

**Law 633**  
**Copyright Law**

**Copyright Due Diligence Problems**

*For discussion in class the weeks of March 11 and March 18*

*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 1996, Olympic platform diving medalist Mike Mason accepted a full-time job as a brand representative with Warnaco, the US producer of Speedo<sup>®</sup> brand swimsuits. Mike traveled the world promoting Speedo<sup>®</sup> swimwear. With the help of writers in the Warnaco in-house promotion department, Mike wrote a book, *Deep Dive and Small Splash*, about his amateur athletic diving career. (The book included a number of appreciative comments about Speedo<sup>®</sup> swimsuits.) Mike and the in-house writers completed the manuscript in November of 2010. Warnaco published the book with appropriate copyright notice in March of 2012, in advance of the 2012 London Olympics, and registered the copyright in the book as a work made for hire. In October 2012, PVH Corporation purchased Warnaco and all of its assets. When does the copyright in *Deep Dive and Small Splash* expire?

**ii**

Pittsburgh playwright Derek Doober completed the script for his masterpiece play, *Zombie Apocalypse*, in 1950. The play was initially produced in 1952 by the Romero Regional Theatre in Pittsburgh, and later performed in 1954 by the McKeesport Players. In 1969, an Off-Broadway production of *Zombie Apocalypse* ran for seven months at the Astor Place Theatre. Nathan Nauhaus, a producer with Universal Television, saw the show and persuaded Doober that the script would make a terrific television series. Doober

registered his copyright in the play as an unpublished work on February 2, 1970. In April of 1970, Doober assigned both the initial and the renewal term of the copyright to Universal Television in return for a \$1500 payment. Nauhaus worked for a few months on developing *Zombie Apocalypse the Series*, but left Universal Television to work for a competing production company in 1971. The television series was never made. Doober died in 1990. When does the copyright in *Zombie Apocalypse* expire?

### iii

Hanna Barbera's Saturday morning cartoon, *Jose in the Grapevines*, followed the heartwarming adventures of eight-year old Jose and his large family. The family had traveled from Jalisco Mexico to Northern California, where they worked as grape pickers in Napa Valley. The series, created in 1978, ran for 15 episodes on NBC in the fall of 1979, and acquired a significant cult following. NBC canceled the series in response to an outcry over episode # 15, which depicted the working conditions for migrant laborers as arduous. At the time the series was canceled, three additional episodes had been completed but not yet shown. In 1981, Hanna Barbera licensed all 18 episodes in the series to MCA Disco Vision for release on Laser Disc. MCA manufactured laser discs containing all 18 episodes and delivered them to stores in time for the 1982 Christmas shopping season, but customers failed to buy the discs because *Jose in the Grapevines* fans didn't own laser disc players. In October of 2010, Time Warner, which had purchased Hanna Barbera in 1991, released the 18 episodes on DVD through its Warner Animation subsidiary. The DVDs sold briskly. When does the copyright expire?

### iv

Eugenics was a theory popular in the first third of the 20<sup>th</sup> Century. The theory 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 the 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. Emma Washington was born into slavery on a Virginia plantation in 1850. In 1859, with the help of her mother and the Underground Railroad, she escaped by first hiding in a cart filled with dirty laundry, and then stowing away on a north-bound freight train. Emma made her way to Philadelphia, where she lived with a local family and attended Philadelphia public schools. As an adult, she held nursing jobs in Philadelphia hospitals. She saved her wages and bought a small house. She then found one of her surviving brothers still living in Virginia, and paid for him to move to Philadelphia. The brother eventually married and had a son, and the family continued to live together in Emma's house.

In 1887, Emma began to write a memoir recounting her early childhood as a slave, her harrowing trip North, her struggles to adjust to her new life in Philadelphia, and her eventual reunion with her younger brother. She completed the memoir in June of 1890, and mailed the manuscript to a Philadelphia book publisher. The editor returned her manuscript with a letter explaining that while he had found it to be an excellent book, the publishing company had concluded that the market for autobiographies of escaped slaves was oversaturated. Emma put the manuscript in a desk drawer and concentrated on nursing. In 1898, Emma volunteered to work as a nurse in the Spanish-American War. During the war, she met and had a brief but torrid love affair with a wounded rebel Cuban soldier. He was married, however, and they parted as soon as the war ended. Emma returned to Philadelphia, where she lived until her death in 1920. After Emma died, her brother and his family continued to live in the house they had shared.

