



Copyright

Class schedule

Class	Topic
9/10	Introduction
9/17	Copyrights
9/24	Trademarks
10/1	Patents
10/8	Digital futures



Gorski's Design



Gymboree's Design

Copyright Or Trademark?



Girl Scouts IP Badge

Girl Scouts Get A Badge In Intellectual Property Maximalism

Review

- ▶ Article 1, Section 8, gives Congress the right to establish copyright laws.
- ▶ Copyright laws
 - Established basic framework for definition and process
 - Extended copyright to non-written works
 - Established copyright duration
 - Extended definition to include new types of works, new uses, and electronic distribution

What is copyrightable?

- ▶ Original works
 - Creator need only establish that the work was not copied.
 - Multiple independent creations are possible
 - See later about “subconsciously knowing”
- ▶ In a tangible form
 - Originally intended for print
 - Now includes digital expressions

What can be copyrighted?

- ▶ 17 U.S.C.A. § 102. Subject matter of copyright
 - ▶ (1) literary works;
 - ▶ (2) musical works, including any accompanying words;
 - ▶ (3) dramatic works, including any accompanying music;
 - ▶ (4) pantomimes and choreographic works;
 - ▶ (5) pictorial, graphic, and sculptural works;
 - ▶ (6) motion pictures and other audiovisual works;
 - ▶ (7) sound recordings; and
 - ▶ (8) architectural works.

Exclusive rights

- ▶ § 106. Exclusive rights in copyrighted works
- ▶ To make copies
- ▶ To prepare derivative works
- ▶ Distribute copies, including transferring ownership, renting, leasing, electronic forms, etc.
- ▶ Perform the work in public
- ▶ Exceptions for academic use and others
 - § 110. Limitations on exclusive rights: Exemption of certain performances and displays



First Sale Doctrine

[Kirtsaeng v. John Wiley & Sons, Inc.](#)

Who owns that selfie?



What does © mean?

▶ Registration

- Establishes a public record of the copyright
- Required if you sue for infringement
- Makes copyrighted material available through the Library of Congress
- Two best copies within three months of publication

