Works Made for Hire

Copyright Law – Professor Grimmelmann
Class 8 – September 23, 2008

works made for hire

- 101(1): "a work prepared by an employee acting within the scope of his or her employment"
  - 201(b): who's the initial owner, and how far can this be varied by contract?
- 101(2): For everyone else, who's the initial owner, and how far can this be varied by contract

employees and
employers

Third World America

common law agency factors

- skill required
- source of tools
- location of work
- duration of relationship
- can asisgn more work?
- discretion over when and how long to work
- method of payment
- role in hiring assistants
- hired party in business?
- employee benefits?
- tax treatment?

application

- Is *Third World America* a 101(1) work made for hire?
- Is the CSALIB program a 101(1) work made for hire?
- Which factors are significant?
- Is either a 101(2) work made for hire?
- Is either a joint work?

Avtec v. Peiffer

- Is Peiffer an employee?
- Did he act within the scope of his employment?
  - How do we tell?
  - (Was this an issue in *CCNV* and *Aymes*?)
- How should employers and employees handle these issues in their contracts?

A "teacher exception"?

- Who initially owns the copyright in my slides? Who should?
- How about in my lecture notes to myself?
- And in the scholarly articles I write?
- Should NYLS and I change these rules in my contract?

101(2) and specially commissioned works

101(2)'s requirements

- The work must fit within one of nine statutorily-specified categories
- The parties must "expressly agree in a written instrument signed by them" on work made for hire status. (When?)
- N.B.: This is for independent-contractor works, not employee works

The 101(2) categories

- Contributions to collective works
- Audiovisual works
- Translations
- "Supplementary works"
- Compilations
- Instructional texts
- Tests and test answers
- Atlases

Notice how narrow the categories are.

that last paragraph

- in 1999, Congress added “sound recordings” to the list
- in 2000, Congress deleted them
- what’s at stake?
- why add the “this never happened” language?
- will courts honor it?

