



# CopyrightX Lecture 9: Fair Use

Selected Illustrations

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The following images appear in the background of the 9th lecture in the CopyrightX lecture series. A recording of the lecture itself is available at <http://ipxcourses.org/lectures/>. Removed from their original context, the images will not make much sense. The function of this collection of images is to enable persons who have already watched the lecture to review the material it contains.

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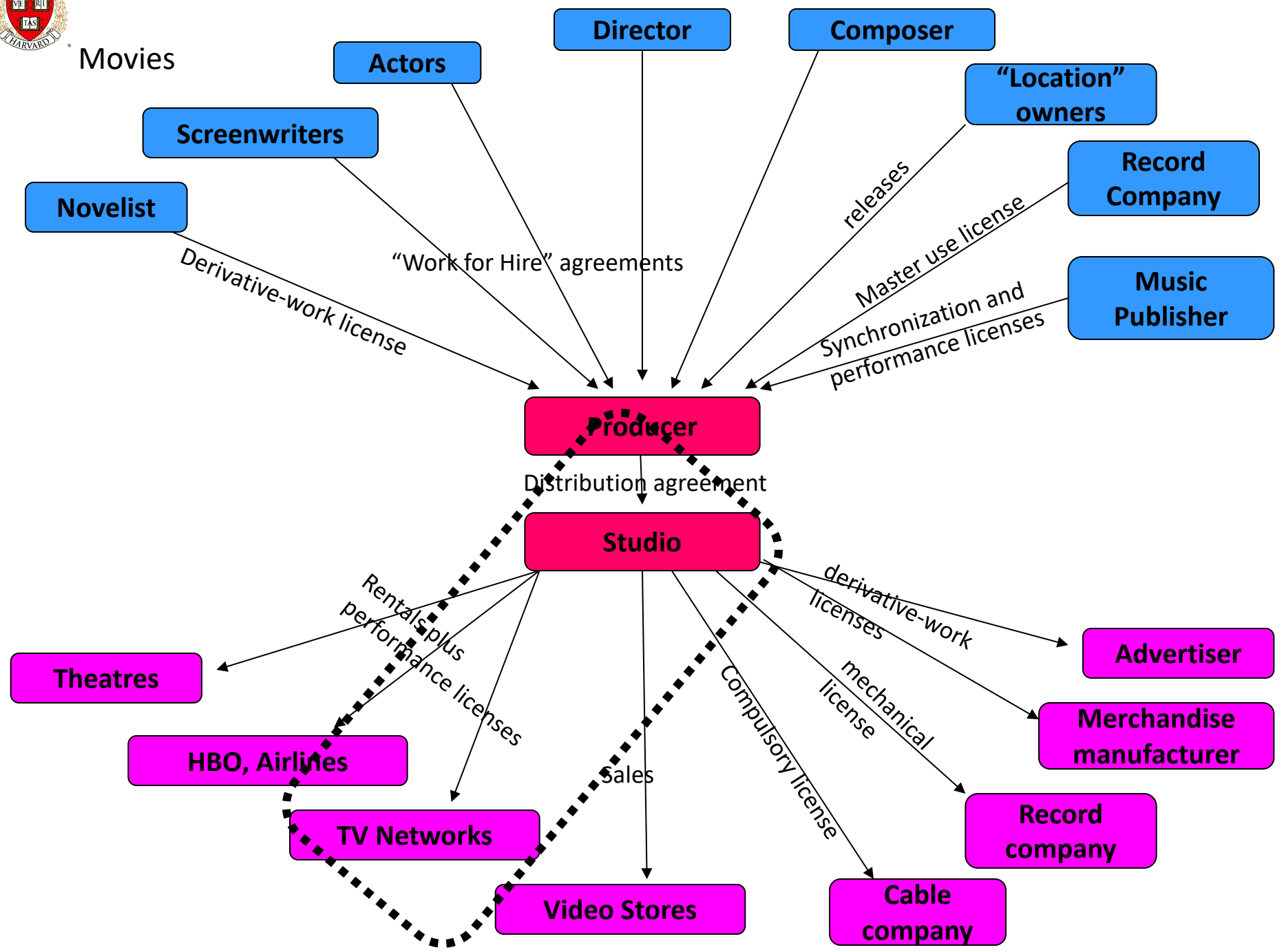
# Fair Use Factors

