

# Fair Use And Online Publishing: Legal And Practical Guidance For Publishers

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## INTRODUCTION

This Article first discusses broad copyright and fair use concepts. Next, we discuss spe-

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cific fair use problem areas, involving "coverage of coverage" reporting and uses of headlines, stories and other publisher content by Google and other web portals. Then, we discuss how much use is fair use, and practical guidelines for use.

We conclude by briefly considering the practical implications for fair use of technological developments in online publishing.

## FAIR USE

Fair use is a statutory defense to copyright infringement, set forth in the US copyright law.<sup>1</sup> Section 107 does not actually define fair use; rather, it sets out 4 nonexclusive factors to evaluate a fair use of copyrighted material:

1. The purpose and character of the use, including whether the use is of a commercial nature or for nonprofit educational purposes.
2. The nature of the copyrighted work.
3. The amount of the copyrighted work used.
4. The effect of the use on the potential market for or value of the copyrighted work.

Though still subject to an evaluation of the four statutory factors, several purposes of use are expressly named in the preamble to Section 107 as fair uses, including news reporting, criticism, commentary, research and teaching. Fair use was created by federal case law long ago and later codified by Congress in revisions to the copyright law. Case law and academic guidance on the subject is extensive and varied—and not always consistent. We write here about some useful interpretative guidelines on fair use, followed by a sampling of useful case citations.

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<sup>1</sup> 17 U.S.C. §107.

### *Purpose and Character of the Use*

The first statutory factor has been reduced further to look at (1) whether the use of the copyrighted work was “socially productive”, (2) whether the use was commercial or non-commercial and (3) whether the user acted in good faith. A use is socially productive if it is “transformative” of the original work, meaning: more than replacing or copying, but adding value to the original or creating something new. Parody and satire are given protection under copyright and defamation laws because they are viewed as transformative uses of original material. Similarly, news reporting is deemed transformative and therefore socially productive—and protected as fair use—when using brief quotations from original copyrighted material.

In the *Sony Betamax* case,<sup>2</sup> the Supreme Court stated that commercial uses give rise to a presumption of unfair use. While noncommercial uses are favored over commercial uses, so long as the use is transformative a commercial use can qualify as fair use. Though typically a commercial use, news reporting is given more leeway since it is expressly named in the copyright law as a fair use purpose.

### *The Nature of the Copyrighted Work*

The second statutory factor is the nature of the copyrighted work. Copyright protects an author’s *unique expression* of facts and ideas. Facts and ideas themselves (as opposed to their expression) are generally not subjects of copyright protection and, likewise, generally will not support claims of copyright infringement. For the same reason, when the nature of the copyrighted work is more factual or informational than creative, fair use is more likely to be found. So, for example, greater copyright protection will apply to scholarly treatises and works of fiction, poetry, music and choreography, than will apply to biographies, histories and hard news. Creativity in the original work is an important consideration for evaluation of a fair use defense.

### *The Amount of the Copyrighted Work Used*

The third statutory factor is the amount of the copyrighted work used. The more of the work copied, the less likely the use is fair use. The trouble here has always been how to measure what is too much copying. There is no actual quantitative rule in statute, regulation

or case law. The cases are very fact-specific and tend to look at both the quantity and quality of the material copied. So, for example, in 1985 *The Nation* copied 300 words from Gerald Ford’s 200,000 word memoir for a magazine article. This was ruled not a fair use because, among other reasons, those 300 words discussed Ford’s pardoning of Richard Nixon.<sup>3</sup> This case was instructive on how to evaluate the amount of use that constitutes “fair” use, and we discuss this case more fully below. A common thread in cases is whether the use copies the “heart” or “essence” of the original work.

### *The Effect of the Use On the Potential Market for or Value of the Copyrighted Work*

The final statutory factor is the effect of the use on the potential market for or value of the copyrighted work. If the use would prevent readers from needing to go at all to the original website or publication, it is less likely a fair use. Recently, a client wanted to post on its website press reports about its company published in the *New York Times*, *Philadelphia Inquirer*, *Washington Post* and other papers. Those papers offer reprint rights (including web posting rights) for stories, for fees, allowing purchasers to post the articles on their own websites without having to redirect readers. The fees compensate the papers for the lost website traffic and for the value of the works. In *The Nation*/Gerald Ford case referred to above, an important factor against fair use was that *The Nation* had scooped *Time* magazine’s forthcoming exclusive book excerpt of the Ford memoirs—and killed the serialization value of that deal for *Time* (and thus the serialization market for Harper & Row, publisher of the memoir).

