

**Law 633
Copyright Law**

Copyright Due Diligence Problems

For discussion in class the weeks of March 28 and April 4

These twelve problems are designed to test your knowledge of the material in chapters 3, 7, and 11, and your ability to work with sections 101, 104A, 201, 202, 203, 204, 302, 303, 304, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, and 412 of the 1976 Copyright Act and sections 1, 2, 10, 12, 19, 20, 21, 24, 26, 27, and 28 of the 1909 Copyright Act. Please work through the problems at home. It's fine to collaborate with classmates in coming up with the answers to some or all of the problems if you prefer to work in groups. I will be calling on you individually in class to tell me the answers to the problems. You should each expect to be asked to answer and then to explain your answer to one or more of the problems. Most of the fact patterns are made up; one comes from an actual dispute. Four of the problems are simplified versions of past copyright exam questions.

i.

In 1988, Olympic speed skater Frankie Fast accepted a full-time job with the Marchese skate company. Frankie traveled the country as a Marchese brand ambassador, and also wrote a book titled *My Life in the Fast Lane*, which he completed in March of 1991. Marchese published the book with a copyright notice in January of 1992, and registered it as a work made for hire. When does the copyright expire?

ii.

In the summer of 1938, Wanda Worry painted an abstract painting she titled "West of Wombat." In March of 1946, Wanda registered the painting as an unpublished work and donated it together with its copyright to the Waterbury Institute of the Arts (WIA). In January of 1974 Wanda applied for renewal of her copyright and conveyed the renewal term to WIA. In 1985, she moved to Waco to live with her unmarried daughter, Wendy. In 1992, Wanda died. When does the copyright in "West of Wombat" expire?

iii.

In 1980, TwentyBucks Productions created an animated television series about Alexander Hamilton called *Alex and the Revolution*. The series premiered on CBS in October of 1981, and ran for 21 episodes, acquiring a small group of devoted fans, before CBS cancelled it. In February of 1984, TwentyBucks licensed 20th Century Fox to sell all 21 of the episodes of *Alex and the Revolution*, plus a 22d episode that had been shot but never broadcast, on laser disc. Fox manufactured and distributed the laser disc to stores in time for the 1984 Christmas season, but nobody bought copies because most *Alex* fans didn't have laser disc players. In September of 2002, TwentyBucks licensed Buena Vista Home Video to bring out the same 22 episodes as a boxed DVD set. The DVDs hit the market on November 1, 2003, and sold briskly. When does the copyright expire?

iv.

- A.** In 1885, Jorge Johnson wrote a murder mystery novel but never published it; instead he locked the manuscript in a desk drawer and became a clown with the Ringling Brothers circus. In 1927, Jorge died. After his death, Jorge's grandson Jed examined all of Jorge's furniture to decide what to keep, what to throw out, and what to sell. He found the manuscript, but left it in the drawer, although he decided to keep the desk. In 1997, Jorge's great-great-grandson, Jed Johnson, Jr., discovered the manuscript and sent it to Random House, who thought that it had great potential. Random House hired Dominique Derry, a ghostwriter, to "polish" the novel, replace old fashioned turns of phrase and archaic words with language that would be more accessible to contemporary readers, and add a discreet sex scene near the end. Dominique completed the revisions in December of 2000, and Harcourt published the revised novel in June, 2001, as "*Circus Murder by J. Johnson.*" The book was a surprise bestseller. Dominique died in a freak balloon accident last week. When does the copyright expire?
- B.** The success of Jorge's novel inspired his great-great-grandson to search the house for other unpublished manuscripts. Jed, Jr., found another completed novel in an old bureau in the attic and sent it to Random House. Random House published it, without significant revisions, in January of 2004, as "*SideShow Murder, by J. Johnson, the bestselling author of Circus Murder.*" When does the copyright expire?

v.

From 1923 through 1971, Septimus Spratt wrote advice columns under the pen name "Cassandra Jones," as a staff writer for *The Lake City Sketch*, a local

newspaper. Sprat retired in December 1971; he died of a heart attack on June 1, 1989. One of Sprat's columns, completed on March 6, 1950, but never published, was finally published by the *Lake City Sketch* on June 29, 1989 in a memorial tribute to Cassandra Jones. What is the last day on which copyright protection subsists in the column?

vi.

