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Copyright and Education: a Collision of Old Principles and New Possibilities

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October 20, 2010.

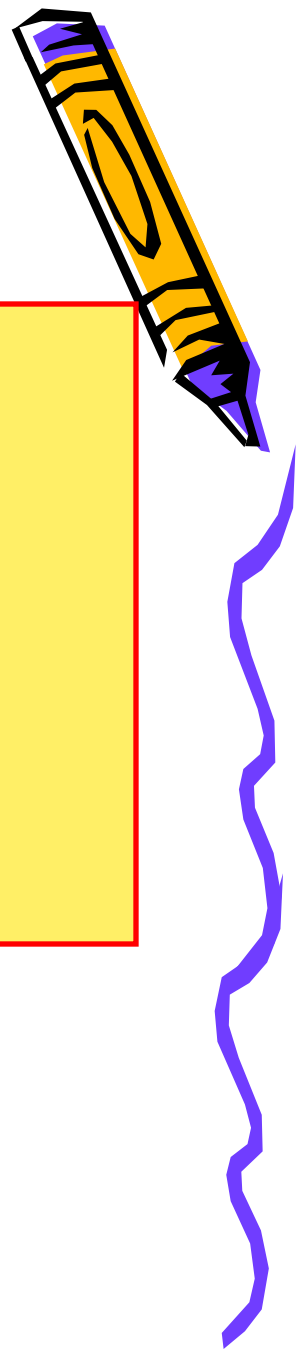
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Copyright and Education:

A collision of old
principles and new
possibilities?



20 October 2010. SIUC



OR...



South Park,
Gilligan's Island, and
the search for meaning
in copyright Law





Dwayne K. Buttler

Professor, University Libraries

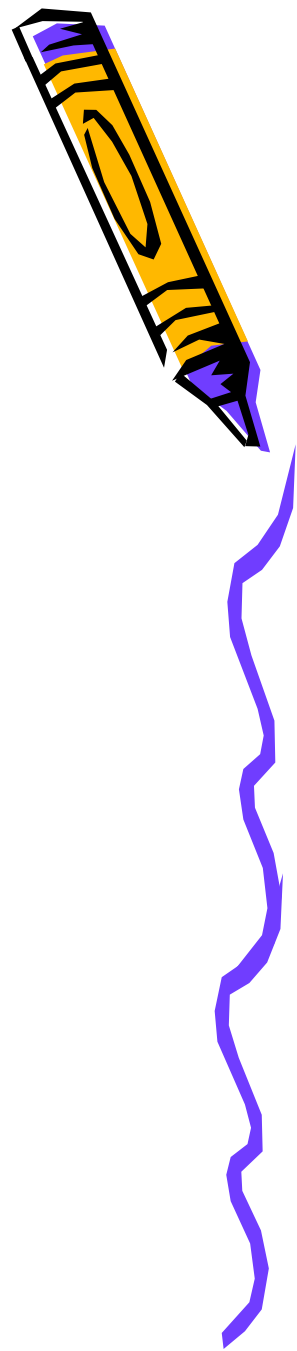
Evelyn J. Schneider Endowed Chair for Scholarly Communication
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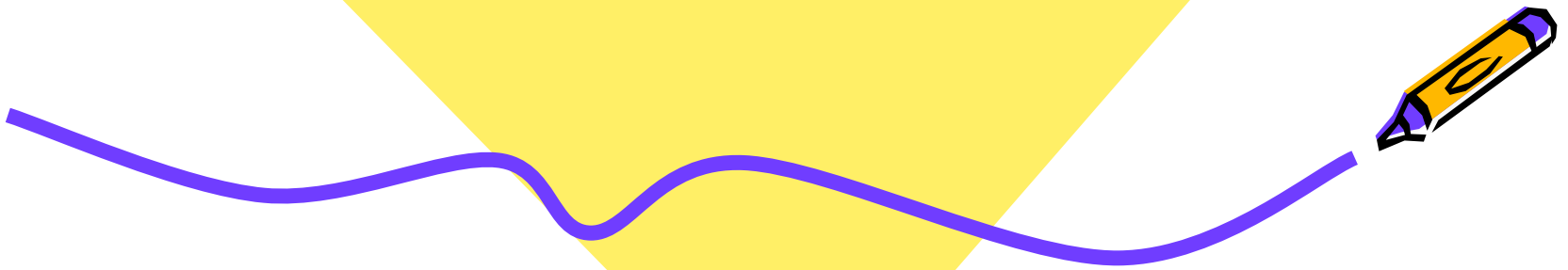
the Exclusive Rights

- reproduction
- distribution
- preparation of derivative works
- public performance
- public display





We are here because...