▶ Notice

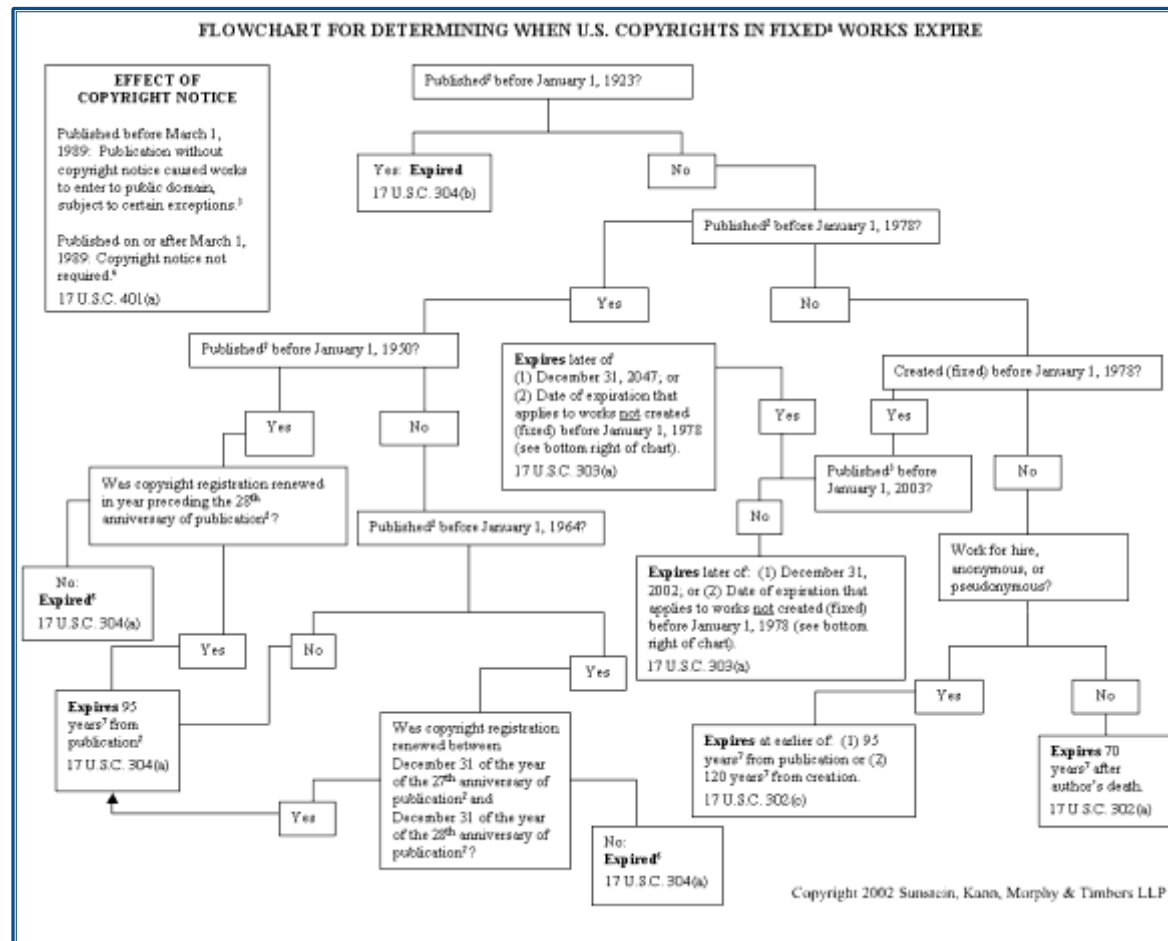
- the symbol © (the letter C in a circle), or the word “Copyright”, or the abbreviation “Copr.”; and
- the year of first and, if applicable, latest publication of the work
- the name of the owner of copyright in the work
- § 401. Notice of copyright: Visually perceptible copies

Why you might be confused ...

- ▶ “Optional registration fulfills mandatory deposit requirements.”
[U.S. Copyright Office - Mandatory Deposit \(FAQ\)](#)
- ▶ The use of the copyright symbol does not establish your copyright.
 - It's your work. You already have that right.
 - It only serves notice that this is a copyrighted work.
- ▶ The lack of notice does not necessarily mean that the work isn't copyrighted.
 - It might mean that it isn't.
 - It might mean that you don't care.

The registration process

- ▶ How it works
 - [U.S. Copyright Office - Online Services \(eCO: Electronic Copyright Office\)](#)
- ▶ How much does it cost?
 - How much do you have?
 - [U.S. Copyright Office - Fees](#)
- ▶ How long does it take?
 - Electronic filing – 4-5 months
 - Paper filing – 15 months

