Copyright Law

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Topics:

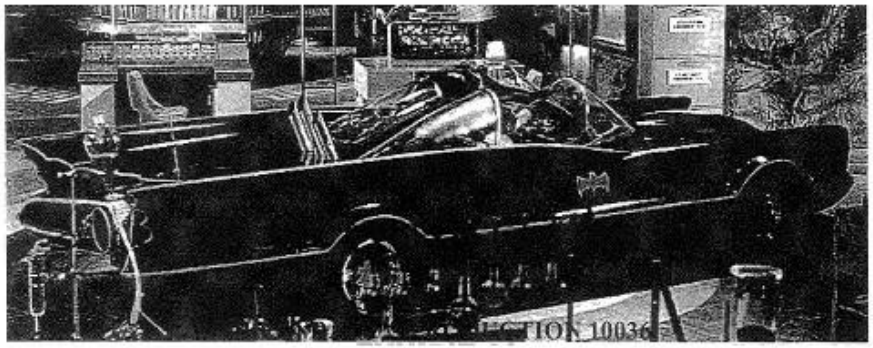
- When and how should IP doctrines “stay in their lanes”?
- Copyright and/vs. patent law
- Copyright and/vs. trademark law

Boundaries: 2D and 3D works, “idea,” “usefulness,” and “expression”

New for Feb. 2024: Squishmallows (Jazwares) v. Skoosherz (Build-A-Bear)

APPENDIX A

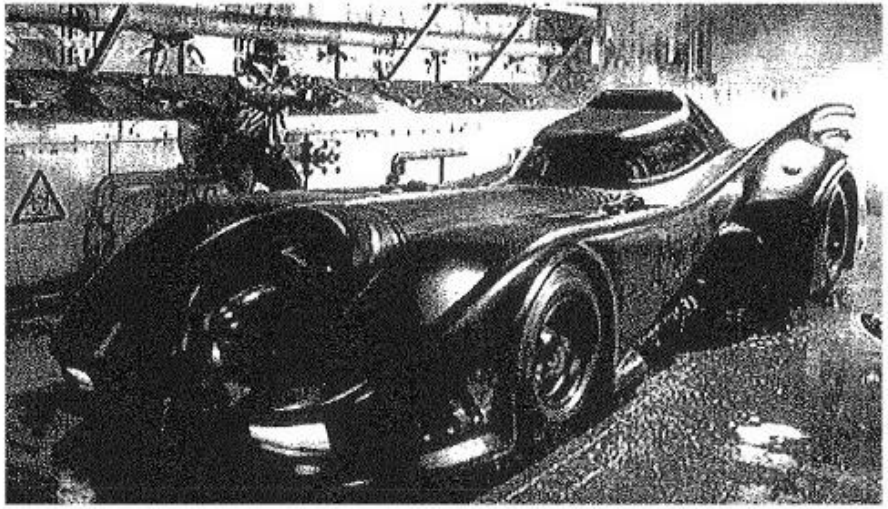
Batmobile Depicted in the 1966 Television Series



