Introduction

Copyright Law – Professor Grimmelmann
Class 2 – August 27, 2008

Today

- What is originality?
- How much originality is enough?

Treatises

- *Nimmer* — heavily cited, stodgy
- *Patry* — brilliant, cranky
- *Goldstein* — readable, maximalist
- *Leaffer* — concise, thin

- My second-favorite casebook: Joyce *et al.*

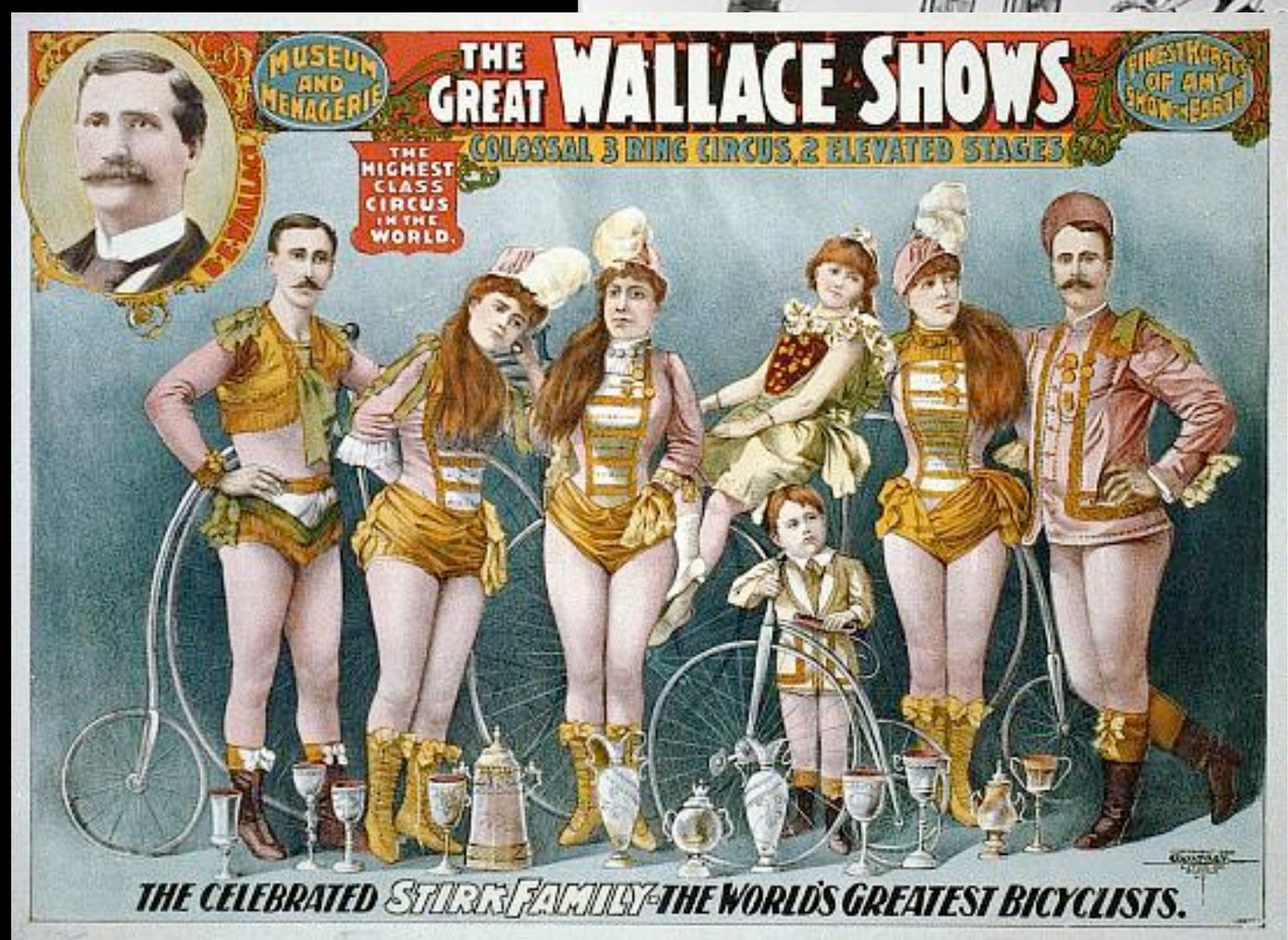
Oscar Wilde No.18

Napoleon Sarony

Burrow-Giles (1884)

- Two distinct objections to copyright in the photograph of Oscar Wilde
  - Photographs are proper *subject matter*
  - Photographs aren't *original*
- The Supreme Court says, "They are, and they can be." Why?
- What makes *Oscar Wilde No. 18* original?

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
STIRK FAMILY
B.E. WALLACE
LY. 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
ERTS. AN ENORMOUSLY EXPENSIVE EATURE OF THE WORLD'S BEST SHOW.


MUSEUM AND MENAGERIE
THE GREAT WALLACE SHOWS
FINEST HORSES OF ANY SHOW ON EARTH
COLOSSAL 3 RING CIRCUS, 2 ELEVATED STAGES
THE HIGHEST CLASS CIRCUS IN THE WORLD.
B.E. WALLACE
THE CELEBRATED STIRK FAMILY-THE WORLD'S GREATEST BICYCLISTS.

