



Copyright

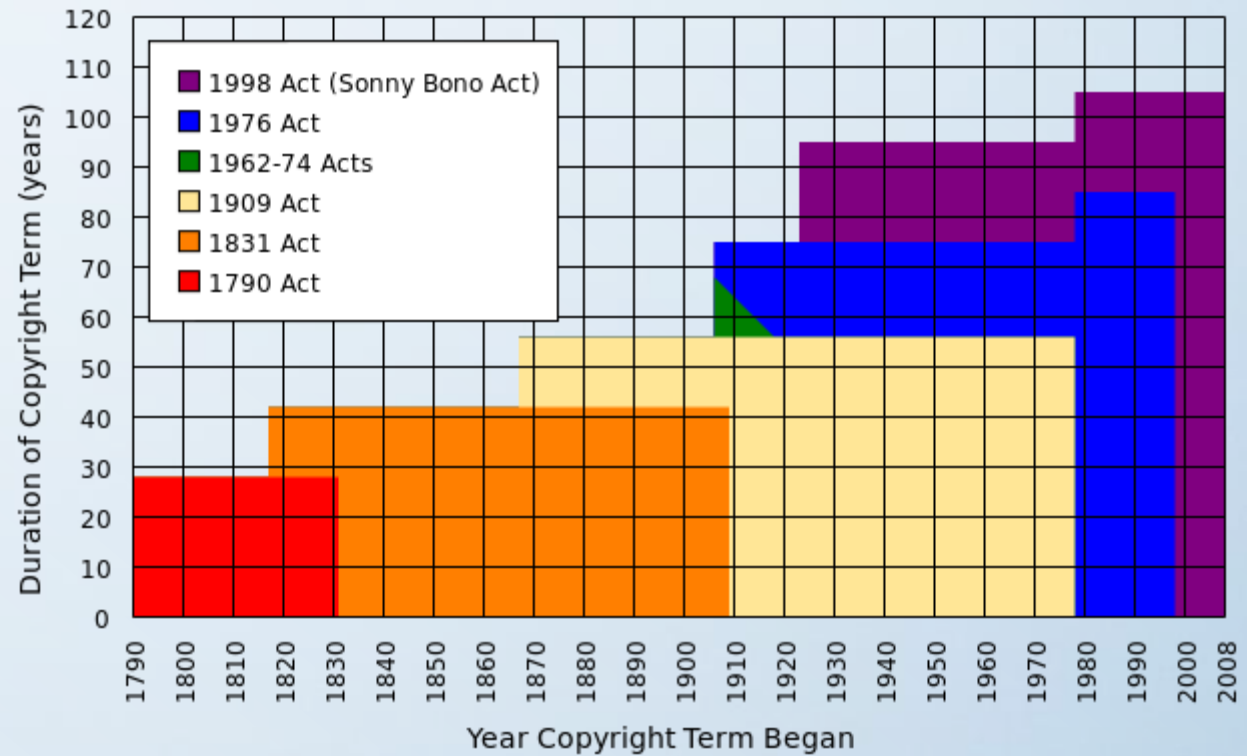
Law 115 | Week 3 | Lecture 5
Rachael Vaughn

Agenda

1. Duration of Protection
2. Public Domain
3. Infringement
4. Limitations of Copyright Protection
 - a. Independent Creation
 - b. Utility Doctrine (discuss Christopher Sprigman on creativity without copyright from Surprisingly Free podcast)
 - c. The First Sale Doctrine
 - d. Fair Use (introduction)
5. Example (if there is time)

Duration of Protection

The original Copyright Act from 1790 provided a 14 year term for protection that with the right to renew for one additional 14 year term should the copyright holder still be alive. Since then the duration of copyright has generally expanded over time.



Duration of Protection

For work created in or after 1978→

- Single Author: author's life + 70 years
- Joint Authors: life of longest living joint author + 70 years
- Works Made for Hire: the earlier of...
 - 95 years from the date of first publication
 - 120 years from the date of creation

For works first published prior to 1978, the term will vary depending on several factors.



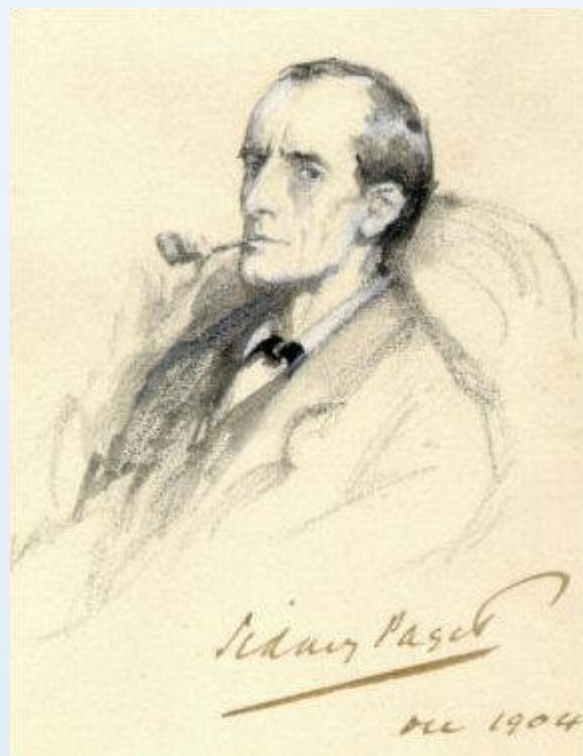
Public Domain

What does it mean when a work is “in the public domain?” What can you use the work for?

