

Class 16: Fair Use (Part 1)

Last Time

Administrative

Next Time: 541-66

Note about election day
(Tuesday, November 4)

Figure out the circularity
problem with Factor
Four (esp. while reading
Am Geophysical)

Right to prepare
derivative works

Definition (section 101):
Work based on one or
more preexisting works

Such as a translation,
musical arrangement,
dramatization,
fictionalization, motion
picture version, sound
recording, art
reproduction,
abridgement,
condensation . . .
or any other form in
which a work may be
recast, transformed, or
adapted.

Classic Examples

Prepare movie version
of a novel.
Prepare action figures of
copyrighted figures from a
movie.
Weird AI

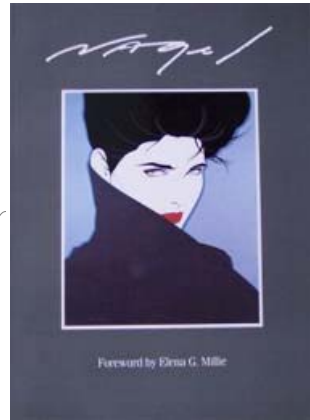
515-16: Problem 4-26

Casebook bought and
passages are underlined
and marks are made in
the margins.

Student sells marked-up
book back to bookstore.

Bookstore sells them to
incoming law students
as used books.

Compare A.R.T. cases



Held (CA9, CA7)



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Fair Use Generally

Old Doctrine, but codified in 76 Act

Section 107

Six sample purposes ⊕

"Not an infringement"

Four Factors (illustrative, not exhaustive) ⊕

How to Apply

Sony: Equitable rule of reason.

Lessig: Right to Hire a Lawyer

Policy ⊕

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.

Selected "most interesting and moving parts" and from among the "most powerful passages."

Time canceled second payment (\$12.5k)

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Held

Reasoning

- A. The importance of the unpublished nature of the manuscript.
- B. First Amendment considerations: No "Public Figure" fair use exception; no blanket "news reporting" fair use exception; No "important work" fair use exception.

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.

Sony v. Universal

Basic Facts

Sony sells VCRs.

Sued by Movie companies because movies (and other shows) were being taped by purchasers of the VCRs.

Subtopic

Survey's of how users used VCRs

Jack Valenti (MPAA) to the House Subcommittee: "The VCR is to the American film producer and the American public as the Boston strangler is to the woman home alone."

- 75%: Time-shifting
- 96%: Caught a show I would've missed.
- 70% of total programs only watched once.

Procedural Oddity +

Reasoning +

Public Interest

Note 1: What about library/archive creation?
Fair use?

TV-skipping variations +

Postscript