



Expression
Copyright

Fair Use

Eric E. Johnson

ericejohnson.com



Konomark
Most rights sharable

17 U.S.C. § 106

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

“The limited scope of the copyright holder’s statutory monopoly ... reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts.”

Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156 (1975)

17 U.S.C. § 107

Limitations on exclusive rights: Fair use

“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 ... , scholarship, or research, is not an infringement of copyright.”

17 U.S.C. § 107

Limitations on exclusive rights: Fair use

Fair use factors (nonexclusive list):

“(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.”

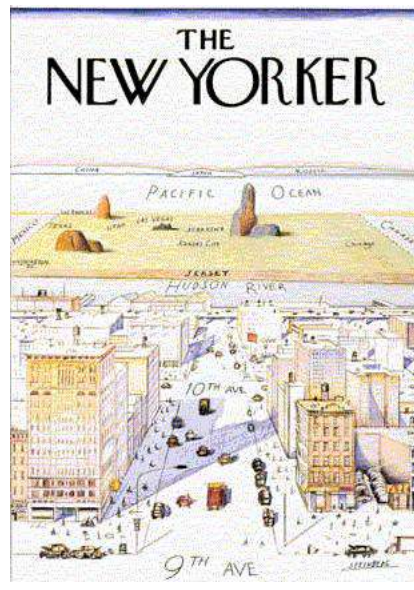
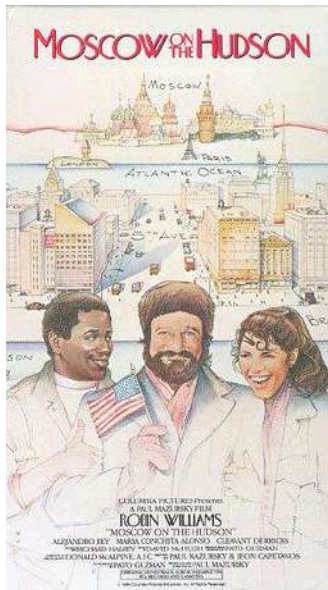
On fair use:

“The inquiry is necessarily a flexible one, and the endless variety of situations that may arise precludes the formulation of exact rules.”

Sony Corp. of America v. Universal City Studios, Inc.
464 U.S. 417, 479-80 (1984)

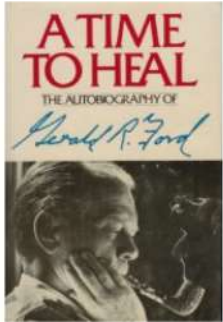
Realothenicals

Steinberg v. Columbia Pictures (S.D.N.Y. 1987)

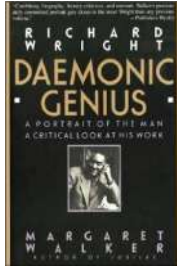




Harper & Row v. Nation Enterprises, 471 U.S. 539 (1985)



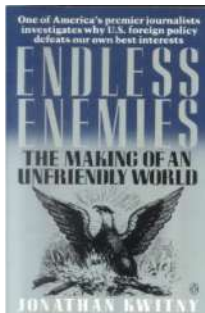
Wright v. Warner Books, Inc.,
953 F.2d 731 (2d Cir. 1991)



Biographer quoted from 6 unpublished letters and 10 journal entries.

Fair use. Use was informational, and less than 1% was taken.

Love v. Kwitny,
772 F. Supp. 1367 (S.D.N.Y. 1989)



Author copied more than 50% of unpublished manuscript to prove a person's involvement in Iranian government overthrow.

Not a fair use. Key: amount taken and unpublished status.

Roy Export Co. of Vaduz v. CBS,
672 F.2d 1095 (2d Cir. 1982)



75 seconds of 72 minute film used in TV news report on Charlie Chaplin's death.

Not a fair use. The court found the portion taken substantial and the "heart" of the film.

Perfect 10 v. Google



Not fair use. Use is "consumptive" rather than "transformative," and "likely does harm the potential market for the downloading of P10's reduced-size images onto cell phones."

Perfect 10, Inc. v. Google, 416 F.Supp.2d 828 (C.D. Cal. 2006)

Perfect 10 v. Google



REVERSED!

Not transformative is “consumptive” rather than “transformative,” and “likely does harm the potential market for the downloading of P10’s reduced-size images onto cell phones.”

