

Law 633  
Copyright Law

Copyright Due Diligence Problems

*For discussion in class the week of March 5*

*These twelve problems are designed to test your knowledge of the material in chapters 3 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 several of the problems.*

*i*

In 1985, Olympic gymnast Yanhong Li accepted a job as a brand representative with the Danskin apparel company. Li traveled the world promoting Danskin's designs. With the help of Danskin's in-house promotion department, Li wrote a memoir, *My Life in the Air*, about her childhood gymnastics training, her amateur sports career, and her post-Olympic life as a Danskin brand representative. Li completed the manuscript in July of 1987. Danskin published the book with appropriate copyright notice in March of 1988, in advance of the 1988 summer Olympics, and registered the copyright in the book as a work made for hire. When does the copyright expire?

*ii*

In 1939, sculptor Katy Kornfield completed a massive, abstract, bronze sculpture that she titled "Kangaroo Kourt." In March of 1947, Kornfield registered the copyright in the sculpture as an unpublished work, and donated it together with its copyright to the Kansas Museum of Contemporary Art [KMCA]. In February, 1975, Kornfield applied for the renewal term of her copyright, and conveyed the renewal to KMCA. In 1976, she moved to Key Biscayne to be

nearer to her grandchildren. In 1996, Kornfield died. When does the copyright in in “Kangaroo Kourt” expire?

*iii*

In 1981, Jay Ward productions created an animated television series called *Young Al*. The series followed the completely fictional adventures of a nine-year-old Al Capone pursuing petty crimes in Brooklyn along with a gang of other like-minded pre-teens. The Saturday-morning cartoon premiered in September of 1982 and ran on ABC for 18 episodes, acquiring a small but devoted group of fans. After receiving complaints from family advocacy and education organizations that the children's series inappropriately glorified crime, ABC canceled *Young Al* in February of 1983. In April of 1985, Jay Ward Productions licensed Pioneer to sell all of the episodes of *Young Al*, plus five additional episodes that had been produced but never broadcast, on Laservision laser discs. Pioneer manufactured and distributed the laser discs to stores in time for the 1985 Christmas season, but nobody bought copies because most *Young Al* fans didn't have laser disc players. In 2005, Jay Ward licensed Classic Media to bring out the same 23 episodes as a boxed DVD set. The DVDs hit the market in January 2006, and sold briskly. When does the copyright expire?

*iv*

Eugenics was a theory popular in the first third of the 20<sup>th</sup> Century that held that many social ills were a result of genetic weaknesses, and that selective breeding could therefore greatly reduce crime, mental illness, and poverty. In 1927, Oliver Wendell White III, a follower of Eugenics and an advocate of eugenic sterilization of criminals, paupers, and people with epilepsy, wrote a series of eight essays expressing his views. The essays were published in *The Eugenics Review* (a monthly magazine) in 1927. The essays had no separate copyright notice, but the title page of every issue of the magazine included the following copyright notice:

**Copyright © 1927 Eugenics Review. All Rights Reserved**

In 1929, White assigned both the initial and the renewal term of his copyright in the essays to publisher Henry Holt. Henry Holt published the collection of eight essays in book form, under the title *Essays in Eugenics by Oliver Wendell White III*. On the page following the title page, the following copyright notice appeared:

**Copyright © 1929 Oliver Wendell White III. All Rights Reserved**

In 1955, White died. In 1957, Henry Holt applied for the renewal

copyright in *Essays in Eugenics*.

Recently, Carrie Buck, a history of science major at Clymner College, found a copy of the book in the college library. She read the essays and was outraged by the views they expressed. She scanned the book and posted the full text of all eight essays on the Internet under the heading, "*Racist and Clueless Oliver Wendell White III.*" Oliver Wendell White VI, the great grandson and only living descendant of the author, finds his ancestor's views embarrassing, especially because links to the essays show up as search results linked to his name. He would like to force Buck to remove the essays. Can he do so? If not, why not?

