



Expression
Copyright

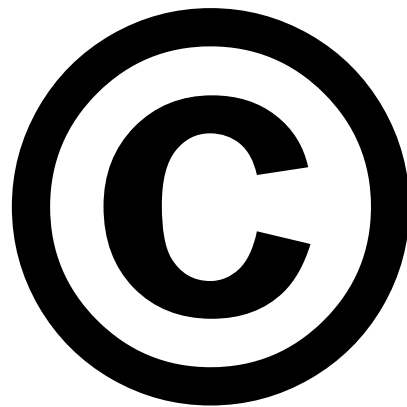
Copyrightable Subject Matter and the Requirements of Originality and Fixation

Eric E. Johnson

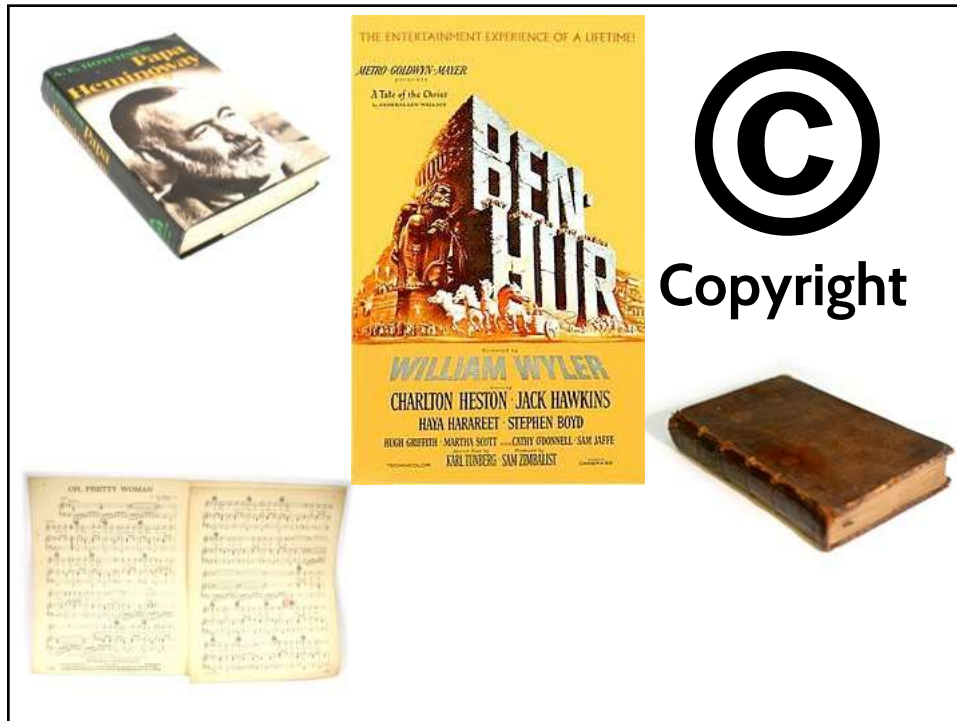
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Copyright



Let's see where we are in the syllabus ..

PART II: Expression

3. Copyrightable Subject Matter and the Requirements of Originality and Fixation

4. The Idea/Expression Dichotomy
5. Ownership of Copyrights
6. Copyright Formalities and the Public Domain
7. Introduction to Copyright Infringement
8. Additional Rights of the Copyright Owner
9. Statutory Limits on Copyright Enforcement, Including Fair Use

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8. Additional Rights of the

9. Statutory Limits on Copy

Fair Use

Now, let's get a little ahead of ourselves, and mention infringement, because that helps us understand why we're learning what we're learning.