Can you hear me now?

"They don't have the right to read a book out loud," said Paul Aiken, executive director of the Authors Guild. "That's an audio right, which is derivative under copyright law."

Wall Street Journal, 10 February 2009.



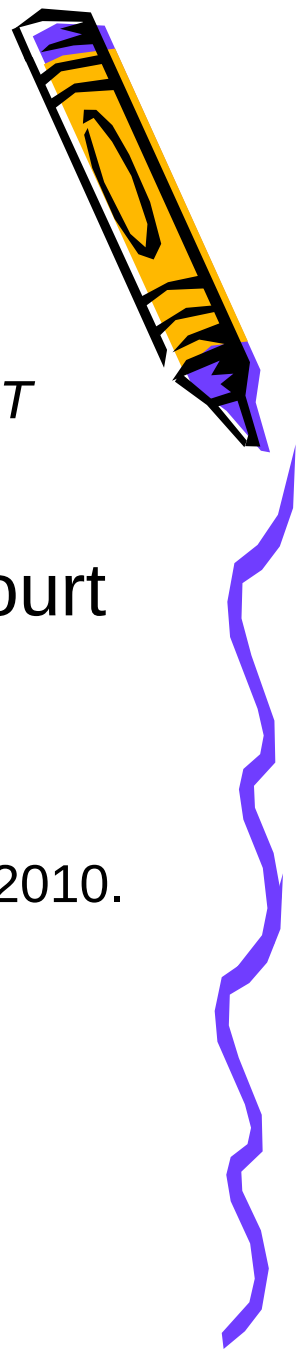
other headlines...

- Summary Judgment Motions Filed in Georgia State Copyright Infringement Lawsuit. *Information Today*, March 29, 2010.
- UCLA Drops Copyrighted Videos From Course Web Sites After Legal Threat. *CHE*, February 21, 2010.
- UCLA Will Resume Streaming Video After Legal Dispute. *CHE*, April 13, 2010.



more headlines...

- A Copyright Ruling No One Can Like. *CNET News*, July 13, 2010.
- Can You Sell Your Imported Gadgets? Court guts "First Sale." *Ars Technica*, July 12, 2010.
- Willy Wizard takes *Harry Potter* copyright fight to America. *The Hollywood Reporter*, July 14, 2010.
- LimeWire Crushed in RIAA Infringement Lawsuit. *Wired*, May 12, 2010.



more headlines...

- Real Networks Drops Fight to Sell DVD Copying Software. *NYT*, March 3, 2010.
- Google's Digital Library Faces Key Hurdles. *Mercury News*, March 7, 2010.
- The Apple iPad went on sale Friday. Word that the device can read any page aloud - including e-books - has authors on alert. *Christian Science Monitor*, March 12, 2010.



yet more headlines...

