



Copyright

Law 115 | Week 3 | Lecture 6
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Agenda

1. Fair Use Factors
2. Fair Use Example Cases
 - a. Hustler and Jerry Falwell case
 - b. Campbell v. Acuff Rose
 - c. The Cat Not in the Hat
 - d. The Harry Potter Lexicon

Fair Use

17 USC §107 provides a defense to copyright infringement based on four factors...

1. purpose and character of the use
2. nature of the copyrighted work
3. amount and substantiality of the portion taken
4. effect of the use upon the potential market



Fair Use: Factors 1 and 2

Factor 1: Purpose and character of the use

- Is the use transformative?
- Is the use commercial?

Factor 2: The nature of the copyrighted work

- Creative work given more protection than factual work
- Example: news article vs. novel

Fair Use: Factors 3 and 4

Factor 3: The amount and substantiality used

- No fixed amount
- Quantity of the work taken and the quality and importance of the portion taken (the “heart of the work”)

Factor 4: The effect of the use upon the potential market

- Will the use supplant the market for the copyrighted work?
- What about the market for derivative works?

Fair Use: *Hustler* Case

Jerry Falwell talks about his first time.*



INTERVIEWER: But your mom? Isn't that a bit odd?

FALWELL: I don't think so. Looks don't mean that much to me in a woman.

INTERVIEWER: Go on.

FALWELL: Well, we were drunk off our God-fearing asses on Campari, ginger ale and soda—that's called a Fire and Brimstone—at the time. And Mom looked better than a Baptist whore with a \$100 donation.


INTERVIEWER: Campari in the crapper with Mom... how interesting. Well, how was it?

FALWELL: The Campari was great, but Mom passed out before I could come.

INTERVIEWER: I see. You must tell me all about it.

FALWELL: I never really expected to make it with Mom, but then after she showed all the other guys in town such a good time, I figured, "What the hell!"

Campari, like all liquor, was made to mix you up. It's a light, 48-proof, refreshing spirit, just mild enough to make you drink too much before you know you're schnockered. For your first time, mix it with orange juice. Or maybe some white wine. Then you won't remember anything the next morning. Campari. The miteable that amarts.



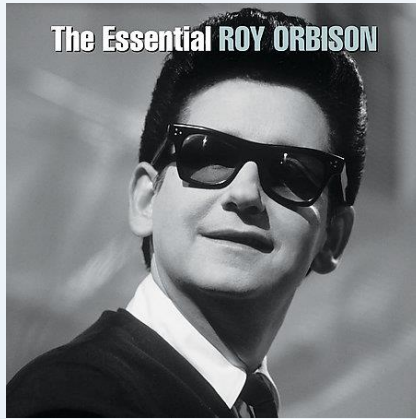
CAMPARI You'll never forget your first time.

*AD PARODY—NOT TO BE TAKEN SERIOUSLY

- **Factor 1:** primary purpose was rebutting a personal attack (**MM**)
- **Factor 2:** creative work (**Hustler**)
- **Factor 3:** the entire work was copied (**Hustler**)
- **Factor 4:** virtually no effect on the market for the magazine (**MM**)

The court ruled for **MM** so the fair use defense applied.

Fair Use: *Campbell v. Acuff Rose*



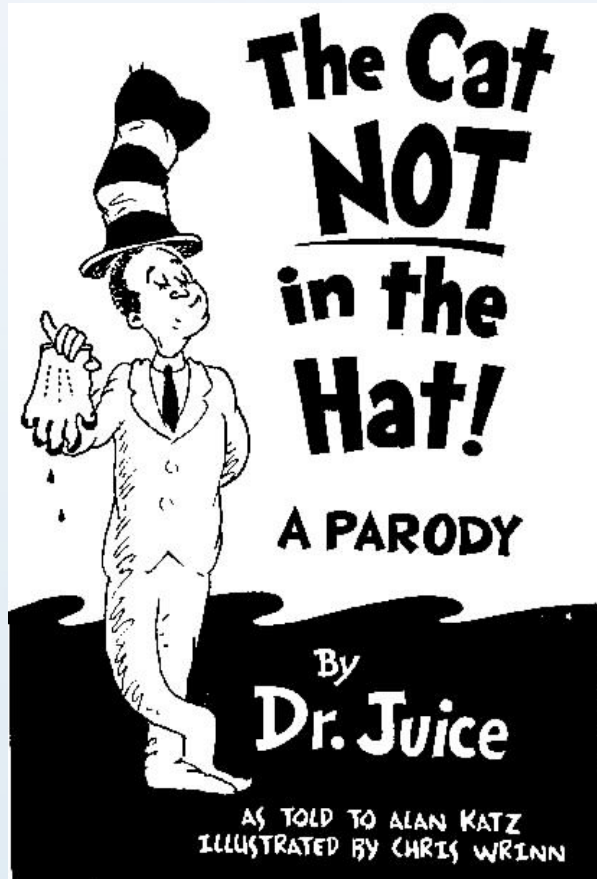
2 Live Crew:

<http://youtu.be/JJjuxDa9sWM>

- **Factor 1:** commercial purpose, but highly transformative (**2 Live Crew**)
- **Factor 2:** creative work (**Orbison**)
- **Factor 3:** took the heart of the work, but this was necessary for parody (**2 Live Crew**)
- **Factor 4:** no evidence of market harm (**2 Live Crew**)

The court ruled for **2 Live Crew** so the fair use defense applied.

