Class Outline

• Originality (Section 102)
  - Facts
  - Scenes a faire
  - Short words & phrases
  - Independent creation & ”modicum”
  - Photographic originality (rendition, timing, subject)
§ 102. Subject matter of copyright: In general

§ 102(a): “Copyright protection subsists ... in original works of authorship fixed in any tangible medium of expression...”
Feist v. Rural Telephone
“Original, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity.”
The Treatment of Facts

The Height of Mount Everest

Measurements:

1848: 9205 m.
(30,200 ft.)

1856: 8840 m.
(29,002 ft.)

1955: 8848 m.
(29,028 ft.)

1999: 8850 m.
(29,035 ft.)
The Treatment of Facts

Why not protect these measurements under copyright law?

Arguments in favor of protection:

1) Accurate measurements certainly “advance the progress of science,” so the law should give an incentive to make them.

2) The measurements are “original,” in the sense that they do not depend on earlier measurements, but are made independently.
“Mr. James Caplinger, who currently resides in Leonora, Kansas, has not one, but two mobile telephone numbers, and they are, respectively, 567-4751, and 567-4769.”

“James Caplinger of Leonora, Kansas has two mobile phone numbers: 567-4751 and 567-4769.”
ABOVE
Yosemite
Like Never Before

Australia’s Great Barrier Reef  34
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Thomas Mangelsen,
Catch of the Day

Alfred Eisenstaedt
Above The Clouds

[Image of a person and clouds]
Photograph Originality

1. Rendition

2. Timing

3. Creation of the Subject (a seeming exception to the principle that copyright confers no right over the idea behind the photo)
To find originality:

(1) Independent Creation; and

(2) A “Modicum of Creativity”