

# Copyright and the Collapse of Two Spheres

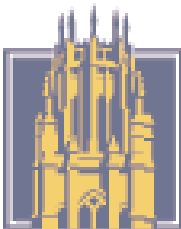
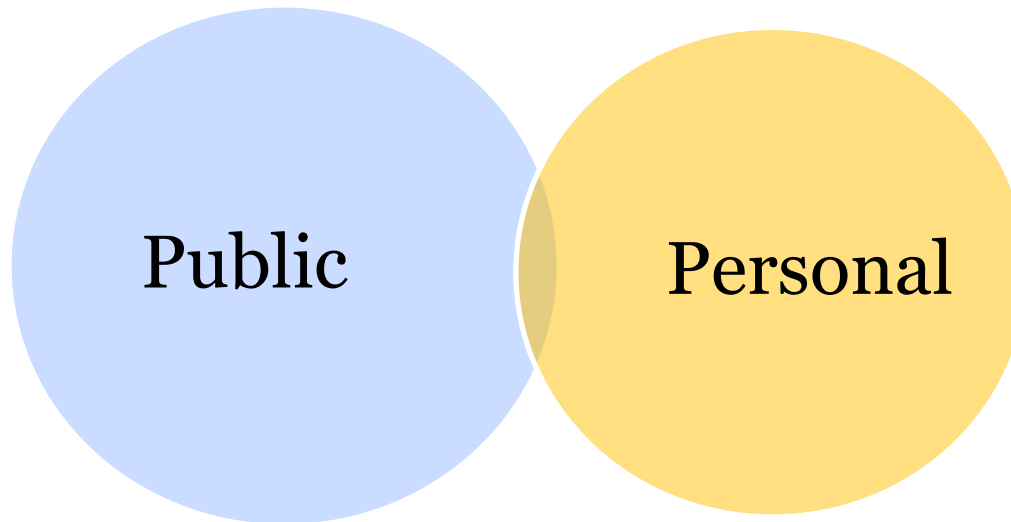
**Bruce E. Boyden**

Marquette University Law School

CPIP Fall Conference 2018:  
IP for the Next Generation of Technology

# Two Spheres

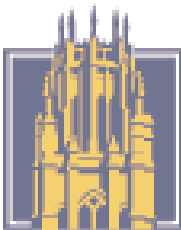
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# Section 107

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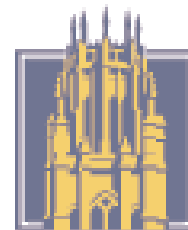
- In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:
  - (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
  - (2) the nature of the copyrighted 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.



# Section 101

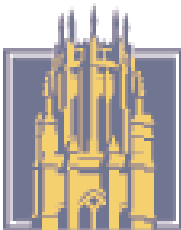
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- **“To perform . . . a work ‘publicly’ means—**
  - (1) to perform . . . it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
  - (2) to transmit or otherwise communicate a performance . . . of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.”



# Individual Copies

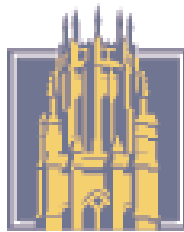
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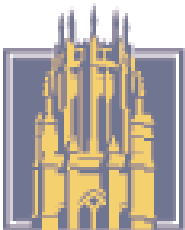
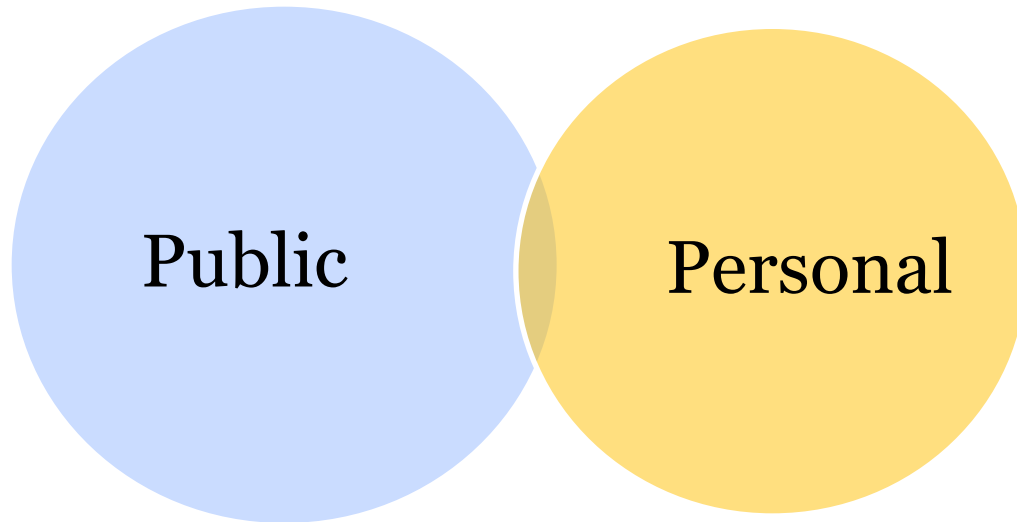
# Sony v. Universal

