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Fair Use Paper

Fair Use

In today's world the internet provides numerous amounts of data and information that we can gather and use, but are you infringing on someone's Copyright? The Copyright Act gives the holder all rights to the content and can reproduce the the work for a specified period of time. Fair use is a defense against any claims of copyright infringement. In this paper I will provide you some examples and of fair use and some infringement of copyrighted information.

How does a court know if a use is fair?

Whether a use is fair will depend on the specific facts of the use. Note that attribution has little to do with fair use; unlike plagiarism, copyright infringement (or non-infringement) doesn't depend on whether you give credit to the source from which you copied. Fair use is decided by courts on a case-by-case basis after balancing the four factors listed in section 107 of the Copyright Act. Those factors are:

1 - The purpose and character of the use of copyrighted work

- Transformative quality - Is the new work the same as the copyrighted work, or have you transformed the original work, using it in a new and different way?
- Commercial or noncommercial - Will you make money from the new work, or is it intended for nonprofit, educational, or personal purposes? Commercial uses can still be fair uses, but courts are more likely to find fair use where the use is for noncommercial 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. How much of the copyrighted work did you use in the new work?

Copying nearly all of the original work, or copying its "heart," may weigh against fair use. But "how much is too much" depends on the purpose of the second use. Parodies, for example, may need to make extensive use of an original work to get the point across.

4 - The effect of the use upon the potential market for or value of the copyrighted work. This factor applies even if the original is given away for free. If you use the copied work in a way that substitutes for the original in the market, that will weigh against fair use. Uses of copyrighted material that serve a different audience or purpose are more likely to be considered fair.

These factors are guidelines, and they are not exclusive. As a general matter, courts are often interested in whether or not the individual making use of a work has acted in good faith. (Teaching copyright)

What is considered to be fair.

The courts have found numerous cases where they have found to be fair. Here a few types of examples.

- 1 - Commentary and Criticism
- 2 - Parody
- 3 - News reporting
- 4 - Art

In all respect, there is a fine line in what is deemed to be copyright infringement and fair use. I thought that it would be helpful to see a couple examples of what is considered fair use and not fair use. (Summaries of fair use Cases)

Parody:

Fair use. Comedians on the late-night television show Saturday Night Live parodied the song "I Love New York" using the words "I Love Sodom." Only the words "I Love" and four musical notes were taken from the original work. Important factors: The Saturday Night Live version of the jingle did not compete with or detract from the original song. (Elsmere Music, Inc. v. National Broadcasting Co., 482 F. Supp. 741 (S.D. N.Y.), aff'd 632 F.2d 252 (2d Cir. 1980).) - See more at: <http://fairuse.stanford.edu/overview/fair-use/cases/#sthash.jg6teP1O.dpuf>

Not a fair use. An author mimicked the style of a Dr. Seuss book while retelling the facts of the O.J. Simpson murder trial in The Cat NOT in the Hat! A Parody by Dr. Juice. The Ninth Circuit Court of Appeals determined that the book was a satire, not a parody, because the book did not poke fun at or ridicule Dr. Seuss. Instead, it merely used the Dr. Seuss characters and style to tell the story of the murder. Important factors: The author's work was nontransformative and commercial. (Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc., 109 F.3d 1394 (9th Cir. 1997).) - See more at: <http://fairuse.stanford.edu/overview/fair-use/cases/#sthash.jg6teP1O.dpuf>

Music:

Fair use. A television film crew, covering an Italian festival in Manhattan, recorded a band playing a portion of a copyrighted song "Dove sta Zaza." The music was replayed during a news broadcast. Important factors: Only a portion of the song was used, it was incidental to the news event, and it did not result in any actual damage to the composer or to the market for the work. (Italian Book Corp., v. American Broadcasting Co., 458 F. Supp. 65 (S.D. N.Y. 1978).) - See more at: <http://fairuse.stanford.edu/overview/fair-use/cases/#sthash.jg6teP1O.dpuf>

Not a fair use. A defendant in a music file sharing case could not claim a fair use defense since he had failed to provide evidence that his copying of music files involved any transformative use (an essential element in proving fair use). Important factors: The court held that the defendant was confusing "fairness" and "fair use"—"In the end, fair use is not a referendum on fairness in the abstract ..." (Capitol Records Inc. v. Alaujan, 2009 WL 5873136 (D. Mass., 7/27/09).) - See more at: <http://fairuse.stanford.edu/overview/fair-use/cases/#sthash.jg6teP1O.dpuf>

In this paper I have provided you with some examples of fair use and some examples that are considered to be an infringement on the copyright law. As you can see, there are many cases of fair use and at times can be a grey area. Just remember to use common sense when using material that is not yours.

Stim, Rich. "Summaries of Fair Use Cases." *Stanford Copyright and Fair Use Center Summaries of Fair Use Cases Comments*. N.p., 04 Apr. 2013. Web. 26 Mar. 2016.

"Teaching Copyright." *Use Frequently Asked Questions | Teaching Copyright*. N.p., n.d. Web. 26 Mar. 2016.