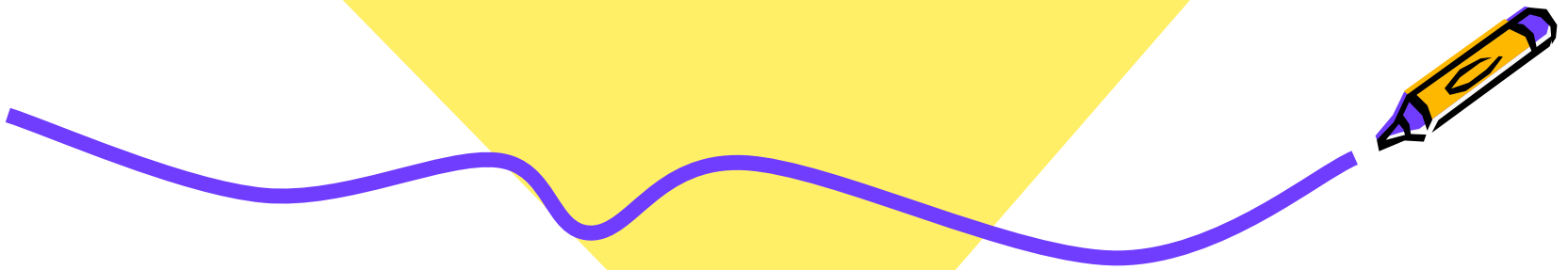


- Downfall filmmakers want YouTube to take down Hitler spoofs... Constantin Films stepping up campaign to assert copyright. *The Guardian*, April 21 2010
- MPAA and RIAA outline chilling copyright charter. *techradar.com*, April 16 2010.
- Stifled by Copyright, McCain Asks YouTube to Consider Fair Use. *Wired Blog*, October 14, 2008.



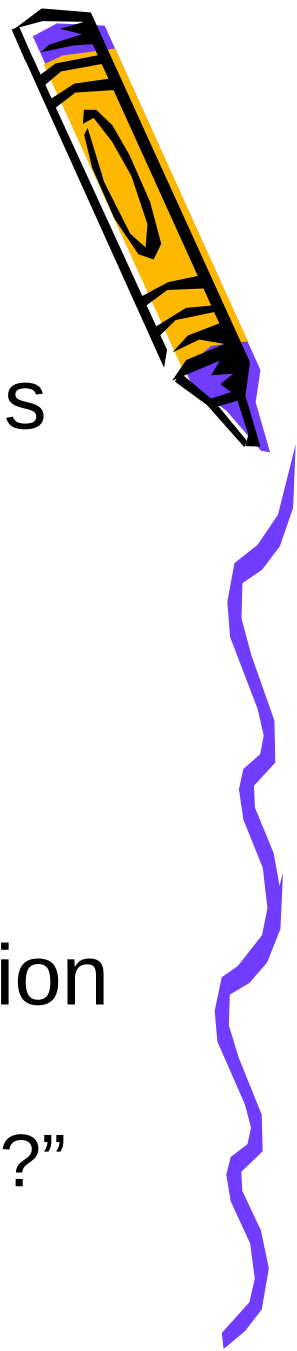


a word on
“new” technology...



Why is Copyright Important?

- Protects enormous range of materials
 - “original works of authorship ... fixed in any tangible medium of expression”
- Runs longer than you and me (*the Energizer Bunny?*)
 - “life of the author” plus 70 years
- Influences policy, education, innovation
 - economic, no social, no economic, no social. Promoting “ progress of science?”



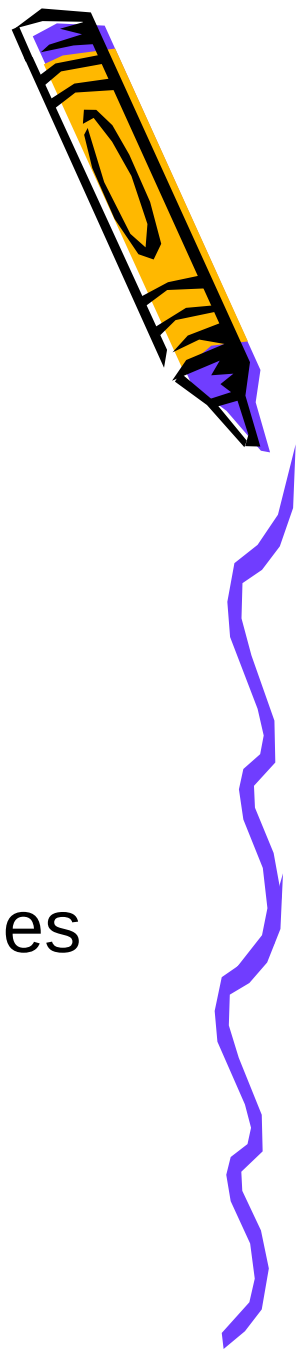
© law probably oughta' ...

