

Index

ABOUT TO BE PUBLISHED WORKS

Nature of copyrighted work, § 4:2

ABSTRACTING AND INDEXING

Generally, § 3:13

Internet search engines, § 3:17

New York Times v. Roxbury Data
Interface, § 3:15

Nihon Keizai Shimbun v. Comline
Business Data, § 3:16

Purpose and character of use, gen-
erally, §§ 3:13 to 3:17

Wainwright Securities v. Wall
Street Transcript Corp.,
§ 3:14

ACTUAL FAIR USE ANALYSIS

Generally, § 7:2

ADDISON-WESLEY PUBLISHING v. NEW YORK UNIVERSITY

Educational and government
photocopying, § 3:107

ADDITIONAL FACTORS

Generally, § 7:1

Custom, industry practice, § 7:1

ADVERTISEMENTS

Generally, § 3:18

Comparative advertising, § 3:21

Eveready Battery v. Adolph Coors,
§ 3:23

Leibovitz v. Paramount Pictures,
§ 3:24

MasterCard International v. Nader
2000 Primary Committee,
§ 3:26

ADVERTISEMENTS—Cont'd

MGM v. American Honda Motor,
§ 3:25

Parodies, §§ 3:22 to 3:26

Purpose and character of use, gen-
erally, §§ 3:18 to 3:26

Sales-related advertisements,
§ 3:19

Tin Pan Apple v. Miller Brewing,
§ 3:23

AFFIRMATIVE DEFENSE

Pleading, other considerations,
§ 7:4

Potential market for or value of
copyrighted work, § 6:3

Statutory recognition of fair use,
generally, §§ 2:4, 2:5

AGENCY

Third-party claims, § 7:3

AGGREGATE ASSESSMENT

Statutory recognition of fair use,
§ 2:2

Totality of factors, § 7:2

AIRCRAFT TECHNICAL

PUBLISHERS v. CESSNA AIRCRAFT CORP.

Corporate photocopying, § 3:119

AMERICAN GEOPHYSICAL UNION v. TEXACO, INC.

Generally, §§ 3:126 to 3:131

Amount and substantiality of por-
tion used, § 3:129

Corporate photocopying, gener-
ally, §§ 3:126 to 3:131

Judge Jacob's dissent, § 3:131

**AMERICAN GEOPHYSICAL
UNION v. TEXACO, INC.
—Cont’d**

Nature of copyrighted work,
§ 3:128
Potential market for or value of
copyrighted work, §§ 3:130,
6:5, 6:9
Purpose and character of use, gen-
erally, § 3:127
Section 108, § 7:13

**AMOUNT AND
SUBSTANTIALITY OF
TAKING**

Generally, §§ 5:1 to 5:4
American Geophysical Union v.
Texaco, § 3:129
Bramwell v. Halcomb, § 5:1
Campbell v. Acuff-Rose Music,
Inc., § 5:2
Copying entire work, § 5:3
Defining the “work,” § 5:4
Downloading entire work, § 5:3
Entire work, § 5:3
Folsom v. Marsh, §§ 1:22, 5:1, 5:2
Gray v. Russell, § 5:1
Harper & Row, § 5:1
“Heart of the work,” § 5:1
Hustler Magazine, Inc. v. Moral
Majority, Inc., § 5:4
Internet, § 5:3
Materiality, § 5:1
Parody, § 3:100
Purpose and character of use,
second factor
American Geophysical Union v.
Texaco, § 3:129
parody, § 3:100
Quantity and value of materials
used, Folsom v. Marsh,
§ 1:22
Reproduction of entire work, § 5:3
Sony, § 5:3
Third factor of section 107, gener-
ally, §§ 5:1 to 5:4

**AMOUNT AND
SUBSTANTIALITY OF
TAKING—Cont’d**

Time-shifting, § 5:3
Totality of factors, § 5:2
Transformative use, § 5:2
Viewing at later time, § 5:3
Williams & Wilkins, § 5:3
“Work” defined, § 5:4

AMOUNT OF HARM

Potential market for or value of
copyrighted work, § 6:11

**AMSINCK v. COLUMBIA
PICTURES INDUSTRIES**

Purpose and character of use,
§ 3:67

ANCILLARY MARKETS

Potential market for or value of
copying and public benefit,
§ 6:7

**ANDY WARHOL FOUNDATION
v. GOLDSMITH**

Generally, §§ 3:27.10 to 3:27.50
Amicus briefs, § 3:27.50
Caselaw after the Warhol Founda-
tion, § 3:27.60
Court of Appeals, § 3:27.30
District Court proceedings,
§ 3:27.20
Supreme Court decision, § 3:27.40

ANTICIRCUMVENTION

Statutory provisions, § 1:1

APPROPRIATION

**Amount and Substantiality of
Taking** (this index)
Purpose and character of use,
parody, § 3:101

APPROPRIATION ART

Purpose and character of use,
§ 3:103

INDEX

ARCHITECTURAL PLANS
Purpose and character of use,
§ 3:28

ARCHIVES
Limitation on exclusive rights,
reproduction, Section 108,
§ 7:8

ARICA INSTITUTE v. PALMER
Purpose and character of use,
§ 3:58

**ASSOCIATED PRESS v.
MELTWATER U.S.
HOLDINGS, INC.**
News clipping services and
rebroadcasts, § 3:80

**ASSOCIATION OF AMERICAN
MEDICAL COLLEGES v.
CAREY**
Section 108, § 7:13

**ASSOCIATION OF AMERICAN
MEDICAL COLLEGES v.
CUOMO**
Educational and government
photocopying, § 3:110

**ASSOCIATION OF AMERICAN
MEDICAL COLLEGES v.
MIKAELIAN**
Educational and government
photocopying, § 3:109

ATTRIBUTION
Additional factors, § 7:1

AUSTRALIA
Fair dealing provisions, § 8:9

**AUTHORS GUILD, INC. v.
HATHITRUST**
Section 108, § 7:13

BAD FAITH
Additional factors, § 7:1
Custom, industry practice, § 7:1

BARABAN v. TIME WARNER
Criticism and comment, § 3:57

BARBIE DOLL PARODIES
Purpose and character of use,
§ 3:99

**BASIC BOOKS v. GNOMON
CORP.**
Corporate photocopying, § 3:114

**BASIC BOOKS v. KINKO'S
GRAPHICS CORP**
Photocopying by copy centers,
§ 3:121

BELL v. WHITEHEAD
Origins and purpose of fair use,
§ 1:17

**BERNE CONVENTION
ARTICLE 9(2)**
International law, three-step test,
§ 8:2.20

BETAMAX BILLS
Legislative history, fair use, § 9:33

BIAS OR PREJUDICE
Degree in which use may preju-
dice sale of original work,
Factor 3 of Folsom v. Marsh,
§ 1:23

BIOGRAPHIES
Generally, § 3:29
Eisenschiml v. Fawcett Publica-
tions, § 3:31
Elvis Presley Enterprises v.
Passport Video, § 3:44
Estate of Hemingway v. Random
House, Inc., § 3:35
Greenbie v. Noble, § 3:32
Holdredge v. Knight Publishing,
§ 3:33
Iowa State University Research
Foundation v. American
Broadcasting Cos., § 3:38
Meeropol v. Nizer, § 3:36

