

Class 3: Idea Expression

Administrative

Next Time:

News Wednesdays

Copyright side of the Late-Night wars

Class 3: Idea Expression

Last Time

Originality

Problems

Some examples / Problems

Two Requirements (Feist)

Independent Creation
Modicum of Creativity

1

HI TWITTERS . THANK YOU FOR
A WARM WELCOME. FEELING
REALLY 21st CENTURY.

@oprah ur caps r on, btw

Fixed and Tangible
Too Short -- Not Original
No IP for You!

Haiku



More smileys



New York Arrows logo
802 F.2d 989

2



Logos



3

4

5

6

Audio Recordings

Wilhelm Scream

<http://www.birds.cornell.edu/ivory/multimedia/sounds/listening/900a>

http://www.news.cornell.edu/stories/April05/Woodpecker_sound_tech.html

Policy for Originality Requirement

Burrow-Giles Lithographic v. Sarony

Bleistein v. Donaldson Lithographic

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Idea-Expression

Basics

Definition

Applies to BOTH copyrightability (originality) analysis and to infringement analysis

Baker v. Selden

Basic Facts

Blank Accounting Forms

Selden came up with new method for accounting.

Key innovation: More summary data shown on two facing pages.

Selden's book:

Introductory essay explaining the system.

Blank forms illustrating the system.

Baker's book

Similar plan, with different columns and headings

"If [plaintiff] had the exclusive right to the use of the system explained in the book, it would be difficult to contend that the defendant does not infringe it . . ."

Held (Supreme Court 1880)

Many possible

Use / Explanation distinction

Channeling Doctrine

Blank Form Rule

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Protecting Facts

Hoehling v. Universal

Facts

Three versions of the story of the Hindenburg

1: By Plaintiff, Hoehling

Historical, factual book

Key theory: sabotage by crew member to please a communist woman

2: By D1, Mooney

Book

"More literary"

Dominant theme: Nature prevailing over technology

D1 admits consulting P's book for details

3: By D2, Universal

Screenplay and Film

"Disaster" film with many fictional creations

P alleged D's took much, grouped into three categories

A. Basic Plot

B. Many specific facts

As many as 266

See FN6 for representative list of 10

C. Phrases and sequences of events

German beer hall

German national anthem

Heil Hitler

Scenes a faire

stock characters

stock settings

Audience expectations

District Court: Summary Judgment for Defendants

Held

Reasoning "thin" Copyright

Other examples

Holy Blood, Holy Grail v. Da Vinci Code

Facts

**Class 3: Idea
Expression**

Merger, Thin Copyrights, Scenes a Faire

Merger

Thin Copyright

Scenes a Faire

ADA v. Delta Dental

Morrissey v. Procter & Gamble

Two sets of Rules 