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

Copyright

- Books
- Poems
- Movies
- Computer software
- Photographs
- Paintings
- Sculptures

Copyright

- original works of authorship fixed in any tangible medium of expression from which they can be perceived, either directly or with the aid of a machine

Copyright subject matter – what’s included (requirements)

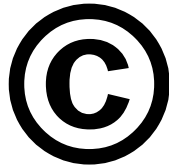
- “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device”
17 U.S.C. § 102(a)

Copyrightable subject matter – Three requirements from § 102(a)

- 1. originality**
 - independently created by the author
 - possesses some minimal degree of creativity (“some creative spark”)
- 2. work of authorship**
- 3. fixed in a tangible medium of expression**

Copyright subject matter – some things excluded

- **facts**
 - Constitutional requirement and § 102(b)
 - “facts do not owe their origin to an act of authorship” –*Feist*
- **ideas, procedures, processes, systems, methods of operation, concepts, principles, discoveries**
 - Constitutional requirement and § 102(b)
 - “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b)
- **U.S. government works (§ 105)**



**U.S.
government
works**




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[2020 Support Manual](#) (Right Click, Download Linked File.)

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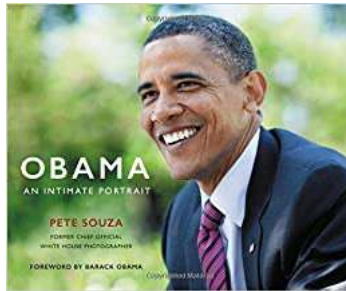


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Phone Number

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Large directory page with multiple columns of text, likely containing names and addresses. The text is dense and difficult to read due to the high resolution of the image.

Large directory page titled 'NORTH & NORTHWEST Aho-Albrecht 5'. It contains a list of names and addresses, organized into columns. The text is dense and difficult to read.

Let's do some hypotheticals and some realotheticals

I whispered to you a secret – the lottery numbers I am mentally planning to pick when I buy a ticket tonight.

Is that copyrightable? (I.e.: Is it within copyright subject matter? Is it capable of being protected by copyright law? Can I prove the first element of an infringement case?)

I whispered to you a secret – the lottery numbers I am mentally planning to pick when I buy a ticket tonight.

Is that copyrightable? (I.e.: Is it within copyright subject matter? Is it capable of being protected by copyright law? Can I prove the first element of an infringement case?)

No.

Why not?

The easiest reason is that it's not fixed in a tangible medium of expression.

Two women find a cornflake shaped like Illinois. Can they “copyright it”?



Two women find a cornflake shaped like Illinois. Can they “copyright it”?



No.

What if it were shaped like Abraham Lincoln?



What if it were shaped like Abraham Lincoln?



No.

What if they owned the automatic cornflake producing machine, and then found it?



What if they owned the automatic
cornflake producing machine, and then
found it?



No.

Scientists using the Gemini North 8.1 meter
telescope on Mauna Kea in Hawaii take this
image of galaxy NGC 3359. Is the image
protected by copyright?



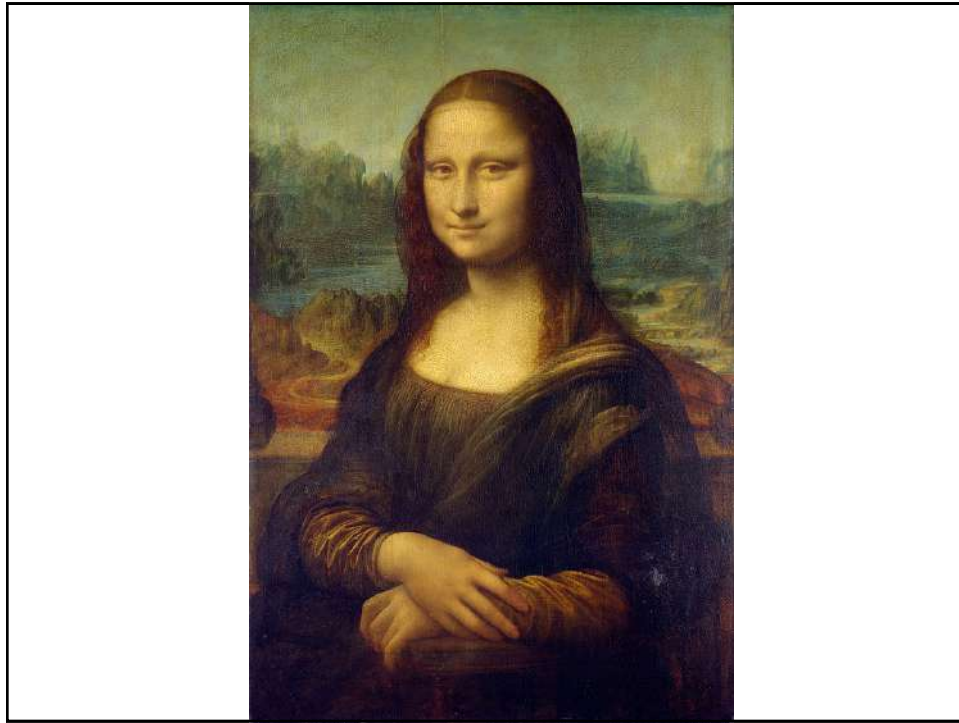
Scientists using the Gemini North 8.1 meter telescope on Mauna Kea in Hawaii take this image of galaxy NGC 3359. Is the image protected by copyright?

