

Fair use defense - eastside movies inc vs manny goldstein

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Fair Use Defense: Eastside Movies Inc v Manny Goldstein

Whether or not Manny Goldstein can escape liability for copyright infringement of Eastside Movies Inc.'s movies will depend upon the four-factor test under the fair use defense. The four-factor test which engages the fair use defense is explained in *Harper and Row v Nation Enterprise* (1985). According to the four-factor test, unauthorized use of copyright material, whether by reproducing copies or phonorecords or otherwise may be considered fair use if that use is made “ for criticism, comment, news reporting, teaching, scholarship or research.” (*Harper and Row v Nation Enterprise* (1985))

Under the four factor test, it appears that Manny Goldstein may not successfully claim fair use. While Goldstein may pass some parts of the four-factor test, it is very unlikely that he will pass each part. The four-factor test provides that in determining whether or not the fair use defense can bar a claim in copyright infringement four factors will be taken into account. Those factors include the “ purpose and character of the use.” (*Harper and Row v Nation Enterprise* (1985)) In this regard, it will be important to determine whether or not the use of the material was for commercial “ or nonprofit educational purposes.” (*Harper and Row v Nation Enterprise* (1985)) Certainly Manny Goldstein can pass this part of the test since he was conducting research as a media researcher and not for commercial purposes. He was looking to devise a system to run his DVD player on a computer running the Linux operating system. The sole purpose was to copy parts of movies for his research on media effects.

The remaining three factors under the four-factor test are the nature of the

copyrighted work. According to the facts, the copyright material is movies and this is directly related to Goldstein's research. Again, Goldstein can succeed under this part of the fair use test. However, in ascertaining fair use, account will also be taken of the " amount and substantiality of the portion used in relation to the copyrighted work as a whole". (Harper and Row v Nation Enterprise (1985)) Since Goldstein has made his copying device available on the internet, he has made it possible for the world at large to gain access to Eastside's movies and this would seriously undermine the company's sales and income from these films. This of course ties in with the fourth and final factor test which considers the impact on the market value. (Harper and Row v Nation Enterprise (1985))

Ultimately, while permitting fair use for educational, research and scholarship purposes, the court will weigh these purposes against the extent to which the unauthorized use may negatively impact sales or profits or otherwise exceed the purpose of the original material. (Folsom v. Marsh, 9 F. Cas. 342 (1841)) Making the copying device available to the world at large is bound to prejudice the sale and profits of films and exceed the goals of the original work. When these factors are weighed against Goldstein's media research goals, he will not be able to successfully claim fair use. Goldstein therefore faces an injunction and may very well be required to pay statutory damages from US\$750 to US\$30, 000 or even US\$150, 000 if the court comes to the conclusion that the Goldstein's infringement is willful. Having regard to his continued use of the copyright material after Eastside made an application for injunctive relief, the court might consider this " electronic civil disobedience" willful infringement.

Works Cited

Folsom v. Marsh, 9 F. Cas. 342 (1841)

17 USC Section 107