

Law 633
Copyright Law
Problems

For discussion in class the week of February 9

i.

In 1984, Olympic gymnast Dee Delacorte accepted a full-time job with the Danskin apparel company. Dee traveled the country as a Danskin brand ambassador, and also wrote a book titled *My Life Upside-Down*, which she completed in March of 1988. Danskin published the book with a copyright notice in January of 1989, and registered it as a work made for hire. When does the copyright expire?

ii

In the summer of 1936, Elmer Ellis painted an abstract painting he titled "East of Everywhere." In March of 1944, Elmer registered the painting as an unpublished work and donated it together with its copyright to the Elmira Institute of the Arts (EIA). In January of 1972 Elmer applied for renewal of his copyright and conveyed the renewal term to EIA. In 1983, he moved to Eastpointe to live with his unmarried son, Edison. In 1989, Elmer died. When does the copyright in "East of Everywhere" expire?

iii

In 1981, Macintosh Productions created a television series called *Johnny Appleseed*. The series premiered on ABC in September of 1982, and ran for eleven episodes, acquiring a small group of devoted fans, before ABC cancelled it. In February of 1985, Macintosh licensed MCA to sell all eleven of the episodes of *Johnny Appleseed*, plus a twelfth episode that had been shot but never aired, on laser disc. MCA manufactured and distributed the laser disc in time for the 1985

Christmas season, but almost nobody bought copies because the majority of Johnny Appleseed fans didn't have laser disc players. In March of 2006, Macintosh licensed Fox Home Video to bring out the same twelve episodes as a boxed DVD set. The DVDs hit the market on November 1, 2006, and sold briskly. When does the copyright expire?

iv.

- A. In 1887, Darla Dorris wrote a novel but never published it; instead she opened a brothel. In 1930, Dorris died. In 1967, Dorris's granddaughter discovered the manuscript but did nothing with it. In 1999, Dorris's great-grandson, Douglas Dorris, Jr., discovered the manuscript and sent it to Harcourt Brace, who thought that it had great potential as a Western. Harcourt hired Sam Stevens, 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 climactic gun fight near the end. Stevens completed the revisions in December of 2000, and Harcourt published the revised novel in June, 2001, as "*Gunfighters in Trouble* by D. Dorris." The book was a surprise bestseller. Stevens died in a freak horse riding accident last week. When does the copyright expire?
- B. The success of Darla Dorris's novel inspired her great grandson to search the house for other unpublished manuscripts. Douglas, Jr., found another completed novel in an old bureau in the attic and sent it to Harcourt Brace. Harcourt published it, without significant revisions, in January of 2005, as "*Gunfighters in Love*, by D. Dorris, the bestselling author of *Gunfighters in Trouble*." When does the copyright expire?

v.

From 1956 through 1981, Louis Lerner wrote advice columns under the pen name "Marion Von Mustardseed," as a staff writer for *The Lake City Crier*, a local newspaper. Lerner retired in January 1982; he died of a heart attack on June 1, 1990. One of Lerner's columns, completed on March 6, 1975, but never published, was finally published by the *Lake City Crier* on June 21, 1990 in a memorial tribute

to Marion Von Mustardseed. What is the last day on which copyright protection subsists in the column?

vi.

Joanna Jukes painted a colorful painting she titled "Joie du Jus" during the spring of 1963. Jukes registered "Joie du Jus" as an unpublished work in October of 1972, and donated it five months later to the Jackson Art Museum, along with a document purporting to assign "the copyright in 'Joie du Jus' together with any renewal term in the copyright" to the Museum.

The Jackson 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 1983, the Jackson City Dispatch did a feature article on Cajun artists from southern Louisiana, in which it printed a photograph of "Joie du Jus" on page B5 without a separate copyright notice; there was, however, a copyright notice in the name of the Jackson City Dispatch on the front page of the paper.

In the spring of 1985, the Jackson Art Museum did a retrospective of paintings by Louisiana painters. To publicize the exhibit, the museum created a poster showing a group of tourists in the museum, looking at the painting, "Joie du Jus." 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 © 1985 Jackson Art Museum. All Rights Reserved."

