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IP Theory

Fall 2014

**Replacing Fair Use**

# Introduction

Fair Use started out it’s life as a common law doctrine, and was first articulated in the case *Folsom v. Marsh.*[[1]](#footnote-1) Justice Story, then a federal judge in Massachusetts, articulated the fair use doctrine as such

…we must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work. [[2]](#footnote-2)

It was created as a common law defense to the 1790 Copyright Act, passed by the first Congress and signed into law by George Washington. Like a lot of legislation passed by the founding fathers, it was short and broad. In classical common law style, the judicial branch was expected to flesh out the details as cases arose.

Congress did not create a fair use defense when it passed the 1909 Copyright Act, but the defense stood in common law and its use continued. Congress began the project of revising the common law back in early 60s. After debate and revisions, Congress passed the 1976 Copyright Act.[[3]](#footnote-3) §107 of the Act includes a fair use defense (the first of several enumerated defenses in the Act), that substantially mirrors Justice Story’s original language and has been interpreted by the U.S. Supreme Court as incorporating previous case law on the subject.

By including the fair use defense in the statute, Congress made sure that it would continue to remain a viable defense to copyright infringement. Many uses of copyrighted material, like the distribution of copies by teachers for classrooms and the use experts and quotes for purposes of criticism or critique rely heavily on fair use.

However, by taking fair use as it existed in 1976: a broad common law doctrine shaped entirely by a century of case law, Congress missed an opportunity to clarify what uses were fair, and which were not. Rather than enumerating the types of uses that would be considered fair under the new statute, they kept the four factor balancing test. This test create uncertainty because each court has to go through the factors to figure out if something is fair, and thus permissible, or unfair and thus infringement. The U.S. Supreme Court has rejected bright line rules for the test though lower courts are often pre-disposed to create. Broad statute without bright line rules creates uncertainty that makes it difficult to predict which uses are fair, the U.S. should move to a system where all exceptions to copyright infringement are enumerated like the copyright statutes in civil law countries in Europe.

# Fair Use and Its Strengths and Flaws

## The Usefulness of Broad Rules

Broad rules are often useful when creating categories of permitted or prohibited behavior. In such circumstance, enumerating every permitted activity or, more likely, every prohibited activity may be seen as impossible or undesirable.

One example that is seen commonly in statutes are the words ‘including, but not limited to the following.’ Such language is used when drafting statutes so that lawyers have a list to guide them in giving clients advice, but judges and juries have latitude to add to the list if something’s omission seems like an oversight. The legislators who draft such statutes realize that something important may be left out of the list. Rather than be forced to update the list every time someone thinks of a loophole, or gets away with exploiting a loophole, the legislature gives the court permission to add to it as cases come up.

Such lists can also signal potential loophole seekers that the courts have discretion to close a loophole if they think the conduct is out of line with the underlying principals of the statutory scheme.

Under the current statutory scheme, fair use is the first of sixteen enumerated exceptions to the six rights granted in §106.[[4]](#footnote-4) One interesting facet of fair use is that rather than being a broad rule that prohibits conduct, like a ‘be civil’ rule in an online forum, the fair use exception is a rule *permitting* a broad range of behavior.

For example, many online discussion forums have a rule that the users who post to those forums ‘be civil’ to each other. The idea behind this rule is create a broad category of prohibited behaviors that are unacceptable and may trigger moderation. We might formulate such rules as ‘do whatever you want, but don’t be rude.’ A moderator who deletes a post for being uncivil, or rude, can point to the ‘be civil’ rule even if there is no explicit rule governing the post’s contents.

But fair use starts from a different sort of position. The rights granted by §106: reproduction, creation of derivative works, distribution, performance, and display are broad.[[5]](#footnote-5) Reproducing a copyrighted book is infringement unless: 1) you own the copyright, 2) you have the copyright holder’s permission, or 3) you have an exception granted by the statute.

This works because copyright is in itself a kind of exception to the normal rules of property. For example, real property doesn’t fall into the commons after a set time period, the owner would have to place it in the commons for it be a commons. But copyright expires after a set time period. Because American society believes that there is value to having some works, like the novels of Jane Austin, in the public domain, we don’t give copyright holders all the same rights land owners have. So there is a tension in the law between broad rights and broad exceptions.