- A. Yes
- B. No
- C. i.d.k.
- D. I'm lost.

We will always do the same thing for yes-or-no polling questions.



Burrow-Giles
Lithographic Co. v.
Sarony, 111 U.S. 53
(1884)



www.louvre.fr/en/oeuvre-notices/mona-lisa-portrait-lisa-gherardini-wife-francesco-del-giocondo


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Collection & Louvre Palace Curatorial Departments Mona Lisa – Portrait of Lisa Gherardini, wife of Francesco del...

Previous work Work **Mona Lisa – Portrait of Lisa Gherardini, wife of Francesco del Giocondo** Next work
Department of Paintings: Italian painting

All works



Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the *Mona Lisa* (the *Joconde* in French)
© RMN-Grand Palais (Musée du Louvre) / Michael Utzinger

Conditions for use of images Full Screen


Paintings Italian painting

Author(s):
Cécile Scallières

This portrait was doubtless started in Florence around 1503. It is thought to be of Lisa Gherardini, wife of a Florentine cloth merchant named Francesco del Giocondo - hence the alternative title, La Gioconda. However, Leonardo seems to have taken the completed portrait to France rather than giving it to the person who commissioned it. After his death, the painting entered François I's collection.

Technical description

Leonardo di ser Piero da Vinci, known as LEONARDO DA VINCI (Vinci, 1452 - Amboise, 1519)
Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the Mona Lisa (the *Joconde* in French)

