



University of New Hampshire
Franklin Pierce School of Law

Derecho de Autor v. Derecho de lautor **Copyright v. GenerAlight**

Megan Carpenter, Dean
UNH Franklin Pierce School of Law
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Global perspective

- **European Union – *Infopaq v. Danske (CJEU 2009)***
 - **Germany – “author’s own intellectual creation”**
 - **France – “personal touch”**
- **UK**
 - **But Cf. *Copyright Designs and Patents Act (Sec. 9(3) 1988)***
- **China**
 - ***Shenzhen Tencent (2019)***
 - ***Li v. Liu (2024)* “intellectual achievement” and “originality”**
 - **“Japan idol,” “cool pose,” “viewing at camera,” “film grain”**

What's going on in the US?

US Const. Art 1. Sec. 8 Cl. 8

Congress shall have Power ... [t]o promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

17 USC 102. Subject matter of copyright: In general

Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

- Authorship
- Originality

Key US Cases

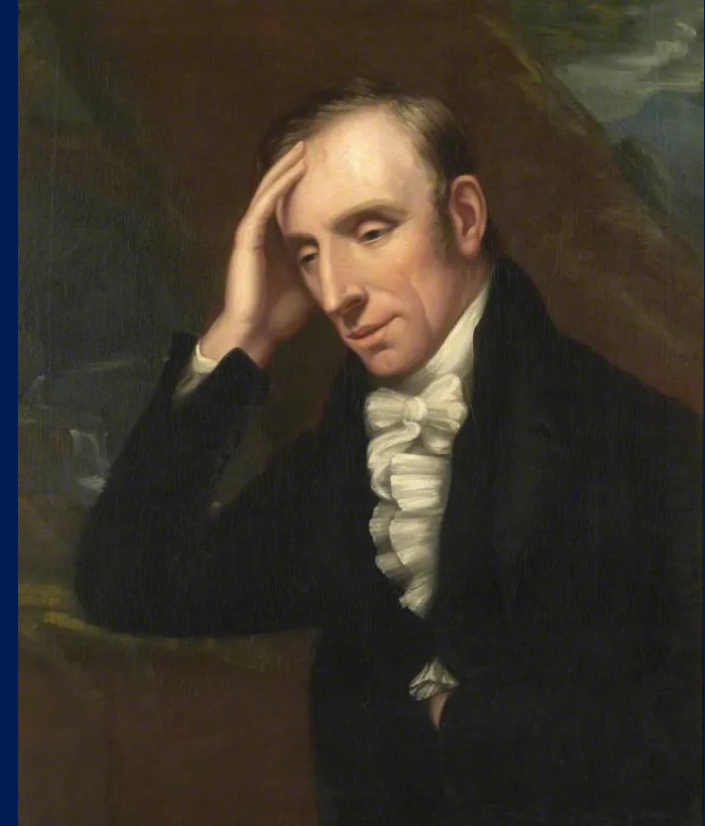
- *Burrow-Giles Lithographic Co. v. Sarony* (1884)
- *Naruto v. Slater* (2018)
- *Thaler v. Perlmutter* (2024)



Authorship “fill your paper with the breathings of your heart”