If someone prints thirty copies of a news post off of CNN.com to distribute to their class, we don’t want that person to be subject to a lawsuit. Of, if a lawsuit is filed, we want it dismissed as quickly as possible. Even if the statute never contemplated websites, fair use allows the public to use new technology to accomplish the same thing old technology did without the fear that the law has lagged behind.

Fair use also keeps us from being subject to arbitrary limits on quoting a work for review purposes. The use of the word ‘fair’ is also an indication that some uses are infringement only in certain contexts. For example, quoting 300 words from a large book isn’t necessarily going to be infringement, but if the work is unpublished and those 300 words are the only reason people would buy the book, then that use seems unfair and thus infringement.

As a broad rule, fair use allows judges and juries leeway in deciding what is infringement. Rather than a ridged and formulistic interpretation of the law, the fair use exception creates a safe harbor for people using new technology or who are using works in new and creative ways.

## Competing Theories

The first problem with fair use is that the underlying reasoning behind it is unclear. Of course, the reasons behind copyright law are unclear. Typically, copyright law in the U.S. is considered to be incentive based. But a lot of modern U.S. copyright law comes from the tenants of the Berne Convention, which has a moral rights rational as its underlying reason.

Under an incentive based rational, copyright doesn’t need to last longer than the life of the author because people can’t be incentivized to do anything once their dead. But the U.S. adopted a life of author plus fifty years upon the enactment of the 1976 Act because that’s the minimum term for compliance with the Berne convention.[[6]](#footnote-6) We might say that the rational behind the current statute is neither one of moral right nor incentivizing the creation of new works but rather making our works more marketable to the world. As an exporter of copyrighted material, we have an incentive to write statutes that encourage other countries to offer our content creators protection.

This ambiguity in the rational behind copyright has created ambiguity in the rational behind fair use. Under a pure incentive rational, we want content to move into the public domain as quickly as possible. But not so quick that creators can’t make money off their creations. We want them to make just enough money from their creations to keep making more works. We also want content that is out there to be as accessible as possible to the public as possible. So a broad fair use doctrine where a wide variety of copying is permitted is a good idea.

But under a pure moral rights theory, we want artists to maintain control over their work, because that is the moral thing to do. They own the work by virtue of having created it. Therefore a narrow fair use doctrine is in order. Under this regime, fair use needs to be limited doctrine where the only copying permissible is what is necessary to keep a free flow of ideas from artist to artist.

Many commentators feel that fair use is about lowering transaction costs. Under this theory, there are some uses that are infringing, but are so small that to make the copier seek out permission would be pointless. A good example is making a copy to distribute to your friends. Lets say Alice lost the instructions to a board game and asks Bob to photocopy the instructions to his copy of the game so she can have one. Under a transaction-cost reducing paradigm, this should be fair use because making everyone who looses their instructions to Monopoly ask for permission is wasteful and inefficient. Especially when most board game publishers would likely say yes anyways.

The flaw of this kind of reasoning is that some board game publishers might want to say no. This can be especially true if the game publisher sells replacement instructions. Should the game publisher be able to say no? In theory, the fair use doctrine doesn’t give them the opportunity to. In practice, the publisher can harass people by suing them. Because the doctrine is a multi-factor balancing test, it’s difficult to get unmeritorious claims dismissed. We might be tthink that, in the case of photocopying game rules the case would be over quickly, but we’re still talking months of uncertainty before a court rules on the motion. Also, the statute’s breadth means that there is a larger category of things that *don’t* get dismissed out of hand.

Free speech is also used as the underlying reasoning behind fair use. In fact, the U.S. Supreme Court has gone so far as to say that there is no separate First Amendment defense to copyright infringement. Any copying that’s protected by the First Amendment is covered by the fair use doctrine. But there are uses that are covered by the fair use doctrine that do not implicate free speech. The photocopying of the rules to a board game is a good example. Neither Alice’s nor Bob’s free speech is impaired if they can’t photocopy the rules to a board game.

However, the use of quotes for commentary and criticism is an important free speech concept. The ability to quote someone and say “this is what they said” is a powerful tool. Combined with citations to the source material, this empowers a copier’s audience to read the source’s words for themselves and judge if the copier is misrepresenting or misquoting the source. If copyright law prohibited that kind of use, public discourse on important matters would be heavily impaired.

