



Fair Use Doctrine

Using copyrighted Music / SFX under
Section 107 of Copyright Law

compiled by Greg Penetrante, CTS
SDSU Sch. of Theatre, Television & Film

Fair Use

- Provision in Copyright law that:
 - Allows some uses without permission
 - Is very fact specific
 - Considers both the work and the use
 - Favors internal over external use

Purposes of “Fair Use”

- Criticism
Transformational!
- Comment
- News Reporting
- **Teaching**
- **Scholarship/Research**

Fair Use

- **Affirmative Right.**
 - Allows us to make use of copyrighted material without infringing.

“Fair” Factors

- the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work

“Fair” Factors

- amount and substantiality of the portion used in relation to the copyrighted work as a whole
- the effect of the use upon the potential market for or value of the copyrighted work

Students...

- ... may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.

Students...

- ... may perform and display their own educational multimedia projects created for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses such as job and graduate school interviews

Fair Use Guidelines for Educational Multimedia

Medium	Proportion	Limits	Notes
Film/Video Motion Media	10%	Up to 3 minutes from a work	
Music/Lyrics/ Music Video	10%	30 seconds Max!	No change to melody or fundamental character of the work

* New Fair Use provisions allow **entire works** to be exhibited in classroom environment.

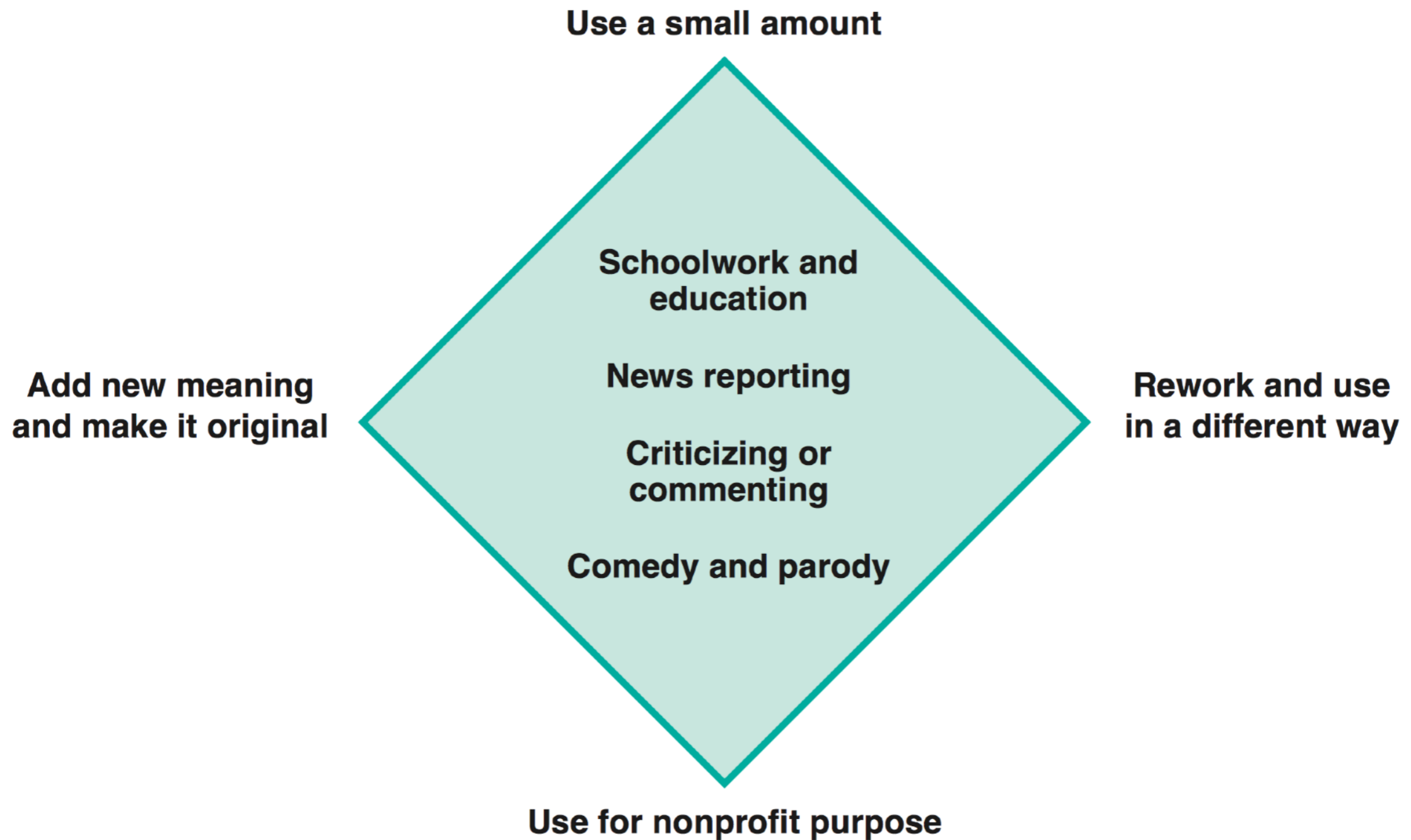
Classroom Performance

- A specific exemption within the law allows for the performance of music by either live or recorded means in the course of face-to-face teaching activities in a classroom at non-profit educational institutions. No additional permissions are required for this use.

Non-Academic Usage?

- Festivals
- Public Exhibitions outside of School
- TV Shows
- Commercial usage

If a creative work falls into at least one of the situations inside the diamond, and if it fulfills one of the criteria at the four points of the diamond, there's a good chance it's fair use!



