

Note from the Multiverse Explorers:

We found this Supreme Court case in a close parallel timeline based on a website created in said timeline called Yalies2024. This case existing, the energy drink Gay Fuel being commercially successful, and the makeup of the Supreme Court are the only divergences between our and their timelines that affect the Judicial Branch. Please enjoy the following Supreme Court case from Universe Gamma-12. You can find our website at Yalies2024.com.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PROFESSOR BRAD ROSEN *v.* YALIES 2024 INC.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

No. 26–1540. Argued March 10, 2026—Decided May 30, 2026

Respondent Yalies 2024 Inc. is a for profit company based around the social media platform Yalies2024.com. It was incorporated in the winter of 2023 by Seth Goldin, Erik Boesen, and Juliette Garcia to support the website. The website was based on ‘Yalies2004.com,’ which was a social site initially created by Petitioner Professor Brad Rosen. Rosen created Yalies2004.com in the year 2000 during his tenure as a student at Yale University. Yalies2004 was intended to be a social networking site, but it was ultimately shut down, and now exists only as a web archive. After taking one of Rosen’s classes - CPSC 183 Law, Tech, and Culture - Goldin, Boesen, and Garcia found Yalies2004.com online and created Yalies2024.com. They developed a different code base and parodied the words in many places, but the site still mimicked the layout of Yalies2004.com and retained the same general capabilities. The District Court of Connecticut granted summary justice to Rosen. Yalies 2024 continued to contend that their website fell under fair use. The 2nd Circuit Court of Appeals overturned the District Court ruling.

Held:

Yalies 2024 Inc.’s creation of Yalies2024.com is fair use and thus there is no copyright infringement.

TRAN., J., delivered the opinion of the Court, in which OLIVER, C.J., WEISS, RIVERA, and KENNEDY, JJ., joined. STEIN, J., concurred in the judgment. MINSKY-PRIMUS, J., filed a dissenting opinion, in which VELASQUEZ and SHERMAN, JJ., joined.

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SUPREME COURT OF THE UNITED STATES

No. 26–1540

PROFESSOR BRAD ROSEN *v.* YALIES 2024 INC.ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[May 30, 2026]

JUSTICE TRAN delivered the opinion of the Court.

Petitioner Brad Rosen is a current professor at Yale University and an alumnus of the university. In 2000, near the start of his undergraduate education at Yale, he created a website titled “Yalies of 2004.” The original website was hosted on Tripod.com under the pseudonym “yalesinger.” However, the website is no longer accessible on that service. A portion of the website’s original contents are accessible via The Internet Archive, a digital library which provides the public with access to archived versions of digital materials. The archived version this website includes a user-submitted directory of Yale students with their photos and residential colleges; collections of short comments for news about the page, Yale, and the community; a chat page; resources for dining and packing for college; a collection of poems written by Professor Brad; and instructions on how to use the “Pantheon,” a collection of computers at Yale at the time.

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Respondent Yalies 2024 Inc. created a purported parody website of Rosen’s original website. They substituted much of the original content with their own similar content meant to appeal more to Yale undergraduate students that graduate in 2024 rather than 2004 like the original website. For example, they updated outdated links to modern equivalents and wrote new resources pages for Yale’s new collection of computers, the “Zoo.” Their content includes both material that they wrote and material that was generated via artificial intelligence, which complicates the analysis of their work under copyright law. Their content was influenced by how all of the owners of Yalies 2024 Inc. had taken a class with Rosen in the fall of 2022. They also reused many of the graphics and the layout of the original website in their website.

What needs to be determined is whether their website constitutes “fair use” under copyright law. 17 U.S.C § 107 lays out the four factors that need to be taken into consideration to be (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

We will review the case *de novo* due to certain attributes of the original work, including how the website is no longer accessible in its original form, complicates the analysis for “fair use” under copyright law.