The broadness of the fair use doctrine means that judges and juries have to rely on the underlying rationales behind it to decide edge cases. Quoting five sentences from *The Lord of the Rings* is clearly fair use under U.S. law, regardless of the rational used. But what if someone copies a larger chunk of the work? Is that fair? Let’s say I publish all of Book Five (the first half of *The Return of the King*) with mark-ups indicating all the flaws I find? Does the amount of mark-up I do influence how fair it is? For example if the pages I copy are full of red line outs and in-depth commentary is that more fair than a copy with just a few minor changes?

Publishing half of *The Return of the King* seems unfair and should be infringement. The problem is articulating a reason why. An annotated version of half the book probably isn’t going to displace sales of the whole work. After all, people still have to buy the first two volumes to understand the third. And only half the third has been published. Also, heavy annotations mean that that the work has been transformed from Tolkien’s purpose.

Maybe Christopher Tolkien should sue the person who tries, then we would all and find out.

## Balancing Factors vs Bright Line Rules

There’s a tendency to want bright line rules in copyright infringement cases. For example, a trial court might like a rule that says you can’t copy more than 10% of a literary work that’s more than 1,000 words in length. This gives people a clear idea of how much they can copy, and the court’s decision is an easy one. The problem with this rule is that it might be really useful to someone to copy 11% of a work. It feels really arbitrary. It’s easy to imagine someone saying that copying 101 words out of a 1,000 word short story isn’t that different from copying 100 words. Why does one word make a difference. That sounds unfair.

Of course, the rule is useful to copiers as well. Just count-up how much you’re copying and make sure it’s under the threshold. Most reviews of literary works aren’t likely to copy more than 10% of a work they review anyways.

But for content creators, this rule can be a real problem. If someone quotes 10% of a lengthy memoir, they could potentially copy the only part of the work that’s worth anything to anyone. What if you could legally copy the part of Bill Clinton’s memoir talking about Monica Lewinsky? For a publisher, that’s a big part of the reason why a lot of people would buy the book. More people are interested in presidential sex than in terrible childhoods.

So content creators resist such a rule because of its effects on potential markets. Notice that the market for the work and the use’s affect on it are factors in the test for fair use.

But this creates a problem, anything more than a paragraph or two (and sometimes, even then) and a reviewer runs the risk of copying the heart of the work. After all, what do you want to quote from, a piece that’s inconsequential or a piece that important? What’s a better illustration of the work that’s being reviewed?

This situation came up when The Nation got an advanced copy of Gerald Ford’s memoirs. The Nation quickly wrote-up an article heavily quoting from the section of Ford’s book dealing with Nixon’s pardon. Why? Because that was the only part of the book that anyone was interested in. It’s the only part that was newsworthy. The Nation lost on its fair use defense because that was the important part of the book. In fact, it was so important that Time Magazine had paid to publish it first and when they were scooped, they pulled out of the deal.

Now, a big part of the case was that The Nation had gotten ahold of the copy illegally, or at least underhandedly. But the case wasn’t about unfair competition, or trade secret law. It was about copyright infringement and fair use. We can think about this reasoning in a non-time sensitive context. Imagine publishing who the murderer to each of Agatha Christie’s books. Is that fair?

So, a single bright-line rule about how much you can copy would be useful to determining if something is infringing, but can lead to bizarre and arbitrary results.

But a more fuzzy rule like the one we have creates uncertainty until the court rules on it. Leading potential copiers and content owners to base their decisions not on what’s actually fair, but on how likely and beneficial a lawsuit to the content owner.

## Among Friends: A Case Study

Let’s say a company makes free version of a game. The post the rules to their website and invite people to use them. The document is one hundred pages of text. Can someone print out the whole document several times to distribute to their friends?

This question came up on a message board I frequent. The owner of the board, a content creator who runs a small game publishing house, said that doing that is probably copyright infringement, but someone who makes copies and distributes them to their friends is unlikely to be sued. This is a theme that shows up a lot in copyright discussions: in order to keep something from being infringement, you have to get explicit permission from the content owner. Professor Eric Goldman calls the “permission culture.”

One might think, legally speaking, that a publisher who distributes a game for free wants people to print it out and play it with their friends. But permission culture frames it as a litigation issue. The problem with fair use and implied consent is that content owners can always threaten litigation. Even if they loose legally, they may win by successfully harassing the copier.