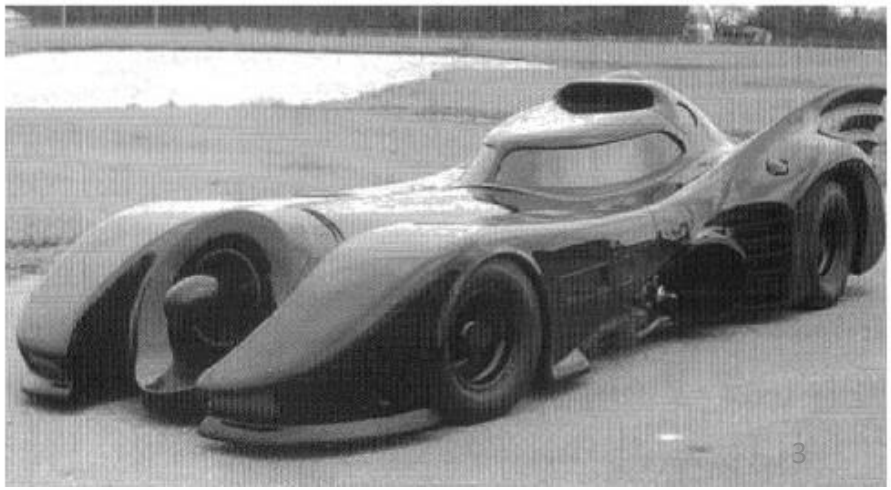
Towle Replica

APPENDIX B

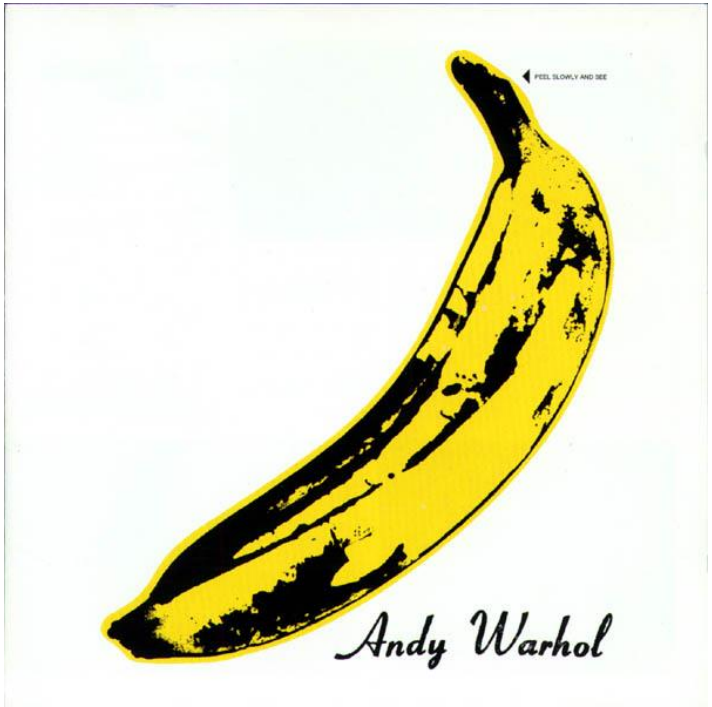
Batmobile Depicted in the 1989 Motion Picture



Towle Replica



Boundaries: Copyright and/vs. trademark law: Warhol – again



[the original album cover; the skin of the banana could be peeled off, revealing a pinkish painted image of a raw … banana]

[the phone case authorized by the Warhol Foundation (which owns the ©) but not by the Velvet Underground (which claims rights in the banana as a TM]

The Velvet Underground [Lou Reed] v. The Andy Warhol Foundation

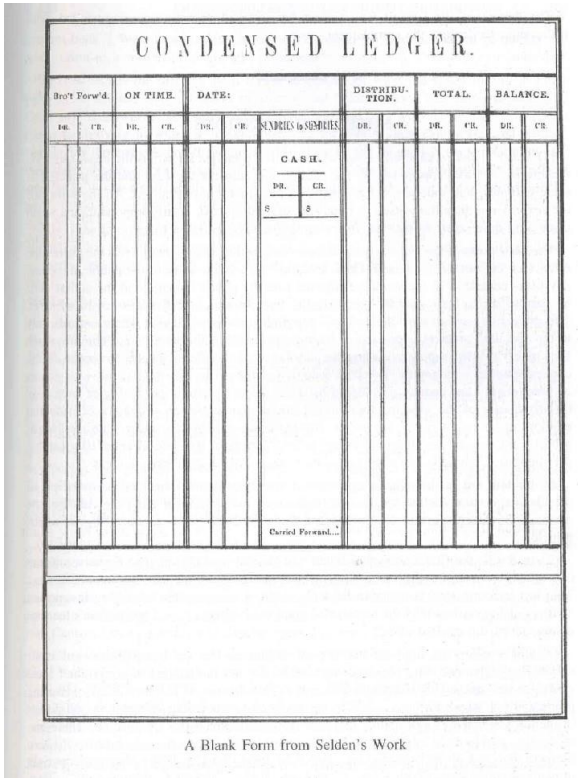
(case filed 2012)

[Andy Walhol produced the album cover art at the request of Lou Reed; the banana peel design became associated with The Velvet Underground]

Boundaries: Baker v. Selden (U.S. 1879) – the classic idea v. expression precedent

Focus on copyright v. patent:

- Focus on function: Novel **functional** ideas may be patented, but Selden did not obtain a patent.
- Copyright law may not provide "back door" or "end run" IP protection for patent-ineligible subject matter.
- The absence of © for business strategies and computer software puts pressure on Congress and courts to uphold patents on those things.
- Implication for patent law: Should "business methods" patents and "software patents" be suspect? (In fact, today, they are suspect. Ask yourself: why?)
- Implication for © law: In permitting software ©, courts must be careful to limit protection to expressive/original parts (usually, code) and avoid © protection for functional parts (structure, system, ideas, processes).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Carried Forward...