BIOGRAPHIES—Cont'd

- Nash v. CBS, § 3:43
- New Era Publications
International ApS v. Henry
Holt & Co., § 3:40
- Norse v. Henry Holt & Co., § 3:42
- Purpose and character of use, gen-
erally, §§ 3:29 to 3:45
- Rokeach v. Avco Embassy
Pictures, § 3:37
- Rosemont Enterprises v. Random
House, § 3:34
- Salinger v. Random House, Inc.,
§ 3:39
- Toksvig v. Bruce Publishing,
§ 3:30
- Warren Publishing Co. v.
Spurlock, § 3:45
- Wright v. Warner Books, § 3:41

**BLACKWELL PUBLISHING,
INC. v. EXCEL RESEARCH
GROUP LLC**

- Photocopying by copy centers,
§ 3:123

BLIND PERSONS

- Purpose and character of use,
§ 3:46

**BOUCHAT V. BALTIMORE
RAVENS LIMITED
PARTNERSHIP**

- Incidental, nonfortuitous uses,
§ 3:68.10

BRAMWELL v. HALCOMB

- Amount and substantiality of tak-
ing, § 5:1
- Early English cases, § 5:1
- Origins and purpose of fair use,
§ 1:16

**BROADCASTING AND OTHER
FORMS OF EXHIBITION**

- Generally, § 3:47
- Commercial broadcasts, § 3:48
- Noncommercial broadcasts, § 3:49

**BROADCASTING AND OTHER
FORMS OF EXHIBITION
—Cont'd**

- Purpose and character of use, gen-
erally, §§ 3:47 to 3:49
- Rebroadcasts. **News Clipping
Services and Rebroadcasts**
(this index)

**BRUZZONE v. MILLER
BREWING**

- Off-air taping, § 3:83

BURNET v. CHETWOOD

- Origins and purpose of fair use,
§ 1:6

**CABLE NEWS NETWORK v.
VIDEO MONITORING
SERVICES OF AMERICA**

- News clipping services and
rebroadcasts, § 3:75

CALCULATION OF HARM

- Purpose and character of use,
parody, § 3:102

CALLIGRAPHERS

- Purpose and character of use,
§ 3:50

**CAMPBELL v. ACUFF-ROSE
MUSIC, INC.**

- Amount and substantiality of tak-
ing, § 5:2
- Codification distinguished from
statutory recognition, § 2:1
- Nature of copyrighted work, § 4:1
- Potential market for or value of
copyrighted work, §§ 6:2, 6:4
to 6:6, 6:14
- Purpose and character of use
noncommercial uses, § 3:7
- post- Campbell parody cases,
§ 3:98

CANADA

- Fair dealing provisions, § 8:8

INDEX

CANADA—Cont'd

Origins and purpose of fair use,
§ 1:3

Preliminary injunctions and fair
use as affirmative defense,
§ 2:7

CARY v. KEARSLEY

Origins and purpose of fair use,
§ 1:11

CASTLE ROCK

**ENTERTAINMENT v.
CAROL PUBLISHING
GROUP**

Criticism and comment, § 3:60

CATALOGUE RAISONNE

Purpose and character of use,
§ 3:50.50

CHICAGO BOARD OF EDUCATION v. SUBSTANCE, INC.

Criticism and comment, § 3:62

CHICAGO LAWYER v. FORTY-SIXTH WARD REGULAR DEMOCRATIC ORGANIZATION

Political uses, § 3:134

CITIZEN GROUPS

Political purposes, political uses,
§ 3:140.60

CLEARLY ERRONEOUS STANDARD

Appellate review, § 7:6

COLLEGE ENTRANCE EXAMINATION BOARD v. CUOMO

Educational and government
photocopying, § 3:111

COMMERCIAL AND NONCOMMERCIAL USES

Potential market for or value of
copyrighted work, § 6:4

COMMERCIAL BROADCASTS

Purpose and character of use,
§ 3:48

COMMERCIAL SKIPPING

Fox Broadcasting Co., Inc. v. Dish
Network L.L.C., § 3:88

COMMERCIAL USES

Generally, § 3:2

Commerciality not absolute
principle, § 3:4

Legislative history of section
107(1), § 3:3

Purpose and character of use, gen-
erally, § 3:2

COMMINGLING

Freedom of Information Act,
requests, § 3:69

COMMON LAW

Actions and proceedings, § 2:3

Codification distinguished from
statutory recognition, § 2:1

Purpose of fair use, § 1:2

Statutory recognition of fair use,
§ 2:2

COMPARATIVE ADVERTISING

Purpose and character of use,
§ 3:21

COMPLETION OF STRUCTURE

Purpose and character of use,
§ 3:28

COMPUTER PROGRAMS

Statutory provisions, § 1:1

COMPUTERS

Generally, § 3:51

Amount and substantiality of tak-
ing, § 5:3

Copying to extract data, § 3:53

Data mining, § 3:53

Extraction of data by copying,
§ 3:53

Internet downloads, § 5:3

COMPUTERS—Cont'd

- Internet search engines, § 3:17
- Internet uses, § 3:54
- Obsolete computer programs and video games, statutory provisions, § 1:1
- Purpose and character of use, generally, § 3:51
- Reverse engineering, § 3:52
- Text mining, § 3:53

CONSENT

- Additional factors, § 7:1

COPY CENTER

PHOTOCOPYING

- Basic Books v. Kinko's Graphics Corp., § 3:121
- Blackwell Publishing, Inc. v. Excel Research Group LLC, § 3:123
- Princeton University Press v. Michigan Document Services, Inc., § 3:122
- Purpose and character of use, §§ 3:121 to 3:123

CORPORATE PHOTOCOPYING

- Generally, §§ 3:114 to 3:120, 3:124 to 3:131
- Aircraft Technical Publishers v. Cessna Aircraft Corp., § 3:119
- American Geophysical Union v. Texaco (this index)
- Basic Books v. Gnomon Corp., § 3:114
- Harper & Row v. American Cyanamid Co., § 3:116
- Harper & Row v. Squibb Corp., corporate photocopying, § 3:117
- Harper & Row v. Tyco Copy Service, § 3:115
- Pasha Publications v. Enmark Gas Corp., § 3:124
- Pfizer, § 3:118

CORPORATE PHOTOCOPYING

—Cont'd

- Purpose and character of use, §§ 3:114 to 3:120, 3:124 to 3:131
- Schuchart & Associates v. Solo Serve Corp., § 3:120
- Television Digest v. United States Telephone Association, § 3:125

COSMOS CLUB TALKS

- Legislative history, fair use, § 9:16

CRITICISM AND COMMENT

- Generally, § 3:55
- Arica Institute v. Palmer, § 3:58
- Australia fair dealing, § 8:9
- Baraban v. Time Warner, § 3:57
- Bell v. Whitehead, § 1:17
- Canada fair dealing, § 8:8
- Castle Rock Entertainment v. Carol Publishing Group, § 3:60
- Chicago Board of Education v. Substance, Inc., § 3:62
- Historical uses, § 3:70
- India fair dealing, § 8:10
- Ireland, fair dealing, § 8:7
- Israel fair use, § 8:11
- Jamaica fair dealing, § 8:12
- Maxtone-Graham v. Burtchaell, § 3:56
- Potential market for or value of copying and public benefit, § 6:7
- Purpose and character of use, generally, §§ 3:55 to 3:62
- Singapore fair use, § 8:14
- Sony BMG Music Entertainment v. Tenenbaum, § 3:63
- Twin Peaks Productions v. Publications International, § 3:59
- Ty, Inc. v. Publications International, § 3:61