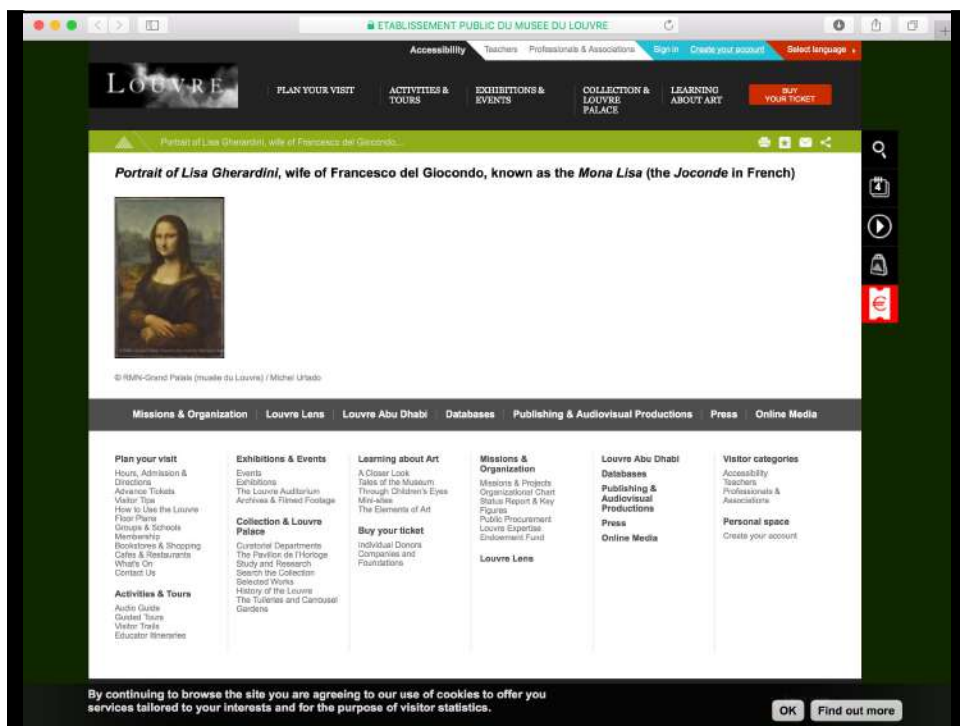


Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the Mona Lisa (the Joconde in French)
© RMN-Grand Palais (musée du Louvre) / Michel Urtado

