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PROFESSOR KRISTELIA GARCÍA

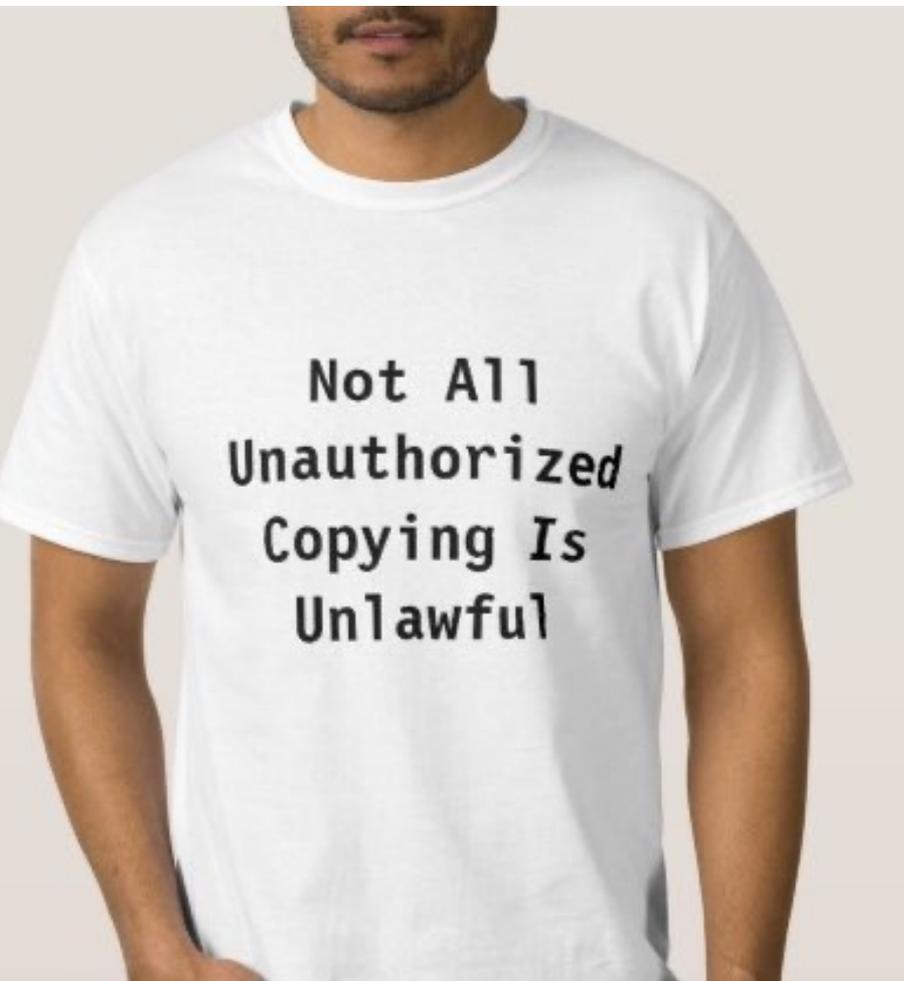
CLASS 19:
FAIR USE I – FOUNDATIONAL CASES

Class Outline

- Fair Use
 - Section 107
 - The 4 factors
 - Other considerations



"What is 'fair use'?"



§ 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Fair Use **used to be** is an affirmative defense.

This meant you had to cop to infringement, then you could use fair use to beg forgiveness. *Lenz* changed this (as we'll see in a future class).

Four factors:

(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.

Two key questions:

(1) Did the unlicensed use “transform” the material taken from the copyrighted work by using it for a different purpose than the original, or did it just repeat the work for the same intent and value as the original?

(2) Was the amount and nature of material taken appropriate in light of the nature of the copyrighted work and of the use?

Other considerations:

- (1) Did the user act reasonably?
- (2) Did the user act in good faith?
- (3) Is the use consistent with general practice in the particular field? (See the Fair Use statement from American University at http://www.cmsimpact.org/sites/default/files/fair_use_final.pdf.)

Experience the freedom of total control.



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The new Sony Betamax SL-5800 frees you from the restraints of time, memory and circumstance. And makes you master of them all.

Mastering time, memory and circumstance.

The Betamax gives you the power to alter the fabric of time itself. You can record one channel while watching another.

You can program it to record a variety of shows on four different channels for up to fourteen days in advance. And with our optional Backstop tape changer you can even record up to twenty solid hours of consecutive programming.

If having all this programming at the palm of your hand seems a bit overwhelming, we've got some more good news for you.

Mastering motion.

The Sony Betamax SL-5800 has a remarkable feature called BetaScan that allows you to find any single image from through the thousands of images on a tape many hours long. BetaScan lets you go far forward or reverse without interrupting the image on the screen. A Variable BetaScan feature lets you adjust the speed at which you can view the tape from five times up to twenty times normal speed. A Variable slow motion feature allows you to go from Freeze Frame up to one-third

normal speed. And our Freeze Frame is really frozen. It's clear and still and optically true, without noise bars or distortion.