- Reflect fairness and balance in application and perspective
- Encourage and value the cumulative development of enduring knowledge
- Support opportunities to use protected works, new technologies, and the development of the “public domain”
- Not create a nation of scofflaws, law breakers, ne'er-do-wells, and “pirates”



The legal framework...

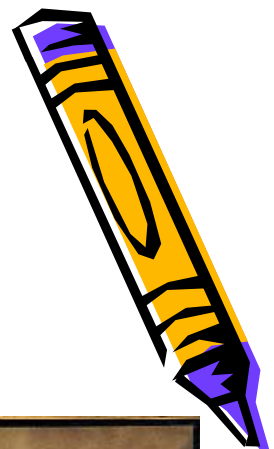
- U.S. Constitution
 - Article 1, Section 8, Clause 8
- Federal Statute
 - Title 17 United States Code
- Case Law
 - Districts, Courts of Appeal, the Supremes
- “Common Law” Copyright???
 - Mostly gone but not always forgotten.



the Curious Case of Oscar Wilde...

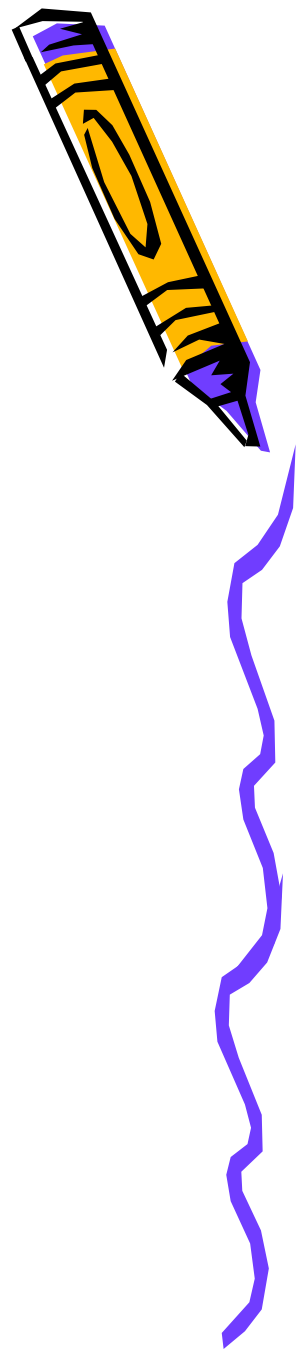
The Congress shall have
Power To ...*promote* the
Progress of Science and
useful Arts, by securing for
limited Times to Authors
and Inventors the *exclusive*
Right to their respective
Writings and *Discoveries*...

Art. 1, § 8, Cl. 8.



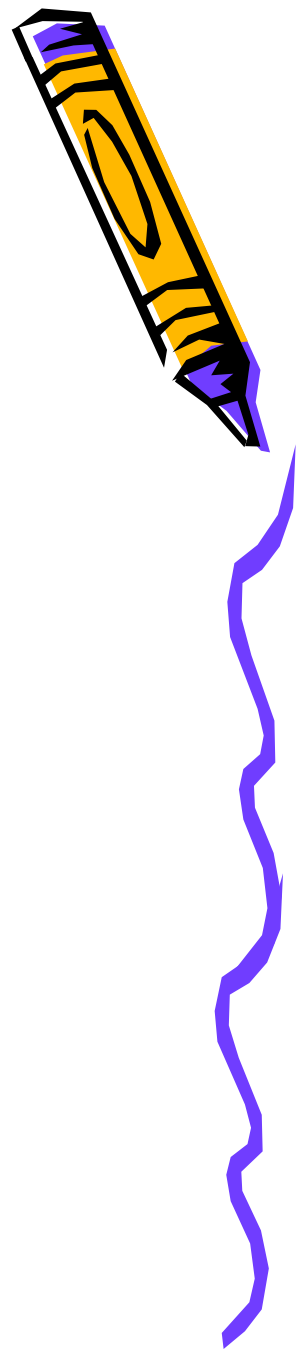
the Basic Questions...

1. Is the work copyrighted at all?
2. How do you plan to use the work?
3. Is the work covered by a license?
4. Does the law contain a specific exception allowing your use?
5. Will I need permission from the copyright holder?