Green = favors fairness; Red = disfavors fairness

	Sony	Harper & Row	Campbell
1. Purpose and character of defendant's use	♦	♦	♦
2. Nature of copyrighted work		♦	♦
3. Amount of copying	neutral	♦	neutral
4. Impact on potential market	♦	♦	♦
	Fair	Unfair	Fair

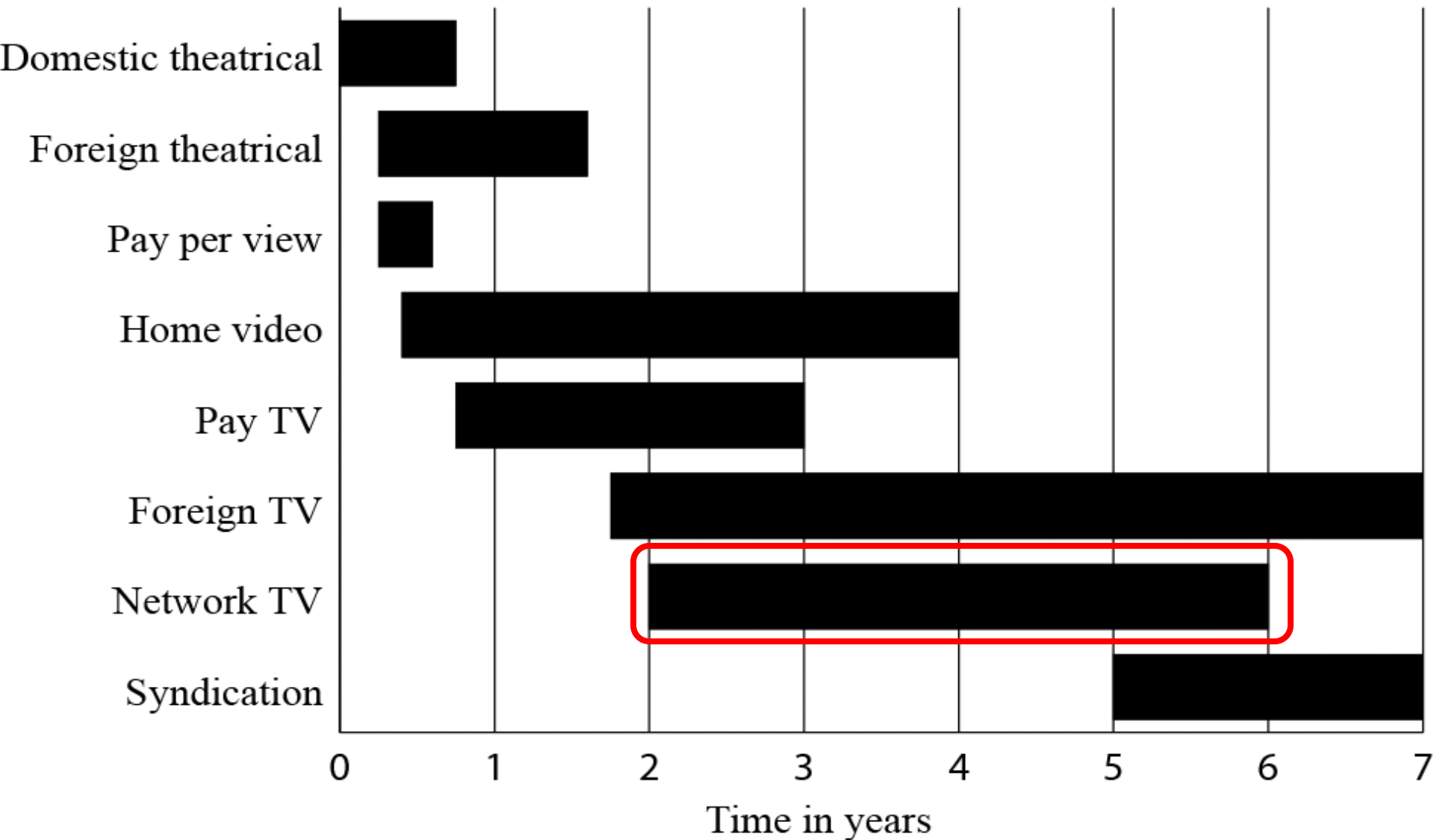


Movies



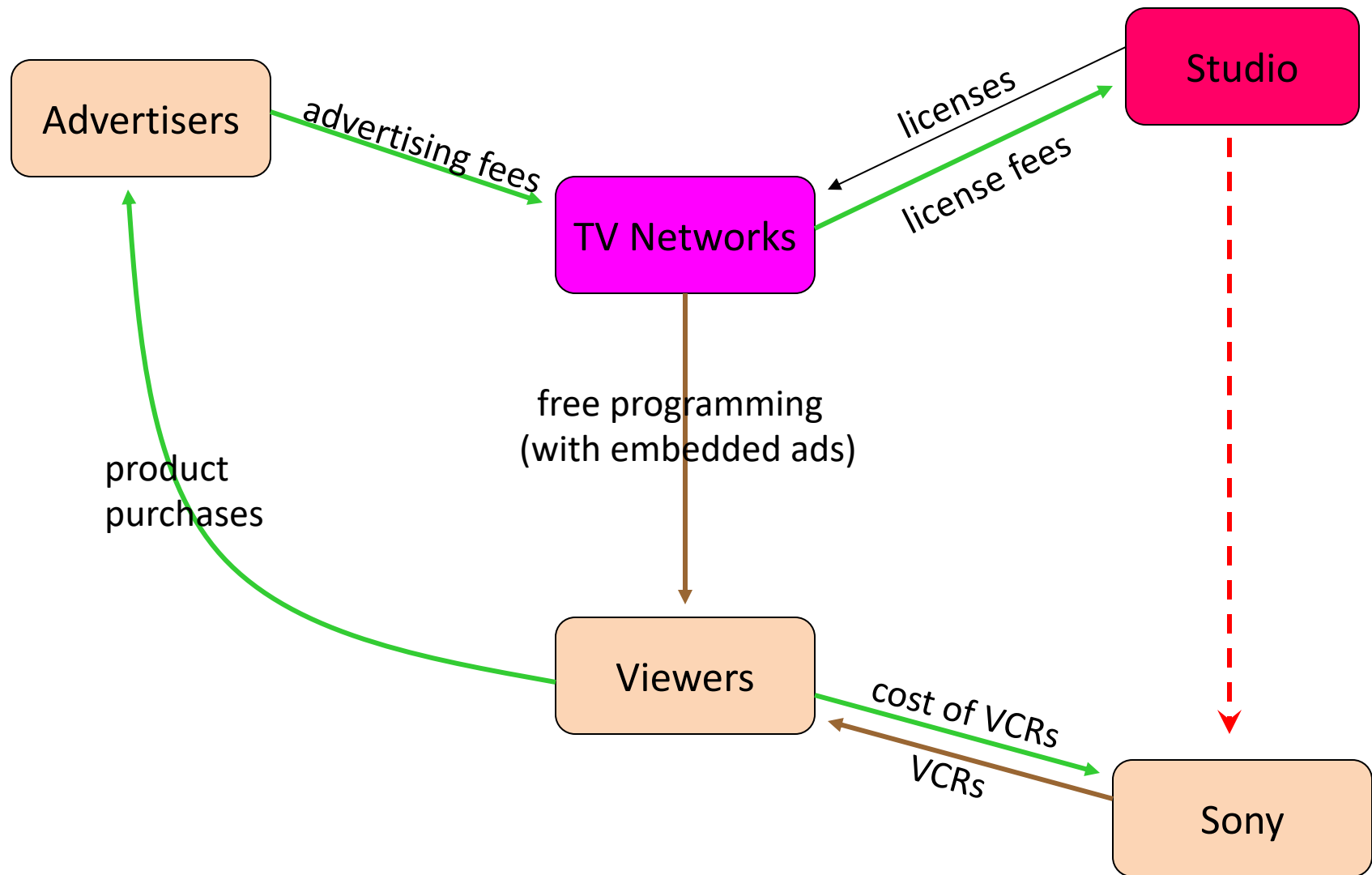


## Market Windows for Major Films from Release Date





# Compensation System for Network Broadcasts of Films





# Holdings of *Sony*

- 1) Manufacturer of a device that can be used to violate the copyright laws is liable for contributory copyright infringement if and only if the device is not capable of substantial noninfringing uses
- 2) Timeshifting copyrighted programs is a fair use



# Justice Blackmun, dissenting

“The situations in which fair use is most commonly recognized are listed in section 107 itself; fair use may be found when a work is used ‘for purposes such as criticism, comment, news reporting, teaching, . . . scholarship, or research.’ ... Each of these uses ... reflects a common theme: each is a *productive* use, resulting in some added benefit to the public beyond that produced by the first author’s work. The fair use doctrine, in other words, permits works to be used for ‘socially laudable purposes.’ I am aware of no case in which the reproduction of a copyrighted work for the sole benefit of the user has been held to be fair use.”