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### SINGLE-SOURCE “COVERAGE OF COVERAGE”

Coverage of coverage reporting is increasingly popular, although it generates controversy involving search engine and portal uses of original content. What about coverage of a story based on a single-source report? For starters, facts and ideas themselves are generally not subjects of copyright protection. So while it is true that facts themselves are not copyright protected, the *reporting* of facts is protected. You can quote or summarize a story with some leeway in order to draw on facts

<sup>2</sup> *Sony Corporation of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984).

<sup>3</sup> *Harper & Row v. Nation Enterprises*, 471 U.S. 539 (1985).

and ideas. Nonetheless, an excessive excerpting of a single source can be unfair use of the author's *reporting* of those facts. That, really, is the danger with single-source coverage of coverage. As noted above, news reporting is a favored use and, therefore, fair use, so long as some minimum of editorial skill or judgment is applied—without which, it is simply copying. So, for example, a story drawn entirely from a Sydney, Australia newspaper website about a dock strike in Sydney raises the issue of whether the reporting is actually creative in any way at all.

On the other hand, if you simply report a fact reported previously, even if only from a single source, attribution certainly would be appropriate editorial practice, but without more this is not copyright infringement. Single-source coverage of coverage is a copyright problem where the coverage is really just copying an author's *unique expression* of facts and ideas. From a legal perspective, use of multiple sources supports an evidentiary argument that coverage of coverage involves editorial skill and judgment—the basis of a solid fair use defense.

There will be situations where multiple-source coverage is not practical. In these situations, it is important to limit coverage to brief quotations or summaries sticking to facts and ideas as much as possible, and to avoid using unique material from the single-source.

For example, in *Financial Information, Inc. v. Moody's Investors Service, Inc.*,<sup>4</sup> an appeal of a fair use ruling in favor of defendant Moody's, Moody's argued that it had done its own market research and drawn on multiple sources for its market reports, not solely on FII's reports. However, FII was able to show that Moody's had copied large portions of FII's data and could not have gotten this information from another source. There was a threshold question of whether FII's data was copyright protected at all, though the trial court had been satisfied with FII's demonstrating a minimum level of editorial selection in its data compilation. Moody's then argued that FII's data compilation, even if copyrightable, was nonetheless worthy of lesser protection since it was more factual in nature than creative. The 2nd Circuit U.S. Court of Appeals acknowledged the point but noted that Moody's use was similarly non-creative, and therefore its fair use argument was likewise worthy of less credence. The overwhelming evidence of

copying (wholesale copying of 40-50% of FII's material) weakened Moody's argument that it had consulted multiple sources, and also discounted the creative or transformative value of Moody's work. Moody's copied FII's data and added little or no value of fair use significance, whereas drawing on additional sources would have helped.

#### USE OF HEADLINES AND STORY LEADS—*AFP v. GOOGLE*

From March 21, 2005 until April 6, 2007, Agence France Presse (AFP) and Google were in litigation in District of Columbia federal court over Google's unauthorized use of AFP's story headlines, story leads and photographs in Google News. AFP complained that Google News infringed AFP's copyrights, including copyrights in headlines from AFP stories.<sup>5</sup> Google countered that headlines are precluded from copyright protection as falling within the meaning of "words and short phrases such as names, titles, and slogans."<sup>6</sup> Headlines are not specifically named in the copyright exclusions, but Google argued that they are essentially the titles of stories—without sufficient verbiage or originality to qualify as creative expression. (Short phrases and single words generally cannot be copyrighted, the idea being that words and short phrases are the building blocks of creative expression. Otherwise individuals would be able to regulate use of individual words.)