A Blank Form from Selden's Work

Focus on trademark basics:

- Trademark law protects the user of a distinctive "sign" (name, symbol, logo, slogan, etc.) against unauthorized use that confuses consumers as to the source of relevant goods or services. Multi-factor "likelihood of confusion" standards define the scope of TM rights.
- TM law ordinarily should not be used to exclude competitors from the marketplace.
- "Who made [produced, designed, endorsed/ sponsored] this thing?" is a key TM issue.
- The identity of the author (giving credit where credit is due) is usually *unimportant* under US copyright law. US law generally lacks any provision for "attribution" rights (in the EU, these are sometimes parts of "moral" rights, or *droit moral*). US view is that © rights are *economic* rights.

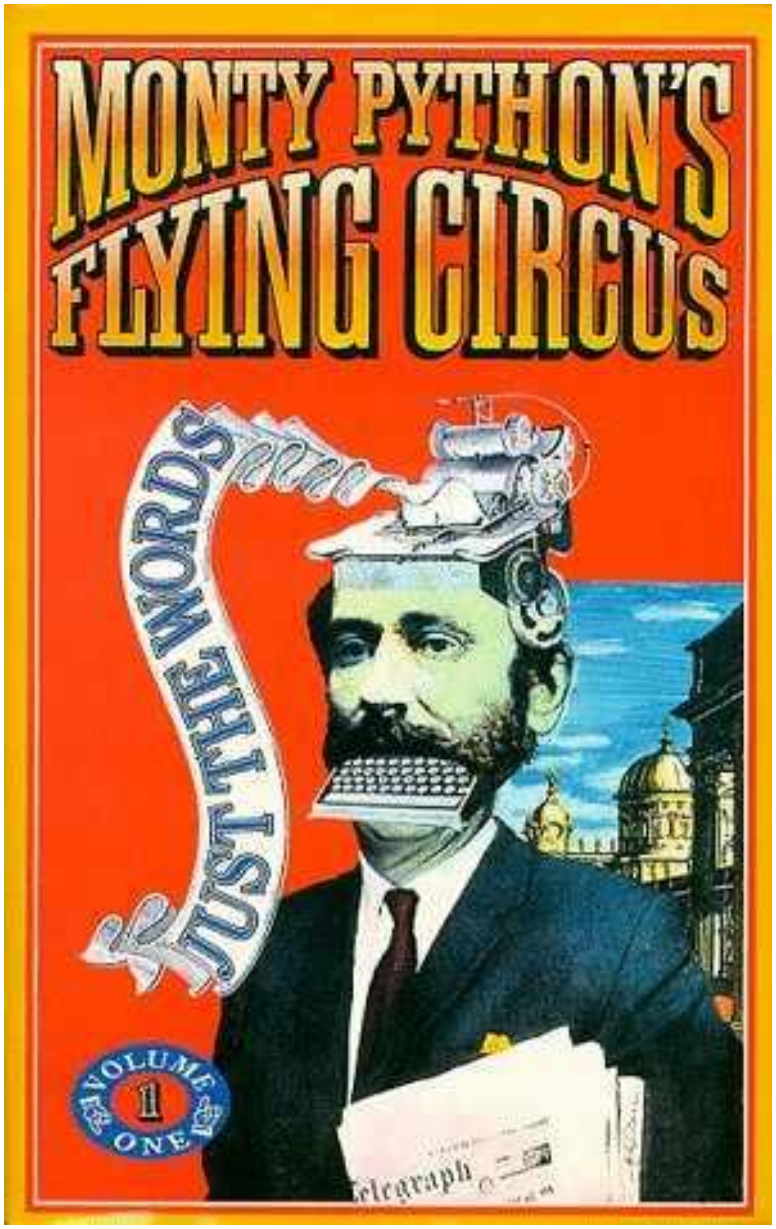
Boundaries: Copyright and/vs. trademark law – a key older case

Gilliam v. American Broadcasting Companies (2d Cir. 1976) (finding that a preliminary injunction should issue under the *Lanham Act*)

