Celebrate Fair Use Week at Virginia Tech! February 22 - 26, 2016

A Local Copyright Story: Fair Use, or Copyright Infringement?

This exhibit illustrates fair (and infringing) uses of copyrighted works to put the U.S. Copyright Law Fair Use exemption in context. Let’s consider a local case study.

View the images and news story; explore our 4-panel exhibit to learn more about fair use, and then on panel 4: tell us what you think about this local case!

Was this a fair use?

The image of Mary Shelley’s character, Frankenstein's monster, is well known, and some forms are in the public domain (no longer protected by copyright).

A local tattoo artist, Roger LaDouceur, was inspired to create an original artwork based on this image.

In October 2015, Macado’s, a local restaurant, created pint glasses with an image of Frankenstein's monster.

Fair Use Fundamentals

Fair Use is a Right

Fair Use is for Everybody

Fair Use is Everywhere

Copyright law is a carefully balanced system meant to encourage creativity as well as the protection of intellectual property. Copying, incorporating, and adapting copyrighted works has, in various forms, been a part of human culture since the beginning. To balance these competing interests, the United States’ Copyright Act of 1976, as amended, provides a limited defense to the copyright holder for those who engage in fair use.

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With the First Amendment as its foundation, fair use is a critical safeguard for the freedom of speech and expression. It protects the First Amendment rights of all citizens in the United States and is a cornerstone of our cultural heritage and scientific progress.

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5-Step Framework

Panel 1

Fair use in context: U.S. Copyright Law

Fair Use, is a four-factor exemption of U.S. Copyright Law 17 U.S. Code § 107 which allows anyone to:
- Copy
- Re-distribute
- Perform
- Electronically transmit
- Publicly display
- Create new versions of others' copyrighted works ...without permission.*

*When the potential use is deemed to be fair rather than infringing. Only a court can decide what is truly fair use. However, U.S. law allows anyone to conduct a well-informed fair use analysis in good faith to determine if their proposed use of copyrighted material is more fair or more infringing.

Panel 2

5-Step Framework to Analyze Any U.S. Copyright Question

This 5-step framework will take you through factors to consider, including fair use, in a step by step order. If you eliminate one step as an option, continue on to the next. If none work, you may need to request permission to use the work, pay to license your use of the work, or look for alternative content to use.

Step 1 Is the work protected by copyright?

Is the work I want to use a type of work protected by copyright? If it is eligible for copyright protection:
- Who owns the copyrights?
- Did I create it and did I retain the copyrights?
- Does someone else own the copyrights?
- Is it in the public domain?

Step 2: Is there a specific exemption in U.S. Copyright Law 17 U.S. Code § 108-121 or others that covers my use?

Section 108: Library copying
Section 109(a): First sale doctrine
Section 109(c): Exemption for public displays
Section 110(1): Displays/performances in face to face teaching
Section 110(2): Displays/performances in distance learning
Section 120: Architectural works
Section 121: Special formats for persons who are blind or have other disabilities

Step 3: Is there a license that covers my use?

Library subscription licenses include some explicit uses for education and research. Open licenses of many types allow creators of copyrightable works to explicitly allow uses of their works by others. Creative Commons Licenses: https://creativecommons.org/licenses/
GNU General Public License: http://www.gnu.org/licenses/gpl-3.0.en.html

Step 4: Is my use covered by Fair Use?

Fair Use is the exemption described in U.S. Copyright Law 17 U.S. Code § 107
Consider the 4 factors: Purpose, Nature, Amount, Effect
Use the Fair Use Evaluator Tool, which will guide you through your analysis of each factor, and then all of them as a whole, supplying you with a PDF of your analysis and comments to keep in your records.

Step 5: Will the copyright owner grant permission for my use, or can I arrange to pay for a license for my use?

Stanford University has an excellent guide to ‘The Basics of Getting Permission’ http://fairuse.stanford.edu/overview/introduction/getting-permission/
VT Copyright Clearance permissions information for VT faculty, staff, and students: http://www.printing.vt.edu/services/digitalpro.php#copyright

Step 6: If none of the above:
Consider how you may make your use more fair
Identify alternative content
Create your own content
Ask a librarian for assistance in identify openly license resources, or alternative content.

Panel 3

Fair Use around the world

Most other countries do not have a provision similar to Fair Use within their copyright (or intellectual property) laws. Canada and countries that follow United Kingdom laws include a similar provision called Fair Dealing.