17 USC § 201 – ownership of copyright initially vests in the author

- Single authors
- Joint authors: equal shares
- Work for hire

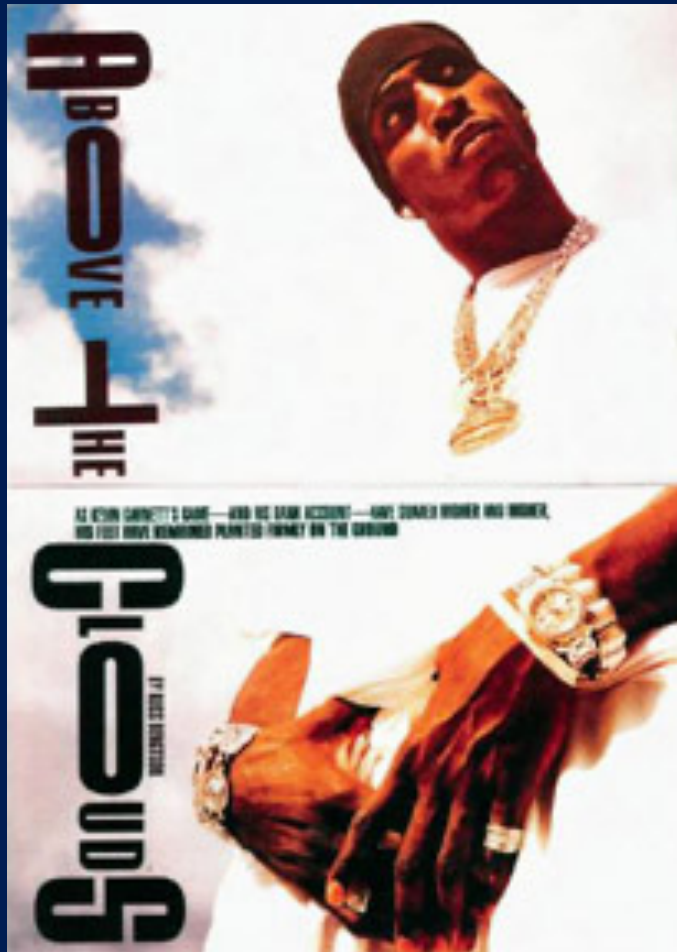


Compilations, Joint works, Collective works

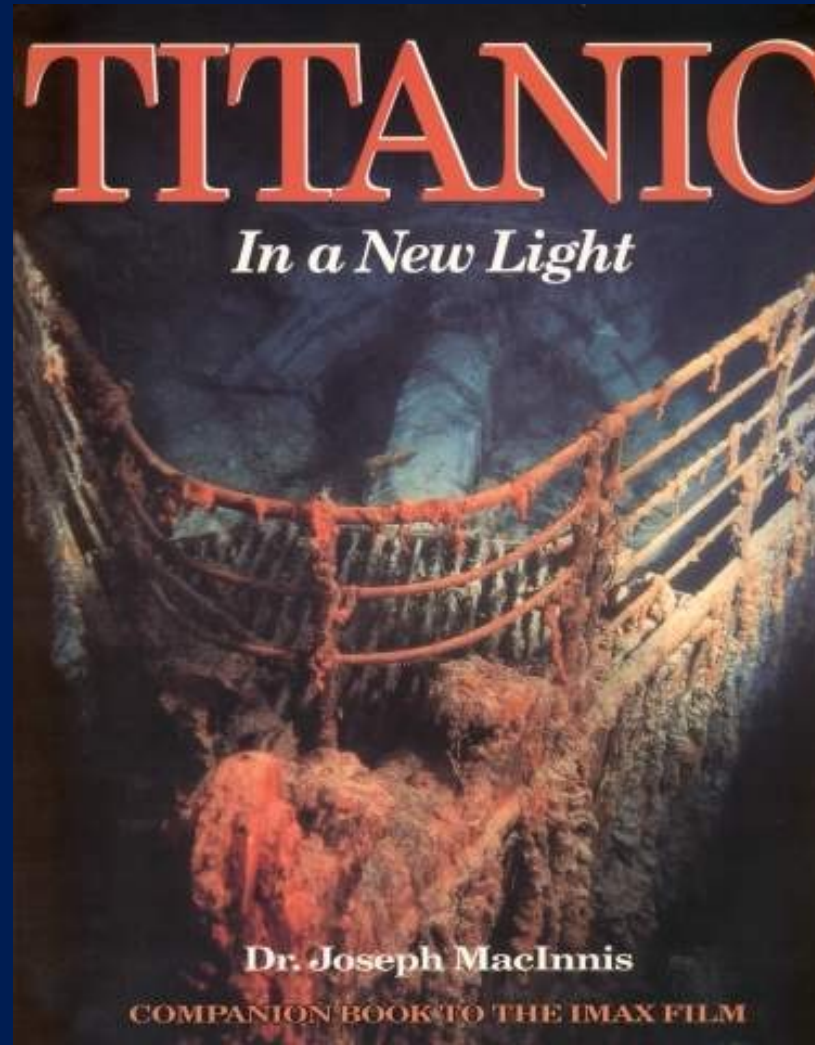
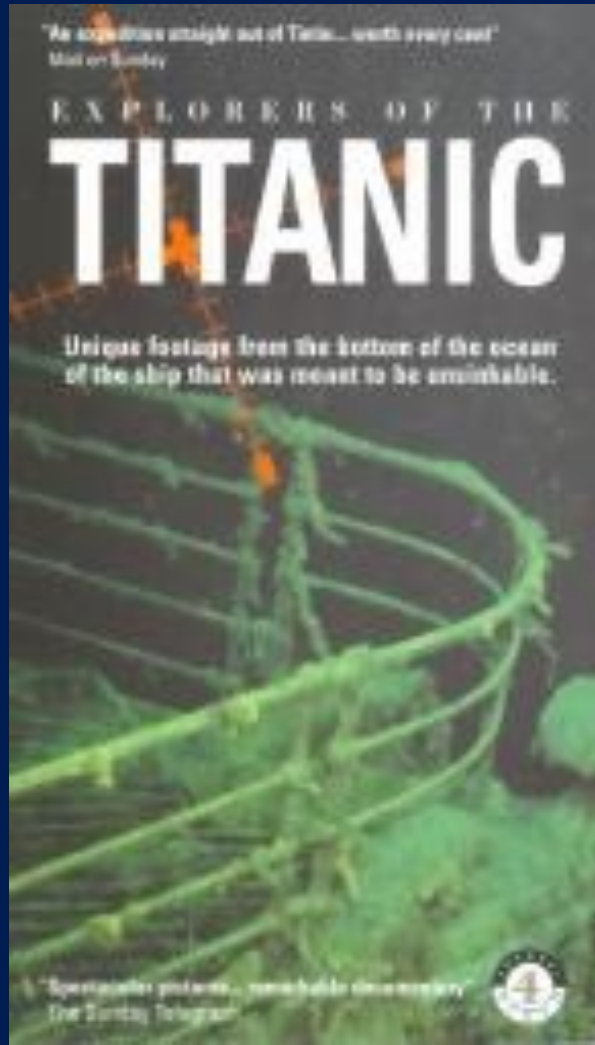
17 USC 101