Marla Mahoney painted a colorful abstract painting she titled "Mess of Mice" during the spring of 1960. Marla registered "Mess of Mice" as an unpublished work in October of 1971, and donated it five months later to the Monroe Art Museum, along with a document purporting to assign "the copyright in 'Mess of Mice' together with any renewal term in the copyright" to the Museum.

The Monroe Art Museum displayed the painting in its permanent exhibit. There was no copyright notice on the painting, no copyright notice posted anywhere in the museum, and no restrictions on photographing paintings in the permanent exhibit. Although Jackson residents and tourists regularly brought their cameras into the museum, there is no evidence indicating whether members of the public photographed Jukes's painting. In September of 1986, the Monroe City Dispatch did a feature article on abstract painters from northern Georgia, in which it printed a photograph of "Mess of Mice" on page B5 without a separate copyright notice; there was, however, a copyright notice in the name of the Monroe City Dispatch on the front page of the paper.

In the spring of 1987, the Monroe Art Museum did a retrospective of paintings by Georgia painters. To publicize the exhibit, the museum created a poster showing a group of tourists in the museum, looking at the painting, "Mess of Mice." To commemorate the exhibit, the Museum reduced the poster and printed it as a postcard. Both the poster and postcard bore the following notice:

"Copyright © 1987 Monroe Art Museum. All Rights Reserved."

The Museum has continued to sell this postcard in its museum gift shop to this day.

In July of 1993, Marla died. Marla's will named her long-time companion, Susanna, as her executor. The will left Marla's house, her money, and her personal property to her brother, Milford. It left a self-portrait she had painted to Susanna, and left the copyrights to all of her paintings to the Georgia Historical Society. In June of 1999, the Monroe Art Museum applied for the renewal term in the copyright of "Mess of Mice." In July of 1999, Milford applied for the renewal term in the copyright of "Mess of Mice" in the name of "Milford Mahoney." The same month, Susanna applied for the renewal copyright of "Mess of Mice" in her capacity as executor of Marla's's estate and executed a document purporting to convey the renewal term copyright to the Georgia Historical Society. The Register of Copyrights filed all three renewal applications.

On October 30, 2015, the Monroe Art Museum sold the painting, together with its rights in the copyright of the painting, to your client for \$500,000. Your client orally assured the Museum that she had no objection to the Museum's continuing to produce and sell the "Mess of Mice" poster and postcard it created in 1985.

Just what did your client purchase? Who has the right to manufacture and sell postcards of "Mess of Mice"?

vii.

Janet Jenius is a professor of kinesiology at a large, public, midwestern university. She is also the author of *KINESIOLOGY 101*, the leading text for introductory college-level kinesiology courses. Each year, Jenius selects three research assistants, all of whom are graduate students in her department. Research assistants receive tuition waivers and an hourly wage of \$11.00 for up to 20 hours of work each week. In addition to asking her RAs to perform a variety of research tasks, Jenius requires all three of them to sit in on all of her classes and take copious notes. She then incorporates those notes, sometimes verbatim, into the new editions of her textbook. This past year, Jenius's RAs were Ron, Dawn and Fawn. Because she had a particularly busy semester, filled with speaking engagements and department committee work, Jenius relied especially heavily on her RAs' class notes in putting together the 9th edition of *KINESIOLOGY 101*, which will be published by Large Midwestern University Press this April, in time for fall classes.

In January, Jenius met individually with Dawn, Ron, and Fawn to discuss their future in academic kinesiology. Jenius encouraged Dawn and Ron to pursue post-docs and eventually seek tenure-track positions as kinesiologists. She advised Fawn, however, that she was not cut out to be a kinesiology scholar. Although she had found Fawn's class notes exceptionally helpful, Jenius explained, Fawn's work on research assignments had been consistently sub-par. Jenius suggested that Fawn abandon any hope of finding an academic position in a kinesiology department, and instead seek employment as an aerobics teacher, a rhythmic gymnastics coach, or a professional dancer.

