

# COPYRIGHT

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SLIDES 22: FAIR USE III – SOFTWARE & TECHNOLOGY

# Class Outline

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- Fair Use (cont):
  - “Access to knowledge” & other “productive uses”
  - Software

# Jimmy Smith's Rap (JSR)

**JIMMY SMITH**  
OFF-THE-TOPI  
FEATURING  
GEORGE BENSON  
RON CARTER  
GRADY TATE  
STANLEY TURRENTINE



# Pound Cake/Paris Morton Music 2



## Pound Cake / Paris Morton Music 2

Drake  
Jay-Z

Nothing Was The Same

# Theories of Fair Use

- Sufficiently transformative uses may have social benefit of creating “new”(ish) content for public consumption
- Some unauthorized uses are “reasonable and customary” (news reporting, film reviews), and so presumed socially desirable as they facilitate “access to knowledge”
- Market failure can make voluntary agreements too difficult, so fair use facilitates the formation of those goods anyway
  - costs (difficult to ID owners; expensive to negotiate)
  - Externalities (both positive – public may benefit from parodies even if author doesn’t & negative – we might get “better” creation from forcing people to create around copyright)

“[H]ow to define the boundary limit of the original author’s exclusive rights in order to best serve the overall objectives of the copyright law to expand public learning while protecting the incentives of authors to create for the public good.” - *Author’s Guild*

“Google copied those lines not because of their creativity, their beauty, or even (in a sense) because of their purpose. It copied them because programmers had already learned to work with the Sun Java API’s system, and it would have been difficult, perhaps prohibitively so, to attract programmers to build its Android smartphone system without them.

...The “substantiality” factor will generally weigh in favor of fair use where, as here, the amount of copying was tethered to a valid, and transformative, purpose.”