

This was the original script outline for the live podcast taping of [Political Theater](#), which took place on October 19, 2017, at the University of Pennsylvania Law School. The show was recorded for [Open Access Week 2017](#) as part of [Penn Libraries' OA Week events](#) and co-sponsored by Penn IP Group (PIPG).

This script may not reflect the final recording. Slides were mostly basic images - any movie clips are linked to from here. All episodes of Political Theater are available for streaming or download on [iTunes](#), from the [Political Theater page](#), under the "podcasts" tab at [Front Row Central](#), or from the podcast catcher of your choice.

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This episode can also be downloaded at

http://repository.upenn.edu/penn_oa_events/2017/events/5/

Open Access in Order to Make a Midnight Movie (LIVE show)

Original script outline

Lively intro: Hello, and welcome to our Open Access event with Political Theater. Please note that tonight's presentation is for adult audiences, though not mature ones. It contains foul language, poor production values, and explicit descriptions of copyright law. Our presentation will be recorded live, so audience members are asked to please turn off their cell phones, beepers, pacemakers, and other devices that may interfere. And the people in the first five rows will get wet. Enjoy the show!

Hello, Philadelphia!

<Sponsors slide>

Marty: Tonight, we're doing a live taping at the University of Pennsylvania Law School for an event co-sponsored by the Penn Libraries and the Penn IP Group - Thank you to Penn Law, thank you to Penn Libraries, thank you to Penn IP Group!

<Who we are slide>

My name is Martin R. Schneider/my name is Marta Rusek, we are Political Theater.

Marta: How many of you have heard the Political Theater podcast prior to this evening?

<If few people raise their hands> Wow...whole lot of Political Theater virgins here tonight. Make us sound good, people!

Marty: If you've never listened to the show before, what we do is unpack some of the connections between real-world politics and pop culture. Normally we talk about the actual content of the media, but tonight, we're talking about actual behind-the-scenes production. We're talking about legal loopholes and copyright disputes and laws that resulted in some classic and not-so-classic "cult film."

<OA Week slide>

This is a special episode of sorts because we're doing tonight's show as part of Open Access Week, which takes place October 23-29th this year. Open Access Week is an annual, global event that provides an opportunity for the academic and research community to educate and engage others in promoting open access to information.

Marta: What's open access? The term "open access" basically just means that information is available to the public unrestricted, online, for free, and that users can reproduce (copy) and redistribute (share) that information. Sounds like the internet, right? Unfortunately, not everything online is free or supposed to be freely shared. And I'm not just talking about piracy. A lot of content - specifically academic papers, scientific articles - are stuck behind paywalls that require you to pay ridiculous amounts of money to be able to read a paper - like \$68 for 24 hours of access to a 5 page journal article that you don't know if you want to read in the first place but could be pivotal to, say, how your city government decides public health policies. Now take that cost times 10: It adds up quickly. Many university libraries pay millions of dollars to publishers every year to provide their campus access to certain journals, but everyone else - doctors, lawyers, politicians, independent groups, your dentist - are mostly left in the dark with a choice to either pony up or not read new research in their field that could drastically affect their work and, by extension, you.

Marty: A lot of issues to access and open access lie in copyright - who owns the work and what they allow others to do with it. Normally, that would be the author who created the work in the

first place, but authors often transfer all of their rights to publishers who then have full control over the materials.

Marta: While copyright is a great way for authors to protect what they create and say what others can do with their work, it also has the potential to limit knowledge and restrict creativity in society, whether that's because academic research gets stuck behind a paywall nobody is able to pay or because you'll never be able to freely riff off of someone else's work without worrying about copyright infringement. In fact, with a current copyright term of life of the author plus 70 years, we'll pretty much never be able to reuse anything (copyright free) created in our lifetime. That's why, tonight, as part of Open Access Week 2017, we're going to be telling you stories about how copyright has affected some films and how open access has let them grow and thrive

Marty: So big disclaimer: We are not lawyers. We are not qualified to give legal advice, do not contact us if you get sued. Also, we're mostly sticking to US copyright tonight, which may not translate for other countries. BUT we brought a lawyer along to tell us why we're wrong!

Intro Frank Taney - Frank gives a spiel about the major points.

