

COPYRIGHT

PROFESSOR KRISTELIA GARCÍA

CLASS 9:
THE REPRODUCTION RIGHT – COPYING IN FACT

Class Outline

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

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



Factual Copying

→ Asks: Did the D actually copy P's copyrighted work?

There are 2 parts to this Q:

1 – access

(2 – probative similarity)

Two ways to show access:

1 – Present direct evidence of D accessing P's work; this is rare/difficult; or

2 – Present circumstantial evidence by showing that the D had access to the P's work



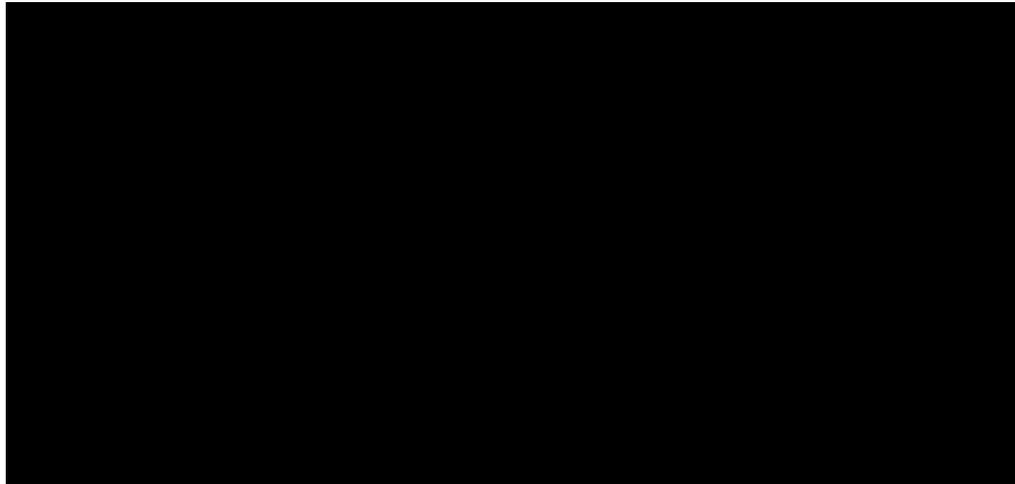
“He’s So Fine”



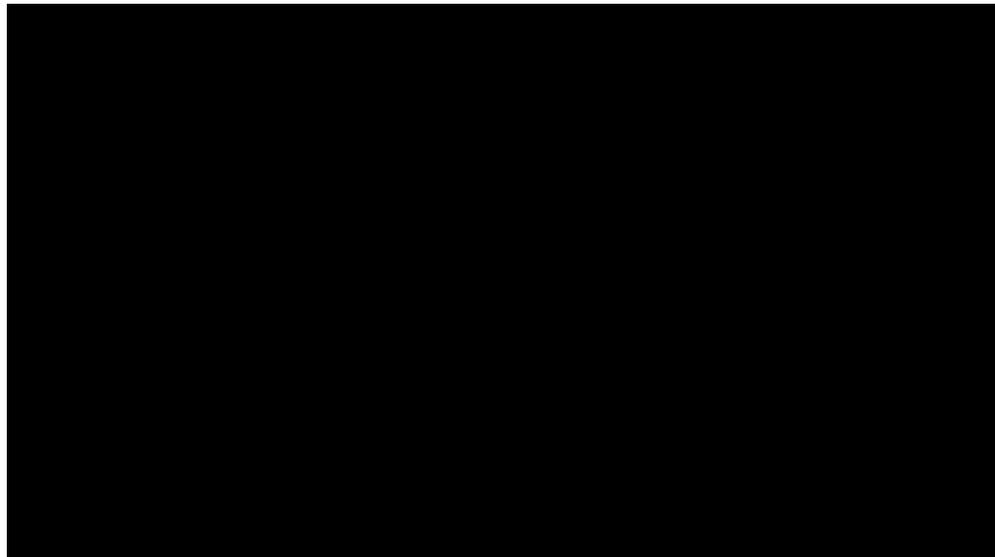
“My Sweet Lord”







“Photograph”



“Amazing”