INDEX

CRITICISM AND COMMENT

—Cont'd

United Kingdom, fair dealing,
§ 8:6

Whittingham v. Wooler, § 1:14

DATA MINING

Computers, § 3:53

DE MINIMIS USES

Potential market for or value of
copyrighted work, § 6:12

Statutory recognition of fair use,
§ 2:8

DERIVATIVE WORKS

Right to prepare, § 6:16

DESCRIPTION OR IDENTIFICATION

Potential market for or value of
copyrighted work, § 6:9

DIGITAL MEDIA

Media neutrality, § 7:7

DIGITAL MILLENNIUM COPYRIGHT ACT

Libraries, photocopying, § 7:12

Statutory provisions, § 1:1

DISABLED PERSONS

Purpose and character of use,
§ 3:46

DISCOVERY

Purpose and character of use,
§ 3:72

DISPARAGING PARODY

Purpose and character of use,
§ 3:97

DISTORTION

Additional factors, § 7:1

DODSLEY v. KINNERSLEY

Origins and purpose of fair use,
§ 1:9

DOWNLOADING FILES

Amount and substantiality of tak-
ing, § 5:3

EARLY ENGLISH CASES

Generally, § 1:5

Amount and substantiality of tak-
ing, § 5:1

Bell v. Whitehead, § 1:17

Bramwell v. Halcomb, §§ 1:16,
5:1

Burnet v. Chetwood, § 1:6

Cary v. Kearsley, § 1:11

Dodsley v. Kinnersley, § 1:9

Lewis v. Fullarton, § 1:18

Lord Hardwicke, § 1:7

Macklin v. Richardson, § 1:10

Mawman v. Tegg, § 1:15

Origins and purpose of fair use,
§ 1:5

Roworth v. Wilkes, § 1:12

Tonson v. Walker, § 1:8

Whittingham v. Wooler, § 1:14

Wilkins v. Aikin, § 1:13

E-BOOKS

Statutory provisions, § 1:1

ECONOMICS

Purpose and character of use,
§ 3:10

EDITIONS, SUBSEQUENT OR REVISED

Nature of copyrighted work, § 4:4

EDUCATIONAL AND GOVERNMENT PHOTOCOPYING

Generally, §§ 3:104 to 3:113

Addison-Wesley Publishing v.
New York University,
§ 3:107

Association of American Medical
Colleges v. Cuomo, § 3:110

EDUCATIONAL AND

GOVERNMENT

PHOTOCOPYING—Cont'd

Association of American Medical
Colleges v. Mikaelian,
§ 3:109

College Entrance Examination
Board v. Cuomo, § 3:111

Marcus v. Rowley, § 3:108

National Association of Boards of
Pharmacy v. Board of
Regents of University System
of Georgia, § 3:113

National Rifle Association v.
Handgun Control Federation
of Ohio, § 3:131.10

Newport-Mesa Unified School
District v. California, § 3:112

Purpose and character of use, gen-
erally, §§ 3:104 to 3:113

Wihtol v. Crow, § 3:105

Williams & Wilkins v. United
States, § 3:106

**EISENSCHIML v. FAWCETT
PUBLICATIONS**

Biographies, § 3:31

ELECTRONIC MEDIA

Media neutrality, § 7:7

**ELVIS PRESLEY ENTERPRISES
v. PASSPORT VIDEO**

Biographies, § 3:44

**ENCYCLOPEDIA BRITANNICA
EDUCATIONAL CORP. v.
CROOKS**

Off-air taping, § 3:84

ENTERTAINMENT USES

Campbell v. Acuff-Rose Music,
Inc. and first factor of section
107, § 3:8

ENTIRE WORK

Amount and substantiality of tak-
ing, third factor of section
107, § 5:3

EQUITY

Origins and purpose of fair use,
§ 1:4

Totality of factors, equitable
balancing, § 7:2

ERRONEOUS

FUNCTIONALITY TEST

Potential market for or value of
copyrighted work, § 6:15

**ESTATE OF HEMINGWAY v.
RANDOM HOUSE, INC.**

Biographies, § 3:35

**EUROPEAN COURT OF
JUSTICE**

International law, control of
exceptions, §§ 8:2, 8:4

**EVEREADY BATTERY v.
ADOLPH COORS**

Advertisements, § 3:23

EXAMPLES

Section 107 preamble, list of
illustrative uses, § 2:10

EXEMPT CONDUCT

Third-party claims, § 7:3

EXTENT OF HARM

Potential market for or value of
copyrighted work, §§ 6:11,
6:12

**EXTRACTION OF DATA BY
COPYING**

Purpose and character of use,
§ 3:53

**FACTOR 1 OF FOLSOM v.
MARSH**

Purpose and Character of Use
(this index)

FACTOR 1 OF SECTION 107

Purpose and Character of Use
(this index)

INDEX

FACTOR 2 OF FOLSOM v. MARSH

Third factor of section 107.
Amount and Substantiality of Taking (this index)

FACTOR 2 OF SECTION 107 **Nature of Copyrighted Work** (this index)

FACTOR 3 OF FOLSOM v. MARSH

Fourth factor of section 107.
Potential Market For or Value of Copyrighted Work
(this index)

FACTOR 3 OF SECTION 107 **Amount and Substantiality of Taking** (this index)

FACTOR 4 OF SECTION 107 **Potential Market For or Value of Copyrighted Work** (this index)

FAILURE TO STATE CLAIM Other considerations, § 7:5

FAIR ABRIDGEMENT

Dodsley v. Kinnersley, § 1:9
Lord Hardwicke, § 1:7
Origins and purpose of fair use, § 1:19
Tonson v. Walker, § 1:8

FAIR DEALING PROVISIONS

Australia, § 8:9
Canada
 historical development, § 8:8
 origins and purpose of fair use, § 1:3
 preliminary injunctions and fair use as affirmative defense, § 2:7
India, § 8:10
Ireland, § 8:7
Israel, § 8:11
Jamaica, § 8:12

FAIR DEALING PROVISIONS

—Cont'd

Singapore, § 8:14
South Korea, § 8:13
United Kingdom, § 8:6

FAIREY v. ASSOCIATED PRESS

Political uses, § 3:139

FAIR QUOTATION

Wilkins v. Aikin, § 1:13

FAMOUS ORIGINAL

Purpose and character of use, parody, § 3:95

FAVORABLE IMPACT ON MARKET

Potential market for or value of copyrighted work, § 6:14

FEDERAL RULES OF CIVIL PROCEDURE 8(C)

