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**Case Analysis Paper: *Campbell v. Acuff-Rose Music, Inc.***

In *Campbell v. Acuff-Rose Music, Inc.*, Acuff-Rose Music filed a copyright infringement lawsuit against the rap group 2 Live Crew. This group consisted of members Luther R. Campbell, Christopher Wongwon, Mark Ross and David Hobbs (Vile, n.d.). Acuff-Rose Music owned the famous song “Oh, Pretty Woman.” Roy Orbison and Bill Dees wrote this song, and it was sung by Orbison. It was released in 1964, and it became a number-one hit, selling over 7 million records. In 1989, 2 Live Crew member Luther Campbell wrote a parody of this song and called it “Pretty Woman.” The parody was written to make fun of the song’s bland, conventional nature. The case eventually reached the Supreme Court, which ruled that the parody was “fair use” and was not copyright infringement (*Copyright Law and the Fair Use Doctrine*, n.d.). This is an important case because it suggested that parodies can still be protected even if they make a profit, and it set a precedent that courts must consider all factors as a whole to determine fair use.

When 2 Live Crew first created the parody, the group asked Acuff-Rose Music for permission to pay and use the original song, but the group’s request was denied. The rap group decided to release the parody anyway in its new album “As Clean As They Wanna Be.” The album was successful, and over 280,000 copies were sold (*Campbell V. Acuff-Rose Music, Inc.*, n.d.). Acuff-Rose Music then sued for copyright infringement. The District Court for the Middle District of Tennessee was the first to hear the case. This court ruled in favor of Campbell, stating that the work created by 2 Live Crew was a fair use of the original song. Acuff-Rose Music then filed an appeal to the Sixth Circuit Court of Appeals.

The Sixth Circuit reversed the prior decision. This court primarily looked at the first factor out of the four factors for determining fair use, which are listed in the 1976 Copyright Act. The four factors are listed as the following:

- (1) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose;
  - (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.
- (Messenger, 2019, 102-103).

The Court of Appeals ruled that the commercial nature of the parody meant that it could not be considered fair use. The court also looked at the third factor and decided that the group took the “heart” of the original song and made it the “heart” of the new song, which meant that too much of the song had been taken (*Campbell V. Acuff-Rose Music, 510 U.S. 569 (1994).*, n.d.).

After this ruling, 2 Live Crew’s case was accepted by the United States Supreme Court. In 1994, the Court reversed the decision made by the Court of Appeals. It was determined that the appellate court’s decision focused too much on the first factor regarding commercial use. It appeared that the Court of Appeals was suggesting that any work that was of commercial use should be considered unfair use. The Court concluded that this was incorrect because the parody’s transformative nature can overpower the first factor.

Looking at the oral arguments, Bruce S. Rogow first argued for Campbell’s side. He asked for the decision of the Sixth Circuit to be reversed. He said that the purpose of copyright was to encourage creativity and that parody was a creative force in society. Therefore, the creation of parodies should be encouraged. He said that this new song fell under the definition of parody because it was a criticism that poked fun at the original work. His main concern was whether or not this parody materially impaired the market for the original, and his key argument

was that it did not: “The rule that we suggest is that parody is a fair use unless it materially impairs the market for the original, and material impairment of the market for the original means supplant the original” (*Campbell V. Acuff-Rose Music, Inc.*, n.d.).

Rogow brought up the last line of the Sixth Circuit’s opinion: “Because this was blatantly commercial, it cannot claim fair use” (*Campbell V. Acuff-Rose Music, Inc.*, n.d.). He explained that this decision was too far. Other factors should be considered and not ignored just because of commercial use. He continued to emphasize the importance of the fourth factor. He said there were no facts that suggested the market for the original work had been materially impaired. This parody appealed to the rap market, while the original work was a rock ballad. Lastly, Rogow said that the decisive fact is that the Court of Appeals followed a presumption that commercial always means unfair use, and this presumption is simply incorrect.