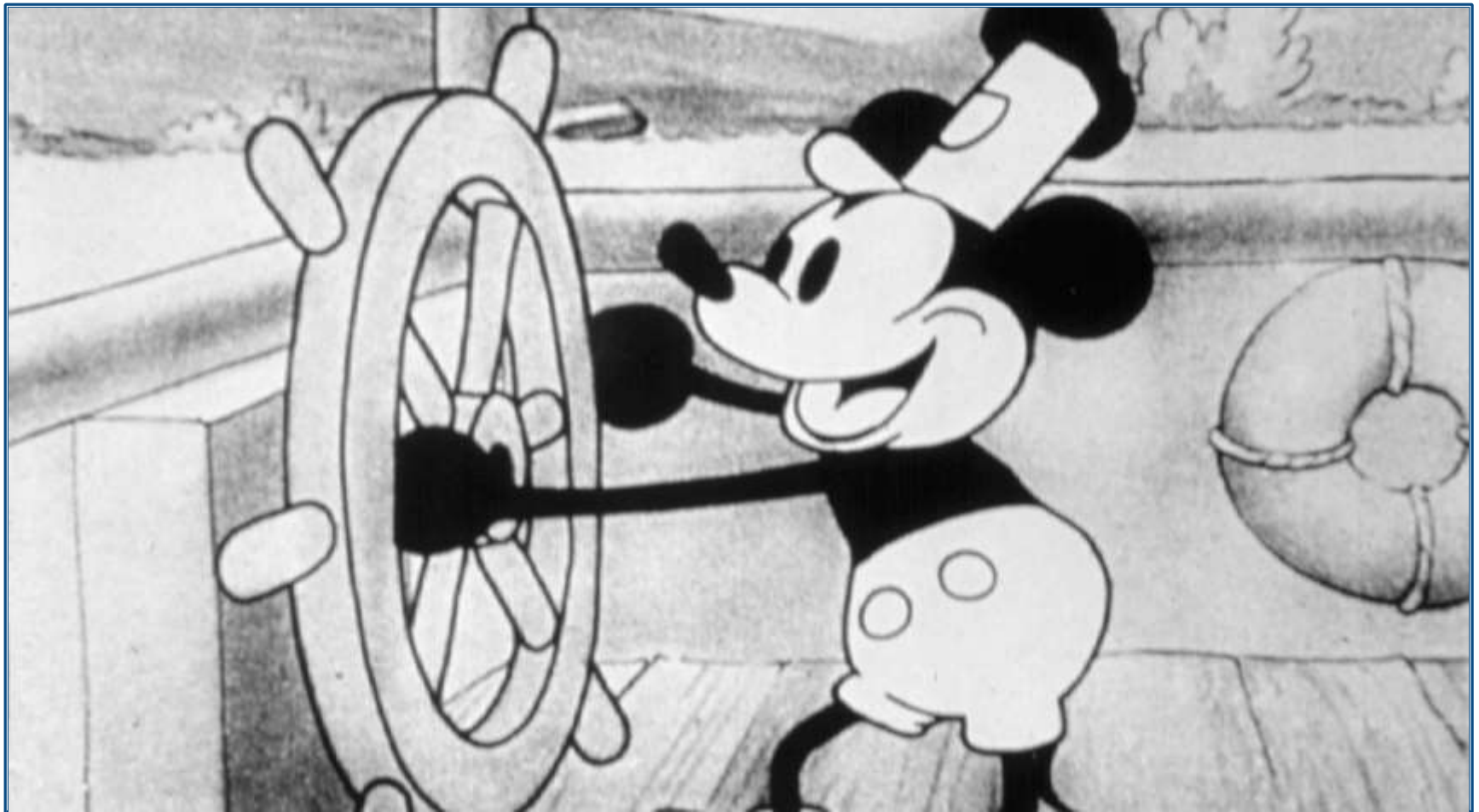


What is the duration of a copyright?

It depends ...

What happens after a copyright expires?

- ▶ Public domain
 - Items whose copyright periods has lapsed
 - Where the author failed to comply with registration procedures
 - The work is published by the U.S. Government or states.
- ▶ No restrictions on use



Free Mickey in 2023

[How Mickey Mouse Keeps Changing Copyright Law](#)



Mystery solved

[Judge Posner Solves Sherlock Holmes Copyright Case](#)