Fawn was enraged. As soon as Jenius left the room, Fawn went to the Jenius's desktop computer and downloaded the semester's worth of class notes taken by Dawn, Ron and herself onto a jump drive. She rushed home and combined the three sets of notes into a single file. She then posted the file in multiple locations on the Internet under the heading "*Everything you need to know to ace Janet Jenius's kinesiology course even if you never go to class,*" and "*Why buy Jenius's kinesiology book? You can download everything that's in it right here!*" Jenius is furious. She consults you to tell her how she can make Fawn remove the files from the Internet.

viii.*

- A.** Anita Author creates and publishes a work with proper notice of copyright in 1970, and in 1980 grants to Bill Buyer “all right, title and interest” in the initial and renewal terms for the work. Anita dies in 1990, leaving a will that grants all copyright interests to the American Cancer Society. Author is survived by her husband, Walter, and one child, Chris. Does the American Cancer Society own anything? Who can terminate the grant to Bill, and when?
- B.** Anita Author creates and publishes a work with proper notice of copyright in 1960, and in 1980 grants to Bill Buyer “all right, title and interest” in the initial and renewal terms of the copyright. In 1988, Anita timely files a renewal registration for the work. Anita dies in 1990, leaving a will that grants all copyright interests to the American Cancer Society. Author is survived by her husband, Walter, and one child, Chris.
1. Does the American Cancer Society own anything?
 2. Who can terminate the grant to Bill, and when?
 3. What if Walter and Chris disagree about whether to terminate the grant and do not reach agreement until 2019?
 4. What if Anita’s widower, Walter, died in 2006, and also left all of his property to the American Cancer Society? Does the American Cancer Society own anything now?
 5. Assume Anita and Walter both execute grants to Bill in 1980, Anita dies in 1985, and Walter files the renewal registration in 1988. Does the American Cancer Society own anything? Can the grant to Bill be terminated?
 6. What if Anita were not survived by a spouse or any descendants?
 7. What if Anita serves a termination notice on Bill in 2005 and dies in 2006?
 8. What if Anita had assigned only the initial term of the copyright to Bill?
- C.** Anita Author creates and publishes a work with proper notice of copyright in 1960, and in 1974 assigns “all right, title and interest” in the initial and renewal terms of the copyright to Bill Buyer. In 1988, Anita timely files a renewal registration for the work. Anita dies in 1990, leaving a will that grants all copyright interests to the American Cancer Society. Author is survived by her husband, Walter, and child, Chris.
1. Does the American Cancer Society own anything?

* Problem *viii* was written by your casebook coauthor, Julie Cohen, and is used here with her permission.

2. Who may terminate the grant to Bill, and when?
 3. What if Walter and Chris disagree about whether to terminate the grant and do not reach agreement until 2020?
 4. Assume Walter and Chris terminated the grant to Bill in 2016, and then assigned the copyright to Movie Mogul in 2018. By 2020, they have a change of heart and want to know if they can recapture the copyright again. Can they?
 5. Assume Anita and Walter both execute grants to Bill in 1974, Anita dies in 1985, and Walter files the renewal registration in 1988. Does the American Cancer Society own anything? Can the grant to Bill be terminated?
 6. What if Walter dies in 1990? Can the grant to Bill be terminated?
- D.** Anita Author creates and publishes a work with proper notice of copyright in 1935. In 1963, Author timely files a renewal registration for the work. In 1974, she assigns "all right, title and interest" in the renewal term of the copyright to Bill Buyer. Anita dies in 1990, leaving a will that grants all copyright interests to the American Cancer Society. Author is survived by her husband, Walter, and one child, Chris.
1. Does the American Cancer Society own anything?
 2. Who may terminate the grant to Bill, and when?

ix.

- A.** Peter Pond is an amateur singer and songwriter. In November of 1992, Restless Records, Inc., approached Peter with the offer of a recording contract. Peter and Restless Records negotiated a contract that provided that Peter would record one album for Restless, and Restless would have the right (but not the obligation) to release that album on a CD. Under the contract, after Restless had recouped any advance, production costs, and promotional expenses, the company would pay Peter a royalty of 10% of the wholesale price of the CD for each CD sold, payable semi-annually. The contract gave Peter a single initial flat payment of \$100,000 as an "advance" against later royalties, if any, earned by the recording, to use for recording expenses. Peter agreed to use Restless's recording studio and pay its customary rental fee from his advance. The contract also provided that the album and all songs on it would be considered "works made for hire," and that, although Peter promised that he would record exclusively for Restless, Peter would not be deemed Restless's employee.

Peter signed the contract, and Restless wrote Peter a check for \$100,000. Peter went out the next day and used some of the money to buy a new keyboard.