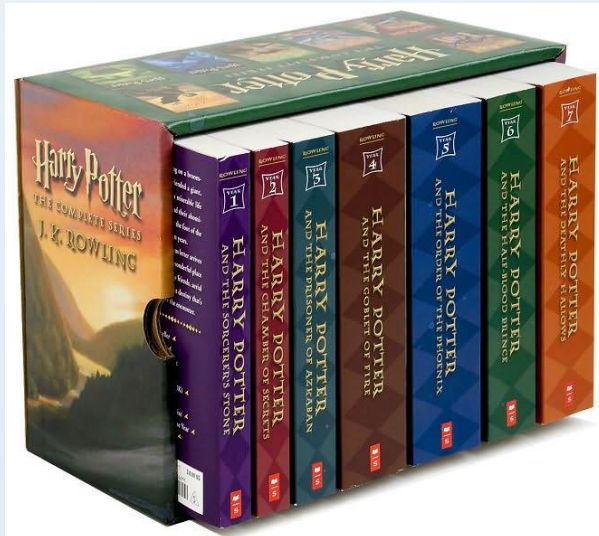
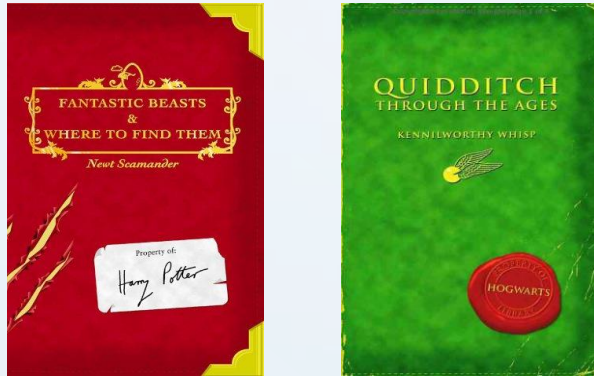
Fair Use: *Cat in the Hat* Case



- **Factor 1:** commercial work and not transformative (**Dr. Seuss**)
- **Factor 2:** creative work (**Dr. Seuss**)
- **Factor 3:** large portions copied and not needed for purpose (**Dr. Seuss**)
- **Factor 4:** no evidence of effect on the market (**Dr. Juice**)

The court ruled for **Dr. Seuss** so the fair use defense did NOT apply.

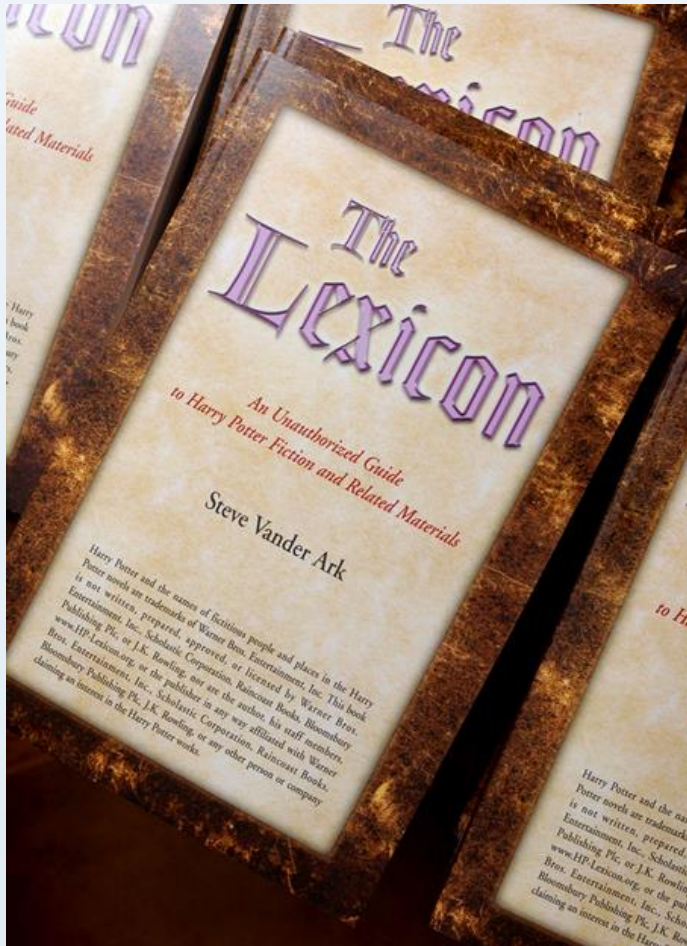
Fair Use: *HP Lexicon* Case



- **Factor 1:** commercial purpose, transformative with respect to the original books, but not the companion books (**Rowling/WB**)
- **Factor 2:** creative work (**Rowling/WB**)
- **Factor 3:** portions copied verbatim, but close call(**Rowling/WB**)
- **Factor 4:** no competition with books(**Lexicon**)

The court ruled for **Rowling/WB** so the fair use defense did NOT apply.

Fair Use: HP Lexicon Case



- The court awarded statutory damages in the amount of \$6750 (\$750 X 9)
- After the litigation, Steve Vander Ark published a new book: The Lexicon
- The Harry Potter Lexicon web site still exists: <http://www.hp-lexicon.org>