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Fair Use or Not?
Lift up a case to see the decision!

Case 1
“Libraries … provided a search engine company (Google) with books to scan. . . . . the libraries later used the resulting digital scans for three purposes: preservation, a full-text search engine, and electronic access for disabled patrons who could not read the print versions.”

Case Study Citation: The case above is an excerpt from content on the Stanford University “Copyright and Fair Use Overview” website section is from NOLO, with much of it taken from the book Getting Permission (October 2010) by Richard Stim.

Were these uses of copyrighted materials considered to be a fair use?

Case 2
“The Nation magazine published excerpts from ex-President Gerald Ford’s unpublished memoirs. The publication in The Nation was made several weeks prior to the date Mr. Ford’s book was to be serialized in another magazine.”

Case Study Citation: The case above is an excerpt from content on the Stanford University “Copyright and Fair Use Overview” website section is from NOLO, with much of it taken from the book Getting Permission (October 2010) by Richard Stim.

Case 3
“A television news program copied one minute and 15 seconds from a 72-minute Charlie Chaplin film and used it in a news report about Chaplin’s death.”

Case Study Citation: The case above is an excerpt from content on the Stanford University “Copyright and Fair Use Overview” website section is from NOLO, with much of it taken from the book Getting Permission (October 2010) by Richard Stim.

Was this use of a copyrighted work considered to be a fair use?
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**Fair Use or Not?**
**Lift up a case to see the decision!**

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**Fair Use**

The actions and uses of copyrighted works in this case were decided as: protected by fair use.

A key fair use factor in this decision was purpose in that the intended and resulting uses of the scans were transformative. Also, no evidence was found regarding a market effect (no detrimental effect on the commercial market of the original works).


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**Not a Fair Use**

The actions and uses of copyrighted works in this case were decided as: Not a Fair Use.

A key fair use factor in this decision was effect. The decision, following a previous decision and an appeal, was that The Nation's actions in publishing the excerpted content, obtained without permission, was detrimental to the market value, and/or commercialization of the published work, specifically, the author's serialization rights. It is worth noting as well that the autobiography itself was not published at the time the excerpt was printed and distributed.


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**Not a Fair Use**

The use of a copyrighted work in this case was decided as: Not a fair use.

A key Fair Use factor in this decision was Amount. The court’s decision was that the pieces of the film used by the television news program were both substantial, and represented the “heart of the work,” or the most instantly recognizable, significant, and well-known portion of the film. So, even though the amount (1 min 15 sec) used relative to the whole (72 min) might appear small, this was still decided as disproportionate due to the significance of the piece used.

Case citation: Roy Export Co. Estab. of Vaduz v. Columbia Broadcasting Sys., Inc., 672 F.2d 1095, 1100 (2d Cir. 1982).
Consider the fair use factors
As you consider each of the four factors listed on this panel, add a pebble to the side of the scale that matches your decision (towards fair, or towards infringing).

Add a checkmark to show your decision on either the Fair Use or the Infringing decision notes areas on this panel.

Step 5 - 6: What if it's not a fair use? If your decision was that this case was not a fair use, and you find yourself in a similar situation, remember that your next options include: Step 5 - Getting Permission from the copyright holder to use the work, or Step 6: Creating or Identifying alternative content to use.

Fair Use

Infringing

Panel 4

4 Fair Use Factors (1)

Deciding whether a use of a copyrighted work falls within a fair use exemption requires considering 4 different factors - all of which are important:

Purpose - What is the purpose and character of your use? (How will you use the copyrighted work? Why will you use it? How will the resulting new work be used and distributed? Does your use somehow transform, add meaning, or use the existing work differently than intended?)

Nature - What is the nature of the copyrighted work that you will use? (Is it a highly creative work, such as an artwork, a piece of music, an image? Is it a scholarly work? Is it a work with primarily factual content? Has the copyrighted work been published?)

Amount - What is the amount and substantiality of the portion that you will use, in relation to the whole of the copyrighted work? (Will you use the whole work? A small portion, such as a section of a chapter of a book? Is it the “heart” of the work, such as the ‘hook’ or main lyric from a famous song?)

Effect - What effect will your intended use have on the current market or potential value of the copyrighted work, and how does that relate to fair use? (Is the copy of the work you plan to use a legal copy? Does the work have an established market, or is it under commercial exploitation through licensing or sale? Will your use of the work damage the current or future marketability of the original work?)