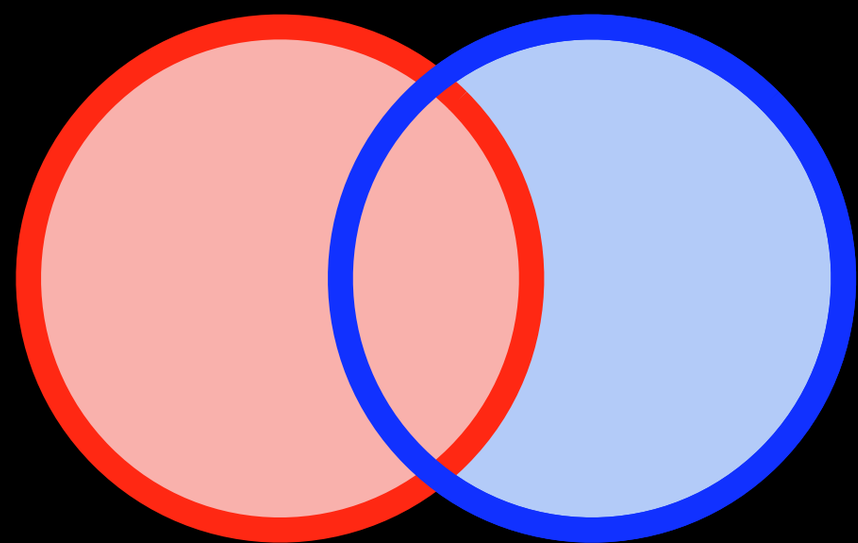
collective works

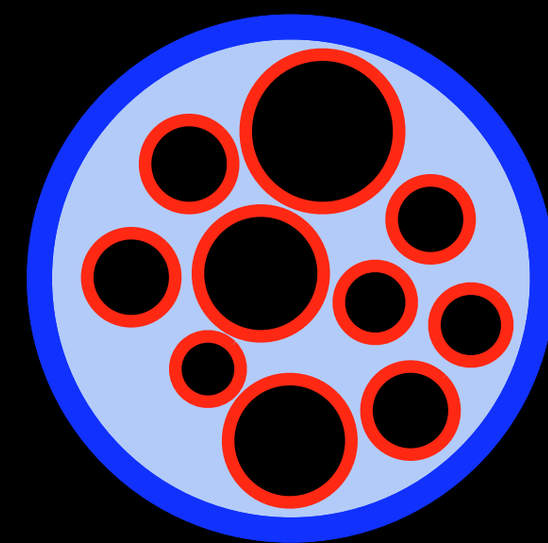
few

many

derivative work

compilation





few

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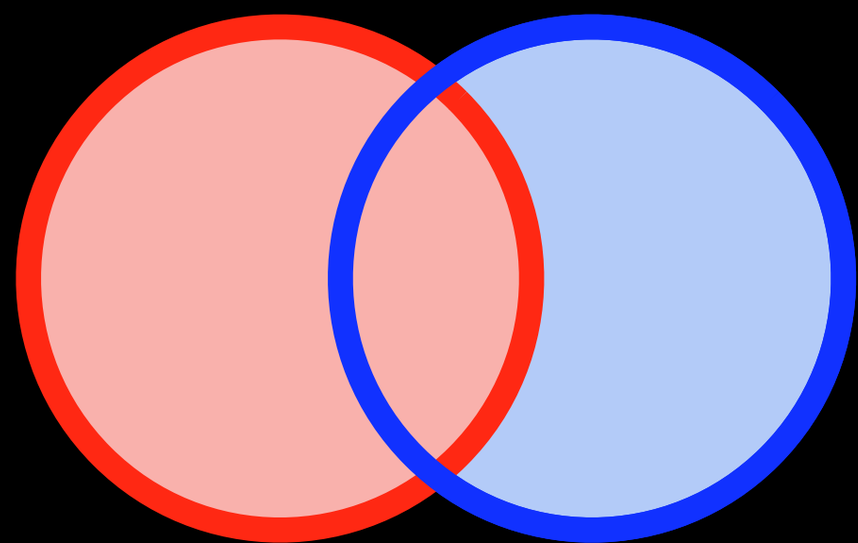
derivative work



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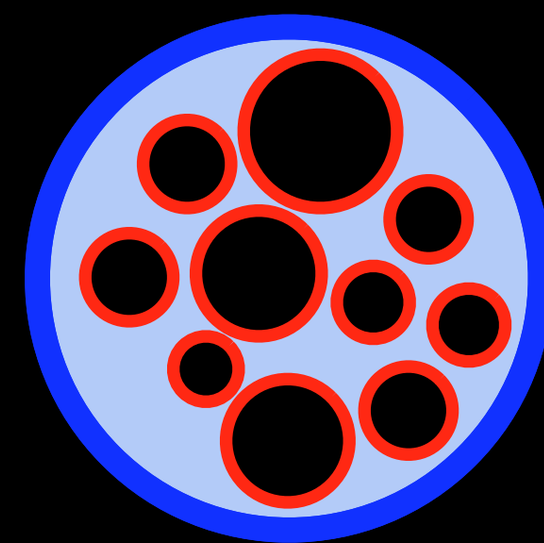
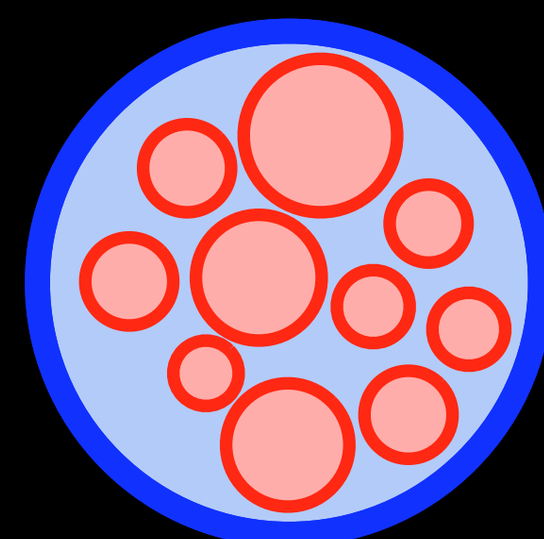


collective work



collective work rules

- authors of individual works own copyright in those works
- editor of collection owns copyright in the collective work as a whole
  - what kind of copyright is this?
- can these rules be varied by contract?

The *Tasini* context

- Tasini et al. write freelance for the *Times*
  - Joint works?
  - 101(1) employee works made for hire?
  - 101(2) specially commissioned works?
  - Derivative works? Compilations?
  - Collective works?

