

COPYRIGHT BASICS

Presenters:



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Brigham Young University

BYU Copyright Symposium 2017: Copyright Basics

Peter Midgley
Ty Turley Trejo

November 2, 2017

#YCopyright2017

Constitution & Copyright

“The 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”

US Constitution, Article I, Section 8 (1787)

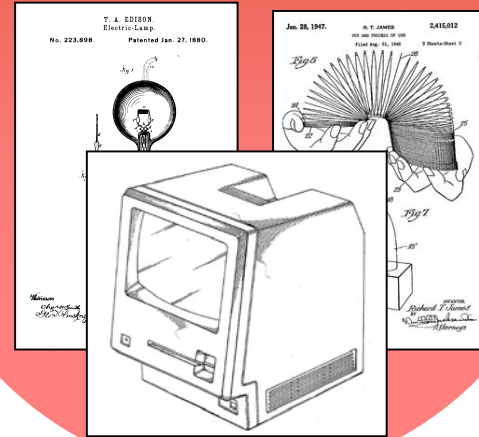
Major Categories of Intellectual Property

- Copyrights
 - Protecting creative content
- Patents
 - Excluding others from using inventions
- Trademarks
 - Developing recognition with customers
- Trade Secrets
 - Preserving valuable confidential information

COPYRIGHT



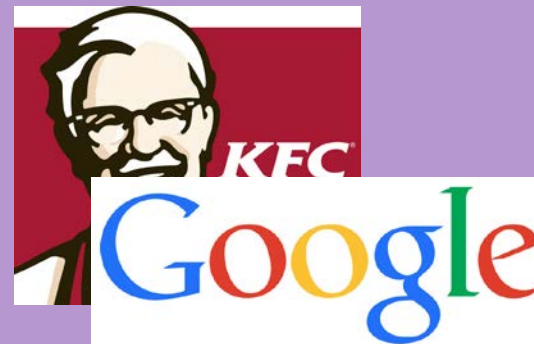
PATENT

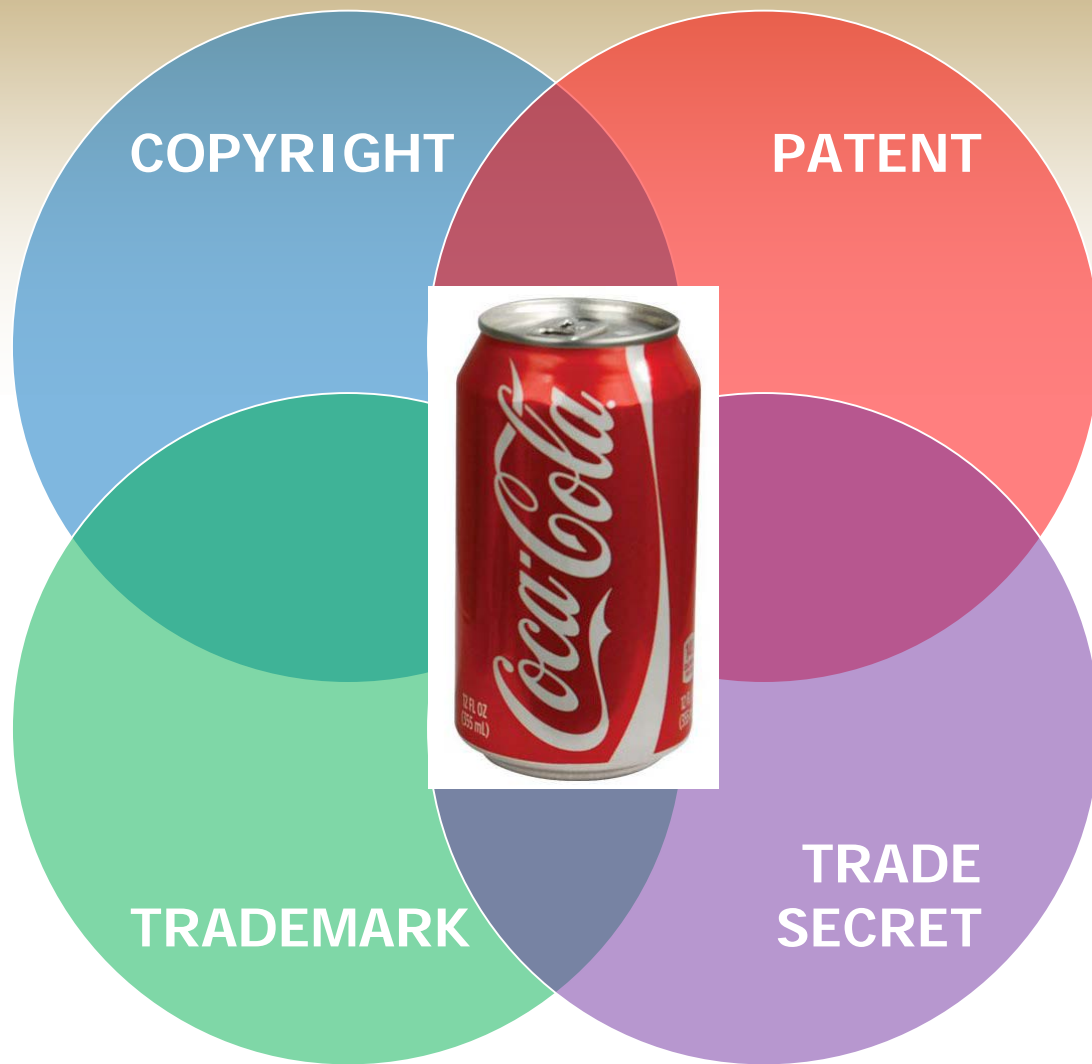


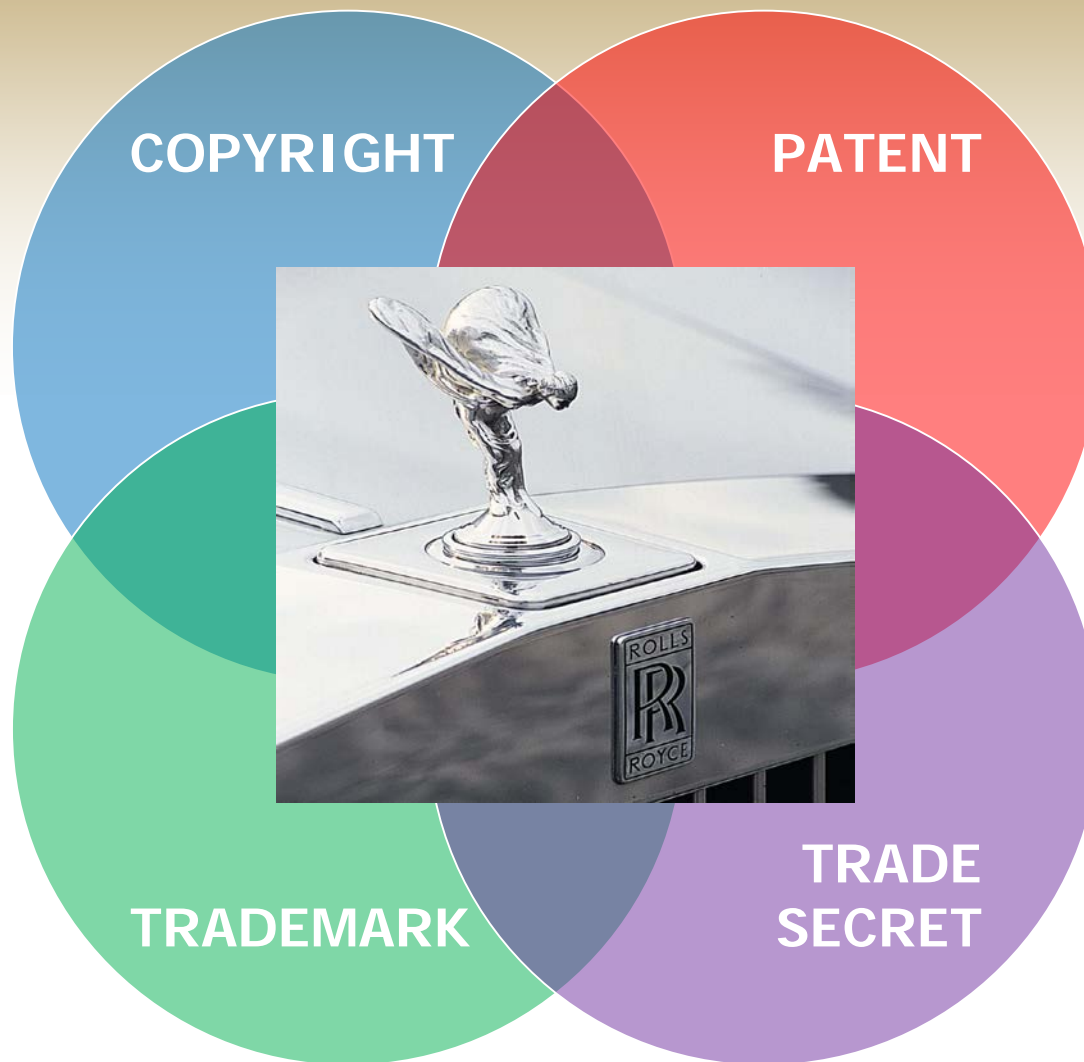
TRADEMARK



TRADE SECRET

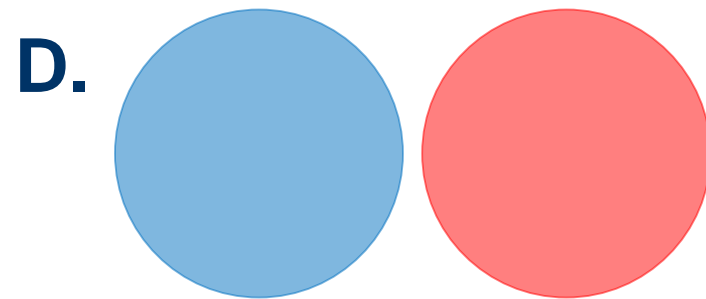
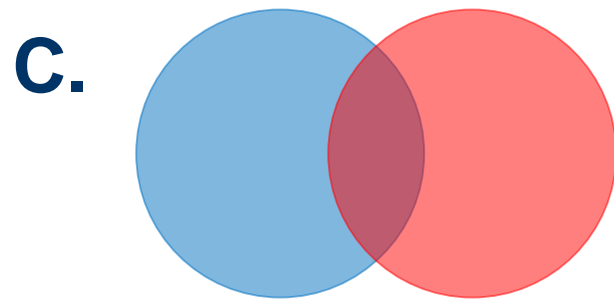
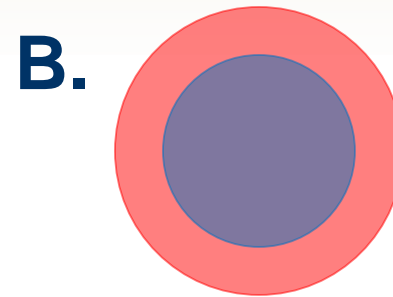
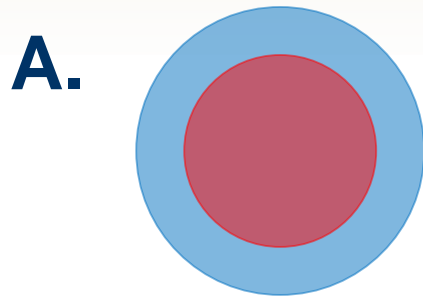






Copyright Infringement vs. Plagiarism

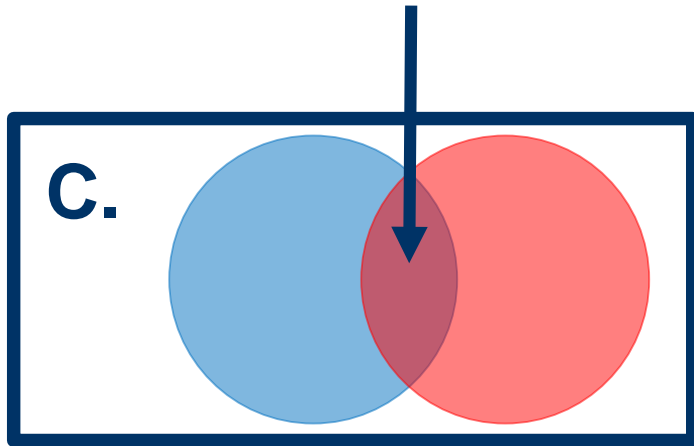
Which Venn diagram represents the correct relationship between these two principles?



Copyright Infringement vs. Plagiarism

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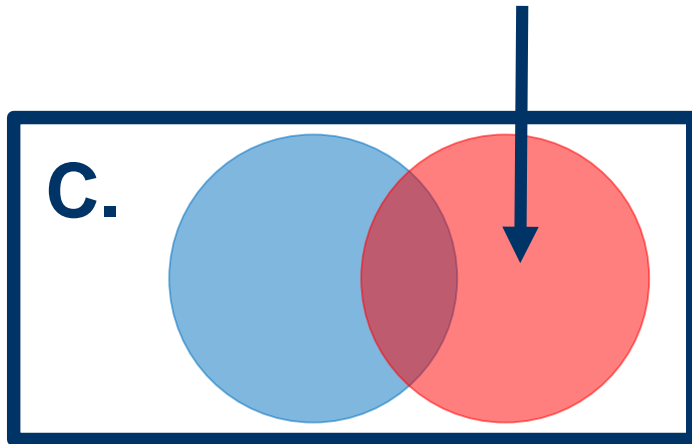
Using content: (a) without permission; **AND** (b) passing it off as your own (e.g., copying a classmate's essay without permission).



Copyright Infringement vs. Plagiarism

Which Venn diagram represents the correct relationship between these two principles?

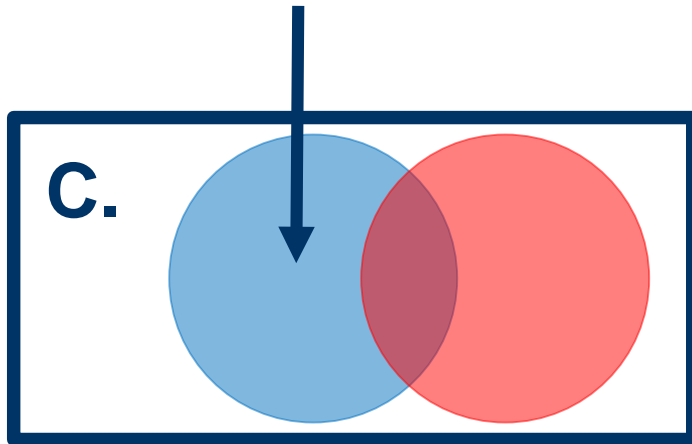
Passing off another's work as your own, with their permission (e.g., submitting an essay purchased online).



