

GAME SHOW

February 17, 2026
by Eric E. Johnson
ericejohnson.com

QUESTIONS

What case that we read contains these passages?

“There is no doubt that a work on the subject of book-keeping, though only explanatory of well-known systems, may be the subject of a copyright; but, then, it is claimed only as a book. Such a book may be explanatory either of old systems, or of an entirely new system; and, considered as a book, as the work of an author, conveying information on the subject of book-keeping, and containing detailed explanations of the art, it may be a very valuable acquisition to the practical knowledge of the community. But there is a clear distinction between the book, as such, and the art which it is intended to illustrate.”

Baker v. Selden, 101 U.S. 99 (1879)

What title of the United States Code contains copyright law?

17

What are “material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device,” including “the material object in which the sounds are first fixed.”

Phonorecords

Where could I find that definition?

17 U.S.C. § 101

What are “material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device,” including the material object “in which the work is first fixed.”

Copies

In what year was the Copyright Act – 17 U.S.C. § 101 and following sections – enacted by Congress?

1976

When did the Copyright Act of 1976 go into effect?

January 1, 1978

What case that we read contains this passage?

“The photograph of the Tusayan jar lacks a creative spark because it depicts the artifact in an obvious, preordained angle and depth of field to best record the artifact’s condition. Any two dimensional depiction of a three dimensional object necessarily captures only one angle and depth of field. Yet the logical result cannot be that any two dimensional depiction of a three dimensional object qualifies for copyright registration.”

***Harvard v. Steve Elmore*, 2016 WL 7494274 (D.N.M. 2016)**

What case that we read contains this passage?

“The third finding of facts says, in regard to the photograph in question, that it is a “useful, new, harmonious, characteristic, and graceful picture, and that plaintiff made the same . . . entirely from his own original mental conception, to which he gave visible form by posing the said Oscar Wilde in front of the camera, selecting and arranging the costume, draperies, and other various accessories in said photograph, arranging the subject so as to present graceful outlines”

Burrow-Giles v. Sarony, 111 U.S. 53 (1884)

What case involved dental records codes, and were the dental records code held copyrightable?

American Dental Association (or “ADA”) v. Delta Dental, 126 F.3d 977 (7th Cir. 1997)

What government entity did I tell you you should know about, that is an agency of Congress, that does research and writes up reports – designed to be understandable for non-lawyers in government?

Congressional Research Service CRS

In what case were illustrations claimed by the defense to be uncopyrightable on the basis that they were, essentially, too tawdry to be among the copyrightable fine arts?

Bleistein v. Donaldson (U.S. 1903)

Name a category of copyrightable work of authorship that is within the numbered list in 17 U.S.C. §102(a)?

- (1) literary works;**
- (2) musical works, including any accompanying words;**
- (3) dramatic works, including any accompanying music;**
- (4) pantomimes and choreographic works;**
- (5) pictorial, graphic, and sculptural works;**
- (6) motion pictures and other audiovisual works;**
- (7) sound recordings; and**
- (8) architectural works.**

Name something, by word mentioned in the statute, that 17 U.S.C. §102(b) says that copyright protection for an original work of authorship **will not** extend to.

**[any] 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.

What case that we read contains this passage?

“the act however construed, does not mean that ordinary posters are not good enough to be considered within its scope. The antithesis to “illustrations or works connected with the fine arts” is not works of little merit or of humble degree, or illustrations addressed to the less educated classes; it is “prints or labels designed to be used for any other articles of manufacture.” Certainly works are not the less connected with the fine arts because their pictorial quality attracts the crowd and therefore gives them a real use -- if use means to increase trade and to help to make money. A picture is none the less a picture and none the less a subject of copyright that it is used for an advertisement. And if pictures may be used to advertise soap, or the theatre, or monthly magazines, as they are, they may be used to advertise a circus”

Bleistein v. Donaldson (U.S. 1903) (Holmes)

What case involved the rules for a sweepstakes used to promote laundry detergent?

Morrissey v. Procter & Gamble, U379 F.2d 675 (1967)

What case that we read contains this passage?

“we must hold for the defendant. When the uncopyrightable subject matter is very narrow, so that ‘the topic necessarily requires,’ if not only one form of expression, at best only a limited number, to permit copyrighting would mean that a party or parties, by copyrighting a mere handful of forms, could exhaust all possibilities of future use of the substance. In such circumstances it does not seem accurate to say that any particular form of expression comes from the subject matter. However, it is necessary to say that the subject matter would be appropriated by permitting the copyrighting of its expression. We cannot recognize copyright as a game of chess in which the public can be checkmated.”

Morrissey v. Procter & Gamble, U379 F.2d 675 (1967)

In what case was copyrightability's low threshold for originality in authorship underscored by the example that even the jostle of a hand caused by a "clap of thunder" is enough to turn a mere copyist into an author?