Common-law analysis, § 2:2

FILE SHARING

Purpose and character of use, § 3:63

FIRMWARE

Statutory provisions, § 1:1

FIRST AMENDMENT

No separate defense, § 1:2.50

FOLSOM v. MARSH

Generally, § 1:20
Amount and substantiality of taking, § 5:2
Degree in which use may prejudice sale, or diminish profits, or supersede objects, of original work: Factor 3, § 1:23
Nature and objects of selections made: Factor 1, § 1:21
Origins and purpose of fair use, generally, § 1:20
Purpose and character of use, § 1:21

FOLSOM v. MARSH—Cont’d

Quantity and value of materials
used: Factor 2, § 1:22

**FORTUITOUS AND
INCIDENTAL
REPRODUCTION**

Purpose and character of use,
§ 3:64

**FOURTH FACTOR OF SECTION
107**

**Potential Market For or Value of
Copyrighted Work** (this
index)

**FOX BROADCASTING CO.,
INC. v. DISH NETWORK
L.L.C.**

Commercial skipping, § 3:88

**FOX NEWS NETWORK v.
TVEYES, INC.**

News clipping services and
rebroadcasts, § 3:81

FRCP RULE 12(b)(6) MOTIONS

Other considerations, § 7:5

FRCP RULE 12(c) MOTIONS

Other considerations, § 7:5

FRCP RULE 12(f) MOTIONS

Other considerations, § 7:5

FRCP RULE 50 MOTIONS

Other considerations, § 7:5

**FREEDOM OF INFORMATION
ACT**

Requests, § 3:69

FUNNY PARODY

Purpose and character of use,
§ 3:97

**GATT TRIPS AGREEMENT OF
1994**

International law, limitations and
exceptions, § 8:2.40

GOOD FAITH

Additional factors, § 7:1

Cary v. Kearsley, § 1:11

Custom, industry practice, § 7:1

GOVERNMENTAL USE

Purpose and character of use,
§ 3:72

GRANT v. TRUMP

Political uses, § 3:140.50

GRAY v. RUSSELL

Amount and substantiality of tak-
ing, § 5:1

GREENBIE v. NOBLE

Biographies, § 3:32

HARM

Potential market for or value of
copying and public benefit,
§ 6:7

HARPER & ROW

Amount and substantiality of tak-
ing, § 5:1

Nature of copyrighted work, § 4:1

Potential market for or value of
copyrighted work

generally, §§ 6:1, 6:5

problems with Sony, § 6:2

treatment of fourth factor, § 6:5

**HARPER & ROW v. AMERICAN
CYANAMID CO.**

Corporate photocopying, § 3:116

**HARPER & ROW v. SQUIBB
CORP.**

Corporate photocopying, § 3:117

**HARPER & ROW v. TYCO
COPY SERVICE**

Corporate photocopying, § 3:115

“HEART OF THE WORK”

Amount and substantiality of tak-
ing, § 5:1

INDEX

HILL v. PUBLIC ADVOCATE OF THE UNITED STATES

Political uses, § 3:140

HISTORICAL USES

Purpose and character of use, § 3:70

HOLDREDGE v. KNIGHT PUBLISHING

Biographies, § 3:33

HOPPER CASES

Generally, § 3:88

HOUSE OF BRYANT PUBLICATIONS, LLC v. A&E TELEVISION NETWORK

Purpose and character of use, § 3:68

HOW MUCH IS TOO MUCH

Bramwell v. Halcomb, § 1:16

HUMOROUS PARODY

Purpose and character of use, § 3:97

HUSTLER MAGAZINE, INC. v. MORAL MAJORITY, INC.

Amount and substantiality of taking, § 5:4

IDENTIFYING POTENTIAL MARKET

Potential market for or value of copyrighted work, § 6:9

ILLUSTRATIVE USES

Section 107 preamble, § 2:10

INCIDENTAL AND FORTUITOUS REPRODUCTION

Purpose and character of use, § 3:64

INCIDENTAL, NONFORTUITOUS USES

Generally, § 3:65

Amsinck v. Columbia Pictures Industries, § 3:67

Bouchat v. Baltimore Ravens Limited Partnership, § 3:68.10

House of Bryant Publications, LLC v. A&E Television Network, § 3:68

Mura v. CBS, § 3:66

Purpose and character of use, generally, §§ 3:65 to 3:68

INDEXING

Abstracting and Indexing (this index)

INDIA

Fair dealing provisions, § 8:10

INDIRECT HARM

Potential market for or value of copying and public benefit, § 6:7

INJUNCTIONS

Statutory recognition of fair use, § 2:7

INTERNATIONAL LAW

Generally, §§ 8:1 to 8:15

Australia, § 8:9

Berne Convention Article 9(2), three-step test, § 8:2

Canada, § 8:8

European Community, § 8:1

European Court of Justice, control of exceptions, §§ 8:2, 8:4

Fair dealing, United Kingdom, § 8:6

Fair use versus fair dealing, § 8:15

GATT TRIPS agreement of 1994, § 8:2.40

India, § 8:10

Ireland, § 8:7

Israel, § 8:11

INTERNATIONAL LAW—Cont'd

Jamaica, § 8:12
Limitations and exceptions
generally, § 8:1
European Court of Justice,
§§ 8:2, 8:4
GATT TRIPS agreement of
1994, § 8:2.40
three-step test, § 8:2
U.S. answers to questions from
EU member states, § 8:15
WIPO copyright treaty of 1996,
§ 8:5
Politicizing provisions, § 8:2
Public interest, generally, § 8:1
Singapore, § 8:14
South Korea, § 8:13
Statute of Anne, §§ 1:2, 1:5, 8:1
Three-step test, generally, § 8:2
Treaties and conventions
Berne Convention Article 9(2),
three-step test, § 8:2
GATT TRIPS agreement of
1994, §§ 8:2.40, 8:4
politicizing provisions, § 8:2
three-step test, generally,
§§ 8:2, 8:2.20
WIPO copyright treaty of 1996,
§ 8:5
United Kingdom, § 8:6
U.S. answers to questions from
EU member states, § 8:15
WIPO copyright treaty of 1996,
§ 8:5

INTERNET DOWNLOADS

Amount and substantiality of tak-
ing, § 5:3

INTERNET SEARCH ENGINES

Purpose and character of use,
§ 3:17

INTERNET USES

Purpose and character of use,
§ 3:54

**IOWA STATE UNIVERSITY
RESEARCH FOUNDATION
v. AMERICAN
BROADCASTING COS.**

Biographies, § 3:38

IRELAND

Fair dealing provisions, § 8:7

ISRAEL

Fair use provisions, § 8:11

JAMAICA

Fair dealing provisions, § 8:12

JUDGE JACOB'S DISSENT

American Geophysical Union v.
Texaco, purpose and
character of use, § 3:131

**JUDGMENT AS A MATTER OF
LAW**

Other considerations, § 7:5

**JUDGMENT ON THE
PLEADINGS**

Other considerations, § 7:5

JURY TRIAL RIGHT

Origins and purpose of fair use,
§ 1:4

KARAOKE

Purpose and character of use,
§ 3:71

**KEEP THOMSON GOVERNOR
COMMITTEE v. CITIZENS
FOR GALLEN
COMMITTEE**

Political uses, § 3:133

LATMAN STUDY

Legislative history, fair use, § 9:1

LAW

Purpose and character of use,
§ 3:10

INDEX

LEGISLATIVE HISTORY OF FAIR USE

Betamax bills, § 9:33
Cosmos Club talks, § 9:16
Early revision bills and hearings
(1964-1967), §§ 9:7 to 9:14
Final revision bills and hearings
(1973-1976), §§ 9:18 to 9:29
Latman study, § 9:1
Library photocopying and fair use,
§§ 9:30, 9:31
National Commission on New
Technological Uses of
Copyrighted Works, § 9:32
Period 1968-1972, §§ 9:15 to 9:17
Post-1976 legislation and propos-
als affecting fair use, §§ 9:32
to 9:37
Preliminary studies and reports
(1958-1963), §§ 9:1 to 9:6
Reports, § App B
Semiconductor computer chips,
design, § 9:34
Unpublished works, § 9:36
Upstairs-Downstairs talks, § 9:20
Varmer study, § 9:2
Video clipping services, § 9:37
Visual Artists' Rights Act of 1990,
§ 9:35