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I

A

The first factor in determining fair use involves the “purpose and character of the use.” 17 U.S.C § 107 states this includes “whether such use is of a commercial nature or is for nonprofit educational purposes.”

The commercial nature of the work is clearly present to us as Yalies2024.com is the sole product of the for profit company Yalies 2024 Inc.. Petitioner Rosen raised concern at the advertisements present to visitors of Yalies2024.com. The presence of these advertisements was confirmed with Boesen’s testimony of the mechanism of displaying the advertisements: “The advertisement is displayed in a popup window that appears to visitors of every page on the website using a browser compatible with JavaScript, unless blocked by the browser.” He also goes on to describe the content of the ads themselves by stating, “There is solely one advertisement that we run in this popup. We are paid by Gay Fuel to promote their drink product to every visitor.” Therefore, it is clear that the commercial nature of the work is present with how Yalies 2024 Inc. obtains revenue from attempting to show Gay Fuel advertisements to every visitor of the website.

The commercial nature of the work renders any deep analysis into whether the work is for “nonprofit educational purposes” unnecessary. Although the website arguably provides some educational value, it is not accomplished in a nonprofit manner because as Boesen testified, paid Gay Fuel advertisements are displayed on

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“every [emphasis added] page,” which would include even the pages that serve educational purposes.

However, the commercial nature and nonprofit educational purpose of the work is only a subset of what needs to be considered under the first factor of fair use. *Campbell v. Acuff-Rose Music, Inc.* has set precedent for how parodies even if they are commercial can still constitute fair use. Additionally, as seen in *Seltzer v. Green Day, Inc.* and *Authors Guild, Inc. v. Google, Inc.* and other past cases of how this factor was considered, courts have determined that analyzing this factor involves inspecting the extent of the “transformative nature” of the work in comparison to the purpose of the original work. They have determined that the more “transformative” the nature of a work, the more this factor weighs towards fair use.

Numerous past cases, including *Campbell v. Acuff-Rose Music, Inc.* and *Seltzer v. Green Day, Inc.*, have referred to the review of what constitutes “transformativeness” in Judge Pierre Leval’s *Toward a Fair Use Standard*, an article published in the Harvard Law Review in 1990, in analyzing the transformative nature of works. The article states that a transformative use “must be productive and must employ the quoted matter in a different manner or for a different purpose from the original” and how “the secondary use [must add] value to the original—if the quoted matter is used as raw material, transformed in the creation of new information, new aesthetics, new insights and understandings.”

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Yalies 2024 Inc's website is transformative by these standards. The website is productive and serves a different purpose than the original. It is productive as it consolidates information useful to current Yale undergraduate students and serves a different purpose by appealing to these current students rather than students graduating in 2004. The petitioner argues that the website still serves the same purpose of serving Yale undergraduates, but we consider defining this to be the purpose of the original work to be overly broad. Not restricting how broadly the purpose of the original work is defined when comparing it to the purpose of the derived work is problematic; it is always possible to define the original purpose too broadly such that the purpose of the derivative work is not considered any different. The aspects of a centralized website for Yale undergraduate students that would be useful, including the information provided, have changed vastly between 2004 and present day; the website in question serves this purpose uniquely. The website also uniquely serves a role as a parody of the original website.

Additionally, the new website makes changes that add value, even as it retains elements of the original site such as a few graphics and its overall layout. However, these new aesthetic changes are minimal. The banner which originally said "Yalies of 2004" has been changed to "Yalies of 2024" to represent the new intended audience of the website. However, it heavily updates the original work with new information. The majority of the textual content on most pages has been replaced with new content that is part of a clear parody of the original. For

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instance, satirical poems were added in the “Webmaster Info” page to replace Rosen’s original poems. In certain cases, the new content is not satirical but novel to the site and useful. For example, the page “The Pantheon” was replaced with a page for “The Zoo” in order to provide information related to Yale’s new set of computers for Computer Science use that replaced “The Pantheon.”

