Transactions

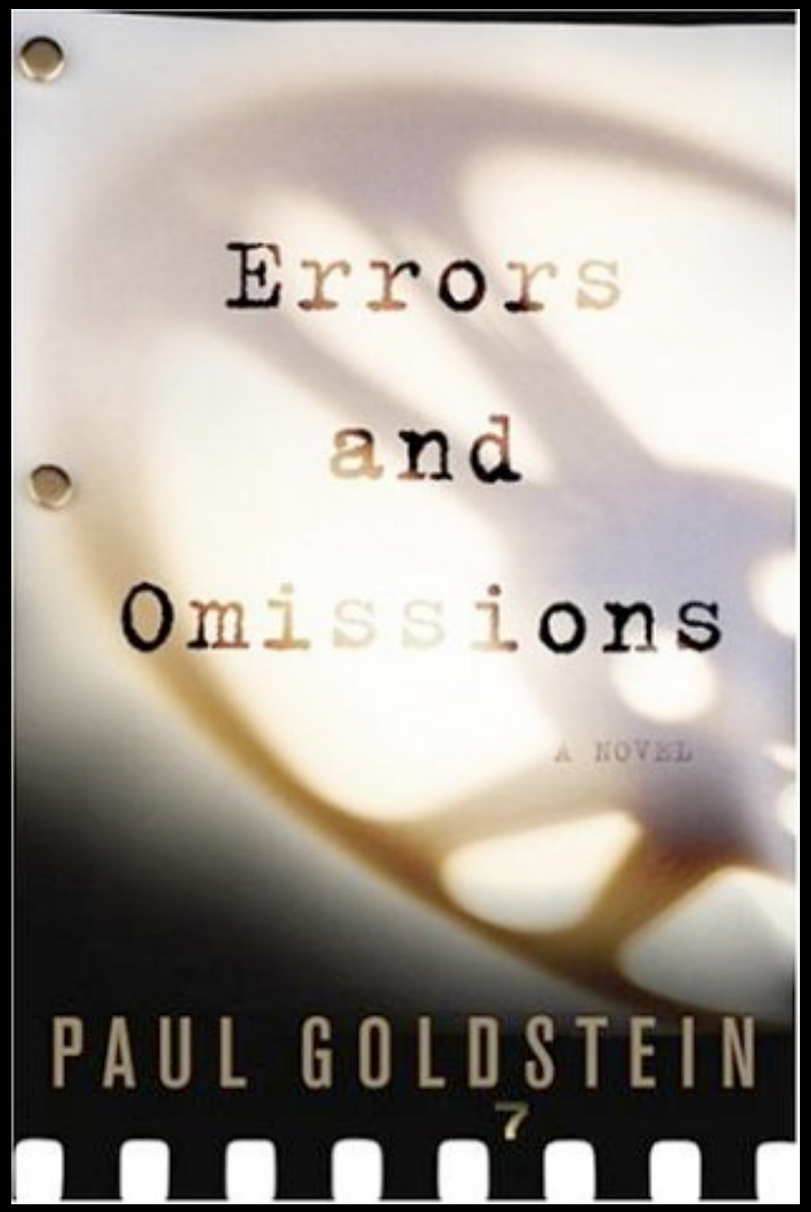
Copyright Law – Professor Grimmelmann
Class 11 – October 7, 2008

the system

- § 202: a copyright is an intangible property right, distinct from ownership of copies
  - § 201(d)(2): that right can be divided
  - § 201(d)(1): that right can be transferred
- § 204: statute of frauds
- § 205: recording system

licenses

- licenses can be *exclusive* or *non-exclusive*
- repeat after me:
  - exclusive license = transfer of ownership
  - transfer of ownership requires a writing
- any desired division of ownership is okay
  - industries have conventional divisions



A thriller about formalities of transfers under the Copyright Act.

No. Really.

McDon
McDonald's
HAMBURGERS

Effects Associates

- joint work?
- work made for hire?
- why doesn't the oral arrangement suffice?
- why doesn't delivery of the negative suffice?
- what argument *does* work? why?

some brass tacks

- as a business reality, is this the right result?
- what did the parties do wrong?
- how could lawyers have helped? why weren't there lawyers involved? what could lawyers do to respond to that concern?
- what rights do the parties now have?

implied licenses

- if I write a blog post, do you infringe if you point your browser at the page?
  - what if you post it to your own blog?
- when you submit your final exam, do I infringe by printing a copy?
  - what if I submit it to an anti-plagiarism service that keeps a copy?

the "new use" problem

- it's easy to transfer a complete copyright
  - say: "all right, title, and interest"
- transfer anything less, and there's necessarily a drafting issue
  - this is first-year contracts, *except that*
  - it's hard to predict new technologies

Boosey & Hawkes

- what was the work?
- what was the authorized use?
- what language did the contract use?
- what's the unanticipated technology?
- how would you draft the contract *now*?
- how could you have drafted it *then*?

Random House

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cases compared

- which technology was harder to forsee?
- were these transfers or licenses?
- are there derivative-work reliance issues?
- which terms did the parties negotiate over? which ones did they take for granted?
- what result maximizes access for these works? what result creates good incentives?

termination rights

- under the 1976 Act, there are no renewals, but Congress wanted to keep the author's ability to renegotiate terms
- § 203: terminate post-1978 transfers in years 36–40 after transfer
- § 304: terminate pre-1978 transfers in years 57-61 after copyright vests

policy of transfers

- the derivative work problem: what is it, and how did Congress respond to it?
- what do the termination of transfers provision do for freedom of contract?
  - for predictability of ownership?
  - for open source?
  - for authors?

next time

litigation