

## Notes to Accompany Section 108, Fair Use and Copyright

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As for notes, for my discussion of the Third Factor and the Betamax case (should be slide 48 on the joint presentation) I had a quote I highlighted:

“Moreover, when one considers the nature of a televised copyrighted audiovisual work, see [17 U.S.C. § 107\(2\)](#), and that time shifting merely enables a viewer to see such a work which he had been invited to witness in its entirety free of charge, the fact that the entire work is reproduced, see [id., at § 107\(3\)](#), does not have its ordinary effect of militating against a finding of fair use” J. Stevens, Betamax case at 792

And for my discussion of the Google Books on the Fourth Factor (slide 49) I have a few notes:

Also note the effect the Google Books case has had on the second factor, the “nature” of the work: “nothing in this case influences us one way or the other with respect to the second factor considered in isolation.” Authors Guild v. Google, Inc. (2d. Cir. 2015) at 220

Ultimately Google Books looked at the “nature” of a work under the second factor in combination with “purpose and character” of the use in the first factor to argue that Google “transformatively provides valuable information about the original” and thus when viewed collectively, the factors favored fair use.

While libraries cannot claim transformativeness, they might instead emphasize that while the second factor is neutral in isolation, in combination with the fact that this is a non-commercial use (under factor 1) and results in no cognizable harm to the market (under factor 4), the “nature” of these copies cuts in favor of fair use.