LEGISLATIVE HISTORY OF NONPROFIT EDUCATIONAL PURPOSES

Noncommercial uses, § 3:6

LEGISLATIVE HISTORY OF SECTION 107(1)

Purpose and character of use,
§ 3:3

LEGISLATIVE REPORTS

Generally, § App B et seq.
Sections 108(f)(2) and (4), § App
D
Section 118(f), § App F
Sections 504(c)(2)(i) and (ii),
§ App H

LEGISLATIVE REPORTS

—Cont'd

Unpublished works, § App L
Visual Artists' Rights Act of 1990,
§ App J

LEIBOVITZ v. PARAMOUNT PICTURES

Advertisements, § 3:24

LEWIS v. FULLARTON

Origins and purpose of fair use,
§ 1:18

LIBRARIAN OF CONGRESS

Statutory provisions, § 1:1

LIBRARIES

Digital Millennium Copyright Act,
photocopying, § 7:12
Limitation on exclusive rights,
reproduction, Section 108,
§ 7:8
Photocopying, Section 108, §§ 7:9
to 7:13
legislative history, §§ 9:30, 9:31

LICENSING AND SUBSIDIARY RIGHTS

Potential market for or value of
copyrighted work, §§ 6:9,
6:10

LICENSING MATERIAL USED IN LITIGATION

Purpose and character of use,
§ 3:72

LIKELIHOOD OF SUCCESS ON MERITS

Preliminary injunctions and fair
use as affirmative defense,
§ 2:7

LIMITATIONS AND EXCEPTIONS

International Law (this index)

LISTS

Illustrative methods of reproduction, Section 107 preamble, § 2:10

LITIGATION

Purpose and character of use, § 3:72

LITIGATION INVOLVING USE OF COPYRIGHTED MATERIALS

Purpose and character of use, § 3:72

LORD HARDWICKE

Origins and purpose of fair use, § 1:7

LOS ANGELES NEWS SERVICE v. CBS BROADCASTING

News clipping services and rebroadcasts, § 3:79

LOS ANGELES NEWS SERVICE v. KCAL-TV CHANNEL 9

News clipping services and rebroadcasts, § 3:77

LOS ANGELES NEWS SERVICE v. REUTERS TELEVISION INTERNATIONAL

News clipping services and rebroadcasts, § 3:78

LOS ANGELES NEWS SERVICE v. TULLO

News clipping services and rebroadcasts, § 3:76

MACKLIN v. RICHARDSON

Origins and purpose of fair use, § 1:10

MARCUS v. ROWLEY

Educational and government photocopying, § 3:108

MASTERCARD

INTERNATIONAL INC. v. NADER 2000 PRIMARY COMMITTEE, INC.

Advertisements, § 3:26

Political uses, § 3:138

MATERIALITY

Amount and substantiality of taking, § 5:1

MATERIALS

Quantity and value of materials used, Folsom v. Marsh, § 1:22

MAWMAN v. TEGG

Early English cases, § 1:15

Origins and purpose of fair use, § 1:15

MAXTONE-GRAHAM v. BURTCHAELL

Criticism and comment, § 3:56

MEDIA NEUTRALITY

Generally, § 7:7

MEEROPOL v. NIZER

Biographies, § 3:36

Nature of copyrighted work, § 4:4

MESSANGER DISTINGUISHED FROM MESSAGE

Parody, § 3:96

MGM v. AMERICAN HONDA MOTOR

Advertisements, § 3:25

MISUSE OF COPYRIGHT

Additional factors, § 7:1

MIXED QUESTIONS OF LAW AND FACT

Appellate review, § 7:6

MOTION FOR JUDGMENT ON THE PLEADINGS

Other considerations, § 7:5

INDEX

MURA v. CBS

Incidental, nonfortuitous uses,
§ 3:66

NASH v. CBS

Biographies, § 3:43

NATIONAL ASSOCIATION OF BOARDS OF PHARMACY v. BOARD OF REGENTS OF UNIVERSITY SYSTEM OF GEORGIA

Educational and government
photocopying, § 3:113

NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

Legislative history, fair use, § 9:32

NATIONAL COUNCIL OF TEACHER QUALITY v. MINNESOTA STATE COLLEGE AND UNIVERSITIES

Freedom of Information Act,
requests, § 3:69

NATIONAL RIFLE ASSOCIATION v. HANDGUN CONTROL FEDERATION OF OHIO

Nature of copyrighted work,
§ 3:131.10

NATURE AND OBJECTS OF SELECTIONS MADE

Folsom v. Marsh, § 1:21

NATURE OF COPYRIGHTED WORK

Generally, §§ 4:1 to 4:4

About to be published works,
§ 4:2

American Geophysical Union v.
Texaco, § 3:128

Campbell v. Acuff-Rose Music,
Inc., § 4:1

NATURE OF COPYRIGHTED WORK—Cont'd

Factual works distinguished from
nonfactual works, § 4:1

Harper & Row, § 4:1

Informational works distinguished
from entertainment works,
§ 4:1

Meeropol v. Nizer, § 4:4

National Rifle Association v.
Handgun Control Federation
of Ohio, § 3:131.10

New Era Publications, § 4:2

Out-of-print works, § 4:4

Published works, § 4:3

Purpose and character of use,
American Geophysical Union
v. Texaco, § 3:127

Revised editions, § 4:4

Salinger v. Random House, § 4:2

Sony, § 4:1

Subsequent editions, § 4:4

Unpublished works, § 4:2

Withdrawal from market, § 4:4

Wright v. Warner Books, § 4:2

NEW AND IMPROVED VERSIONS

Lord Hardwicke, § 1:7

NEW ERA PUBLICATIONS INTERNATIONAL APS v. HENRY HOLT & CO.