Copyright Infringement vs. Plagiarism

Which Venn diagram represents the correct relationship between these two principles?

Using content: (a) without permission; **BUT** (b) giving credit to the source (e.g., “no copyright infringement intended”).



Copyright: Fixation



“Copyright protection subsists ... in original works of authorship fixed in any tangible medium of expression”
17 U.S.C. § 102(a)

Categories of Copyright

- 1) Literary works
- 2) Musical works,
including any
accompanying words
- 3) Dramatic works,
including any
accompanying music
- 4) Pantomimes and
choreographic works



Categories of Copyright



One World Trade Center by Michael Vadon. Flickr. CC BY 2.0

- 5) Pictorial, graphic, and sculptural works
- 6) Motion pictures and other audiovisual works
- 7) Sound recordings
- 8) Architectural works.

Copyright: Works NOT Protected

Examples of works **not** subject to copyright:

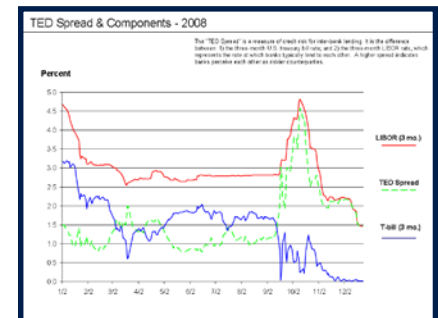
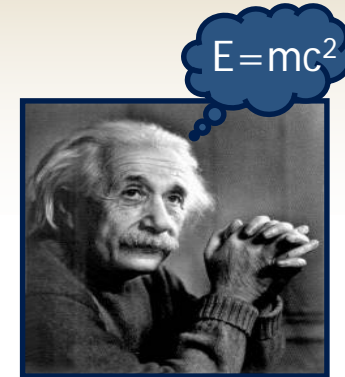
- words and short phrases
- ideas
- blank forms
- calendars, height and weight charts, rulers, etc.
- typeface

got milk?

Periodic Table of the Elements

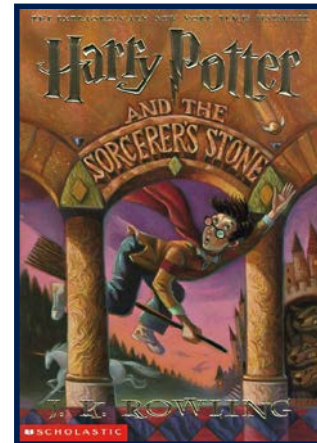
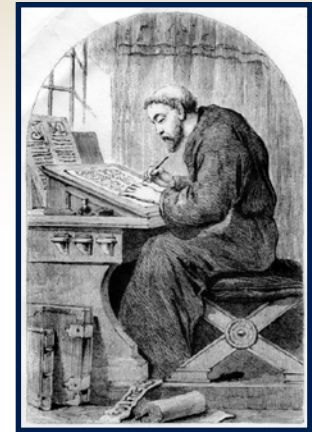
Times
New Roman

Times New Roman Times New Roman Times New Roman
Times New Roman Times New Roman Times New Roman



Exclusive Rights

1. Reproduce the copyrighted work
2. Prepare derivative works based upon the copyrighted work



Exclusive Rights

3. Distribute copies or phonorecords of the work



4. Perform the copyrighted work publicly



Exclusive Rights

5. Display the copyrighted work publicly and
6. Publicly Perform Sound Recordings – ONLY by means of a digital audio transmission.



