

Class 17: Public Performance And Display Rights

Administrative

Next Time: 691-709

Remember: we won't make up the original 3/21 assignment

Legislative Exercise Debrief

About the exercise

The Writing Assignment

Due Mon, April 9
5-10 pages

Looking ahead to the final

Open book

If you're eager, sample examples on my Intro to IP webpage (paulohm.com)

Lots of detail in the casebook we did not discuss in class, and although it's all fair game, don't spend much time on topics we never discussed at all in class.

Also, orphan works is fair game; open source won't be on the final.

This afternoon: Web and the West

No Office Hours

Public Performance and Display

Hypos

DJ hired to play at Boulder farm market.

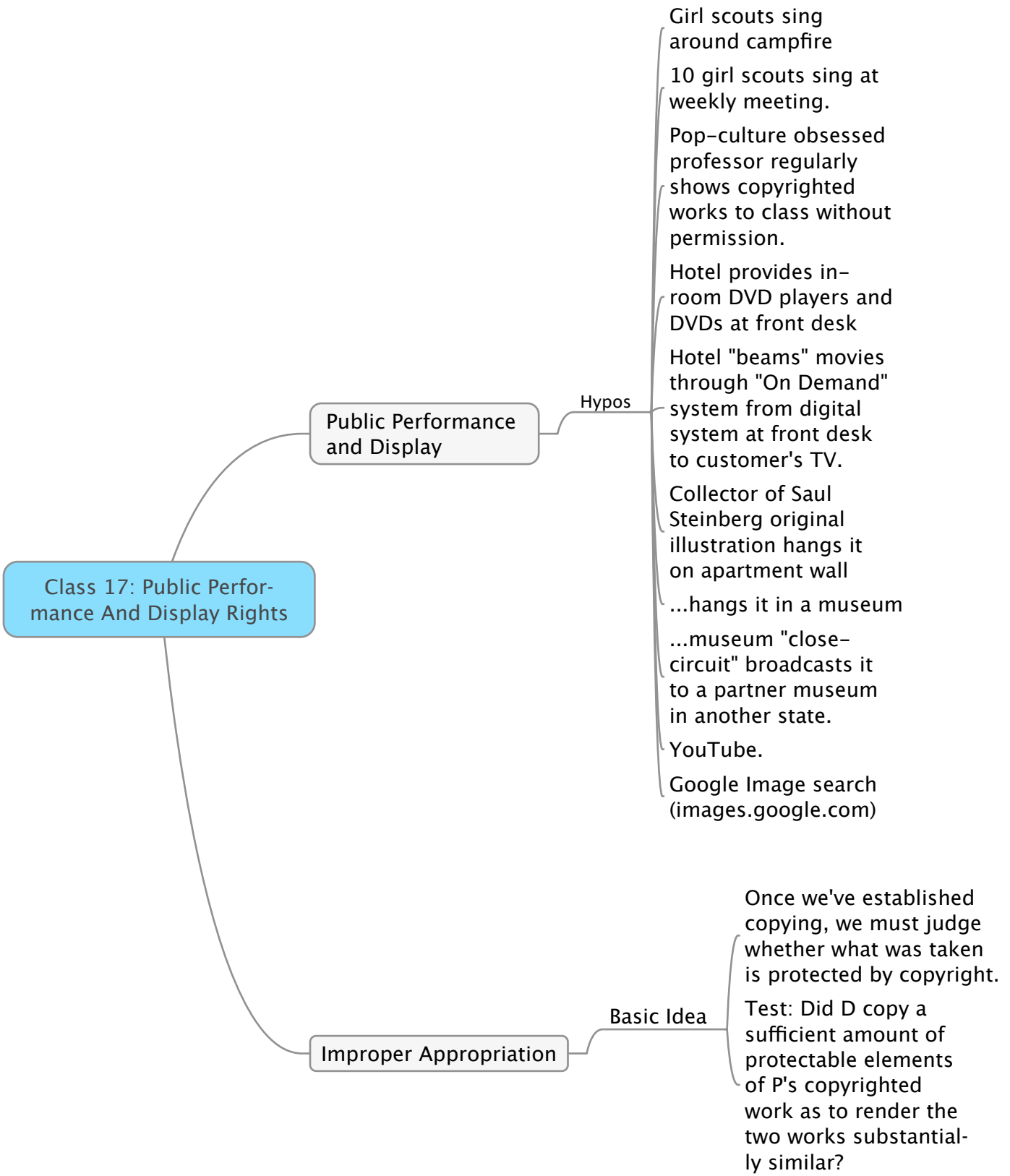
...on a rainy day when only 3 vendors and 4 customers show up.

DJ hired to play records at wedding with 75 guests in the backyard of a home.

...in a church.

...in a public park.

Couple wants to give commemorative CDs to the guests with favorite songs burned on each.



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Public Performance and Display

Hypos

- Girl scouts sing around campfire
- 10 girl scouts sing at weekly meeting.
- Pop-culture obsessed professor regularly shows copyrighted works to class without permission.
- Hotel provides in-room DVD players and DVDs at front desk
- Hotel "beams" movies through "On Demand" system from digital system at front desk to customer's TV.
- Collector of Saul Steinberg original illustration hangs it on apartment wall
- ...hangs it in a museum
- ...museum "close-circuit" broadcasts it to a partner museum in another state.
- YouTube.
- Google Image search (images.google.com)

Improper Appropriation

Basic Idea

Once we've established copying, we must judge whether what was taken is protected by copyright.

Test: Did D copy a sufficient amount of protectable elements of P's copyrighted work as to render the two works substantially similar?

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Improper Appropriation

How to apply the test?

Ad Hoc ↗ 617: Hand Quotes

Bifurcated Test?

First, was protected expression appropriated?

NOT: ◉
 Hand's Levels of Abstraction are ◉ useful here.

Objective? Objective: Analytic dissection of plots, themes, dialogues, mood, setting, etc.

Subtractive Also: Analytic Dissection. Column with "protectable"; Column with "unprotectable." Compare only the items from "protectable" that are similar to D's work.

Ninth Circuit Terminology: Extrinsic Test
 Expert Testimony Allowed ◉

Second, will intended audience recognize substantial similarities?

Subjective? Nichols, last sentence

or: 637 (Laureyssens): Whether the ordinary observer, unless he set out to detect the disparities, would be disposed to overlook them, and regard their aesthetic appeal as the same.

Totality "Total concept and feel"

Ninth Circuit Terminology: Intrinsic Test
 Expert Testimony Not Allowed

"Must be more ingenuous, more like that of a spectator, who would rely on the complex of his impressions of each character."
 Why shouldn't it be enough if "experts" notice the similarities even if ordinary observer wouldn't?

Should Differences Matter?

Hand in Sheldon (Note 6). Very, very famous.

Kerr e.g. (629-30): Skyline mohawk case.

No plagiarist can excuse the wrong by showing how much of his work he did not pirate.

