COPYRIGHT

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SLIDES 7:
AUTHORSHIP AND OWNERSHIP

Class Outline

- § 201 – Ownership of Copyright
  - Initial ownership
  - Works made for hire
- What is an "author"?
- Intent
- Co-authorship and "control"
- Works-made-for-hire
- Status as an "employee"
- Scope of employment
- Commissioned works
- Orphan works

17 U.S.C. § 201 – Ownership of copyright

(a) Initial Ownership.—

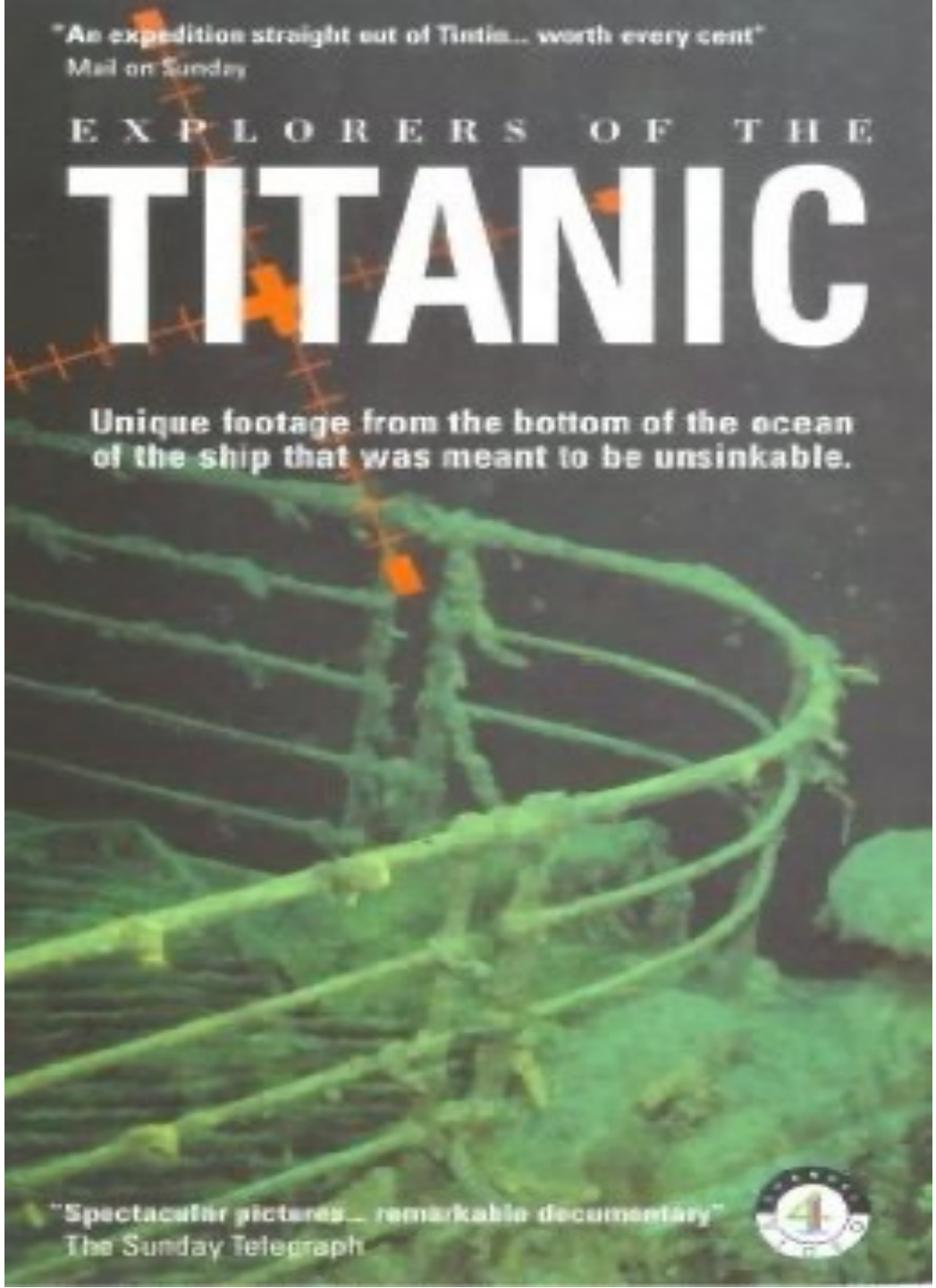
Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) Works Made for Hire.—

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) Contributions to Collective Works.—

Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.