In the spring of 1993, Peter made a master recording that included 12 songs – all written by Peter in 1990 and 1991 and never previously recorded or publicly performed. Peter paid for the recording studio and for recording technicians out of the balance of the \$100,000 advance. He accompanied himself on the new keyboard, and on his old acoustic guitar. Restless manufactured an album from the master tape called "*Introducing Peter Pond*". The album was distributed in CD format to wholesalers in October of 1994 and reached retail record stores in January of 1995. The copyright notice on the album read as follows:

"©1996 RESTLESS RECORDS, INC."

The CD sold many copies, and one song, *Goodbye Little Audrey*, became a hit, although not so great a hit that it earned Peter any royalty checks. Through an oversight, neither Restless nor Peter did anything about copyright registration.

In 2015, Swashbuckle Music, Inc., without seeking permission from anyone, transcribed the words and music to *Goodbye Little Audrey* from the CD. Swashbuckle then published sheet music for the song. Swashbuckle now consults you to determine whether it is likely to be liable for infringement.

- B.** Would your advice to Swashbuckle be different if everything had happened ten years earlier?

x.

In the 1970s, Alison Ammer was a modestly successful actor who played leading roles in minor stage productions, supporting roles in major stage productions, guest-star stints on a few television series, and was featured in commercials for cat food, laundry detergent, juice drinks, and running shoes. In 1977, Alison decided to write and star in a one-woman show about the pilot Amelia Earhart. After working on the idea for several months, though, she gave up on the project.

In January of 1980, Alison met Beatrice Bogle, a young playwright. The two got to talking about Alison's Amelia Earhart project, and Beatrice expressed interest. "Oh, I'd love you to write it," Alison said. "I'd pay you everything I earn from the Tide® commercial I shot last week – that's my biggest commercial yet."

Beatrice and Alison met the next week at Alison's apartment. Alison retrieved her notes from a drawer and explained her ideas. The notes were a disorganized collection of single sentences, short paragraphs, and Earhart

quotations written on scraps of paper. Beatrice said she wasn't sure when she'd have the time, but she'd put something together and bring it back to Alison. She took Alison's notes with her. On her way home, she stopped at the public library and checked out a couple of biographies of Earhart.

A year later (in January of 1981), Alison ran into Beatrice in a coffee shop. Beatrice said, "Oh! I've been meaning to call you. I finished that script for you a couple of months ago. Listen, I'm on my way out of town, but I will mail it to you." The script arrived in the mail about a week later, along with a letter from Beatrice explaining that she was off to do a playwriting residency in Melbourne, Australia, but would be back in five months, and could be reached by mail in the interim.

Alison loved the script. She immediately wrote a check for the \$6000 she had earned so far on her Tide® commercial, and mailed it to Beatrice in Australia, along with a note promising to send checks each time she got paid for that commercial. Alison then asked a local theater company whether she could perform the one-woman show, which Beatrice had titled "The Real Amelia," at the company's theater on Mondays and Tuesdays, when the theater was normally dark. The company was happy for Alison to use the space in return for 25% of any ticket sales. Alison sold tickets for \$15, and performed "The Real Amelia" Monday and Tuesday evenings for six weeks during March and April of 1981. In the final week of the show, she asked her friend Sam to film her performance. Sam used a video camera to record the two final performances and edited the videotape into a tape of the entire one-woman show. He made a title card for the tape that said:

**Alison Ammer
In
The Real Amelia
an original one-woman show
about
Amelia Earhart**

Sam included the title at the beginning of the recording. He then made 50 copies on videocassettes, and labeled each one "Alison Ammer/The Real Amelia." Alison paid all of Sam's expenses and bought him a fancy dinner to say thank you. In July of 1981, Alison mailed videocassettes of "The Real Amelia" to ten major New York theatre producers, suggesting that they produce "The Real Amelia" on Broadway. None of them responded.

Over the next few years, Alison received six further checks for her Tide® commercial, and mailed checks for the amounts reflected in each of them to Beatrice at her then-current address. She also gave several videocassettes to her agent to send to casting directors, and sent out some to friends and admirers. Beatrice, meanwhile, moved to Hollywood, where she became a successful screenwriter. By the mid-1980s, Alison's Tide® commercial was no longer running and she received

no further checks. She figured she had kept her promise to pay Beatrice all of the money she earned from the commercial, and didn't worry about it. In 1988, Alison performed "The Real Amelia" for two weekends to sold-out houses at the Reston Community Theater. She used Sam's videocassette to make a 30-second commercial promoting the show. The commercial ran on a local television station and may have boosted ticket sales. The same year, Alison did a television commercial for Mr. Clean® and played Lady Macbeth in the Reston Community Theater's production of "Macbeth."

