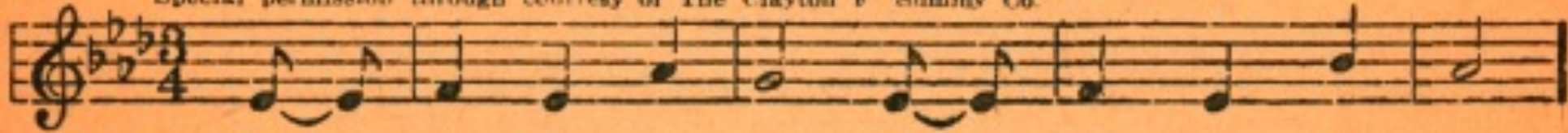


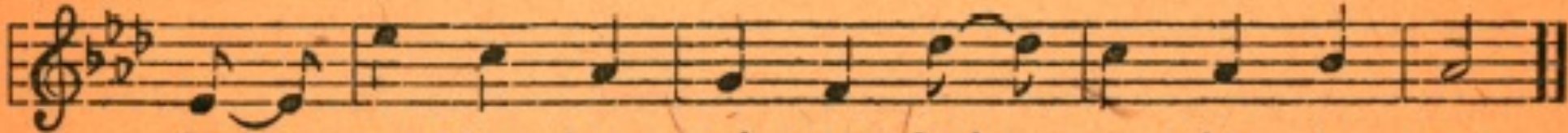
16

Good Morning and Birthday Song.

Special permission through courtesy of The Clayton F. Summy Co.



Children: Good morn - ing to you, Good morn - ing to you,
 Teacher: Good morn - ing to you, Good morn - ing to you,
 Optional: Hap - py birth - day to you, Hap - py birth - day to you,



Good morn - ing, dear teach - er, Good morn - ing to you.
 Good morn - ing, dear chil - dren, Good morn - ing to you.
 Hap - py birth - day, dear *....., Hap - py birth - day to you.

*When the song is sung as a birthday greeting for some child in the room, the name of the child is inserted here.

Copyright

Intellectual Property for the Rest of Us – Class 2



Class schedule

Class	Topic
9/9	Introduction A ridiculously fast history of intellectual property in America
Note: no class meeting on 9/16 in observance of Yom Kippur	
9/23	Copyrights
9/30	Trademarks
10/7	Patents
10/14	Digital futures

Course materials are on:
<https://queenlake.com/wise-2021/ip4us/>



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.



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.
- ▶ A court determined that "Happy Birthday" never should have been copyrighted, that it's based on a public domain song, "Good Morning to You."
- ▶ "Happy Birthday" is in the public domain, former owner Warner/Chapell to pay back \$14M to those who licensed it.

[\[Link\]](#)



Copyright.gov | U.S. Copyright Office


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▼ Law & Policy ▼ Registration ▼ Recordation ▼ Licensing ▼ Research

Find Yourself in Copyright
Explore our online exhibit

**FIND INSPIRATION
EXPRESSION HISTORY
CREATIVITY EMPOWERMENT
IMAGINATION KNOWLEDGE
YOURSELF IN COPYRIGHT**

What is Copyright?
Learn about the basics of copyright with our new online reference page. [Learn More](#)



The Copyright Office website [[Link](#)]





The Music Modernization Act [\[Link\]](#)