Acronym for Six Exclusive Rights

R Reproduction

A Adaptation

P Public Performance

D Distribution

D Display(publicly)

D Digital Audio Transmission of
Sound Recordings

Copyright: Term

- Works published before 1978
 - 95 years after publication
 - Works published before 1923 are in the public domain
- Works published after Jan. 1, 1978 OR unpublished works
 - Life + 70 years, OR
 - 120 years after creation

Copyright: Public Domain

- Works published before 1923
- Works published in 1923 will enter the public domain on Jan. 1, 2019
- United States government works



Copyright Registration

- Required for litigation
- Register with U.S. Copyright Office (copyright.gov)
- Benefits
 - Prima facie evidence in court (if w/in 5 years)
 - Maximum statutory damages available if:
 - Registered within 3 months after publication or
 - Prior to an infringement (“separate-accrual” rule applies)
 - Not required to prove monetary harm

Copyright Infringement

- Statutory Damages (17 U.S.C. § 504-505)
 - \$750-\$30,000 per work infringed (could be reduced to \$200 for non-willful)
 - If “willful”, up to \$150,000 per infringement
- Attorneys fees
- Imprisonment of up to 5 years (18 U.S.C. § 2319)
- 3-year statute of limitations, but note “separate-accrual” (17 U.S.C. § 507(b))

Copyright Exemptions

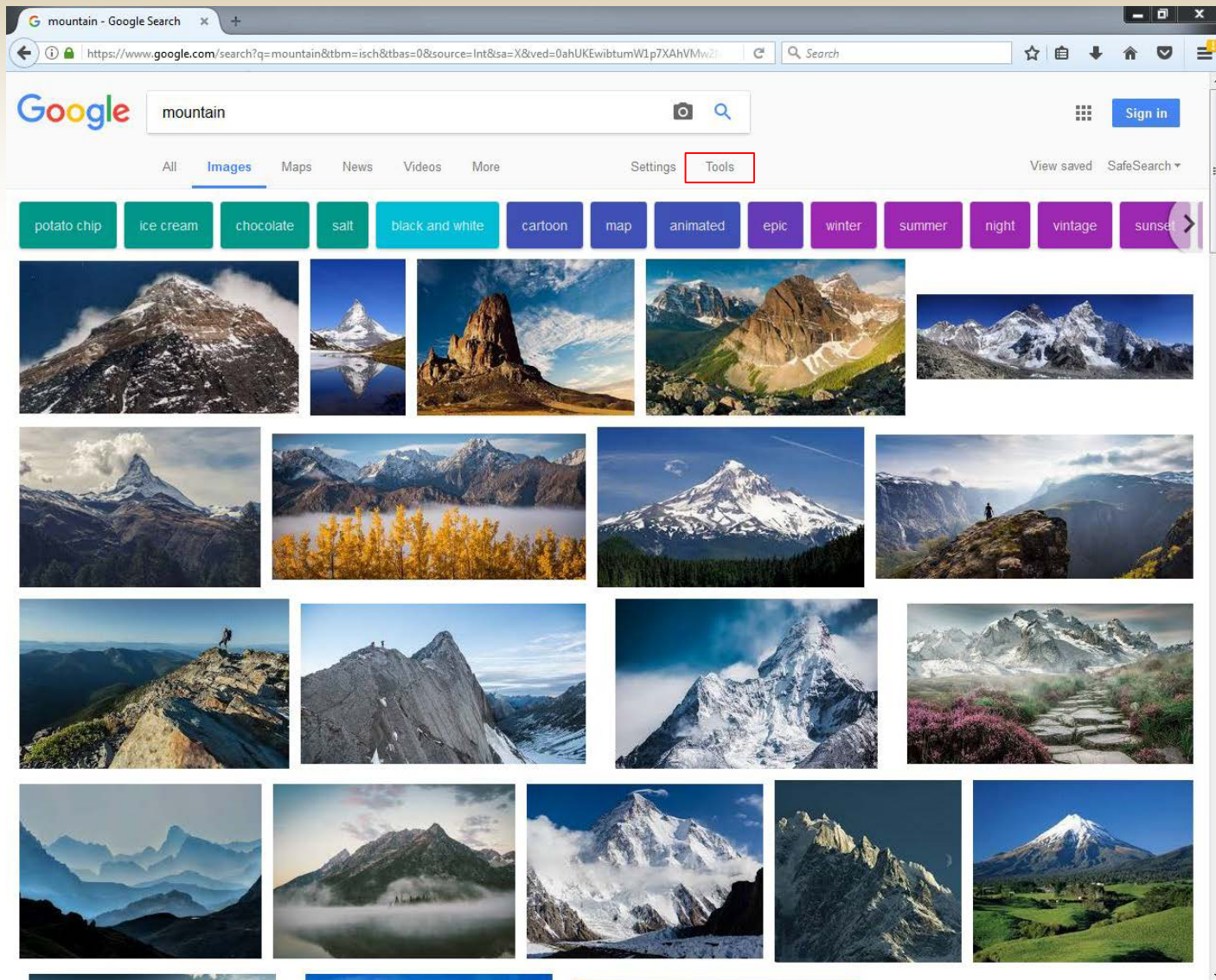
- Library exemption for preservation copies, patron copies, interlibrary loan, etc.
- Face-to-face classroom teaching exemption
- TEACH Act exemption for distance education

Creative Commons

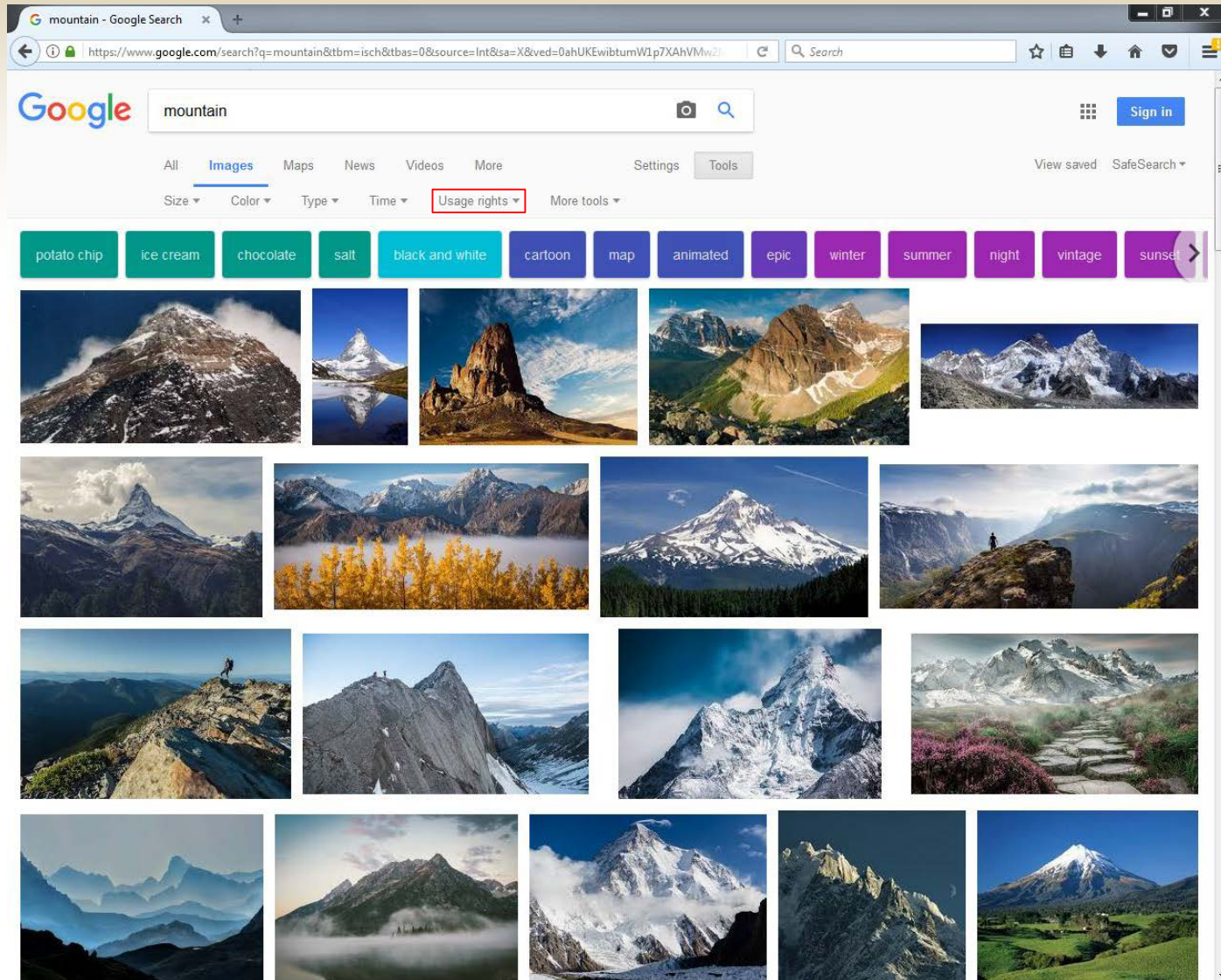
- Creative Commons
 - Nonprofit organization that provides a variety of simple, standardized licenses
 - All CC licenses have specific terms (attribution, non-commercial, etc).
- License/Publication agreement with copyright owner
- ***Use must adhere to individual licensing terms***



