



# Lecture 3

Law 115  
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# Agenda

- Who Owns the Copyright
- How to Get Protection
- Duration of Protection
- Public Domain
- Limitations of Copyright Protection
- Creativity Without Copyright (discussion)
- Fair Use
- DMCA (if there is time)
- Two Tales of Copyright

# Who Owns the Copyright

Default Rule = the **author** of the work owns the copyright unless

- The work qualifies as a “work made for hire” OR
- The author assigned the copyright to someone else

## Two Types of Work Made for Hire

1. **Employee/Employer:** Work was made by an employee as part of the scope of her employment
2. **Other type:** the work is...
  - Commissioned or specially ordered
  - Parties sign an agreement specifying work for hire
  - Work falls into one of nine categories

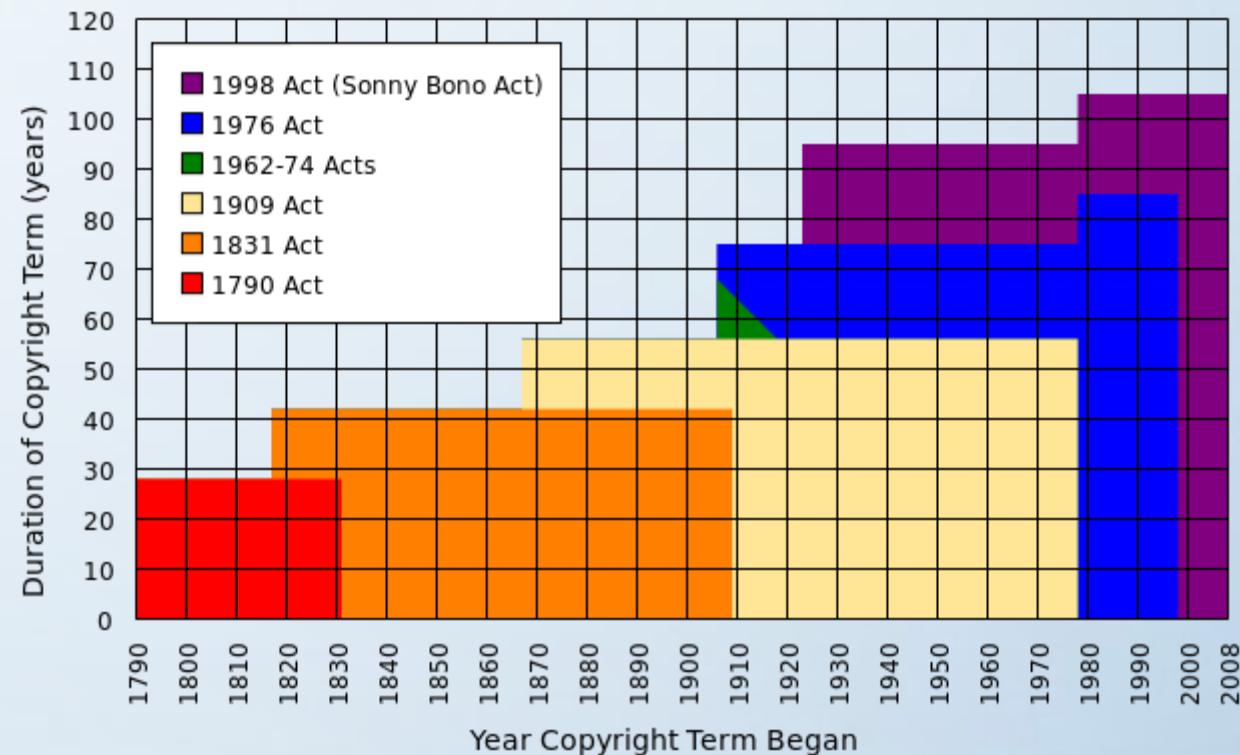
# How to Get Protection

- Copyright protection is automatic at creation – from the moment the “expression” is “fixed”
- Copyright registration through US Copyright Office is NOT required to obtain rights
- Use of the © symbol informs others you recognize your rights and will enforce them, but it is NOT required to maintain rights



# Duration of Protection

The original Copyright Act from 1790 provided a 14 year term for protection that with the right to renew for one additional 14 year term should the copyright holder still be alive. Since then the duration of copyright has generally expanded over time.