<Topics slide>

Nosferatu

<Nosferatu slide>

Marty: Our story begins in 1916 during World War I, when a young would-be movie producer named Albin Grau was stationed in rural Serbia. Grau heard local farmers telling superstitious folk stories about the vampires that lived in the dark of the local forests. He was already fascinated by all things involving mysticism and the occult, but in Serbia, he became enamored with vampire and undead lore. He vowed to make a film about vampires once he got back to his native Germany.

<Scarlett O'Hara joke from Marta - "We will never want for quality vampire movies again!!!">

Marty: When the war ended and Grau made it home, he made good on his vow by establishing a production studio named Prana Film. Grau intended to use the studio to produce films dedicated to occultism and the supernatural, and he wanted to start by producing an expressionist adaptation of the 1897 Bram Stoker book *Dracula*.

Marta: But there was a problem. In Germany, the text of *Dracula* was still under copyright protection, where it would remain until the 50th anniversary of Bram Stoker's death in 1962.

This meant that to make his movie, Albin Grau would have to get approval from the Bram Stoker estate, which was run by his widow, Florence.

Marta: We looked into this, and we couldn't determine whether Florence refused or Albin never asked, so when production began, we know he definitely did not have the Stoker estate's blessing.

<Dracula and Count Orlock slide>

Marty: What Albin Grau did have was a director, a screenwriter, and a producing partner all eager to get moving - and to get paid. So Grau moved forward with his adaptation but made a few changes to the mythos that he hoped would make the film legally different from *Dracula*. Primarily, all the major character names were changed, including changing Dracula himself into Count Orlock. The word "vampire" was changed to "nosferatu" - which is just Romanian for "vampire." And some changes were made to the character himself beyond just that name. Count Orlock is more like a feral animal, whereas Dracula is charming and sophisticated.

Marta: In 1922, Albin Grau's film *Nosferatu* made its debut. But Florence Stoker believed these deviations from the plot of her late husband's novel were minor ones at best. So she sued Albin Grau and Prana Film. Making matters worse for Grau, his publicity team kept the phrase "freely adapted from Bram Stoker's *Dracula*" on their promotional posters. Facing a very obvious defeat, Prana Films declared bankruptcy in order to escape the lawsuit. The courts sided with Stoker's estate, and a judge ordered every copy of NOSFERATU to be destroyed. All the prints were burned... except for one.

Marty: Somehow one print of *Nosferatu* made its way across the ocean to the United States, where *Dracula* was already listed in the Public Domain and required no permissions to adapt. This means you need no permissions to make a Dracula adaptation in the US, like the one Universal Pictures made in 1931 or the one Francis Ford Coppola made in 1992, which committed another type of crime by forcing Keanu Reeves to fake an English accent.

<Keanu in Dracula clip>

<Nosferatu slide>

Marty: Thanks to that one print, *Nosferatu* could legally be screened in the US and the UK, much to the dismay of Florence Stoker, who fought it until her death in 1937. The film finally made its way home to Germany in the mid '60s. By that point, its influence was already felt and this film that legally should never have existed gave birth to an entire genre of fiction we delight in to this day.

Marty: As for Albin Grau? He didn't see a dime off this success, and he never re-founded Prana Films, making *Nosferatu* their only release. But he did go on to co-found an order of magic alongside Gregor Gregorious and Alestair Crowley. Which isn't bad for a guy that loved the supernatural but didn't care much for legal formalities.

<Fraternitas Saturni slide>

Marta: And since *Nosferatu* and *Dracula* are both public domain now, that means we can have art like this: <https://www.youtube.com/watch?v=yorZRDUjbd0>

<Spongebob clip>

<Blank slide>

Marta: Question for you Frank -why would a filmmaker take this risk? What are the potential consequences of a lawsuit and what would warrant a total destruction order? (2-3 minutes.)

Night of the Living Dead

<NoLD slide>

Marty: When the original *Night of the Living Dead* film was released in 1968, zombie movies already existed. But they were a little different than the zombie films that came after. Those films featured "voodoo" zombies, living people possessed by supernatural forces. The more well-known rise-from-the-dead, hungry-for-brains kind of zombies started with *Night of the Living Dead*, and caught on because of a copyright error that made them totally fair game to use.

