



Class 15: The Right To Reproduce

Administrative

- Next Time: 484-85; 491-506; 449-52
- Skip Anderson v. Stallone and Notes 1 and 2 Following
- News Wednesdays
 - Google launches YouTube Video Identification. 🤖
 - Schwarzenegger signs Dead Celebrities Right of Publicity Protection Bill 🗳️
 - Madonna may dump label.
 - MLB loses fantasy baseball suit. 🏟️

Last Time

- Question about the National Law Journal example
- Joint Works
 - Basic Rules
 - Aalmuhammed v. Lee
 - Basic Facts
 - Spike Lee makes Malcolm X starring Denzel Washington
 - Washington asks plaintiff to assist him in preparing for the role
 - Devout Muslim
 - Creator of prior documentary about Malcolm X
 - Plaintiff's contributions
 - "Very extensive"
 - Suggested script revisions; some included; others filmed but edited out.
 - Directed actors
 - Created two new scenes with new characters
 - Translations from Arabic
 - Voice for voice overs
 - Selected prayers and religious practices
 - Post-production marketing and promotion
 - No contract.
 - Paid \$125,000
 - Sued as joint work, part owner
 - Held
 - Reasoning
 - Collaborative Editing (Hive Mind)
 - Wikipedia 🤖
 - Photo editing 📷
 - The Smaller Picture 🖼️
 - Mutating Pictures Gallery 🖼️🔗
 - More fun 😄

Overview

- Exclusive Rights
 - Reproduce
 - Prepare derivative works
 - Distribute copies or phonorecords
 - Perform publicly
 - Display publicly
- Right to Copy
 - NOT limited to exact reproductions
 - Test: Two prongs
 - 1. Copying — independent creation is a defense.
 - 2. Improper appropriation

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Prong 1: Copying

Arnstein v. Porter

Basic Facts

Aside: great archive of music clips from famous copyright cases at <http://ccnmtl.columbia.edu/projects/law/library/song.html>
This case: http://ccnmtl.columbia.edu/projects/law/library/cases/case_arnsteinporter.html

Evidence of "Access"

- 1 Million Copies of A Mother's Prayer had been sold.
- 2000 copies of "The Lord is My Shepherd."
- 1 song not published, but played on radio.
- Stooges hired by Defendant.
- A copy of a song had been stolen from his room, maybe by the stooges.

"I don't know that he had to do with it, but I only know that he could have."

Lower Court
2d Cir. 1946

Proof of copying -- "probative similarity" ⊕

Role of Experts

Subconscious copying ⊕

Planted errors as proof of copying

Prong 2: Misappropriation

Basic Idea ⊕

Nichols v. Universal Pictures Corp.

Basic Facts

Plaintiff's Play: Abie's Irish Rose
Def's Movie (Motion picture play): The Cohens and the Kellys
Really wonderful recap of both plots and characters in this opinion.

Held: (2d Cir. 1930) (L. Hand)

Access?

Reasoning

More on the Levels of Abstraction ⊕

How to apply the test? ⊕

Sampling Music ⊕

Steinberg v. Columbia Pictures ⊕

Special rules for music (484)