Fair use is broad enough that content owners have a plausible argument a large number of specific cases. So, from a content owners perspective potential copiers should just ask for permission. And for permission and you’ll be fine. It’s a short leap from not only *should* you ask for permission, to you *must* ask for permission. On the message board where this question came up, an attorney literally said that fair use is only a defense you bring up during litigation, you’re not supposed to use it as a guide to how much you can copy.

So here we have an attorney saying that you can’t use fair use as a guide to how much you can copy without permission, because according to him, you can’t copy anything without permission.

Unless a court says you can after you’ve been sued.

## New Technology and Blank Media: The Betamax Case

Another common problem in fair use is that uses that weren’t fair when done by competitors seem to become fair once new technology brings the ability to copy something into the hands of consumers.

For example, it would be unthinkable for Paramount to make a copy of the Warner Brothers movie *Superman* and distribute it for free. But once videocassette recorders became consumer items, people could legally record *Superman* off their TV and watch it when they want to. They could also make copies for their friends, or keep the movie to watch later. The New York Post couldn’t distribute Dave Berry’s column without permission, but a school teacher can make thirty photocopies of it and distribute it to her students.

Making and distributing copies is most common, at least in the days of boom boxes, with music. Mix tapes were common items to make both for yourself and for others. Compact disc players were often sold in conjunction with tape recorders to facilitate the making of mix tapes, or even making wholesale copies of the work.

Should copyright holders benefit from the making of mix tapes? We might ask if they should be able to prevent such uses, but history has made it clear that in practice they can’t, so it seems silly to ask if the law should prohibit the making of such copies illegal. If it does, that law is almost completely unenforceable.

Of course, from a moral rights perspective, we might say that the law should try to prohibit the copying of music into mix tapes. After all, some people might not do it simply because it is illegal. Also, it gives copyright owners the power to go after egregious offenders.

Of course, prohibiting the making of mix tapes raises transaction costs for anyone who tries to get permission. Which is one reason why so many people won’t and simply do it anyways. So it might be better to ask, should copyright holders benefit from the making of mix tapes? If society can’t prevent people making mix tapes, we might want to at least give the artist some kind of compensation for the unauthorized copying.

Right now, artists in the United States get nothing from the sale of cassettes. And not just because no one buys cassettes anymore. Blank media, including cassettes, blank CDs, blank DVDs, videotapes, and even hard drives are used to make unauthorized copies all the time. A company like Sony may benefit from both, given that they both distribute the consumer equipment to make copies and distribute a large amount of the material that is copied, but the artists and copyright holders themselves don’t receive anything from the copies.

# Potential Solutions

## Explicit Statutory Exceptions

One solution to the problem of unauthorized personal use is to explicitly state, in the law, that personal use is permitted. Imagine a statutory provision that explicitly lays out a personal use exception. Swiss copyright law actually has such an explicit exception. The first sentence of Article 19 of the Swiss Federal Act on Copyright and Related Rights states “Published works may be used for private use.” Private use is defined as:

1. any personal use of a work or use within a circle of persons closely connected to each other, such as relatives of friends;
2. any use of a work by a teacher and his class for educational purposes;
3. the copying of a work in enterprises, public administrations, institutions, commissions and similar bodies for internal information or documentation.[[7]](#footnote-7)

The statute also allows third parties to make the copies. The advantages of such a statute is that it clearly tells the public when copying without permission is not infringement. This lowers transaction costs in two ways: first it explicitly allows people make copies that most creators would be fine with; second lawyers don’t have to go through an ambiguous multifactor test to see if their use qualifies, which makes advising clients easier.

By defining what personal use is and explicitly allowing it, statutes like this can end pointless threats of lawsuits for personal use. If the U.S. were to follow the Swiss example, even copy shops like Kinko’s would be exempted. Right now, whether or not Kinko’s will print something or make a copy for you seems to depend entirely on who you get and what their understanding of copyright law is.

One potential problem with this approach is that some personal uses will displace sales. For example, Alice might send her cousin, Bob, an electronic copy of *Harry Potter and Sorcerer’s Stone* while retaining one for herself. It’s possible that Bob, or someone in his position, would have bought a copy had someone not given him one for free.

Of course, most personal uses won’t displace sales. Sometimes personal use is just that, personal. In these instances, the person making the copy is also going to be the user. The copier now has two copies. This is the case with forms in a book, the idea is to copy the form from the book every time you use it.