Marta: Before *Night of the Living Dead* was called "Night of the Living Dead", it went by a different working title - "Night of the Flesh Eaters" (A better title if you ask me). And that's how a simple mistake was made. When the distributors made the change to the title card at the beginning of the movie - they forgot to include the copyright notice on the final print.

<Animations>

Today, that wouldn't matter, thanks to the Copyright Act of 1976 which removed all the notification requirements. But in 1968, it meant the movie lost all copyright protections and was immediately placed into the public domain. Meaning that director George Romero and his writing partner John Russo... made basically no money off the film's success.

<NoLD slide>

Marty: Russo and Romero went on to each have successful careers, but they didn't work on the series again after disagreeing on sequel's direction. Since the film was public domain and therefore there was no fight over legal ownership, Romero and Russo went their separate ways and created their own franchises, agreeing that Russo would continue to use the "Living Dead" moniker while Romero would use the phrase "...of the Dead" in his films. Romero's films were more serious and focused on social commentary, whereas Russo took a more slapstick tone and focused on world-building.

<Dawn of the Dead slide>

Marta: Most importantly, though, all of the crucial character elements which "Night of the Living Dead" introduced to the concept of zombies - the "rules" of a zombie movie, like how zombies move slowly, eat brains, and must be killed by a headshot - all of those elements became fair use for any aspiring filmmakers to play with.

<Dead montage slide>

Without that copyright notice, the elements of Night of the Living Dead would have been protected - and any other films which used those elements would be subject to legal disputes. But with copy protections, just like with zombies, you can't kill what's already dead. Free of legal red tape, writers and filmmakers were given a whole graveyard full of goodies in which to frolic, and these elements kept showing up again and again and again, always returning to life.

Marty: This is an example of what having access to pre-existing works can do for creators - how copyright protections both protect creative works and inhibit future creativity.

It's A Wonderful Life

<IAWL slide>

Marty: *It's a Wonderful Life* is a movie we've come to think of as a holiday classic, but it wasn't always that way. In 1974, due to a copyright renewal error, the film slipped into the public domain, and out of the control of its original production company, Republic Pictures. TV stations, looking for cheap and easy holiday programming, seized on this opportunity and began playing the film on a near-constant rotation every December.

That's how it stayed until 1990, when the Supreme Court ruled on a case involving a *different* Jimmy Stewart film, *Rear Window*. In that case, Jimmy Stewart's production company lost the rights to air the film on TV because the movie rights belonged to a literature dealer who also owned the rights to the original story which the movie was based upon.

Republic Pictures took this as an opportunity to take control of their film, *It's A Wonderful Life*. Essentially, that movie is technically in the public domain - but essential parts of it like the story and the music - belong to Republic. So you can show *It's A Wonderful Life* all you want, as long as it doesn't contain any music or story elements. Which basically means... you can't show *It's A Wonderful Life*, unless you have Republic's permission, which they only grant a few times a year.

"What we could do, Marta,... is Jimmy Stewart impressions."

"Please don't."

"*extremely Jimmy Stewart voice* Nooow you listen to me! I don't want any plastics, and I don't want any ground floors and I don't want to get married — ever — to anyone! You understand that?"

"Why are you doing this."

"Merry Christmas, you beautiful old building and loan!"

"**Stop.**"

"Have you met my friend Harvey?"

"That's not even the right movie."

Basically there's two ways you can look at this:

One the one hand, it's understandable that if you produce a film that's playing on every TV in America all day every day for an entire month, you'd be frustrated that you can't make any money off of it.

On the other, the only reason the movie became the holiday classic phenomenon that it did... is because it was free to use.

<Blank slide>

Frank, thoughts?

*QUESTION FOR FRANK: What exactly does it mean to have copyrightable elements, where some things can be used and some can't? What is and isn't protectable? How can you compare *Night of the Living Dead* to *It's a Wonderful Life*?*

Marty: But hey, all we've talked about so far are good movies!
You all came here to see some bad movies, right?

Well, you asked for it.

