THE COMPLICATIONS OF BRIDGEMAN AND COPYRIGHT (MIS)USE

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Bridgeman Art Library, Ltd. v. Corel Corp showed that reproductive photography is not copyrightable.

Considered in the decision are two precedent-setting court cases that show:

- Photography often is copyrightable.
- Facts often are not copyrightable.

Art museums and libraries are ignoring the decision and hinder artists and art historians.
BRIDGEMAN ART LIBRARY

- Leading source of high quality reproductive images of fine art
- Offices in London, Paris, New York, and Berlin
- Archives contain images from over 8,000 collections and more than 29,000 artists.¹
- Licensor of art images used in publications
COREL CORPORATION

- Canadian software company
- Originally created graphic design software
- Now creates software in the digital media industry
The Conflict:

- Corel sold a CD-ROM set of 700 digital reproductive images.
- Bridgeman also owned and claimed copyright over 120 of the images.
- In 1998, the Bridgeman Art Library sued Corel for copyright infringement.

Source: Wikimedia Commons
The Decision:

- Bridgeman did not have copyright over the reproductions.

- **Judge Kaplan:** “While it may be assumed that this required both skill and effort, there was no spark of originality—indeed the point of the exercise was to reproduce the underlying works with absolute fidelity.”
Napoleon Sarony sued Burrow-Giles Lithographic Co. for selling unauthorized copies of his original photograph.

Burrow-Giles argued: a photograph is not a writing nor “the production of an author”

Decided that Sarony did have copyright over the photograph.
FEIST PUBLICATIONS, INC. V. RURAL TELEPHONE SERVICE CO (1991)

- Rural sued Feist for publishing a telephone book using unlicensed information from Rural.

- Decided that compilations of facts, without a “creative spark” are not copyrightable.

- Further, copyright is not granted to hard work alone.

- Feist won the case.

Source: Wikimedia Commons
APPLYING BURROW-GILES AND FEIST TO BRIDGEMAN

Burrow-Giles:
Photographs can be copyrighted.

Bridgeman:
Can a photograph of a fact be copyrighted?

Feist:
Facts cannot be copyrighted.
APPLYING BURROW-GILES AND FEIST TO BRIDGEMAN

- **Burrow-Giles:** Are all photographs copyrightable?
**APPLYING BURROW-GILES AND FEIST TO BRIDGEMAN**

- **Burrow-Giles:** Are all photographs copyrightable?

- Most are. Reproductive photography is most likely the only case in which photography is not copyrightable.

*Katherine near Look Mickey, Patricia Kelley, 2007*
Feist: Is a "creative spark" inherent in the production of any photograph or is a reproductive photograph only a slavish copy of a "fact" (the original artwork)?
**Feist:** Is a “creative spark” inherent in the production of any photograph or is a reproductive photograph only a slavish copy of a “fact” (the original artwork)?

- Photographers must make choices such as lighting and lenses.
- Reproductive photography is intended to make an image as true to the original as possible--to copy a fact.
THE REACTION: IGNORE BRIDGEMAN

- **Bridgeman Art Library:** “All images supplied by the Bridgeman Art Library are copyrighted photographs. The Bridgeman Art Library either owns the copyright in the photograph or acts as the authorised agent of the copyright holder.”

- **J. Paul Getty Museum:** “grants permission to download collection images from our Web site for your own personal and non-commercial use, or for fair use as defined in the United States copyright laws.”

- **Metropolitan Museum of Art:** “Many of these images are available to license for study, editorial, and commercial usage.”
These copyright claims only hold power as warnings.\(^5\)

If a “copyright infringer” were ever taken to court, it is likely the precedent of *Bridgeman* would be extended to the region overseen by that court.

Source: Wikimedia Commons
These warnings are enough to dissuade artists and stifle art historical discourse.

Colin Cameron: “One cannot measure the deterrent effect these copyright claims have on potential authors who would use the uncopyrightable reproductions to create new works.”

Scholars are forced to carefully choose images that are absolutely necessary to their arguments.
WHY ASSERT COPYRIGHT?

- Financial gain.
- Bridgeman’s only source of income is dealing in art reproduction licenses.
- For a small museum, change in income can be detrimental.

Source: Wikimedia Commons
Copyright was created to encourage innovation.

*Bridgeman Art Library, Ltd. v. Corel Corp* shows that exact photographic copies of public domain works of art cannot be copyrighted.

Public domain works of art are considered facts that cannot be bound by copyright.
REFERENCES


