

Legal Issues in Poetry

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Copyright Review

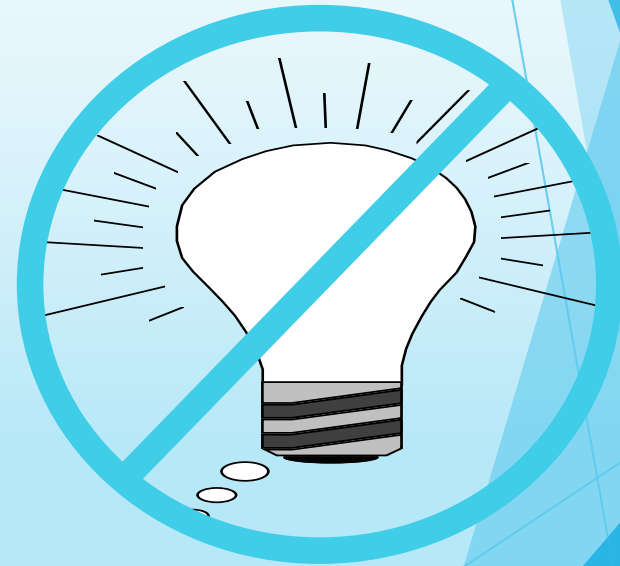
- ▶ Copyrightable Content
 - ▶ Originality
 - ▶ Fixation
- ▶ Copyright Ownership
- ▶ Exclusive Rights of Copyright Owners
- ▶ Copyright Registration and Notice
- ▶ Copyright Term
- ▶ Non-Waivable Right to Terminate Assignments
- ▶ Infringement and Defenses
- ▶ Author Exposure: Defamation, Rights of Privacy and Publicity
- ▶ Agency and Publishing Agreements

Copyrightable Content

Copyright Protects:

- “Original works of authorship fixed in a tangible medium of expression”
 - Does not cover:
 - words or short phrases;
 - facts; or
 - any idea, procedure, process, system, method of operation, concept, principle, or discovery

Again, copyright law does not protect ideas, but the EXPRESSION of those ideas





Copyright Ownership

General Rule

“AUTHOR” is the Owner, but

CREATOR is not always the
AUTHOR

Creator not Author when:

- ▶ When Creator is an Employee, the ***Employer is considered the Author*** as long as work is created within the scope of the employment
- ▶ When Creator is an Independent Contractor hired to create the work, ***Commissioning Party can be Author only in limited circumstances***
 - ▶ Written Agreement
 - ▶ Work Within One of Nine Categories: ***Collective Work Contribution***; Motion Picture or Audio Visual Work; Translation; Supplement; Compilation; Instructional Text; Test; Answers for Test; Atlas
- ▶ When Creator is Not Employee and when Work is not Work Made For Hire, Transfer Can Only Occur With Written Assignment Agreement

Assignments

- ▶ A written document that, for example, transfers the rights to intangible property
- ▶ Assignments are subject to termination
- ▶ Poetry Contest Query

“Joint Works”

- ▶ Authors intend contributions be merged into **inseparable and interdependent parts** of a unitary whole
- ▶ Each have right to independently exploit subject to a duty to account

Exclusive Rights of Copyright Owners

EXCLUSIVE RIGHT:

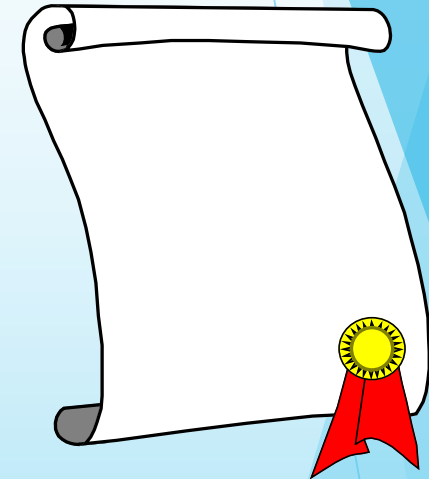
- ▶ Copy and Distribute
- ▶ Publicly Display
- ▶ Publicly Perform
- ▶ Prepare Derivative Works