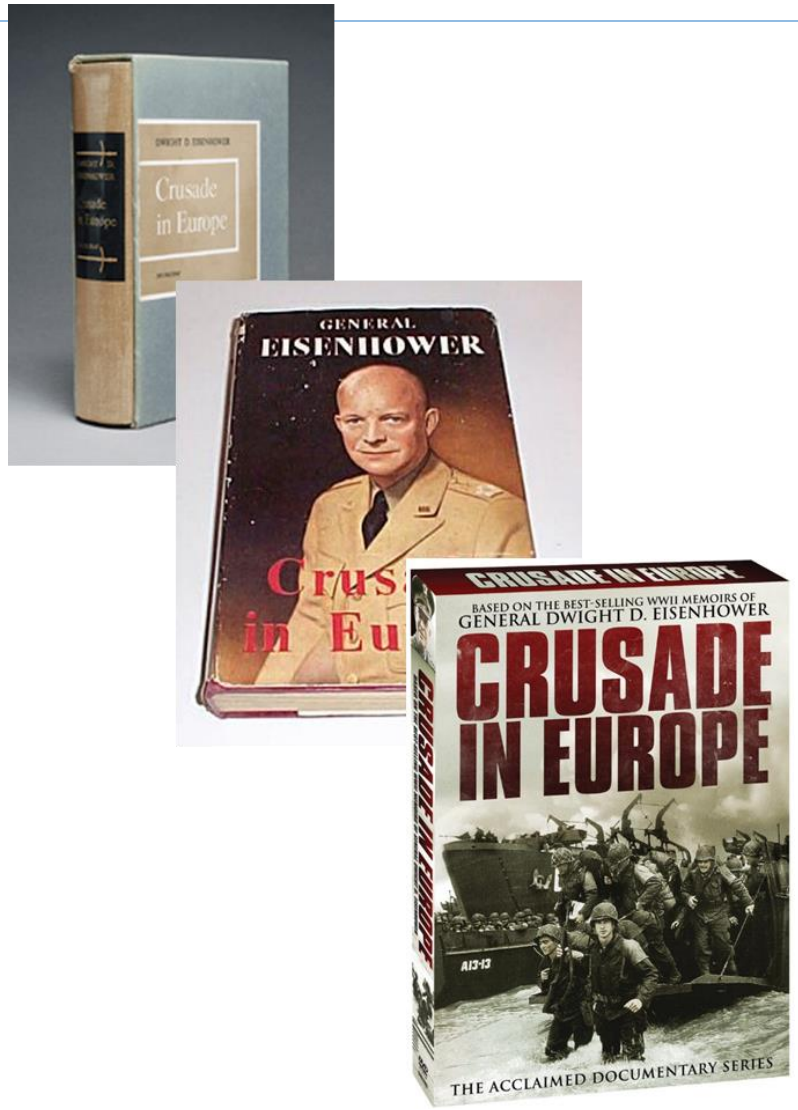
Episodes of Monty Python's Flying Circus were edited for US broadcast by taking out the offensive bits. In short: the shows were not funny.