Moreover, we ultimately weigh this factor towards fair use for the website in question. Although the commercial nature of the website does support weighing this factor against fair use to some extent, the court since *Campbell v. Acuff-Rose Music, Inc.* has shifted to emphasizing the consideration of transformativeness of works over that of their commerciality. Therefore, we weigh this factor towards fair use because of the transformative nature of the website, including acting as a satirical parody and appealing to a newer audience of new Yale undergraduate students.

B

The second factor in determining fair use from 17 U.S.C § 107 considers the “nature of the copyrighted work.” The court favors defending certain types of works more than others against fair use, including creative works specifically outlined in the statute and as-yet unpublished works. Weighing this factor will involve analyzing the nature of the different aspects of the original copyrighted work copied, including the computer code that defines the content and style of the website, the literary works embedded within the website, specifically

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the informative non-fiction portions of the website, and the other resources that the website provides.

Computer code is considered to be a literary work under 17 U.S.C. § 101. Rosen’s website uses computer code in HTML and CSS styling (often done within in the HTML itself) in order to define the layout and style. The code also contains the literary content that is displayed to the user which is the text on all of the pages, including all of Rosen’s statements and poems. There is no doubt there is a great deal of creativity involved in creating the layout and style of the website from the blue color palette chosen to the graphics included. As these aspects of the work can be considered creative, factor two weighs against fair use and towards the side of the petitioner. The instances of literary content embedded in the website, including poems, are clearly an example of creative works, which further weighs this factor against fair use.

Although we would consider the majority of the literary work within the site creative, there is text within the website that we instead consider informational and non-fiction. *In Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, it was decided that information published without any creative or thoughtful addition cannot be copyrighted, as “In no case does copyright protection for an original work of authorship extend to any idea,...,method,[or] concept,” (U.S. Congress § 102(b)) This applies, for instance, where Rosen’s website had a directory of Yale students who voluntarily submitted their information to him. Rosen’s website’s “Yalies” directory does not present its data in a creative enough way to constitute being protected under copyright; the directory

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simply displays 2004 Yale undergraduate students in alphabetical order. Yalies2024.com website did not copy the 2004 student data from Rosen’s directory, but instead has a dynamically updating directory of Yale undergraduate students graduating in 2024 based on data automatically obtained from Yale’s websites.

The other substantial informational and non-fiction part of Rosen’s website is in the pages within “The Pantheon” section, which includes pages that are informative about Yale’s “The Pantheon” computer network, how to use various programs within it, and a rant on what exactly Unix is and is not. The Yalies2024.com website copied the idea of providing factual instructions on how to remotely access computers within Yale, but with computers located in the “Zoo” at Yale in their case. They also provide informative instructions on how to use certain software, but opting for software that is more popular in the present day, including vim.

There are also smaller informational and non-fiction parts of Rosen’s website such as a page displaying a useful packing list for those moving into housing within Yale University. Similar to the other non-fiction parts of the site, the nature of pages like these being non-fiction makes these parts of the site as it relates to the second factor for fair use to favor weighing towards fair use. Facts and ideas are not protected under copyright, but how they are expressed can be. In this case, the equivalent of these pages on Yalies2024.com did not directly copy Rosen’s writing within these pages, so they are safe in regards to infringing on how Rosen expressed his ideas. Relating to the second factor of fair use, we lean

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towards favoring fair use for their web pages that are mimicking the aforementioned non-fiction factual pages.

Rosen also argues that Yalies 2024 Inc. with the publication of their website is infringing on his exclusive rights to publish his copyrighted work. However, as established in *Harper & Row, Publishers, Inc. v. National Enterprises*, the exclusive right in this context given to copyright holders is the right of first publication. Rosen's website had already been accessible on the web, and additionally the large majority of it is still accessible via the Internet Archive. Unpublishing a work that was previously available does not preclude that work from being used in other works under fair use.