Biographies, § 3:40

Nature of copyrighted work, § 4:2

NEWPORT-MESA UNIFIED SCHOOL DISTRICT v. CALIFORNIA

Educational and government
photocopying, § 3:112

NEWS CLIPPING SERVICES AND REBROADCASTS

Associated Press v. Meltwater
U.S. Holdings, Inc., § 3:80

**NEWS CLIPPING SERVICES
AND REBROADCASTS**

—Cont'd

- Cable News Network v. Video Monitoring Services of America, § 3:75
- Fox News Network v. TVEyes, Inc., § 3:81
- Los Angeles News Service v. CBS Broadcasting, § 3:79
- Los Angeles News Service v. KCAL-TV Channel 9, § 3:77
- Los Angeles News Service v. Reuters Television International, § 3:78
- Los Angeles News Service v. Tullo, § 3:76
- Pacific & Southern v. Duncan, § 3:74
- Purpose and character of use, generally, §§ 3:74 to 3:82

NEWS REPORTING

- Purpose and character of use, § 3:73

**NEW YORK TIMES v.
ROXBURY DATA
INTERFACE**

- Abstracting and indexing, § 3:15

**NEW YORK TRIBUNE v. OTIS
& CO.**

- Political uses, § 3:135

**NIHON KEIZAI SHIMBUN v.
COMLINE BUSINESS DATA**

- Abstracting and indexing, § 3:16

**NONCOMMERCIAL
BROADCASTS**

- Purpose and character of use, § 3:49

NONCOMMERCIAL USES

- Generally, § 3:5
- Campbell v. Acuff-Rose Music, Inc., § 3:7

NONCOMMERCIAL USES

—Cont'd

- Legislative history of nonprofit educational purposes, § 3:6
- Purpose and character of use, generally, §§ 3:5 to 3:7

NORSE v. HENRY HOLT & CO.

- Biographies, § 3:42

**NRA v. HANDGUN CONTROL
FEDERATION OF OHIO**

- Political uses, § 3:136

OBSCENE FAIR USE PARODIES

- Purpose and character of use, § 3:94

**OBSOLETE COMPUTER
PROGRAMS AND VIDEO
GAMES**

- Statutory provisions, § 1:1

OFF-AIR TAPING

- Bruzzone v. Miller Brewing, § 3:83
- Court of Appeals, Sony Corp of America v. Universal City Studios, § 3:87
- District Court, Sony Corp of America v. Universal City Studios, § 3:86
- Encyclopedia Britannica Educational Corp. v. Crooks, § 3:84
- Purpose and character of use, generally, §§ 3:83 to 3:87
- Sony Corp of America v. Universal City Studios, §§ 3:85 to 3:87
- Supreme Court, Sony Corp of America v. Universal City Studios, § 3:89

ONLINE SALES

- Purpose and character of use, § 3:20

INDEX

OUT-OF-PRINT WORKS

Nature of copyrighted work, § 4:4

PACIFIC & SOUTHERN v. DUNCAN

Appellate review, § 7:6
News clipping services and
rebroadcasts, § 3:74

PARODIES

Generally, §§ 3:10, 3:90
Advertisements, §§ 3:22 to 3:26
Amount and substantiality of tak-
ing, § 3:100
Amount of appropriation, § 3:101
Appropriation, § 3:101
Barbie doll parodies, § 3:99
Calculation of harm from parody,
§ 3:102
Decision making, § 3:92
Defined, § 3:91
Disparaging parody, § 3:97
Famous original, § 3:95
Funny parody, § 3:97
Humorous parody, § 3:97
Messenger distinguished from
message, § 3:96
Obscene fair use parodies, § 3:94
Post- Campbell parody cases,
§ 3:98
Potential market for or value of
copyrighted work, § 3:102
Protection, subject to, § 3:10
Recognition of original, § 3:95
Second factor, §§ 3:100, 3:101
Targeting the original, § 3:93
Vehicle is not message, § 3:96
Vulgar fair use parodies, § 3:94
Well-known original, § 3:95
Who decides, § 3:92

PASHA PUBLICATIONS v. ENMARK GAS CORP.

Corporate photocopying, § 3:124

PENGUIN BOOKS U.S.A. v. NEW CHRISTIAN CHURCH OF FULL ENDEAVOR

Religious uses, § 3:145

PERMISSION

Additional factors, § 7:1

PFIZER

Corporate photocopying, § 3:118

PHOENIX HILL ENTERPRISES v. DICKERSON

Political uses, § 3:137

PHOTOCOPYING

Copy centers, §§ 3:121 to 3:123
Corporate Photocopying (this
index)
**Educational and Government
Photocopying** (this index)
Libraries, Section 108, §§ 7:9 to
7:13
legislative history, §§ 9:30, 9:31
Purpose and character of use, gen-
erally, §§ 3:104 to 3:131

PLEADINGS

Common-law analysis, § 2:2
Other considerations, § 7:4

POLITICAL USES

Generally, § 3:132
Chicago Lawyer v. Forty-Sixth
Ward Regular Democratic
Organization, § 3:134
Citizen's groups, political
purposes, § 3:140.60
Fahey v. Associated Press,
§ 3:139
Grant v. Trump, § 3:140.50
Hill v. Public Advocate of the
United States, § 3:140
Keep Thomson Governor Com-
mittee v. Citizens for Gallen
Committee, § 3:133
MasterCard International Inc. v.
Nader 2000 Primary Com-

POLITICAL USES—Cont’d

- mittee, Inc., § 3:138
- New York Tribune v. Otis & Co., § 3:135
- NRA v. Handgun Control Federation of Ohio, § 3:136
- Phoenix Hill Enterprises v. Dickerson, § 3:137
- Purpose and character of use, generally, §§ 3:132 to 3:140
- Three-step test, §§ 8:2, 8:2.20
- Treaty provisions, § 8:2

POTENTIAL MARKET FOR OR VALUE OF COPYING AND PUBLIC BENEFIT

- Ancillary markets, § 6:7
- Criticism, § 6:7
- Harm, § 6:7
- Indirect harm, § 6:7
- Related markets, § 6:7
- Speculative harm, § 6:7
- Type of harm, § 6:7

POTENTIAL MARKET FOR OR VALUE OF COPYRIGHTED WORK

- Generally, §§ 6:1 to 6:16, 6:14.50
- American Geophysical Union v. Texaco, Inc., §§ 3:130, 6:5, 6:9
- Amount of harm, § 6:11
- Campbell v. Acuff-Rose Music, Inc., §§ 6:2, 6:4 to 6:6, 6:14
- Circularity argument against licensing as market harm, § 6:10
- Commercial and noncommercial uses, § 6:4
- Degree in which use may prejudice sale of objects of original work, § 1:23
- Erroneous functionality test, § 6:15
- Extent of harm, § 6:11
- Fair use, § 6:13

POTENTIAL MARKET FOR OR VALUE OF COPYRIGHTED WORK—Cont’d

- Favorable impact on market, § 6:14
- Folsom v. Marsh, § 1:23
- Fourth factor of section 107, generally, §§ 6:1 to 6:16
- Harm
 - fair use, § 6:13
 - type to be weighed, § 6:8
 - widespread, small uses, § 6:12
- Harper & Row
 - generally, §§ 6:1, 6:5
 - problems with Sony, § 6:2
 - treatment of fourth factor, § 6:5
- Identifying potential market, § 6:9
- Licensing and subsidiary rights, §§ 6:9, 6:10
- Purpose and character of use, §§ 3:102, 3:130
- Small uses, § 6:12
- Sony
 - generally, § 6:1
 - affirmative defense, § 6:3
 - presumption, §§ 6:4, 6:6
 - problems with decision, §§ 6:2 to 6:4
 - relevant potential market, § 6:9
- Transformative use, § 6:4
- Usurp of market, § 6:8
- Widespread harm, § 6:12

PREAMBLE TO SECTION 107

- Generally, § 2:9
- List of illustrative uses, § 2:10

PRELIMINARY INJUNCTIONS

- Statutory recognition of fair use, § 2:7

PRESUMPTIVE ENTITLEMENT

- Section 107 preamble, § 2:10

PRIMA FACIE CASE

- Statutory provisions, §§ 2:1 to 2:7

INDEX

PRINCETON UNIVERSITY PRESS v. MICHIGAN DOCUMENT SERVICES, INC.