# Duration of Protection

For work created in or after 1978→

- Single Author: author's life + 70 years
- Joint Authors: life of longest living joint author + 70 years
- Works Made for Hire: the earlier of...
  - 95 years from the date of first publication
  - 120 years from the date of creation



For works first published prior to 1978, the term will vary depending on several factors.

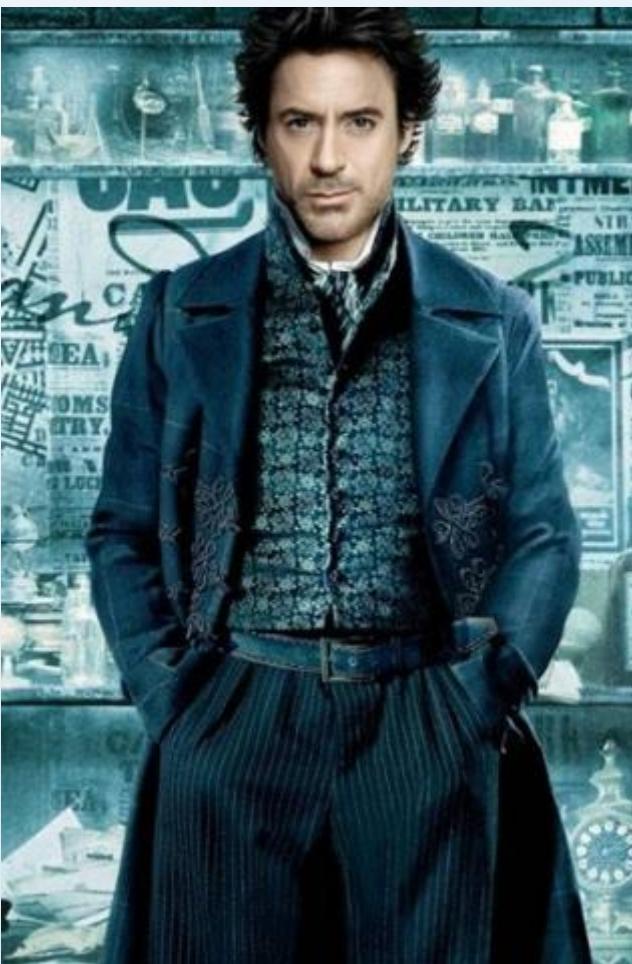
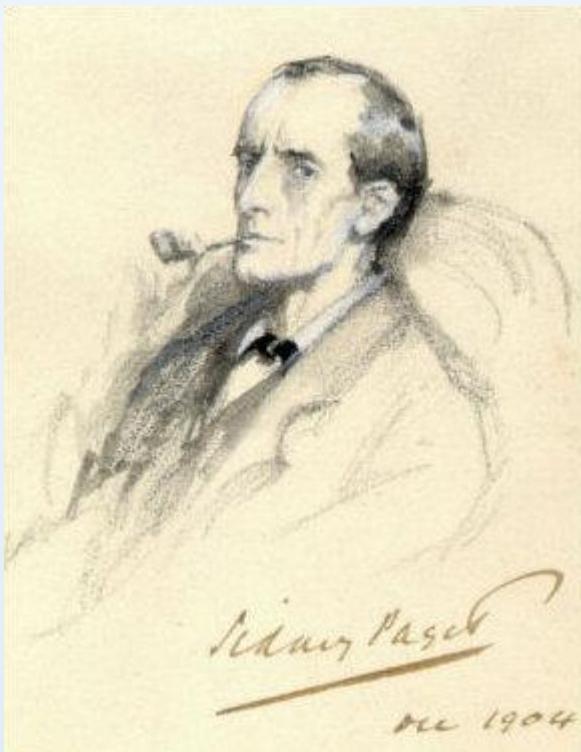
# Public Domain

What does it mean when a work is “in the public domain?” What can you use the work for?