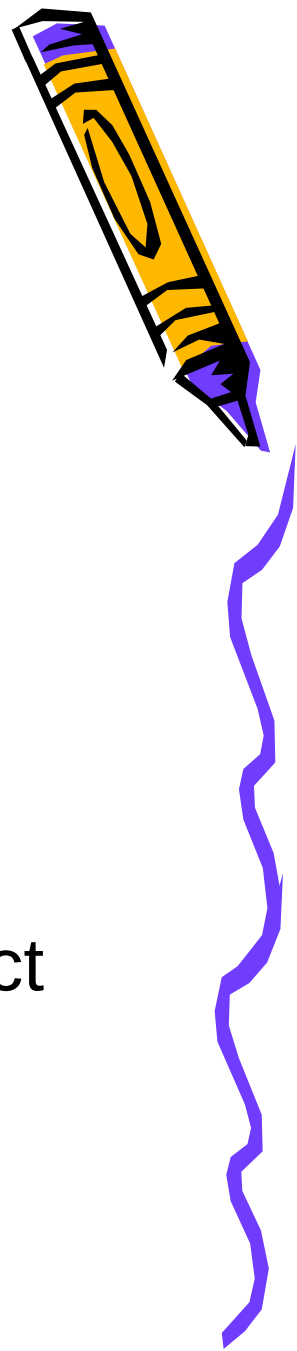
“Getting” copyright...

- original work of authorship
 - “modicum of creativity”
 - “human” author
- fixed in “tangible medium”
 - infinite range of possibilities
- automatic protection
 - no notice, no registration, no record

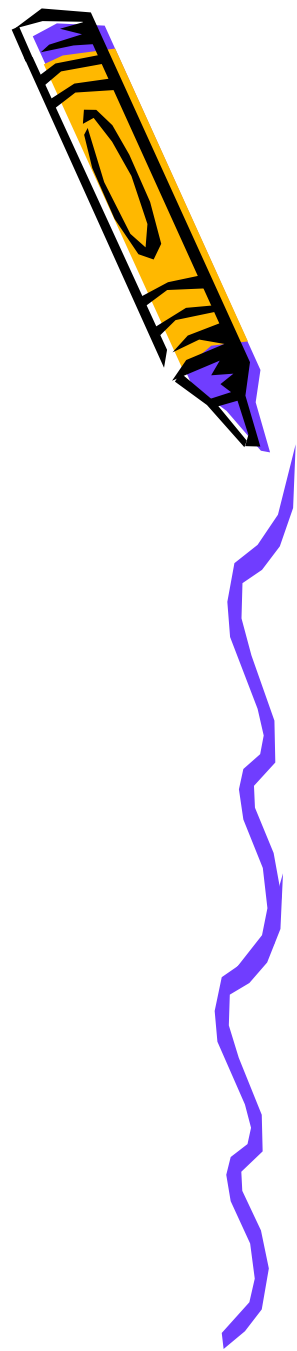


the Unprotected

- facts
- ideas
 - “merger” doctrine (idea = expression)
- expired works
- statutory defects
 - notice and renewal under the 1909 Act
- U.S. government works



Duration, Duration, Dura...



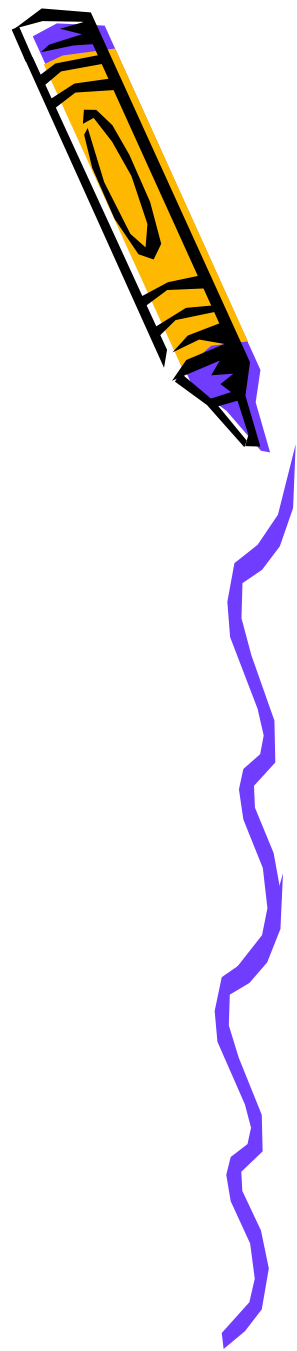
- works created after 1978
 - life of the author plus 70 years
 - “work-for-hire”
 - 95 years from publication date
 - 120 years from creation date
- works created before 1978
 - $28+47+20=95$ UNLESS
 - published w/out notice or not renewed



