

Google's e-library

[Linguistics](#), [English](#)



Four fair use factors affiliation Fair use factors Fair use is an "affirmative defense to what would otherwise be an infringing act, such as reproducing a copyright work 17 U. S. C & 107 (200); Campbell. Acuff-rose Music, Inc (1985). People think Google should be punished for scanning these books without authors' permission, while others believe that it should consider the law of fair use as Crews (1993) points out "fair use doctrine helps to prevent the copyright owners exclusive right from interfering with the frames stated purpose of the promotion of learning" as cited in Cohen, 2001, p. 170).

Google has to satisfy each criteria of the fair use four factors test. There are four factors to scanning or copying books according to the fair use principle. Fair use is the most significant limitation on the copyright holders exclusive rights (United States Copyright Office, 2010, para. 1). "The four factors are: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used and the effect to the use on the potential market Value of the Work (Hanratty, 2005)."

The first factor is about the purpose of copying commercial or educational purpose. Google says that it is not making profit from scanning; therefore, it is not commercial making profit by advertising. "Google also gave a copy to the library and allows authors to chose if they want their books scanned or not. For example Google also has this option policy where by the copyright holder can select not to get his/her book digitized" (Prasad and Agarwala. 2008. 258). In order not to cause any effect or harm in commercial benefit therefore Google project will provide snippets only Moreover, Google will share the digitals copies for all libraries. Merely "coping a book into a digital format would not be deemed transformative because all that Google is

changing in the medium print to digital see Kirkwood, 150 F. 3d at 108, n. 2."

The law states that whether the use is for non-profitable or commercial nature, this analysis should be taken into consideration. In circumstances where the analysis is for business purposes, presumption deliberates in contradiction to fair use. Practically, the court has found that commerciality is of no significant use to determine fair use. This can be attributed to the commercialization of secondary sources of copyright materials inclusive of the legal preamble. The root of this inquiry is to note whether the users profit by exploiting the copyrighted material devoid of customary price payment. The offset of the commercial aspect of the use character is determined by whether or not the use is transformative. This transformative use changes or adds the copyrighted work to give it a new meaning, message, and expression. For this reason, the more the work is transformative, the more there will be a shift in the balance to fair use, and something new must be created from the transformation. Thus in this analysis the commercial factor deliberates against Google due to its nature of copying books to enhance its service value to their customers and selling of advertisement space that is similar to the copyrighted work (HANRATTY, 2005).

The second factor is the nature of the copyrighted bookwork. There are two types, which are factual work and creative work " the more creative the expression embodied in a work, the more likely a copy will not be fair use" cabbell. Acuff-rose Music, Inc. 510 U. S. 569, 586 (1994). Google does not allow users to copy or scan the entire book; it only displays the bibliographic information that makes finding books easier for people. On the other hand "

copyright office is preparing recommendation to Congress on how to address the orphan works problem- how to enable uses of works whose owners cannot be identified and/or located" (Band, 2006).

In this analysis, the more the manifestation of creativeness undergoes personification in the work, the higher the chances that the copy of the work will not be fair use. Additionally, the copyright system is meant to provide monopoly to authors thus providing an encouragement to create.

Congruently, by replicating the facts, as well as the factual elements of creative works, there is a more likelihood of it being fair use. Additionally, whether work is published is also an important characteristic. Additionally, in the parody, even pure original uses can be fair. In this analysis, Google creates exact duplicates of works, some of which will blend unique fact and expression while others will be pure original expression. As a result, Google fails to show some accepted fair use reason and thus this factor will weigh against Google.

The third factor refers to the quantity and the quality, how much scanning can harm the market. Google only scan the entire books that depending of the type of the book and just displays part of it. " in the context of internet searching engines, there are two cases in which reproduction and archiving of the entirety of copyrighted content found on web sites have been deemed a fair use" (Kelly v. Arriba soft, 336 f. 3d 816, 822 (2003)).

Making of duplicates that are not significant in their dimensions might prevent fair use if the copy captures the work's essence substantively. On one end of the spectrum, copying the whole work might prevent the finding of fair use. Typically, when an individual replicates the whole work and uses

it for its creative purpose with no added benefits to the public, the fair use policy is inapplicable. As well, a copy of a completely original work can be still fair use in the right conditions. In Google case, investigations of sustainability and amount appear to deliberate besides a fair use finding. Google is replicating books in their totality thus preventing fair use unless justifying factors are found. For this reason, by observing Google in this light, this analysis weighs in favor of fair use.

Last but the least the fourth factor is the effect of copyright project in the market “ it encompasses within its fold not only the existing and potential market of the work but also its derivatives" (Sony Corp. of America v. Universal City Studios, Inc. 464 U. S 417 (1984)). The above-mentioned factors are most important and critical for Google’s e-library project, because with the help or understand of the mentioned factor Google will be able to identify whether this project goes under fair use or not.

In the analysis of fair use, this factor is considered to be the single most significant. It relates to the result that the possibly infringing use has on the prospective market for, or the importance of, the copyrighted work. Markets considered are the existing ones and any potential market for the derivative or original works creators might license others to develop or improve themselves.

Furthermore, usage that substitutes for original is not considered as fair use since it affects the market for the original. Thus, making consumers turn away from the original. This factor does not comprise only the loss of value: even though the use makes the proprietor of the copyright gain, this factor can still weigh against fair use. For this reason, the appropriate query is not

on the effect of Google's project in the market but also the impact on the market if there were myriad websites carrying out the same service. Lastly, due to the grouping of incredible grasp of Google's project and the amount of copyright holders harmed by the project. Moreover, with the fact that Google is a for-profit company that generates revenue from this venture, it appears the project is commercial and affects the copyright holder's potential licensing rights. As a result, this factor would deliberate against a finding of fair use.

References

Hanratty, E. (2005). Google Library: Beyond Fair Use? *Duke Law & Technology Review*, 1-18.