

Artistic Purpose

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BLEISTEIN V. DONALDSON (1903)

What is this? Circus Posters.

Was it copyrightable art? Yes!

What makes this copyrightable art? Supreme Court Justice Oliver Wendell Holmes, Jr. ruled that vintage ad posters are art.

Lesson: Justice Holmes wrote THIS MONEY QUOTE: "It would be a dangerous undertaking for persons trained only to 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. Their very novelty would make them repulsive until the public had learned the new language in which their author spoke. It may be more than doubted, for instance, whether the etchings of Goya or the paintings of Manet would have been sure of protection when seen for the first time. At the other end, copyright would be denied to pictures which appealed to a public less educated than the judge. Yet if they command the interest of any public, they have a commercial value - 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."



SATAVA V. LOWRY



What is this? A glass jellyfish in a glass.

Was it copyrightable art? No!

Why not? The sculpture of the jellyfish shows us the parts of a jellyfish that absolutely must be shown for us to understand it's a jellyfish. And then the jellyfish shows us nothing else.

Lesson: Really hard to get a copyright to a faithful depiction of something in nature. Even with things as cool as this.

STANISLAWSKI V. JORDAN (USDC 2004)



What is this? Wooden picture frames with an old-timey country feel.

Was it copyrightable art? Yes!

What makes this copyrightable art? The elements and arrangements are not commonplace nor expected as a matter of course.

Lesson: More times than you can believe, the arrangement of elements makes something mundane into a copyrightable work.

MAZER V. STEIN (1954)



What is this? A statue that was used as a lamp base.

Was it copyrightable art? Yes!

What makes this copyrightable art? The work started out as art.

Lesson: You can copyright this art as part of a useful thing, but only the art part gets the copyright - the useful thing isn't covered.

PIVOT POINT V. CHARLENE PRODUCTS (7th CIR 2004)

What is this? A mannequin head with a "hungry" look designed as a training skull for haircutters.

Was it copyrightable art? Yes!

What makes this copyrightable art?

It was the product of the artist's judgment, particularly since the "hungry" look had nothing to do with helping train haircutters

Lesson: I need to book a cut and color.

ARNOLD V. SILVERCROFT (1966 USDC SDNY)



What is this? A kitschy pencil sharpener masquerading as an old-timey phone.

Was it copyrightable art? Yes!

What makes this copyrightable art? The work incorporates artistic sculpture, carving, and pictorial representations. The artist exercised his discretion and created the work from research sketches and deliberation.

Lesson: Using public domain elements is dicey and picking a new medium - like a flag - is an idea and thus not copyrightable.



BURROWS-GILES V. SARONY (1884)



What is this? A photo of Oscar Wilde.

Was it copyrightable art? Yes!

What makes this copyrightable art?

This case was an early and seminal case showing that photography is artistic and copyrightable. Here, the Supreme Court said that the choices of the photographer in position, lighting, background, etc. is the artistic contribution.

Lesson: Sometimes, the Supreme Court brings the law up to date with state of the art technology.

WOOLWORTH V. CONTEMPORARY ART (1st CIR 1951)

What is this? A porcelain sculpture of a dog in show position.

Was it copyrightable art? Yes!

What makes this copyrightable art? The artist's choice as to position, form, contour, configuration, and conformation.

Lesson: Unlike life, beauty in law doesn't matter.

EARTH FLAG V. ALAMO FLAG (2001)



What is this? A flag you usually see at Earth Day.

Was it copyrightable art? No!

Why not? The picture - a public domain photo taken by an Apollo astronaut - could note a copyrightable element. B without the photo, there was nothing else original to the photo. Just putting it on fabric as a flag is not sufficient.

Lesson: Using public domain elements is dicey and picking a new medium - like a flag - is an idea and thus not copyrightable.

Generic

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Creative

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What is Art?

(Or more specifically, what art is copyrightable?)

Utilitarian Purpose

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BRANDIR



What is this? A neat and novel BIKE RACK that started life as a sculpture.

Was it copyrightable art? No!

Why not? Even though it started life as a sculpture, the artist modified its materials and dimensions to make it work as a bike rack - therefore, the work was more the product of utility and function than artistic discretion. You can still buy this from the original creator - and from knockoff sellers.

Lesson: Sometimes, copyright, like life, isn't fair.