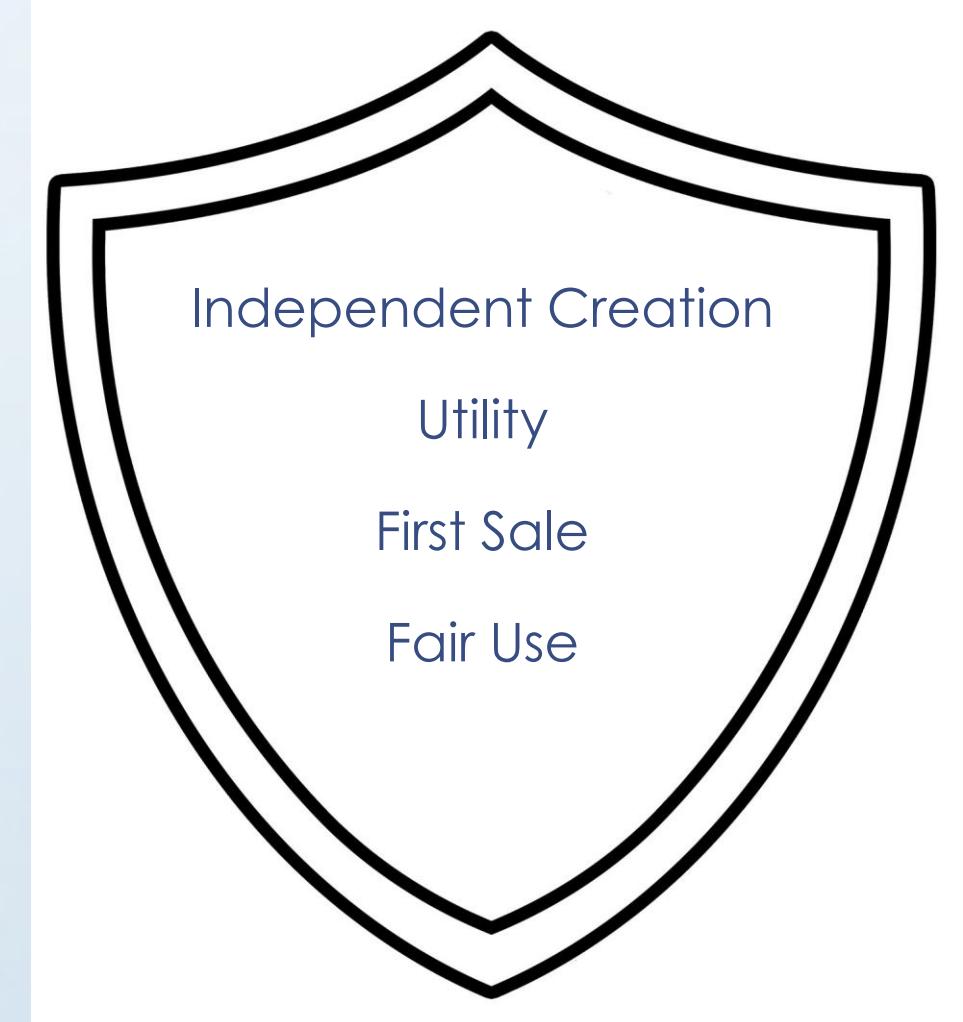
If a work is in the public domain, it can be used for anything, BUT you cannot use derivative works based on the public domain work during their separate copyright terms.

**Resource:** Cornell University's Copyright Term and Public Domain Chart <http://copyright.cornell.edu/resources/publicdomain.cfm>