**SELLING A COPY OF YOUR WORK DOES
NOT TRANSFER ANY OF THESE RIGHTS**

Copyright Registration and Notice

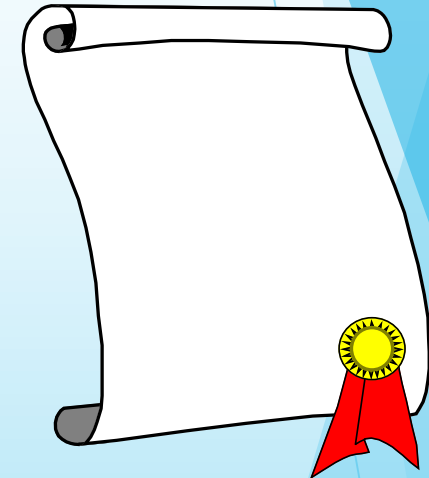
COPYRIGHT REGISTRATION

- ▶ Not Necessary, But Helpful
 - ▶ Needed to Sue and Obtain Statutory Damages and/or Attorneys' Fees
 - ▶ Easy and Cheap
 - ▶ Can use a single registration for multiple works if the owner is the same, and:
 - ▶ If unpublished, common author, or
 - ▶ If published, in same unit of the publication



COPYRIGHT NOTICE

- ▶ (a) Optional (since 1989)
 - ▶ (b) © Year of 1st publication Owner
 - ▶ (c) Location should give reasonable notice
 - ▶ (d) Eliminates Innocent Infringement
-
- ▶ Single notice on collective work sufficient for all contributions



Copyright Term

Copyright Term

- ▶ Works published before 1923 = public domain
- ▶ Works published before 1963 without renewal = public domain
- ▶ Works published before 1977 without notice = public domain
- ▶ Works published before 1989 without notice or registration w/in 5 years = public domain
- ▶ Works published before 1977 that are not in the public domain = 95 years
- ▶ Works published between 1978 and 1989 that are not in the public domain =
 - ▶ Creator-Owner - life of last surviving author plus 70 years
 - ▶ Work-Made-For-Hire/Anonymous Works - shorter of 95 years from publication or 120 years from creation
- ▶ Since 1989, same as above regardless of notice or registration

Termination of Transfer

- ▶ Five year window
 - ▶ 35 years from the date of execution; or,
 - ▶ If the grant covers the right of publication,
 - ▶ 35 years from the date of publication; or
 - ▶ At the end of 40 years from the date of execution of the grant, whichever term ends earlier
- ▶ Advanced written notice
 - ▶ Effective date of the termination,
 - ▶ Served not less than two or more than ten years before that date

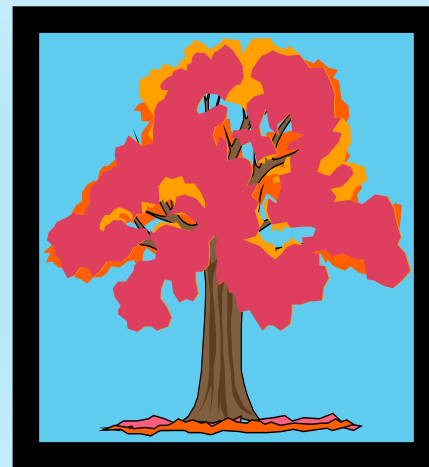
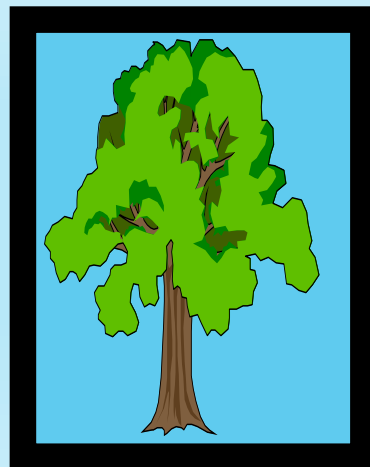
Infringement and Defenses