Therefore, considering how we consider the majority of Rosen's work to be creative, weighing this factor towards fair use, with elements of informative nonfiction within the work that do not weigh towards fair use, this second factor of fair use slightly favors the petitioner instead of the respondent and fair use.

C

The third factor in determining fair use from 17 U.S.C § 107 considers the "amount or substantiality of the portion used." If less of the original work is copied, this factor would lean more closely towards fair use.

In this case, there is a substantial amount of the original layout, style, and graphics used to imitate the original website visible on Yalies2024.com. This would typically weigh against fair use; however, Yalies2024.com would not be a recognizable parody of Rosen's original

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website if it were not for this style. Garcia from Yalies 2024 Inc. testified how the layout, style, and graphics of the website may seem out of place now, but they fit in with the style of graphics of websites in the 2000s. Web developers from the era had testified in the lower court regarding this case. We conclude in accordance with the lower court that the copying of the layout, style, and graphics (some of which are slightly modified) served no significant purpose other than to make it clear that Yalie 2024 Inc.’s website is a parody of the original.

More importantly though, previous interpretations of 17 U.S.C § 107 in the courts have viewed “amount” as also referring to the qualitative amount of the material taken. We find that the services and the textual content of the website to be more of the “heart of the work,” which we previously established that Yalies 2024 Inc. did not substantially copy from but rather made their own parodies of or functional equivalents of that appeal to Yale undergraduate students graduating in 2024, such as with the previous example with the directory. There is substantially more text included in the website that was remade by Yalies 2024 Inc. for parody rather than copied verbatim.

Rosen asserts that Yalies2024.com also committed copyright infringement by using content generated via artificial intelligence, which itself is copyrighted¹, which has trained on many different copyrighted works. We take it as fact from the lower court that part of the textual content included in the Yalies2024.com was generated via the artificial intelligence model ChatGPT by the company OpenAI. Notwithstanding that the model was trained

¹ The U.S Copyright Office would not recognize such copyright anyways as they have stated “Copyright under U.S. law requires human authorship. The Office will not knowingly grant registration to a work that was claimed to have been created solely by machine with artificial intelligence.”

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on other copyrighted works, OpenAI licenses the output of their model to their users as outlined in their Terms of Use: “OpenAI hereby assigns to you all its right, title and interest in and to Output.” We will ignore this assertion regardless as it does not relate to the analysis at hand.

Therefore, looking at this factor with “amount” and “substantiality” being measured qualitatively with the “heart of the work in mind”—in this case, the textual content and services of the website—this factor weighs slightly in favor of fair use and towards the respondents.

D

The final and fourth factor in determining fair use from 17 U.S.C § 107 considers “the effect of the use upon the potential market for or value of the copyrighted work.” We clearly see that the value of Rosen’s website was in how it was a centralized website with information, both factual and opinionated, and services for Yale undergraduates graduating in 2004. We have already established how defining this value as applying to any Yale undergraduate is overly broad in the analysis of the first factor. Both the value and potential market of Rosen’s website did not stand the test of time and are negligible at best.

Additionally, even if, *arguendo*, the potential market of appealing to Yale undergraduates that graduated in 2004 still existed, we see that the content of the Yalies2024.com website is sufficiently different from the original that it would have no effect on this market anyways. The argument still holds as long as that potential

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market, defined reasonably, does not overlap with Yale undergraduates graduating in 2024. There's even the added element of parody in addition to how this website appeals to Yale undergraduates graduating in 2024 that makes the website not a reasonable market substitute for the original website. Therefore, we conclude that this fourth factor weighs towards fair use as there is negligible effect on potential market nor value of the original work from the website.

* * *

After considering the four factors of the fair use standard, it is clear that Yalies 2024 Inc.'s website does not commit copyright infringement on Rosen's original work. With analysis of the first factor, we conclude that the transformative nature of the website outweighs its commercial nature, leaning this factor in favor of fair use. The third and fourth factors also weighed towards fair use for how "the heart of the work" was massively transformed, as opposed to being copied verbatim, and how the potential market and value of the original work are not affected. The only factor that weighed against fair use was the second one due to the nature of the work, especially the literary and creative elements, but this is not enough to offset the other three factors weighing strongly towards fair use.

