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”
Selle, “Let It End”

Bee Gees, “How Deep Is Your Love?”
Pig Floppy Friend
CAP 139

End of ear is folded over & sewn to check.

Knotted corkscrew tail

8" around

Pink satin bow

Black thread on hands & feet

Black thread for nostrils

Eyes = Black

+ Fill with beans

Color:
Body = white
Hands & feet = pale pink
Nose = pale pink
Inside ears = pale pink
Outside ears = white
tail = white
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?