Perfect 10, Inc. v. Google, 416 F.Supp.2d 828 (C.D. Cal. 2006)

Perfect 10 v. Google

Fair use.

“Google’s use of thumbnails is highly transformative. Although an image may have been created originally to serve an entertainment, aesthetic, or informative function, a search engine transforms the image into a pointer ... directing a user to a source of information.”

Perfect 10, Inc. v. Amazon.com, Inc. [and Google], 508 F.3d 1146 (9th Cir. 2007)

Perfect 10 v. Google

“Just as a “parody has an obvious claim to transformative value” because “it can provide social benefit, by shedding light on an earlier work, and, in the process, creating a new one,” Campbell, 510 U.S. at 579[^], a search engine provides social benefit by incorporating an original work into a new work, namely, an electronic reference tool.”

Perfect 10, Inc. v. Amazon.com, Inc. [and Google], 508 F. 3d 1146 (9th Cir. 2007)

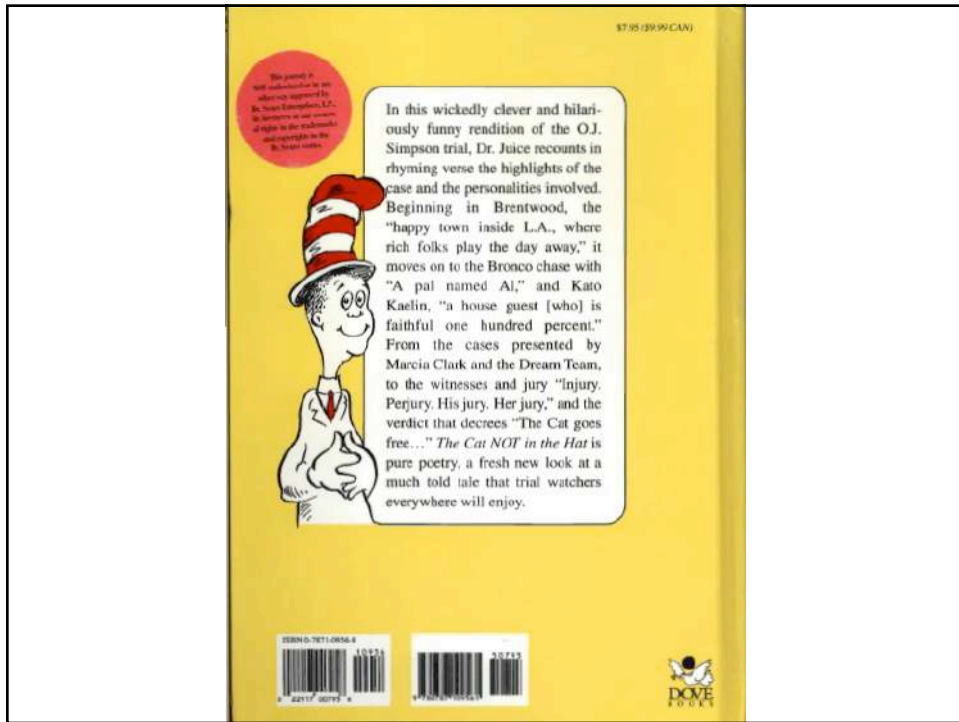
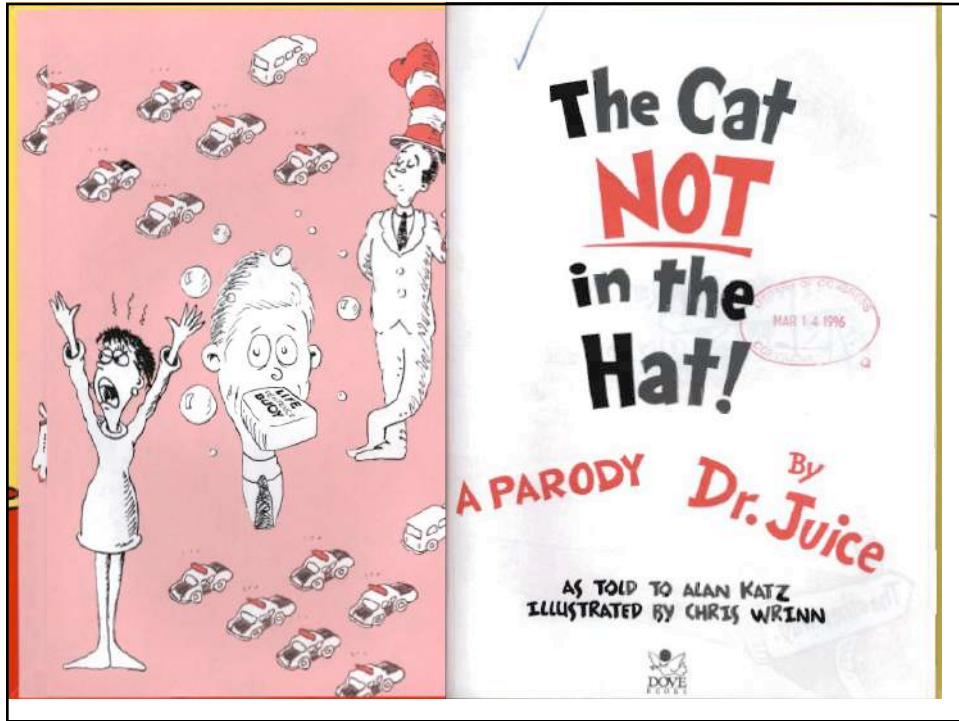
Perfect 10, Inc. v. Amazon.com, Inc.,
No. 06-55405 (9th Cir. 2007)

