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SUPREME COURT OF THE UNITED STATES

Syllabus

CAMPBELL, AKA SKYYWALKER, ET AL. v. ACUFF-ROSE MUSIC, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 92-1292. Argued November 9, 1993—Decided March 7, 1994

Respondent Acuff-Rose Music, Inc., filed suit against petitioners, the members of the rap music group 2 Live Crew and their record company, claiming that 2 Live Crew's song, "Pretty Woman," infringed Acuff-Rose's copyright in Roy Orbison's rock ballad, "Oh Pretty Woman." The District Court granted summary judgment for 2 Live Crew, holding that its song was a parody that made fair use of the original song. See Copyright Act of 1976, 17 U. S. C. §107. The Court of Appeals reversed and remanded, holding that the commercial nature of the parody rendered it presumptively unfair under the first of four factors relevant under §107; that, by taking the "heart" of the original and making it the "heart" of a new work, 2 Live Crew had, qualitatively, taken too much under the third §107 factor; and that market harm for purposes of the fourth §107 factor had been established by a presumption attaching to commercial uses.

Held: 2 Live Crew's commercial parody may be a fair use within the meaning of §107. Pp. 4-25.

(a) Section 107, which provides that "the fair use of a copyrighted work . . . for purposes such as criticism [or] comment . . . is not an infringement . . .," continues the common-law tradition of fair use adjudication and requires case-by-case analysis rather than bright-line rules. The statutory examples of permissible uses provide only general guidance. The four statutory factors are to be explored and weighed together in light of copyright's purpose of promoting science and the arts. Pp. 4-8.

(b) Parody, like other comment and criticism, may claim fair use. Under the first of the four §107 factors, "the purpose and character of the use, including whether such use is of a commercial nature . . .," the enquiry focuses on whether the new work merely supersedes the objects of the original creation, or whether and to what extent it is "transformative," altering the original with new expression, meaning, or message. The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use. The heart of any parodist's claim to quote from existing material is the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's work. But that tells courts little about where to draw the line. Thus, like other uses, parody has to work its way through the relevant factors. Pp. 8-12.

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(c) The Court of Appeals properly assumed that 2 Live Crew's song contains parody commenting on and criticizing the original work, but erred in giving virtually dispositive weight to the commercial nature of that parody by way of a presumption, ostensibly culled from *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U. S. 417, 451, that "every commercial use of copyrighted material is presumptively . . . unfair . . ." The statute makes clear that a work's commercial nature is only one element of the first factor enquiry into its purpose and character, and *Sony* itself called for no hard evidentiary presumption. The Court of Appeals's rule runs counter to *Sony* and to the long common-law tradition of fair use adjudication. Pp. 12-16.

(d) The second §107 factor, "the nature of the copyrighted work," is not much help in resolving this and other parody cases, since parodies almost invariably copy publicly known, expressive works, like the Orbison song here. Pp. 16-17.

(e) The Court of Appeals erred in holding that, as a matter of law, 2 Live Crew copied excessively from the Orbison original under the third §107 factor, which asks whether "the amount and substantiality of the portion used in relation to the copyrighted work as a whole" are reasonable in relation to the copying's purpose. Even if 2 Live Crew's copying of the original's first line of lyrics and characteristic opening bass riff may be said to go to the original's "heart," that heart is what most readily conjures up the song for parody, and it is the heart at which parody takes aim. Moreover, 2 Live Crew thereafter departed markedly from the Orbison lyrics and produced otherwise distinctive music. As to the lyrics, the copying was not excessive in relation to the song's parodic purpose. As to the music, this Court expresses no opinion whether repetition of the bass riff is excessive copying, but remands to permit evaluation of the amount taken, in light of the song's parodic purpose and character, its transformative elements, and considerations of the potential for market substitution. Pp. 17-20.

(f) The Court of Appeals erred in resolving the fourth §107 factor, "the effect of the use upon the potential market for or value of the copyrighted work," by presuming, in reliance on *Sony, supra*, at 451, the likelihood of significant market harm based on 2 Live Crew's use for commercial gain. No "presumption" or inference of market harm that might find support in *Sony* is applicable to a case involving something beyond mere duplication for commercial purposes. The cognizable harm is market substitution, not any harm from criticism. As to parody pure and simple, it is unlikely that the work will act as a substitute for the original, since the two works usually serve different market functions. The fourth factor

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requires courts also to consider the potential market for derivative works. See, e. g., *Harper & Row, supra*, at 568. If the later work has cognizable substitution effects in protectable markets for derivative works, the law will look beyond the criticism to the work's other elements. 2 Live Crew's song comprises not only parody but also rap music. The absence of evidence or affidavits addressing the effect of 2 Live Crew's song on the derivative market for a nonparody, rap version of "Oh, Pretty Woman" disentitled 2 Live Crew, as the proponent of the affirmative defense of fair use, to summary judgment. Pp. 20-25.

972 F. 2d 1429, reversed and remanded.

SOUTER, J., delivered the opinion for a unanimous Court. KENNEDY, J., filed a concurring opinion.