Do You Know Your Fair Use Rights?

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You write, but do you own a copyright?
Copyright Basics

- For works produced today, protection is **automatic** once a **creative** work is fixed

- The bundle of copyrights lasts a long time:
  - **Life of the author plus 70 years**
So...what rights do you have?

- Reproduction
- Distribution
- Derivatives

Absolutely necessary for publishing

- Performance
- Public display

Mostly come into play for creative works

Arguably necessary for publishing (at least a subset of derivative rights)

The right to license any of the above to third parties
I own a copyright, but others do, too?

• Right. This begs the question . . . Can you use others’ work in your work?

• The answer is generally yes, but there are different ways to get there . . .
Using Others’ Work

• Here are some avenues for legally using others’ work in your own work:
  
  (1) Public Domain
  
  (2) Creative Commons Licensing
  
  (3) Copyright Exceptions
  
  (4) Fair Use
  
  (5) Asking for (and receiving) permission from the copyright owner
FAIR USE 17 USC Section 107

Preamble to Section 107: “the fair use of a copyrighted work . . . for purposes such as criticism, comment . . . teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”
Fair Use Factors

“In determining . . . fair use the factors to be considered shall include—

(1) purpose and character of the use, including whether such use is . . . for nonprofit educational purposes;
(2) nature of the copyrighted work;
(3) amount and substantiality of the portion used . . . ; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.”
Factor 1: Purpose & Character of the Use

Commercial versus Educational Use

Not FU  FU
Factor 2: Nature of the Work

unpublished/creative versus published/factual
Factor 3: Amount/Substantiality Used

entire book copied/heart of work copied versus small amount copied

Not FU  FU
Factor 4: 
Effect on Market for Original Work

Replaces marketplace for original work versus substantially different than original work

Not FU  FU
A transformative use is one that alters the original work "with new expression, meaning or message . . .." *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 579 (1994).
Some specific examples

• The transformative factor was first explained in a case involving a parody of the lyrics to “Pretty Woman.”

• The Supreme Court explained that a parody, not a satire, is a fair use.

• Can someone explain the difference between parody and satire?
Parody versus Satire

“[T]he 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.”

Transformative Use Example

1) Roy Orbison:
   Pretty Woman Lyrics
   “Pretty woman”

2) 2 Live Crew:
   Parody of “Pretty Woman”
   “Big Hairy Woman”
Pretty Woman Parody

• Original Lyrics: “Pretty Woman, walkin’ down the street, pretty woman, the kind I’d like to meet . . .”

• New Lyrics: “Big hairy woman, you need to shave that stuff. Big hairy woman, you know I bet it’s tough.”

• Why is this a parody and not satire?
Parody?

The Cat Not in the Hat

*OJ Simpson murder trial*

You be the judge! Is it:

(a) Parody (fair use)
(b) Satire (not fair use)
Cariou v. Prince
But, some courts are “over it”

But, the Second Circuit in Cariou v. Prince explicitly said:

“Prince's work could be transformative even without commenting on Cariou's work or on culture, and even without Prince's stated intention to do so.”

- 714 F.3d 694, 707 (2013)
So, now what is the test?

If not in the world of parody,

Back to the original language: “A transformative use is one that alters the original work ‘with new expression, meaning or message . . . .’”
Transformative Use Example

1) Purpose of the original posters:
   *Advertise Concerts*

2) Purpose of posters embedded in book:
   *Historical Context*
Moral of the story?

• You can use your fair use rights even if you asked for permission and someone told you “no.”
Transformative Use?

The HathiTrust digital library inputs entire digital copies of books and other materials. For © works, the general public cannot see the entire book, but can search for how many times a specific “term” is used in that work.

Transformative use?

(a) Yes

(b) No
Transformative Use Example

1) Purpose of original materials:
   *Communication*

2) Purpose of HathiTrust term numbers:
   *Research*
Moral of the fair use story?

• Even using the entire work and making multiple copies of the work can constitute a transformative fair use.
Thank You!

You can always e-mail me at:

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Check out my library guide at:
guides.library.Illinois.edu/copyrightreferenceguide

Check out my video at:
https://go.Illinois.edu/fairusevideo