Authorship

Copyright Law – Professor Grimmelmann
Class 7 – September 16, 2008

“author[s],” “owner[s],”
and “original work[s]”

Is there originality?

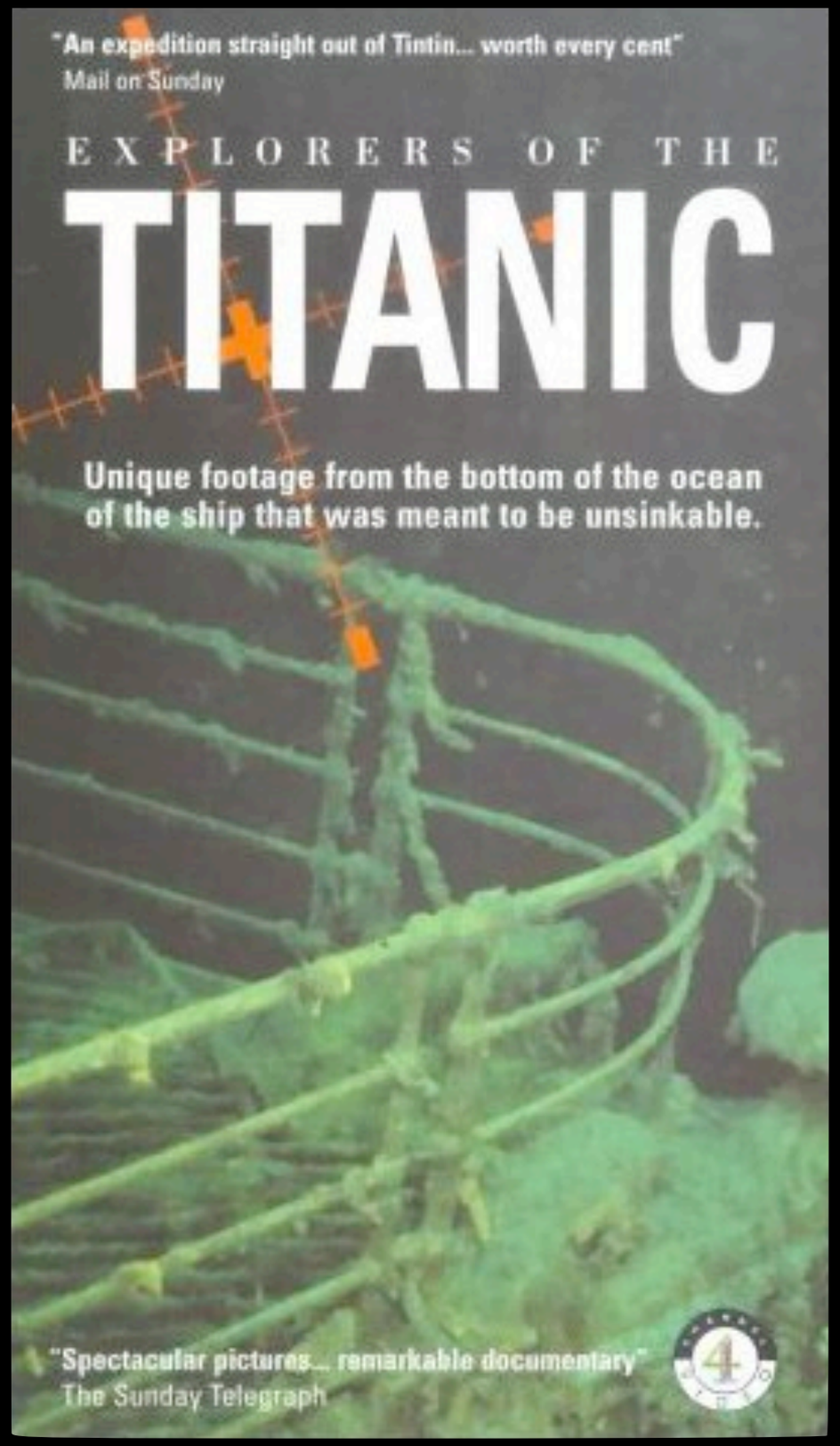
Who owns the copyright?

Must there be a copyright?

Does everything "original" have an "author?"

Could there be a copyright without an author?

The obvious answers are right, but they're not obviously right.