In 1947, Earl Washington, Emma's great nephew, put the house up for sale so that he could move to the suburbs with his wife and newborn daughter. In the course of packing up the family's furniture, he found Emma's desk and decided to take it with him to his new home. He never opened the drawers, and didn't find the manuscript. Earl died in 1996. Earl's only daughter Ellen decided to donate the sturdier pieces of

Earl's family furniture to the Salvation Army. She opened the drawer of an old desk and found a folder containing Emma's memoir. Ellen had dated an editor at Random House, so she sent the manuscript to her, along with a note explaining that she believed that it had been written by her great great aunt. The editor thought that the memoir had potential, but would need to be rewritten for the modern reader. She hired Randall Rangler, an experienced ghost-writer, to revise Emma's prose. Randall rewrote a number of passages to replace archaic idioms with language that would be more accessible to a modern reader, but made an effort to retain both the tone and the sequence of the original manuscript. He completed his work in November of 1999. Random House published the book in July 2000, as "*The Autobiography of a Runaway Slave*, by Emma Washington." To everyone's surprise, the book became a best seller. Randall died of emphysema in November of 2017. When does the copyright in the book expire?

- B. The success of Emma's memoir inspired Ellen to search old furniture, luggage, and cardboard boxes to see whether she could find other unpublished manuscripts. She found another completed memoir, significantly racier than the first one, chronicling Emma's experiences in the Spanish American War. She sent that manuscript to her editor friend. Random House published it, without significant revisions or corrections, in April of 2003, as "*A Runaway Slave's Love and War in Cuba*, by Emma Washington." When does the copyright expire?

## vi

In 1955, famed sculptor Tomo Tanaka created a series of three large bronze sculptures, which he described as his "Giant Head" series. Each of the sculptures was a 21' tall, realistic human head, cast in bronze. He named the sculptures "Giant Head 1," "Giant Head 2," and "Giant Head 3." Giant Heads 1 and 2 sold to collectors for \$30,000 each. In 1960, Tomo donated Giant Head 3 to the Omaha Sculpture Museum, signing a document purporting to transfer the sculpture together with its copyright to the Museum. Neither Tomo nor the Museum registered the copyright in the sculpture. From 1960 to 2017, the Museum displayed Giant Head 3 in its atrium, the only room with tall enough ceilings to accommodate the 21' sculpture. Beginning in 1990, the Museum sold postcards with an image of Giant Head 3 in its museum gift shop for \$2.50 per card. In 1998, the Museum featured an image of Giant Head 3 on the cover of its monthly museum magazine. In 2016, Tomo died. His will bequeathed all of his unsold sculptures and all of his copyrights to his husband, Frank.

In 2017, the Museum received a donation of a different artist's masterwork, "Massive Foot 6," which was 24' tall and which the curator preferred to Giant Head 3. In order to make room for Massive Foot 6, the museum removed Giant Head 3 from the atrium. With no appropriate place to store it, the Museum sold the sculpture to your client, who orally

assured the museum that she had no objection to its continuing to sell Giant Head 3 postcards. Your client installed the sculpture at the entrance of her company's office building. A motion picture producer has reached out to your client for permission to film several extended scenes of its forthcoming movie, "God to Man," in front of Giant Head 3, and has offered to pay a one-time license fee of \$20,000. Who, if anyone, is legally entitled to grant that license?