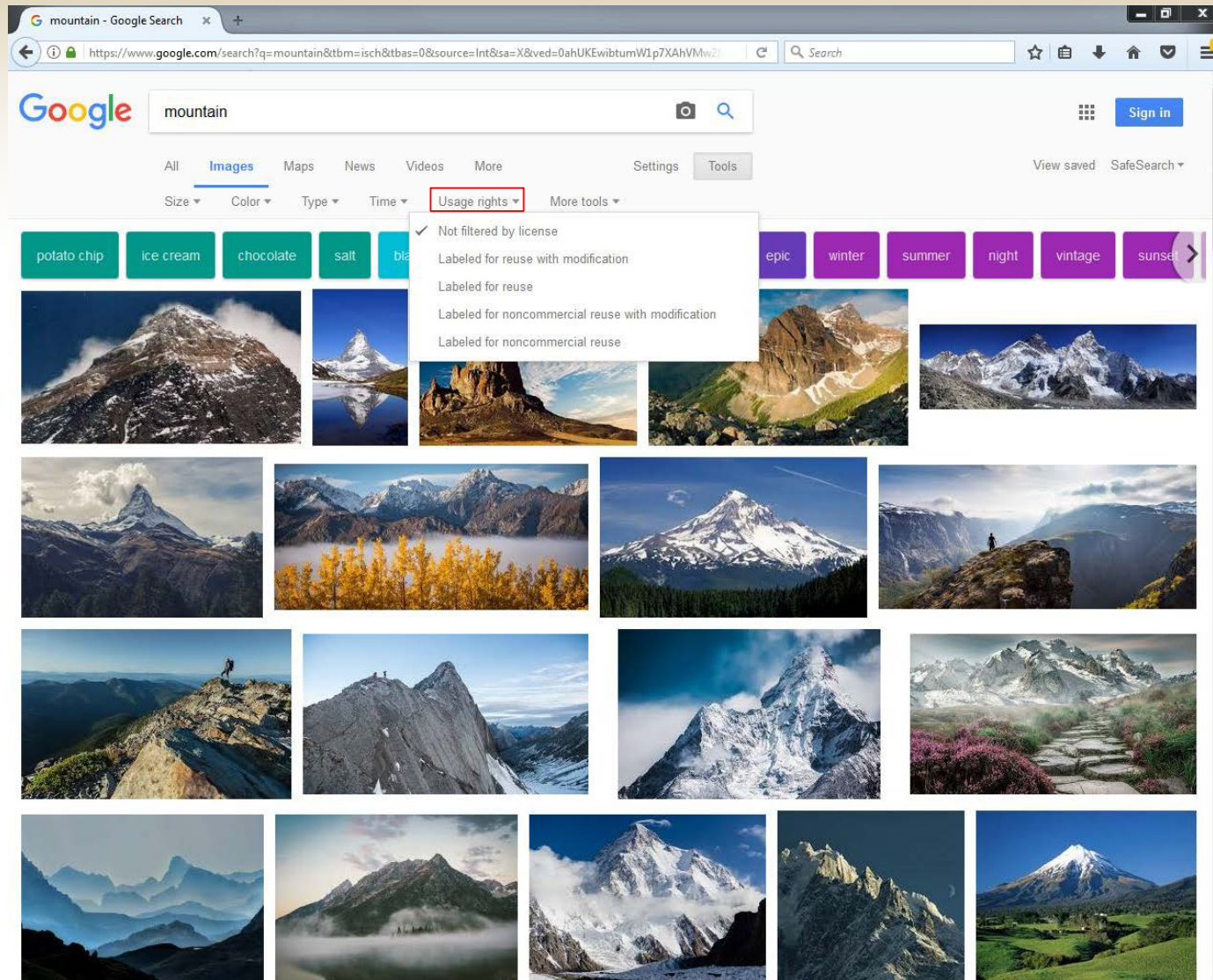
Google Image Search



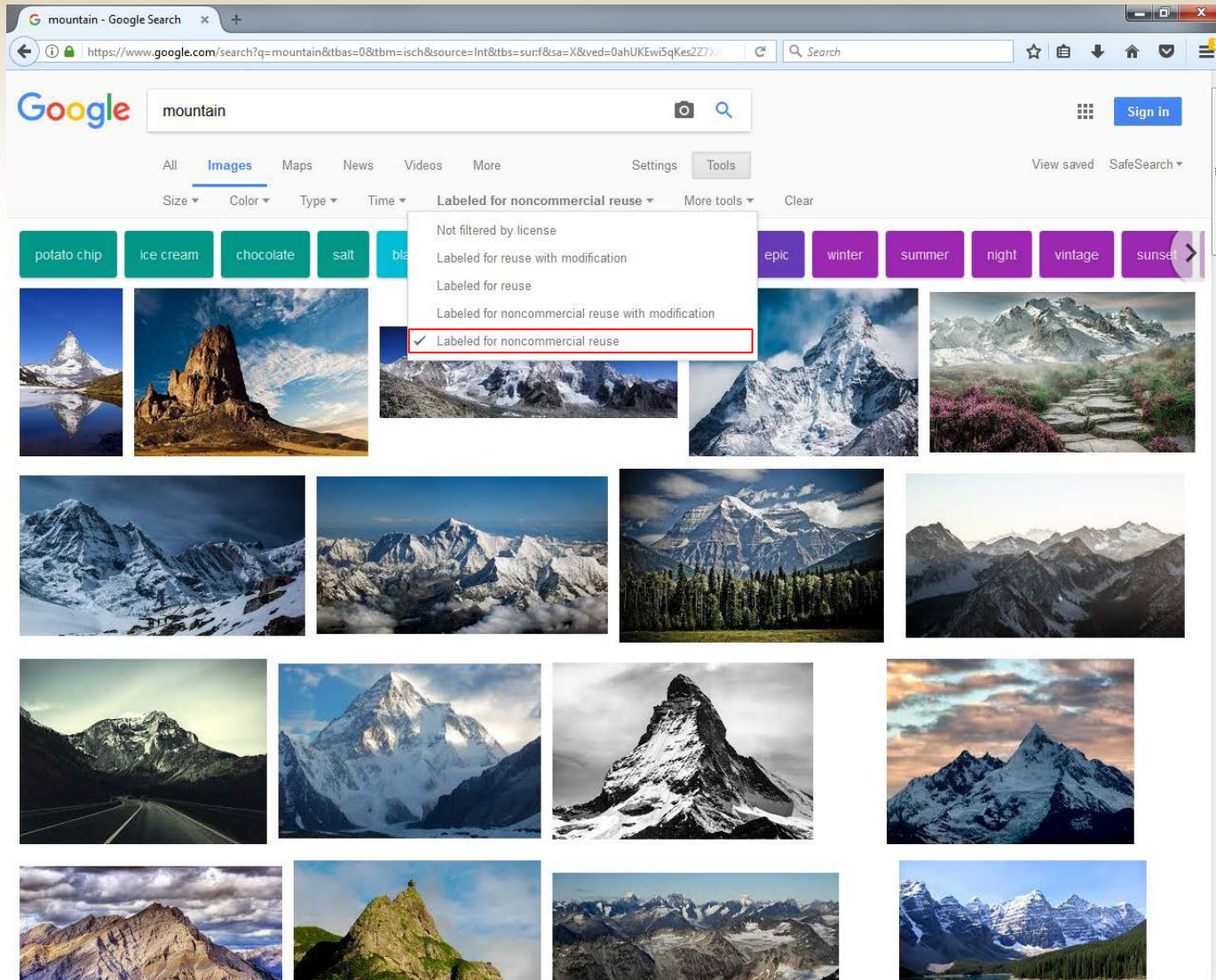
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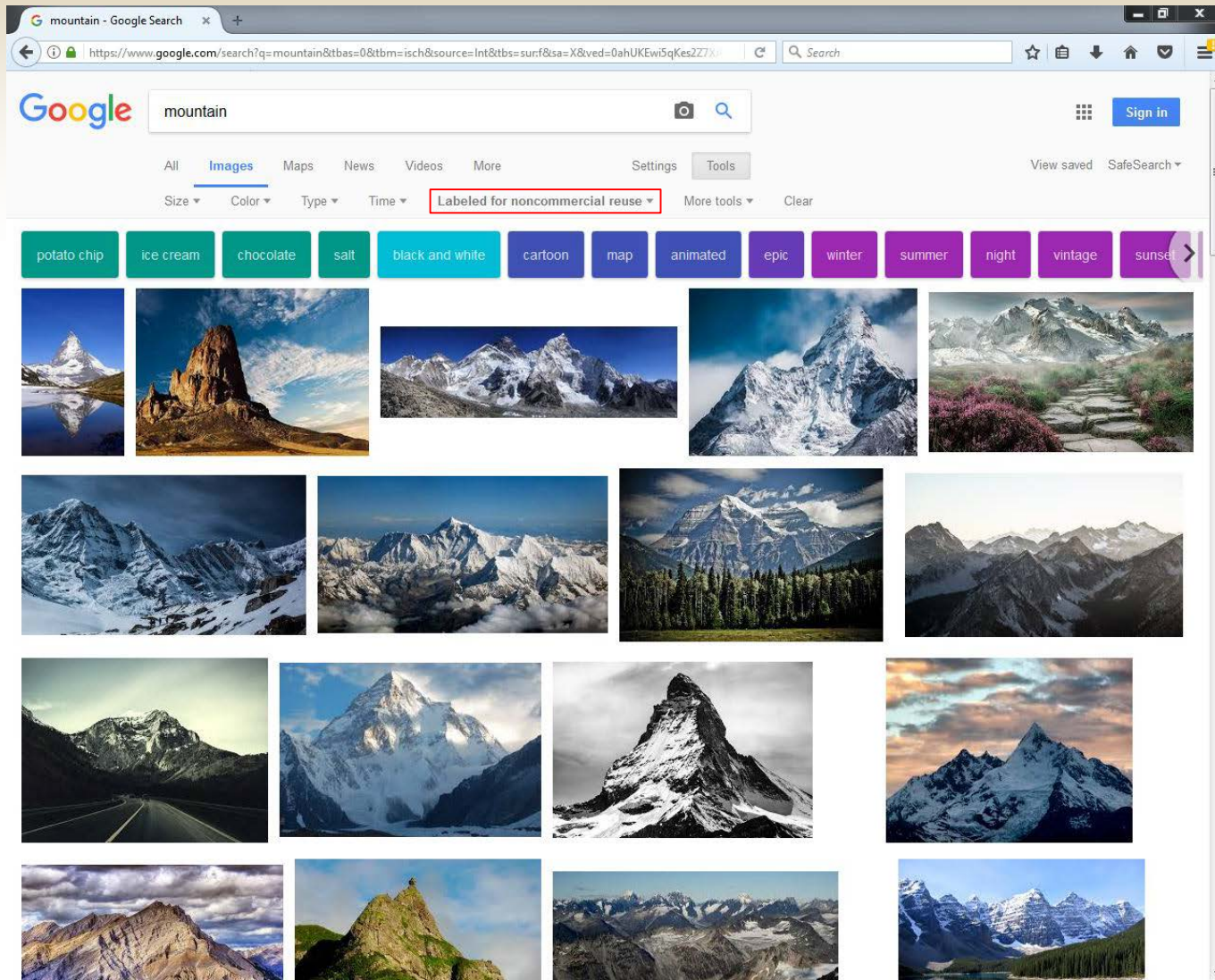
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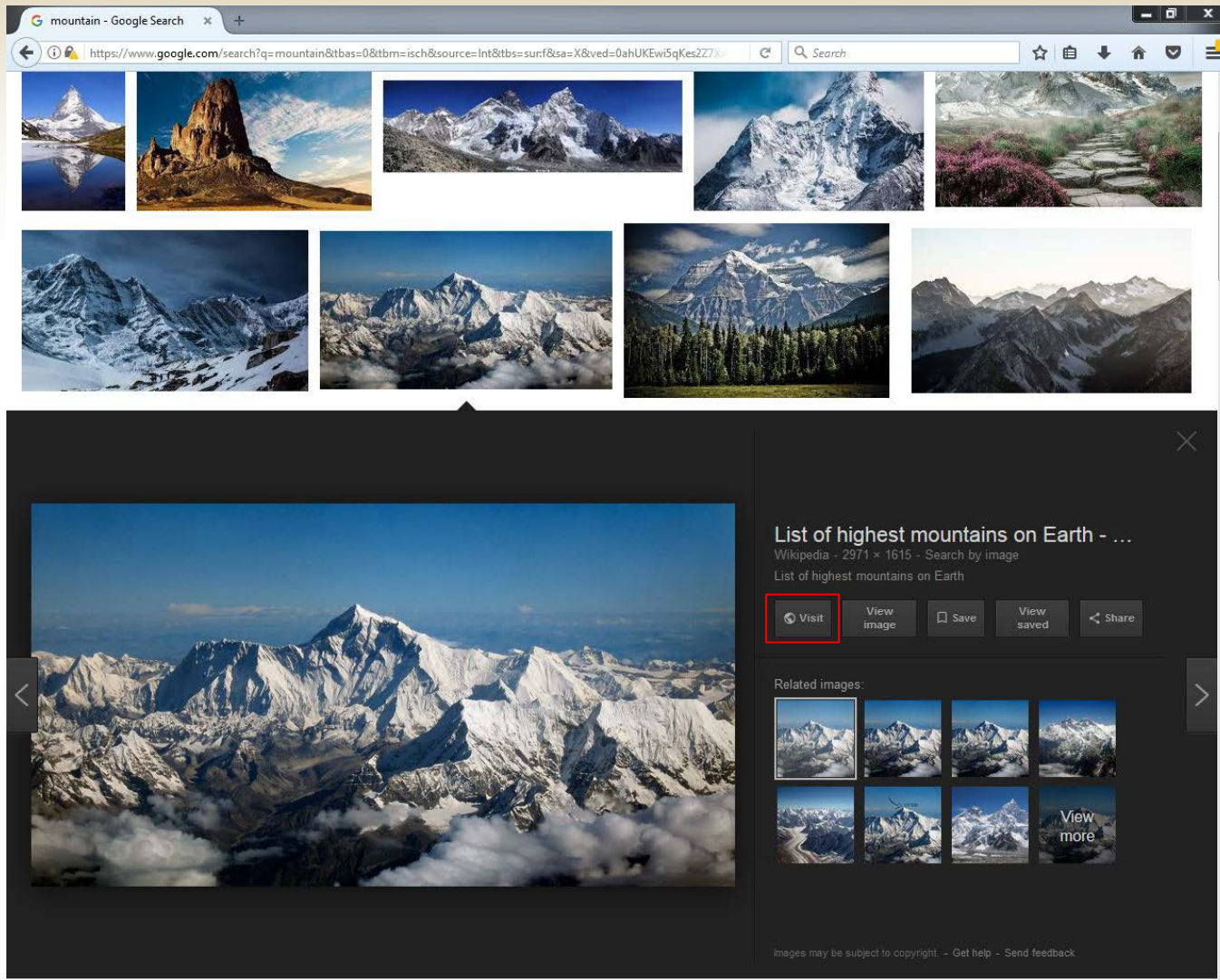
Google Image Search