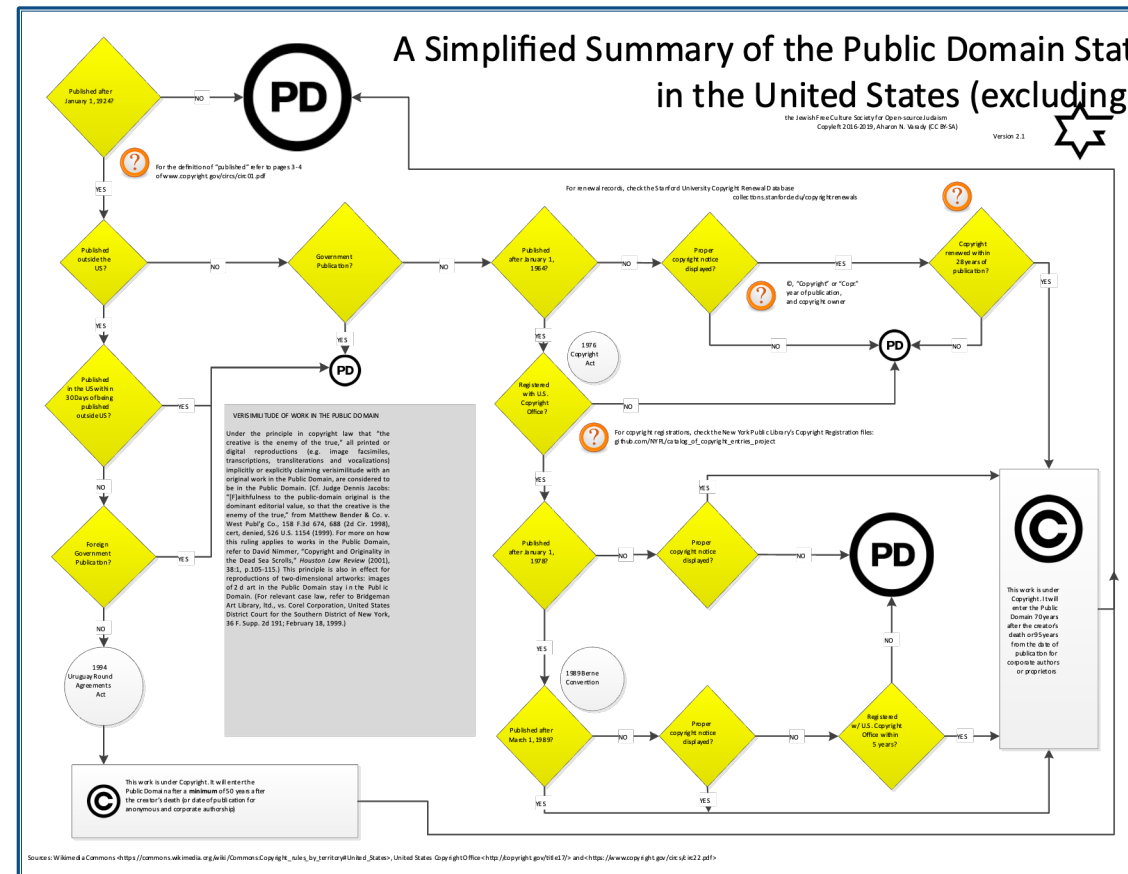
Copyright in the Streaming Era



MMA – Pre-1972 Sound Recordings

- ▶ For recordings first published before 1923, the additional time period ends on December 31, 2021.
- ▶ For recordings first published between 1923-1946, the additional time period is 5 years after the general 95-year term.
- ▶ For recordings first published between 1947-1956, the additional time period is 15 years after the general 95-year term.
- ▶ For all remaining recordings first fixed prior to February 15, 1972, the additional transition period shall end on February 15, 2067.
- ▶ Additional protections for producers

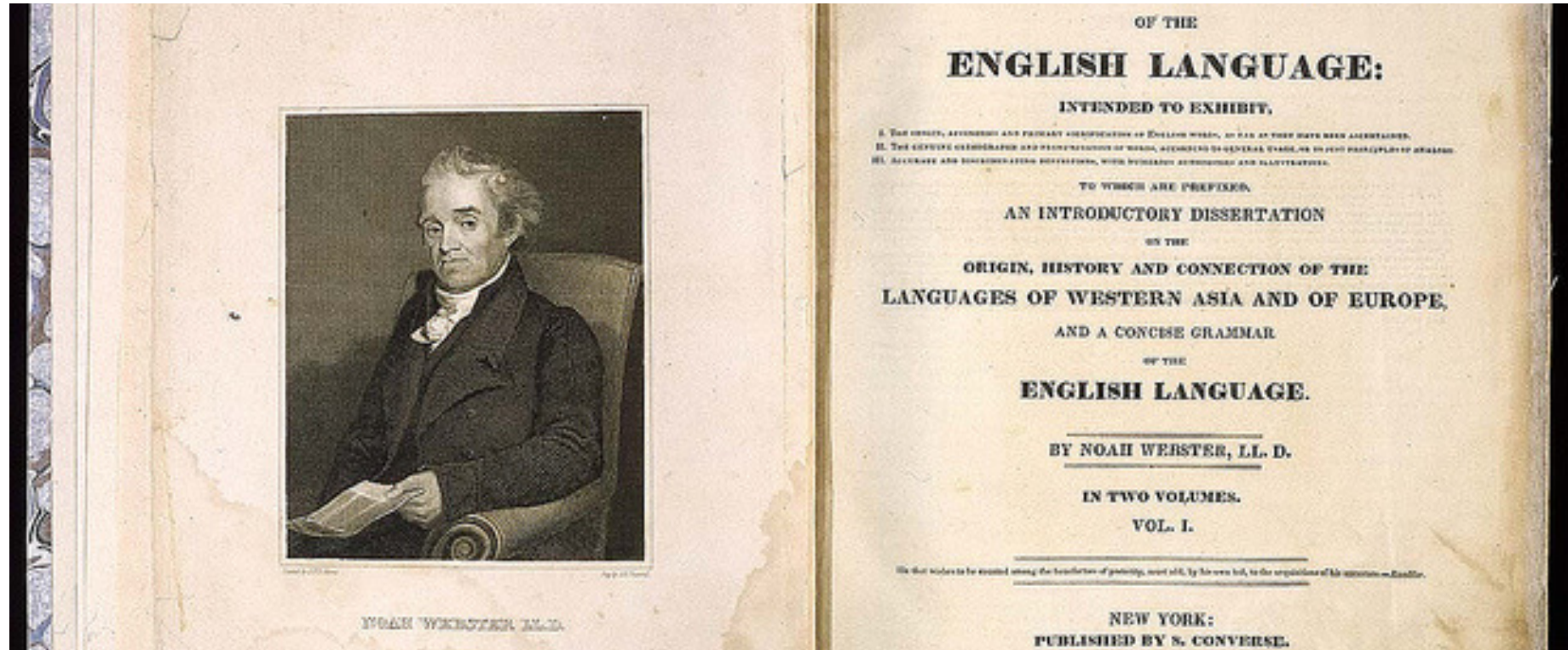




What is the duration of a copyright?