Yours..Mine...Somebody's....

- Creator
OR
- “W-M-F-H”
OR
- “assignee”
OR
- inherited





number of © suits filed...

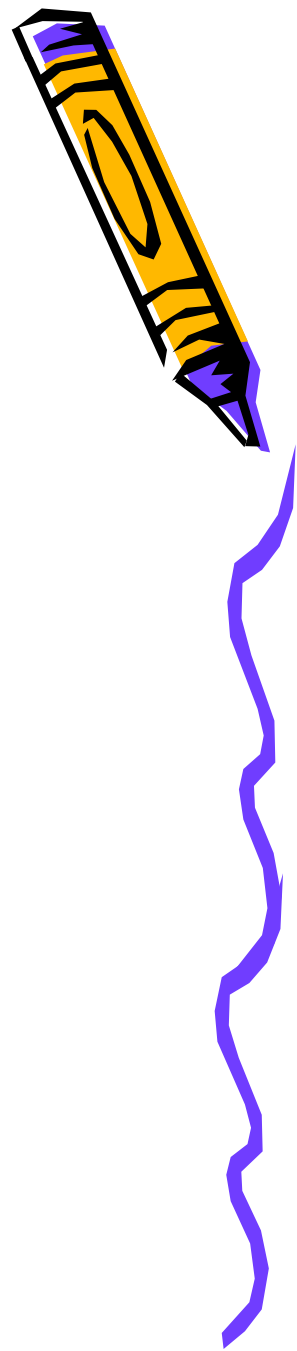
- 2007 = 4,400
- 2006 = 4,944
- 2005 = 5,796
- 2004 = 3,007
- 2003 = 2,448
- 2002 = 2,084
- 2001 = 2,446
- 2000 = 2,050
- 1999 = 2,093



Source: Judicial Facts and Figures, Analytical Services Office,
Administrative Office of the U.S. Courts, March 2003 at table 2.2.
<<http://www.uscourts.gov/judicialfactsfigures/2007/Table407.pdf>>
Visited 22 September 2009.

limitations on Exclusive Rights

- Sec.107 - fair use doctrine
- Sec.108 - libraries & archives
- Sec.109 - transfer of copies
- Sec.110 - performances & displays



fair USE...

- common law... “[L]ook 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” Folsom v. Marsh, 9 F. Cas. 342 (No. 4,901) (CCD Mass. 1841)



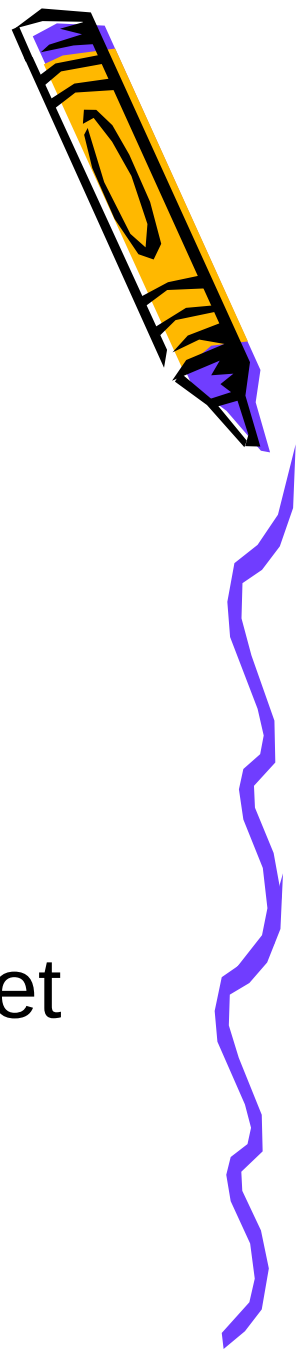
the SUPREMES...