In the early 1990s, Alison married one of her biggest fans and retired from acting. In 1997, as a birthday present, Alison's stepson, Doug, transferred one of the "Real Amelia" videotapes to DVD and made his stepmom 100 copies. At her birthday party in a friend's backyard, Doug played the DVD for an enthusiastic audience of Alison's friends. In 2009, Doug's daughter uploaded the video of her grandma being Amelia Earhart to YouTube. A producer for TBS saw the video on YouTube and admired it. Last week, he got in touch with Alison asking to buy the rights to the script for a television movie. Also last week, Alison received a notice of termination from Beatrice Bogle purporting to terminate Alison's copyright interest in "The Real Amelia."

You are Alison's lawyer. In response to your questions, she tells you that she never registered any copyrights in anything, never put a copyright notice on anything, and never took credit nor gave Beatrice credit for writing the script. Explain to Alison what the notice from Beatrice means, and advise her about her options.

xi.

Sally Simon (1920-1975) was a prolific author of children's books. She wrote and illustrated more than 50 books, including such classics as *Eleanor Elephant Eats an Egg*, *Lester Lion Loves Loofahs*, *Gordon Gorilla Gets a Goat*, and *Madeline Monkey Makes Mudpies*, all of them published by Dutton Books. Many of her books have been in print continuously since their initial printings. Sally also had a secret, scandalous personal life. She struggled with compulsive gambling and heroin addiction. She had many torrid and passionate affairs with married and single movie stars, politicians, and celebrities of both genders. In addition to her numerous children's books, Sally wrote a tell-all memoir in which she recounted her history as a writer and illustrator, her loves and losses, and her struggles with drugs, alcohol, and gambling. She illustrated her memoir lavishly with caricatures of her lovers and drawings of her most beloved book characters behaving in rude and inappropriate ways. Sally had no intention of publishing her memoir until after she retired as a children's book author, since she figured that no parents would buy her books for young children if they knew that Sally was a promiscuous drug addict. Once her children's books were no longer fashionable, she figured she could sell the

memoir for a large sum that would allow her to retire in comfort. She kept the single typescript copy of her manuscript, with hand-drawn pen illustrations, locked in the bottom drawer of the oak desk in her home. From time to time, she wrote and illustrated new chapters telling about new scandals, and added those chapters to the manuscript in the locked drawer. Sally married briefly, twice, and divorced each husband after less than two years. She and her second husband had a son, Stephen, who lived with his father after the divorce.

In the 1970s, Sally's gambling problems and drug addiction became more serious. Over an 18-month period, she had a disastrous run of bad luck and ran up \$50,000 in gambling debts.

Harry Hill (1913-1975) was a small-time, small-town crime boss. Harry ran a car theft ring and a loan shark operation, fenced stolen goods, imported and distributed narcotic drugs, and oversaw an illegal gambling business. Harry, in fact, ran the high-stakes poker game that Sally couldn't stay away from. (Harry and Sally had had a brief sexual liaison back in the early 1950s, when Sally was married to her first husband and Harry was married to his second wife.) Week after week, Sally promised to pay her debts in full, and week after week, she failed to come up with any money. Finally, Harry lost patience and warned Sally that if she didn't pay her gambling debt in full by the last day of the month, he would instruct his enforcer, Ernie, to cut off all the fingers of her right hand.

At the end of the month, Harry and Ernie showed up at Sally's house. Once again, she had no money to pay him, so Harry instructed Ernie to take out his butcher's knife. Sally cried, "Wait, please don't cut off my fingers. I'll give you something worth a lot more than \$50,000." Sally explained about the secret memoir locked in her desk drawer. "I wasn't going to publish it yet, but you can, and the right publisher will pay you a lot of money. Or, you can use the information in the book to blackmail some of my former lovers – some of them would pay plenty to make sure that their stories never get made public."

Harry told Ernie to go home, and told Sally he would be merciful, this time only, and accept her manuscript in full satisfaction of her gambling debts, so long as she promised to never again gamble in any of Harry's games. Sally unlocked her desk drawer, took out the manuscript and handed it to Harry.