Snakes on a Train

<https://www.youtube.com/watch?v=DxVqAcNKMNk> (Play until 1:30)

<SoaT slide>

Me: I'm gonna skip over that part in the audio editing for the people at home, so if you're listening at home, just pretend you heard 90 seconds of yelling and glass breaking, okay?

Would anyone.. Like to guess what the name of that film was?

<SoaT poster slide>

Snakes on a Train. Snakes on a Train, that's right. (More like Train in a Snake, but whatever.)

Snakes on a Train is a 2006 film from a studio named The Asylum, which has basically made a career out of releasing "Mockbusters." A mockbuster is a low-budget, usually direct-to-video film which comes out around the same time as a major studio release with similar titles or subject matters.

<posters slide>

Marta: Some of their works include Snakes on a Train, Pirates of Treasure Island, Paranormal Entity, Transmorphers, and the laziest one... Atlantic Rim.

Marty: Most of the time, these films are released within 1-2 weeks of their source materials, and back when Blockbuster video used to exist, you used to see another one of these every couple of months taking up like three rows of shelf space.

Marta: So, how is this legal, Frank?

(Frank explains the legality of the asylum)

Marty: Frank, what constitutes infringement? Quentin Tarantino has said that he "steals his material from every movie that was ever made." How can filmmakers make midnight movies/cult classics that don't actually infringe on someone else's work?

<Age of the Hobbits slide>

Marta: The Asylum actually WAS successfully sued once - they wanted to release a film called "Age of the Hobbits" and Warner Brothers successfully sued them because the term Hobbit is trademarked. They had to change the name of the movie and release it three months later.

Marty: The Asylum isn't the only company doing this, they're just quite frankly, the best at it. Another offender is BrightSpark Entertainment, who make knockoff versions of Disney and other animated films.

<posters slide>

Marta: If you can get into this line of work, this is actually pretty lucrative. As recently as 2013, the Asylum has NEVER lost money on it's movies. Because they cost nothing to make.

Marty: Yeah, the budget for an asylum film is the cost of a family dinner at Outback steakhouse. Their visual effects department is a Bloomin' Onion.

Before we move on, I want to show this clip from the trailer for Transmorphers:
<https://www.youtube.com/watch?v=IhAefsEqJsl>

<Transmorphers clip>

That's JUST a robot turning into a slightly different robot!

Showerhead joke

<MST3K slide>

Marty: So, now we're into the bad movies, so let's consult some bad movie experts. Mystery Science Theater 3000 is a cult comedy show about a man trapped on a spaceship by evil mad scientists and forced to watch cheesy movies as part of their experiments. He tries to keep his sanity with the help of his robot friends by making fun of the films and riffing on them.

Marta: The series has been around for nearly 30 years, gone through four different incarnations with three hosts, and spawned its own movie - but the format remains the same. One man, and two puppets, making fun of a bad movie for 90 minutes.

Marty: The show started off as a production of local television station KTMA in Minneapolis, as the result of a bad movie distribution deal. In those days, if a local TV station wanted the rights to air a classic monster movie like The Mummy, Dracula, The Wolfman, the only way to get them from film distributors was to buy them in a package with a bunch of other films. So in order to get one or two good movies, you were stuck with a lot of... unwatchable garbage.

Marta: So, it's the film distributor equivalent of the \$5 DVD bin?

Marty: Exactly.

<S/E slide>

Marty: TV stations actually had a lot of fun with this. Some of them created silly characters to be the late-night monster movie host - like Svengoolie or Elvira. But comedian Joel Hodgson saw a different opportunity- a chance to make jokes and use some props. Eventually, MST3K became popular enough to pitch to an actual production company and move off the independent KTMA station onto the newly-formed cable network the Comedy Channel, which we now know as Comedy Central.

<Hosts slide>

Marty: Eventually, distributors got wind that the Comedy Channel was making good money off of riffing on these movies. Distribution started to get a lot more expensive, because the copyright holders saw how valuable they'd become.

Marta: This has been a running theme tonight - when the money gets good, lawsuits follow. Distribution started to get a lot more expensive, because the copyright holders saw how valuable they'd become. This directly refers to a point you made earlier, Marty. These films became valuable because more people saw them. Open Access for the win!