Google Image Search




Google Image Search



Google Image Search

mountain - Google Search W Mount Everest as seen from I. +

https://en.wikipedia.org/wiki/List_of_highest_mountains_on_Earth#/media/File:Mount_Everest_as_seen_from_Drukair2_PLW_... Search



Aerial view of Mount Everest from the south. The peak rises over Lhotse, while Nuptse is the ridge on the left.

More details

Mount_Everest_as_seen_from_Drukair2.jpg: shrimp1967 derivative work: Papa Lima Whiskey 2 (talk) - This file was derived from Mount Everest as seen from Drukair2.jpg

Mount Everest as seen from an aircraft from airline company Drukair in Bhutan. The aircraft is south of the mountains, facing north.

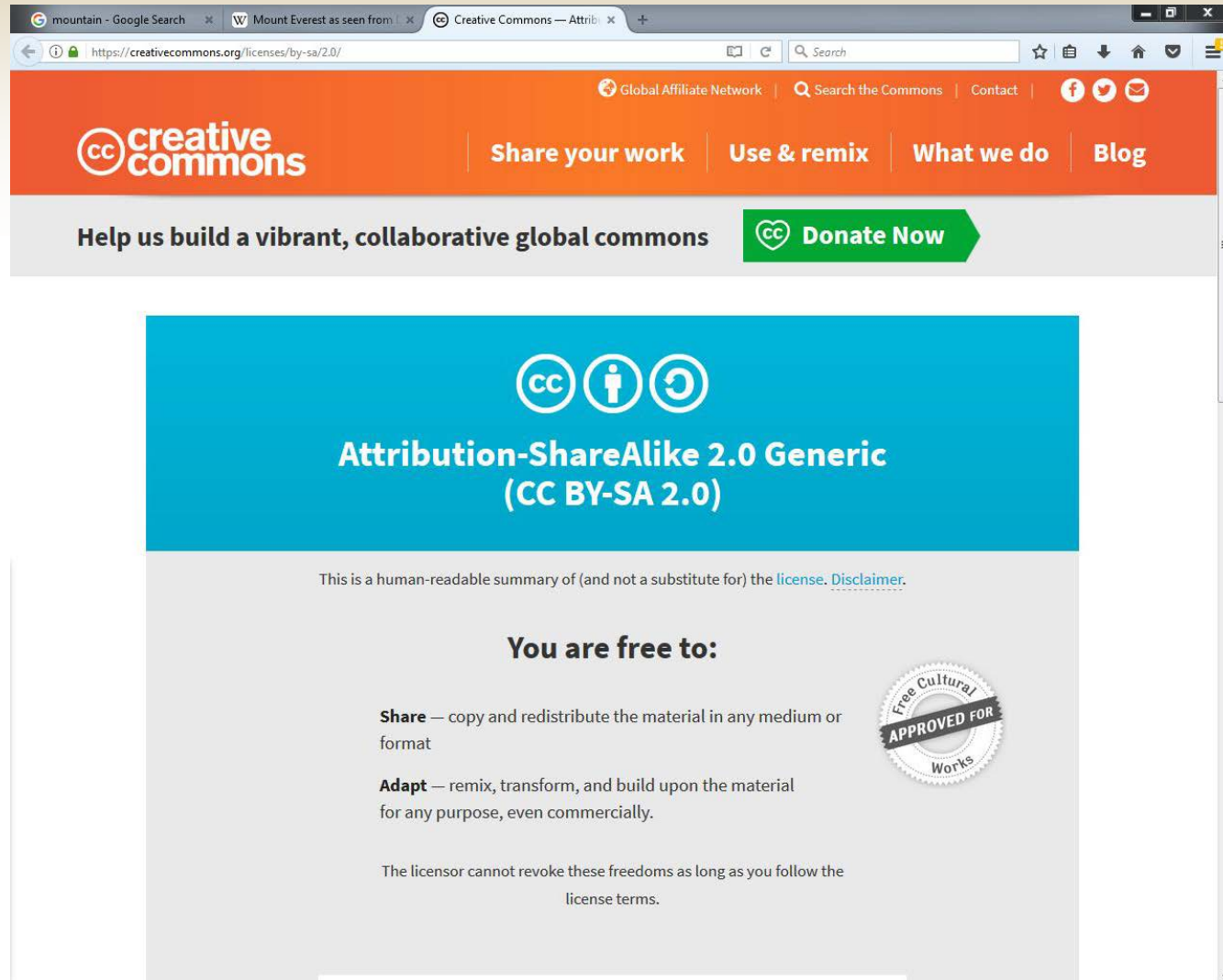
CC BY-SA 2.0

File: Mount Everest as seen from Drukair2 PLW edit.jpg

Created: 3 February 2012

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Google Image Search



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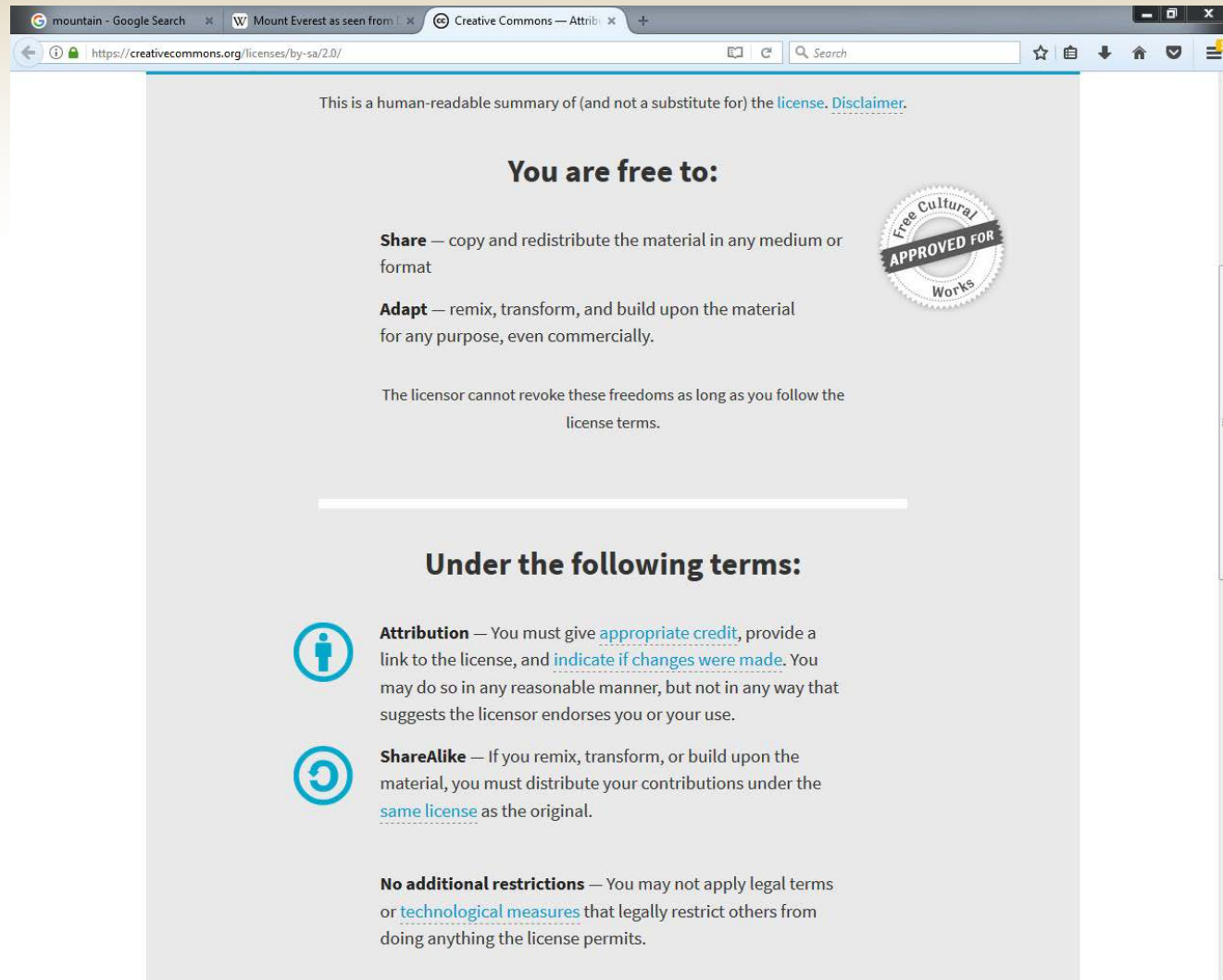
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- Share** — copy and redistribute the material in any medium or format
- Adapt** — remix, transform, and build upon the material for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Free Cultural Works APPROVED FOR Works

Google Image Search



Fair Use