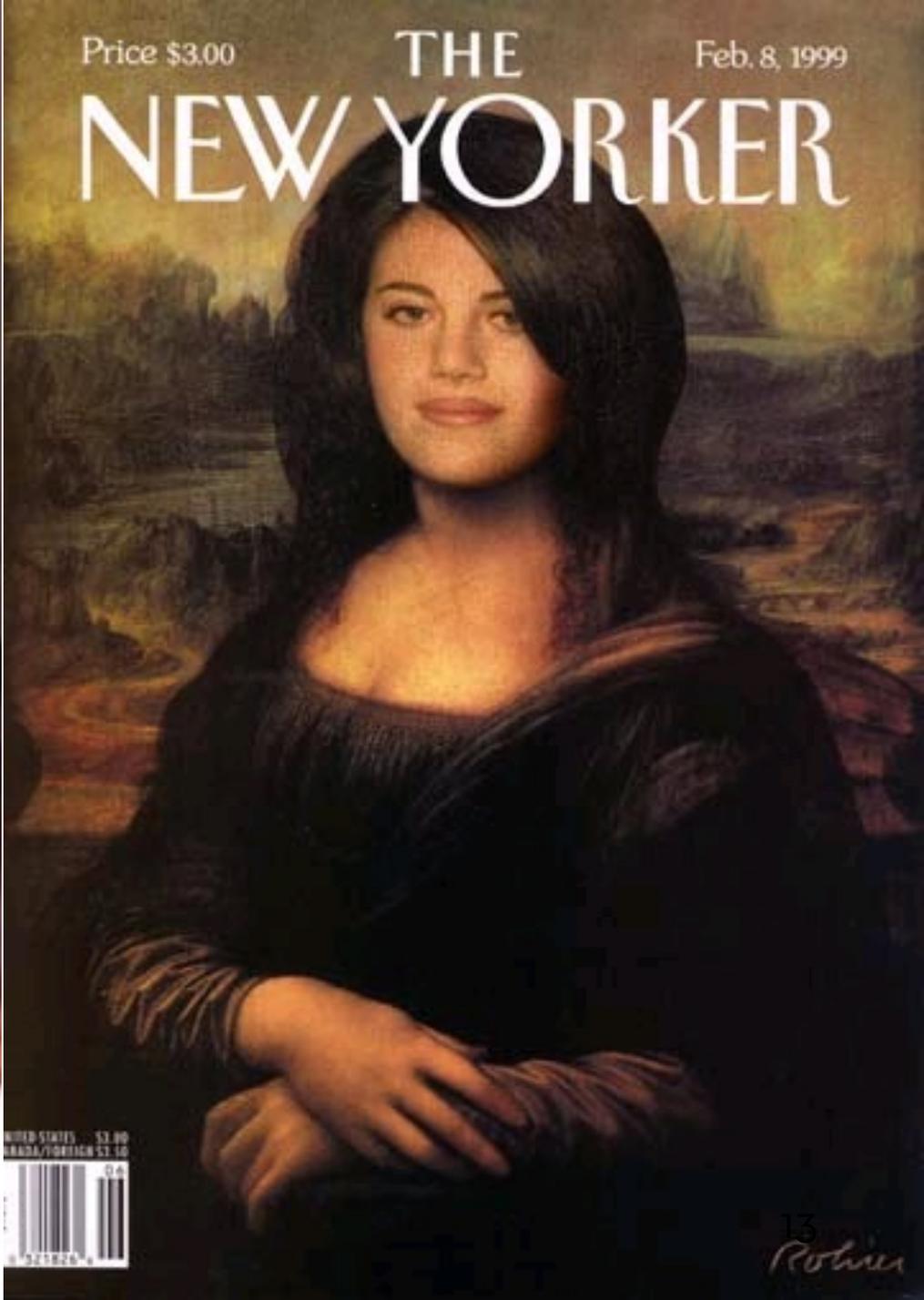


Selle, “Let It End”



Bee Gees, “How Deep
Is Your Love?”





