Fair Use exception to copyright

Author name

Affiliations

One cannot use any copyright-protected material unless authorized by the copyright owner. However, one statutory exception is the fair use which is a legal doctrine that allows the reuse of copyright-protected material. There are four factors in the Fair Use exception to copyright; the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion taken, and the effect of the use upon the potential market. This paper will analyze the four factors in the Fair Use exception to copyright and their application in Harper & Row dispute.

The first factor that the judge considers for determining fair use is the analysis of the purpose and character of the use. The purpose can be commercial as well as nonprofit educational purpose. The main focus here is to check the transformative nature; adding new meaning or just copying from the original. The second factor is the nature of the copyrighted work. It is considered as fair to use material from primarily factual works as compared to use the material from fictional works. The third factor in determining the fairness is to check about the amount of the material that had been used with regard to copyrighted work as a whole. The last factor that judges consider is the effect of the use upon the potential market for the copyrighted work. The uses cannot be fair if they hamper the copyright owner’s ability to make a profit.

Harper & Row, Publishers, Inc is a famous example of the application of the Fair Use exception. The United States Supreme Court considered the case as an infringement of the copyright holder's exclusive rights. The court reached this decision after the application of the "totality of the work" factor. Moreover, I agree with the court decision as the author's right about the first public appearance of his undisseminated expression are overweighing a claim of fair use.