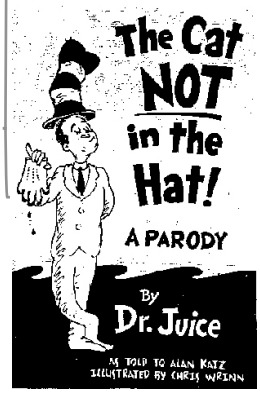
# Class 21: Fair Use (Part 2)

- **Administrative**
  - Next Time: 553-63; 576-91
    - Extra reading for Wednesday, 11/15 on website by tomorrow morning.
  - News
    - http://appft1.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PG01&p=1&u=%2Fnetahtml%2FPTO%2Fsrchnum.html&r=1&f=G&l=50&s1=%2220040161257%22.PGNR.&OS=DN/20040161257&RS=DN/20040161257
    - TDRA: Oct. 6
      - Ignore impact of TDRA for this class. Assume dilution law exists frozen as it was when your casebook was written.
- **Last Time**
  - Sony v. Universal
    - Basic Facts
      - Sony sells 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."
      - Sued by Movie companies because movies (and other shows) were being taped by purchasers of the VCRs.
      - Survey's of how users used VCRs
        - 75%: Time-shifting
        - 96%: Caught a show I would've missed.
        - 70% of total programs only watched once.
    - Odd CivPro Facts
      - They're not suing the direct infringers. Contributory Infringement
      - We will discuss next week. Another Sony excerpt will follow.
    - Held
    - Reasoning
      - Many users authorize time shifting.
      - Rushes through first three factors
        - 1. Purpose and character of use.
        - 2. Nature of the work.
        - 3. Amount and substantiality of part taken.
      - 4. Mostly about factor 4: Effect of the use on the potential market for or value of the copyrighted work.
        - What is the market here?
    - Public Interest
      - Question: What is or should be public interest? Plus factor? Fifth factor?
        - What if there is LOTS of evidence of market effect but also HUGE evidence of societal benefit? What result?
    - Postscript
      - The Movie Industry loves the VCR. They make lots of money (book says "Majority of their revenue) off of VCR sales.
- **Parodies / Transformative Uses**
  - Campbell v. Acuff-Rose
    - Basic Facts
      - 1964: Roy Orbison writes "Oh, Pretty Woman"
      - 1989: 2 Live Crew write "Pretty Woman".
        - P uses word "parody" and D uses word "satire"
        - July 1989: Sought a license from Acuff-Rose
          - Acuff-Rose refused permission.
        - Released song anyway. Large success.
    - District Court: Fair Use.
    - CA6: Reversed. Blatantly commercial purpose, so no fair use.
    - Held (Supreme Ct. 1994)
    - Reasoning
      - Importance of Transformative Works
      - Parody
        - Defined
        - Test for whether something is a parody
        - EVERY ONE of the four factors are affected by a finding of parody
      - 1. Character and Purpose of Use
        - Commercial presumptively unfair (Sony)
        - b/c Parody -- doesn't cut against D
      - 2. Nature of the copyrighted work
        - Creative work, cuts against fair use.
        - Parodies are always about creative work.
      - 3. Amount and Substantiality of the Portion Used
        - Took the heart
        - But: Parodies must take the heart to be recognizable.
        - Lyrics: All 2LC took was the heart.
        - Music: They took the heart, but maybe they took too much.
      - 4. Effect of the use on the market
        - Harm to Derivative Market for Rap Covers of Pretty Woman
          - Remand
  - Other examples
    - Note 4: 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 flat! Assault! Assail! 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.




    - Note 5: The Wind Done Gone
- **Photocopying**
  - 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
  - Other questions