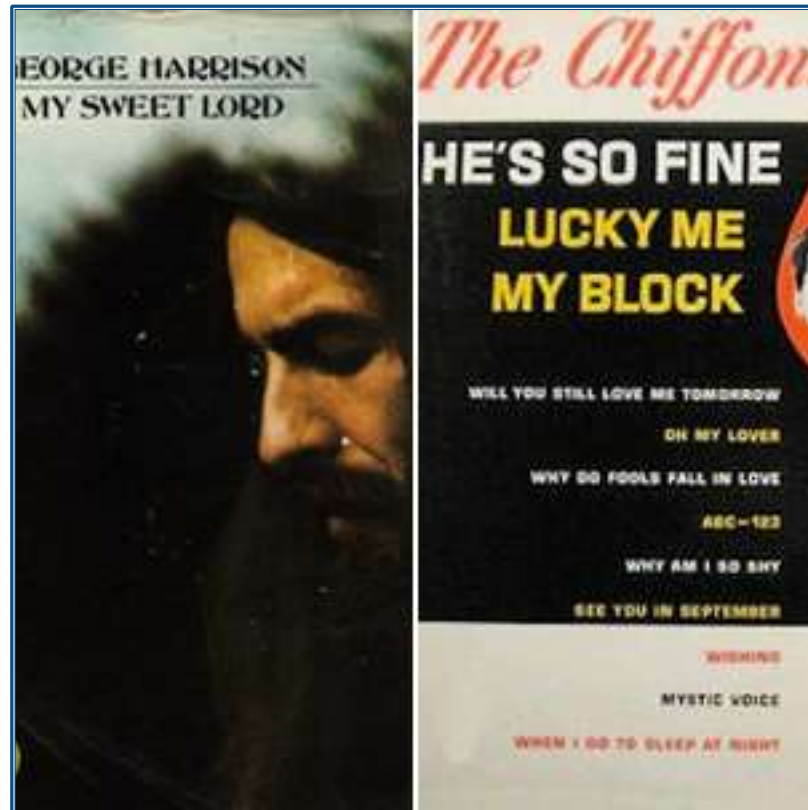
Infringement

- ▶ Did copying occur?
- ▶ Is it impermissible?
- ▶ Infringement of musical works
- ▶ Infringement of literary works
- ▶ Innocent infringer
 - Intent
 - Motive
 - Burden of proof
 - The owner must prove willfulness
 - The innocent offender has the burden of proof regarding profits



Copyright infringement

Us



Unconscious infringement

Bright Tunes Music Corp. vs. Harrison Songs Music, Ltd.



Novel defense: I was too drunk and wasted

Robin Thicke in a deposition about copyright infringement case

Remedies

- ▶ Preemption
 - Federal copyright law preempts state laws
 - § 301. Preemption with respect to other laws
- ▶ Injunctive relief
- ▶ Damages and profit
- ▶ Impoundment
- ▶ Criminal penalties
- ▶ Eleventh Amendment immunity
 - States are immune from suits for copyright infringement except for a pattern of infringement

Copyright trolls

- ▶ Definitions

1. Companies that buy the assets of another company for the purpose of bringing suit against third-parties.
2. Companies that allege copyright infringement for the purpose of intimidation, settlement, and profit.

- ▶ Copyright Trolls: The Meaner Stepsister of Patent Trolls | IPWatchdog.com | Patents & Patent Law

Fair Use

§ 107. Limitations on exclusive rights: Fair use

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for, or value of, the copyrighted work

Academic fair use

- ▶ Generous provisions for academic use
- ▶ Copying
- ▶ Performance
- ▶ Demonstration
- ▶ Issues regarding amount, purpose, and profit
- ▶ Assumption College Policies

How can you record someone else's song?

- ▶ Mechanical license – the right to record
- ▶ Performance rights – the right to perform in public
- ▶ Statutory Royalty Rates for a mechanical rights

Parody and sampling

- ▶ Parody
 - 2 Live Crew's sampling of Roy Orbison's "Oh, Pretty Woman"
 - [Campbell v. Acuff-Rose Music, 510 U.S. 569 \(1994\).](#)
- ▶ Licensing of samples
 - Manu Dibango – Soul Makossa
 - Michael Jackson – "Wanna be Startin' Something"
 - Rihanna – Don't Stop The Music
 - [Court Rejects Dibango's Claims](#)



Can I be sued for plagiarizing myself?

John Fogerty – [The Old Man Down the Road](#)



Attribution
CC BY



Attribution-ShareAlike
CC BY-SA



Attribution-NoDerivs
CC BY-ND



Attribution-NonCommercial
CC BY-NC



Attribution-NonCommercial-ShareAlike
CC BY-NC-SA



Attribution-NonCommercial-NoDerivs
CC BY-NC-ND

Creative Commons

How to force an copyrightable item into the public domain

Applying fair use

- ▶ Remember the four tests:
 - How is it used?
 - What is the nature of the copyrighted item?
 - How much is used?
 - What is the economic impact of the use?
- ▶ Each of the following has some case law associated with the use

May I show a YouTube video?