Of course, we run into the problem that the exception may swallow the rule.

One issue is copying computer programs to your friends computer. The statute completely exempts computer programs from the private use exception. Computer programs are, however, discussed in Articles 21 and 24 of the Swiss statute, which deal with decoding of computer programs and the making of backups.

One way private use can be limited is by making sure that the distribution or copying is limited to close friends and family. That does create a fuzzy boundry, how many people are close friends? If someone gives a single copy of a song to their best friend would seem to be unarguably personal use. But what about giving away a dozen copies to her friends? A hundred? Is someone really going to go into court and say they have a hundred close friends?

In U.S. law, there might be a believability issue with someone saying they have a hundred close friends. But lower numbers like a dozen or two dozen may straddle the line a bit, depending on how outgoing the individual is.

Of course, we have the same exception swallowing the rule issues under §107, because it does seem to cover the kind personal use contemplated by the a more explicit statute. But §107 also doesn’t give any guidance as to where to draw the line. Worse, because it’s written so broadly, the line can be draw in arbitrary and unpredictable ways that vary from circuit to circuit.

## The only things certain in life are copyright infringement and taxes.

But what about the recording (or rerecording) and distribution of music and other electronic files? Even if we don’t make the copiers get permission, content creators would like some kind remuneration for their work. Especially since some of that use is, in fact, displacing sales. One solution is a tax on blank media and recording devices. After the loss in the Betamax case, film studios lobbied Congress for a tax on blank videotapes. The legislation failed because VCR use had become both common and explicitly legal under Supreme Court law. The lobby had lost its primary argument for such a tax.

The music industry tried the same thing with the Audio Home Recording Act (Chapter 10 of the title 17). That statute regulates the use of digital audio recording devices, and under it blank media is to be taxed and revenue from the tax is supposed to be distributed to the music industry. Unfortunately, the music industry agreed to exclude computers from the legislation. This led the amusing result that CDs labeled for music storage are taxed, but CDs labeled for computer file storage are not. This makes no sense from a technical standpoint, because discs can be used for either purpose.

If we combine a tax on blank media and an explicit exception for personal use, we get a powerful combination. Copiers get protection for personal use and content creators get money from the sale of blank media, some of which will be used for unauthorized copying that would go unremunerated if not taxed. Everyone gets something.

There are two flaws with a tax on blank media. First, some blank media is used to make original works: voice recordings, personal pictures, private correspondence, all the incidental writings people generate. A VHS tape can be used in a camcorder. A hard drive can be filled with personal pictures and home movies. CDs may be used to make demos. In these instances we might call the tax over-inclusive.

The second flaw, and worst, is how to distribute the tax to the content creators. Many copyright schemes, like Swiss law, gives collectives like BMI and ASCAP special rights under their copyright statutes and governs their use in those statutes. By contrast, ASCAP and BMI were prosecuted for antitrust violations and both organization operate on a consent decree governed by the S.D.N.Y., the federal district court covering New York City.

But even if given the blessing of legislation, collectives aren’t free from bias. It’s likely that large companies like Disney (who now both Spider-Man and Mickey Mouse) would get more favorable treatment over smaller content creators. For example, an independent film with poor distribution by a strong fan base may be widely copied off the internet because of it’s unavailability in the market place, but those rights holders will not see any money from the sale blank media because the collectives favor the big companies.

A big part of the problem is finding out what people are copying, as online copying is a difficult thing to track. Sure, servers keep all kinds of stats that Orwell’s Big Brother would love to have, but getting access to a server’s stats, particularly if they are outside your jurisdiction, can be difficult. Also, the number of servers is difficult to track.

These problems, however, don’t suggest that such a plan isn’t preferable to the current fair use regime. If content providers get some extra money from a tax on blank media that would have been use for wholly original content, that’s not a big problem unless the tax is so large as to dissuade people from buying the media for that use. The distribution of the tax is a bigger issue. The best solution would be to have independent content creator to form their own organization to apply for the a slice of the tax pie. This way the content providers negotiate among themselves and come to an agreement.

But what if the collectives made an agreement with server operators so that they would be permitted to distribute content in exchange for server data? It’s a good solution, though it might be someone what problematic in that the slice of pie from the tax is likely to be lower than what would be made from direct sales. Another problem would be anti-copyright crusaders who operate the servers for the explicit purpose of defying copyright law, those operators are unlikely to cooperate.