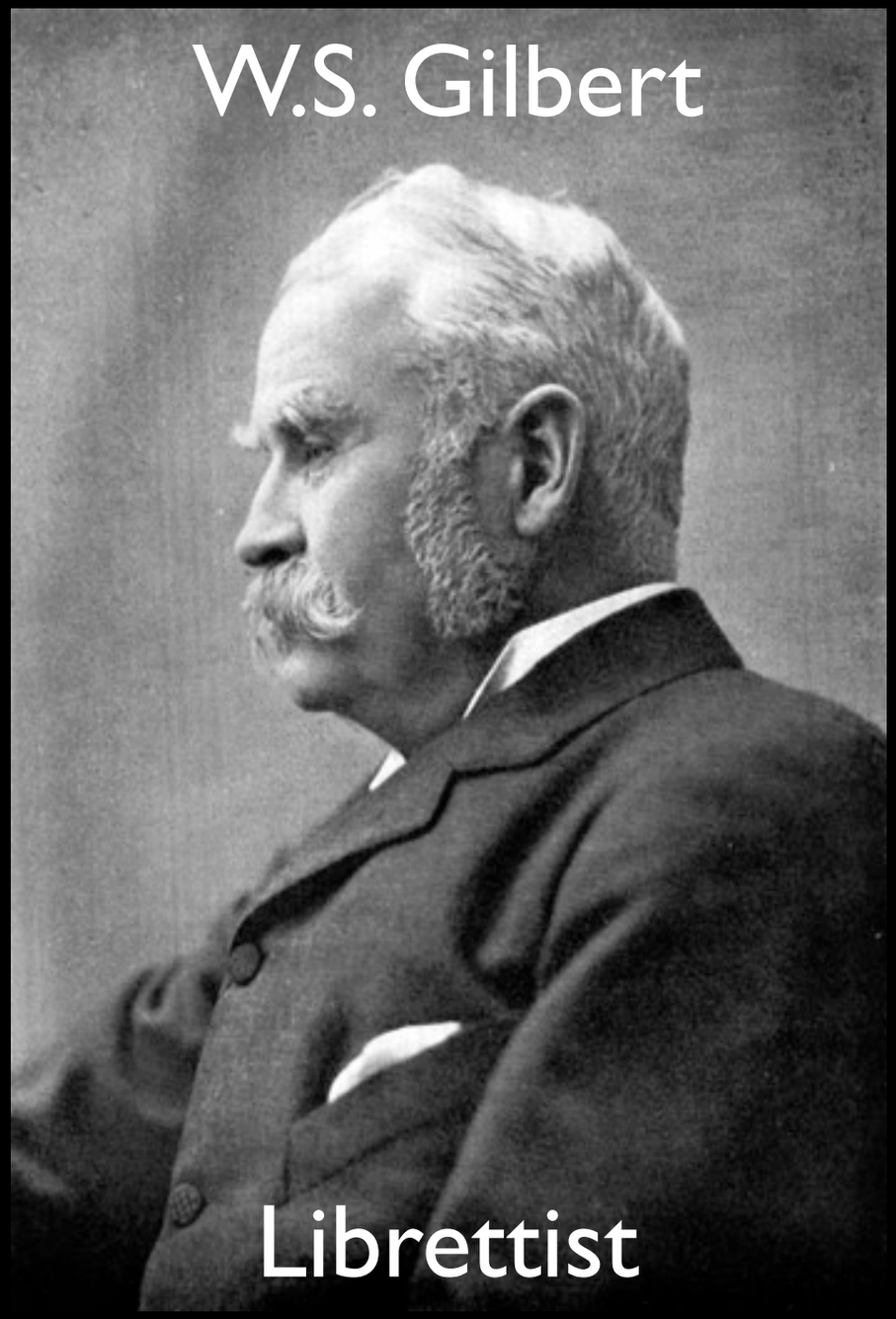


Who's the author? Oscar Wilde? Napoleon Sarony? Both? Neither?

Who owns the copyright?