Mastering space.

The Betamax also has a Time Commander Remote Control feature that lets you utilize Variable BetaScan, Variable Stop-motion, Frame-by-Frame Advance and Freeze Framing, without moving from the comfort of your bed or easy chair.

Mastering the medium.

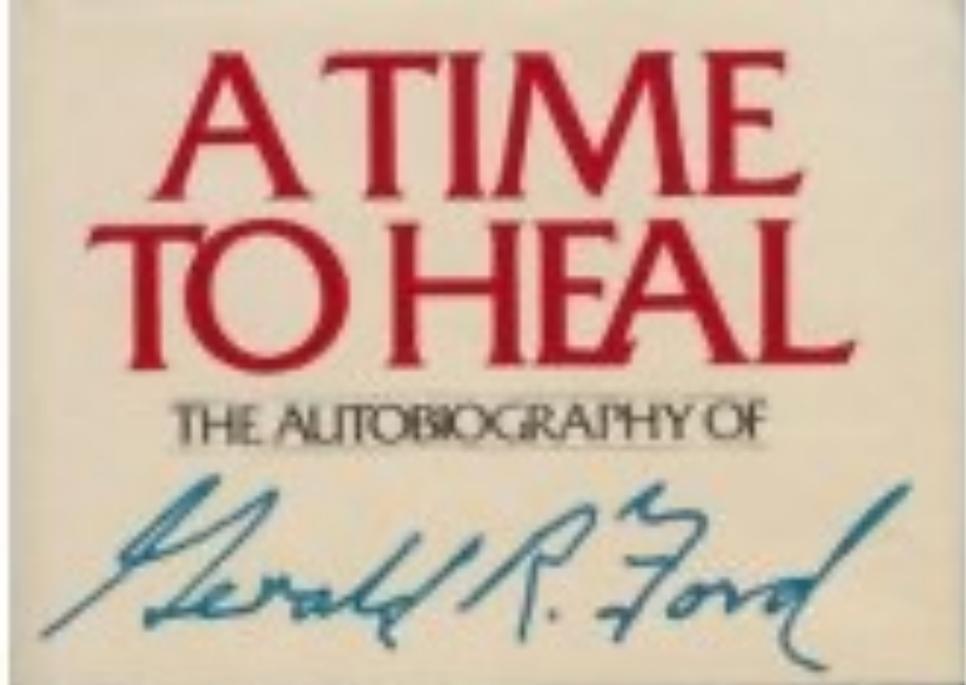
The elegant, sophisticated technology of the Betamax SL-5800 gives you a new kind of freedom. It lets you record whether you're home or away. It gives you access to a vast variety of programming that you can buy or rent. And a Sony Portable Videotape Camera enables you to actually make your own programs, and play them back instantly.

The Sony Betamax SL-5800 lets you shape and mold television to conform to your desires, to satisfy your own particular needs and interests. It allows you to make the final decision about what you'll watch and the way you'll watch it. It presents you with an almost infinite possibility of choices. And there, what freedom is all about.



SONY
THE ONE AND ONLY

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THE
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LIVE CREW

Play it
Don't say it

AS NASTY AS THEY WANNA BE

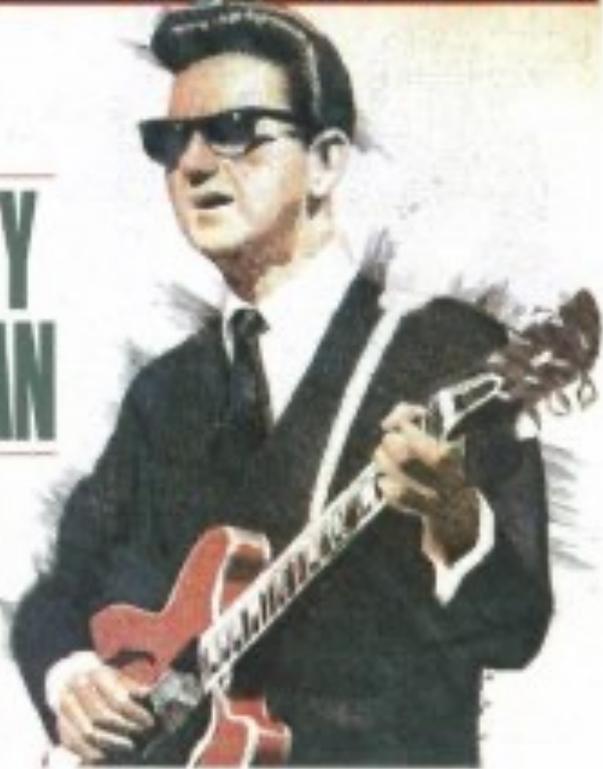


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ROY ORBISON

**PRETTY
WOMAN**



“a transformative work is one that serves a new and different function from the original work and is *not a substitute for it...*”