It depends ...





Why did the Copyright clause make it into the Constitution? [\[link\]](#)



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



Fair use

- ▶ Fair use is a defense against infringement, not a right to use.
- ▶ 107. Limitations on exclusive rights: 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?





Sony Corporation of America, et al., Petitioners v. Universal City Studios, Inc., etc., et al. (1984) [\[Link\]](#)



Academic fair use

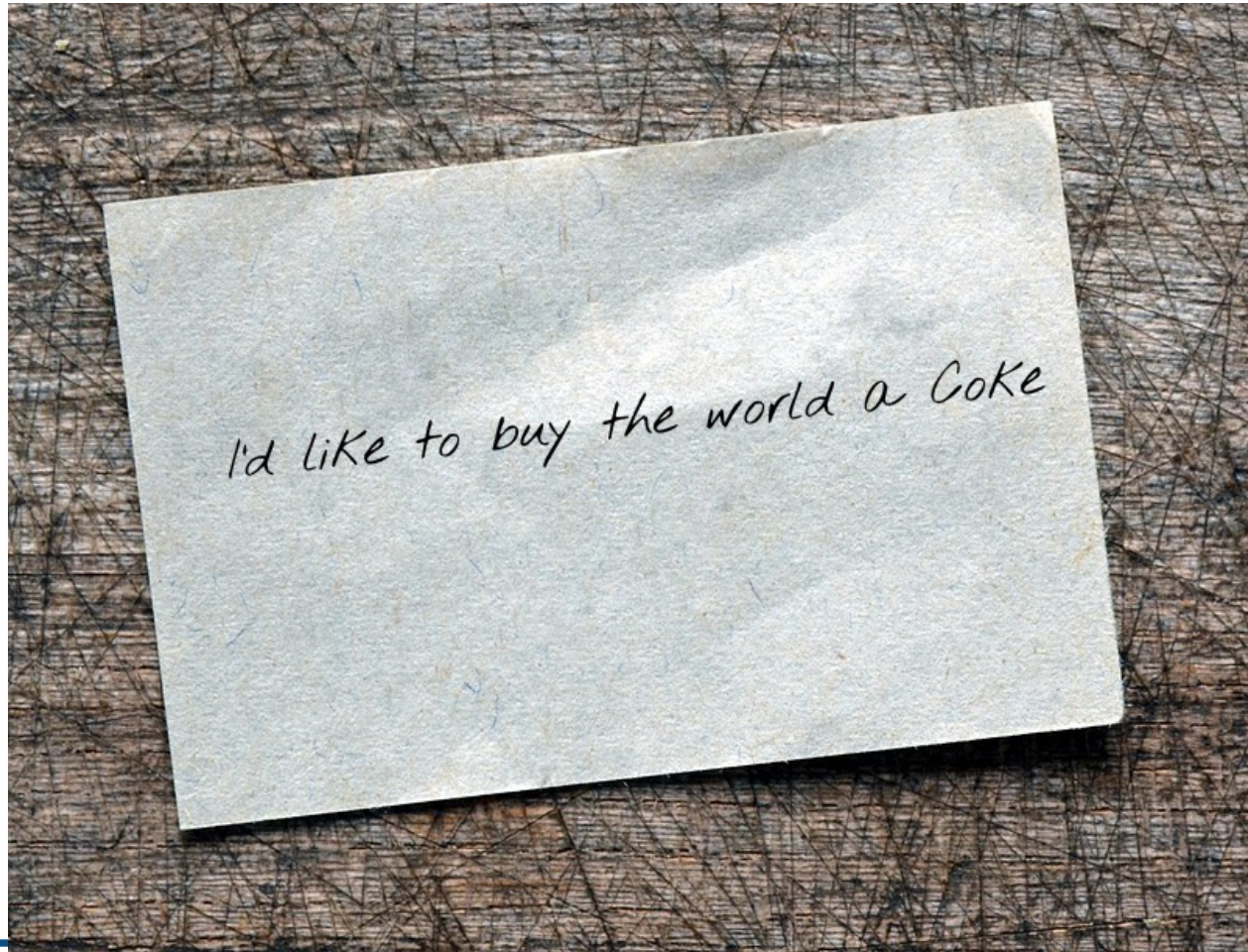
- ▶ Generous provisions for academic use
- ▶ Copying
- ▶ Performance
- ▶ Demonstration
- ▶ Issues regarding amount, purpose, and profit
- ▶ Assumption University Policies





Where have I heard that song before?