A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

“interdependent” joint works



"inseparable" joint works

Medieval Spawn

from *Gaiman v. McFarlane*, 360 F.3d 644 (7th Cir. 2004)

Nimmer vs. Goldstein

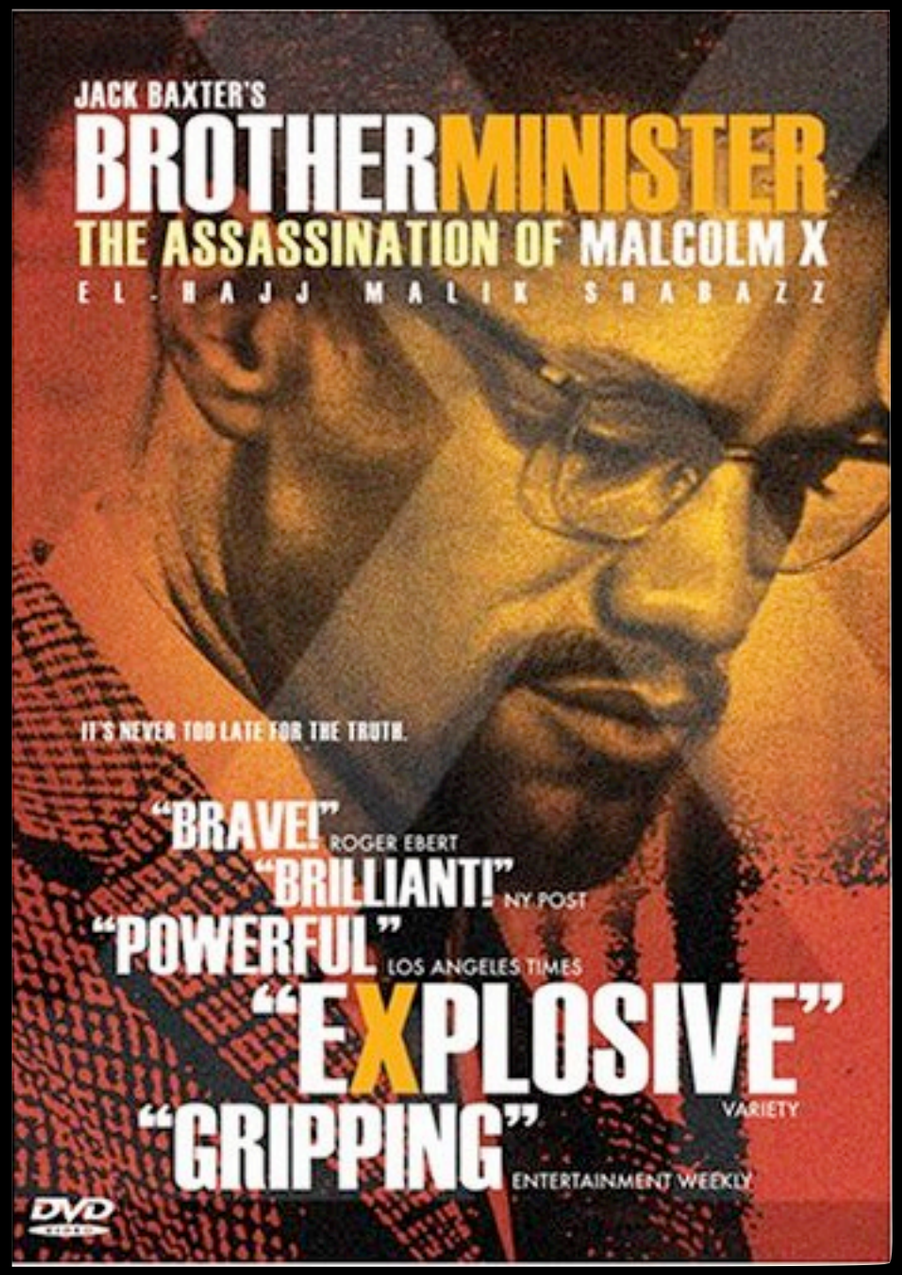
- Nimmer: final result must be copyrightable
- Goldstein: each author's contribution must be copyrightable
- For interdependent joint works, Goldstein is clearly right, and followed in the courts
- For inseparable joint works, "independently copyrightable" is misleading but not wrong

