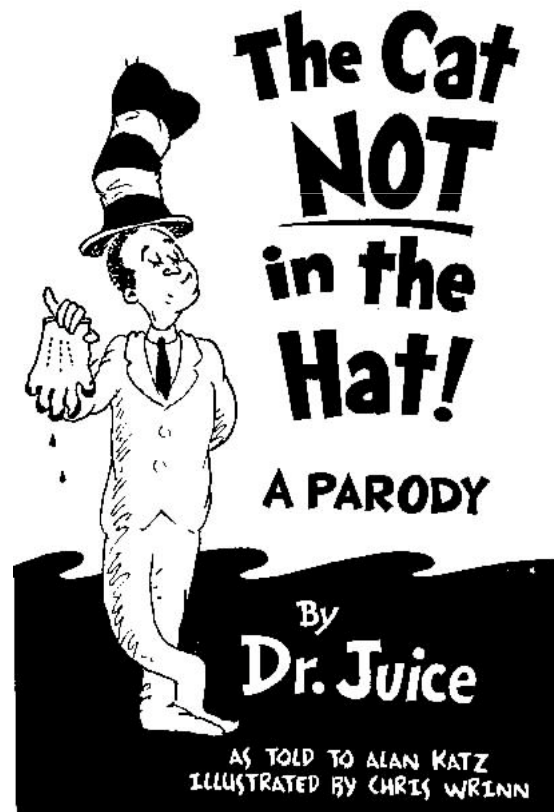
- 2 Live Crew v. Ray Orbison



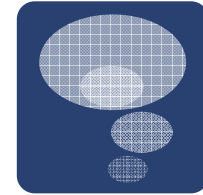
Examples of fair use



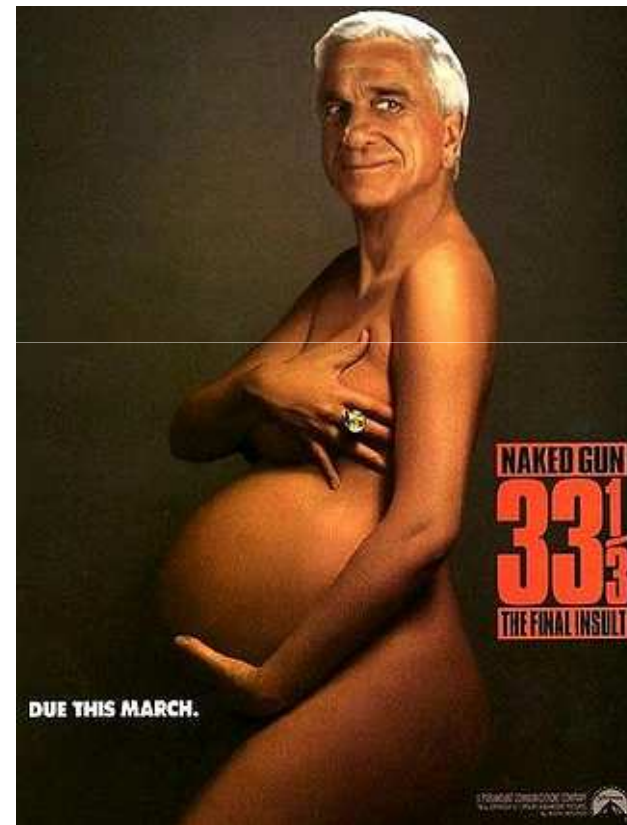
- Dr. Suess and the O.J. Simpson story (Cat NOT in the Hat)



Examples of fair use



- Naked gun movie poster playing on Annie Liebovitz photo of pregnant Demi Moore





Questions?