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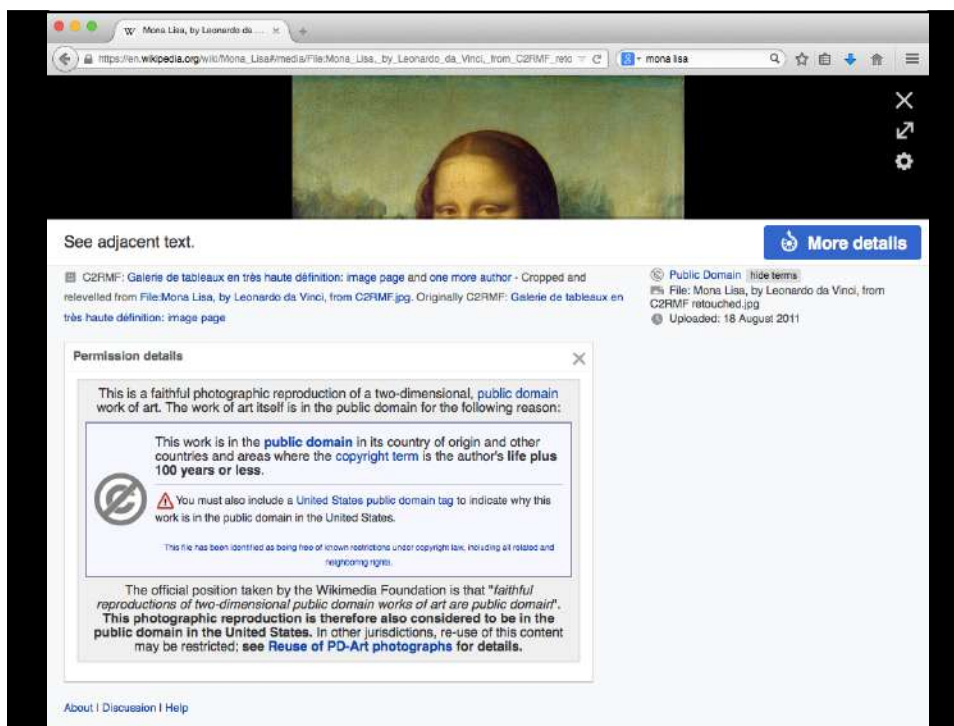
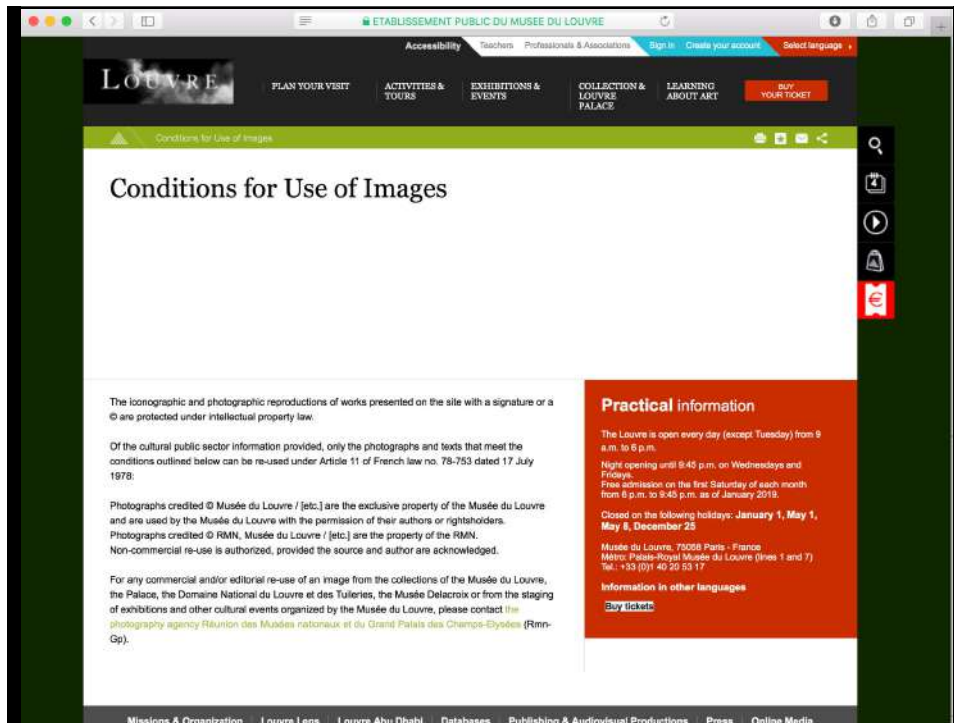
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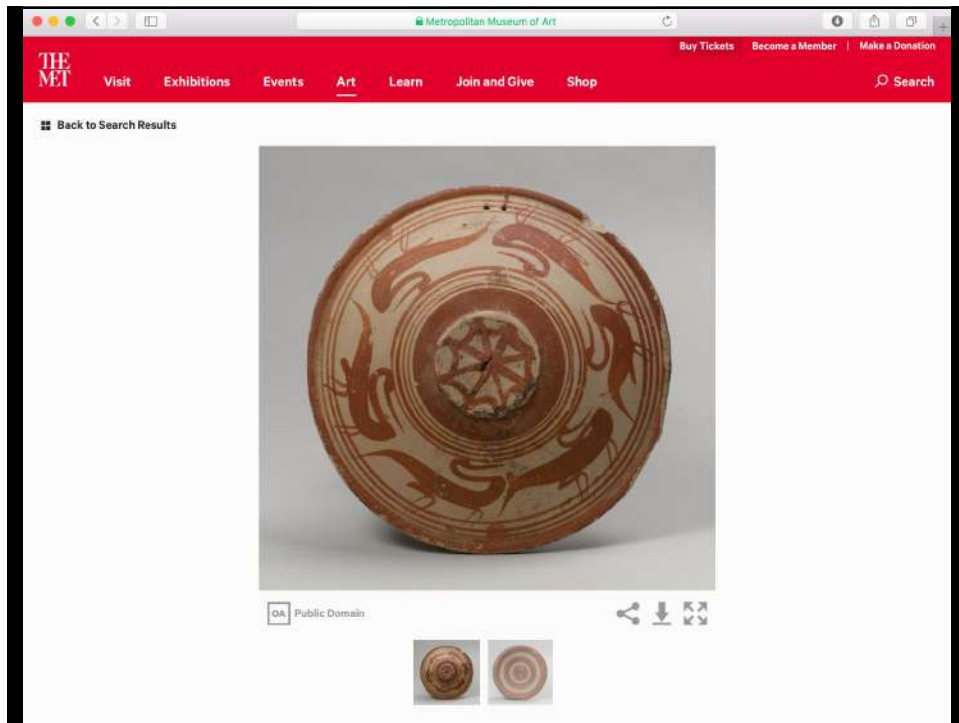
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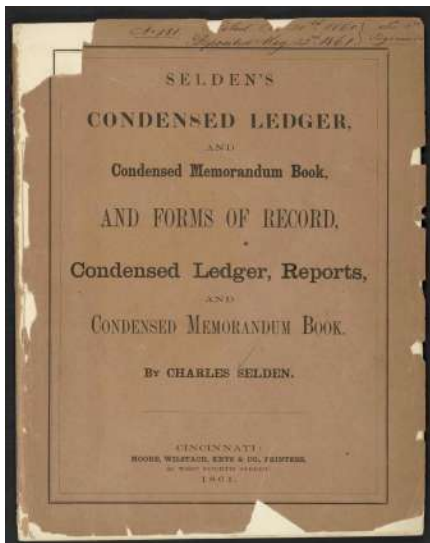
Public Domain