An airport meeting leads to an iconic song



Evolution of the song

"True Love and
Pie"

Roger Cook and
Greenaway



"I'd Like to Teach the World
to Sing (In Perfect
Harmony)"

Roger Cook and
Billy Davis



You can thank me later for this earworm.





Who owns that selfie? [\[link\]](#)



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
- Send 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.
 - At one point, it did.
 - It's your work. You already have that right.
 - The symbol 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. Nevertheless, the copyright is still yours.



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?

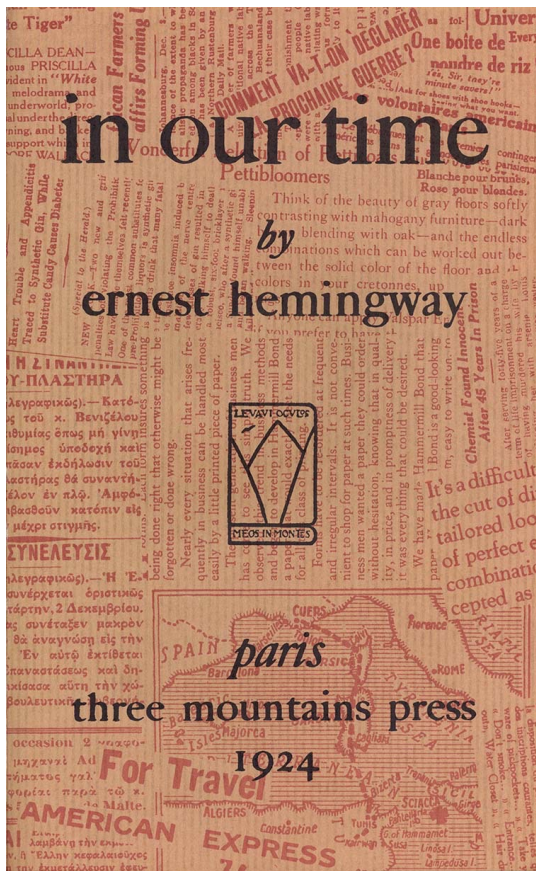
- Electronic filing – 4-5 months
- Paper filing – 15 months



What happens after a copyright expires?

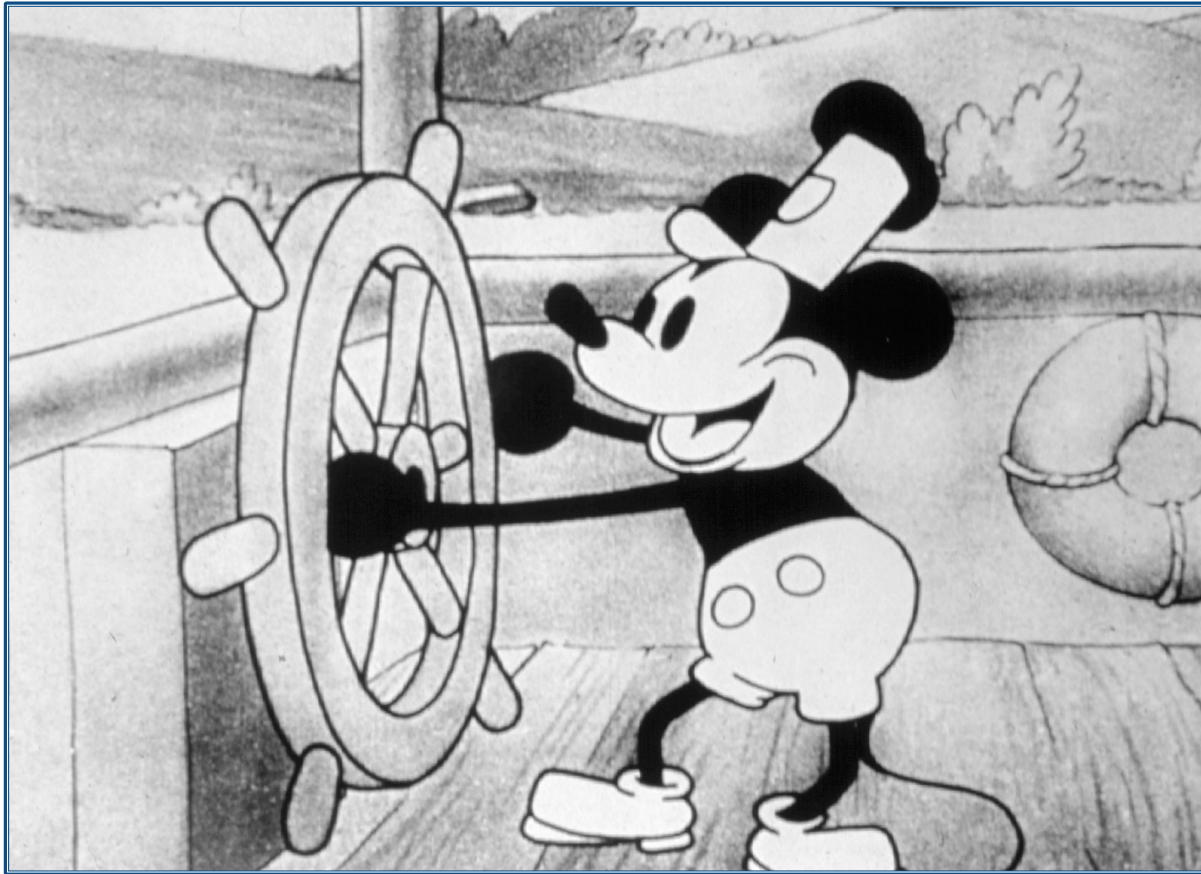
- ▶ The copyrighted item goes into the Public Domain
 - Items whose copyright periods has lapsed
 - Where the author failed to comply with registration procedures
 - The work is published by the U.S. Government or states.
- ▶ No restrictions on use





