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Booklover: Divorce Romance Happy Endings

Donna Jacobs

Medical University of South Carolina, donna.jacobs55@gmail.com

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Booklover — Divorce Romance Happy Ending

Column Editor: **Donna Jacobs** (Retired, Medical University of South Carolina, Charleston, SC 29425)
<donna.jacobs55@gmail.com>

Lively scholarly discussions make my world go around. Discussions of a scientific nature come natural, but the ones around literature really intrigue me. When the two get blended together — well, it doesn't get much better. I have a dear friend who recently presented and defended his doctoral thesis at the **Medical University of South Carolina**. To celebrate the occasion I took him to lunch where we had the time to linger and discuss his thesis project, his future post-doctoral opportunities and the fact that a Nobel laureate was a native of his birthplace, Sardinia.

Sardinia is the second largest island in the Mediterranean Sea and has an ancient history that rivals the mainland of Europe. But the focus of this essay is not the history, geography or natural beauty of this Italian region. The focus is that the town of Nuoro, located in the central eastern region of Sardinia, is the birthplace of **Grazia Deledda**, who was awarded the **Nobel Prize** in literature in 1926 "for her idealistically inspired writings which with plastic clarity picture the life on her native island and with depth and sympathy deal with human problems in general."



A lively dialogue ensued over which of her works I should read. My friend recommended *Reeds in the Wind*. **Amazon's** description was inviting:

"**Deledda** tells her story with her characteristic love of the natural landscape and fascination with the folk culture of the island, with details about the famous religious festivals held in mountain encampments and the lore of the 'dark beings who populate the Sardinian night, the fairies who live in rocks and caves, and the sprites with seven red caps who bother sleep.'"

But for reasons that I am now unsure of I settled on *After the Divorce: A Romance*. Maybe it was the title. Divorce and romance. Interesting blending of subject matters from a Roman Catholic. I downloaded a **Kindle** version and was ready to read. Sidetracked by events of life, it took me a minute to delve into this book. But I had the good fortune to remember there was a short story of **Deledda's**, "The Sardinian Fox," in the little gem of a book I discovered in a second-hand book store entitled *Great Stories by Nobel Prize Winners*. I enjoyed the short story over

lunch one day and then just dedicated myself to set aside the time for her novel.

Opening scene:

"Nineteen Hundred and Seven. In the "strangers' room" of the Porru house a woman sat crying. Crouched on the floor near the bed, her knees drawn up, her arms resting on her knees, and her forehead on her arms, she wept and sobbed continuously, shaking her head from time to time as though to indicate that there was no more hope, absolutely none at all; while her plump shoulders and straight young back rose and fell in the tightly fitting yellow bodice, like a wave of the sea."

What has happened? Giovanna Era is crying because her husband Costantino Ledda has been found guilty of the murder of his uncle. Left with an untenable fate and no resources to support herself, her son or her mother, she divorces Costantino in order to marry a wealthy landowner. The story unfolds from both Costantino and Giovanna's views. One in a prison serving a sentence for a crime he didn't commit; one in a prison of a cruel marriage suffering the consequence of an action she did not create.

continued on page 46



LEGAL ISSUES



Section Editors: **Bruce Strauch** (The Citadel) <strauchb@citadel.edu>
Bryan M. Carson, J.D., M.I.L.S. (Western Kentucky University) <bryan.carson@wku.edu>
Jack Montgomery (Western Kentucky University) <jack.montgomery@wku.edu>

Legally Speaking — What Does the HathiTrust Decision Mean for Scholarly Publishers?

by **Sanford G. Thatcher** (8201 Edgewater Drive, Frisco, TX 75034; Phone: 214-705-1939) <sgt3@psu.edu>

Fair use has been tested in court with increasing frequency in recent years, and many of these cases have revolved around the question of whether the use challenged can be reasonably viewed as “transformative” or not. I traced the background in some earlier articles in *Against the Grain*, especially “Is ‘Functional’ Use ‘Transformative’ and Hence ‘Fair’? A Copyright Conundrum” (June 2009): <https://scholarsphere.psu.edu/files/9880vr71h>. There I particularly focused on the different ways the Ninth and Second Circuits had approached the interpretation of fair use, which seemed to portend eventual appeal to the Supreme Court. Readers not already familiar with the background might want to read that article before continuing with this one. I will also assume, in the interests of brevity, that readers of this journal will be generally familiar with **HathiTrust**, the **Authors Guild**, and the origins of this suit, filed in September 2011, which pitted these two main parties (with support from others) against each other in a battle to determine whether the mass digitization begun by **Google** and built upon by the **HathiTrust** participating libraries could be construed as fair use. (It should be noted that “transformative use” was not at issue in the suit brought by three academic publishers against **Georgia State** because **Judge Evans** did not believe the copying under challenge there to be transformative.)