<Keep circulating slide>

Marty: It gets more complicated than that, because when they originally aired, the home video market had not been tapped yet. MST3K used to have a message - "Keep circulating the tapes!" - to encourage people to tape the episodes and share them with their friends. Having the right to show something on TV and having the right to reproduce and distribute it? Whole different ballgame. That's why some episodes of MST3K are not available in any format.

Questions for Frank:

- 1) Frank, can you tell us why this was even allowed to happen in the first place?
- 2) When your entire work is based off of existing, copyrighted content, what legal hurdles do you face when you want to share it? How do hip-hop artists navigate this when it comes to sampling work for their songs?

Finally...Manos!

<Manos slide>

MST3K stumbled upon this hidden D-movie gem, and once they did an episode around it, it became one of the most popular episodes of all time.

<Manos robes slide>

Basically, this awful film, produced in 1966 by a fertilizer salesman in Texas, slipped into the public domain after a lapse in copyright renewal, where it sat unnoticed for 30 years until the MST3K crew seized it for an episode. This gave the film a tremendous cult following. But the story gets weird in 2011, when a film collector came across a reel of the original footage. His name was Ben Solovey.

<Restoration + animation slide>

The original footage and crowdfunded its digital restoration, removing some of the dinginess and grit the film was known for. (In the MST3K episode, one character remarks that "every shot of this movie looks like someone's last known photograph.")

<Restoration slide>

The restoration actually looks pretty good - and it sparked a legal battle over Public Domain. Joe Warren, the son of the producer of the original film has begun taking legal action to regain control over the work on the grounds that the copyright to the original script was still valid.

So, when it became valuable, the legal troubles began.

The case has since moved on...Joe Warren has dismissed the idea that the original story is still copyrightable, and now he's trying to trademark the phrase "Manos: The Hands of Fate"

<Blank slide>

Hey Frank - can he do that???

The closer:

The saga of Django

<Django clip/collage slide>

Basically, in 1968, a western called Django was produced in Italy starring Franco Nero and it was a huge success - such a huge success that other studios immediately began making "sequels" to the movie (sometimes re-titling existing films, sometimes just tossing a character named Django into a movie they were already making) in order to cash in on that success. There are somewhere between 30 and 100 Django sequels, 99% of which have nothing to do with the original film - and apparently that was something which was okay by Italian copyright at the time.

Want to introduce you to Django: <https://youtu.be/EUeCnpkjEV4>

<Django coffin clip>

Question for Frank: *When does a character become copyrightable? How is it possible for there to be 100 Django movies? What would happen in America? What if I made a movie that happened to be a spy movie and happened to have a main character named Jason Bourne - but like, a different Jason Bourne?*

<Marty Bourne slide>

Question for Frank: *Also, let's point out the irony here that Tarantino was sued for his Django film, for copyright infringement. Frank, thoughts on that case?*

Speaking of the Quentin Tarantino Django film, the original Django, Franco Nero actually has a cameo in that movie, as sort of a little in-joke:

<Django clip>

Conclusion

So, how does having things open access make a difference? How does this really help us create things? Well, for one, open access means you can reuse stuff, renew it, retell it as a new story. It encourages you to take a concept and build off of it. What if anyone could use Harry Potter in their storyline? What if the Star Wars universe could be reimaged as a slapstick comedy or a grotesque horror film? Open access lets you do that.

And there's ways for you to make your work open access, to tell people, "Yes, please use my stuff" while still having copyright protection - it's called Creative Commons licenses. Creative Commons lets you tell people that they can reuse your stuff in certain ways.

In fact, this podcast that you're listening to - right now - has an open access "Creative Commons" license - specifically, a Creative Commons Attribution-NonCommercial-ShareAlike (CC BY-NC-SA) license. That means that you can share it — copy and redistribute the material in any medium or format - and adapt it — remix, transform, and build upon the material - in any way you like as long as you attribute us as the original authors (the Attribution part of the license), don't make money off of it (NonCommercial use only), and relicense any new works you make under the same license (ShareAlike - it's a way to "pay it forward"). If you want to use it for commercial purposes or anything outside of this, you just come and talk to us first. We'll probably let you. Otherwise, it's yours to reuse.

