

# Do You Know Your Fair Use Rights?



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You write, but do you own a  
copyright?



# Copyright Basics

- For works produced today, protection is **automatic** once a **creative** work is fixed
- The bundle of copyrights lasts a long time:
  - **Life of the author plus 70 years**

## So...what rights do you have?

- Reproduction
  - Distribution
  - Derivatives
- Absolutely necessary for publishing
- Arguably necessary for publishing (at least a subset of derivative rights)
- Performance
  - Public display
- Mostly come into play for creative works

The right to license any of the above to third parties



# I own a copyright, but others do, too?

- Right. This begs the question . . . Can you use others' work in your work?
- The answer is generally yes, but there are different ways to get there . . .

# Using Others' Work

- Here are some avenues for legally using others' work in your own work:
  - (1) Public Domain
  - (2) Creative Commons Licensing
  - (3) Copyright Exceptions
  - (4) Fair Use
  - (5) Asking for (and receiving) permission from the copyright owner

# FAIR USE 17 USC Section 107

Preamble to Section 107: “the fair use of a copyrighted work . . . for purposes such as criticism, comment . . . teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”

# Fair Use Factors

“In determining . . . fair use the factors to be considered shall include—

- (1) purpose and character of the use, including whether such use is . . . for nonprofit educational purposes;
- (2) nature of the copyrighted work;
- (3) amount and substantiality of the portion used . . . ; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.”

# Factor 1: Purpose & Character of the Use

Commercial versus Educational Use



## Factor 2: Nature of the Work

unpublished/creative versus published/factual



# Factor 3: Amount/Substantiality Used

entire book copied/heart of work copied versus small amount copied



# Factor 4:

## Effect on Market for Original Work

Replaces marketplace for original work versus substantially different than original work





# Factor 1+

## Transformative Use

A transformative use is one that **alters the original work "with new expression, meaning or message . . ."** *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 579 (1994).

## Some specific examples

- The transformative factor was first explained in a case involving a parody of the lyrics to “Pretty Woman.”
- The Supreme Court explained that a parody, not a satire, is a fair use.
- Can someone explain the difference between parody and satire?

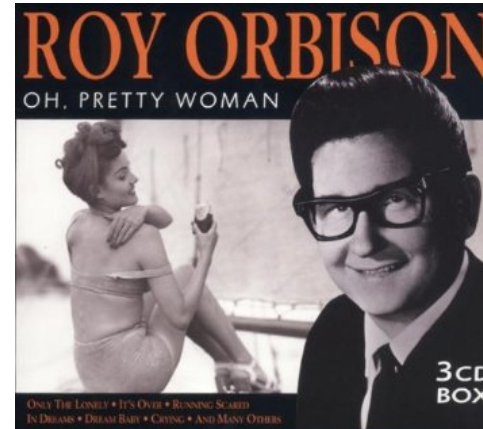
# Parody versus Satire

“[T]he heart of any parodist's claim to quote from existing material, is the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's works.”

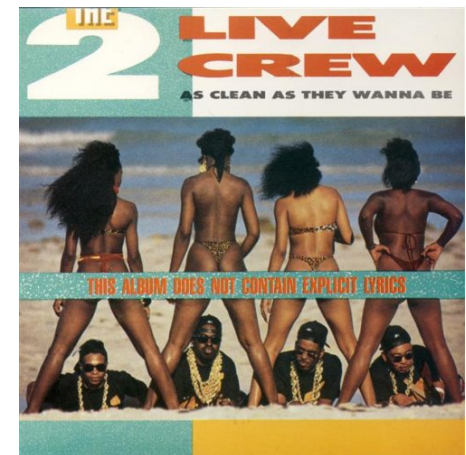
*Campbell v. Acuff-Rose Music*, 510 U.S. 569, 580-81 (1994).

