



Expression  
Copyright

## Infringement Continued: Appropriative Similarity

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Konomark  
Most rights sharable

### Elements of prima facie case for copyright infringement (for reproduction right)

1. it's a copyrighted work  
(copyrightable subject matter)
2. copying
3. substantial appropriation

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1. it's a copyrighted work  
(copyrightable subject matter)
2. copying
  - via direct evidence, or
  - via indirect evidence:
    - access and
    - probative similarity (a/k/a “substantial similarity”)
3. substantial appropriation (a/k/a “substantial similarity”)
  - what was taken the *copyrightable* part
  - enough was taken, it constitutes infringement
    - analysis might proceed from perspective of ordinary observer, intended audience, average consumer, expert witness, etc.

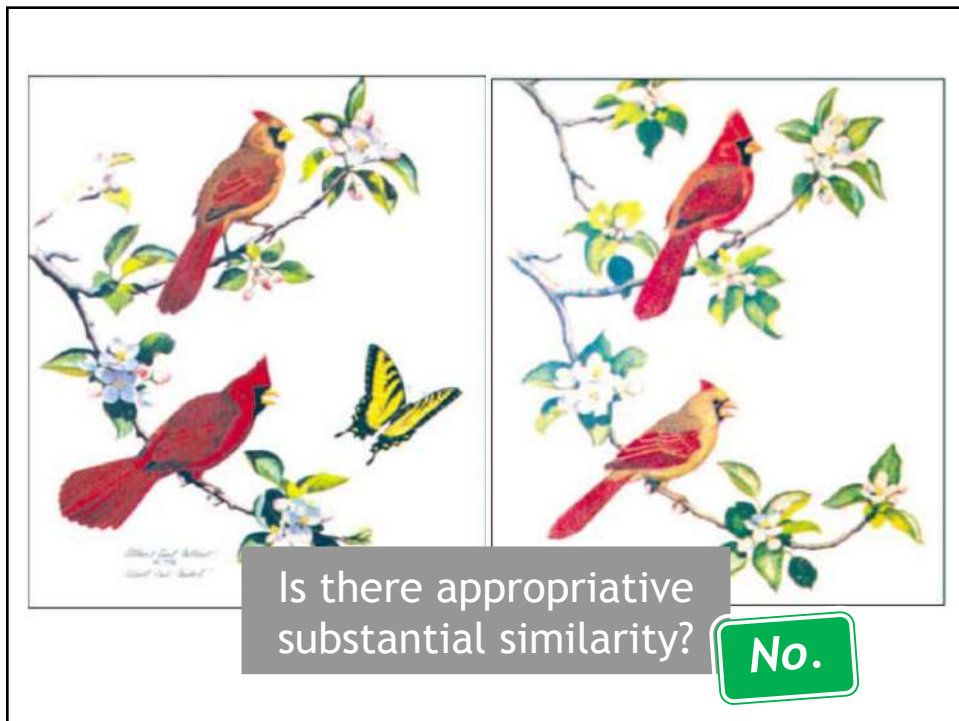
### 17 U.S.C. § 106

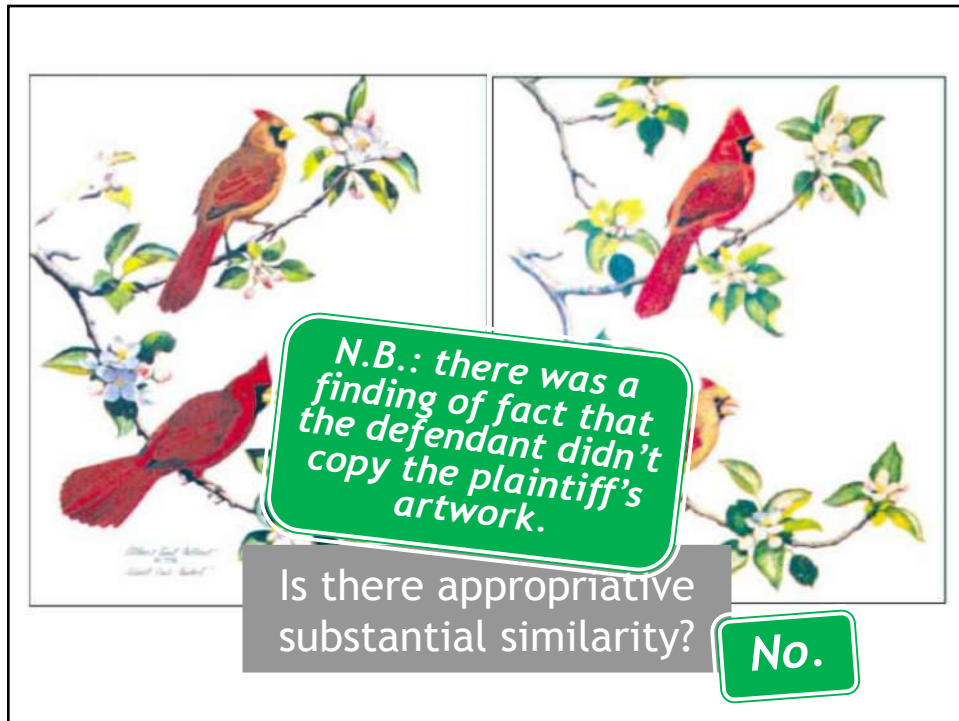
Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (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.

# Realothenicals







**IMPORTANT NOTE:**  
confusing  $\neq$  confused

**Keep this in mind: If you find it all confusing, it doesn't mean you are confused; it's actually a leading indicator that you understand.**