Introduction

Copyright Law – Professor Grimmelmann
Class 1 – August 25, 2008

Today

- Welcome
- Administrata
- Syllabus
- Theory
- A little history

Administrata

If you haven't taken IP

- You probably shouldn't be in this course
- But that's not a hard-and-fast rule
- Talk to me at the end of the class

Class meetings

- Class time is valuable, and so is yours
- Let me know if you'll be away
- I cold-call, mostly at random
- I answer as many questions as possible
- Be excellent to each other
- Small classes are more fun

Online resources

- james.grimmelmann.net
  - Syllabus
  - Slides
- Blackboard
  - Class audio recordings

Materials

- COOL Copyright
  - This is my favorite casebook
  - Check out http://coolcopyright.com
- Supplement
  - Read the statute closely
  - Bring it to class!

Grading

- 24-hour take-home self-scheduled final
  - Page limit
  - Goal: 6 hours actual work time
  - This time for sure!
- Usual ± ⅓ for participation
- 13 students = no mandatory curve!

Me

- Office: 40 Worth St., room 706
- Office Hours: Tuesdays 9:00–11:00 AM
  - Or any time by appointment
- james.grimmelmann@nyls.edu
  - Say "Copyright Course" so I see it
- (212) 431-2864

The Syllabus

New and improved!

The grand overview

- Introduction (1 class)
- Copyrightability (5 classes)
- The mechanics of copyright (8 classes)
- Infringement (9 classes)
- Fair use (3 classes)
- Beyond traditional copyright (2 classes)

Copyrightability

- Originality
- Idea/expression
- Derivative works
- Subject matter
- Boundary cases

Mechanics of copyright

- Authorship
- Works for Hire
- Fixation
- Formalities and Term
- Transfers
- The copyright lawsuit
- Remedies
- Copyright practice

Infringement

- Proof of copying
- Substantial similarity
- Public distribution
- Public display and performance
- Derivatives
- The music industry
- Direct, vicarious, and contributory infringement
- Inducement infringement (herein of peer-to-peer)
- Section 512 (and a little criminal infringement)

Fair Use

- Transformation of the original
- Transformation of purpose
- Market failure

Beyond copyright?

- DRM and the DMCA
- Preemption

Things we won’t cover

- International copyright law
- Comparative copyright law
- Copyright policy and reform
- Constitutional limits on copyright
- The 1909 Act
- The dense parts of the 1976 Act

Some History

Key dates (Europe)

- ca. 1439: Printing press
- 1557: Stationer's charter
- 1710: Statute of Anne
- 1774: *Donaldson v. Beckett*

Key dates (U.S.)

- 1787: Intellectual Property Clause
- 1790: first Copyright Act
  - …small revisions in the 19th century…
- 1909 Act
- 1976 Act

