

# COPYRIGHT

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SLIDES 20: FAIR USE II – INDEXING & SOFTWARE

# 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

# § 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.

# 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.”