But the point is that all of us in this room are making an open access work right now that allows to others create new works with with a few limitations. We're all part of this. Right now. So if you didn't care about any of this before, you're kind of like Kiera Knightly in *Pirates of the Caribbean* where Captain Barbossa tells Elizabeth Swan...

<CLIP (0:33-0:39: <https://youtu.be/1fzXmJyolfY>)>

I think that's legal.

Ironically, Quentin Tarantino did get sued for copyright infringement over his Django film, but by some different screenwriters:

<http://www.slashfilm.com/django-unchained-lawsuit/>

<https://theclearancelab.com/3-takeaways-from-django-unchaineds-copyright-infringement-lawsuit/>

I figured we could start with mentioning the issues that plague famous bad-movie riffers Mystery Science Theater 3000, a show that basically got famous making transformative works out of pre-existing materials, and which spent four years encouraging piracy by telling its fans to "keep circulating the tapes!" Because so much of MST3K's work comes from remixing other copyrighted works, it's proven difficult to distribute episodes on DVD, as well.

More information on MST3K's deal here:

<https://www.quora.com/How-did-Mystery-Science-Theater-3000-get-the-rights-to-the-films-they-lambasted>

<http://www.mst3kinfo.com/mstfaq/legal.html>

<http://www.mst3kinfo.com/?p=43>

<http://www.imdb.com/title/tt0094517/faq> (See last question "why aren't the DVDs released in episode order?")

This can lead into the legal battle over one of MST3K's most famous films, *Manos: The Hands of Fate*:

<https://news.avclub.com/read-this-the-battle-over-the-infamous-cult-classic-ma-1798284742>
<https://www.plagiarismtoday.com/2015/11/03/how-the-worlds-worst-movie-could-change-copyright/>
<https://www.gofundme.com/manosfate>

Basically, this awful film, produced in 1966 by a fertilizer salesman in Texas, slipped into the public domain after a lapse in copyright renewal, where it sat unnoticed for 30 years until the MST3K crew seized it for an episode. This gave the film a tremendous cult following. But the story gets weird in 2011, when a film collector came across a reel of the original footage. His name was Ben LAST NAME

the original footage and crowdfunded its digital restoration, removing some of the dinginess and grit the film was known for. (In the MST3K episode, one character remarks that "every shot of this movie looks like someone's last known photograph.") The restoration actually looks pretty good - and it sparked a legal battle over Public Domain. Joe Warren, the son of the producer of the original film has begun taking legal action to regain control over the work on the grounds that the copyright to the original script was still valid. (Frank, you could help explain if there's actually a case here.) At first it was just letters, but as of this year - Joe Warren is seeking to trademark the phrase "Manos: The Hands of Fate". This might be an opportunity to talk about the difference between copyright and trademark.

I'd also love to talk about the Django "sequels" because I love spaghetti westerns - but this is Italian copyright law and I haven't been able to find much more concrete explanations than "Italian copyright law was pretty crap in the 60s and 70s"

<https://www.timeout.com/london/film/the-rise-of-django-and-the-spagetti-western>
<http://tvtropes.org/pmwiki/pmwiki.php/Film/Django>
https://www.spaghetti-western.net/index.php/Title_chaos

Basically, in 1968, a western called Django was produced in Italy starring Franco Nero and it was a huge success - such a huge success that other studios immediately began making "sequels" to the movie (sometimes re-titling existing films, sometimes just tossing a character named Django into a movie they were already making) in order to cash in on that success. There are somewhere between 30 and 100 Django sequels, 99% of which have nothing to do with the original film - and apparently that was something which was okay by Italian copyright at the time. This would be like me just making a movie that *happened* to be a spy movie and *happened* to have a main character named Jason Bourne - but like, a different Jason Bourne.

Ironically, Quentin Tarantino did get sued for copyright infringement over *his* Django film, but by some different screenwriters:

Other fun potential topics:

Turkish Star Wars, which famously steals from Indiana Jones and Star Wars, made during the Turkish Coup which kept western films out of Turkey:

<https://www.theverge.com/2016/12/20/14024124/turkish-star-wars-restoration>

Asylum films, which basically made a company out of *barely* not violating copyright laws:

https://en.wikipedia.org/wiki/The_Asylum