“[T]he fair use of a copyrighted work ... for purposes such as **criticism, comment, news reporting, teaching** (including multiple copies for classroom use), **scholarship**, or **research**, is not an infringement of copyright.”



Does it Qualify for Fair Use?

P

PURPOSE and character of the use,
commercial or nonprofit educational purposes

A

AMOUNT and substantiality of the portion
used in relation to the copyrighted work

I

IMPACT – the effect of the use upon the
potential market/the value of the work

N

NATURE of the copyrighted work

Copyright: First Sale Doctrine



“The owner of a particular copy lawfully made under this title is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy.”

17 U.S.C. § 109

Digital Millennium Copyright Act (DMCA)

- Provides “notice and takedown” procedures to protect online service providers from liability for the infringing acts of their customers or subscribers
- Prohibits circumvention of technological protection measures used by copyright owners to protect their works
- Prohibits tampering with copyright management information

Music Copyright

Musical Work



Sound Recording



FREE FALLIN'

Words and Music by
TOM PETTY and JEFF LYNN

Moderate rock $\text{♩} = 64$

mf

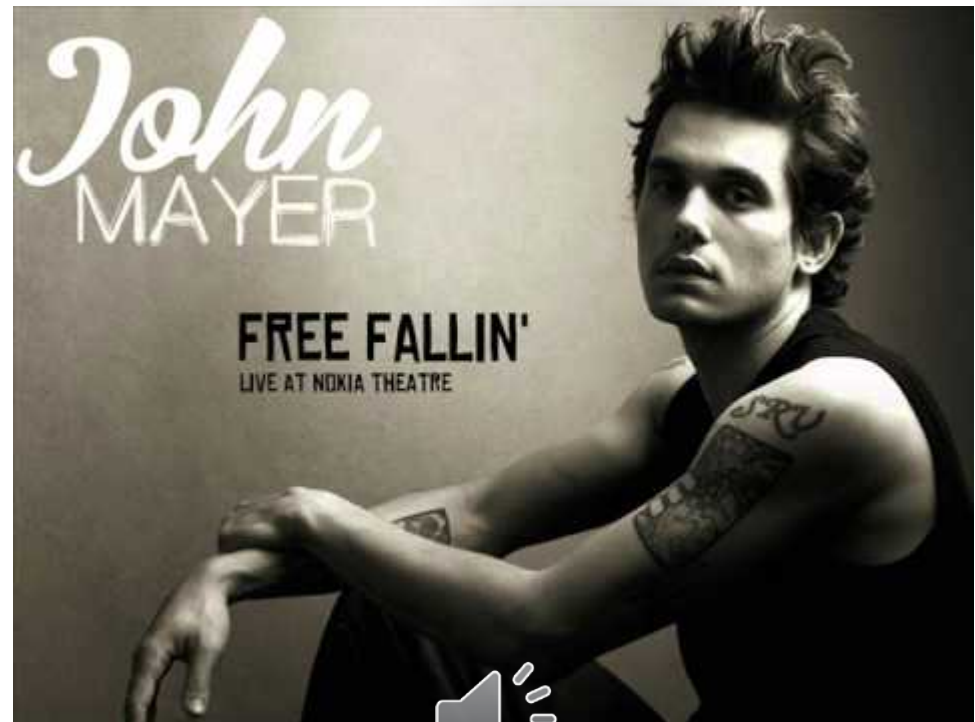
1. She's a

good girl, loves her Ma - ma, loves Je - sus, and A -

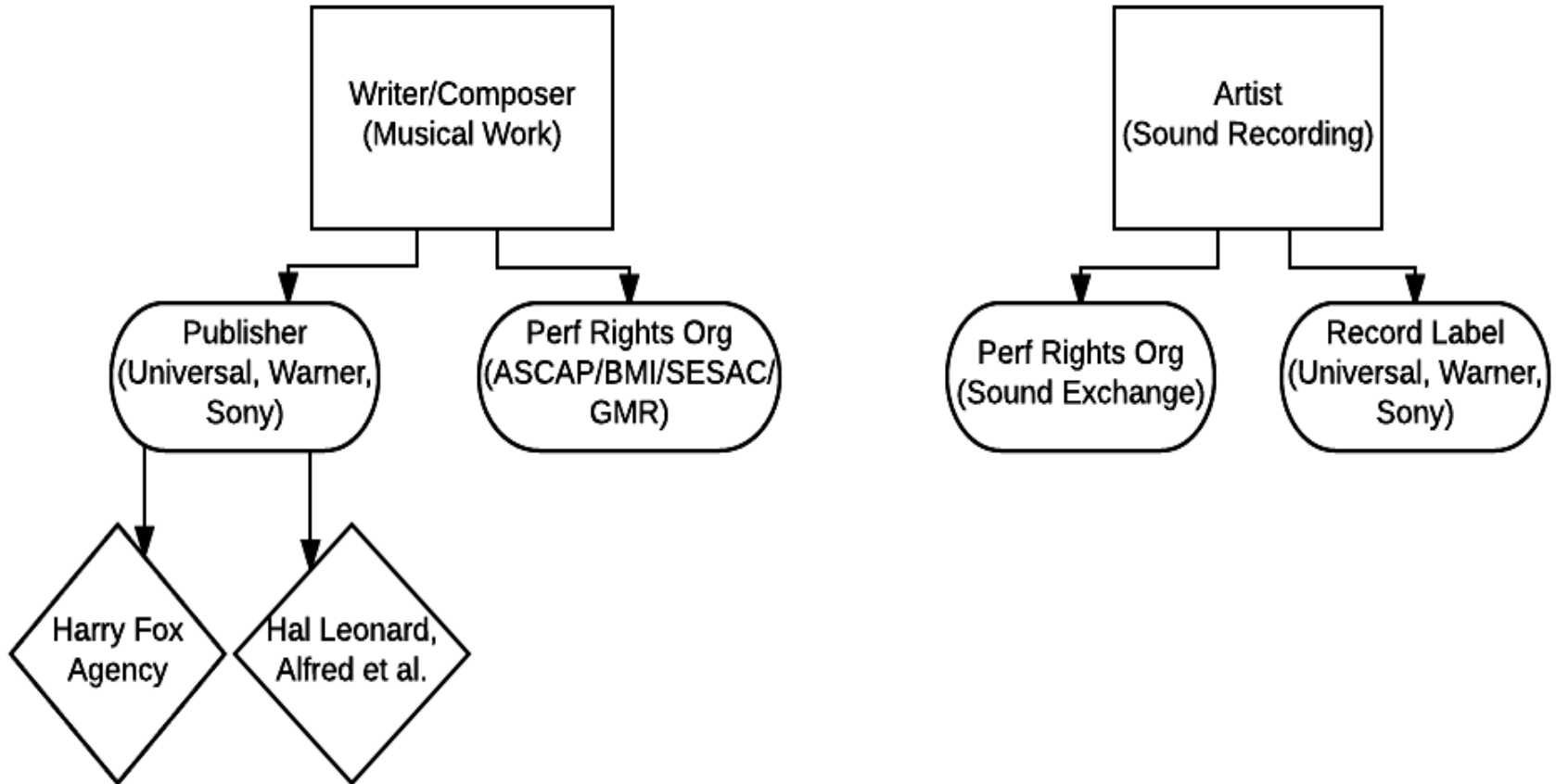
mer - i - ca too. She's a good girl, cra - zy 'bout El - vis; loves