The Associated Press has sportswriters from various organizations rank college football teams and publishes the result as the AP Top 25 College Football Poll. Does AP have a copyright in the list of 25 teams such that unauthorized people cannot reproduce the list?

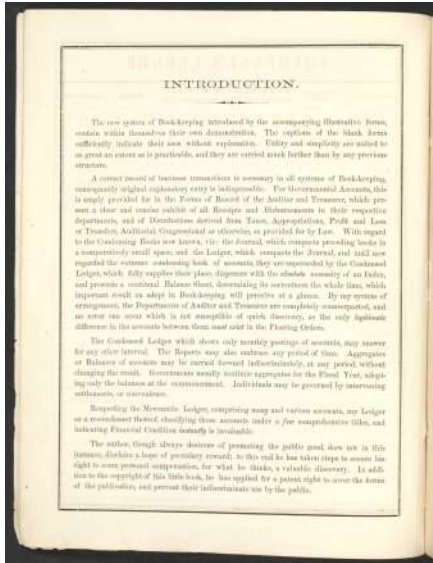


Does an association of universities and bowl game organizers need the permission of the AP to use the AP poll in determining who should play in the national championship game (or playoffs)?



Baker v. Selden, 101 U.S. 99 (1879)

Selden's
Condensed
Ledger



Baker v. Selden, 101 U.S. 99 (1879)

Selden's Condensed Ledger

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Baker v. Selden, 101 U.S. 99 (1879)

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Baker v. Selden, 101 U.S. 99 (1879)

