

**Creation or Evolution:  
Can Copyright  
Bring the Peace?**

University of Colorado  
Colorado Springs  
June 5, 2017

**Kenneth D. Crews, J.D., Ph.D.**  
Gipson Hoffman & Pancione (LA)  
Columbia Law School (NYC)

---

---

---

---

---

---

---

---

**Creation and Copyright**

- **Creation of *New Works***
  - Copyright as Inspiration or Motivation
  - Copyright as Inducement
  - Copyright as Reward
- **Creation and *Authorship***
  - Requirement of Creativity
  - Human concept of “Authorship”

---

---

---

---

---

---

---

---

**Creation and Authorship**

- ***U.S. Constitution and Authors***
  - “by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”
- ***Authors as People***
  - Computer generated music?
  - Monkeys and photography?
  - Elephants and art?

<https://commons.wikimedia.org>

---

---

---

---

---

---

---

---

## Creation and Authorship

- **Authors as *People***
  - Satan and His Staff?
  - Words of God?
- **Corporations are *People*, too?**
  - Works Made for Hire
  - Underlying Human Authorship

---

---

---

---

---

---

---

---

## Copyright Law Itself

- **Creation of the Law**
  - Power of Congress to Act
  - Natural Rights Theory
- **Evolution and the Law**
  - Expansion of Scope of Works
  - Expansion of Rights
  - Extension of Term of Protection



---

---

---

---

---

---

---

---

## *"In the beginning...."*

- **Copyright has Roots to 1486**
  - *Venice Book Privilege*
- **British Statute of Anne in 1709**
- **U.S. Copyright Act**
  - 1790
  - 1831
  - 1856
  - 1870
  - 1909

---

---

---

---

---

---

---

---

**“...and it was very good.”**

*But soon the man and the woman came to know “good and evil.”*

**Good?**

*Author Rights  
Choices  
Good Cases  
Expression  
Rights of Use  
Careers*

**Evil???**

*Expanding Term  
Messy Exceptions  
Interpretations  
Guidelines  
Bad Cases  
Litigation*

---

---

---

---

---

---

---

---

**“The serpent deceived me, and I ate.”**

It must be **Somebody's** Fault!!!

**Congress  
Courts  
Copyright Office  
You and Me??**

---

---

---

---

---

---

---

---

**Returning to the Garden**

*Finding Good – Avoiding Evil*

- **Creation**
  - Starts with **Congress**
  - Adapted by **Courts**
- **Evolution**
  - Mostly with the **Courts**
  - Daily with **You & Me**



---

---

---

---

---

---

---

---

## Viva la Evolution!

- **Know Your Rights**
  - **Selective Assertion of Rights**
  - Exercise of Creative Commons
  - Liberal Permission
- **Keep Your Rights**
  - Negotiate your Agreements
  - Parse and Share your Rights

Source: nasa.gov.

---

---

---

---

---

---

---

---

## Viva la Creation!

*Cariou v. Prince*, 714 F.3d 694, 708 (2d Cir. 2013)




---

---

---

---

---

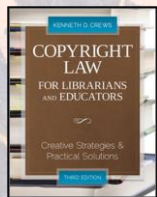
---

---

---

## Thank You!

[www.twitter.com/kcrews](http://www.twitter.com/kcrews)




---

---

---

---

---

---

---

---