Questions & Answers -- Copyright Column

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Section III— that's the Master level— teaches how to dissolve unwanted thought forms. Although that seems like what Secs. I and II were doing. But here you do it by "merging with the thought and feeling how it feels."

Ooo-kay. And so it goes through all the rubbish. You don't really have to send me $500. You can just read the case. Or write to Eldon, tell him you're broke, and get it free. Anyhow, there were a whole passel of similarities both literal and nonliteral and they were sure enough substantial.

Copyright Infringement

But is it an infringement? In the nonliteral area, both courses were in three parts. Section I was intro to consciousness. Section II was the exercises, and Section III a meditation technique. The exercises, being virtually identical, would permit that famous layman to avow that Eldon had copied Harry.

But are the exercises idea or expression?

As to literal, Eldon copied fifteen sentences from Harry. While that doesn't seem like a lot, they are used as part of an exercise identical to Harry's. Without these sentences, no one goes to meditation which is penultimate to enlightenment. And everyone is just clamoring to get there.

Remember, Eldon said they were so simple that the merger doctrine covers them. And they were simple. Yes, I'll give you another one. "My past doesn't exist" versus "The past doesn't exist."

And of course you've got objections. I mean, where did all those ghastly summer vacation photos come from? But they were such dumb, hideous, unflattering, pointless, waste-of-money photos that they really couldn't possibly exist. Because only a complete idiot would have taken them. Or thought he was having fun at the time. And no one that stupid could exist. Gosh. I've gotten through Section II. I could be, like, a Wizard.

A not bad note elaborates this merger thing. "Two fish" would be merged. Likewise "red fish." But old Dr. Seuss' "one fish, two fish, red fish, blue fish" would not.

And then just as you think the 11th Circuit is going to slam the District judge with a reversal, it trails off into muttering that the line between idea and expression is not easily drawn. And all this must be resolved based on the totality of the facts and blah blah. But the District Court didn't abuse its discretion by denying a preliminary injunction.

Which has got to be one of the most masterful exercises in wandering around to get nowhere in particular that I've seen in recent memory. And if you meditate real hard, this appellate decision doesn't even need to exist.

However this has given me a wizard idea for a self-help course. I'm calling it "Master Wizards Are the Source." It's protected by the idea-expression merger because there's really no other way to express it. Anyone can see that. Except the really, really stupid who don't deserve to exist in my serene, all-powerful reality.
Questions & Answers
from page 58

QUESTION: The library wants to send out some long, overdue reminders, let borrowers know that the maximum fine is only $2.00 per item, and encourage them to return the books. In order to catch their attention and set the tone, the library would like to use Shel Silverstein's "OVERDUES" poem (with its cartoon illustration) from A LIGHT IN THE ATTIC. Shel Silverstein is deceased, so the 1981 copyright must have transferred to someone else. Does the library write the publisher? Can it give permission? Or will the publisher just provide the name and address of the copyright holder?

ANSWER: The estate of Silverstein will own the copyright if he still owned it at the time of his death; thus, the copyright may be owned by his spouse, children, other heirs or someone else entirely to whom he bequeathed the copyright.

Or, prior to his death and even at the time of publication, he may have transferred the copyright to the publisher. In either event, it is much easier to contact the publisher for permission than to try to locate heirs. Publishers know if they hold the rights while heirs often do not know. And if the publisher does not own the copyright, it may be able to help locate the heirs.

QUESTION: Why is it okay for people to use quotes from others in their signature lines in email? Is it because it is brief, and not a full representation of someone's work?

ANSWER: Whether it is "okay" to use a quote in a signature line may depend on more than copyright law. For example, there may be institutional or company policies that prohibit attaching quotations to an email signature. Additionally, the use of a quotation should cite the source so there is no plagiarism problem.

For copyright purposes, short phrases, etc., are not copyrightable. Usually, however, a quotation comes from a longer work. If the work is in the public domain, using the quotation is no problem, of course. If it comes from a copyrighted work, one would apply the fair use factors to determine whether using the quotation is permissible; the third factor, amount and substantiality used, is the most critical. So, a sentence quotation from a longer work likely is fair use. A one sentence quotation from a four line haiku may not be fair use.

Legally Speaking — I got you babe!

The Sonny Bono Copyright Term Extension Act & Eldred v. Ashcroft

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"Babe! I got you babe! I got you babe! I got you babe!"

What was Sonny Bono's greatest legacy? Was it his songwriting for Phil Spector and Lester Sills, his hit "The Beat Goes On," his dynamic work with Cher, or his solo acting career? The answer is "None of the Above." Sonny Bono's greatest legacy is the way in which his name is forever linked with copyright law.

On October 7, 1998, the "Sonny Bono Copyright Term Extension Act" (also known as the Copyright Term Extension Act, or CTEA) was passed by the House and Senate, and subsequently signed into law by President Clinton. This statute extends the term of copyright protection for all materials by 20 years. This statute is currently the subject of a Constitutional challenge in the U.S. Supreme Court.

Background of the Statute
Copyright law in the United States is based on Article I, Section 8, Clause 8, of the Constitution, also known as the "Copyright Clause." This portion of the Constitution states: "Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The first copyright act allowed works to be protected for 14 years, with the option of extending for another 14 years. The 1909 Act made the term 28 years. Since 1960, the copyright term has been extended 11 times. When the 1976 Copyright Act was passed, new copyrights were granted for the life of the author plus 50 years, while works that were registered before 1978 (when the 1976 Copyright Act became effective) would be protected for 75 years.

By 1993, however, the music and entertainment industry began to press for longer terms and more protection for the content owners. The intense lobbying resulted in the 1998 passage of the Digital Millennium Copyright Act and the CTEA, as well as the ratification of the World Intellectual Property Organization treaty (WIPO). WIPO is a specialized agency of the United Nations which deals with intellectual property. The creation of WIPO had been one of the basic goals of the Clinton administration, and on October 21, 1998, the United States became the first nation to ratify the treaty. The passage of the Sonny Bono Copyright Term Extension Act and the Digital Millennium Copyright Act made possible the complete implementation of the WIPO treaties.

The Copyright Term Extension Act added an additional 20 years to the life of all copyrights, including those that were created before the Act was passed. After the new law was passed, copyrights created before 1978 are given a life of 95 years. Works created after 1978 are protected for the life of the author plus 70 years. Works for hire are also covered by copyright for 95 years. The Eldred Challenge
The new law was challenged in the courts almost immediately after passage. Eric Eldred, the publisher of Eldritch Press, filed a lawsuit in the U.S. District Court for the District of Columbia. Eldred v. Ashcroft Press is a non-profit publisher of Internet books and relies mostly on materials that are in the public domain. Eldred was assisted by students at the Berkman Center for Internet and Society at Harvard Law School.

Eldred claimed that "the new law is unconstitutional because..." The practice of continually extending copyright retroactively means that Congress, in effect, is granting copyright holders more than a limited term...[This extension] limits access and therefore harms the public good...[The copyright term] is beyond any reasonable expectation of the life expectancy of an author, since few authors begin creating works until they are at least adolescents and since there are few, if any, authors who have lived to an age of 110 years."

The District Court case gave no hint of the controversy that was to follow. The Justice Department opposed the lawsuit and asked for summary judgement on the grounds that the statute was based on a valid body of law. Some of the reasons that the Justice Department gave in support of continued on page 60