hoo - es and her boy - friend too.

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Music Industry



Music Licensing Matrix

What do you want to do?	License Needed	Where do I get a license?
Make a CD of cover songs for distribution/sale	Mechanical	Harry Fox Agency obo Publishers
Play music in my restaurant, event hall, or dance studio	Public Performance	ASCAP/BMI/SESAC/GMR
Use a song and recording in a motion picture	Synchronization	Publisher and Record Label
Write an arrangement of a hit song for distribution	Arranging/Adaptation	Hal Leonard, Alfred, Tresona Licensing Exchange
Play a cover song for a live performance	Public Performance	Typically covered under venue's performance license with ASCAP/BMI/SESAC/GMR
Put on a production of a Broadway Musical at your school	Grand Rights	Musical Theatre International (MTI) et al.
Sample a song in my new recording	Reproduction OR Fair Use	Publisher and Record Label if not fair use (typically commenting on the original song)
Upload a cover song to YouTube	Synchronization	Publisher or Licensing Exchange (e.g. Tresona)
Write and record an arrangement of a public domain song like "Amazing Grace"	NONE	N/A. Copyright is owned by you.
Write an original song	NONE	N/A. Copyright is owned by you.

Rude Music v. Huckabee for President



Kittos v. Donald J. Trump for President

If I had a **bowl of skittles** and
I told you just **three would kill you.**
Would you take a handful?

That's our **Syrian refugee problem.**



BYU Copyright Decision Trail

1. Are you using a legal copy of the work?
2. Is the work protected by copyright?
3. Do you have permission from the copyright holder?
4. Is there an exemption, other than fair use, that covers your use?
5. Does your proposed use qualify as fair use?

FAIR or NOT FAIR

FAIR or NOT FAIR?

P PURPOSE

A AMOUNT

I IMPACT

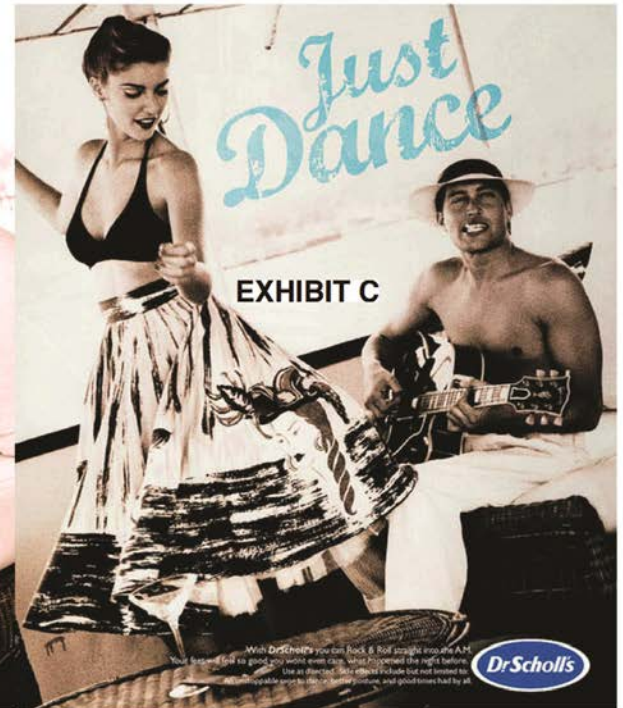
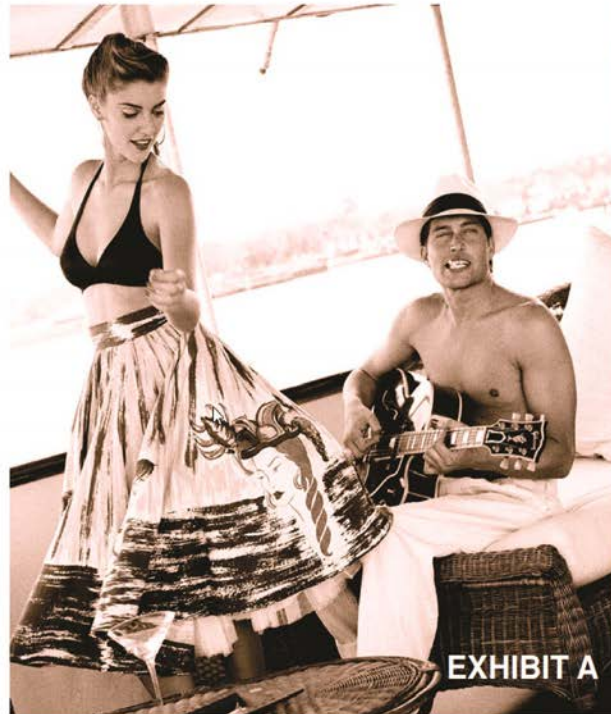
N NATURE

Mock Advertisement

- Photographer provided a photo to a stock photo company for licensing and sale
- Graphic design student used the photo, provided by his professor, to create a mock advertisement for a class project
- Student later posted the mock ad to his Flickr account to archive it
- Photographer did not grant permission or receive any license fees for the use of his photo

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P PURPOSE
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FAIR or NOT FAIR?

VOTE:

A – Fair

B – Not Fair

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FAIR or NOT FAIR?

KinderGuides

P PURPOSE

- Condensed, sanitized versions of classic novels (Hemingway's "Old Man and the Sea")

A AMOUNT

- Custom illustrations aimed at kids.

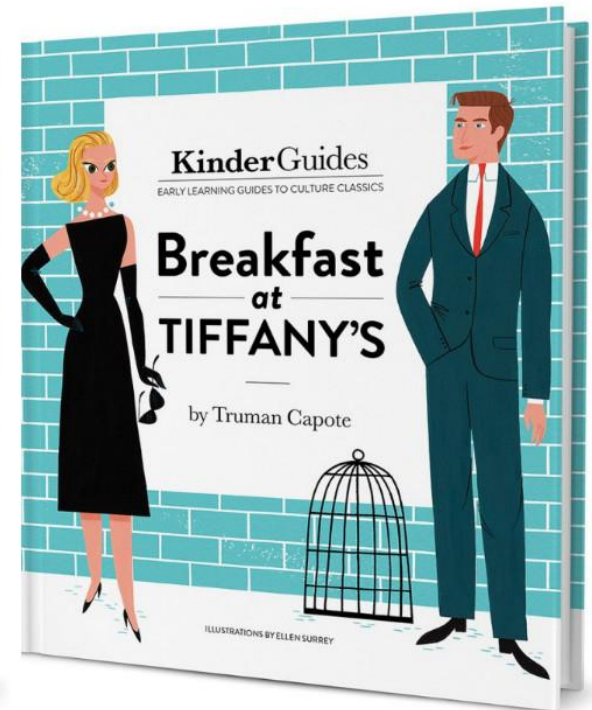
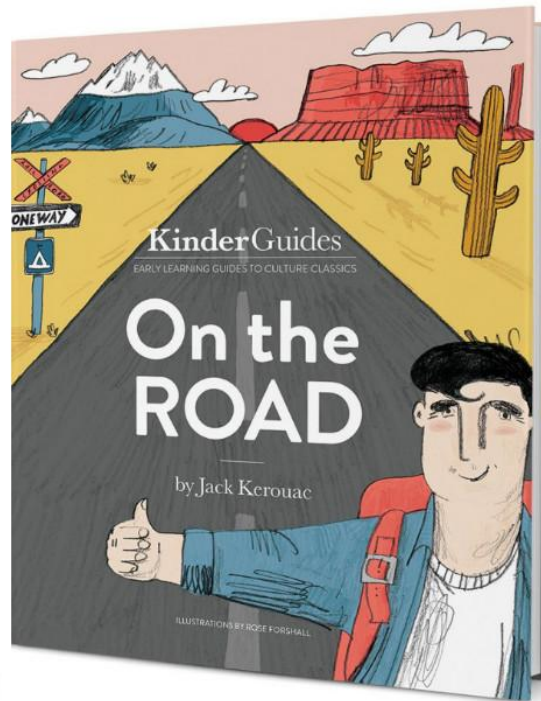
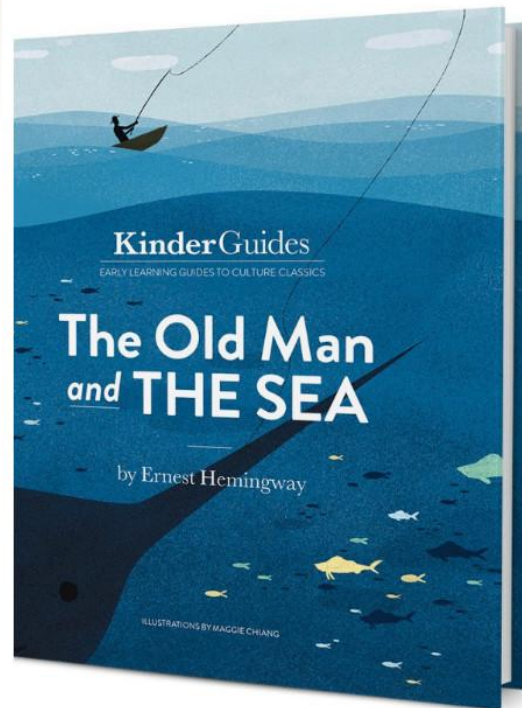
I IMPACT

