CLASS 6:
COPYRIGHTABLE SUBJECT MATTER: USEFUL ARTICLES
Class Outline

• Useful articles
  – Physical separability
  – Conceptual separability

• Software
Definition of “pictorial, graphic, and sculptural works”:

“Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.”
California Modern

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Is the work a useful article?

- No
  - Apply the regular copyrightability requirements of originality and fixation, etc.

- Yes
  - Is the art physically or conceptually separable from the function?
    - Yes
      - The separable artistic elements may be copyrightable (but not the functional ones)
    - No
      - Nothing to copyright; try your luck with patent
Star Athletica Separability Analysis:

1. Can the design element be separately identified from the article?

2. Can the separately identified feature exist apart from the utilitarian aspects of the article?
“The ultimate separability question, then, is whether the feature for which copyright protection is claimed would have been eligible for copyright protection as a pictorial, graphic, or sculptural work had it originally been fixed in some tangible medium other than a useful article before being applied to a useful article.”
Figure 25: cat lamps