v

A. Louisa Leyton was born in England in 1867. When she was 12, she took her first job as a kitchen maid in the house of an English duke. Louisa turned out to be a talented cook, and rose from kitchen maid to head cook. In 1886, the duke's eldest daughter married an American businessman and moved to Albany, New York, taking the 19-year-old Louisa with her as her cook. Louisa had grown up to be uncommonly beautiful, and, in America, she acquired a number of devoted and wealthy admirers. One of those admirers persuaded her to move to New York City. He purchased an exclusive New York City supper club and hired Louisa as the head chef. The club, named LOUISA'S, was a raging success, helped along by the fact that it was unusual and considered scandalous for an unmarried woman to be the head chef in a fancy restaurant. Louisa's many liaisons were a popular topic of New York City gossip; that, too, proved to be good for business. The restaurant closed in 1894, a casualty of the Panic of 1893. In 1896, Louisa wrote a memoir chronicling her rise from kitchen maid to celebrated and notorious New York City chef. She decided that a good title for it would be *Saucier: The Saucy Life of a Lady Chef*. Louisa was interested in publishing the memoir, but she had never received any formal education and she realized that her grammar and spelling required extensive correction. She gave the manuscript to her recently married daughter, Charlotte, who promised to correct all of Louisa's mistakes. Charlotte, however, found life with her new husband, and, later, children, to be very time consuming and she never got around to reading her mother's manuscript. In 1928, Louisa Leyton died.

Charlotte died in 1957. Charlotte's son, Charlie, found Louisa's uncorrected manuscript in his mother's desk. He sold the desk, and put the manuscript away to read someday, but never got around to it. In 1999, Charlie's great grandson, Lester, found the manuscript in a bureau drawer, along with a notebook in the same handwriting full of recipes that Louisa had written out for Charlotte when she got married. Lester sent both manuscripts to an editor he knew at Doubleday. The editor thought that the memoir had

great potential, but would need to be heavily corrected, edited, and possibly rewritten in places. Doubleday hired Jeremy Jermyn, an experienced ghost-writer, to edit and correct Louisa's prose. Jeremy corrected all of the spelling and grammatical mistakes in the memoir, and rewrote a number of sentences in words that would be more accessible to a modern audience. Jeremy also selected 18 recipes from the notebook, and included a recipe, in Louisa's original uncorrected language, after each of the 18 chapters of the memoir. Jeremy completed his editorial work in November of 2000, and Doubleday published the book in October 2001 as "*The Saucy Life of Lady Chef*, by Louisa Leyton." The book was a surprise bestseller. Jeremy Jermyn died in a tragic kitchen accident last week. When does the copyright in the book expire?

- B.** The success of Louisa's memoir inspired Lester to search the family home for other unpublished manuscripts. He found another completed memoir chronicling the later years of Louisa's life in an old bureau in the attic. Lester sent that manuscript to his editor friend. Doubleday published it, without significant revision or corrections, in January of 2005, as "*The Further Saucy Adventures of a Lady Chef* by Louisa Leyton." When does the copyright expire?

*vi*

From 1940 through 1980, Francesco Fernandez wrote a food column under the pen name "Cathy Cook" as a staff writer for the Fort Worth Flyer, a local newspaper. Fernandez retired in September of 1980; he died of a heart attack on June 19, 1996. One of his columns (*What's Wonderful About Scones?*), completed on September 21, 1976, but never published, was finally printed by the Flyer in its June 23, 1996 issue as part of a memorial tribute to Cathy Cook. What is the last day on which copyright protection subsists in the column?

*vii*

Beth Barua painted a colorful abstract painting she titled "Bushels of Baskets" during the spring of 1959. Beth registered "Bushels of Baskets" as an unpublished work in November of 1974, and donated it five months later to the Baltimore Museum of Art, along with a document purporting to assign "the copyright in 'Bushels of Baskets' together with any renewal term in the copyright" to the Museum.

The Baltimore Museum of Art 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 Baltimore residents and tourists regularly brought their cameras into the museum, there is no evidence indicating whether members of the public photographed Barua's painting. In December 1979, the Museum began to sell postcards containing images of the painting; those postcards bore the following copyright notice on the back of the postcard:

**Copyright © 1979 Baltimore Museum of Art**

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

In October of 1984, the Baltimore Sun did a feature article on abstract painters from northern Maryland, in which it printed a photograph of "Bushels of Baskets" on page D3 without a separate copyright notice; there was, however, a copyright notice in the name of the Baltimore Sun on the front page of the paper.