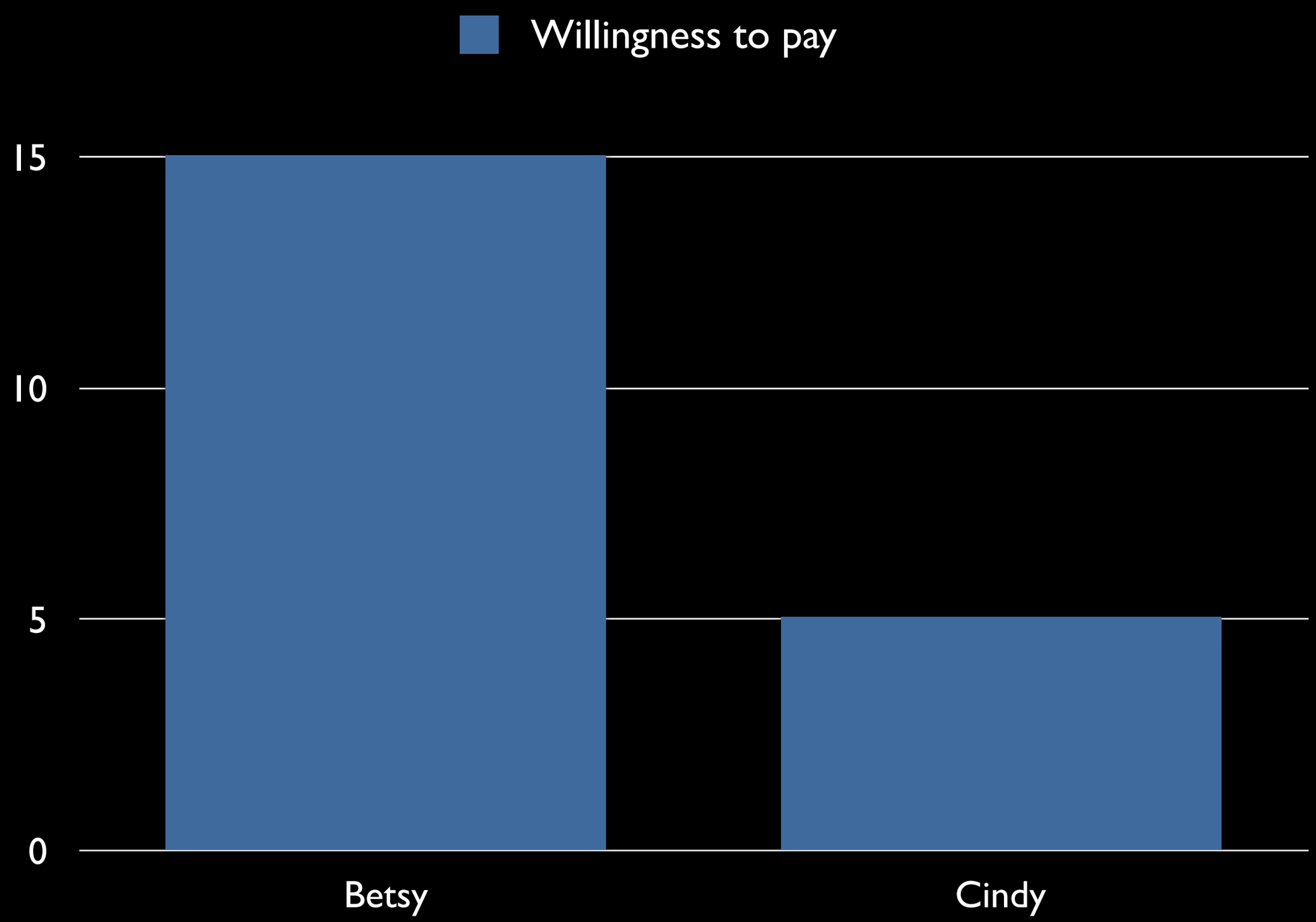
Theories of Copyright

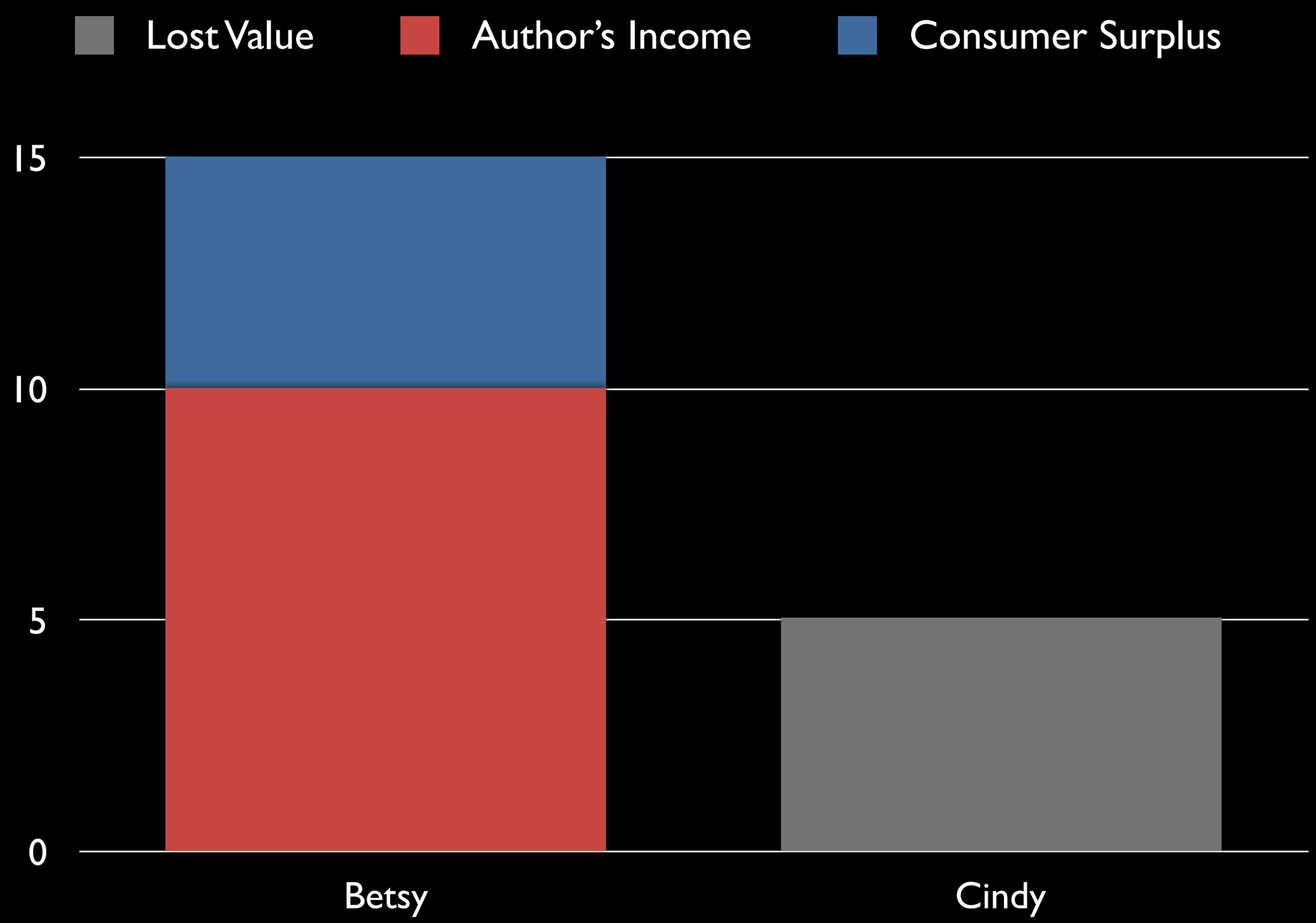
Five Theories

- Utilitarian
- Labor
- Personality
- Democratic
- Culture-shaping

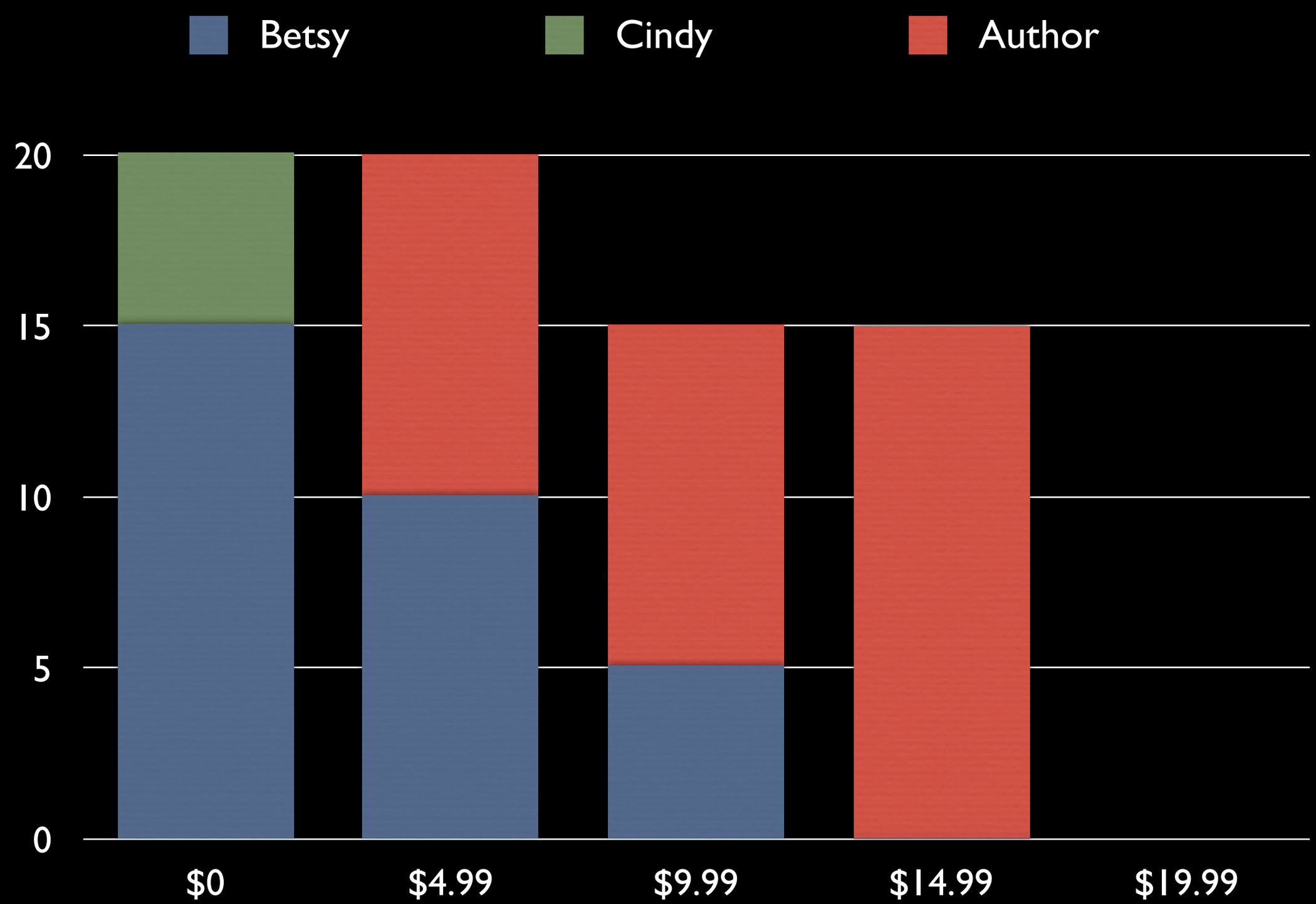
(1) Utilitarian

- Creative works are public goods
- Without copyright, copying is rampant
  - No incentive to create!
- But exclusive rights create artificial scarcity
- Thus: the incentive-access tradeoff


Willingness to pay
15
10
5
0
Betsy
Cindy


Lost Value
Author's Income
Consumer Surplus
15
10
5
0
Betsy
Cindy

	Price: $0	Price: $4.99	Price: $9.99	Price: $14.99	Price: $19.99
Author	$0	$9.98	$9.99	$14.99	$0
Betsy ($15)	$15	$10.01	$5.01	$0.01	$0
Cindy ($5)	$5	$0.01	$0	$0	$0
Total	**$20**	**$20**	**$15**	**$15**	**$0**


Betsy
Cindy
Author
20
15
10
5
0
$0
$4.99
$9.99