Accordingly, we affirm the decision of the 2nd Circuit Court of Appeals in that Yalies 2024 Inc.'s creation of yalies2024.com falls under the fair use exception of copyright infringement.

MINSKY-PRIMUS, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 26–1540

PROFESSOR BRAD ROSEN *v.* YALIES 2024 INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[May 30, 2026]

MINSKY-PRIMUS, J., with whom VELASQUEZ and
SHERMAN, JJ., join, dissenting.

The Patent and Copyright Clause of the Constitution states that congress has the power: “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” (Constitution Art 1 Sec. 8 Clause 8)

The crux of the majority’s argument relies on the idea that Yalies2024.com is a parody, but that is not the case. It is a for-profit social site with comedic aspects and a design copied from an earlier website. Goldin, Boesen, and Garcia found Yalies2004.com and used the intellectual property therein to create their own company rather than produce their own unique work. This is exactly what the copyright statute was meant to discourage and prevent. Innovation should be rewarded, but not when doing so depends on making use of unique ideas that are not a person’s own. Thus, at this juncture, I respectfully dissent from the majority.

There are four main factors on which fair use cases such as this one are meant to be judged:

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- (a) The purpose and characteristics of use
- (b) The nature of the copyrighted work
- (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole
- (d) The effect of the use upon the potential market for or value of the copyrighted work

I

When judging the purpose and character of a use two main areas are generally brought into consideration: commerciality and transformation.

Whether a work is commercial is written into the statute as relevant to this factor (U.S. Congress § 107(1)), and many cases have taken this into account, (*Seltzer v. Green Day*, *Swatch Group v. Bloomberg*). Yalies 2024 Inc. is a for profit company with one revenue stream: their website and the ads therein. As such, the commercial nature of the website is certain.

I do, however, recognize the majority's point that commerciality is usually secondary to whether a work is transformative in nature. As stated in the 1994 Supreme Court case *Campbell v. Acuff Rose Music*: "The more critical inquiry under the first factor and in fair use analysis generally is whether the allegedly infringing work merely supersedes the original work or instead adds something new." Since then precedent has generally weighed in favor of transformative commercial works regardless of commercialization.

Thus, the argument turns to whether this website is transformative in nature. The majority's positive argument rests on two ideas: Yalies2024.com is a parody, and

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Yalies2024.com has a new audience. Let's start with the first argument. The claim of parody, is, to put it simply, unfounded.

In 1994 in the case, *Campbell v. Acuff Rose Music Justice Souter* defined parody as, “a literary or artistic work that imitates the characteristic style of an author or a work for comic effect or ridicule.” While the term ‘artistic work’ is surely broad enough to include a mildly comedic website, the purpose of a parody must be first and foremost to comment on the original work. That is quite simply not the case for Yalies2024.com. This site is primarily a social site, just as Yalies2004.com was, with a secondary aspect of poking fun at certain aspects of the original website. The ad-based profit model reenters the picture here, as it would not function if not for the traffic the site gets from social users. The site was formed with the plan of maintaining it off this profit model, implying that they expected significant traffic. They therefore must have been intended for the social aspect to bring people in, as the comedy could not have been expected to have a wide audience given Professor Rosen's and the original website's limited profiles. Thus, the primary aspect could not have been comedy, because even if the social aspect was meant to prop up the comedy, the creators were aware that the social aspect would be the site's primary source of users.

Even though Yalies2024.com was not, as a whole, a parody, there is no doubt that there were some parodied parts. Specifically, all of the original site's text has been parodied. As such, there is a slight transformation of parts of the website. However, this slight transformation

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is not enough to say that the use is transformative as a whole.