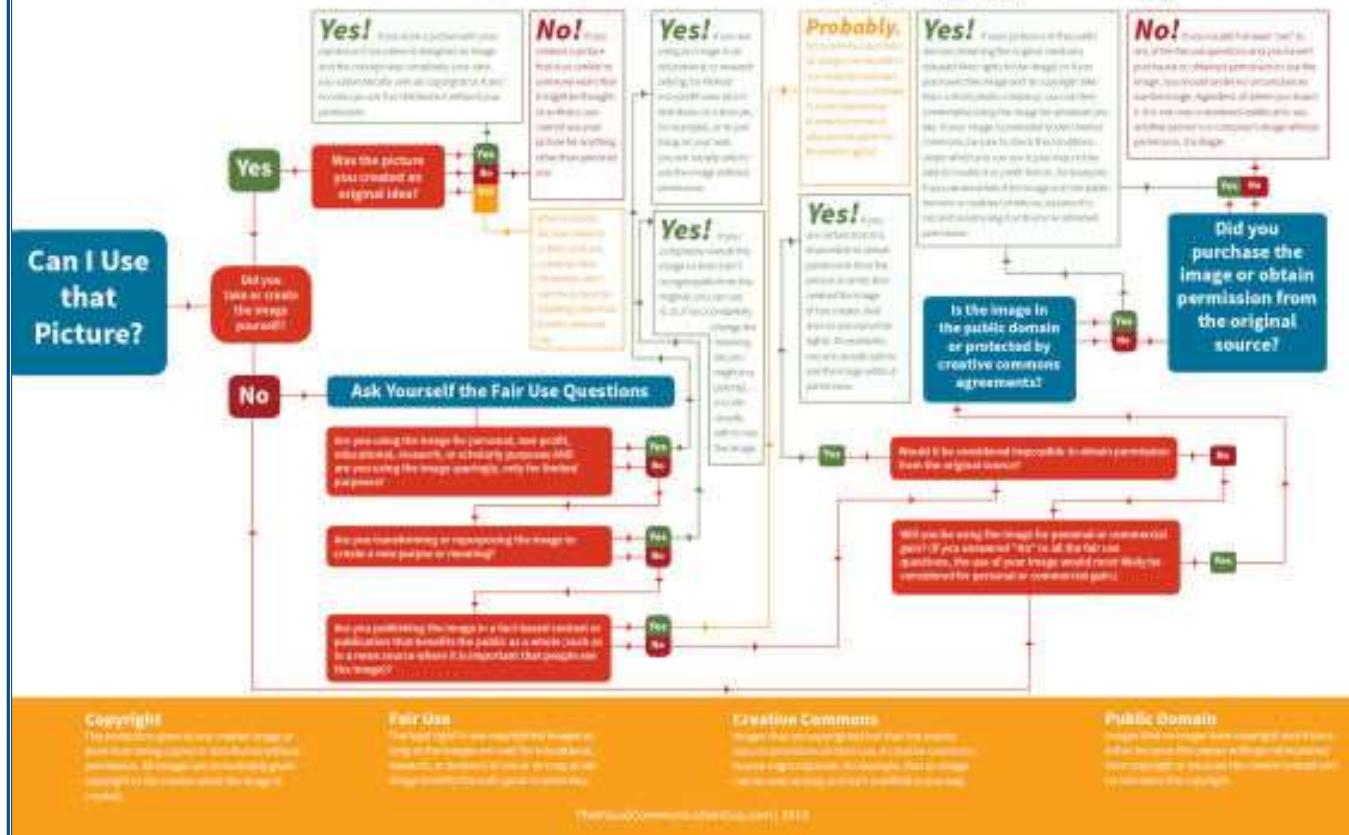
- ▶ How is it used?
- ▶ Nature of the item?
- ▶ How much?
- ▶ Economic impact?
- ▶ Conclusion:
 - It appears to pass the tests for fair use
- ▶ "You shall not download any Content unless you see a "download" or similar link displayed by YouTube on the Service for that Content."

