



Class 21: Fair Use Part Two

Administrative

Next Time: 849-58; 868-74 and Supplemental Perfect 10 Material on Website

Four More Classes

Review Sessions

Tuesday, 5/8, 2pm

Wednesday, 5/9, 10am

News

Felix v. KitCat Clock 🌐

Twentieth Century Fox v. Cablevision

Last Time

The Four Factors

Factor 1: Purpose and character of the use (by D)

Commercial or nonprofit?

Educational?

Transformative

Factor 2: Nature of the copyrighted work.

"Core" of copyright protection ⊕

Unpublished

Factor 3: Amt and Substantiality of the portion used in relation to the copyrighted work as a whole.

Factor 4: Effect of the use on the potential market for or value of the Copyrighted Work.

Class 21: Fair Use Part Two

Last Time

Parody

Campbell v. Acuff-Rose

Basic Facts

1964: Roy Orbison writes "Oh, Pretty Woman"

Assigned rights to Acuff-Rose

1989: 2 Live Crew write "Pretty Woman".

P uses word "parody" and D uses word "satire"
July 1989: Sought a license from Acuff-Rose
Released song anyway. Large success.

District Court: Fair Use.
CA6: Reversed. Blatantly commercial purpose, so no fair use.
Held (Supreme Ct. 1994)

Reasoning

- Parody
- 1. Character and Purpose of Use
- 2. Nature of the copyrighted work
- 3. Amount and Substantiality of the Portion Used
- 4. Effect of the use on the market

Other examples

Note 9: Dr. Seuss: Cat NOT in the Hat.

Rhyme about OJ

A happy town Inside L.A. Where rich folks play
The day away. But under the moon The 12th of June.
Two victims flail Assault! Assault! Somebody will go to jail!
Who will it be? Oh my! Oh me!
One Knife? / Two Knife? / Red Knife / Dead Wife
A man this famous Never hires Lawyers like Jacoby-Meyers.
When you're accused of a killing scheme You need to build a real Dream Team.

Cochran! Cochran! Doodle-doo Johnnie, won't you join the crew?
Cochran! Cochran! Deedle-dee The Dream Team needs a victory.

Held: No fair use because satire.

Note 5: The Wind Done Gone

"My Humps" covers Obama/1984 Mashup

Class 21: Fair Use Part Two

Harper & Row v. Nation Enterprises

Basic Facts

Gerald Ford wrote an autobiography after leaving office.

Lots of "newsworthy" tidbits, most importantly his telling of the events leading up to the pardon of Nixon.

Time magazine entered into contract with Ford & publishers to publish excerpts from the book one week before release date.

Two payments. Second was supposed to be for \$12,500.

Two to three weeks before release, someone stole a copy of the manuscript and gave it to the editor of The Nation

Editor of The Nation (Navasky) worked quickly to excerpt passages in his magazine to scoop Time.

Time canceled second payment (\$12.5k)

Held

A. The importance of the unpublished nature of the manuscript.

B. No public figure exception to copyright

Reasoning

Four Factors

1. Purpose of the Use
2. Nature of the Copyrighted work.
3. Amount and Substantiality of Portion Used
4. Effect on the market.

Other questions

Class 21: Fair Use Part Two

American Geophysical v. Texaco

Basic Facts

83 Publishers of scientific journals sue Texaco for copyright infringement of articles by photocopying.

Texaco's 400-500 scientists

Odd Procedural approach: Pick one lucky scientist at random (Chickering) and dig through his files.

Texaco routes journals to scientists with an interest.

Chickering photocopied eight files on own or with other employees' assistance.

Facilitate current or future professional research.
No immediate use -- placed in his files.

Held

Reasoning

1. Purpose and character of use.
2. Nature of Copyrighted Work
3. Amount and Substantiality of Portion Used
4. Effect upon potential market or value.

What market? ⊕
The circularity problem. ⊕