In its complaint, AFP defined "story leads" as the first sentence of new stories, and argued that "story headlines and leads are qualitatively the most important aspects of a story and are painstakingly created. They capture the reader's attention and describe what the rest of the article is about." In addition to arguing fair use, Google answered that copyright does not protect story leads. As it argued with headlines, Google argued that story leads are short, essentially non-creative (for purposes of constituting creative expression and copyright subject matter) and factual. Commentary on the case cites a 1977 case in the 2nd Circuit U.S. Court of Appeals involving publication of "news events" which, like facts and ideas, cannot be copyrighted.<sup>7</sup> Nonetheless, Google's position is an aggressive approach to copyright and, largely, counter to common journalism

<sup>5</sup> *Agence France Presse v. Google, Inc.*, (D.D.C. 2005).

<sup>6</sup> 37 C.F.R. 202.1 (U.S. Copyright regulations setting forth exclusions from copyright).

<sup>7</sup> *Wainwright Securities, Inc. v. Wall Street Transcript Corp.*, 558 F.2d 91 (2d Cir. 1977).

<sup>4</sup> *Financial Information, Inc. v. Moody's Investors Service, Inc.*, 751 F.2d 501 (2d Cir. 1984).

practice where copyright in story leads is more or less presumed (though subject to fair use).

Google also argued fair use in use of the story leads, and made the same argument for use of AFP's photographs. Arguably, Google News only copies but does not transform and its fair use position might be stronger were it to provide any editorial or other creative addition. To deal with that, Google relied on a 9th Circuit U.S. Court of Appeals Internet fair use case involving a search engine's reproduction of thumbnail images of a photographer's portfolio, *Kelly v. Arriba-Soft*.<sup>8</sup> As an alternative fair use rationale for both story leads and photographs, Google relied on the *Arriba-Soft* court's holding that search engines serve a socially valuable public purpose by organizing and accessing data from massive, innumerable and otherwise inaccessible sources. That argument was persuasive in *Arriba-Soft*, when coupled with limitations on amount of material copied from works plus insignificant adverse effects on source markets (and, arguably, positive effects in generating independent market traffic).

In April 2006, Agence France Presse and Google reached agreement on a license deal in settlement of AFP's 2005 lawsuit against Google in the District of Columbia. License and other settlement terms were not disclosed. Google may have had doubts about its arguments, particularly arguments about the copyright protection and fair use of story leads. Google also suggested that its various uses were fair uses, particularly its thumbnail indexing of AFP photographs, providing a socially valuable and therefore "transformative" use. Having not been adjudicated, the case's legal issues were not resolved. That said, practical legal advice cannot ignore real world situations, and the settlement itself may be the most useful take-away lesson.

Overall, aggregators and search firms have been busy making lots of deals with alleged infringers. Google's recent deal with AFP comes on the heels of an agreement last summer with the Associated Press (AP), while Google's YouTube has worked out deals with several major music distributors. Perhaps the most notorious of the current spate of Google litigations resulted from collapsed license negotiations between Viacom and YouTube, resulting in Viacom's \$1 billion lawsuit against Google, currently pending in federal court in New York.

Some of the deals, while definitely innovative collaborations, are arguably just tests of

ideas for content sharing. For example, in a deal last year with AP, blog search compiler Technorati agreed to incorporate AP-linked stories from blogs into AP member sites. AP made a concurrent deal with Topix (controlled by Gannett, Knight Ridder and Tribune Company), under which Topix will direct its search engine traffic to the AP member that contributed a news story, rather than randomly pointing a searcher to sites with republication of the original story. In turn, AP will provide Topix with stories written by AP writers, access to AP Online and AP photos.

#### HOW MUCH USE IS FAIR USE?

Familiarity with the philosophy of copyright law and the fair use defense is probably the most useful guide for applying fair use standards in specific cases. Guidelines exist but rules really do not. There are the occasional "rules of thumb" such as no more than 300 words copied from a book, or no more than 2 or 3 lines (or 25 words) from a newspaper story. But these are not particularly helpful in broad brush, as *The Nation*/Gerald Ford case illustrates. Google and AFP had fought the same fight.

Beyond guidelines, case law is replete with examples of fair and unfair uses, including some of the leading precedents discussed above. Here are some instructive examples:

- **Fair use.** The *Washington Post* used three brief quotations from Church of Scientology texts posted on the Internet. Factors favoring fair use: Only small portions of the works were excerpted and the purpose was news commentary.<sup>9</sup>
- **Fair use.** Jerry Falwell copied (several thousand times, actually) a page from *Hustler* magazine on which Larry Flynt lambasted Falwell. Falwell used the copies as part of a fundraising campaign for his church. The Supreme Court held that the use was fair use, despite it obviously being blatant, commercial and not at all limited. Some of the reasons cited: The issue of *Hustler* in which this page ran was no longer being sold, so there was no argument that this diminished sales (current or future). It also was viewed as not affecting sales of back issues of the magazine. But it was also only this one page.<sup>10</sup>

<sup>9</sup> *Religious Technology Center v. Pagliarina*, 908 F.Supp. 1353 (E.D. Va. 1995).