Harry took the manuscript home and read it in one sitting. Sally had suggested that he either publish it or use the information in it for blackmail. Harry resolved to do both. First, he made a photocopy of the manuscript and sent it to his lawyer, Fred, with instructions to register the copyright in the book. Fred told Harry to make two additional photocopies and bring them to his office. When Harry arrived, Fred hand-wrote the following copyright notice on the title page of each copy of the the manuscript:

"© 1974 Harry Hill"

Fred handed Harry two dollars and announced that he had purchased both copies of the manuscript. He then locked both copies in his safe.

In October of 1974, Fred submitted a registration application to the copyright office for the manuscript, described as an illustrated book. The application identified Sally Simon as the author, and Harry Hill as the owner of the copyright. It cited a publication date of September, 1974. Fred enclosed the two photocopies of the manuscript with the application. In due course, the Copyright Office sent back a registration certificate.

Meanwhile, Harry went back through the manuscript and identified five wealthy and vulnerable individuals among Sally's many former lovers. His chosen potential victims included one past President of the United States, one headmistress of an exclusive, expensive, girls boarding school, one sitting Senator then exploring a Presidential bid, a Catholic Bishop, and a famous socialite who generously supported many socially conservative charities. Harry then wrote to three of his five chosen blackmail victims, threatening to expose them, and asked each of them to deliver \$50,000 in unmarked bills to him at his home.

One of Harry's potential victims did respond, but not in the way he had hoped. A week after he mailed the five letters, Harry was found dead in his driveway with a gunshot wound to the head. His widow (wife number 4) suspected that Harry had been killed because he threatened to reveal sensitive information about someone dangerous and powerful, and that that sensitive information might still be in the house. She resolved to get rid of it. While the murder investigation proceeded, she quickly packed up all of Harry's papers and donated them to Lake Superior State College (the local college and her alma mater). As soon as the police gave her permission to leave town, she removed all of the valuables from Harry's safe deposit box, moved to New Mexico with her daughter Hallie (Harry's only child), and changed both their names.

When Sally read about Harry's death in the newspaper, she suspected what had happened. She used the remainder of her most recent royalty check to buy some heroin, and died that evening of an overdose. Sally's will left her personal property and any cash in her bank accounts to her son, Stephen. It bequeathed all royalty payments and copyrights to the American Council for Problem Gambling, and left all of her papers to the college where she had earned her BA degree, coincidentally Lake Superior State College. Harry's papers and Sally's papers arrived at the college within a few weeks of each other. The boxes were delivered to the college library, where they sat undisturbed for more than 30 years.

In 2010, Lake Superior State College hired Devora Davidson as a part-time researcher and curator in the college's historical library. Devora's job included putting together four public exhibits every year from the library's collection of historical papers and artifacts, and reviewing and cataloging the collections of donated papers the full-time library staff had not yet gone through.

When Devora sorted through some of the old boxes of donated documents, she discovered Harry's copies of Sally's manuscript. Reviewing other papers in their collections, Devora pieced together what had probably happened. She persuaded her supervisors to approve an exhibition focusing on Sally Simon, Harry Hill, and Sally's memoir. The exhibition featured many of Sally's original caricatures, pages from her typewritten manuscript, photographs of some of the individuals described in the memoir and of Harry and his partners in crime, and copies of many of Sally's published children's books on loan from the local public library. The library titled the exhibition, "When Harry met Sally: the True Story of Harry Hill and Sally Simon." It was the most successful exhibition in the library's history, attracting large crowds and garnering modest regional press coverage.

An editor from Dutton Books (the longtime publisher of Sally's juvenile books) read about the exhibition and traveled to the college to view the exhibit and read the library's copy of the memoir. Hester Holl (formerly Hallie Hill) also read about the exhibit, and sent a letter to the college library claiming that the copyrights in Sally's memoir and any material drawn from Harry Hill's papers belong to her as her father's sole heir. The letter demanded that the library immediately send all copies of the manuscript and illustrations to her, and suggested that the library consider paying her a generous fee for its use of her father's copyrighted material. She enclosed a copy of the 1974 certificate of copyright registration with her letter. Sally's son Stephen also read about the exhibit. He, too, sent a letter to the library, insisting that as Sally's only child, he owned the copyright in her memoir. A third letter arrived from the American Council for Problem Gambling. That letter explained that Sally bequeathed it all of her copyrights in her will, so the Council is the true owner of the copyright in the memoir.