Works from 1925 are open to all! [\[Link\]](#)





Free Mickey in 2023?

How Mickey Mouse Keeps Changing Copyright Law



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



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 infringement is a felony.[\[Link\]](#)





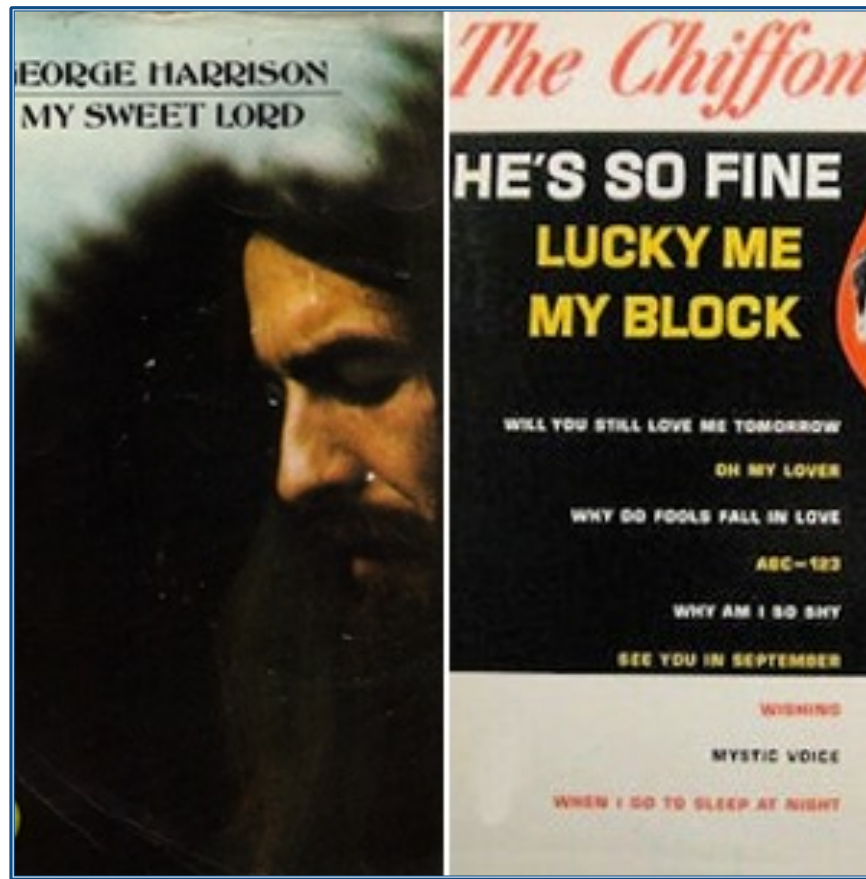
MIT releases report on its actions in the Aaron Swartz case [\[Link\]](#)



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





Unconscious infringement

Bright Tunes Music Corp. vs. Harrisonsongs Music, Ltd.



