

COPYRIGHT

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CLASS 9:
THE REPRODUCTION RIGHT – COPYING IN FACT

Class Outline

- Exclusive rights of copyright holders (§106)
 - The Reproduction Right (§106(1))
- Copying in Fact
 - Access
 - Inverse Ratio Rule

To claim © infringement:

1. Show valid ownership of a copyrighted work; and
2. Show defendant infringed that copyright.

§106: Exclusive Rights in Copyrighted Works

[T]he owner of copyright... has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

To prove © infringement, you must show BOTH:

1. Copying in fact (aka “actual copying”); and
2. Copying in law (aka “substantial similarity”)

“Love Is a Wonderful Thing”



Isley Brothers



Michael Bolton



Two ways to prove copying in fact:

- 1 – Present direct evidence; this is rare/difficult; or
- 2 – Present circumstantial evidence by showing:
 - (a) that the D had “access” to the P’s work; and
 - (b) that the two works are “substantially similar”



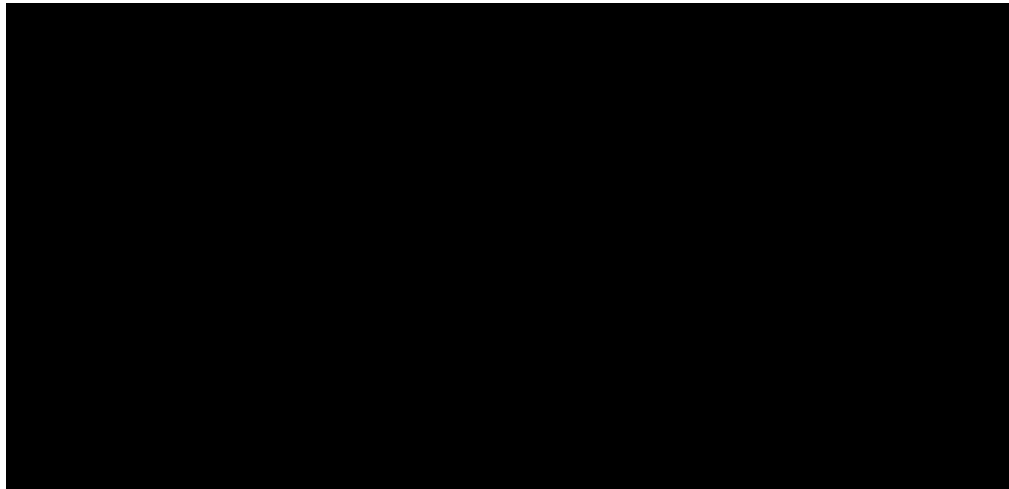
“He’s So Fine”



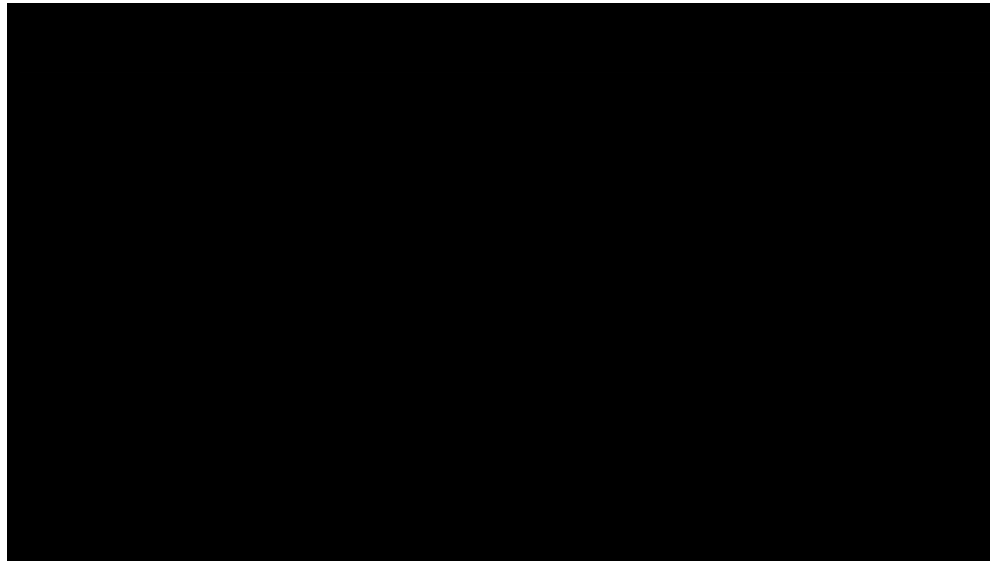
“My Sweet Lord”







“Photograph”



“Amazing”



Selle, “Let It End”



Bee Gees, “How Deep
Is Your Love?”