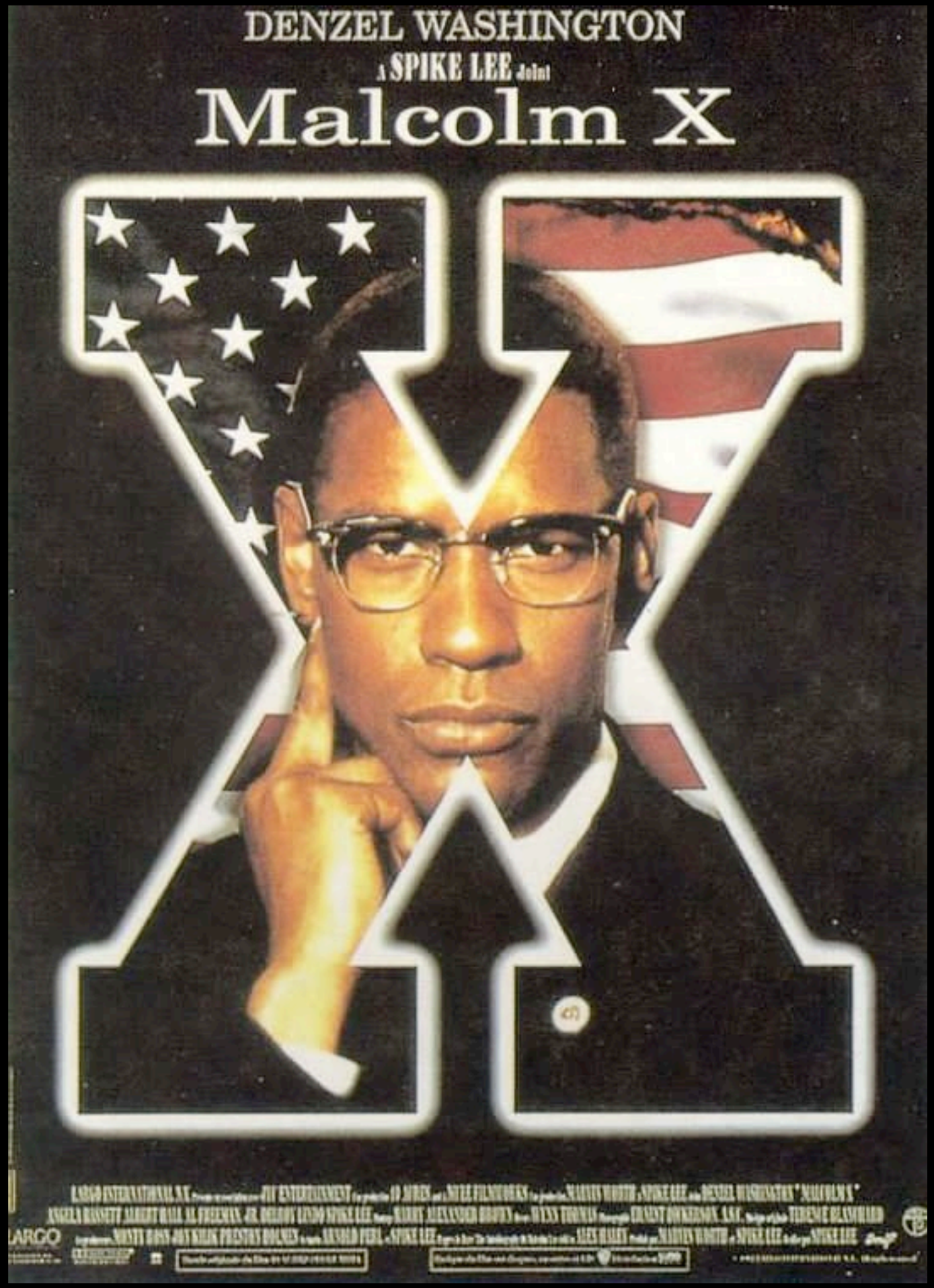
After *Erickson* . . .

- Nathaniel tells Herman, "You should write a book about a whale."
- George sets Ira's lyrics to music
- Editor makes line-by-line typographical corrections to Author's manuscript
- Editor cuts Filmmaker's forty hours of raw footage into a half-hour documentary

"The authors of a joint work are coowners..."

- If Trinity performs the plays, infringement?
- If Trinity grosses $100,000 and nets $5,000 profit from performances, what result?
- If Trinity gives a license to Dramatists' Play Service, can Erickson sue DPS? Sue Trinity?
- Can Trinity convey the copyright to a third party? What can it convey? To Erickson?