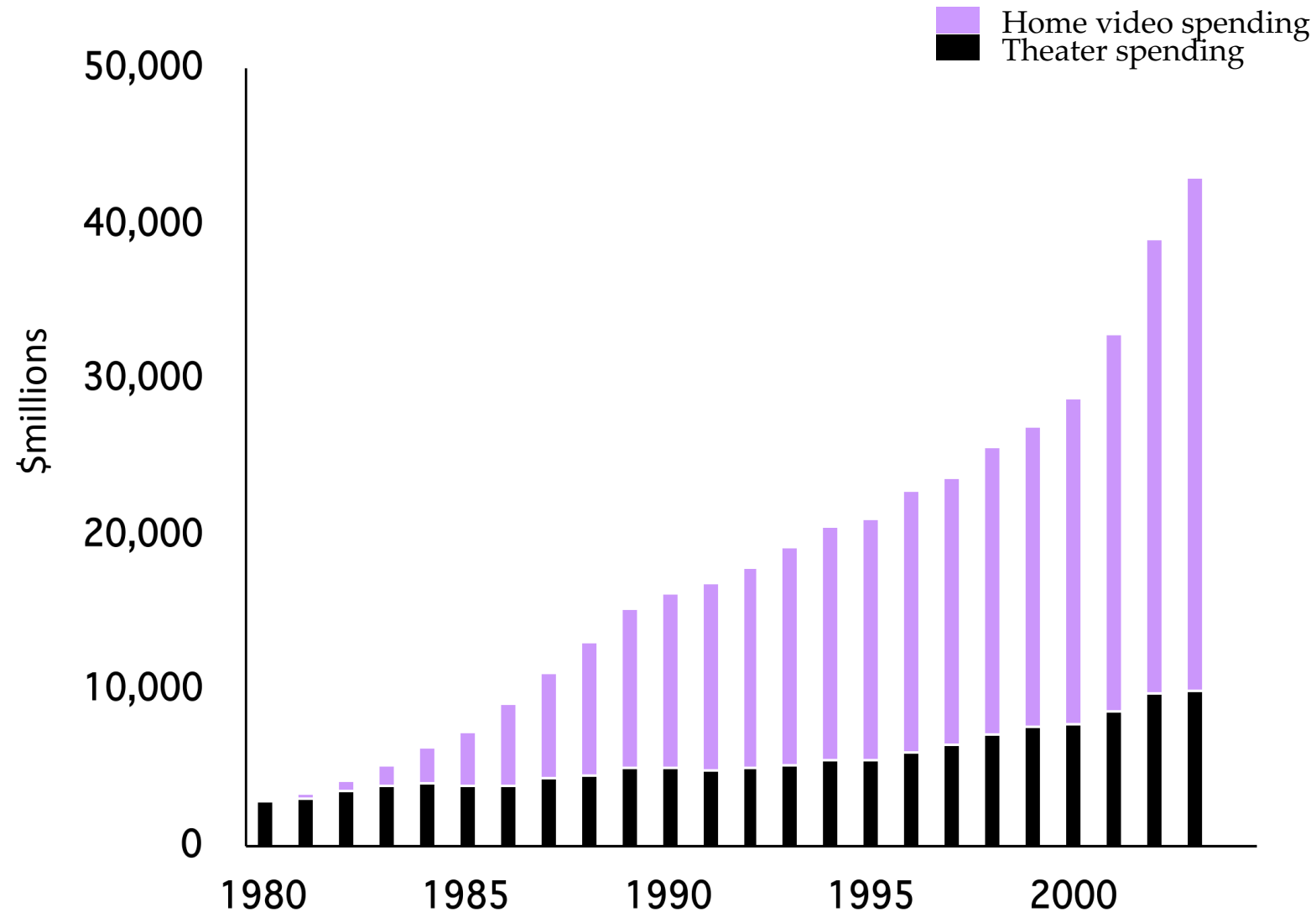


# Justice Blackmun, dissenting

“The requirement that a putatively infringing use of a copyrighted work, to be ‘fair,’ must not impair a ‘potential’ market for the work has two implications. First, an infringer cannot prevail merely by demonstrating that the copyright holder suffered no net harm from the infringer's action. Indeed, even a showing that the infringement has resulted in a net benefit to the copyright holder will not suffice. Rather, the infringer must demonstrate that he had not impaired the copyright holder's ability to demand compensation from (or to deny access to) any group who would otherwise be willing to pay to see or hear the copyrighted work. Second, the fact that a given market for a copyrighted work would not be available to the copyright holder were it not for the infringer's activities does not permit the infringer to exploit that market without compensating the copyright holder.”