In May of 1996, Beth died. Beth's will named her long-time companion, Eleanor, as her executor. The will left Beth's house, her money, and her personal property to her brother, Balan. It left a self-portrait that she had painted to Eleanor, and left the copyrights to all of her paintings to the Maryland Historical Society. In June of 2002, the Baltimore Museum of Art applied for the renewal term in the copyright of "Bushels of Baskets." In August of 2002, Balan applied for the renewal term in the copyright of "Bushels of Baskets" in the name of "Balan Barua." The same month, Eleanor applied for the renewal copyright of "Bushels of Baskets" in her capacity as executor of Beth's estate. Eleanor then executed a document purporting to convey the renewal term copyright to the Maryland Historical Society. The Register of Copyrights filed all three renewal applications.

On November 15, 2017, the Baltimore Museum of Art 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 "Bushels of Baskets" postcard it created in 1979.

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

*viii*

Clymner College is a small private liberal arts college in the town of Clymner, Pennsylvania. Both the college and the town are named for Roderick Clymner (1813-1881). In 1879, Roderick donated a 64-acre tract of land and four million dollars in order to found a college in his name. Clymner College

accepted its first students in the fall of 1883.

Many of Roderick's descendants were born and died in Clymner, and several of them were prominent local figures. Roderick's daughter Virginia Clymner James (1850-1930) was one of the earliest cryptanalysts for the United States government during World War I. Her son, Paul Clymner James (1880-1944), served as an American spy in Germany during World War II. Paul was killed when Allied forces shot down the German airplane in which he was traveling. Virginia's daughter Theresa Clymner James (1885-1960) was a jazz singer in the 1920s and 1930s, performing throughout Pennsylvania. Theresa recorded more than a dozen records for Columbia Records. Roderick's nephew Frederick Clymner (1878-1950) was the governor of Pennsylvania from 1924 to 1928.

Almost every member of the Clymner family who attended college enrolled in Clymner College; many of them donated their personal papers and effects to the college library archive when they died. As a result, the library's collection of Clymner family papers and effects is unusually extensive. The collection includes letters from Virginia to her husband Daniel James (1840-1920), detailing her work as a cryptanalyst in Washington during the war. It also has copies of official state documents and confidential memos from Frederick's term as governor and the text of many of his speeches; letters he wrote to and received from constituents and political cronies; and both a handwritten manuscript copy and heavily-annotated printed galleys of Frederick's memoir, *My Life of Clymner*, written in 1929 and published (with appropriate copyright notice) by Littincott Books in 1930 in anticipation of a possible presidential campaign. The archive also includes a handwritten journal containing Paul's observations of Germany during the Second World War (written entirely in code) and eight of Theresa's recordings, all of them released by Columbia Records on 78 r.p.m. records between 1922 and 1929 and no longer commercially available.

The Andrew Mellon Foundation has awarded Clymner College Library a two million dollar grant to digitize everything of historical significance in its archives and make it available online to the public. The foundation's grant program focuses on supporting the digitization of entire archival collections for the purpose of making historical materials widely available, so that scholars will be able to use the Internet to examine previously inaccessible documents of historical significance. Because not all historians are affiliated with academic institutions, one of the terms of the grant is that material digitized using grant funds must be made available over the Internet to the general public.

The library believes that its collection of materials related to the Clymner family is its most important trove of historical material, and plans to begin by digitizing and posting those materials. The Clymner College General Counsel has examined the documents surrounding the Clymners' donations and bequests of papers and other effects. Those documents are completely silent as to copyright. The College archivist and General Counsel consult you for guidance. Advise them.

**ix\***

- 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.

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

1. Does the American Cancer Society own anything?
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?

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 record 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:

<p style="text-align:center"><b>Alison Ammer</b> In <b><i>The Real Amelia</i></b> an original one-woman show about <b>Amelia Earhart</b></p>
--

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's 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, the Gagosian Gallery in New York City 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  
Leon Busy



1945 Photo by Dmitri Kessel



1915 Autochrome by

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.

Leon 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 Planete* (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 le Planete* 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 Gagorian Gallery have anything to worry about?