The decision in the district court by Judge Harold Baer in October 2012 had largely favored the defendants, finding the alleged infringing uses to be fair mainly because they were all “transformative” and, further, made an “invaluable contribution to the progress of science and cultivation of the arts” (which echoes the language of Article 1 of the Constitution in providing the rationale for having a copyright law in the first place). The uses in **HathiTrust** involved making available the full texts of the digitized works but only for the purposes of text-mining and giving access to the physically disabled. (The question of “orphan works” was set aside as not yet ripe for judicial resolution.) In making his ruling, the judge prominently cited several cases decided in the Ninth Circuit, thus for the first time narrowing the gap I had perceived in my earlier article between the two circuits on the interpretation of transformative use. **Judge Baer’s** decision was followed by another district court ruling in the Second Circuit in November 2013 by **Judge Denny Chin** in the parallel case that the **Authors Guild** had brought against **Google**. **Judge Chin** also favorably quoted from Ninth Circuit cases in reaching his decision, which is now on appeal as well.

Much to my chagrin, in upholding **Judge Baer’s** ruling with respect to fair use regarding creation of a full-text searchable database, the Second Circuit Court of Appeals has abandoned

earlier Second Circuit precedent and instead bought into the controversial theory of the Ninth Circuit (some of whose key decisions it also cites) on functional use. Instead of insisting on viewing the act of copying itself as needing to be creative, the court has accepted the Ninth Circuit’s idea that an otherwise “mechanical” act (similar to use of a photocopy machine) can be fair use if it “allows for” (the key words used by **Judge Chin** in his ruling in the **Google** case) creative use later.

The precedent on which I had been relying in my previous arguments was this passage written by **Judge Jon Newman** in the *Texaco* case:

We would seriously question whether the fair use analysis that has developed with respect to works of authorship alleged to use portions of copyrighted material is precisely applicable to copies produced by mechanical means. The traditional fair use analysis, now codified in section 107, developed in an effort to adjust the competing interests of the authors — the author of the original copyrighted work and the author of the secondary work that “copies” a portion of the original work in the course of producing what is claimed to be a new work. Mechanical “copying” of an entire document, made readily feasible by the advent of xerography ..., is obviously an activity entirely different from

continued on page 48

Booklover from page 45

One immediately feels they are reading a tragic Italian opera — how will it end? This is the surprise. Happy. Yes, a happy ending. Costantino is released from prison after the real killer makes a death bed confession. He returns to his village struggling with his fate and the fate of his now remarried wife. A clandestine romance develops between Costantino and Giovanna (Now the title is understood.), but his thoughts turn to real murder.

“At last the rain was ceasing; it still fell steadily, but more, now, like a gentle shower, while the wind had died down completely. It was cold, though, and the damp, chill atmosphere hung over the cabin like

a heavy wet cloth. So unutterably dreary were the weather and the surroundings that Costantino, recalling the periods of his most acute misery, could never remember being so utterly and hopelessly wretched as now. Not even on the day of the sentence, not even on the day when they had told him of the divorce, nor on that other day of his return: for on every one of those occasions, desperate as the outlook had been there always remained the hope of better things in the life to come. Then his conscience had been pure; but now, should he go on living, he believed that he would surely forfeit all hope in the life to come. At times, goaded by this horror, he would cry aloud, imploring death to come and save him, as a terrified child cries for his mother.”

What Costantino does not know at this moment is that Giovanna’s husband Brontu had died as a result of severe burns. Brontu fell asleep near the kitchen fire after returning home from a night of drunken foolishness. Giovanna and Costantino are soon reunited. More children are born, Brontu’s cruel mother’s heart is softened. They live happily ever after.

“Giovanna is sewing, and hard by Costantino works at his bench. No one speaks, but the thoughts of all are turned on the past. In the middle of the common *Mariedda* (the child of Giovanna and Brontu) and *Malthineddu* (the child of Giovanna and Costantino) are playing together with gurgles and shouts of joyous laughter, as happy and unconcerned as the birds on the neighbouring hedges.” 🐦