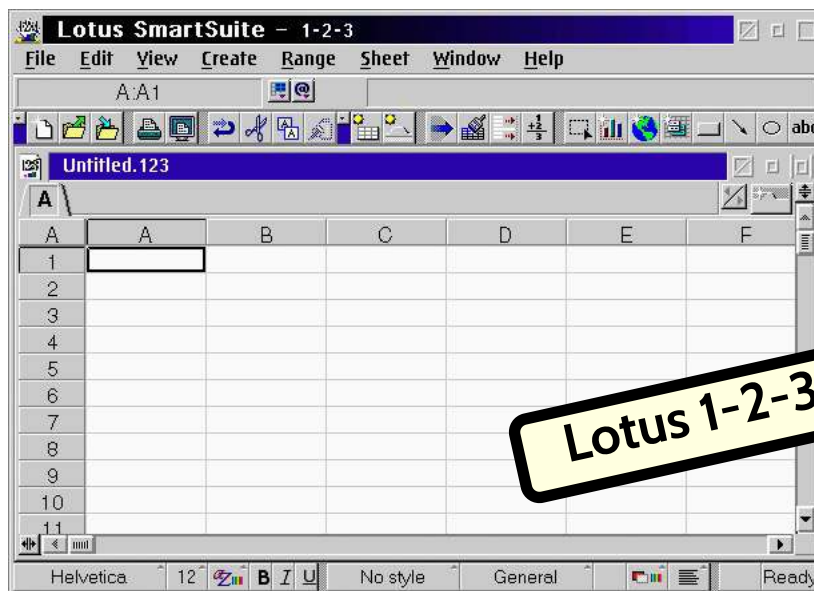
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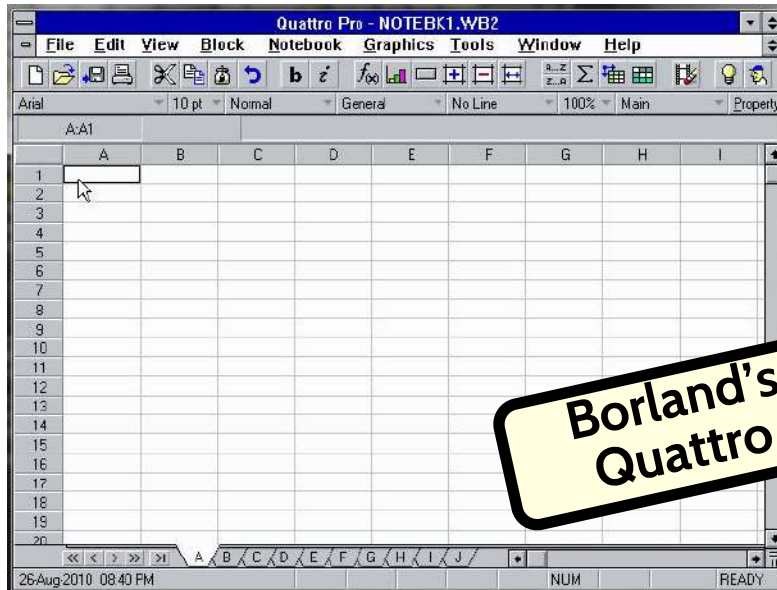
Lotus v. Borland (1st. Cir. 1995)



Lotus v. Borland (1st. Cir. 1995)

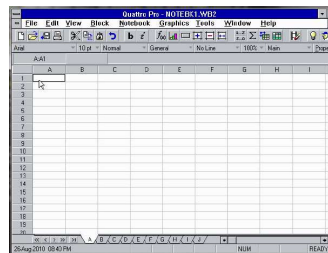


Lotus v. Borland (1st. Cir. 1995)



Lotus v. Borland (1st. Cir. 1995)

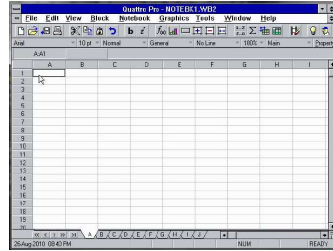
Borland copied Lotus's menu command hierarchy "so that spreadsheet users who were already familiar with Lotus 1-2-3 would be able to switch to the Borland programs without having to learn new commands or rewrite their macros." **Did Borland infringe Lotus's copyright?**



- A. Yes
- B. No
- C. i.d.k.
- D. I'm lost.