~~5. Home recordings~~ 1st DRAFT 5. Audio tape recording for  
 6. ~~Three essential require-~~ in closest analogy - 9  
Part II addresses the Statute - 13 et seq. (5106) See House Report - 10  
 No. 81-1687 ments - 12  
 SONY CORPORATION OF AMERICA, ET AL., PETITIONERS v. UNIVERSAL CITY STUDIOS, INC., ETC., ET AL. (5106)  
 1. The 5 exclusive rights - 13 No 1 is only one relevant - 13, 14  
 ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
 2. 3107 - fair use - 14, 16 [June 1983]  
 3. Policy considerations - 17 9 + is conceded by ~~Sony~~ Walt Disney (one of respondents) - see p3) that home use will not be prosecuted. Makes no sense to have a law meant intended to be enforced vs primary violators - 19  
 Memorandum of JUSTICE STEVENS.  
 "[It is not the intention of the Committee to restrain the home recording, from broadcasts or from tapes or records, of recorded performances, where the home recording is for private use and with no purpose of reproducing or otherwise capitalizing commercially on it. This practice is common and unrestrained today. . . H. Rep. No. 487, 92d Cong., 1st Sess. 7 [1971]."  
 Prior to the Court of Appeals decision in this case, no court had ever held that the act of making a single copy of a copyrighted work for a private, noncommercial use constituted copyright infringement. In a variety of contexts scholars and legislators have expressed the opinion that "anyone may copy copyrighted material for the purpose of private study and review, and that private use is completely outside the scope and intent of the restriction by copyright."<sup>1</sup> This case requires the Court to decide whether that opinion is correct.



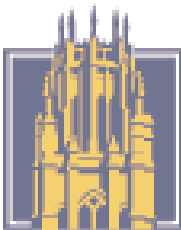
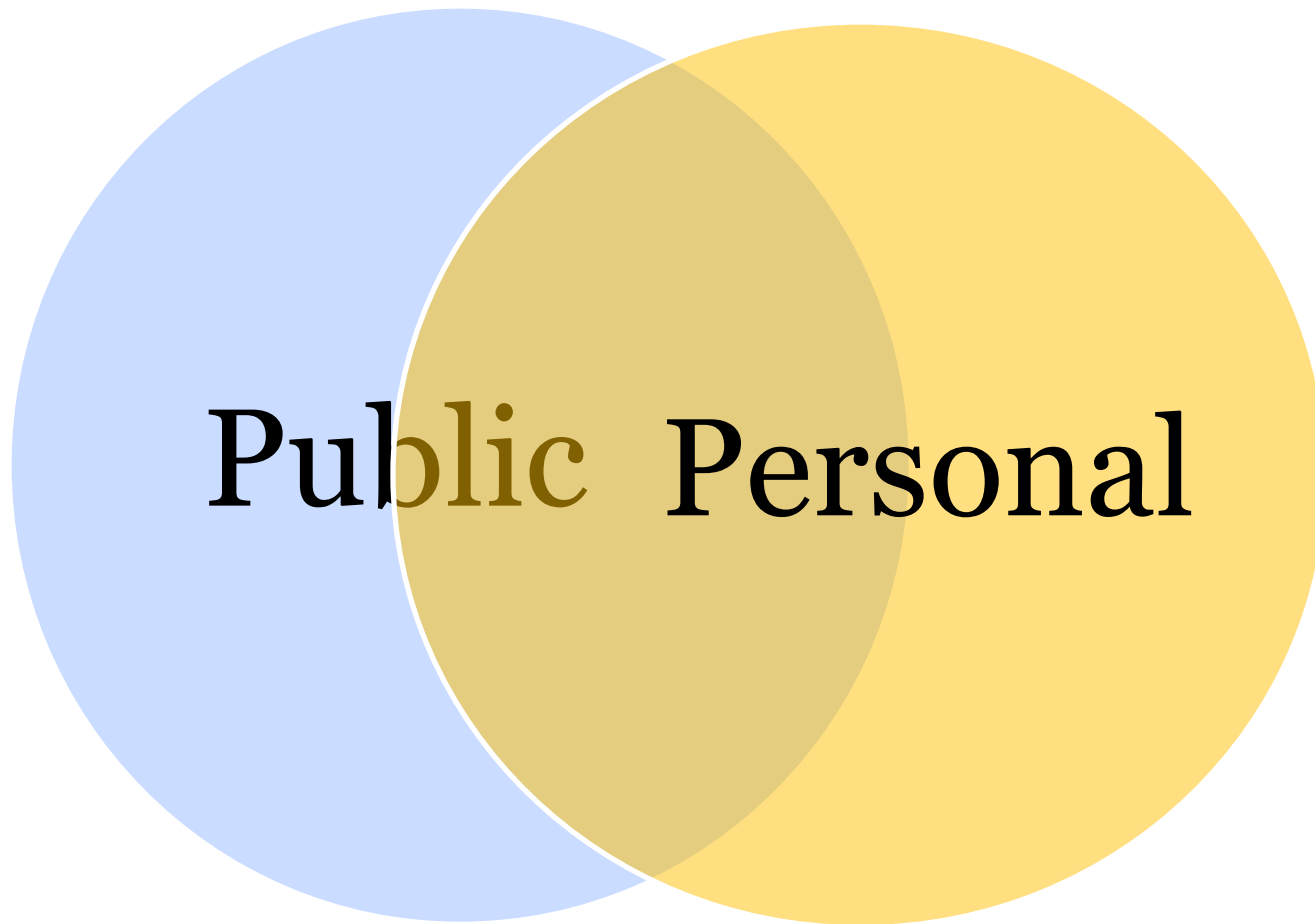
# Expansion and Collapse

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# Expansion and Collapse

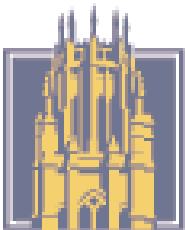
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# Performance Licenses

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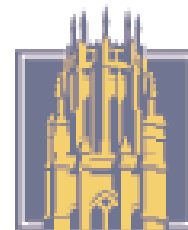


# Performance Licenses

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- **Anti-Collective Rights Laws**
  - Florida
  - Louisiana
  - Nebraska
  - Washington
  - Wisconsin



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# LESSONS?

