Class 15: Copyright Intro, Originality, And Fixation

- Administrative
  - Next Time: 395-405 (including Problems 4-3 to 4-5)
    - The syllabus has a one-page typo (reading begins on 395 not 394) and the pages listed for the problems get a little confusing.
  - News
    - Youtube's Copyright scanning program.
    - Heroes and In-Sink-Erator
      - http://money.cnn.com/2006/10/17/commentary/mediabiz/?postversion=2006101711
    - MLB licenses logos to casket mfgr.
- Last Time
  - Nominative Use
    - New Kids
      - USA Today poll: "NKOTB are pop's hottest group. Which of the five is your fave? Or are they a turn off?"
        - 50 cents a call.
      - Why is this NOT fair use?
      - You can use the mark to describe P's product, provided three elements
        - 1. Product or service is not readily identifiable without the mark
        - 2. Only so much of the mark as is reasonably necessary to ID the product or service is
        - 3. User must do nothing that would suggest sponsorship or endorse-
    - Compare "Trademark Use" and Google case.
  - Recap TM
    - Merchandising / Logos
      - No doubt about validity of the mark.
      - But what if someone sells T-shirts with Buffs logos outside the stadium?
        - Likelihood of Confusion?
        - The strange circularity of the LoC test.
        - Dilution?
        - Is this even a TM use? Is this a nominative use? Is this a fair use?
- History and Policy Justification
  - History
    - 1976 Act is Focus of this class
      - And amendments since such as Sonny Bono Copr. Extension Act
  - Policy Justification
    - Promote production of creative works
      - Utilitarianism
    - Personhood
    - Lockean
- Brief Overview
  - What is Protectable?
    - Subject Matter
      - Three requirements
        - Originality
        - Fixation
        - Idea-Expression
      - Statutory Subject Matter
    - Formalities
      - Won't really cover in this class.
      - Since 1976 Act, not very important.
    - Authorship/Ownership
      - One-third of one class
    - Duration
      - Life + 70 Years (or 95 years for entity authors)
      - One-third of one class.
  - Registration
    - In some ways, even less important than for TM.
    - Won't talk more about it in this class.
  - What Rights are Conferred?
    - Section 106 Rights
      - Copying
      - Derivative Works
      - Distribution
      - Performance
      - Display
    - Other RIghts
      - Anticircumvention
        - Not really in this class
      - Moral Rights
        - Not in this class
    - Third-party liability
      - Contributory / Vicarious / Grokster
  - Limits on these Rights
    - Fair Use
      - Two Classes
    - Compulsory Licensing
      - A little attention
- Originality
  - Basic Rule
    - Originality entails
      - Independent Creation
      - Modicum of Creativity
  - Feist
    - Basic Facts
      - Rural is a phone company. Publishes white pages and yellow pages.
        - State regulation mandates this (important?)
      - White pages
        - 7700 Listings
        - For each
          - Names of subscribers
          - Towns
          - Phone Numbers
      - Feist sells much larger phone book
        - Paid 10/11 local telcos for rights to white page listings
          - Rural said, "No."
        - Used Rural's listings anyway.
          - Used 1309 listings
            - Others were outside territory covered.
          - Added some add'l research (street addresses)
            - Does this matter?
    - Held
    - Reasoning
  - Some examples / Problems
    - 1
      - "Save the Cheerleader...Save the World!"
      - Haiku
        - Fixed and Tangible
        - Too Short -- Not Original
        - No IP for You!
    - 2
      -
      - More smileys
        -
      - New York Arrows logo (page 422)
    - 3
      - White Pages?
        - See Feist discussion above.
      - Yellow Pages?
        - Definitely more S/C/A than a typical white pages, but is it dictated by the form?
    - 4
      - Compilations
    - 5
      - Photographs
    - 6
    - 7
    - 8
- Fixation