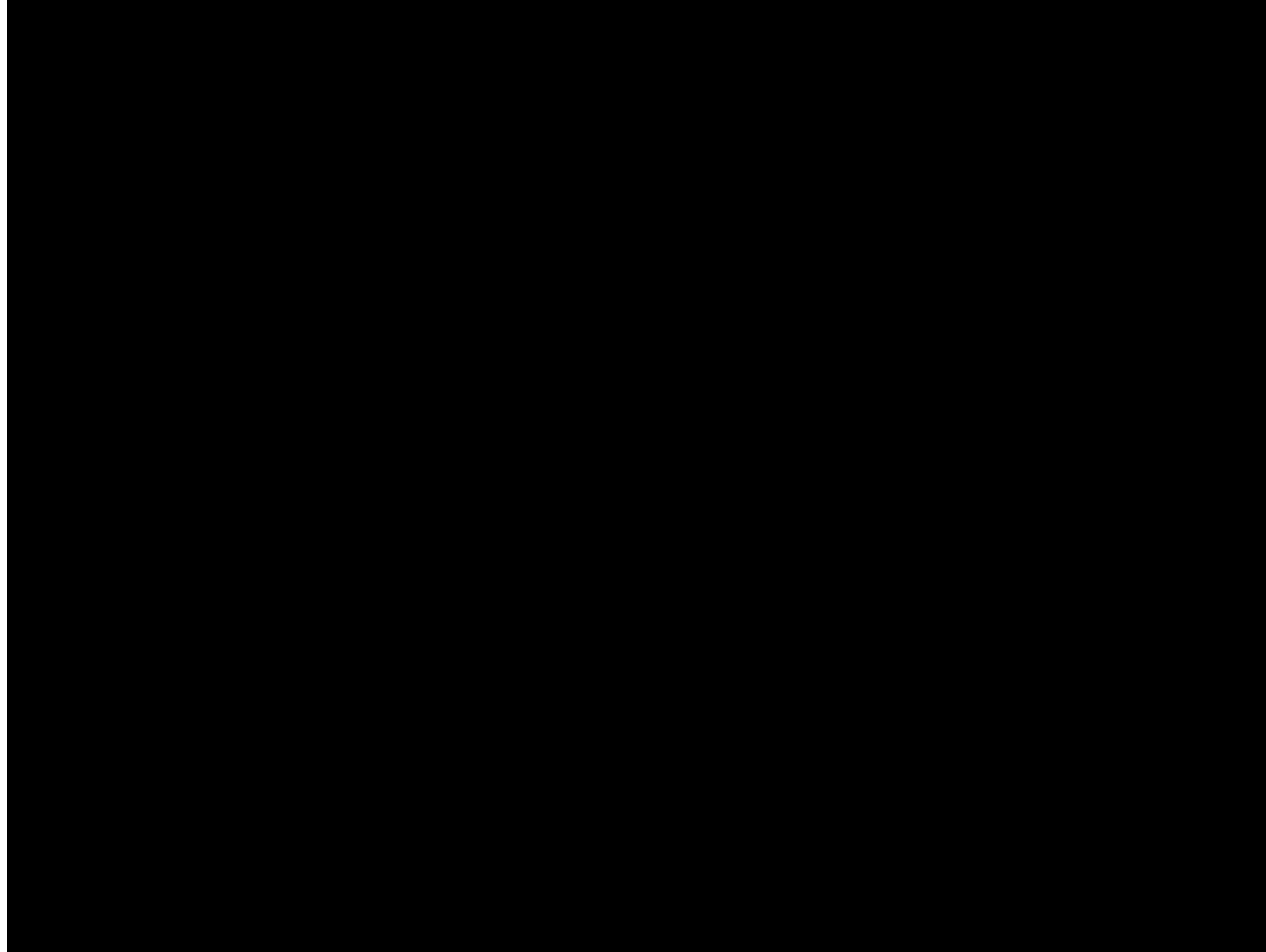


Can I be sued for plagiarizing myself? [[Link](#)]

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



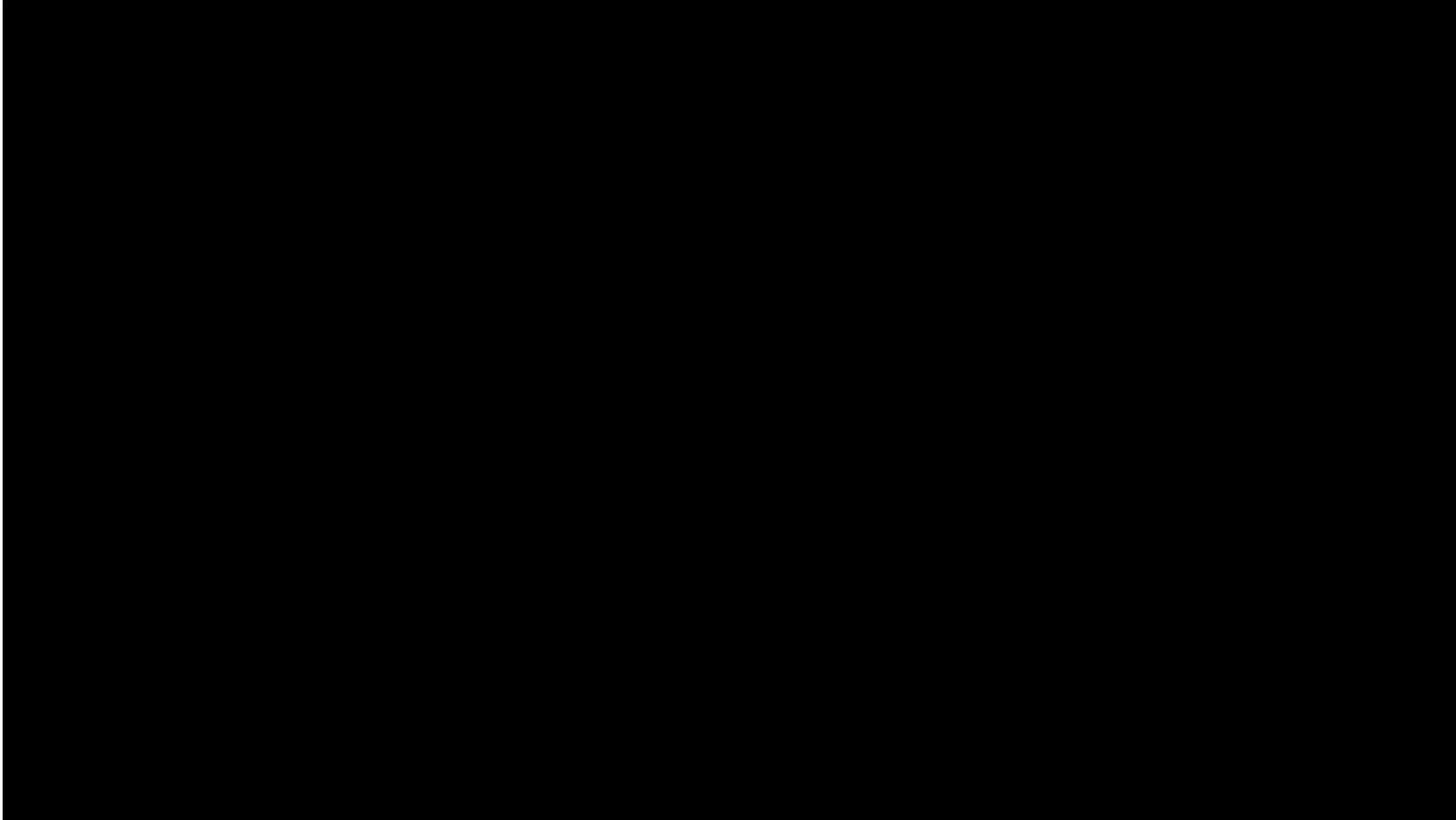
Where have I heard that song before?