If a work is in the public domain, it can be used for anything, BUT you cannot use derivative works based on the public domain work during their separate copyright terms.

Resource: Cornell University's Copyright Term and Public Domain Chart <http://copyright.cornell.edu/resources/publicdomain.cfm>

Public Domain



Infringement

Copyright infringement is the exercise of any of the rights of the author by anyone else without the author's permission.

Actions that can constitute infringement...

- Making an unauthorized copy of a DVD
- Distributing unauthorized software
- Publicly performing a poem without a license
- Making a derivative work based on an existing painting without a license

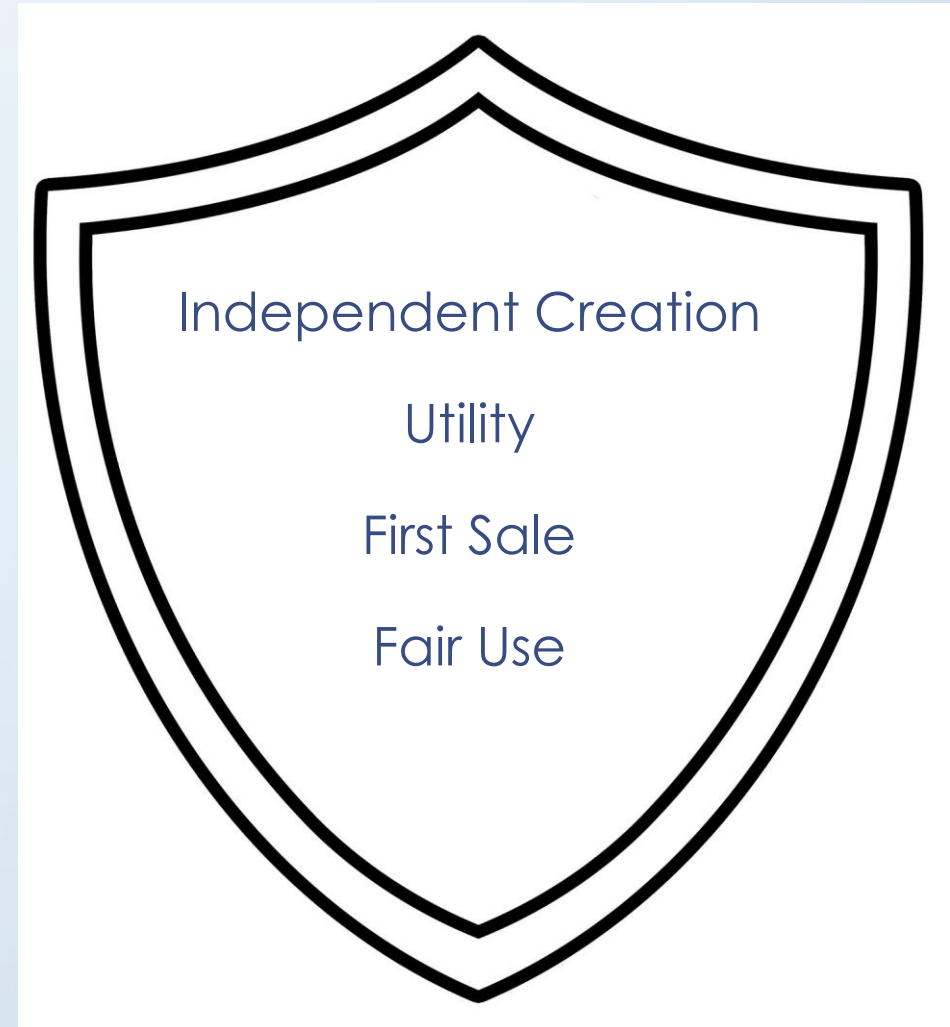
Infringement

Remedies can include...

- Injunction (cease and desist)
- Damages
 - Unregistered works: none
 - Works registered **after** infringement: actual damages
 - Works registered **before** infringement: actual damages + statutory damages + attorney's fees

Statutory damages: between \$750 and \$30,000 per work, at the discretion of the court.