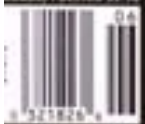
Price \$3.00

THE

Feb. 8, 1999

NEW YORKER

UNITED STATES \$3.00
CANADA/FOREIGN \$3.50



Robur

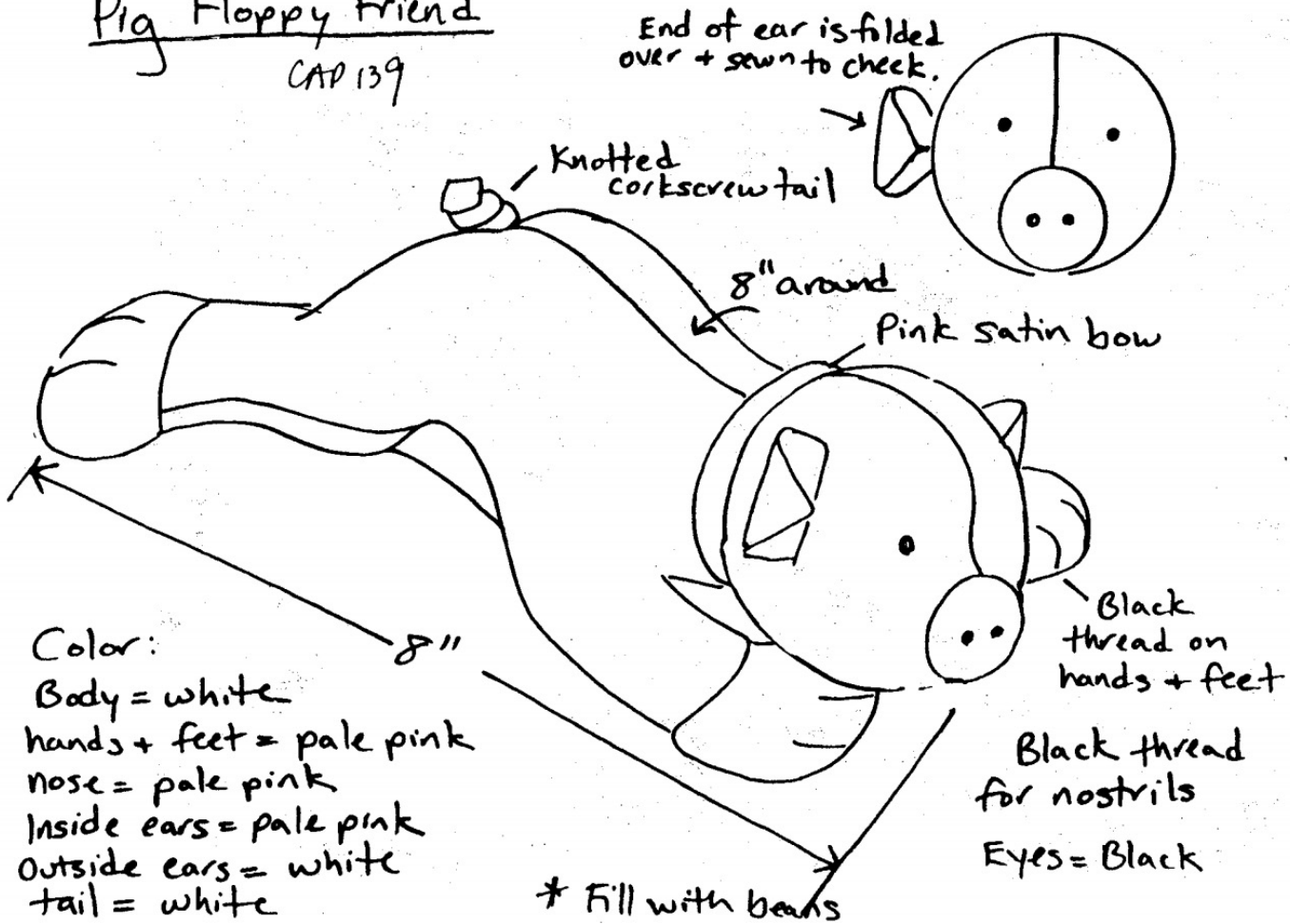


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Pig Floppy Friend

CAP 139



To find copying-in-fact:

- (1) Did the alleged copier have access to the work they are claimed to have copied?
- (2) Did the alleged copier use that access to copy the plaintiff's copyrighted work?