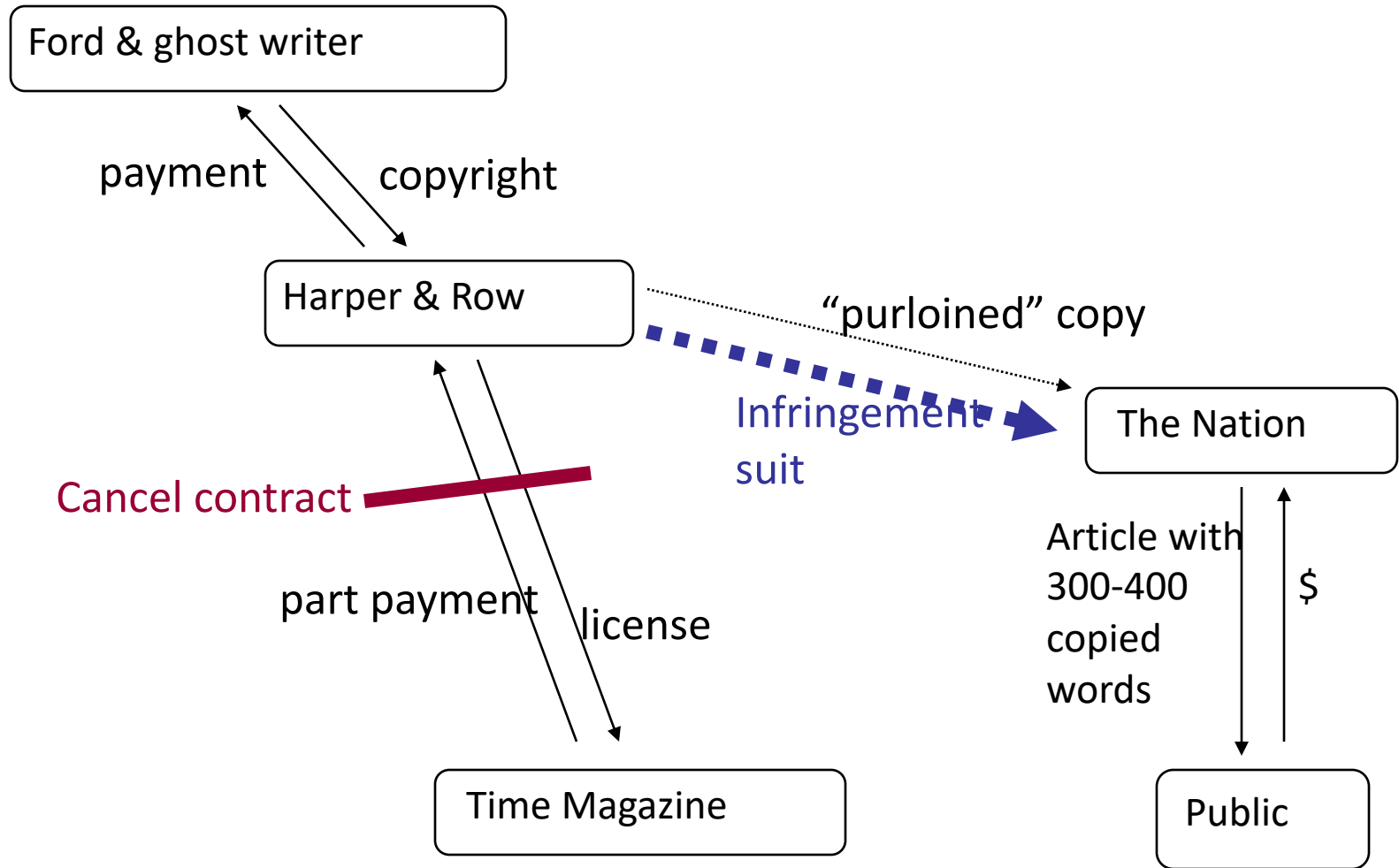


# CONSUMER HOME VIDEO AND THEATER SPENDING





# Harper & Row





# Campbell

“The first factor in a fair use enquiry is ‘the purpose and character of the use.’... The central purpose of this investigation is to see, in Justice Story's words, whether the new work merely ‘supersede[s] the objects’ of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message; it asks, in other words, whether and to what extent the new work is ‘transformative.’ Although such transformative use is not absolutely necessary for a finding of fair use, *Sony*, [464 U.S.] at 455, n. 40, the goal of copyright, to promote science and the arts, is generally furthered by the creation of transformative works. Such works thus lie at the heart of the fair use doctrine's guarantee of breathing space within the confines of copyright, see, e. g., *Sony*, *supra*, at 478-480 (Blackmun, J., dissenting), and 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.”