# Transformative Use Example

- 1) Roy Orbison:  
Pretty Woman Lyrics  
*"Pretty woman"*



- 2) 2 Live Crew:  
Parody of "Pretty Woman"  
*"Big Hairy Woman"*



# Pretty Woman Parody

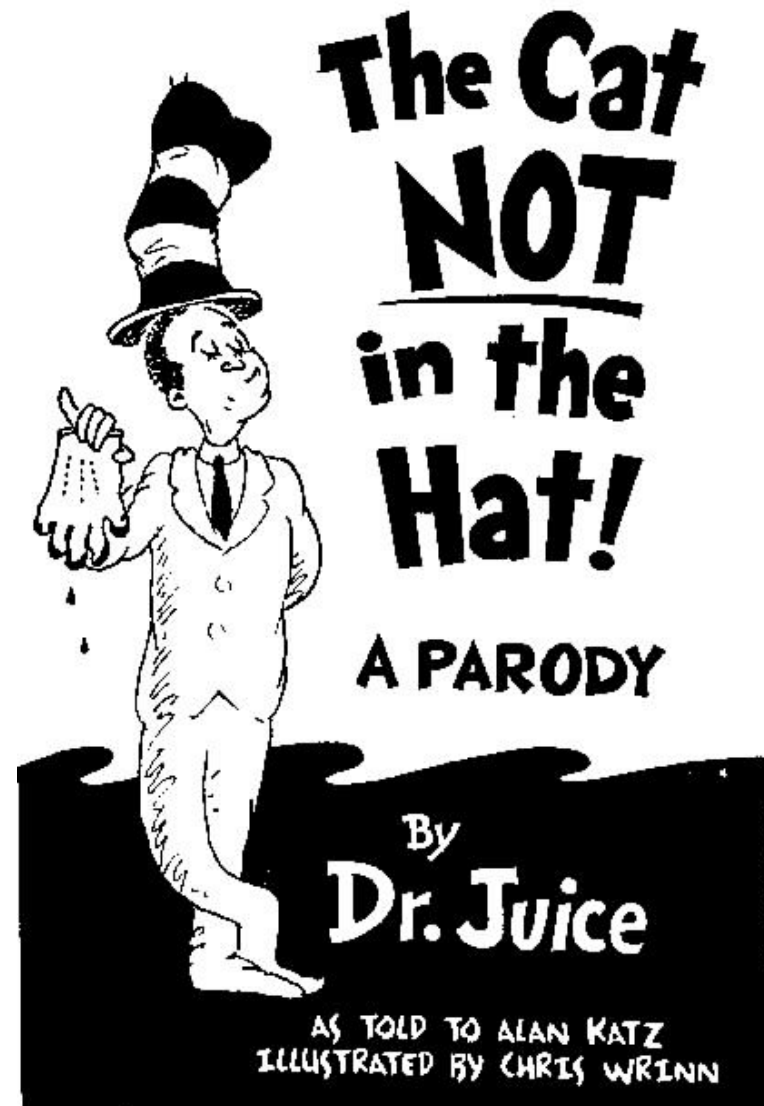
- Original Lyrics: “Pretty Woman, walkin’ down the street, pretty woman, the kind I’d like to meet . . .”
- New Lyrics: “Big hairy woman, you need to shave that stuff. Big hairy woman, you know I bet it’s tough.”
- Why is this a parody and not satire?

## Parody?

The Cat Not in the Hat  
*OJ Simpson murder trial*

*You be the judge! Is it:*

- (a) Parody (fair use)
- (b) Satire (not fair use)



# Cariou v. Prince



## But, some courts are “over it”

But, the Second Circuit in *Cariou v. Prince* explicitly said:

“Prince's work could be transformative even without commenting on Cariou's work or on culture, and even without Prince's stated intention to do so.”

- 714 F.3d 694, 707 (2013)



# So, now what is the test?

If not in the world of parody,

Back to the original language: “A transformative use is one that alters the original work ‘with new expression, meaning or message . . . .’”

# Transformative Use Example

- 1) Purpose of the original posters:

*Advertise Concerts*

- 2) Purpose of posters embedded in book:

*Historical Context*



## Moral of the story?

- You can use your fair use rights even if you asked for permission and someone told you “no.”

# Transformative Use?

The HathiTrust digital library inputs entire digital copies of books and other materials. For © works, the general public cannot see the entire book, but can search for how many times a specific “term” is used in that work.

Transformative use?

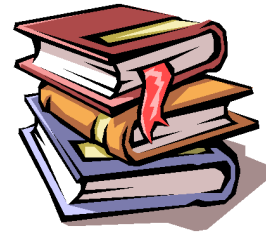
(a) Yes

(b) No



# Transformative Use Example

- 1) Purpose of original materials:



*Communication*

- 2) Purpose of HathiTrust term numbers:

*Research*



# Moral of the fair use story?

- Even using the entire work and making multiple copies of the work can constitute a transformative fair use.

# Thank You!

You can always e-mail me at:

[srbenson@Illinois.edu](mailto:srbenson@Illinois.edu)

Check out my library guide at:

[guides.library.Illinois.edu/copyrightreferenceguide](http://guides.library.Illinois.edu/copyrightreferenceguide)

Check out my video at:

<https://go.Illinois.edu/fairusevideo>