Photocopying by copy centers,
§ 3:122

PRIVACY

Additional factors, § 7:1

PRODUCTIVE USE

Origins and purpose of fair use,
§ 1:21

PROFITS

Degree in which use may diminish
profits of original work, Fac-
tor 3 of Folsom v. Marsh,
§ 1:23

PROGRESS OF SCIENCE

Origins and purpose of fair use,
§§ 1:2, 1:3

PUBLICATION AND PUBLISHED WORKS

Nature of copyrighted work,
§§ 4:2, 4:3

Unpublished Works (this index)

PURPOSE AND CHARACTER OF USE

Generally, §§ 3:1 to 3:147

Abstracting and Indexing (this
index)

Addison-Wesley Publishing v.
New York University ,
educational and government
photocopying, § 3:107

Advertisements (this index)

Aircraft Technical Publishers v.
Cessna Aircraft Corp. ,
corporate photocopying,
§ 3:119

**American Geophysical Union v.
Texaco, Inc.** (this index)

Amount and substantiality of tak-
ing, American Geophysical
Union v. Texaco, § 3:129

PURPOSE AND CHARACTER OF USE—Cont'd

Amount of appropriation in
parody, § 3:101

Amsinck v. Columbia Pictures
Industries , incidental,
nonfortuitous uses, § 3:66

Appropriation art, § 3:103

Appropriation, parody, § 3:101

Architectural plans, § 3:28

Arica Institute v. Palmer , criti-
cism and comment, § 3:58

Associated Press v. Meltwater
U.S. Holdings, Inc. , news
clipping services and
rebroadcasts, § 3:80

Association of American Medical
Colleges v. Cuomo ,
educational and government
photocopying, § 3:110

Association of American Medical
Colleges v. Mikaelian ,
educational and government
photocopying, § 3:109

Baraban v. Time Warner , criticism
and comment, § 3:57

Barbie doll parodies, § 3:99

Basic Books v. Gnomon Corp. ,
corporate photocopying,
§ 3:114

Basic Books v. Kinko's Graphics
Corp , photocopying by copy
centers, § 3:121

Biographies (this index)

Blackwell Publishing, Inc. v.
Excel Research Group LLC,
copying by copy centers,
§ 3:123

Blind persons, § 3:46

**Broadcasting and Other Forms
of Exhibition** (this index)

Bruzzone v. Miller Brewing , off-
air taping, § 3:83

Cable News Network v. Video
Monitoring Services of
America , news clipping ser-

**PURPOSE AND CHARACTER
OF USE—Cont'd**

vices and rebroadcasts,
§ 3:75
Calculation of harm from parody,
§ 3:102
Calligraphers, § 3:50
Campbell v. Acuff-Rose Music,
Inc.
noncommercial uses, § 3:7
post- Campbell parody cases,
§ 3:98
Castle Rock Entertainment v.
Carol Publishing Group ,
criticism and comment,
§ 3:60
Chicago Board of Education v.
Substance, Inc. , criticism
and comment, § 3:62
Chicago Lawyer v. Forty-Sixth
Ward Regular Democratic
Organization , political uses,
§ 3:134
Class actions, § 3:60.50
College Entrance Examination
Board v. Cuomo , educational
and government photocopy-
ing, § 3:111
Comments. **Criticism and Com-
ment** (this index)
Commercial and non-commercial
mixed character uses,
§ 3:4.50
Commercial broadcasts, § 3:48
Commercial Uses (this index)
Comparative advertising, § 3:21
Completion of structure, § 3:28
Computers (this index)
Copy center photocopying,
§§ 3:121 to 3:123
Corporate Photocopying (this
index)
Criticism and Comment (this
index)
Decision making regarding
parody, § 3:92

**PURPOSE AND CHARACTER
OF USE—Cont'd**

Disabled persons, § 3:46
Discovery, § 3:72
Disparaging parody, § 3:97
Documentaries, § 3:62.50
Economics, § 3:10
**Educational and Government
Photocopying** (this index)
Eisenschiml v. Fawcett Publica-
tions , biographies, § 3:31
Elvis Presley Enterprises v.
Passport Video , biographies,
§ 3:44
Encyclopedia Britannica
Educational Corp. v. Crooks ,
off-air taping, § 3:84
Entertainment uses, § 3:8
Estate of Hemingway v. Random
House, Inc. , biographies,
§ 3:35
Eveready Battery v. Adolph Coors
, advertisements, § 3:23
Exhibitions. **Broadcasting and
Other Forms of Exhibition**
(this index)
Extraction of data by copying,
§ 3:53
Fairey v. Associated Press , politi-
cal uses, § 3:139
Famous original, parody, § 3:95
File sharing, § 3:63
First factor and law and econom-
ics, § 3:11
First factor of section 107, gener-
ally, § 3:10
Folsom v. Marsh, § 1:21
Fortuitous and incidental
reproduction, § 3:64
Fox News Network v. TVEyes,
Inc. , news clipping services
and rebroadcasts, § 3:81
Funny parody, § 3:97
Governmental use, § 3:72

INDEX

PURPOSE AND CHARACTER OF USE—Cont'd

Greenbie v. Noble , biographies,
§ 3:32

Harper & Row v. American
Cyanamid Co. , corporate
photocopying, § 3:116

Harper & Row v. Squibb Corp. ,
corporate photocopying,
§ 3:117

Harper & Row v. Tyco Copy Ser-
vice , corporate photocopy-
ing, § 3:115

Hill v. Public Advocate of the
United States , political uses,
§ 3:140

Historical uses, § 3:70

Holdredge v. Knight Publishing ,
biographies, § 3:33

Homages, § 3:70.30

House of Bryant Publications,
LLC v. A&E Television
Network, § 3:68

Humorous parody, § 3:97

Incidental and fortuitous reproduc-
tion, § 3:64

Incidental, Nonfortuitous Uses
(this index)

Indexing. **Abstracting and Index-
ing** (this index)

Insurance claims, § 3:70.50

Internet search engines, § 3:17

Internet uses, § 3:54

Iowa State University Research
Foundation v. American
Broadcasting Cos. , biogra-
phies, § 3:38

Judge Jacob's dissent, American
Geophysical Union v.
Texaco, § 3:131

Karaoke, § 3:71

Keep Thomson Governor Com-
mittee v. Citizens for Gallen
Committee , political uses,
§ 3:133

Law, § 3:10

PURPOSE AND CHARACTER OF USE—Cont'd

Legislative history
nonprofit educational purposes,
§ 3:6
section 107(1), § 3:3

Leibovitz v. Paramount Pictures ,
advertisements, § 3:24

Libraries and archives, § 3:72.30

Licensing material used in litiga-
tion, § 3:72

Litigation involving use of
copyrighted materials, § 3:72

Los Angeles News Service cases,
news clipping services and
rebroadcasts
KCAL-TV Channel 9, § 3:77

