

**Fisher v. Dees,
794 F.2d 432 (9th Cir. 1986)**

Year	1986
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Defendant disc jockey Rick Dees wanted to use all or part of <i>When Sunny Gets Blue</i> , a song composed and owned by plaintiffs Marvin Fisher and Jack Segal, to create a parodic version of it. Fisher refused to give Dees permission to use the song, but Dees soon released a comedy album that contained a parody of the song— <i>When Sonny Sniffs Glue</i> —which contained the first six of the original song’s thirty-eight bars of music and constituted twenty-nine seconds of the approximately forty-minute album. Plaintiffs appealed the district court’s ruling that defendant’s parodic version of their song was fair use.
Issue	Whether defendant’s unauthorized use of a portion of plaintiffs’ song to create a parody constituted fair use.
Holding	<p>The court held that defendant’s song was a parody deserving of fair use protection. Before weighing the fair use factors, the court rejected plaintiffs’ argument that defendant’s song was not actually a parody, noting that defendant’s version was intended to “poke fun” at the original song. Further, the court found that defendant’s use of the original song after being refused permission did not demonstrate bad faith because parodists are seldom granted permission and because the parody defense exists to allow uses that generally cannot be licensed. In response to plaintiffs’ claim that immoral parodies are not protected by the fair use doctrine, the court held that, “[a]ssuming without deciding that an obscene use is not a fair use,” the parody, while innocuous or silly, was not immoral.</p> <p>While the use was commercial in nature, thus creating a presumption against fair use, the court noted that the presumption could be rebutted if the parody did not unfairly diminish the economic value of the original. The court held that the parody was not likely to function as a commercial substitution on the open market, as the two works did not fulfill the same consumer demand. The court also held that the parody used no more of plaintiffs’ work than was necessary to “conjure up” the original song and accomplish its parodic purpose, finding that a song is difficult to parody effectively without exact or near-exact copying since any more of a variation would have made the song unrecognizable to the general audience.</p>
Tags	Ninth Circuit; Music; Parody/Satire; Review/Commentary
Outcome	Fair use found

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