May we sing Happy Birthday?

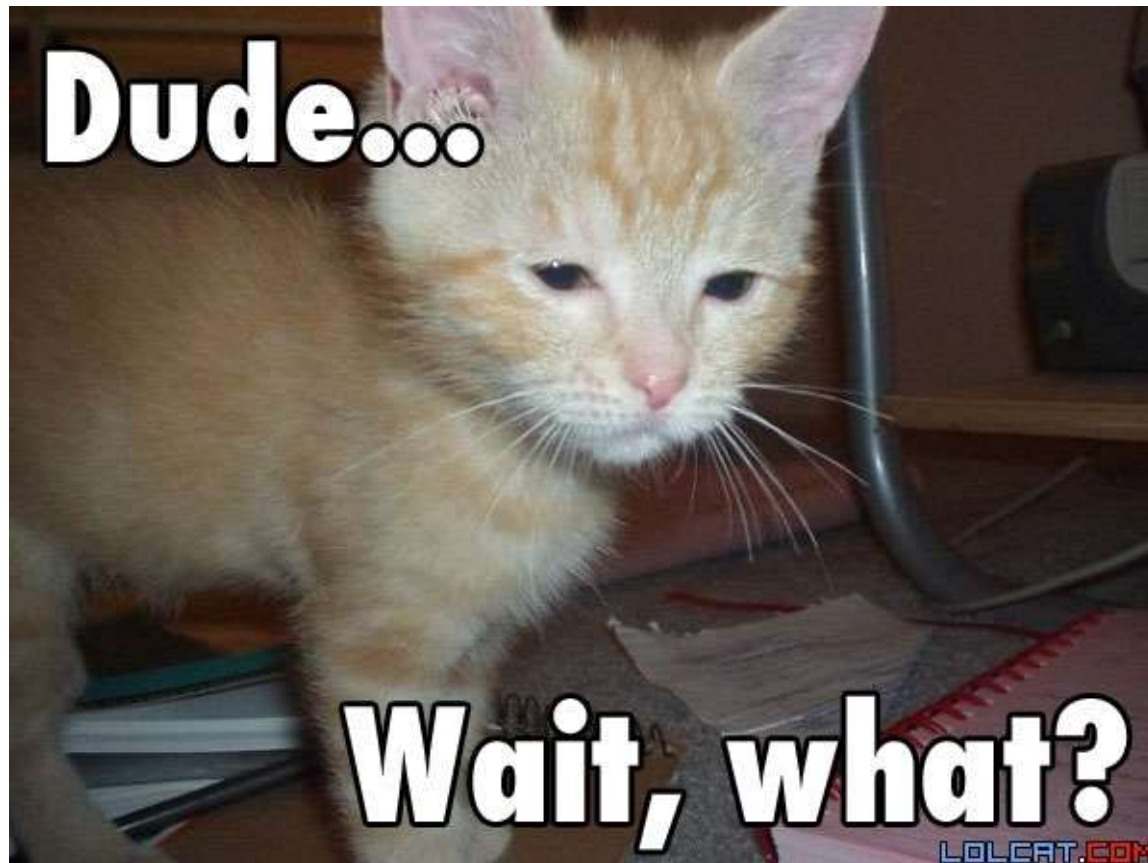
- ▶ The song was copyrighted in 1935 by Clayton F. Summy Company, working with the melody's authors.
- ▶ The copyright term should have ended in 1991.
- ▶ The copyright acts of 1976 and 1998 extend the duration to 2030.
- ▶ 'Happy Birthday to You' Copyright Challenged in Class Action

Can I Use that Picture?

The Terms, Laws, and Ethics for Using Copyrighted Images



Can I Use that Picture?



Questions?



Next week

The who, what, when, where, why,
and how of trademarks