- “[F]air use doctrine ... ‘permits [and requires] courts to avoid rigid application of the ... statute when, on occasion, it would stifle the very creativity which that law is designed to foster... .The task is not to be simplified with bright-line rules, for the statute, like the doctrine it recognizes, calls for case-by-case analysis.’” Campbell v. Acuff-Rose Music, 510 U.S. 569 (1994).

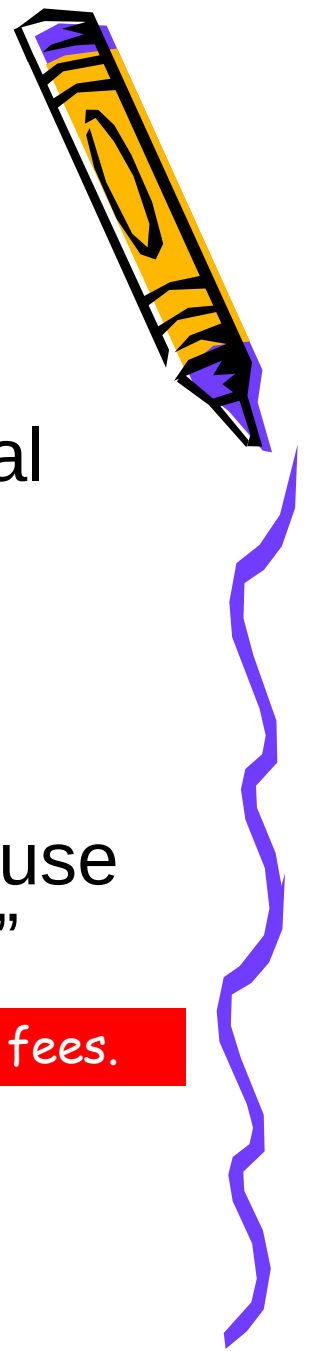


Sec. 107 - the 4 factors

- **Purpose** and character of the use
- **Amount** of the portion used
- **Nature** of the copyrighted work
- **Effect** on the value or potential market



Liability ?



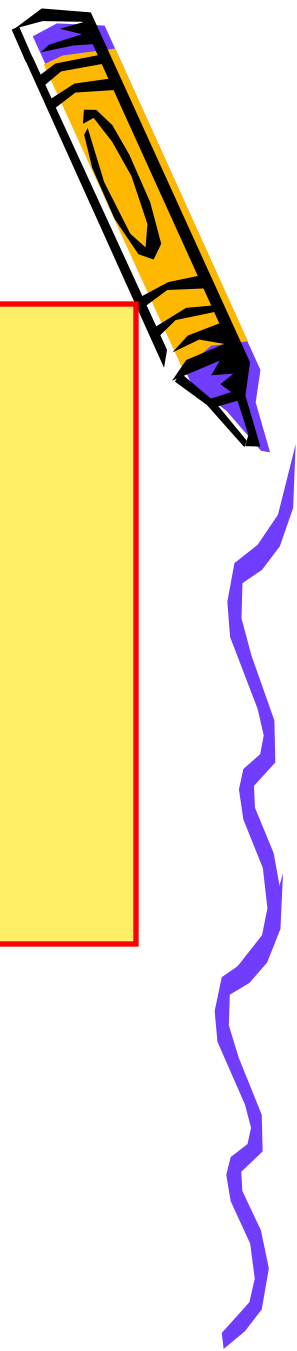
- Sec. 504(c)(2)
 - **who...** employees, nonprofit educational institutions, libraries, archive.
 - **what...** requires court to remit statutory damages if you use good faith and reasonably believe use is fair use.
 - **why...** understanding 4 factors and fair-use evidence “good faith” and “reasonable.”

CAUTION: court may still award actual damages and attorney fees.



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