Another problem could be fraud. An author or other content creator could download thousands of copies from a server to inflate download numbers and get a bigger slice of the pie. The traceability of IP addresses prevents some of this, but a clever person (or a large organization) could likely overcome it.

But I think the goal of giving people clear rules is better than unclear rules. The problems that come-up from giving out explicit right can usually be overcome by thinking about the problem so more and crafting a better rule. Also, Congress can amend the act if court rulings become too draconian.

# Parody and Free Speech

The United States Supreme Court has explicitly said that parody is protected by fair use.[[8]](#footnote-8) This is a win for both free speech and Weird Al.[[9]](#footnote-9) And this is one area where the U.S. is ahead of the European Union. So far, many European countries don’t have an explicit exception for parody. This has been a problem for comedy writers like Graham Linehan, writer and creator of brittish tv shows like Father Ted and the IT Crowd, because jokes often have to be changed for fear of lawsuit. Without the explicit exception, potential parodists have to rely on the good will of the content owners to make a living.[[10]](#footnote-10)

An upcoming change to the European Copyright Directive will allow parody so long as it is not defamatory.[[11]](#footnote-11) The UK is also making a change to their national law allowing parody. This does highlight the flexibility of the U.S. approach. The U.S. has had an exception for parody partly because §107 is so broad. Of course, the EU in general and UK specifically seem to have gotten along fine without the exception. For one thing, there have been many parodies in the UK, but they were often vulnerable to a lawsuit for copyright infringement if they didn’t get permission. Copyright holders do often have grant permission in exchange for a license fee. But that scheme reduces the number of parodies people are willing to make.

A bit driving force in this changes is the creation of new works made almost entirely out of the existing copyrighted material. Mash-ups, where clips of disparate movies and tv shows are edited to create a new work are likely the best example. Other examples would be videos that detail a movie’s flaws by showing clips from the movie in rapid-fire succession. Because so much of the work is sampled from the work being commented on, these forms of expression are quite vulnerable to a lawsuit for infringement if there is not an explicit exception for such material.

But is an explicit exception better than an implied one? The only Supreme Court case on point is the *Campbell* case, which was about music, not about video mash-ups. U.S. notions of free speech are likely strong enough to cover video mash-ups on YouTube and similar services. But that’s only because we’re projecting our notions of free speech on the fair use exception, there is certainly nothing in §107 that demands such a conclusion. And that’s the problem, in a nutshell, §107 doesn’t seem to demand *any* kind of conclusion based only on the text of the statute. While it’s nice when the courts come to a conclusion that society agrees with, there are enough quirks in the legal system that many rulings are simply bizarre and don’t seem to fall into any rational behind fair use.

An explicit exception can guide courts better than an ambiguous one. Particularly since ambiguity can lead to circuit splits in the U.S. A more explicit law can lead more consistent rulings even when there is still some ambiguity left in the statute.

1. Folsom v. Marsh, 9. F.Cas. 342 (C.C.D. Mass. 1841). [↑](#footnote-ref-1)
2. id. [↑](#footnote-ref-2)
3. Chapters 1 through 8 of Title 17, all subsequent code citations will be to Title 17 of the United States Code. Chapters 9 through 13 are not technically part of copyright law, though they often give some kind of copyright like intellectual property protection. [↑](#footnote-ref-3)
4. And, presumably to §106A as well. [↑](#footnote-ref-4)
5. There is also a right in public performance of digital audio transmission in sound recordings. But that right is about as narrow as you can get. [↑](#footnote-ref-5)
6. While the U.S. wasn’t a member of the Bern Convention in 1976, there were plans to bring the U.S. in compliance and join. The U.S. joined in 1989, but isn’t fully compliant. [↑](#footnote-ref-6)
7. Text is quoted from the official English translation of the statute, which is provided by the Swiss government for convenience and has no legal weight. [↑](#footnote-ref-7)
8. *Campbell v. Acuff-Rose Music,* 510 U.S 569 (1994). [↑](#footnote-ref-8)
9. Not that it matters for Weird Al, he’s well known for obtaining permission for all the parodies he records. [↑](#footnote-ref-9)
10. [www.bbc.com/news/entertainment-arts-29408121](http://www.bbc.com/news/entertainment-arts-29408121) [↑](#footnote-ref-10)
11. Id. [↑](#footnote-ref-11)