- A "compilation" is a work formed by the collection and assembling of **preexisting materials or of data** that are **selected, coordinated, or arranged** in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.
- A "joint work" is a work "prepared by two or more authors with the **intention that their contributions be merged into inseparable or interdependent parts** of a unitary whole."
- A "collective work" a work ... in which a number of contributions, **constituting separate and independent works in themselves**, are assembled into a collective whole

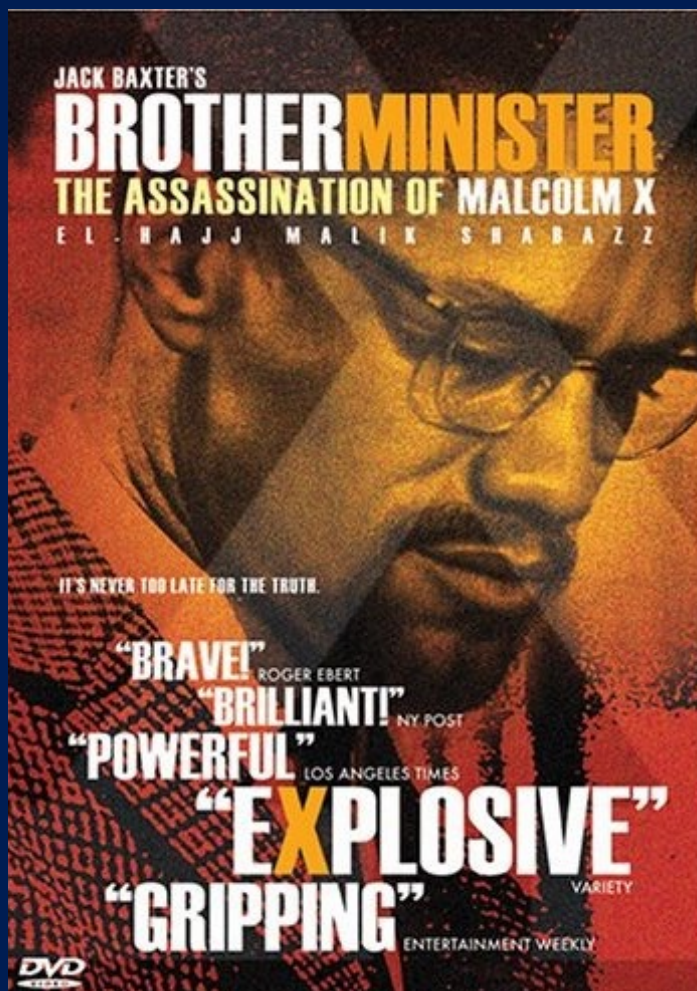
Mannion v. Coors Brewing Co. (SDNY 2006)



Lindsay v. The Wrecked and Abandoned Vessel RMS Titanic (SDNY 1999)



Aalmuhammed v. Lee (9th Cir. 1999)



Can we reconcile... Zarya of the Dawn?