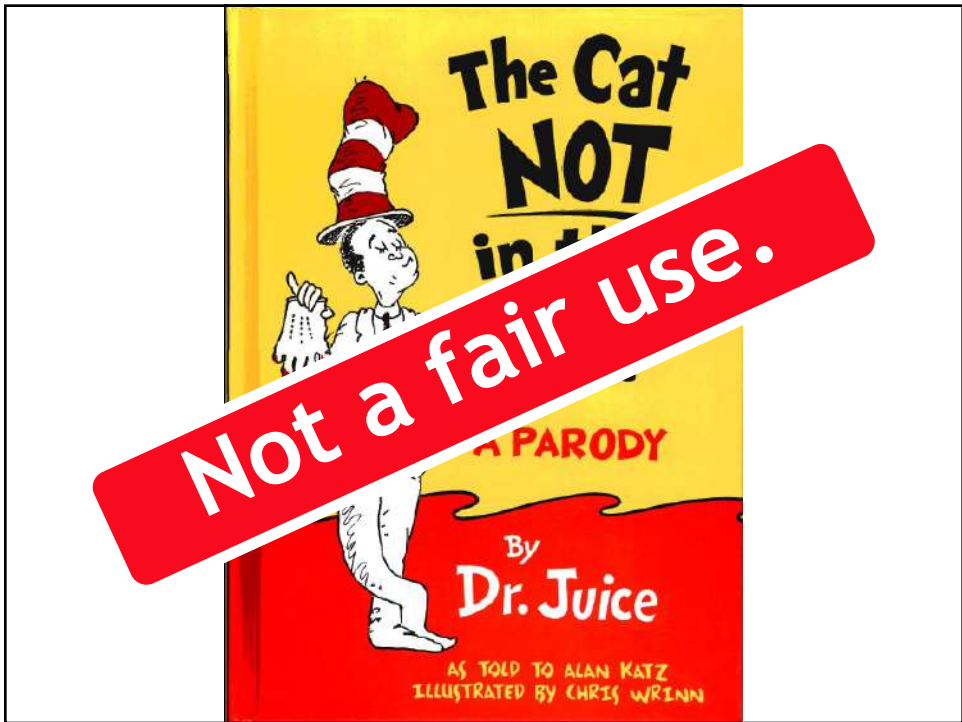
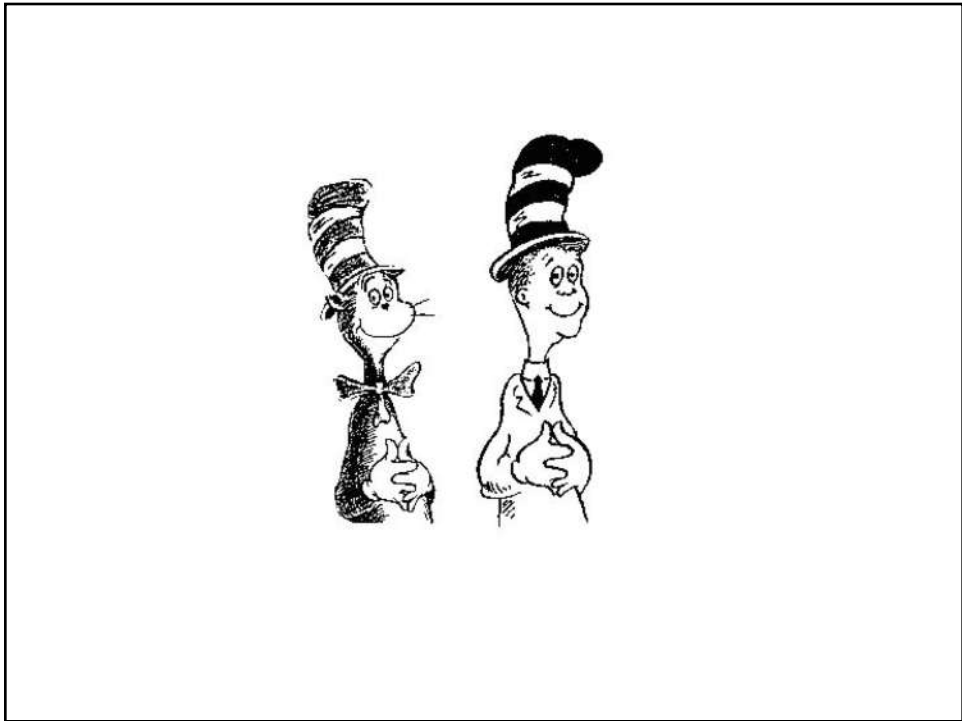


