

Applying Fair Use in Your Library

The U.S. Copyright Office has developed a database that can help special librarians make fair use determinations in their organizations.

BY LESLEY ELLEN HARRIS

Almost every librarian or information professional will be responsible for applying fair use in his or her organization at some point. There is so much to learn about fair use—and, unfortunately, so much misinformation about fair use—that it can be overwhelming to deal with this critical U.S. copyright principle.

So, where do you begin? There are many facts to know about fair use, facts that will help you decide whether and when to apply fair use to your specific circumstances.

Despite what some librarians think, you need not be an expert in copyright law to understand fair use. What makes some people uneasy about applying fair use is that it is not “black and white” or clear-cut; rather, it requires an analysis of each particular set of circumstances. In addition, the application of fair use is never a certain thing unless a judge in a court of law makes a fair use determination.

This means you need to get comfortable with the basics of fair use and with making judgment calls as to whether fair use applies to a particular use of copyright-protected materials. At the

same time, it means understanding copyright risk management and being able to minimize your risks of unauthorized uses of copyright materials.

Being comfortable with fair use and understanding how it works are essential before you apply it to your particular circumstances. So, before you determine whether you can reproduce a paragraph from an article or a chapter from a book, you should understand certain things about fair use.

Fair Use Factors

Fair use is a doctrine created by courts in the nineteenth century; it only recently became part of the U.S. Copyright Act. In fact, it was not until the establishment of the 1976 U.S. Copyright Act that fair use became codified and set out in U.S. law.

Many who apply fair use complain that it is ambiguous and should be more specific to factual situations. Fair use is intentionally open and flexible, and its language allows you to apply the doctrine to your own circumstances. (That said, some organizations prohibit the application of fair use because of its uncertain nature and the need to

analyze each fair use situation.)

Fair use may be applied by individuals or corporations, by commercial and non-commercial entities, and in for-profit and nonprofit situations. It all depends on the facts of your situation and how these facts fit within the four fair use factors set out in the U.S. Copyright Act. The fair use factors are as follows:

1. The purpose and character of the use, including whether such use is of a commercial nature or for nonprofit educational 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; and
4. The effect of the use upon the potential market for, or value of, the copyrighted work.

To help librarians and information users better understand how these four factors apply to specific situations, the U.S. Copyright Office recently launched its free Fair Use Index. The goal of the index is “to make the principles and application of fair use more accessible and understandable to the public by presenting a searchable database of court opinions.”

You can search the index by category (e.g., literary, artistic, or musical work) and by your type of use (e.g., education/scholarship/research, parody, or Internet/digitization.) The index tracks court decisions at various levels, but is not intended to be a comprehensive archive of all fair use cases ever decided. It is designed for lawyers and non-lawyers alike and is intended to be user friendly.

I highly recommend you take a look at the index and see how it can assist you in understanding fair use determinations. The index sets out the name of the case, the court, the jurisdiction,

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and the year of the decision as well as whether fair use was found by the court. You can click on the case name/citation for a summary of the case, which includes the key facts, issue, outcome

other countries have their own unique copyright statutes, and some of them include fair use or comparable “fair dealing” provisions. When making a fair use determination, you apply the laws

copyright law. If you are in Canada, you apply the Canadian principle of fair dealing, which is similar to fair use but has specific differences that must be studied and applied to the circumstances at hand. Many countries’ copyright laws have a fair dealing or fair use provision that is unique according to the copyright legislation and court cases of that country. **SLA**

When making a fair use determination, you apply the laws of the country where you are based—i.e., the country where the work is being reproduced or performed.

and more. All in all, it is a very helpful database on fair use.

Keep in mind that the Fair Use Index is a database of fair use cases decided by U.S. courts. The fair use doctrine is only applicable in the United States;

of the country where you are based—i.e., the country where the work is being reproduced or performed.

For example, if you are in the United States and you reproduce an image from Canada or India, you apply U.S.

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