- Plan for 50-book series.
- Intended as educational guides for children.

N NATURE

- 1-2 pgs of literary analysis for each story.

FAIR or NOT FAIR?



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FAIR or NOT FAIR?



FAIR or NOT FAIR?

Dr. Seuss – “Who’s Holiday”

P PURPOSE

- Playwright wrote a dark and decidedly adult sequel to *How the Grinch Stole Christmas!*

A AMOUNT

- Cindy Lou Who is presented as a middle age woman living in a trailer park, addicted to prescription drugs and served time for killing her husband, the Grinch.

I IMPACT

- Very little of the original *Grinch* rhymes were used.

N NATURE

- Dr. Seuss arguing it’s a “derivative work”; playwright arguing it’s a clear parody.

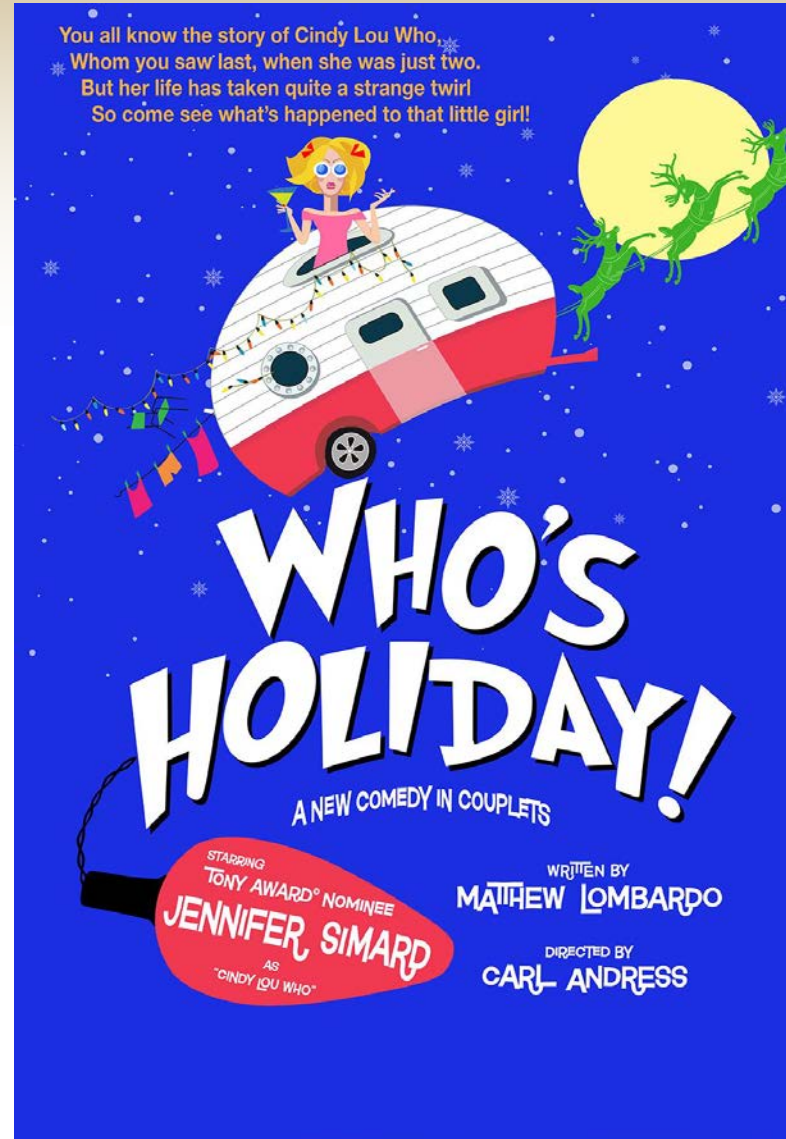
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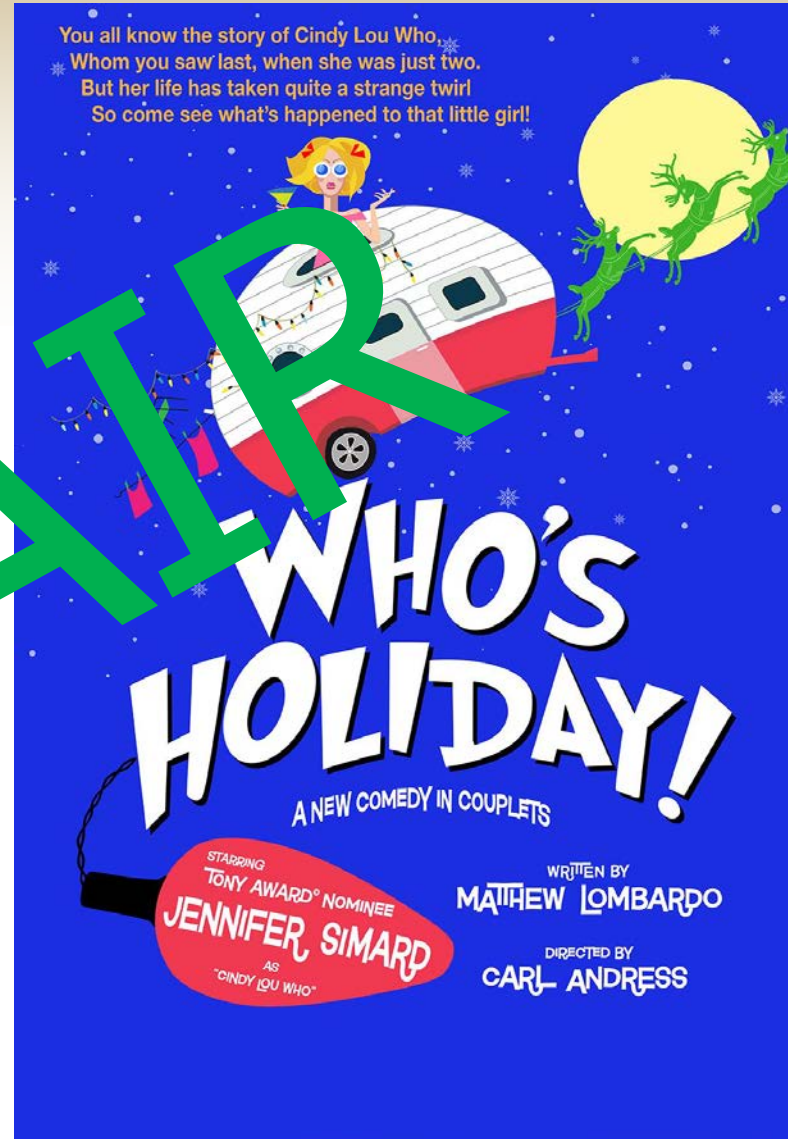
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FAIR



FAIR or NOT FAIR?

P PURPOSE

A AMOUNT

I IMPACT

N NATURE

Fox News Facebook Post

- Plaintiff owned the copyright in an iconic photograph taken on 9/11; earned more than \$1M in licensing revenue
- Fox News employee posted an image on Facebook, juxtaposing plaintiff's photo with an iconic WWII photograph, adding the hashtag #neverforget
- The Facebook page was associated with Fox News' television program *Justice with Judge Jeanine*

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FAIR or NOT FAIR?

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A AMOUNT

I IMPACT

N NATURE



NOT FAIR

FAIR or NOT FAIR?

VidAngel

P PURPOSE

- VidAngel purchased multiple discs and ripped one digital copy to tag for inappropriate content, which was then streamed to paying customers.

A AMOUNT

- No fixed copies of the “censored” films were made (i.e. NOT Cleanflicks).

I IMPACT

- Customers purchased and “sold back” discs, creating a pseudo digital sales exchange of \$1 for each film streamed.

N NATURE

- 100% of each movie was digitally copied
- VidAngel is a commercial service.
- Disney et al. argued that VA was just an unauthorized \$1 streaming service.
- VA argued that their service is “profoundly transformative” and classic space-shifting.

FAIR or NOT FAIR?

VOTE:

A – Fair

B – Not Fair

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Copyright: Questions

BYU Copyright Licensing Office

3760 HBLL

801-422-9339

copyright.byu.edu

copyright@byu.edu



#Ycopyright2017