<sup>10</sup> *Hustler Magazine and Larry C. Flynt v. Jerry Falwell*, 485 U.S. 46 (1988).

<sup>8</sup> *Kelly v. Arriba-Soft*, 336 F.3d 811 (9th Cir. 2003).

- **No fair use.** Evidence showed that Chronicle books made wholesale copies of photographs of fabric and, subsequently, sought to hide the copying by trying to find other credible attribution sources and mixing things up. The court rejected Chronicle's argument that its book contained only 4% copied photos, noting instead that each photo was 100% copied.<sup>11</sup>
- The Los Angeles News Service (LANS) was plaintiff in a series of independent fair use cases involving broadcast and redistribution of its proprietary videotape of the beating of Reginald Denny (in connection with the Rodney King riots in Los Angeles). Three cases:
  - **Fair use.** LANS owned the copyright to the videotape of the Denny beating. Without permission, a distribution subsidiary of CBS distributed portions of the video over its satellite feed service to subscribing media outlets, including CourtTV. In turn, and also without permission from LANS, CourtTV broadcast a few seconds of the video in teaser spots promoting its coverage of the trial of the individuals who beat Denny. Giving significant weight to the fact that the Denny tape was informational and used in promotion of news reporting, the 9th Circuit U.S. Court of Appeals held that CourtTV's use was fair use.<sup>12</sup>
  - **No fair use.** Without permission or license, Reuters sold copies of the Denny video to other news organizations. The 9th Circuit U.S. Court of Appeals found no fair use since the "heart" of the video was used for a commercial purpose, not news reporting. ("Although [Reuters'] service does have a news reporting purpose, its use of the works was not very transformative. Reuters copies footage and transmits it to news reporting organizations; Reuters does not explain the footage, edit the content of the footage, or include editorial comment.")<sup>13</sup>
- **No fair use.** Without permission or license, KCAL-TV broadcast 30 seconds of the 4 minute 40 second Denny video. The 9th Circuit U.S. Court of Appeals reversed summary judgment in favor of KCAL-TV. The court found that KCAL was reporting news, but held that this was not a fair use. The court found that the 30 seconds was the "heart" of the work and had a serious effect on LANS' market for the copyrighted work. ("Although KCAL apparently ran its own voice-over, it does not appear to have added anything new or transformative to what made the LANS work valuable—a clear, visual recording of the beating itself.")<sup>14</sup>
- **No fair use.** As discussed above, *The Nation* published 300 words from former President Gerald Ford's soon-to-be-published 200,000-word memoir. The Supreme Court held that this was not a fair use. In light of Harper & Row's intended serialization of the Ford memoir to *Time* magazine, leak of these 300 words on the Nixon pardon seriously threatened the value of the serialization to *Time* and Harper & Row.<sup>15</sup>
- **Fair use.** The Associated Press published, without permission, photographs of Oliver North taken from a sales brochure for body armor. The photographs were used to accompany a related AP news story. The court upheld fair use because of AP's news reporting use of the photos together with North's status as a public figure.<sup>16</sup>
- **No fair use.** Free Republic, a website, posted the entireties of multiple articles from the *Los Angeles Times* and *Washington Post*. Its purpose was to facilitate commentary and criticism on the copied articles. The court found that, despite the criticism and commentary purpose of Free Republic's website, there was little or no transformative effect attempted or achieved by wholesale copying of articles. The fact that Free Republic or its readers provided commentary was secondary to the simple copying of the articles.

<sup>11</sup> *Schiffer Publishing Ltd. v. Chronicle Books, LLC*, 03-4962, 2004 U.S. Dist. LEXIS 23052; 73 U.S.P.Q. 2d (Nov. 12, 2004), judgment entered, 03-4962, 2005 U.S. Dist. LEXIS 416 (E.D. Pa Jan. 11, 2005).