# Public Domain



# Limitations of Copyright Protection

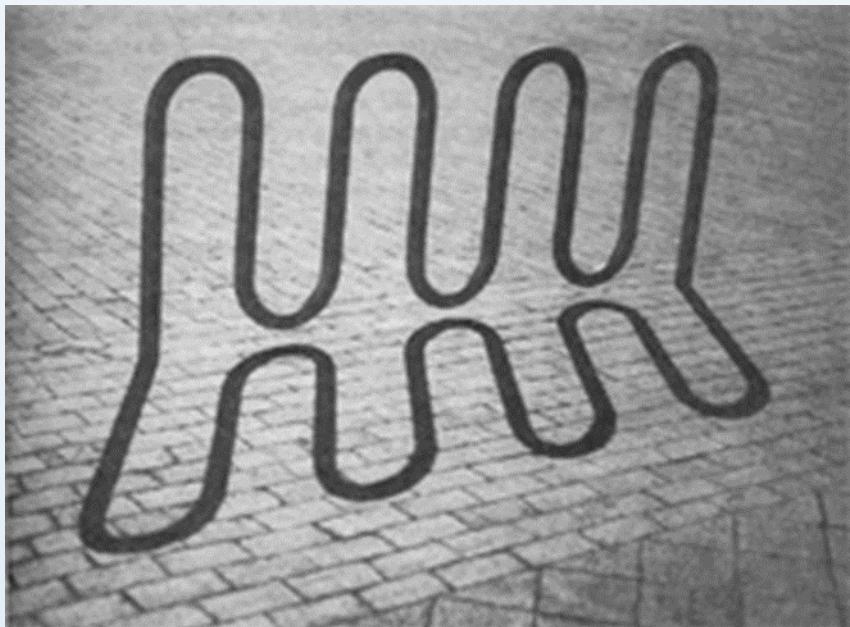


# Independent Creation

- Protects work that is **independently developed** but turns out to be coincidentally similar to copyrighted work
- The big issue is ACCESS



# Utility Doctrine

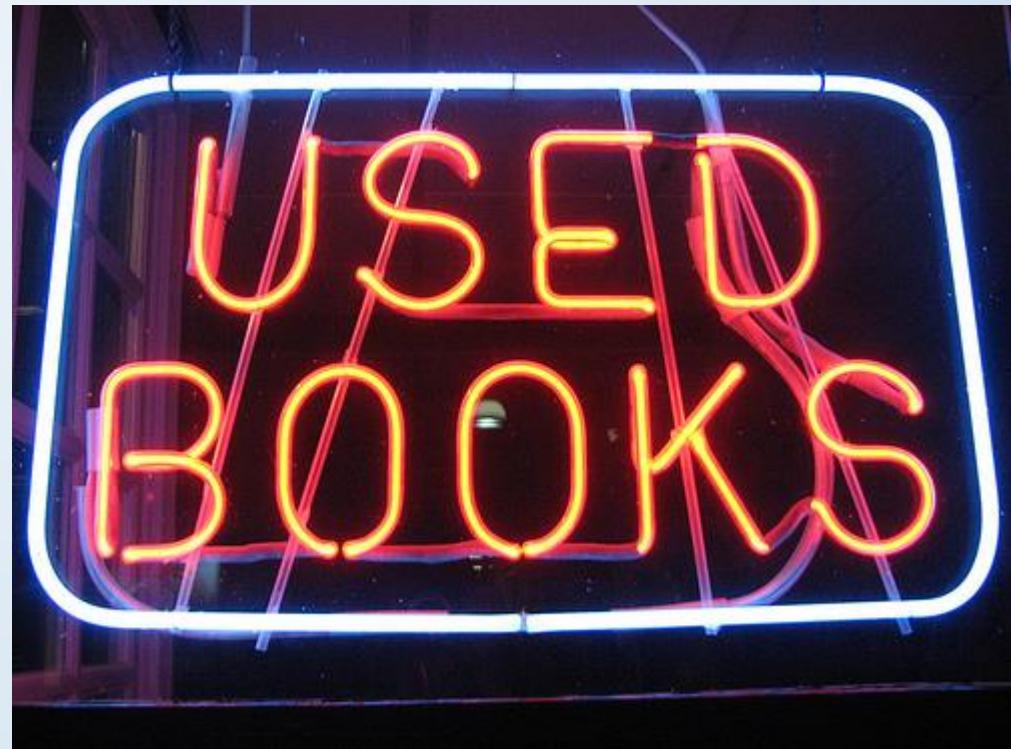


- Only the **expressive** aspects of a work are protectable
- The functional or utilitarian aspects are NOT protectable
- Often applies to pictorial or sculptural works

Otherwise known as “Useful Articles Doctrine”

# First Sale

- The first-sale doctrine creates a basic exception to the copyright holder's ***distribution*** right
- Once the work is lawfully sold, the copyright owner's interest in the material object in which the copyrighted work is embodied is exhausted