JACK BAXTER'S
BROTHERMINISTER
THE ASSASSINATION OF MALCOLM X
EL-HAJJ MALIK SHABAZZ
IT'S NEVER TOO LATE FOR THE TRUTH.
"BRAVE!" ROGER EBERT
"BRILLIANT!" NY POST
"POWERFUL" LOS ANGELES TIMES
"EXPLOSIVE" VARIETY
"GRIPPING" ENTERTAINMENT WEEKLY
DVD


DENZEL WASHINGTON
A SPIKE LEE Joint
Malcolm X

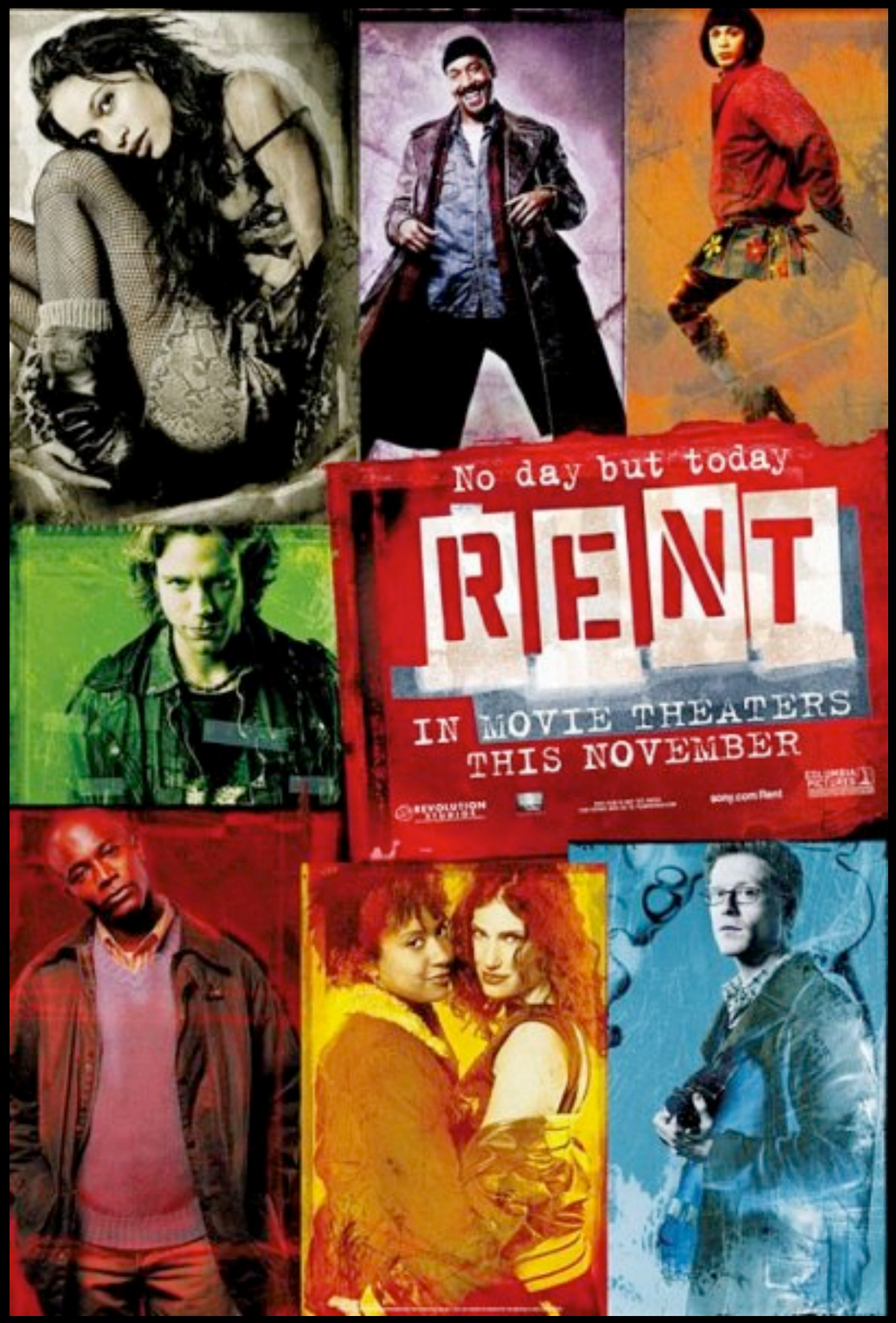
Aalmuhammed v. Lee

- Which lawyer messed up?
- Did Aalmuhammed supply copyrightable expression?
- Did his contributions merge with Warner Brothers's into a unitary whole?
- What, then, is missing?
- And what's the statutory hook?