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

In July of 1990, Jukes died. Juke's will named her long-time companion, Alison, as her executor. The will left Jukes's house, her money, and her personal property to her brother, Jeffrey. It left a self-portrait she had painted to Alison, and left the copyrights to all of her paintings to the Louisiana Historical Society. In October of 2000, the Jackson Art Museum applied for the renewal term in the copyright of "Joie du Jus." In November of 2000, Jeffrey applied for the renewal term in the copyright of "Joie du Jus" in the name of "Jeffrey Jukes." The same month, Alison applied for the renewal copyright of "Joie du Jus" in her capacity as executor of Jukes's estate and conveyed the renewal term copyright to the Louisiana Historical Society. The Register of Copyrights filed all three renewal applications.

On July 30, 2014, the Jackson Art Museum sold the painting, together with any rights in the painting that it might have, 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 "Joie du Jus" poster and postcard it created in 1985.

Just what did your client purchase? Who has the right to manufacture and sell postcards of "Joie du Jus"?

vii.

- 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. Anita 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. Anita 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, dies in 2006, and also leaves all of his property to the American Cancer Society? Does the American Cancer Society own anything now?
 5. What if Anita were not survived by a spouse or any descendants?
 6. What if Anita serves a termination notice on Buyer in 2005 and dies in 2006?
 7. What if Anita had assigned only the initial term of the copyright to Buyer?
- 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. Anita 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?

D. Anita Author creates and publishes a work with proper notice of copyright in 1935. In 1963, Anita 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. Anita 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 Buyer, and when?

viii.

A. Cameron Cassidy is an amateur singer and songwriter. In October of 1983, indie record label Cigarillo Music, Inc., approached Cassidy with the offer of a recording contract. Cassidy and Cigarillo Music negotiated a contract that provided that Cassidy would record one album for Cigarillo Music, and Cigarillo would have the right (but not the obligation) to release that album on a CD. Under the contract, after the record company had recouped any advance, production costs and promotional expenses, Cigarillo would pay Cassidy a royalty of 10% of the wholesale price of the CD for each CD sold, payable semi-annually. The contract gave Cassidy a single initial flat payment of \$150,000 as an "advance" against later royalties, if any, earned by the recording, to use for recording expenses. Cassidy agreed to use Cigarillo's recording studio and pay its customary rental fee (from the advance). The contract also provided that the album and all songs on it would be considered "works made for hire," and that, although Cassidy promised to record exclusively for Cigarillo, Cassidy would not be deemed Cigarillo's employee.

Cassidy signed the contract, and Cigarillo wrote Cassidy a check for \$150,000. Cassidy went out the next day and used some of the money to buy a new keyboard.

In the spring of 1984, Cassidy made a master recording that included 12 songs--- all written by Cassidy in 1981 and 1982 and never previously recorded or

publicly performed. Cassidy paid for the recording studio and for recording technicians out of the balance of the \$150,000 advance. Cassidy sang the vocals and accompanied herself on the new keyboard and an old acoustic guitar. Cigarillo manufactured an album from the master tape called "*Introducing Cameron Cassidy*". The album was distributed in CD format to wholesalers in November of 1985 and reached retail record stores in January of 1986. The copyright notice on the album read as follows:

"©1987 Cigarillo Music, Inc."

The CD sold many copies, and one song, *Going Down*, became a hit, although not so great a hit that it earned Cassidy any royalties. Through an oversight, neither Cigarillo nor Cassidy did anything about copyright registration.

In 2014, Eye-Patch Music, Inc., without seeking permission from anyone, transcribed the words and music to *Going Down* from the CD and published sheet music for the song. Eye-Patch now consults you to determine whether it is likely to be liable for infringement.

- B.** Would your advice to Eye-Patch be different if everything had happened five years later?

ix.

In the 1970s, Alison Ammer was a modestly successful actor who played leading roles in minor productions, supporting roles in major 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 or gave Beatrice credit for writing the script. Explain to Alison what the notice from Beatrice means, and advise her about her options.

x.