Dutton Books would like to publish Sally's memoir. It expects it to be a bestseller. Sales of Sally's juvenile books have slowed to a crawl, and Dutton thinks that the salacious memoir is likely to help rather than hurt the sales of the children's books. You work in in General Counsel's Office at Dutton. Your supervisor asks you to figure out who owns the copyright in the book, so that it can negotiate a license with the actual copyright owner.

xii.

From September 20 through October 22, 2011, New York's Gagosian Gallery hosted "The Asia Series," a show of eighteen Bob Dylan paintings featuring Asian subjects and themes. Gagosian Gallery advertised the show as Dylan's "firsthand depictions of people, street scenes, architecture and landscape," which he had created during recent trips to Japan, China, Vietnam, and South Korea.



Trade



The Game



Opium

A number of Dylan's paintings bore marked similarities to obscure older photographs of Asian scenes.

The painting Dylan called "Trade," showing two older Chinese men exchanging money, looked very much like a 1948 photograph of a royal Chinese eunuch taken by Henri Cartier-Bresson. Dylan's painting, "The Game," looked similar to a 1945 Life Magazine photograph of boys playing Siamese Chess on a Bangkok sidewalk. The painting Dylan titled "Opium," depicting a woman in a red robe reclining in a room amidst opium paraphernalia, looked very much like a 1915 photograph taken by Leon Busy in French Indochina.



1948 Photo by Henri Cartier-Bresson



1945 Photo by Dmitri Kessel



1915 Autochrome by Leon Busy

Henri Cartier-Bresson was a French photographer born in 1908. In 1948, Cartier-Bresson traveled to Beijing. Shortly after he arrived, Mao Zedong defeated the Kuomintang government and established the People's Republic of China. Over an 11-month stay, Cartier-Bresson took photographs chronicling the transition from one regime to the other. In 1948 Carier-Bresson photographed two elderly men; one of them was a eunuch who had served in the imperial court as a chamberlain to the Empress Tsz'e. Cartier-Bresson included that photograph in a 1956 book, *From*

One China to the Other, published simultaneously in France and New York City by Universe Books. The version published in New York City bore an appropriate copyright notice, and the New York office of Universe Books registered the copyright in the book in Cartier-Bresson's name with the United States Copyright Office in 1956. Neither Cartier-Bresson nor Universe Books filed a renewal application. Cartier-Bresson died in France in 2004.

Dmitri Kessel was born in 1902 in the Ukraine. He emigrated to the United States in 1923. He worked as a staff photographer for *Life* magazine from 1943 until 1967. In 1950, Kessel took a photograph of boys playing Siamese chess in front of the Trocadero hotel in Bangkok, Thailand. *Life* published the photograph, with appropriate copyright notice, in its magazine later that year. *Life* registered and later renewed the copyright in the issue containing Kessel's photograph. Kessel died in 1995. *Life* magazine ceased publication in 2000. Its assets, including its copyrights, are owned by its corporate parent, Time-Warner.

Léon Busy was born in France in 1874, and died there in 1951. In 1912, French banker Albert Kahn hired many photographers, including Busy, to travel all over the world shooting pictures, using the newly-invented autochrome process for taking color photographs. The photographers Kahn hired produced 72,000 autochrome images, which Kahn assembled in a collection he named "Archives de la Planète" (Archives of the Planet). France has no work made for hire doctrine, but Busy assigned his copyright in the images he shot to Kahn. Kahn died in 1940, and his home, just outside of Paris, was converted into the Albert Kahn Museum. Kahn willed all of his rights in the Archives de la Planète images to the Museum. A print of Busy's 1915 photograph, "Woman Smoking Opium," has hung in the Albert Kahn Museum since the museum's founding. In 2008, the British Broadcasting Company (BBC) used many of the autochrome images as the basis for a documentary series on Kahn's efforts to photograph people and places all over the planet. The same year, BBC published a companion book by David Okefuna, the producer of the series, containing 350 color images, including an image of Busy's woman smoking opium. That book was published in both the United Kingdom and United States. The U.S. edition bore appropriate copyright notice, but neither Okefuna nor the U.S. publisher registered the copyright in the book. BBC also posted a website linked to the series with images of many of the autochromes, including Busy's image of a woman smoking opium.

France and the United Kingdom, like the United States, are signatories to the *Berne Convention*.

Does Gagosian Gallery have anything to worry about?