The new audience also does not provide enough transformation. It is true that one page was altered from explaining the Pantheon to the Zoe, but all else remained deeply similar. The change in the title does not change the fact that little was done to actually appeal to the new audience. All of the things meant to draw in members of the 2004 class, the photos page, the poem page, the news page, were kept; the only difference is the name and an explanation of a different computer system. This is not transformation, it is repackaging. If one copies Harry Potter, changes the name, and decides to set it in France instead of England, and makes three jokes about JK Rowling on the back cover, they've still committed copyright infringement; they've just repackaged the book.

Thus, with a combination of commerciality and the lack of adequate transformation, this weighs somewhat against fair use.

II

Judging factor two is complicated because the original work has a deeply interconnected front and back end. The source code itself, the back end of the site, is considered a literary work. (*MAI v. Peak*). Thus any creator who uses the back end of the site to make their derivative works, will be making a derivative work of a literary work, which is very close to the original purpose of the statue.

However, the front end of the site adds a layer of complexity. This includes the site's color pallet, layout, fonts,

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flourishes, text and the like. If instead of looking at the code, someone were to use only the front end of the site, any derivative work would be derivative only of the user interface. The interface is an art piece, making it just as close to the purpose of copyright, but the way in which the site functions is no longer covered by copyright. This is because “In no case does copyright protection for an original work of authorship extend to any...method of operation” (U.S. Congress § 102(b)). The way the site works is not copyrighted; only the code, any text or art embedded in the site, and the user interface are covered.

A quick look must also be taken at said embedded text. Clearly, literary works are close to the heart of the copyright statute as well. Some of the text in the site is surely solely informative (the list of 2004 Yalies) but most of it is creative. Even the descriptions on the Pantheon page, while informative, are educational, and therefore. It would be foolishness to claim educational materials do not need to be creatively formed. Thus, the vast majority of the writing on this site falls close to the purpose of copyright.

Clearly all these parts are very close to the original purpose of copyright, which means that this factor ought to weigh in Rosen’s favor. This split between the front and back end, however, will make it harder to judge other factors later on, so it is best to keep in mind. However, as the majority stated, precedent dictates that this is the least significant factor (*LLC v. TVEyes*). As such, I will yield to precedent and weigh this factor only very slightly in Rosen’s favor.

III

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This is the point where the majority and I most strongly disagree, because once again the issue of parody returns. The majority stated here that while Yalies 2024 Inc. did copy a significant portion of Professor Rosen’s website, that use was necessary for their parody; for that reason they weighed this factor evenly between the two sides. This decision would be supported by precedent, as my fellow Justices explained, under the condition that the website was truly a parody (*Campbell v. Acuff Rose Music*). However, as explained in part I, this is not the case. As laid out in part II, Yalies2004.com can be split into three sections: embedded text, the code, and the layout. These three sections all have slightly different evaluations.

First of all, there is the text. The text in Yalies2024.com all mimics the style of the original text, so the substantiality of borrowing is not in question. However, this part was a true parody on the part of Yalies 2024 Inc. The point of these derivative works is simply to comedically criticize the original text and author, and as such their replacement texts are textbook parody. As explained in the majority opinion, it is settled case law that parodies, “[need] to mimic an original to make [their] point” (*Campbell v. Acuff Rose Music*) and as such in a parody the substantiality of the text taken does not lead to a judgment in favor of copyright infringement because necessity is taken into account. It is instead a neutral factor. (*Campbell v. Acuff Rose Music*, *Warhol Foundation v. Goldsmith*)

Source code is considered a literary work, as discussed in part II, but Yalies2024.com is not a derivative work of

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that code. While the code is generally written in the same language, the structure is completely different. Yalies2024.com, for example, utilizes Jekyll as a website framework while Yalies2004.com uses straight HTML. In places where they overlap, for example both chats use embedded outside chat functions, these overlaps are more likely incidental than purposeful. This complete difference when it comes to coding makes it clear that Yalies2024.com's code was inspired by Yalies2004.com's, not derived from Yalies2004.com's code. Because no code was taken, this weighs in the direction of fair use.