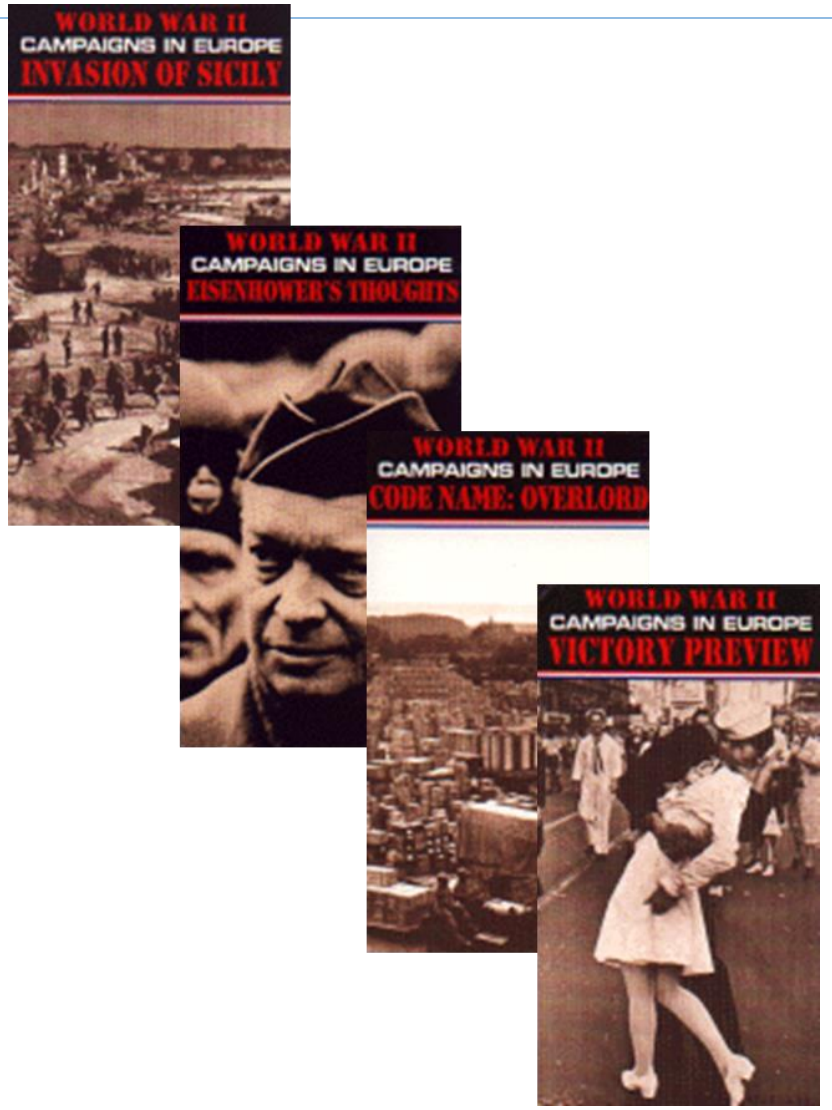
[The unedited program is: https://www.dailymotion.com/video/x2ni9j3]

Python sued ABC, to protect their reputations, for (i) trademark infringement ("Monty Python") and (ii) copyright infringement (production of an unauthorized derivative work).



Boundaries: Copyright and/vs. trademark law – a key recent case





Dastar Corp. v. Twentieth Century Fox Film Corp. (U.S. 2003): Twentieth Century tries to use TM law to prevent Dastar from selling *Campaigns in Europe* videocassettes.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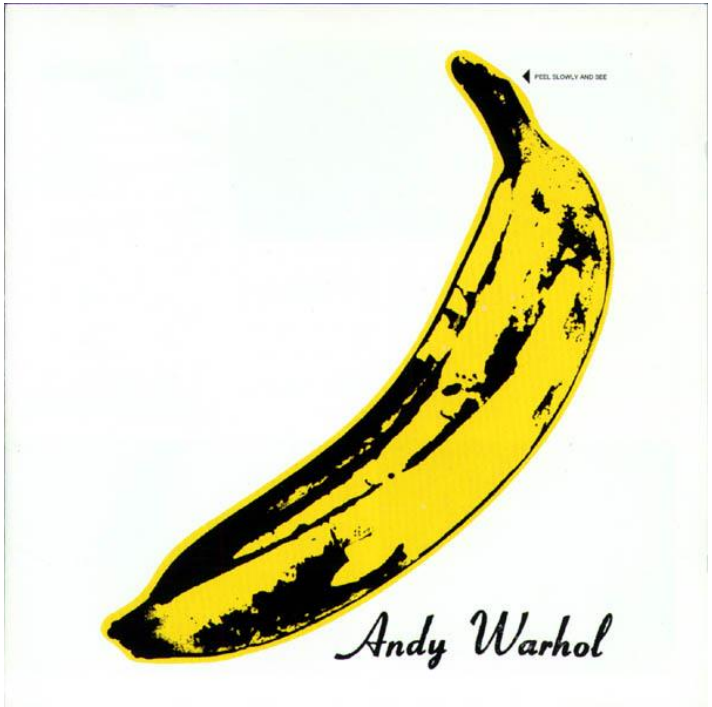
TNT

From Director

Greta Gerwig

Boundaries: Copyright and/vs. trademark law: Back to Andy Warhol



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Boundaries: Copyright and/vs. trademark law and/vs patent law

Practical applications: When / how should *fashion designers* receive © protection?

Star Athletica, LLC v. Varsity Brands, Inc. (U.S. 2017)

Are cheerleader uniforms protectable PGS works (i.e., protected by copyright)?

Should they be? Why / why not?

What about protection for their functionality?

What about protection for the "distinctive" style of a fashion designer (e.g., Chanel)?

Boundaries: Copyright? Trademark? Both? Neither?

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