Limitations of Copyright Protection

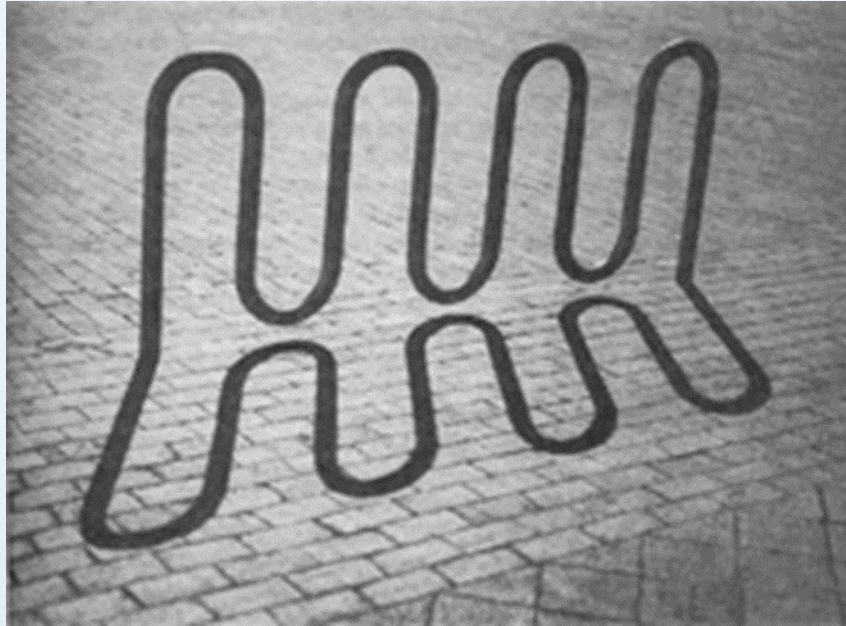


Independent Creation

- Protects work that is **independently developed** but turns out to be coincidentally similar to copyrighted work
- The big issue is ACCESS



Utility Doctrine



- Only the **expressive** aspects of a work are protectable
- The functional or utilitarian aspects are NOT protectable
- Often applies to pictorial or sculptural works

Otherwise known as “Useful Articles Doctrine”

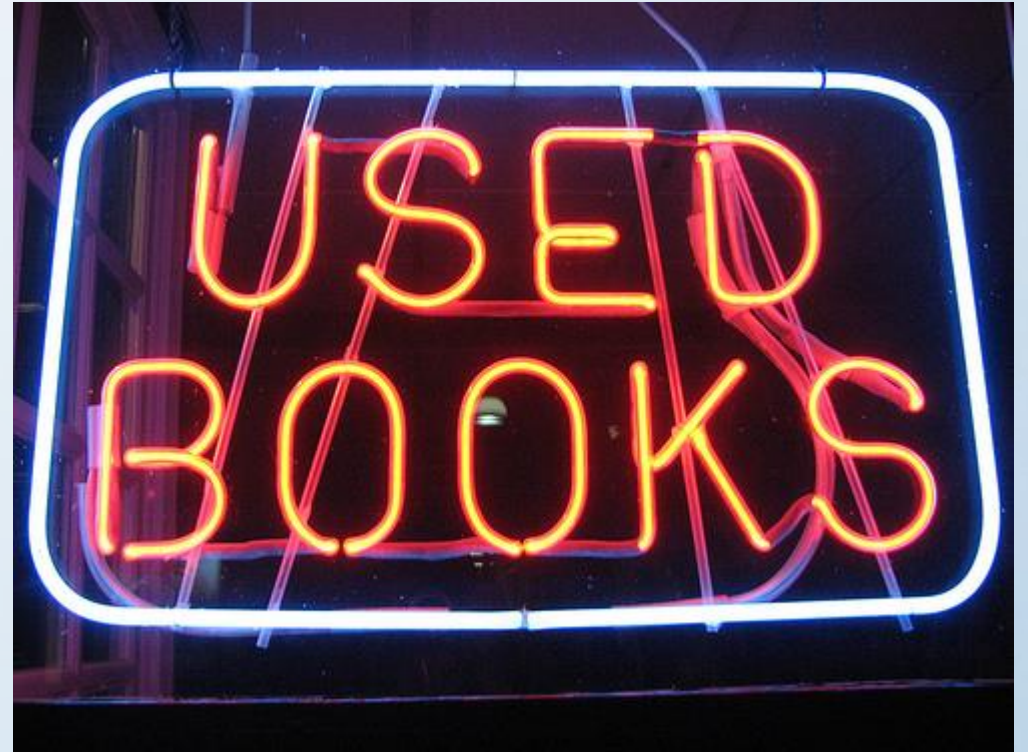
Creativity Without Copyright



1. Explain why fashion is generally not protected by copyright.
2. Are recipes protectable under copyright? What about cookbooks?
3. How do stand up comedians protect their jokes as intellectual property? Can they?
4. Without copyright, how do the fashion, food, and comedy industries thrive? Do they need copyright to be creative?

First Sale

- The first-sale doctrine creates a basic exception to the copyright holder's **distribution** right
- Once the work is lawfully sold, the copyright owner's interest in the material object in which the copyrighted work is embodied is exhausted



Fair Use

17 USC §107 provides a defense to copyright infringement based on four factors...

1. purpose and character of the use
2. nature of the copyrighted work
3. amount and substantiality of the portion taken
4. effect of the use upon the potential market