Bleistein (1903)

- Three non-discrimination principles
  - Artistic merit
  - Commercial purpose
  - Subject
- What makes these posters original?
- Justice Holmes at his most eloquent

Unpack this for me:

- "Others are free to copy the original. They are not free to copy the copy. . . . The copy is the personal reaction of an individual upon nature. Personality always contains something unique. It expresses its singularity even in handwriting, and a very modest grade of art has in it something irreducible, which is one man's alone."

And this:

- "It would be a dangerous undertaking for persons trained only in the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits. At the one extreme, some works of genius would be sure to miss appreciation."

And this:

- "Yet if they command the interest of any public, they have a commercial value—and it would be bold to say that they have not an aesthetic and educational value—and the taste of any public is not to be treated with contempt. . . . That these pictures had their worth and their success is sufficiently shown by the desire to reproduce them without regard to the plaintiffs' rights."

Original?

Alfred Bell (1951)

mezzotint of painting

Bridgeman Art Library (1999)

photograph of painting

difference between a mezzotint and a photo?

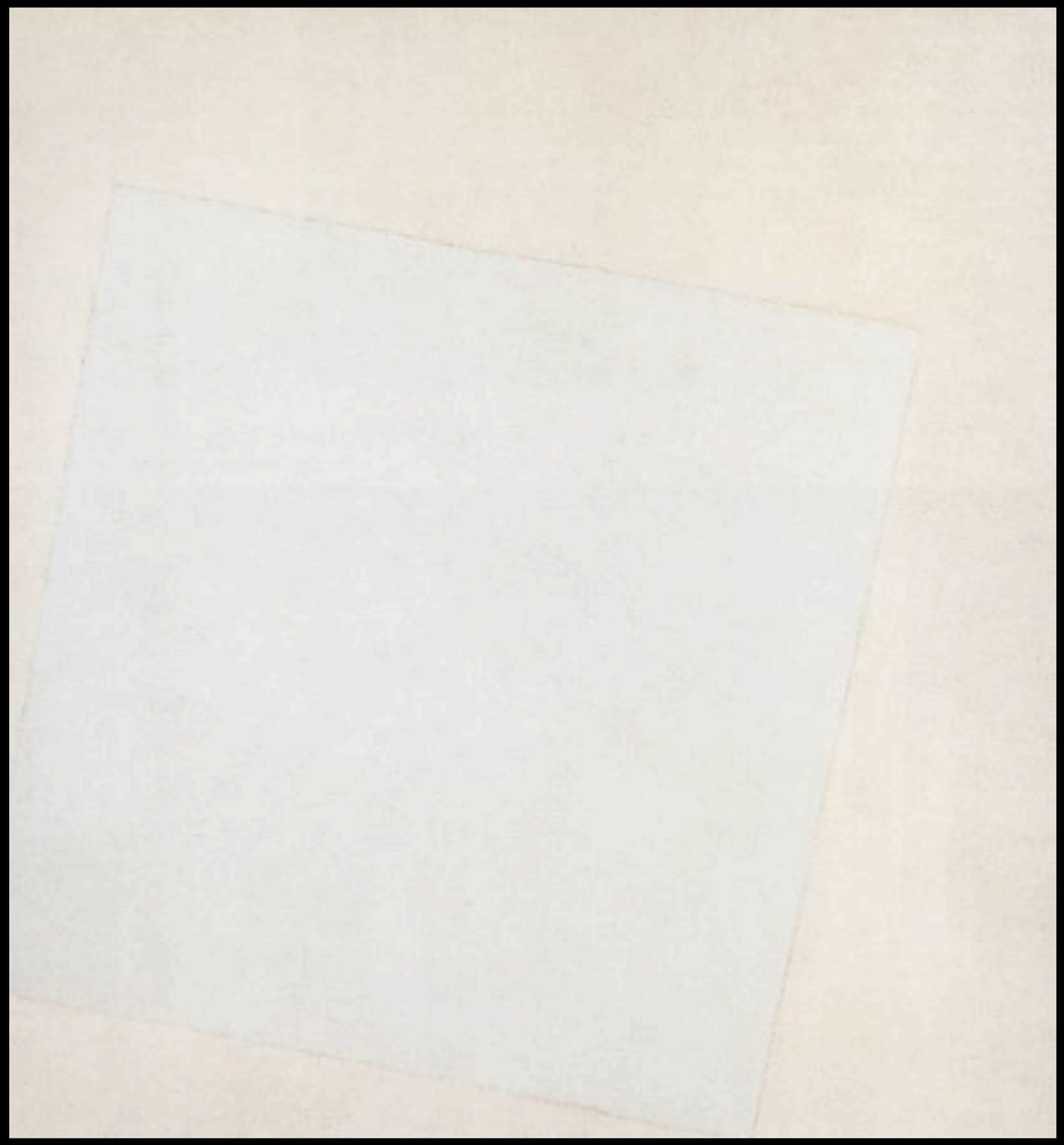
- distinguishable variation to viewer?
- amount of work by author?
- amount of skill used by author?
- change in medium?
- …and how about unintentional creation?

Original?

Lolcat

Original?

Kazimir Malevich
Suprematist Composition: White on White
(1917)



Original?

John Cage,
4’33”

Next time

Ideas and expressions