Alfred Bell v. Catalda Fine Arts, 191 F.2d 99 (2d Cir. 1951)

What case contains these passages?

"It is this bedrock principle of copyright that mandates the law's seemingly disparate treatment of facts and factual compilations. "No one may claim originality as to facts." This is because facts do not owe their origin to an act of authorship.¹

The distinction is one between creation and discovery

Factual compilations, on the other hand, may possess the requisite originality. The compilation author typically chooses which facts to include, in what order to place them, and how to arrange the collected data so that they may be used effectively by readers.

This protection is subject to an important limitation. The mere fact that a work is copyrighted does not mean that every element of the work may be protected.

This inevitably means that the copyright in a factual compilation is thin."

Notwithstanding a valid copyright, a subsequent compiler remains free to use the facts contained in another's publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement.

Feist v. Rural Telephone (U.S. 1991)

I have a list of five words corresponding to five things that are crucial for copyrightability. And here's a list of five vowels: A, E, I, O, and U. In my list of five words, three of which begin with a different one of those letters, and for a fourth vowel, four instances of it can be found among the other two words which begin with consonants.

Name one of the words on my list.

“authorship,”

“originality,”

“expression”

“creativity,”

“fixation,”

In what case was the relatively new technology of photography challenged as uncopyrightable on the basis that it just a factual record and not a work of creative authorship?

Burrow-Giles v. Sarony, 111 U.S. 53 (1884)

In what case did the creator of new and useful bookkeeping/accounting system seek to use copyright to so as to be the sole supplier of blank form books using the system?

Baker v. Selden, 101 U.S. 99 (1879)

Who won – Baker or Selden? And was the claim of a copyright was upheld or denied?

Baker, denied

The U.S. Copyright Office is an agency of what branch of the government?

Congress; or the legislature

What is the U.S. Copyright Office's parent entity?

The Library of Congress

When people want the U.S. Copyright Office to give them paperwork showing ownership and copyright status of a work, what do they file an application for?

Registration

How long is long enough for something to be “fixed” according to 17 U.S.C. §101?

“more than transitory duration”

What case, authored by Sandra Day O’CONNOR, contains this passage?

“It may seem unfair that much of the fruit of the compiler’s labor may be used by others without compensation. As Justice Brennan has correctly observed, however, this is not “some unforeseen byproduct of a statutory scheme.” . It is, rather, “the essence of copyright,” and a constitutional requirement. The primary objective of copyright is not to reward the labor of authors, but “to promote the Progress of Science and useful Arts.””

Feist v. Rural Telephone (U.S. 1991)

In what case did Judge Easterbrook write this?

“Number 04267 reads “guided tissue regeneration – nonresorbable barrier, per site, per tooth” but could have read “regeneration of tissue, guided by nonresorbable barrier, one site and tooth per entry”. Or “use of barrier to guide regeneration of tissue, without regard to the number of sites per tooth and whether or not the barrier is resorbable”. The first variation is linguistic, the second substantive; in each case the decision to use the actual description is original ... not knuckling under to an order imposed on language by some “fact” about dental procedures.

American Dental Association (or “ADA”) v. Delta Dental, 126 F.3d 977 (7th Cir. 1997)

What is “a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship”

A “compilation”

According to the *Trade-Mark Cases* (U.S. 1879), copyright law only protects “the BLANK of intellectual labor” that “are founded in the creative powers of the BLANK.” What words fill in those blanks?

fruits and mind

In *Terminator 2: Judgment Day*, Arnold Schwarzenegger plays a Cyberdyne Systems Model 101 or T-800. In a touching scene, the T-800 tells a young boy, “I know now why you cry, but it’s something I can never do.” According to the U.S. Copyright Office, the T-800 also could never be the author of a copyrightable work. Why not?

because his is not human

If Carolco Pictures Inc. owns the copyright to the 1984 film *Terminator* and its screenplay, and those works mark the first appearance of the phrase “Cyberdyne Systems Model 101,” then according to the U.S. Copyright Office’s guidance, does Carolco Pictures Inc. own a copyright in the phrase “Cyberdyne Systems Model 101”? If not, why not?

Because it’s a short phrase

According to *Feist v. Rural*, this is “the bedrock principle of copyright” and “the very premise of copyright law.”

And according to *Kelley v. Chicago Parks*, this isn’t an *explicit* constitutional requirement, but it’s nonetheless a requirement for copyright that is *implicit* in the Constitution’s reference to “authors” and “writings.” What is it?

Originality

According to Feist, *a* work of authorship must possess “some minimal degree of” this to sustain a copyright claim. But the “requisite level” of this “is extremely low.” Even a “slight amount .. will suffice”. What is it?

Creativity (or creative expression)

{
END
}