11:21 AM

dark skin hands holding an old photograph --ar 16:9 - @KrisKashtanova (fast)



U1

U2

U3

U4

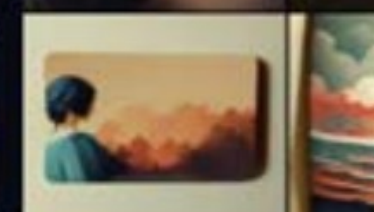
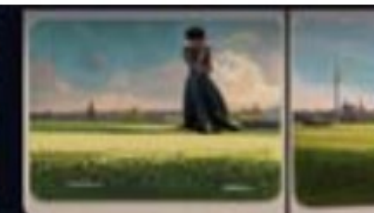
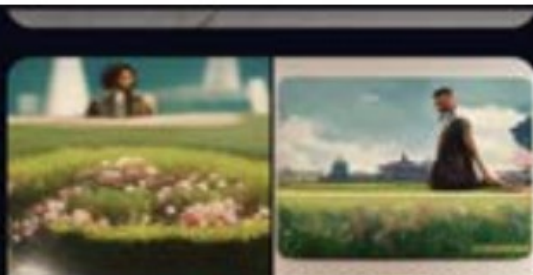
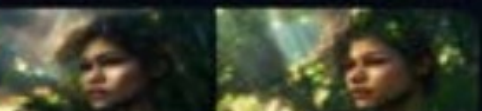
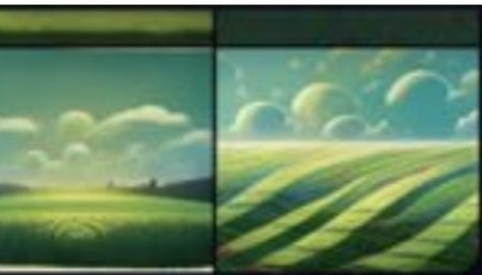


V1

V2

V3

V4





REARVIEW MIRROR
MIRrors of the past
MIRrors of the future
MIRrors of the present

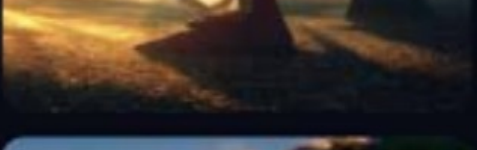
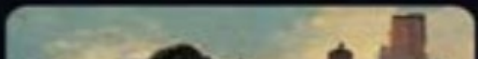
ZARYA
I hope you find
the answers you
are looking for
in this book
of mine
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of mine

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ZARYA & ZARYA
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of mine

MR. BEN ZARK, FIGHT
TO MAKE THE
POTENTIAL POWER
THAT SHOULD BE
THESE

/imagine 3 months ago
Zendaya reading a postcard in
Central Park, New York, God's
Rays, cinematic light, octane...
Kris...

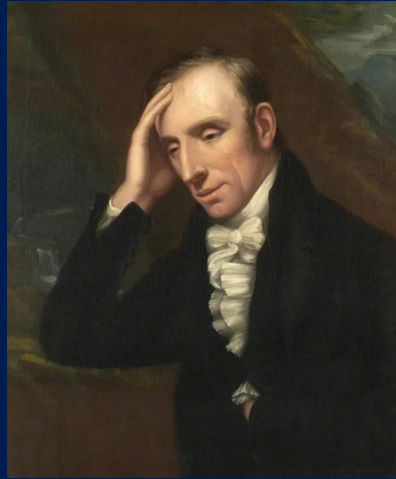




*sci-fi scene future empty New York,
Zendaya leaving gates of Central Park
and walking towards an empty city,
no people, tall trees,
New York Skyline forest punk,
crepuscular rays, epic scene,
hyper realistic, photo realistic,
overgrowth,
cinematic atmosphere, ethereal lighting.*

Prediction

- "Unstable diffusion" This is a fluid situation, a moving target, and the US Copyright Office will eventually relax its standards for authorship and originality and accommodate AI tools as tools.