# 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?

# Creativity Without Copyright

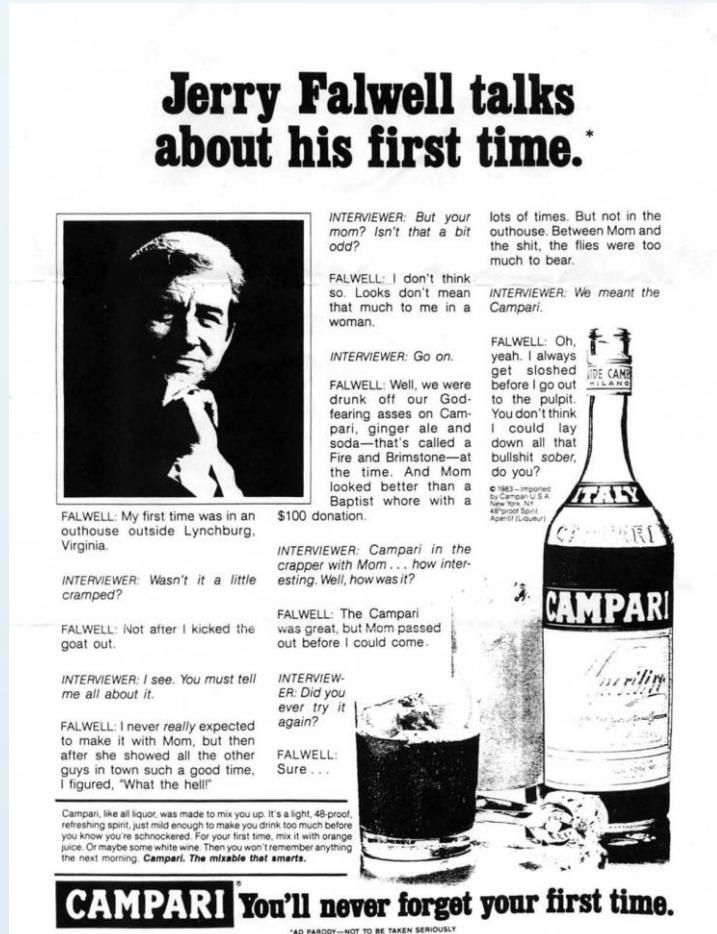


1. Explain why fashion is generally not protected by copyright.
2. Are recipes protectable under copyright? What about cookbooks?
3. How do stand up comedians protect their jokes as intellectual property? Can they?
4. Without copyright, how do the fashion, food, and comedy industries thrive? Do they need copyright to be creative?

Break?



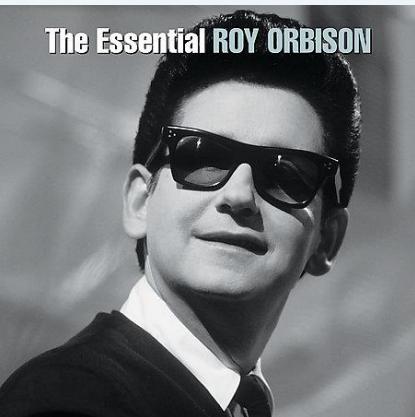
# Fair Use: Hustler Case



- **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*

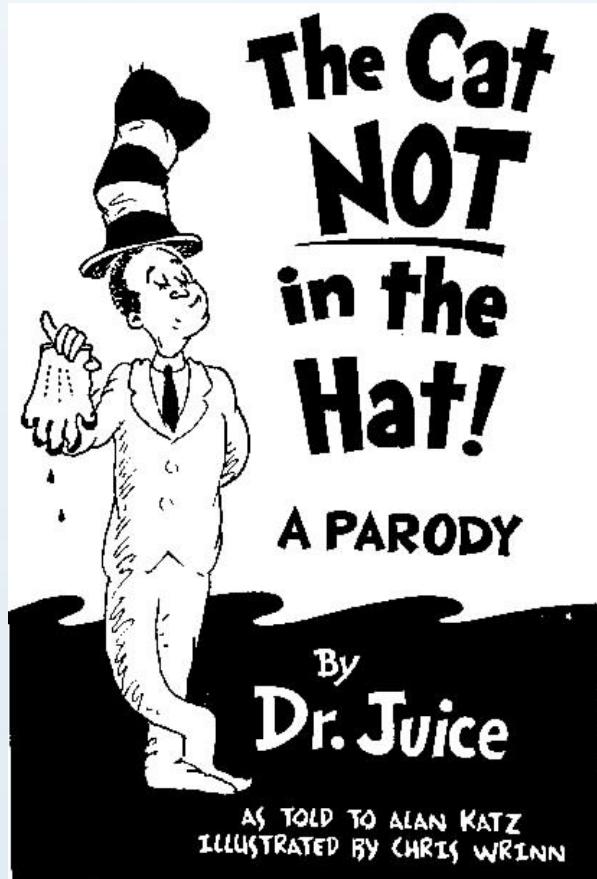


2 Live Crew:  
<http://youtu.be/JJjuxDa9sWM>

- **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.

