

# Copyrightable Subject Matter in the Next Great Copyright Act

R. Anthony Reese  
Chancellor's Professor



SCHOOL OF LAW  
UNIVERSITY of CALIFORNIA • IRVINE

# 1790-1909

- 1790: books, maps, charts
- 1802: historical or other prints
  - 1831: any print, cut, engraving
- 1831: musical compositions
- 1856: dramatic compositions
- 1865: photographs & negatives thereof
- 1870: painting, drawing, chromo, statute, statuary, models & designs intended to be perfected as works of the fine arts

# 1909 Act

“The works for which copyright may be secured under this title shall include all the writings of an author.” (§4)

# 1909 Act Registration Classes (§5)

- books, including composite & cyclopaedic works
- periodicals, including newspapers
- lectures, sermons, addresses for oral delivery
- dramatic & dramatico-musical compositions
- musical compositions
- maps
- works of art, models, or designs for works of art, and reproductions of a work of art
- drawings or plastic works of a scientific or technical character
- photographs
- prints or pictorial illustrations
- motion picture photoplays & motion pictures other than photoplays (1912)

# 1976 Act

- “works of authorship”
- works of authorship include
  - literary works
  - musical works
  - dramatic works
  - pantomimes & choreographic works
  - pictorial, graphic & sculptural works
  - motion pictures and other audiovisual works
  - sound recordings
  - architectural works (1990)

# Principle 1

Expressly enumerate all categories of subject matter protected under the statute.

# 1976 Act

- “works of authorship”
- works of authorship include
  - literary works
  - musical works
  - dramatic works
  - pantomimes & choreographic works
  - pictorial, graphic & sculptural works
  - motion pictures and other audiovisual works
  - sound recordings
  - architectural works (1990)

























# 1976 Act

- “works of authorship”
- works of authorship include
  - literary works
  - musical works
  - dramatic works
  - pantomimes & choreographic works
  - pictorial, graphic & sculptural works
  - motion pictures and other audiovisual works
  - sound recordings
  - architectural works (1990)

# Principle 1

Expressly enumerate all categories of subject matter protected under the statute.



# 1909 Act

“The works for which copyright may be secured under this title shall include all the writings of an author.” (§4)

# 1976 Act

- “works of authorship”
- works of authorship include
  - literary works
  - musical works
  - dramatic works
  - pantomimes & choreographic works
  - pictorial, graphic & sculptural works
  - motion pictures and other audiovisual works
  - sound recordings
  - architectural works (1990)

## Principle 2

Protect compilations and derivative works only if they fall within one of the enumerated categories of protected subject matter.







# Principle 3

Define each enumerated category  
of protected subject matter.





**THE GREAT WALLACE SHOWS**  
**COLOSSAL 3 RING CIRCUS, 2 ELEVATED STAGES.**

**FINEST HORSES OF ANY SHOW ON EARTH**  
**MUSEUM AND MENAGERIE**  
**THE HIGHEST CLASS CIRCUS IN THE WORLD**

**THE RENOWNED STIRK FAMILY.** WHOSE FAME FOLDS IN THE ORB 'O THIS EARTH. THE GLASS OF FASHION AND THE MOLD OF FORM. THE HIGHEST OF HIGH CLASS ACTS. MARVELOUS AND ORIGINAL EVOLUTIONS BY ADULT AND JUVENILE EXPERTS. AN ENORMOUSLY EXPENSIVE FEATURE OF THE WORLD'S BEST SHOW.

## Principle 4

Don't protect all "Writings" of  
"Authors" within the Constitution's  
Copyright Power.

# Thank You

## Photo Credits (Creative Commons licensed)

- Yoga: Eli Christman (Flickr)
- Perfumes: Alastair Dunning (Flickr)
- Culinary Dish: Jacques Lameloise (Wikimedia)
- Runway Models: Art Comments (Flickr)
- Golf Course: Andrea Pacelli (Flickr)
- Roller Coaster: Kjersti Holmang (Wikimedia)
- Elvish script: Morelen (Flickr)
- Hestercombe Gardens; Sand Castle: xlibber (Flickr)
- Synchronized Swimmers: Kevin Hamm (Flickr)
- Zoo Exhibit: Kevin1086 (Wikimedia)