<sup>12</sup> *Los Angeles News Service v. CBS Broadcasting, Inc.*, 313 F.2d 1093 (9th Cir. 2002).

<sup>13</sup> *Los Angeles News Service v. Reuters*, 149 F.3d 987 (9th Cir. 1998).

<sup>14</sup> *Los Angeles News Service v. KCAL-TV*, 108 F.3d 1119 (9th Cir. 1997).

<sup>15</sup> *Harper & Row, Publications, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985).

<sup>16</sup> *Mathieson v. Associated Press*, 23 U.S.P.Q. 2d 1685 (S.D.N.Y. 1992).

Wholesale copying was facially overbroad to achieve the narrow purpose of facilitating commentary. “Even where copying serves the ‘criticism, comment and news reporting’ purposes highlighted in the [fair use provisions of the] copyright law, its extent cannot exceed what is necessary to the purpose.” The *Times* and *Post* were also able to show that Free Republic’s posting of entire articles adversely impacted the papers’ markets for their content.<sup>17</sup>

## GUIDELINES

We have discussed here several practical guidelines, among the most broadly useful of which are these:

- Copy only as much as you really need to make your point.
- Use direct quotations sparingly.
- Ask whether the “heart” of the original work is being used, regardless of the seemingly small physical amount of the copying.
- Add something new, and if it not be utterly original make it commentary, comparison of views, creativity in the selection and compilation . . . another way of telling. The Supreme Court put it this way: whether “the new work ‘merely supersedes the objects’ of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message; it asks, in other words, whether and to what extent the new work is ‘transformative.’”<sup>18</sup> (In defense of this particular “copying” of a quotation: Supreme Court reports and other court reports are public domain.)
- When copying, if at all possible limit your use to facts and ideas, not original expression.
- Look at the nature of the original work, and be particularly careful when copying highly creative works like fiction and poetry, photographs, video and music. (See examples above of fair use cases involving videotape of the Reginald Denny beating in Los Angeles.)
- Take particular care when drawing on only one original source. Guidelines are really no different from those in other contexts, but a fair use defense will typically have to overcome greater negative presumptions.
- Be aware that an author’s presentation or compilation of otherwise non-copyrightable facts may be protected. For example, an almanac can be copyright protected, as can maps, telephone books (unless the listing is simply an alphabetical scroll) and calendars. The telephone numbers themselves, dates and other facts are not copyrightable. However . . .
- Facts are not always clearly public domain, especially in cases where unusual creative effort (e.g. proprietary market analysis algorithms) went into their compilation.

## ONLINE v. PRINT

Are there any meaningful distinctions in fair use law between print and online uses? In terms of guidelines and standards, there is no meaningful distinction. But as seen in the AFP/Google case, technology facilitates new applications of old ideas. The law is fairly slow in catching up with technology, as evidenced by the recent *Grokster* peer-to-peer case in the Supreme Court.<sup>19</sup> *Grokster* was a copyright infringement case, and reviewed the 1984 *Sony* Betamax fair use decision mentioned above. Fair use was not really at issue so much as whether copyright law was nimble enough to account for this kind of technology. Content can now be parsed and redistributed in innumerable ways, making old-fashioned book or magazine copying quaint by comparison. The idea that there would be a fair use fight over news headlines, for example, might have occasionally popped up with a New York newspaper trying to trademark “Ford to City: Drop Dead.” But now, headlines are copied, charts are copied, and whole newspaper pages are scanned.

There are more questions being raised under fair use law than ever before. Previously, the 4th factor in evaluating fair use—impact on the market of the copyrighted work—had been relegated to . . . 4th place in overall analysis. Now, with the mass migration of content to the web, small and otherwise localized actions of single website operators can have a powerful impact on a copyright owner’s market.

<sup>17</sup> *Los Angeles Times v. Free Republic*, 98-7840, 2000 U.S. Dist. LEXIS 5669 (C.D. Cal. 2000).

<sup>18</sup> *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1995) (quoting *Folsom v. Marsh*, 9 F. Cas. 342, 348 (D. Mass. 1841)).

<sup>19</sup> *MGM Studios, Inc. v. Grokster Ltd.*, 545 U.S. 913 (2005).

The statutory and common law parameters for evaluating electronic uses have not really changed from print days, but the level of care in understanding fair use has become more important.