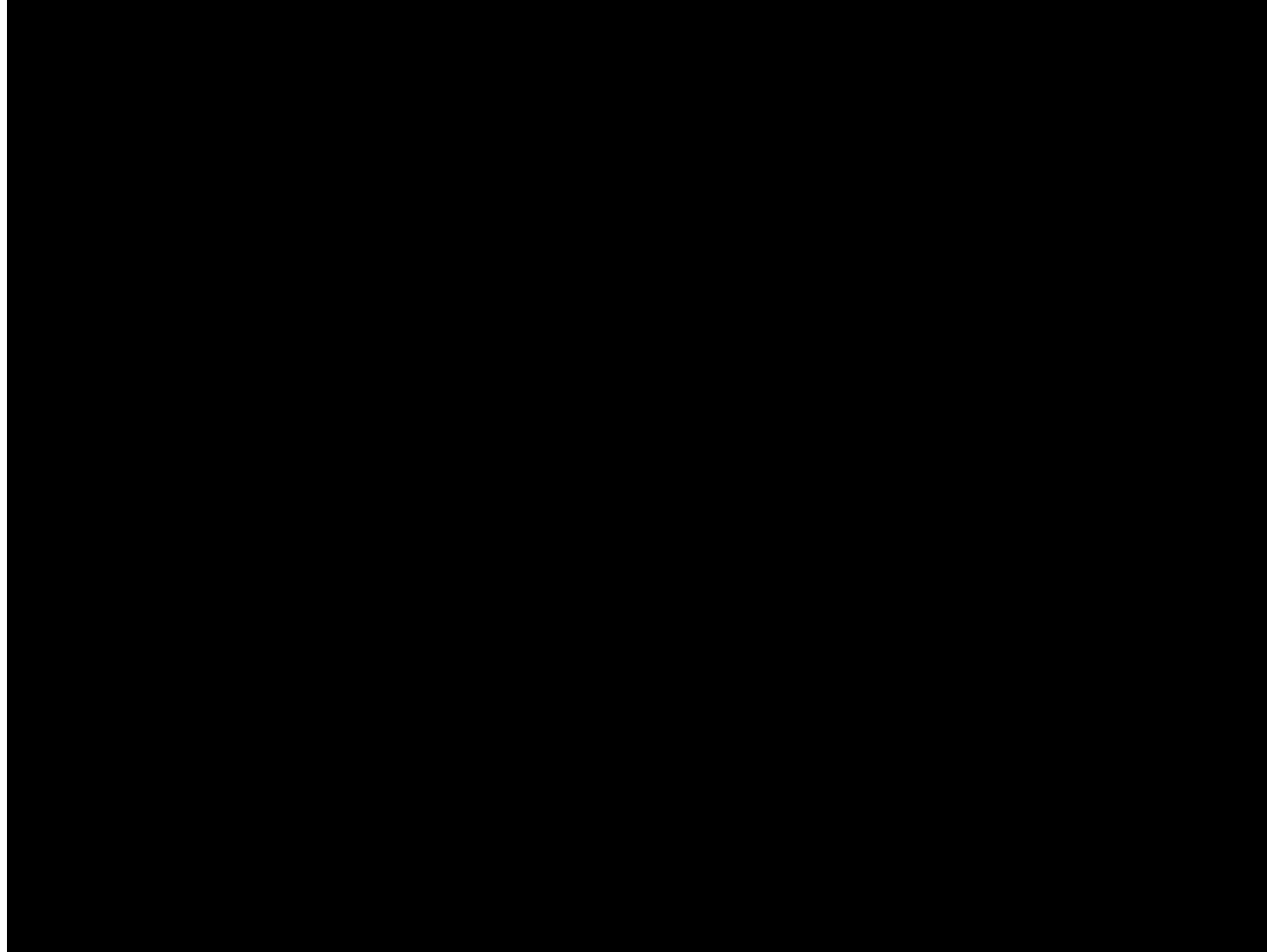
Here?