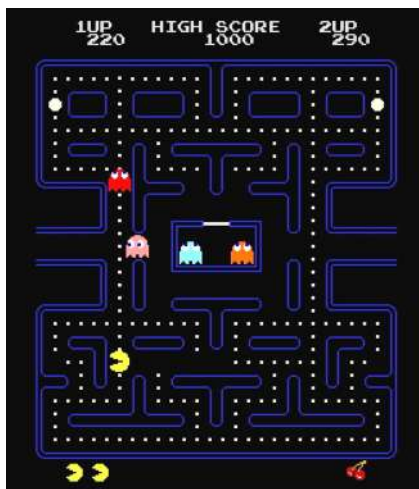
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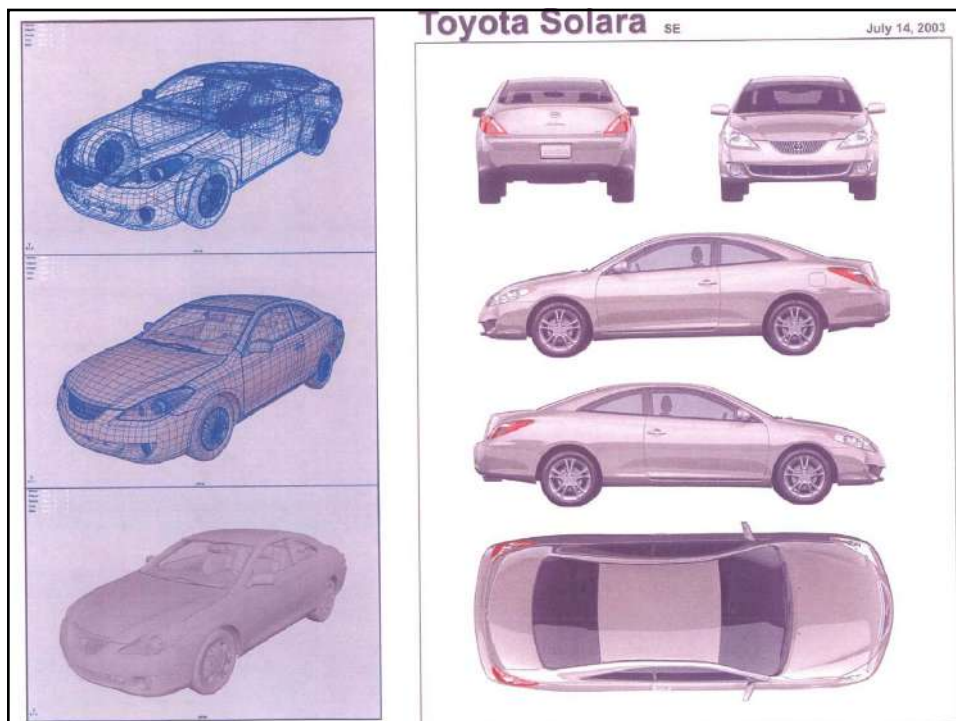


No. Held that what was copied was an uncopyrightable method of operation.

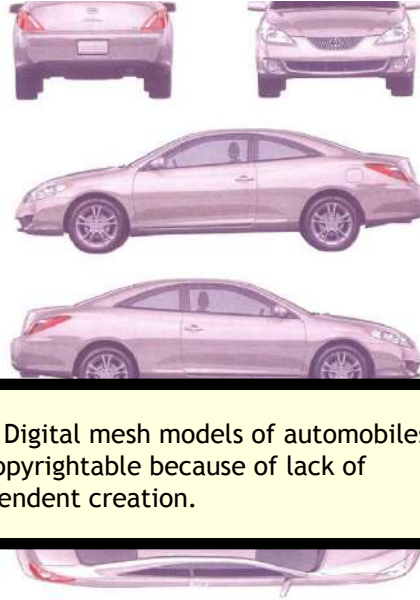
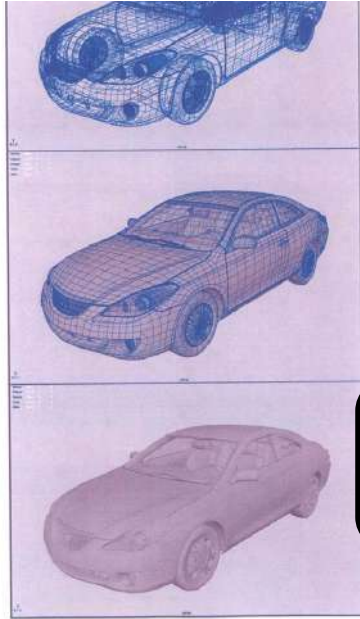
Atari Inc. v. North Am. Phillips (7th Cir. 1982)



Atari Inc. v. North Am. Phillips (7th Cir. 1982)



**Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc.
528 F.3d 1258 (10th Cir. 2008)**



Held: Digital mesh models of automobiles not copyrightable because of lack of independent creation.