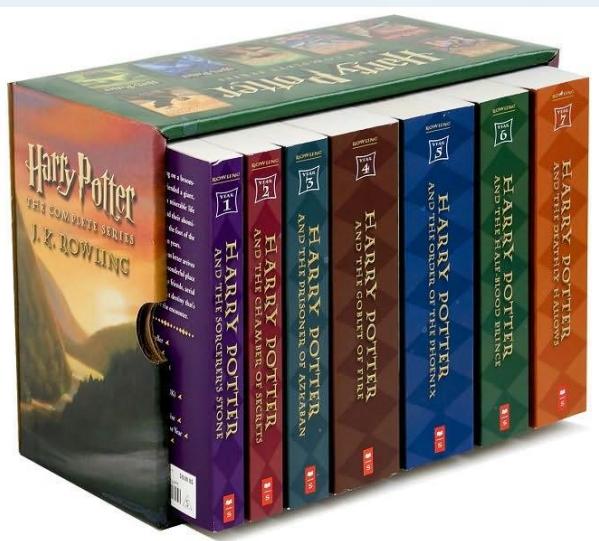
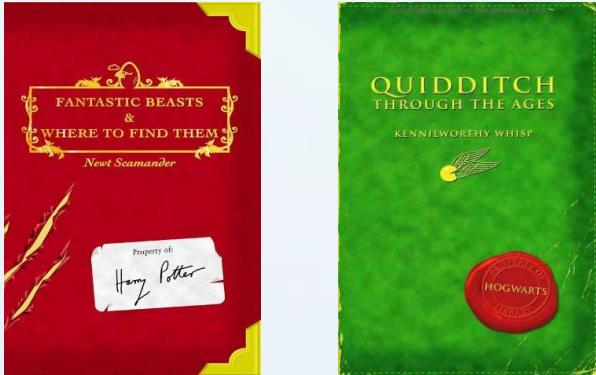
# Fair Use: Cat in the Hat Case



- **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.

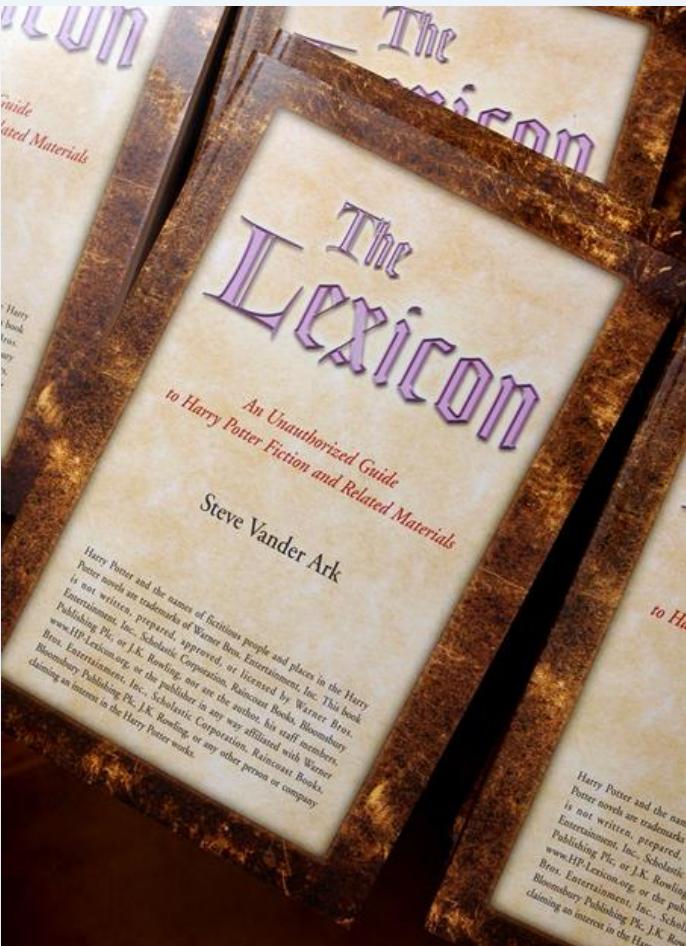
# Fair Use: HP Lexicon Case



- **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>