

Class 21: Fair Use (Part 2)

Administrative

Next Time: 553-63; 576-91

Last Time

Distribution

Right to distribute, through sale or other means, either the original or subsequent copies of a copyrighted work.

First Sale

Art Tile cases: Interaction with Right to Prepare Derivative Works

Basic Facts

"Art book" with one print per page, high color, high quality.

Def. bought book, cut out pages, mounted them to tiles and resold.

Images ☺

Ninth Circuit

Seventh Circuit

Who is right?

Problem 4-26

Casebook bought (first sale) 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.

Moral Rights

VARA (1990) passed so US could join Berne Convention.

What works?

Works of Visual Art

Paintings, drawings, prints, still photos, sculptures; must be limited edition (<200)

NOT: list on 503. Notably: movies and all works for hire.

For anti-mutilation right: ONLY works of "recognized status."

What rights?

Author can claim authorship.

Author can prevent use of name on works she did not create.

Author can prevent use of name on modified or distorted works.

For works of recognized status only: can prevent destruction of such works.

Term

Now: Life of artist.

Mass Art Exhibit 🌐

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Last Time

Fair Use

Harper & Row

- 1. Purpose and Character of Use
 - Purpose: News Reporting { D went beyond simply reporting the news
Neutral or For P
 - Purpose: Commercial ↪ For P
 - 2. Nature of the Copyrighted Work
 - Factual, Historical Autobiography { D pulled more than the facts, took subjective expression
Neutral or For P
 - Unpublished ↪ For P
 - 3. Amount and Substantiality of Portion Used ↪ Insubstantial portion, but the heart of the book ↪ For P
 - 4. Effect on the Market ↪ Actual effect on market for first printing rights shown ↪ For P
- Held: NO fair use.

Sony

- 1. Purpose and Character of Use { Plainly noncommercial and non-profit
For D
 - 2. Nature of the copyrighted work. ↪ Doesn't really say.
 - 3. Amount and substantiality of portion used. { Took entire shows.
For P ↪ But these shows were already available for free.
 - 4. Effect on the Market { No showing that noncommercial time shifting will affect market for the works.
For D
- Held: Fair Use

Class 21: Fair Use (Part 2)

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

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. ⊕

Other questions ⊕

Parodies / Transformative Uses

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

Acuff-Rose refused permission.

Released song anyway. Large success.

Held (Supreme Ct. 1994)

Reasoning

Importance of Transformative Works

Parody

Test for whether something is a 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 ⊕