“intent to be joint authors”

- That’s in a lay sense, not a legal one
- Look for:
  - Billing, credit, etc.
  - Relative importance of contributions
  - Superintendance and overall vision
  - Other objective manifestations of intent

Who owns *Rent*?



Government works

Why no government ©?

- Does government need copyright's incentives?
- Does the government have a distinctive personality reflected in its works?
- Are there democratic consequences of government copyright?
- Do you believe these reasons?

17 USC § 105

"Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise."

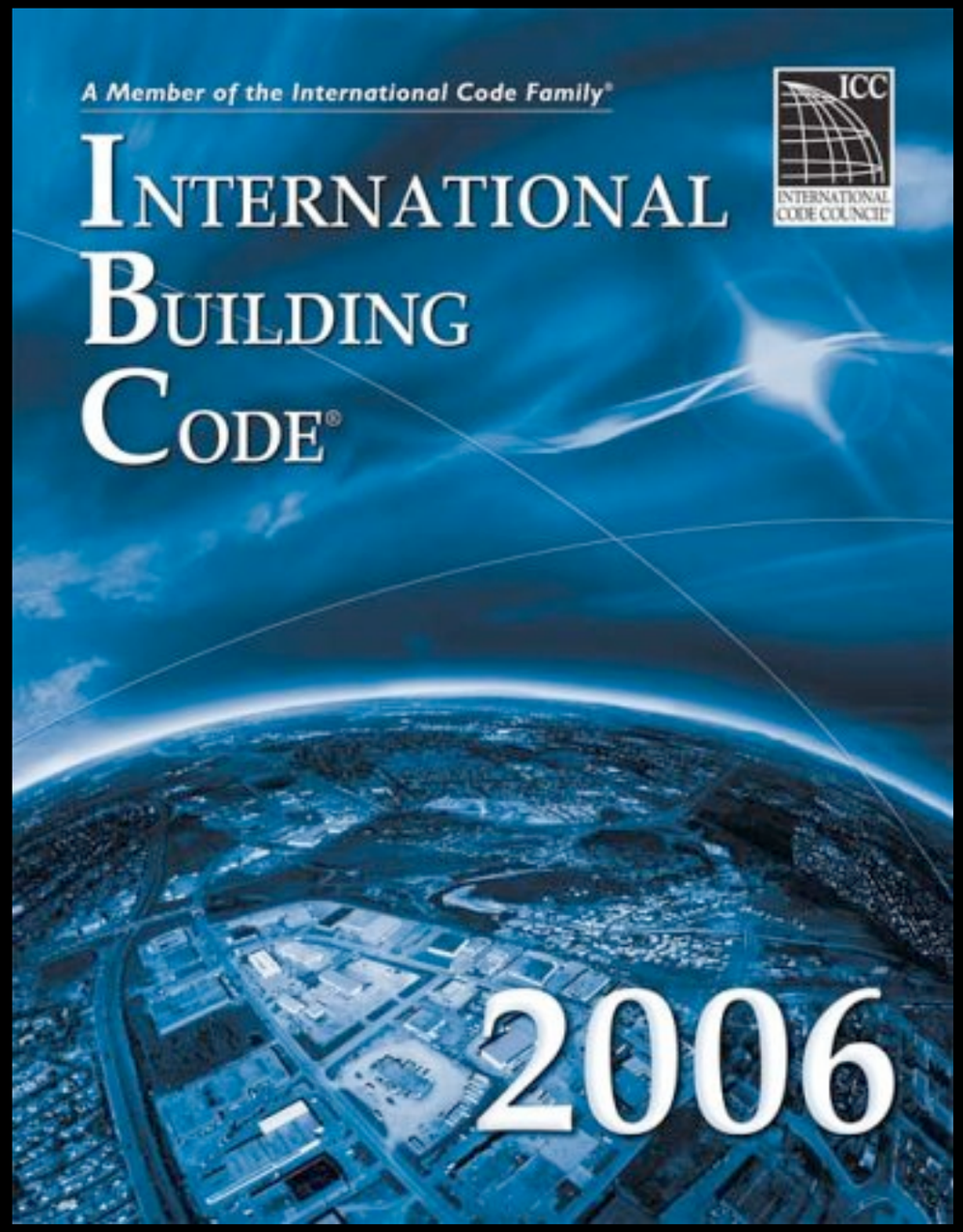
Building codes are privately drafted.