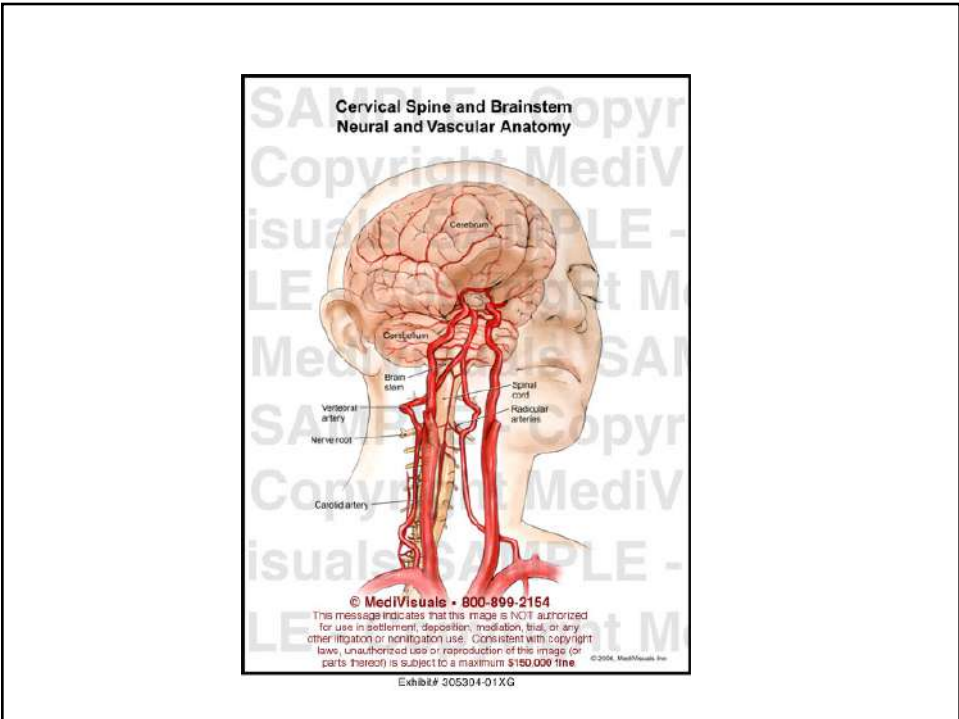
Ringgold v. Black Entertainment Television, Inc.,
126 F.3d 70 (2d Cir. 1997)











Rogers v. Koons, 960 F.2d 301 (2d Cir. 1992)



Blanch v. Koons,
2005 U.S. Dist. LEXIS 26299 (S.D.N.Y. 2005)