#### MARKET FORCES AND FAIR USE

Since the August 2006 announcement of a deal between Google and AP whereby AP would create original content, there was a year-long silence. Nothing was heard until just before Labor Day this year when Google announced that Google News would host news directly from the AP and three other wire services, AFP, The Canadian Press (CP) and The Press Association (PA) in the United Kingdom. This is clearly not an agreement to share content between a search compiler and a news service. Here, the news service is providing news directly to Google News. It side-steps the issue of whether indexing story leads is a fair use, as these stories are original to Google News. Now, Google News is hosting AP material, which is what Microsoft and Yahoo, and AOL have already been doing. What remains to be seen is the impact on the wire services' member publications, as now Google, the most popular search engine, offers direct news, rather than first sending web searchers to a wire service's member site. Google, so long at odds with the publishing industry is now co-opting vast segment of the news publishing industry—the newspaper members of AP, AFP, CP and PA that pay these wires services to use wire stories in their publications. New Internet alliances raise novel perspectives on traditional fair use arguments.

In addition to the still evolving relationship between Google and the news media, Google is pursuing its ambitious books project, with a stated aim of scanning all of the books ever published (by at least one estimate, 32 million books). A *New Yorker* profile of the books project in February reported that Google had already signed contracts with most major American book publishing houses to permit scanning of new and already-issued copyrighted works. (“Google’s Moon Shot”, *New Yorker*, February 5, 2007). Conventional wisdom has it that publisher and author resistance to Google’s will is futile. That may be, but not necessarily due to the costs or other risks of litigation.

Nor are copyright infringement arguments unworthy. Thus, in spite of success signing up publishers, Google currently faces serious legal challenges to the books project from various industry groups. Google suggests that its book project grows the market for book publishers. Or in many cases, that it *makes* the

market for a given title, noting links from book search results to Amazon for purchase and analogizing to Amazon’s impact on the book distribution business. “Google is now the gatekeeper. They are reaching an audience that we as publishers and authors are not reaching. It makes perfect sense to use the specifications of a search engine as a tool for selling books.” (“Google’s Moon Shot,” *New Yorker*, February 5, 2007, quoting Laurence Kirschbaum, literary agent and former book publishing executive.)

Fair use arguments may successfully immunize certain aspects of search engine activity, but courts are increasingly receptive to claims that search engines facilitate third party infringement through contributory or vicarious liability. Recently, for example, the federal appeals court for the 9th Circuit so indicated in a case involving both Google and Amazon.<sup>20</sup>

Developments in the Web 2.0, such as the popularity of blogs and social networking sites, continue to provide new battlegrounds for copyright issues and fair use analysis. In December 2006, the social networking site Facebook reportedly refused an approximately \$1 billion buyout from Yahoo! because, so they claim, the offer undervalued the franchise by viewing it as content rather than communication. (See *Wall Street Journal*, “Weekend Interview”, March 24, 2007; and *New Yorker*, May 15, 2007.) Back in 2005, the *New York Times* forecast that the Supreme Court’s then-pending *Grokster* decision would entrench a “permanent war” between technology and content creators, where “the court[s] can do little to alter the spread of technology or the interests of copyright owners to protect their material.” (“A Supreme Court Showdown for File Sharing,” *New York Times*, March 28, 2005.) As the *Grokster* case turned out, the Court’s fair use decision seemingly divided the technology world into active infringement enablers and passive conduits—a distinction that technology is constantly collapsing. Mark Zuckerberg of Facebook argues more optimistically and ambitiously (and Google would seem to concur) that his company is fundamentally altering the way people communicate and, with it, the business of communication—not repurposing content. This view would seem to challenge the notion of any “war” between technology and content creators. Rather, fair use in digital media gets subsumed into a complex series of business

<sup>20</sup> *Perfect 10, Inc. v. Amazon.com Inc., Google Inc., et al.*, No. CV-05-04753-AHM (9th Cir. May 16, 2007).

decisions—and guesses—about how content creators see the market developing for their content and advertising.

It is interesting to view the recent content deals more as experiments in business development than any concession about copyright.

Content creators are struggling to understand the invasion of technology into old constructs of publishing and media. For content creators, this may be more about owning access to the audience, which the search companies built and which they surely want to maintain.