MYTH-BUSTING: COPYRIGHT, LICENSING, & 3D DATA

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Copyright Advisor
Harvard Library
Office for Scholarly Communication

@KyleKCourtney
I AM...

Not neutral
Completely favor open access
Embrace low risk
and
willing to say more than “it depends”
The “Left Shark” Incident of 2015
What is copyright, really?

A “Bundle of Rights”

Limited Economic Monopoly for Authors

A system to “promote the progress of science and the useful arts….”
Global and Continuing Education

Public Domain
Know Your Copyright

Original/Creative & Fixed*
No Registration Required
Grant of Rights to Owners (the “bundle”)*
Wide Range of Protected Works
Long Term of Protection
Exceptions & Limitations
• Section 107: Fair Use
• And others...
“Bundle of Rights”
(Exclusive Rights 17 U.S.C. §106)

(1) To reproduce the work copies;
(2) To prepare derivative works
(3) To distribute copies
(4) To perform the copyrighted work publicly
(5) To display the copyrighted work publicly
What you create...

- Lab notebooks
- Dissertation
- Doodles
- Authored (your) research articles
- Graphs & charts
- Photographs you take
- Maps you make
- Videos you record
- Algorithms & coding
What’s not protected by ©…..
Work Must be

Original

Creative

Fixed

“Copyright protects original works of authorship that are fixed in a tangible medium of expression”

• Original - not copied, but an independent work
• Creative - a new expression of the idea (not the idea itself)
• Fixed
Copyright and Facts

- Copyright protection is not available for a mere "idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." [§102(b)]
  - Google LLC v. Oracle America, Inc. now at SCOTUS ...whether copyright protected API program elements (2 lines of code shortcuts) necessary for interoperability

- Similarly, © protection not available for “mere statements of facts”
Feist teaches us...

- a telephone utility's white-page directory was *not copyrightable* because the names, towns, and telephone numbers of the utility's subscribers were *uncopyrightable facts/data* that were merely listed alphabetically (not original)
  - *Eliminated the older “sweat of the brow” test*
“The copyright laws only protect the work, not the amount of effort expended.”

- Judge Easterbrook
“In 14 hours Mozart could write a piano concerto, J.S. Bach a cantata, or Dickens a week's installment of *Bleak House*. The Laffer Curve, an economic graph prominent in political debates, appeared on the back of a napkin after dinner, the work of a minute. **All of these are copyrightable.**”
3D Data Applications of Feist

■ Copyright?
■ Meshwerks v. Toyota, 528 F.3d 1258 (10th Cir. 2008)
Can Data be Copyrightable? No.

• Raw Data
• “Discovered” Data (through scientific process)
• 3-D Data Scans
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Copyright in the article about the data

Data! Raw, processable, glorious, data!!!!
Public Domain Exists…

- U.S. published works (prior to 1925)
- U.S. Federal Government Works
  - Most other governments copyright their work
    - Not U.S. States....
- Things that are **not** copyrightable
  - Rulers, height charts, **data**, calendars, etc.
Public Domain?

The Birth of Venus (Italian: Nascita di Venere) created in 1486
But what about this?

*The Thinker*  
(“Le Penseur”)  
by Auguste Rodin  
Created in 1904  

Public Domain?
Public Domain and “Slavish Reproductions”

Slavish reproductions of two-dimensional works warrant special mention:

A photograph or digital reproduction of a two-dimensional work (e.g., a painting) lacks the minimal creativity for U.S. copyright protection if its aim is to reproduce the work faithfully.

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Do not abuse!
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“CC-BY WITHOUT THE CC?”
Data Hypothetical #1
Copyright in....

- Photo?
- 3D Data?
- 3D Print Out?
Data Hypothetical #2: Incan Vase (12\textsuperscript{th} Century)

- Vase (artifact)?
- Photo?
- Sketch?
- 3D Data?
Data Hypothetical #3
Copyright in....

- Photo?
- 3D Data?
- 3D Print Out?