Copyright & Visual Art

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A Little History

• Pre-copyright: censorship and monopoly
• Statute of Anne (1710): books
• US Copyright (1790)
• Engraver’s Act (1735)
• US Engraver’s Act (1802)
• Fine Art Copyright Act (1862)
• US Fine Art Act (1870)
Why Copyright?

- Continental Europe: natural law
  - Parent-child
- Anglo-American: utilitarian
  - Economic incentive to create & disseminate
  - “Promote the progress of science”
Modern Copyright

- 1905-1908—failed revision efforts
- 1909—the “solution”
- Perfect example of public choice legislation
- Since 1909, only two exceptions
Requirements for Copyright

• “Originality”
  – Originated with the author
  – Minimally creative

• “Fixation” in a tangible medium of expression
Modern Rights in Visual Art

- Economic rights
  - Reproduce
  - Adapt
  - Publish
  - Publicly display

- Moral rights
  - Attribution
  - Integrity (modified)
Limitations on Copyright

- Idea vs. Expression
- Duration
- Fair Use
  - Commentary, criticism
  - Four-factor test
- First Sale
  - Right for owner of a copy
The Public Domain

• Encompasses all that is not protected by copyright
  – Not proper subject matter
  – Copyright expired
  – Copyright forfeited?

• Zombie copyright … Golan v. Holder
Property Rights in a Copy

- Not copyright; not public law
- Basis for museum licensing of images of public domain works
- Access mediated by contract
- High transaction cost of private law