

Try It Yourself: An Active Lesson Fair Use

ICEPOPS!

Maryam Fakouri
Scholarly Publishing Outreach Librarian
University of Washington Libraries

Americans talk, er, argue a lot about fair use.

Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P. • *Twin Peaks v. Publications Int'l, Ltd.* • *Leibovitz v. Paramount Pictures Corp.* • *Kienitz v. Sconnie Nation LLC* • *Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc.* • *SOFA Entertainment, Inc. v. Dodger Productions, Inc.* • *Fox News v. TVEYES, Inc.* • *Steinberg v. Columbia Pictures Industries, Inc.* • *Cariou v. Prince* • *Cambridge University Press v. Patton* • *Harper & Row v. Nation Enters.* • *Italian Book Corp., v. American Broadcasting Co.* • *Authors Guild v. Google, Inc.* • *Religious Technology Center v. Pagliarina* • *Religious Technology Center v. Lerma* • *Fisher v. Dees* • *Castle Rock Entertainment, Inc. v. Carol Publ. Group* • *Campbell v. Acuff-Rose Music* • *Keeling v. Hars* • *Los Angeles News Service v. KCAL-TV Channel 9* • *Ringgold v. Black Entertainment Television, Inc.* • *Gaylord v. United States* • *Field v. Google Inc.* • *Warren Publishing Co. v. Spurlock d/b/a Vanguard Productions* • *Kelly v. Arriba-Soft* • *Warner Bros. Entertainment, Inc. v. RDR Books* • *Castle Rock Entertainment, Inc. v. Carol Publ. Group* • *Love v. Kwitny* • *Salinger v. Random House* • *TCA Television Corp. v. McCollum* • *Katz v. Chevaldina* • *Ringgold v. Black Entertainment Television, Inc.* • *Monster Communications, Inc. v. Turner Broadcasting Systems, Inc.* • *BMG Music v. Gonzalez* • *Twin Peaks v. Publications Int'l.*

Learning objectives of the lesson

Participants analyze and argue a fair use case in order to:

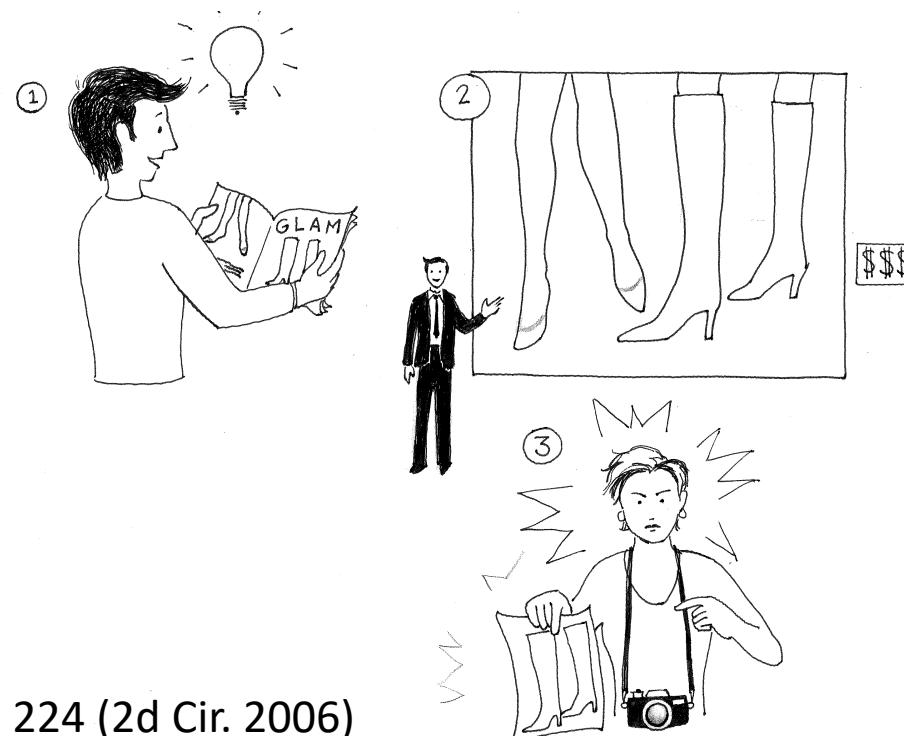
1. Learn the factors of fair use
2. Understand how the factors have been interpreted by courts
3. Compare their reasoning to lawyers' reasoning in a real fair use dispute
4. Be able to think through fair use in their daily work

Preparation

1. Research fair use cases to find one that aligns with your audience's interests, for example, appropriation art or journalism.
2. Summarize the events that led to the dispute, arguments for infringement, arguments for fair use, and the court's reasoning in its decision.

During your workshop

1. Briefly review copyright law and fair use.
2. Give your audience the facts and events from the case you selected.



Blanch v. Koons, 467 F.3d 224 (2d Cir. 2006)

3. Divide participants into two teams.



Plaintiff's team

Defendant's team

5. Give teams time to analyze the fair use factors. Consider distributing a checklist as a guide.

FACTOR	AGAINST FAIR USE	FOR FAIR USE
Purpose of use		
Nature of work		
Amount and substantiality of portion used		
Effect on market		

5. Teams explain their reasoning, factor by factor.

	PLAINTIFF (copyright owner)	DEFENDANT (user)	COURT
Purpose of use			
Nature of work			
Amount and substantiality of portion used			
Effect on market			

6. Debrief.



7. Assess learning.

Remember, this exercise is not about giving the “right answer.” It’s about understanding the fair use factors well enough to apply them.

Assessments include:

1. Records of each group’s thought processes, for example google documents, written worksheets, or photos of your argument grid.
2. Quick surveys, for example
 - What did you gain from this presentation?
 - What do you feel you still don’t fully understand?

Final thoughts

- Participants remember this lesson!
- You will see varying learning styles and personalities.
- Some may have questions and comments beyond the scope of the lesson, e.g., “Is it legal if I use <fill in the blank> in my book?,” or “I patented a <fill in the blank>.”

Thank you!



Bye!