COPYRIGHT INFRINGEMENT

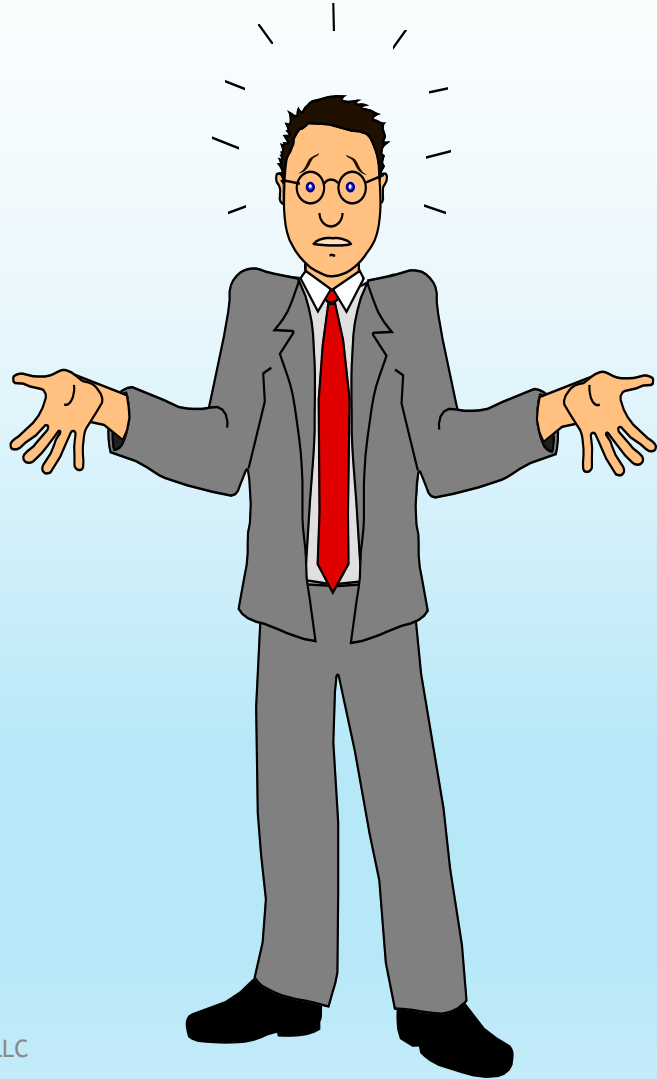
Direct Evidence of Copying

or

Access + Substantial Similarity



COMMON DEFENSES



- ▶ Use of Idea, Not Expression
- ▶ Public Domain
 - ▶ Term expired
 - ▶ No © notice
- ▶ “I Created it Myself”
- ▶ Fair Use

Fair Use Analysis

- ▶ Four-Factor Balancing Test, considering:
 - ▶ Purpose and character of use
 - ▶ Commercial/educational
 - ▶ Transformative - new expression, meaning or message
 - ▶ Nature of Copyrighted Work
 - ▶ Fictional/Factual
 - ▶ Portion Used
 - ▶ Uses Effect on Original