Third of all, there is the layout. In this part, Yalies 2024 Inc. took a significant amount of the original work. The user interface is almost identical to the original Yalies2004.com interface. For example, they use the same exact color background, the same button positioning and design, the same location for all text, and so on. The substantiality is not in question here. The question of parody is a bit more complex. The majority argued it was an aspect of the parody because it provided the similarity needed for the text to be seen as parody. This is, however, untrue, because it wasn't only the aesthetics that were taken but the idea of the website as a whole. The use interface of Yalies2024.com includes the fact that each button takes the users to a page that has the exact use as the page that Yalies2004.com takes a user to when using the identical button on that interface. This fact that the pages have the same use is important because that is not part of the parody. The functional social site use is not necessary for the joke to come across. Perhaps the color scheme and button placement, but the fact

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that users can add photos? The updates on the news page? Are those truly necessary? No. For that reason, the substantial use of the original work in this area is not shielded by necessity and this weighs against fair use.

Given that one aspect of this has no weight and one each weighs in favor of copyright infringement and fair use this takes a bit of discretion. However, given that the functionality of the website is still very substantial and is the “plums” of the work, that outweighs not using the source code (*Warner Brothers v. RDR Books*). Given this conflict, however, this only weighs slightly in favor of infringement.

IV

Here I disagree again with the majority, with the fourth factor of fair use. This was a use of a fully retired work. However, if Professor Rosen chose to revamp the site it would be a competitor with Yalies2024.com. While it is true that Professor Rosen had little intention of re-commercializing his website and therefore yalies2024.com had no fiscal effect on Yalies2004.com, that is not exactly what this factor judges. This factor examines the effect on any current or potential markets on this or derivative works specifically when it comes to unauthorized derivative products being a substitute good (*Folsom v. Marsh*). Thus, the fact that Yalies2024.com is similar enough to Yalies2004 that it would be a possible substitute for Yalies2004.com is significant. If both ever functioned in tandem, they would surely be competitors.

It is true that Yalies2004.com is not in a functional state at the moment, but Professor Rosen would have had the ability to revamp the site and put it back on the

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if he saw fit. Now that Yalies2024 is functional it is unlikely that Rosen would be able to take advantage of that potential market for his derivative product.

One main point pushes against Professor Rosen's case here. Rosen left the website in stasis in the web archives for two decades, making it fairly clear that he had no intention of commercializing again. The code and social media development are also out of date enough that to take advantage of any potential market Rosen would have to completely revamp the website. Again, this is only relevant insofar as it makes it even less likely that Professor Rosen would take advantage of any market.

Warner Brothers v. RDR books implies that if Rosen had made his intention to revamp clear then this would have been copyright infringement, but it does not directly handle the case of if Rosen's intention is to not commercialize. Does he still have power over this potential market if he had no intention of using it? If we turn back to the purpose of copyright, it states in the original statute that it is to encourage the creation of artistic and scientific works (Constitution Art 1 Sec. 8 Clause 8). Looking back at the substitute question now, it becomes clear that this restriction is specifically meant to stop one from choking out funds needed to keep the original work functional without preventing one from commenting on an earlier work. However, if one has truly fully retired a work, as Professor Rosen has, there is no choking off funds to the work. Beyond that, this closes down a market from development, as the original creator cannot develop and others cannot enter without a suit. As such, given Rosen's clear lack of intention to take advantage of

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any potential market, this will not weigh in his favor. However, given that the site still bears the marks of similarity that would usually cause this factor to be weighed against them, it will also not be weighed in their favor. Thus, the fourth factor weighs evenly between the two sides.

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Looking back at these four factors, it becomes very clear what ought to be done. I, II, and III lean towards infringement to different degrees while IV is unweighted. As such, I must dissent, with all respect, from the majority.