

Class 20: Direct and Secondary Liability Take Two

Administrative

- Next Time 576-602, Supp. 455-57
Next Wednesday: Guest lecture: Wendy Seltzer
- News Wednesdays Mardi Gras costumes 🇺🇸
More Netflix/Redbox 📺
- Drafting Exercise Due two weeks from today

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Last Time

Campbell v. Acuff-Rose

Basic Facts

Listen 🎧

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)

Parody

The Wind Done Gone

The Cat Not in the Hat

Reasoning

1. Character and Purpose of Use

Transformative

For D

2. Nature of the copyrighted work

Neither one

3. Amount and Substantiality of the Portion Used

Slightly in favor of D

4. Effect of the use on the market

Similarities

But opposite holdings

New Era Facts

Castle Rock Facts

1. Purpose and Character

2. Nature of the Copyrighted Work

3. Amount and Substantiality of the Portion Used in Relation to the Copyrighted Whole

4. Effect on the Potential Market

Other Cases

Compare and Contrast Book Cases

Caribbean International News Corp.

Direct Infringement

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Secondary Liability

Liability of Device Manufacturers

Search Engines

Basics

Vicarious Liability

Contributory Infringement

Netcom

Fonavisa

Facts

Swap Meet

Vendors pay daily rental fee for booth space

Swap meet also earns separate revenue for

Admission charge

Concessions

Parking charges

One vendor sells bootleg recordings

Music copyright owners sue swap meet itself

Held

LL/Tenant: LL are usually not vicariously liable

Reasoning

Dancehall cases: enough control and financial benefit

Note 6: Corporate Veil Piercing?

What role played by contracts authorizing right to terminate?

Search versus payment