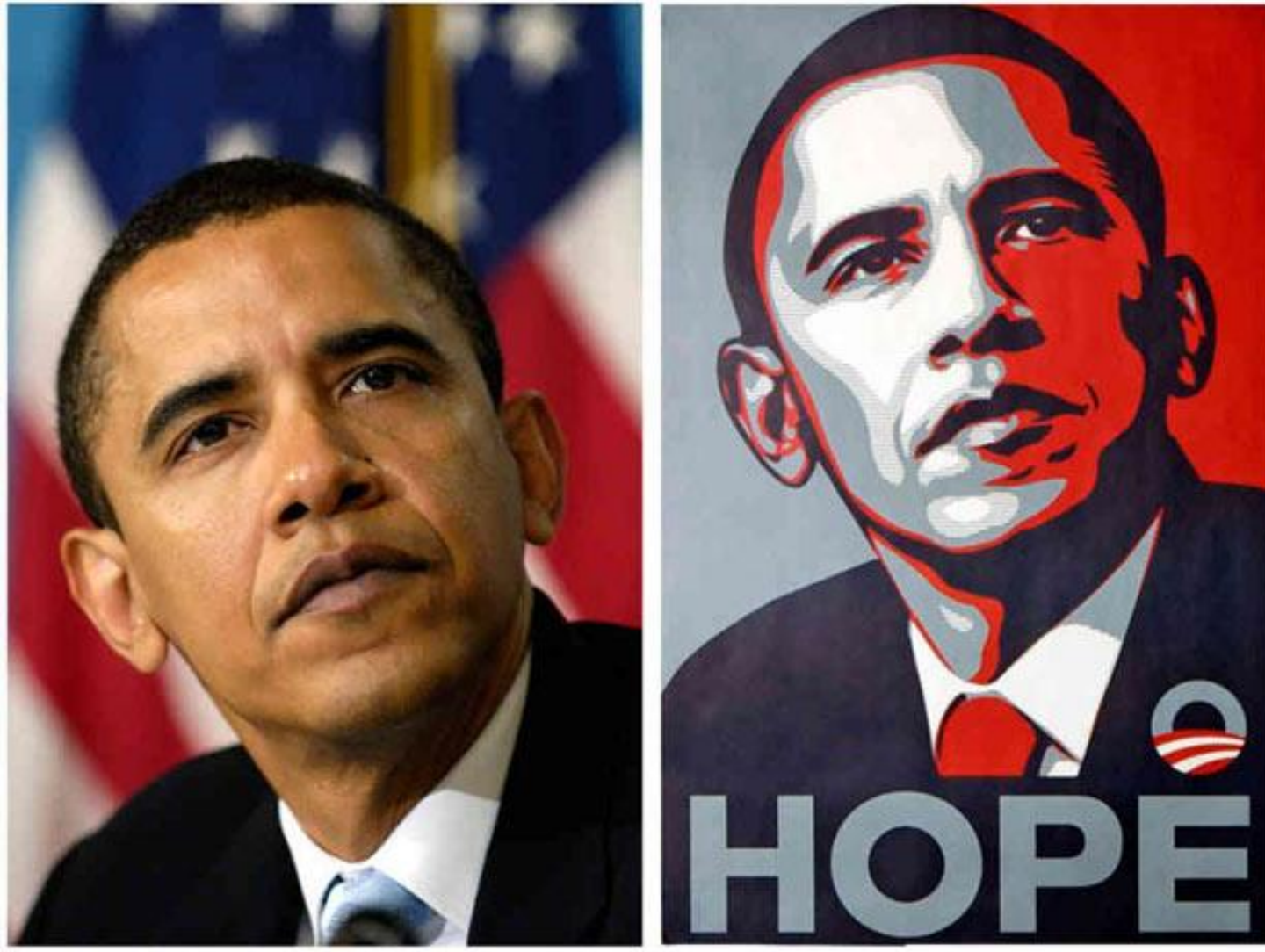
Sex Pistols

Johnny Rotten
Sid Vicious





New expression, meaning or message?
Should this be a “fair use”?



New expression, meaning or message?
Should it be a fair use?

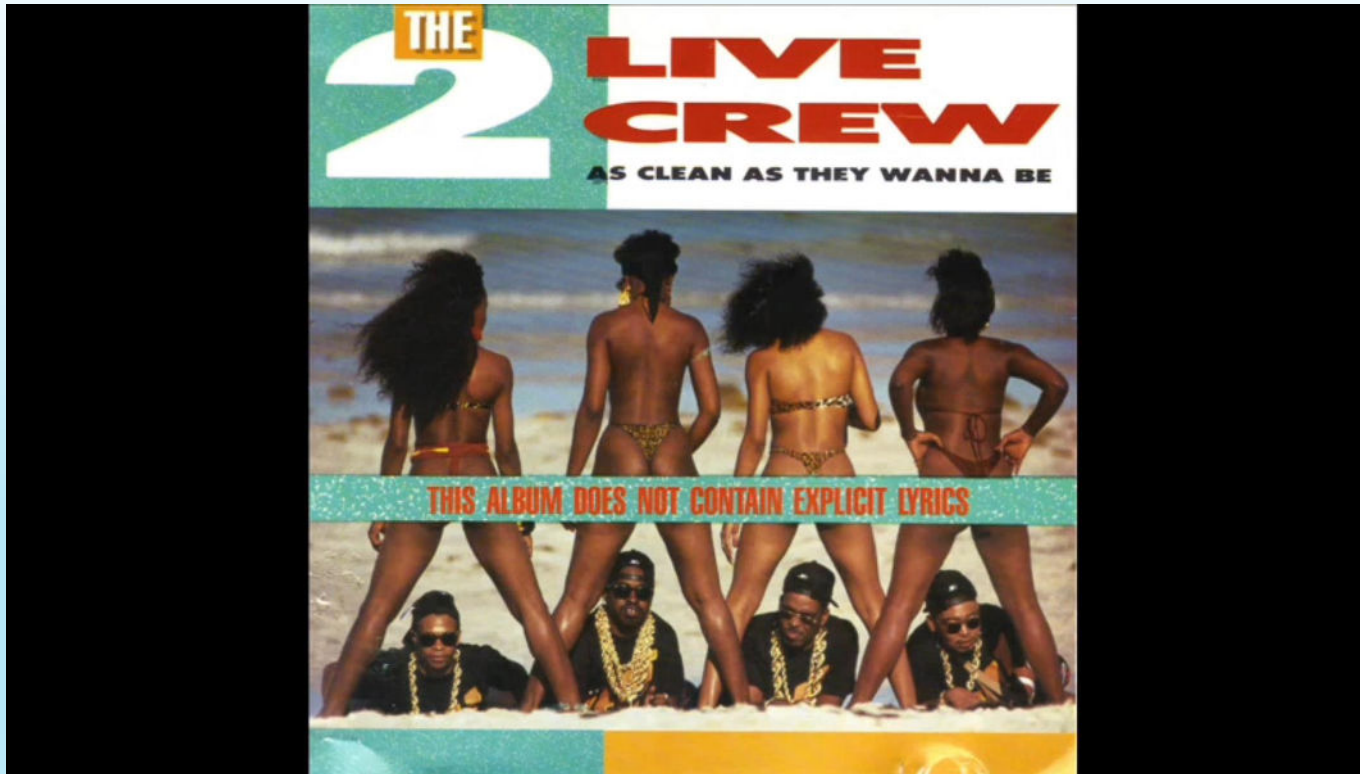
Campbell v. Acuff-Rose Music, Inc., US 1976