Now let's talk about

Use of copyrighted works in training data



Global perspective

- **European Union**
 - **AI Act - transparency requirements for copyrighted content**
- **Japan**
 - **2018 revisions to Copyright Act “permissible to exploit a work, in any way and to the extent considered necessary... if it is done for use in data analysis”**
- **US**
 - **Copyright Office**
 - **Executive and Legislative branches**
 - **Market solutions**

There are 20 cases pending in US courts

- *Tremblay v. OpenAI, Inc.*, No. 3.23-cv-03223 (N.D. Cal)
- *Andersen v. Stability AI Ltd.*, No. 3.23-cv-00201 (N.D. Cal)
- *Authors' Guild v. OpenAI, Inc.*, No. 1.23-cv-08292 (S.D.N.Y.)
- *Getty Images (US), Inc., v. Stability AI Ltd.*, No. 1.23-cv-00135 (D. Del)
- *The NY Times Co. v. Microsoft Corp.*, No. 1.23-cv-11195 (S.D.N.Y.)

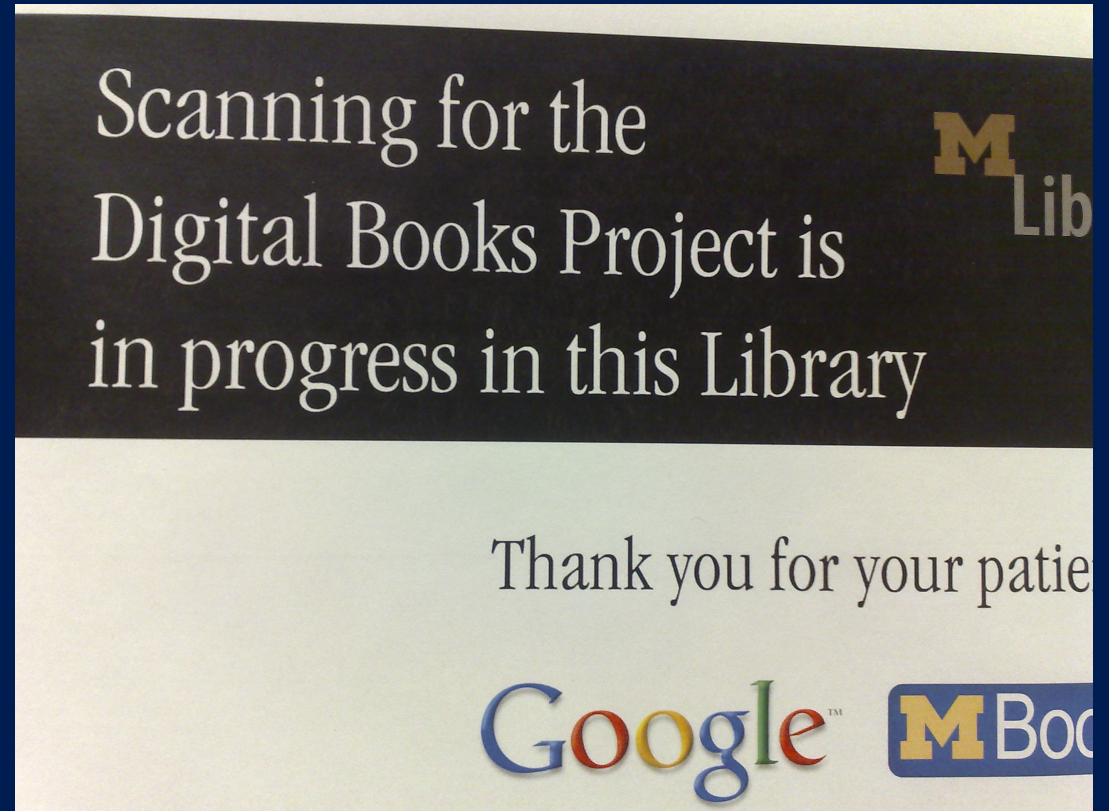


The
New York
Times



Fair Use? - 17 USC 107

1. Purpose and character of the use
2. Amount and substantiality
3. Quality/Quantity
4. Effect on the market



Predictions (and suggestions)

- We will continue to see legislation in various countries providing exceptions for training data – watch this!
- “Poking at life” Engagement in policy debates will be important: What kind of life do we want?
- Increasing focus on rights of publicity and authenticity
- Market solutions would be most effective (damages hard to calculate)





Thank you!