Courtesy: commonsense.org

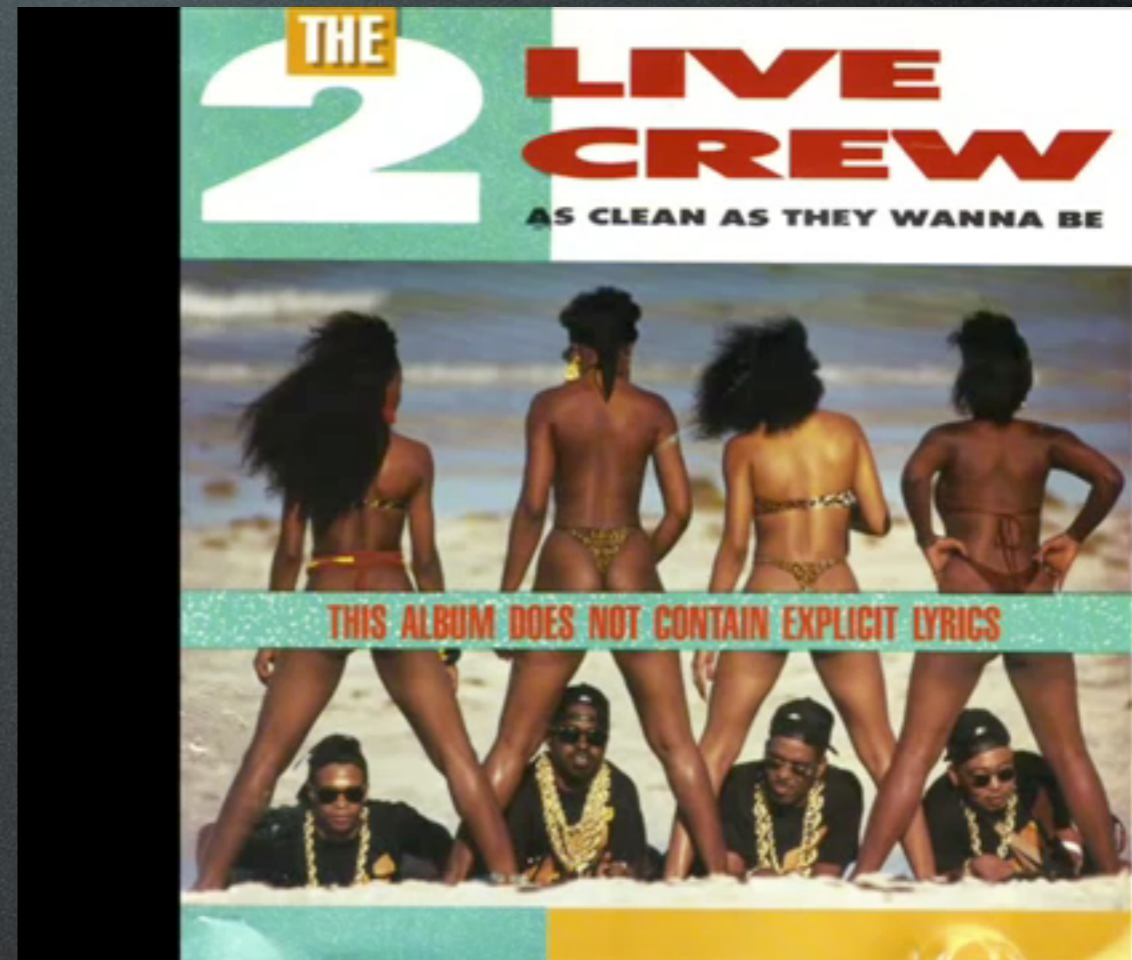
SING FASTER: THE STAGEHANDS' RING CYCLE (USA, 1999)

- 4.5 second clip of “The Simpsons” in shot of stagehands watching TV
- Matt Groening had no problem with clip
- Fox lawyers wanted \$10K for license of clip.
- Clip was removed.



Campbell v. Acuff-Rose Music, Inc,

- 2-Live Crew parody of “Oh Pretty Woman” by Roy Orbison
- Commercial Project
- Supreme Court ruled in favor of Fair Use
- It was a parody





Music/SFX Licensing

Using copyrighted Music/SFX in your films

Music May Have Multiple Copyrights

- Composition
- Lyrics
- Recording by an artist

Music May Have Many Licenses

- Performance
 - If you intend to use music in public (including broadcast)
- Synchronization (“Sync Rights”)
 - allow you to bundle music together in timed relation with visual images or motion pictures to create an audiovisual work.

Music May Have Many Licenses

- Mechanical
 - must be obtained in order to lawfully make and distribute records, CD's and tapes (may include DVDs)
- Publishing

Filmmakers Must:

- Obtain necessary licenses for copyrighted music
 - Performance
 - Sync Rights

How?

- Ask the copyright holder
- Go through copyright agency

Copyright Agencies

- **BMI** (Broadcast Music, Inc.)
 - www.bmi.com
- **ASCAP** (American Society of Composers, Authors and Publishers)
 - www.ascap.com

Sync Rights

- Obtained through publisher
- Music Publishers' Association
 - www.mpa.org
- Harry Fox Agency
 - www.harryfox.com

Pain in the @#\$\$\$?

- Ways to avoid pain / expense:
 - Use stock music / SFX
 - Hire music composer
 - Record own SFX
 - Creative Commons (CC) License



Fair Use Doctrine

Using copyrighted Music / SFX under
Section 107 of Copyright Law