- ▶ “Pretty Woman”- Is this fair use?



Campbell v. Acuff-Rose Music, Inc., US 1976

- ▶ “Pretty Woman”- Is this fair use?



Author Exposure

- ▶ Potential Claims
 - ▶ Defamation
 - ▶ Right of Privacy
 - ▶ Intrusion on seclusion
 - ▶ Publicly disclose private facts
 - ▶ False light
 - ▶ Right of Publicity

Libel/Defamation

- ▶ Publish a false statement
- ▶ In violation of your duty of care
 - ▶ Public vs. Private Figure
- ▶ Damage

Libel/Defamation

- ▶ Duty of Care

- ▶ Public Figure

- ▶ Actual Malice -- Knowledge or Reckless disregard of the truth

- ▶ Private Figure

- ▶ Negligence -- Lacked reasonable grounds for belief

Libel/Defamation

- ▶ Defamation per se
 - ▶ Commission of crime
 - ▶ Loathsome communicable disease
 - ▶ Lack of ability/integrity or otherwise harms the plaintiff in his or her profession
 - ▶ Adultery or fornication

Intrusion Upon Seclusion

- ▶ Unauthorized intrusion or prying
- ▶ Highly offensive to a reasonable person
- ▶ Reveals private matter
- ▶ **Intrusion** caused anguish and mental suffering

Publicly Disclose Private Facts

- ▶ Publicly disclosed
- ▶ Facts were private and not public
- ▶ Highly offensive to a reasonable person

False Light

- ▶ Caused person to be painted in a false light before the public
- ▶ Highly offensive to a reasonable person
- ▶ Actual malice, knowledge of or reckless disregard for the falsity of the statements

Right of Publicity

- ▶ Using person's identity for commercial purposes
- ▶ **Identity**
 - ▶ “any attribute of an individual that serves to identify that individual to an ordinary, reasonable viewer or listener, including but not limited to (i) name, (ii) signature, (iii) photograph, (iv) image, (v) likeness, or (vi) voice.”
- ▶ **Commercial Purposes**
 - ▶ (1) the sale of a product, merchandise, goods, or services; (2) advertising any product, merchandise, goods, or services; or (3) fundraising

Agent Agreements

- ▶ Typical provisions
 - ▶ Works they represent
 - ▶ Markets they will pursue
 - ▶ Compensation
 - ▶ Usually 15% of revenue
 - ▶ Affirmative duties and obligations
 - ▶ Term
 - ▶ Sunset clause
 - ▶ Termination

Publishing Contracts

- ▶ Key provisions
 - ▶ Right Grant (limit to print rights)
 - ▶ Delivery
 - ▶ Publication Deadline
 - ▶ Royalties
 - ▶ Payment/Audit Provisions
- ▶ Termination
- ▶ Indemnification
- ▶ Obligation to Promote
- ▶ Revision

Self-Publishing Services (Electronic Book Stores)

- ▶ Non-exclusive license to publish
 - ▶ Hard copies and to e-book stores
 - ▶ Author markets and promotes
- ▶ Terms modifiable without little notice
- ▶ Understand any additional rights being granted
 - ▶ Retain for Searches; Loan Program; View In Store
- ▶ Highest royalty
- ▶ Lowest author printing costs
- ▶ Return original production files

Thanks for listening!

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