

Copyright and Creativity

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I. INTRODUCTION

In *Feist Publications, Inc. v. Rural Telephone Service Co.*,¹ a unanimous Supreme Court concluded, in dictum, that creativity is a necessary condition for copyright protection. The case dealt with a kind of subject matter that often exhibits no intellectual creativity on its face²—a complete (nonelective) compilation of factual matter arranged

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¹ *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991).

² The phrase “creativity on its face” refers to creative input that can be observed by examination of copies of the work, as opposed to the method by which the work was created. Any painting that is not directly copied displays creativity on its face, whereas the number \$4,300 does not, even though it may be the result of a creative methodology for estimating the value of a used car. In the case of reproductions of public domain works, as well as with some maps and other visual representations of factual information, courts often require the reproduction to show creativity on its face before recognizing copyright protection. See *infra* notes 56-64 and accompanying text. In the case of estimated numerical values of tangible items like cars or coins, some courts do find the necessary creativity. See *infra* note 95 and accompanying text.