Copyright review

- Protects "(1) original (2) works of authorship (3) fixed in any tangible medium of expression"
- Does NOT protect ideas, facts, or common knowledge.
- Holder's exclusive rights:
  - Reproduce
  - Distribute
  - Derivative
  - Perform/display/transmit

- Term of protection:
  - Author: life + 70 yrs
  - Work for hire: lesser of 95 after pub or 120 after creation
- We're buying a physical copy, but what's valuable are the ideas, characters, and the creative expression contained inside
  - Buying the right to use, for personal purposes
  - Compare and contrast with physical property

An original work must be

A. Unique
B. Have human authors
C. All of the above
D. None of the above
**Fair Use**

(Study pages 108-110)

- An exception to copyright (and only copyright...)
- Began as a judicial doctrine (from cases)
- “Allows uses of copyrighted material that contribute to the creation of new work and issues that are not likely to deprive authors/publishers of income for their work.”
- Possible fair uses: “criticism, comment, new reporting, teaching, scholarship, or research.”

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**Fair Use Balancing**

- Promoting production of useful work (by allowing copyright)
- Encouraging the use and flow of information (by limiting copyright)

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**CSMI’s Code of Best Practices in Online Video**

- Watch CSMI’s Code of Best Practices in Online Video

- Fair uses are often
  - Transformative
  - Proportional or incidental
  - Credit sources
What’s your favorite Weird Al song?

A. Like a Surgeon
B. Eat it
C. Yoda
D. Tacky
E. My favorite is not listed
F. Who is Weird Al?

Weird Al Yankovic

• Parody and fair use.
  — Parody as transformative use

• Al takes the position of asking for artist permission.

Sony v. Universal Studios case

• 1984, the betamax
  http://www.law.cornell.edu/copyright/cases/464_US_417.htm

• ISSUE: was Sony liable for contributory copyright infringement by distributing a device that is capable of copyright infringement?

• STD: looked at whether the device was capable of substantial non-infringing uses.
Sony cont’d

• Applied the 4 factor fair use test the situation of recording of a film broadcast on TV for later personal viewing.

1. Purpose and character of the *new* use.
   - Private
   - Idea of mere time-shifting

2. Nature of the *original* copyrighted work
   - Usually creative

3. Amount and substantiality of portion used
   - Ideally whole

4. Effect of the new use on potential market of the original work
   - Not clear that there was a harmful effect
   - Seen as increasing audience and given bigger market for ad revenues

Which factor wins/loses fair use cases?

A. Amount copied
B. Nature of the original work
C. Purpose of the new use
D. Effect on the market of the original
The court could find fair use even if the copier of the work makes money.
A. Yes
B. No

Fair Use Analysis on

Judson Laipply's Evolution of Dance

Ogg's video of Jack White's 'I'm Shakin'

Kelly v. Arriba Soft Corporation (9th Cir., 2003)
http://openjurist.org/336/f3d/811

- Facts: Professional photographer sues search engine operator for indexing his images. In the process, thumbnails were created and stored on the Arriba Soft's server.
- Issue: Do these unauthorized copies of his images violate Kelly's copyright?
- Ct analysis: 4 factor fair use analysis
- Holding:
Do you agree with the court’s decision in *Kelly*?

A. Yes
B. No

Galoob v. Nintendo (9th Cir, 1992)

- Game genie case. Users can modify existing games (extra lives, invincible char., unlimited ammo, etc.).
- Issue: Is this a derivative work?
- Ct Analysis: 4 factor fair use; is it derivative
- Holding:

Do you agree with the court’s decision in the Galoob case?

A. Yes
B. No