$14.99
$19.99

Price discrimination?

- Betsy would pay $15
  - So the price to her is $14.99
- Cindy would pay $5
  - So the price to her is $4.99

Alternative Compensation Systems

- E.g., prizes, subsidies, compulsory licenses
- How might one work?
  - Tax Betsy and Cindy $4 each
  - (What if it were $6?)
  - Give revenues to Author
  - Give Betsy and Cindy free access

	(C)	Price Discrimination	Compulsory License
Author	$14.99	$19.98	$8
Betsy ($15)	$0.01	$0.01	$11
Cindy ($5)	$0	$0.01	$1
Total	**$15**	**$20**	**$20**

(2) Labor

- This is a *moral* theory, not an economic one
- "Natural" rights
- Give people what they deserve
- "Enough and as good" for others
  - What does that mean for creative works?

(3) Personality

- Another *moral* theory
  - And the root of "moral rights"
- What kinds of rights does it justify?
  - Economic ones?
  - Attribution?
  - Integrity?

(4) Democracy

- Copyright as enabler of free speech
  - Incentive to create, exchange ideas
  - Non-censorship (cf. Stationers' Guild)
- Copyright as enemy of free speech
  - It's a right to keep people from speaking
  - Fair use and other "safety valves"

(5) Culture-shaping

- Law isn't neutral and can't be
- What kind of culture does our copyright law promote?
- What kind of culture should it promote?
- Does granting © in a type of work encourage or discourage its production?

(0) Sharing

- "If my poems and painting, which are only small efforts to me, should prove to be of some aid to the forgers, what is there for me to grudge about."
- Is copyright *bad* for creativity?

Next time

What's copyrightable?