Price \$3.00

THE

Feb. 8, 1999

NEW YORKER

UNITED STATES \$3.00

CANADA/FOREIGN \$3.50



13
Robur

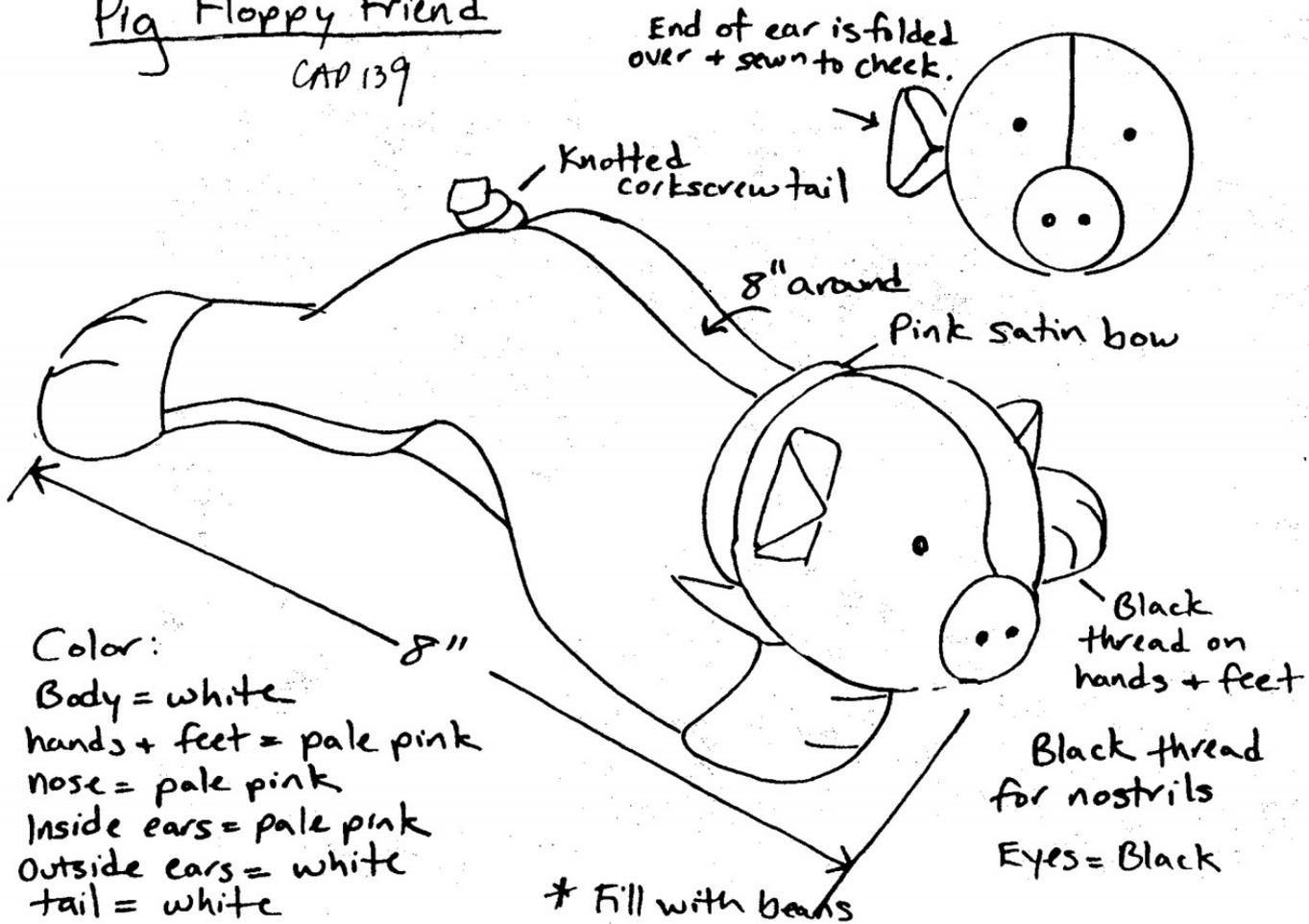


© Fred Bouchat.
Dec-5-1995



Pig Floppy Friend

CAP 139



The sub-questions of 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?