Sidney S. Rosdeitcher argued on the other side for Acuff-Rose Music. He brought up three past court decisions: *Sony*, *Harper & Row* and *Steward v. Abend*. He said, “In each of those opinions this Court, presumably looking at the first factor, namely the factor of purpose and character of the use, stated unequivocally that every commercial use of copyrighted material is presumptively unfair” (*Campbell V. Acuff-Rose Music, Inc.*, n.d.). However, Rogow had previously stated in his argument that *Sony* and *Harper & Row* were copying cases and not in the context of parody. Rosdeitcher also stated that “you can have a parody that takes too much” (*Campbell V. Acuff-Rose Music, Inc.*, n.d.). He then began to talk about the impairment of the market factor. He said that the evidence of market impairment was that 248,000 of the 2 Live Crew albums were sold. He explained that this proved there was a rap market for a rap version of “Oh, Pretty Woman.” This meant there was market impairment: “...it created a record which

would compete with any rap version we would create” (*Campbell V. Acuff-Rose Music, Inc.*, n.d.).

The Court made a unanimous decision in favor of Campbell. It reversed the Court of Appeals' decision and opposed the fact that this court applied the commercial use factor too strictly. Justice David H. Souter wrote the opinion of this case. He wrote in the opinion, “It was error for the Court of Appeals to conclude that the commercial nature of 2 Live Crew's parody of "Oh, Pretty Woman" rendered it presumptively unfair. No such evidentiary presumption is available to address either the first factor, the character and purpose of the use, or the fourth, market harm, in determining whether a transformative use, such as parody, is a fair one” (Loeffler, n.d.).

The opinion then addressed the other conclusion reached by the Sixth Circuit that too much of the original song had been taken: “The court also erred in holding that 2 Live Crew had necessarily copied excessively from the Orbison original, considering the parodic purpose of the use” (Loeffler, n.d.). Because it was a parody, it had to include enough of the original song for the audience to recognize that the original was being mocked and that the new work was indeed a parody. In this case, the Court ultimately noted how a parody changes the original. The audiences for the original and the parody are typically different.

Justice Anthony M. Kennedy wrote a concurring opinion for this case. While he agreed with the decision, he wrote that he was “not so assured that 2 Live Crew’s song is a legitimate parody” (Loeffler, n.d.). He expressed concern for future works getting away with fair use by being called “parodies” even if they are not actually valid comments or criticisms.

*Campbell v. Acuff-Rose Music, Inc.* demonstrates that each copyright infringement case should be evaluated on its own particular facts. There are no absolute rules to define what

constitutes copyright infringement and what constitutes fair use. The case shows that parody has more freedom than other uses of original works. It also states that commercial nature cannot be the only criterion for assessing fair use. It set expectations that all four factors must be considered as a whole (*Copyright Law and the Fair Use Doctrine*, n.d.).

This ruling means that people in the United States have the freedom to create true parodies (that do not materially impair the market of the original). It is even a possibility for someone to make money by doing this. However, creators of parodies must be careful and consider the four factors before releasing their works. While this freedom is a positive possibility, there are also negative possibilities that come from this. Creators of the original works are not fully able to control what kinds of parodies are created. They may find the content offensive or distasteful, but oftentimes they cannot do anything about it. It may be difficult for owners of musical works to see others making money when they otherwise would not have if the original song did not exist in the first place.

There are still unanswered questions because the ruling truly varies by case. It is not one hundred percent clear what musical works may count as parody and what may not. Some may interpret a song as a comment or criticism of the original, but others may not. As Justice Kennedy implied in his concurring opinion, courts must not accept all works that claim to be parodies as actual parodies. This could be an excuse to have the work exempt from copyright infringement as fair use. Overall, *Campbell v. Acuff-Rose Music, Inc.* set an important precedent for courts to follow when analyzing cases similar to this one in the future.

## References

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