Harold Holler and Ira Iceberg met, in 1961, when they were both first year associates at the Detroit law firm of Drudge, Sludge & Fudge. Harold and Ira both discovered quickly that they hated the practice of law, and soon hit on the expedient of wasting their days at work making up parodies of a variety of bad books, movies, songs and television programs. One project that captured a great deal of their attention, and many of their working hours, was a spoof of bodice-ripper romance novels. The two took turns: Harold would write a paragraph when he was supposed to be researching wills and trusts, and hand it to Ira, who was supposed to be drafting the answers to interrogatories. Ira would read Harold's paragraph and add a paragraph of his own. After four months of thus shirking their legal duties, they had a book manuscript that was several hundred pages long. On a lark, they stayed extra-late at the firm for a few nights typing up the manuscript, and then submitted it to Passion Press Publishing under the pseudonym Evangeline Acorn; to their surprise, the publisher snapped it up.

Holler and Iceberg signed a contract giving Passion "exclusive book publication, motion picture and television rights, for the entire term of copyright,

throughout the world," in return for a flat payment of \$10,000 each -- a princely sum in those days. (It was just as well, since their annual evaluations at the law firm were abysmal.) Passion published the book under the title "*Danger in Jamaica*," in July, 1962, with copyright notice reading:

**Copyright (c) 1962 Passion Press Publishing, Inc.
All Rights Reserved**

Passion's legal department registered the book's copyright in the company's name later that month. The registration certificate identified Holler and Iceberg, writing under the pseudonym Evangeline Acorn, as the authors of the book, and designated the company as copyright claimant by reason of the contractual assignment. Unexpectedly, the book became a runaway hit, and the mysterious Evangeline Acorn inspired no small amount of press speculation.

In 1963, Columbus Cinema bought the motion picture and television rights to "*Danger in Jamaica*" from Passion Press for \$60,000. Holler and Iceberg were chagrined to read of the sale, and resolved to quit their law firm jobs and write a bunch of bestsellers under the Evangeline Acorn nom de plume. Perhaps success had spoiled them, or perhaps two years of practicing law had dealt their creativity a mortal wound; in any event, none of their subsequent efforts earned any money.

The movie, *DANGER in JAMAICA*, based on the novel by Evangeline Acorn, was released in January, 1966, and immediately registered at the Copyright Office by Columbus as a derivative work. The closing credits for the film ended with a screen that bore the following text:

Copyright MCMLXVI Columbus Cinema Inc.

Critics panned the movie, but it developed a small cult following.

In 1979, Thurmond T. Thurmond, Jr., a television producer, successfully persuaded the American Broadcasting Network [ABN] to air a weekly series based on the film, *Danger in Jamaica*. Thurmond bought "all television rights in the property" from Columbus for a flat payment of \$30,000 plus a royalty of "\$1000 per episode made and \$200 for any broadcast of any episode after the first two broadcasts." Thurmond made 36 episodes of *Danger in Jamaica -- The Television Series* between 1980 and 1982, and the first episode aired early in ABN's 1981 fall season. (The contracts between Thurmond and ABN were conventional for the era. ABN purchased the right to broadcast each episode two times for a flat sum per episode, while Thurmond retained all rights to each episode thereafter.) The series never generated large Nielsen ratings, and ABN canceled it after a dozen episodes. Thurmond had hoped to recoup his costs by selling all of the episodes he had already produced to independent TV stations in syndication, but was unable to find any buyers. Neither ABN nor Thurmond registered any of the episodes, which bore no copyright notice when broadcast.

In November of 1990, Ira Iceberg married a copyright lawyer, who persuaded him to apply to renew the copyright in the book *Danger in Jamaica* in his and Harold's names. In December of 1990, Columbus Cinema was thrust by its creditors into involuntary bankruptcy. When it emerged in January 1995, a leaner, meaner movie company, it discovered that in the excitement of corporate reorganization, nobody had bothered to file for renewals of any of the copyrights under Columbus's control. In February 2012, Thurmond was approached by the new owner of a fledgling cable channel to be named "The Love Channel" [TLC]; TLC wishes to purchase all extant episodes of the *Danger in Jamaica* television series outright, and show episodes nightly at 11:00 p.m.

You represent Harold Holler. What's in all of this for him?

xi.

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-Brosson 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 le 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?