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FAIR USE

FAIR USE DOCTRINE

- ✦ Developed by courts as a means of balancing the public's interest in the development of arts, science, and history with the copyright owner's exclusive rights.

Ency. Britannica Educ. Corp. v. Crooks, 447 F. Supp. 243 (W.D.N.Y. 1978).

FOUR FACTOR TEST

- ✦ Purpose and character of the use
- ✦ Nature of the copyrighted work
- ✦ Amount and substantiality of the portion used
- ✦ Effect of the use on the market for or value of the work used

17 U.S.C. § 107

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FACTOR ONE

- ✗ Purpose and character of the use
- ✗ Two-parts to consider:
 - + Nonprofit educational use; or
 - + Use of a commercial nature
 - + *Marcus v. Rowley*, 695 F.2d 1171 (9th Cir. 1983).
- ✗ Nonprofit educational use does not insulate from infringement; nor does commercial use mean use is not fair.
 - + *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

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FACTOR ONE

- ✗ Fair use presupposes that defendant acted fairly and in good faith in connection with copyrighted material.
- ✗ Defendant's conduct should be weighed in analyzing the purpose and character of the use.
- ✗ No attempt to secure permission or to credit owner, even though most was copied verbatim.
 - + *Marcus v. Rowley*, 695 F.2d 1171, 75-76 (1983).

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"Copyright"