Cities and states adopt them as law.

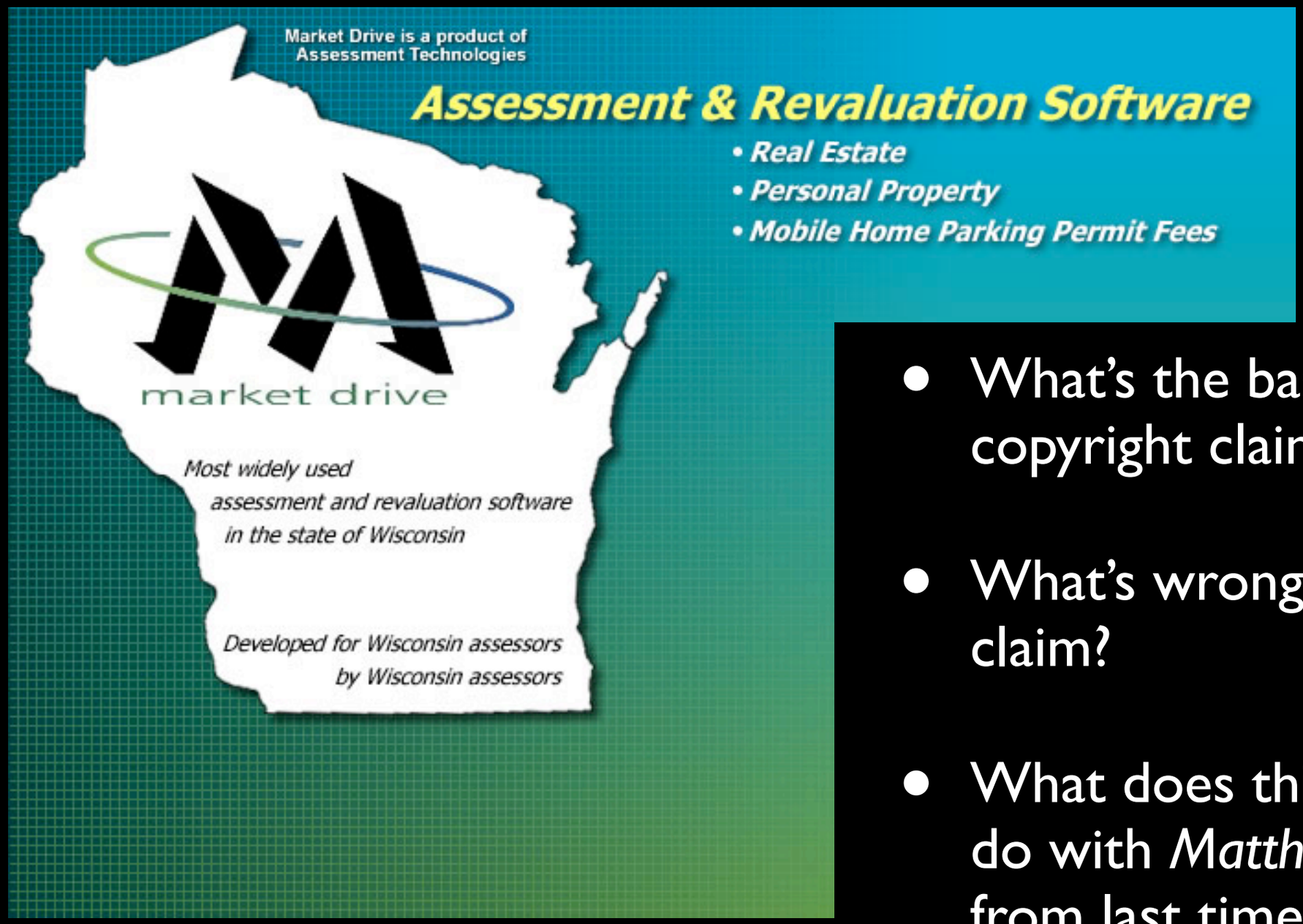
Does § 105 cover them?

Is it infringement to copy the code as drafted?

Is it infringement to copy the code as enacted?



WIREdata



- What's the basis of AT's copyright claim?
- What's wrong with that claim?
- What does this have to do with *Matthew Bender* from last time?

Next time

Works made for hire