## vii

Jim Jester (1930-1990) was an important freelance comic book writer and illustrator during the 1960s and 1970s. Because he was a single father, he built a studio in his apartment so that he could work at home while caring for his daughter, Jennifer. Jim created a number of iconic superheros for Timely Comics, Tower Comics, Gold Key, and Hero Comics. In 1964, Jim decided to create a new female superhero that Jennifer could identify with, and came up with "Fission Girl," a teenaged superhero with the power to cause explosions by shooting energy bolts from her fingers. (Fission Girl got her powers when she was exposed to radiation from an experimental explosive detonated at a secret nearby weapons test site.) When Fission Girl wasn't fighting bad guys, she was concealing her new powers from her family and siblings and trying to survive high school. Working in his home office, Jim wrote and illustrated four issues of a proposed Fission Girl series, and pitched the series to Hero Comics, which had published several earlier comic books written and illustrated by Jim. Hero Comics liked the idea of producing a superhero comic that would appeal to teenaged girls, and agreed to publish six issues on a bi-monthly schedule. Jim's editor at Hero made suggestions for revising the four issues Jim had already created and also agreed with him on the direction he should take on the two remaining issues. Hero agreed to pay Jim a total of \$10,000, in four quarterly installments. Hero didn't offer and Jim didn't ask for continuing royalty payments, and no contract was signed.

Jim returned to his home office, where he reworked the four issues he had already written and illustrated, and then created the two additional issues his editor had agreed to. The initial *Fission Girl* comic book was published in January 1965, with the following copyright notice:

**Copyright © 1965 by Hero Comics. All Rights Reserved.**

Hero promptly registered the copyright in this and later issues.

The series was less popular than Hero had hoped, and it ceased publication after the December 1965 issue. Over the next two decades, Fission Girl made a few isolated appearances in other Hero comic books. In 1984, Jim persuaded Hero to publish a 20<sup>th</sup> anniversary commemorative comic book about Fission Girl. The comic book, written and illustrated by Jim, hit newsstands in January of 1985. It featured a new, expanded origin story explaining how Fission Girl acquired her powers and discovered how to use them,

and a redesigned superhero costume. Hero paid Jim \$1200 for writing and drawing that issue.

In July of 1990, Jim died in a car accident, survived by his only daughter Jennifer. In December of 1992, Jennifer, who had always felt a special connection with Fission Girl, filed an application to renew the copyright in the six Fission Girl issues published in 1965. That same month, Hero Comics filed applications to renew the copyrights in all of the comic books it published in 1965, including the six issues of *Fission Girl*. The Register of Copyrights filed both claimants' renewal applications.

In 2015, Hero Comics declared bankruptcy, and sold all of its assets to the Marvel Entertainment Group division of Disney. Disney has recently announced the introduction of a new line of comic books created for the tween reader, featuring the return of classic superheroes including Fission Girl. Jennifer is delighted that Fission Girl will be reappearing, but wants to make sure that the 21<sup>st</sup> century version of the superhero reflects her father's original vision, and figures that as the owner of the renewal copyright in the original six comic books, she should be receiving a hefty royalty payment. She consults you for legal advice.

### **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. Roderick's nephew Frederick Clymner (1878-1953) 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, and a handwritten journal containing Paul's observations of Germany during the Second World War (written entirely in code). The archive also has copies of Frederick's political speeches and confidential campaign memos written during his 1923 gubernatorial campaign, and original letters to and from some of his campaign donors. The collection also includes heavily-annotated print galley's 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 run.

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

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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?
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**

Lavinia King (1870-1929) was an influential dancer and choreographer, credited as one of the most important creative forces behind the invention of American modern dance. King trained as a classical ballerina, and performed in minor roles with regional ballet companies. In the early 1890s, she rejected the rigid forms of classical ballet and began exploring more natural movements, more casual costumes, and more dramatic and emotional modes of presentation. She found success as a soloist, creating her own dances

and designing her own costumes. King worked with other dancers at the forefront of the modern dance movement, and was widely recognized as one of the most inspiring dancers and choreographers of the era. King died in an auto accident in 1929. At the time of King's death, she was unmarried, childless, and deeply in debt. Unfortunately, she left no records of her dances. There is no surviving film footage of any of King's performances, and the dance world had not yet invented any of the now-common written notation systems for recording choreography.