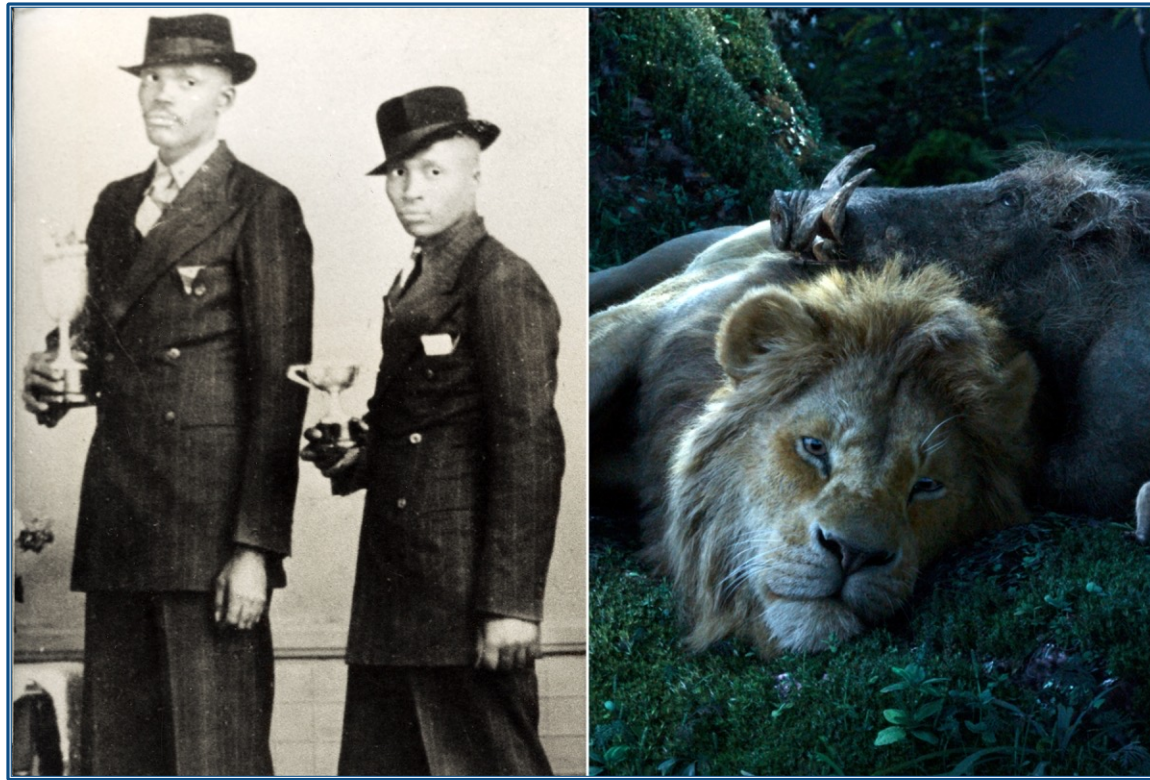


Here?



Or, here?





‘The Lion Sleeps Tonight’: The Ongoing Saga of Pop’s Most Contentious Song [\[Link\]](#)

Seeking justice for Lion Sleeps Tonight composer [\[Link\]](#)





Novel defense: I was too drunk and wasted

Robin Thicke in a deposition about [copyright infringement case](#)
"Blurred Lines"



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).
- King of Parody – Weird Al Jankovic

► Sampling

- Performers should obtain permission from the copyright holder.
- Transformations might be covered by fair use.
- See When You Need Permission to Sample Others' Music [\[Link\]](#)



Parody and sampling, all together



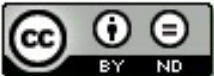







Rogers v. Koons, 960 F.2d 301 (2d Cir. 1992) [[Link](#)]

By Art Rogers, Jeff Koons - <https://jennydodge.wordpress.com/2014/10/08/legal-ethical-issue-rogers-v-koons/>, Fair use, <https://en.wikipedia.org/w/index.php?curid=63698222>



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Creative Commons

Forcing copyrightable item into the public domain



May I show a YouTube video?

- ▶ How is it used?
- ▶ Nature of the item?
- ▶ How much?
- ▶ Economic impact?
- ▶ See Fair Use guidelines
- ▶ See YouTube Terms of Service [\[Link\]](#)
- ▶ YouTube is now offering a premium service that lets you download videos from your browser. (The video creator still owns the copyright.)



I HAS A QUESTION





Next week - Trademarks