Tasini in context

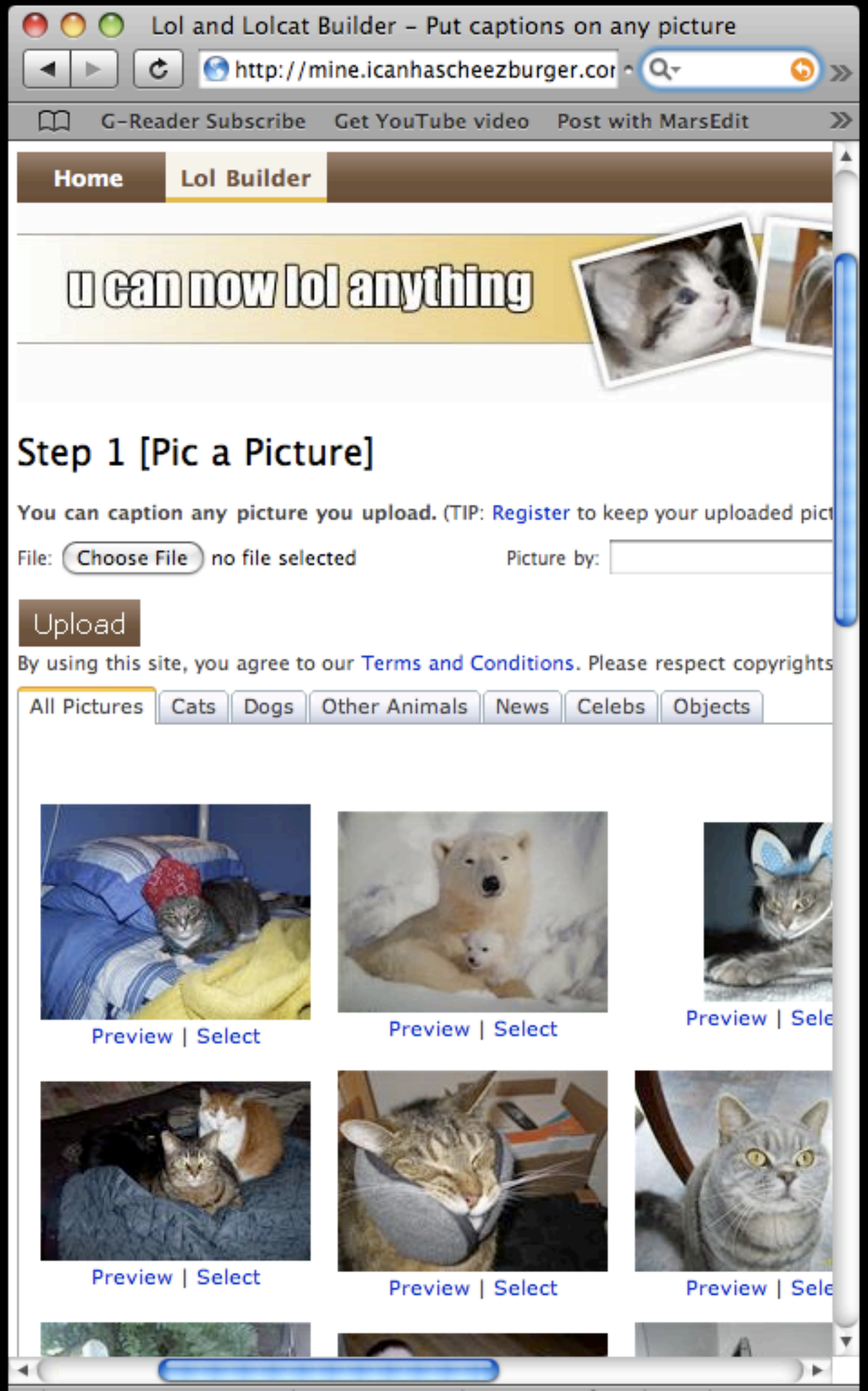
- The *Times* then puts the articles on LEXIS
- At issue: the meaning of "revision." Why?
- Microfiche, file room, floppy disk, or none of the above?

Tasini's consequences

- Why didn't Tasini and the *Times* address this situation in their contract? What will future Tasinis do?
- What'll happen if Tasini wins? The *Times*?
- How do you feel about the result textually? In terms of metaphors? On policy grounds?

Who owns the copyright in the outputs?

lolcat builder



next time

fixation, intuitive and not