Susanna Shuffle is a professor of dance history and ethnochoreology at Aleister College. She has devoted her career to studying the dances of Lavinia King. As a graduate student, she examined many archival still photographs, sketches, and written reviews and descriptions of King's performances, in order to reconstruct King's choreography. She also studied the scores for the music King danced to, and interviewed former King students and the few surviving members of King's dance company. Shuffle's doctoral dissertation documented her effort. It included full reconstructions of three dance compositions: one nine-minute solo dance first performed in 1911, a second eleven-minute solo first performed in 1918, and a twenty-four minute composition for six dancers first performed by King's company in 1924. The dissertation also included partial reconstructions of two additional works: a three-minute fragment of a solo originally performed in 1922, and a six-minute portion of a duet first performed in 1925. Shuffle recorded the reconstructed choreography in Laban notation, a widely-used system for writing down dance movements that was developed in the 1930s. She included the reconstructions in the body of her dissertation.

Shuffle defended her dissertation and earned her PhD in April of 2001. As required by her university's policy, Shuffle deposited a copy of her dissertation with ProQuest, which scanned the document and immediately made a pdf available to subscribing research libraries as part of its dissertation collection. (ProQuest is a commercial company based in Ann Arbor that offers online resources for academic and commercial research. The company maintains a digital collection of more than three million doctoral dissertations, submitted by graduate students earning degrees from 700 universities. It hosts a searchable index and makes the full text of the dissertations available for download to subscribing libraries worldwide.)

In August of 2002, Shuffle began teaching at Aleister College, and signed a contract with Indiana University Press [IUP] to publish a book based on her dissertation. IUP agreed to pay Shuffle a royalty of 5% of its net receipts for the sale of every copy book after the first 500 copies. The contract included the following clause:

By this Agreement, the Author hereby grants and assigns to the Publisher all right, title, and interest in and to the Work. This grant includes, but is not limited to, the right to reproduce and distribute the work in all languages, and any other rights covered by the Copyright Law of the United States and those of all foreign countries, in all media, for all terms of protection that are now or hereafter available, except that the Author reserves the exclusive right to perform publicly the choreography described in the Work.

Shuffle completed the revised manuscript in 2003. In addition to chapters presenting the five reconstructed works in Laban notation, Shuffle included text describing the choreography, illustrated by her own line drawings of some of the dancers' poses and moves. IUP published the book in October 2004, under the title *The Lost Dances of Lavinia King*, with the following copyright notice:

Copyright © 2004 Indiana University Press

IUP registered the copyright promptly. To celebrate the publication, Shuffle staged a concert presenting the five reconstructed dances performed by Aleister College dance students. According to the most recent royalty statement Shuffle received from IUP, the publisher has sold 432 copies of the book in the 15 years since publication, so she has not yet been paid any royalties.

Shuffle has continued to specialize in scholarship about King's work, and to teach dance history and ethnochoreology. Academic dance faculty at other schools have taught and (with Shuffle's permission) staged Shuffle's reconstructions of King's choreography.

In 2013, Peter Patter, a dance critic for the San Francisco Chronicle, published a popular biography of King, entitled, *Lavinia King: A Life*. The biography focused on King's personal life, which had included many lovers and shameless efforts at self-promotion. In the acknowledgements to the book, Patter expressed appreciation for Shuffle's *Lost Dances of Lavinia King*, calling the book "the definitive study of King's choreography." "Only through reading Shuffle's book," he continued, "was I able to appreciate the nature of King's dancing. That dancing turned out to be the crucial key to understanding her life."

Patter's biography was surprisingly popular. Summit Entertainment bought the worldwide motion picture rights and made a film based on the biography, which it released early last month under the title, *Lavinia Aloft*. Critics described the movie as "boring," but praised the verisimilitude of the dancing. Shuffle was curious to see how King would be characterized in a film pitched to a general audience, so she went to see the movie with several of her students during its opening weekend. To her surprise and chagrin, the film featured several lengthy dance sequences, duplicating the choreography that she had painstakingly reconstructed and included in her dissertation and book. The movie credited Patter for writing the book on which the film was based, and credited someone named Bernie Bouree for all choreography. Shuffle's name was not mentioned in the credits.

Shuffle believes that she should receive both credit and payment for the dances that are so prominently featured in the movie. She consults you for legal help. Advise her.

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 his 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



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 Cartier-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 Gagosian Gallery have anything to worry about?