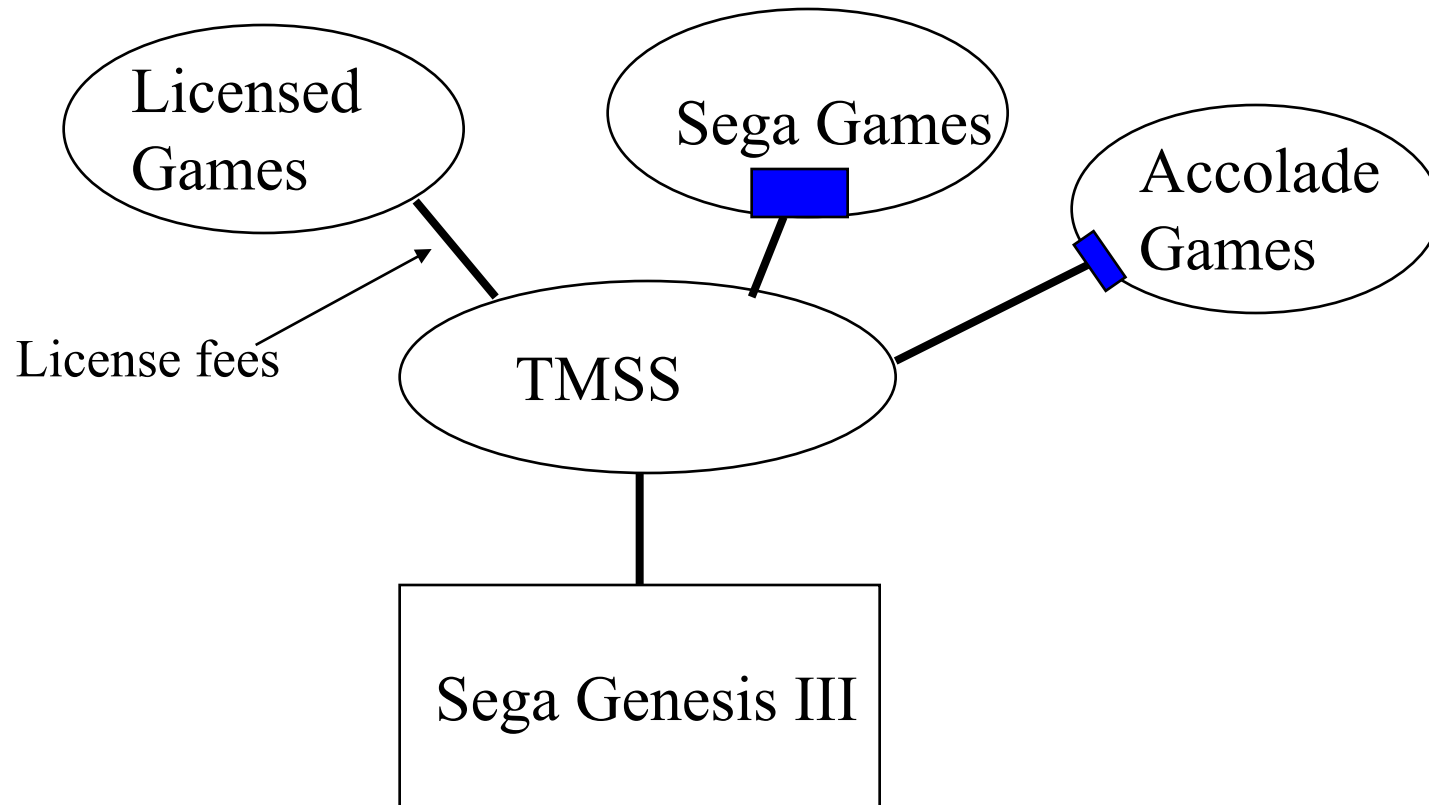


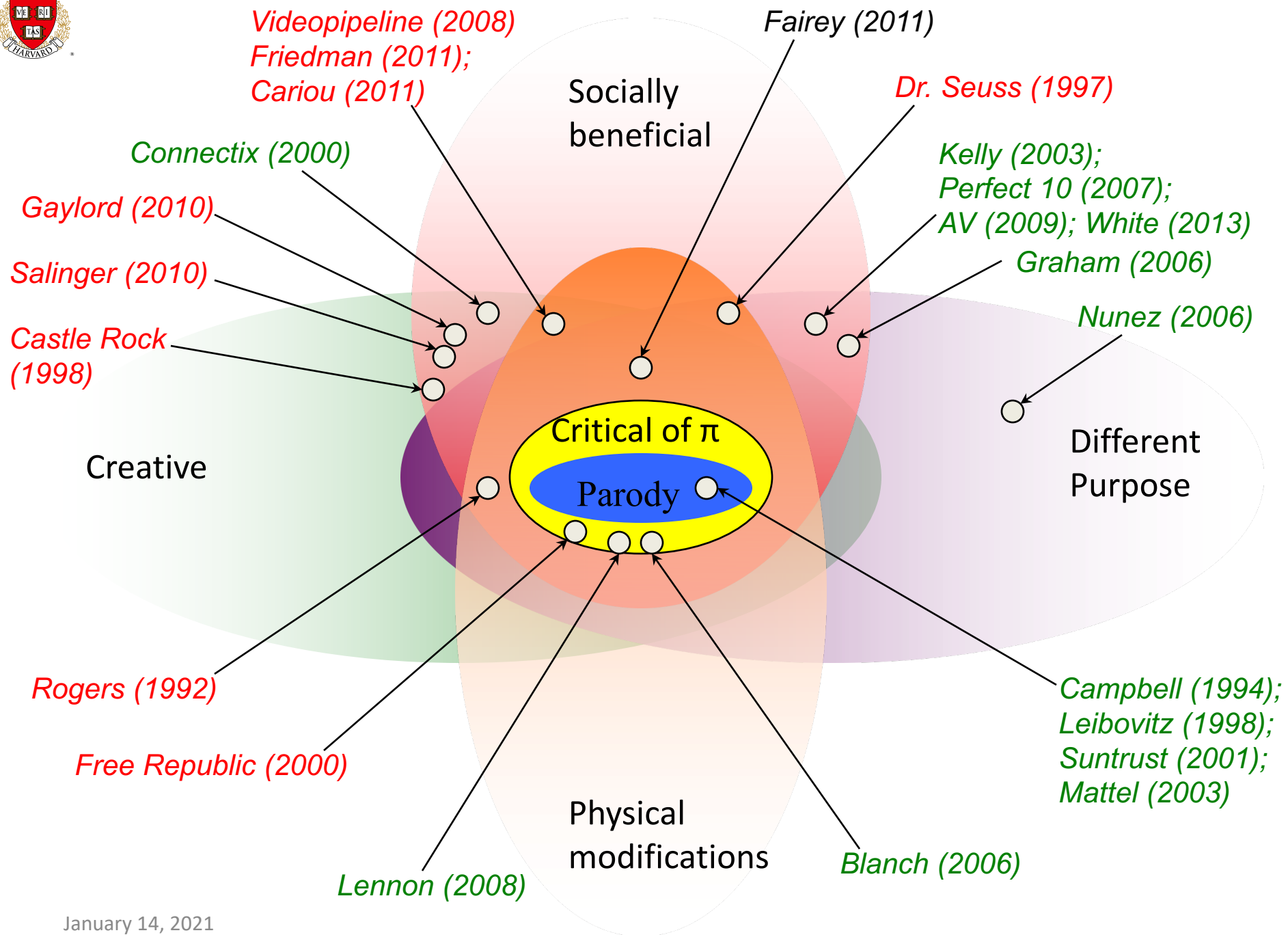
# Campbell

“Modern dictionaries accordingly describe a parody as a ‘literary or artistic work that imitates the characteristic style of an author or a work for comic effect or ridicule,’ or as a ‘composition in prose or verse in which the characteristic turns of thought and phrase in an author or class of authors are imitated in such a way as to make them appear ridiculous.’ For the purposes of copyright law, the nub of the definitions, and 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 works.”



## Sega (CA9 1992)







# Strength of Copyright Protection

Factual

Creative



Unpublished

Published





## Factor 4: Markets