"An expedition straight out of Tintin... worth every cent"
Mail on Sunday
EXPLORERS OF THE
TITANIC
Unique footage from the bottom of the ocean of the ship that was meant to be unsinkable.
"Spectacular pictures... remarkable documentary"
The Sunday Telegraph

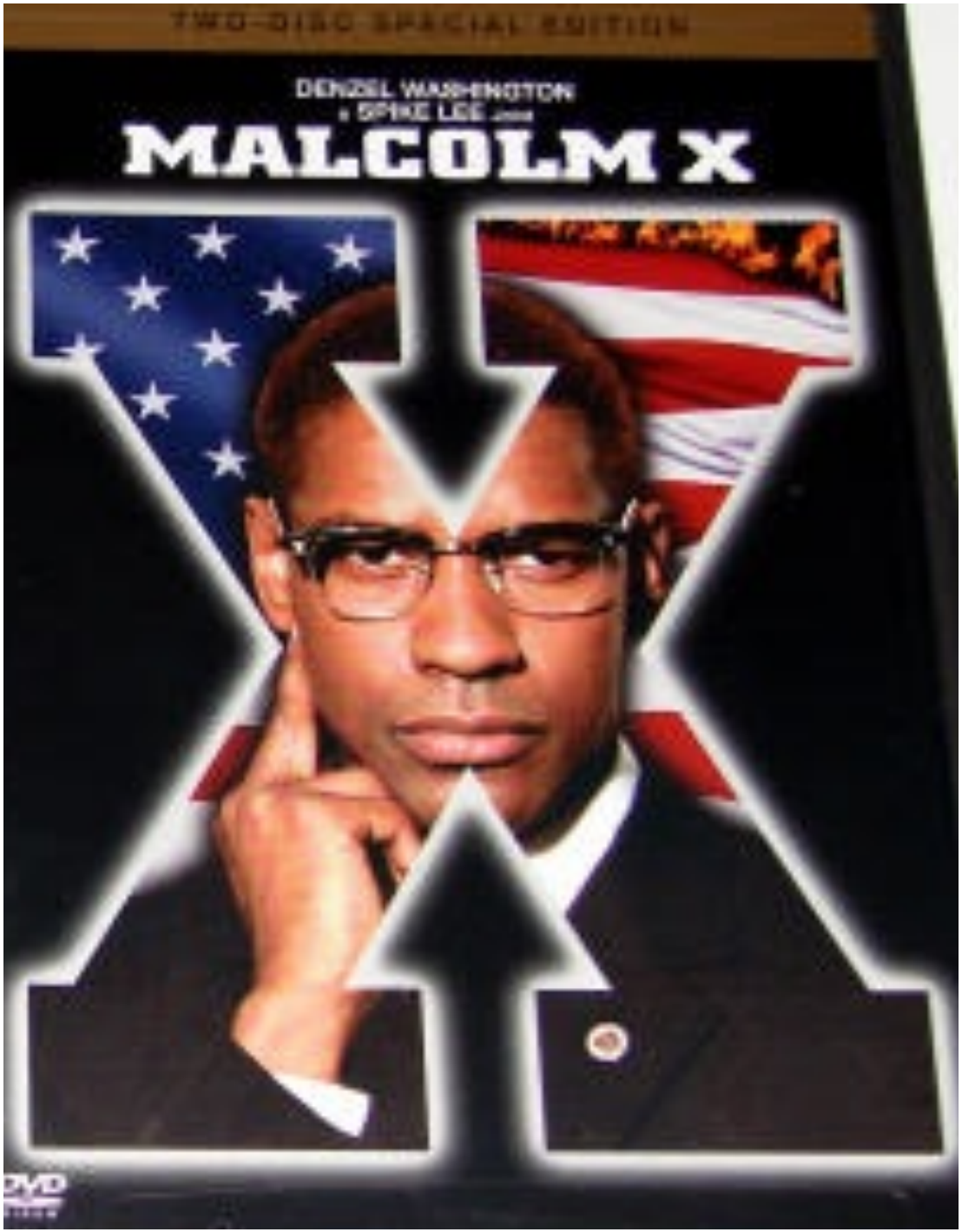
Section 101 on "joint work"

A work "prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole"

Two joint authorship tests

1. Nimmer's de minimis test: the resulting work must be copyrightable, even if the individual's contribution is not;

2. Goldstein's copyrightable subject matter test: the co-author must contribute something that is copyrightable in and of itself.


TWO-DISC SPECIAL EDITION
DENZEL WASHINGTON
SPIKE LEE
MALCOLM X
DVD

Section 101 on "works made for hire":

A "work made for hire" is –

(1) a work prepared by (a) an employee (b) within the scope of his or her employment; or

(2) A work specially ordered or commissioned…belonging to a specified class or work…and…the parties must expressly agree in writing that the work is a work for hire"

- for use as a contribution to a collective work,
- as a part of a motion picture or other audiovisual work,
- as a translation,
- as a supplementary work,
  - a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes,
- as a compilation,
- as an instructional text,
  - is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.
- as a test,
- as answer material for a test,
- or as an atlas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Restatement of Agency test for employment status:

1. The hiring party's right to control the manner and means by which the product is made
2. The skill required
3. The source of the tools
4. The location of the work
5. The duration of the parties' relationship
6. Whether the hiring party has the right to assign additional work
7. The method of payment
8. The hired party's discretion over when and how long to work
9. The hired party's role in hiring and paying assistants
10. Whether the work is part of the hiring party's regular business
11. Whether the hiring party is in business
12. The provision of employee benefits
13. The tax treatment of the hired party

13 Factors!

Restatement 228 on "scope of employment":

An employee's conduct is within the scope of his/her employment only if:

1. It is of the kind s/he is employed to perform;

2. It occurs substantially within the authorized time and space limits; and

3. It is actuated, at least in part, by a purpose to serve the employer