Reuters Television
International, § 3:78

Tullo, § 3:76

Marcus v. Rowley , educational
and government photocopy-
ing, § 3:108

MasterCard International Inc. v.
Nader 2000 Primary Com-
mittee, Inc. , political uses,
§ 3:138

MasterCard International v. Nader
2000 Primary Committee ,
advertisements, § 3:26

Maxtone-Graham v. Burtchaell ,
criticism and comment,
§ 3:56

Meeropol v. Nizer , biographies,
§ 3:36

Messenger distinguished from
message, § 3:96

MGM v. American Honda Motor ,
advertisements, § 3:25

Mura v. CBS , incidental,
nonfortuitous uses, § 3:66

Nash v. CBS , biographies, § 3:43

National Association of Boards of
Pharmacy v. Board of
Regents of University System
of Georgia , educational and

**PURPOSE AND CHARACTER
OF USE—Cont'd**

- government photocopying,
§ 3:113
- Nature and objects of selections
made, *Folsom v. Marsh*,
§ 1:21
- Nature of copyrighted work
American Geophysical Union v.
Texaco, § 3:127
- New Era Publications
International ApS v. Henry
Holt & Co., biographies,
§ 3:40
- Newport-Mesa Unified School
District v. California,
educational and government
photocopying, § 3:112
- News Clipping Services and**
Rebroadcasts (this index)
- News reporting, § 3:73
- New York Times v. Roxbury Data
Interface, abstracting and
indexing, § 3:15
- New York Tribune v. Otis & Co.,
political uses, § 3:135
- Nihon Keizai Shimbun v. Comline*
Business Data, abstracting
and indexing, § 3:16
- Noncommercial broadcasts, § 3:49
- Noncommercial Uses** (this index)
- No need for a transformative use,
no need to change the origi-
nal when the use is
transformative, § 3:9.50
- Nonfortuitous use. **Incidental,**
Nonfortuitous Uses (this
index)
- Norse v. Henry Holt & Co.*, biog-
raphies, § 3:42
- NRA v. Handgun Control Federa-*
tion of Ohio, political uses,
§ 3:136
- Obscene fair use parodies, § 3:94
- Off-Air Taping** (this index)
- Online sales, § 3:20

**PURPOSE AND CHARACTER
OF USE—Cont'd**

- Pacific & Southern v. Duncan*,
news clipping services and
rebroadcasts, § 3:74
- Parodies** (this index)
- Pasha Publications v. Enmark Gas*
Corp., corporate photocopy-
ing, § 3:124
- Penguin Books U.S.A. v. New*
Christian Church of Full
Endeavor, religious uses,
§ 3:145
- Pfizer*, corporate photocopying,
§ 3:118
- Phoenix Hill Enterprises v.*
Dickerson, political uses,
§ 3:137
- Photocopying
 - Blackwell Publishing, Inc. v.*
Excel Research Group,
LLC, § 3:123
 - copy center photocopying,
§§ 3:121 to 3:123
 - corporate photocopying,
§§ 3:114 to 3:120, 3:124
to 3:131
 - educational and government
photocopying, §§ 3:104 to
3:113
- Political Uses** (this index)
- Post- Campbell parody cases,
§ 3:98
- Potential market for or value of
copyrighted work
American Geophysical Union v.
Texaco, § 3:130
- parody, § 3:102
- Princeton University Press v.*
Michigan Document Ser-
vices, Inc., photocopying by
copy centers, § 3:122
- Rebroadcasts. **News Clipping**
Services and Rebroadcasts
(this index)

INDEX

PURPOSE AND CHARACTER OF USE—Cont'd

- Recognition of original, parody,
§ 3:95
- Red Label Music Publishing. v.
Chila Productions, § 3:45.50
- Religious Uses** (this index)
- Reverse engineering, § 3:52
- Robert Stigwood Group v.
O'Reilly , religious uses,
§ 3:143
- Rokeach v. Avco Embassy
Pictures , biographies, § 3:37
- Rosemont Enterprises v. Random
House , biographies, § 3:34
- Sales
 - online, § 3:20
 - related advertisements, § 3:19
- Salinger v. Random House, Inc. ,
biographies, § 3:39
- Schuchart & Associates v. Solo
Serve Corp. , corporate
photocopying, § 3:120
- Social media uses, § 3:147
- Society of the Holy Transfigura-
tion Monastery v. Archbishop
Gregory of Denver, Colorado
, religious uses, § 3:146
- Sony BMG Music Entertainment
v. Tenenbaum, § 3:63
- Sony Corp of America v. Univer-
sal City Studios , off-air tap-
ing
 - generally, §§ 3:85 to 3:87
 - Court of Appeals, § 3:87
 - District Court, § 3:86
 - Supreme Court, § 3:89
- Specific types of uses, §§ 3:12 to
3:141
- Supreme Court, Sony Corp of
America v. Universal City
Studios
 - Off-air taping, § 3:89
- Swatch Group Management Ser-
vices, Ltd. v. Bloomberg, LP.,
§ 3:82

PURPOSE AND CHARACTER OF USE—Cont'd

- Targeting the original, parody,
§ 3:93
- Television Digest v. United States
Telephone Association ,
corporate photocopying,
§ 3:125
- Tin Pan Apple v. Miller Brewing ,
advertisements, § 3:23
- Toksvig v. Bruce Publishing ,
biographies, § 3:30
- Transformative use, §§ 3:1, 3:9
- Translations, § 3:148
- Twin Peaks Productions v.
Publications International ,
criticism and comment,
§ 3:59
- Ty, Inc. v. Publications
International , criticism and
comment, § 3:61
- Vehicle is not message in parody,
§ 3:96
- Visually impaired persons, § 3:46
- Vulgar fair use parodies, § 3:94
- Wainwright Securities v. Wall
Street Transcript Corp. ,
abstracting and indexing,
§ 3:14
- Warren Publishing Co. v.
Spurlock, § 3:45
- Well-known original, parody,
§ 3:95
- Who decides if something is
parody, § 3:92
- Wihtol v. Crow
 - educational and government
photocopying, § 3:105
 - religious uses, §§ 3:142, 3:145
- Williams & Wilkins v. United
States , educational and
government photocopying,
§ 3:106
- Worldwide Church of God v. Phil-
adelphia Church of God ,
religious uses, § 3:144

**PURPOSE AND CHARACTER
OF USE—Cont'd**

Wright v. Warner Books, biographies, § 3:41

PURPOSE OF FAIR USE

Generally, §§ 1:2, 1:3

Bell v. Whitehead, § 1:17

Bramwell v. Halcomb, § 1:16

Burnet v. Chetwood, § 1:6

Cary v. Kearsley, § 1:11

Dodsley v. Kinnersley, § 1:9

Early English cases, generally,
§ 1:5

Fair abridgment and fair use,
§ 1:19

Folsom v. Marsh

generally, § 1:20

degree in which use may prejudice sale, or diminish profits, or supersede objects, of original work:
Factor 3, § 1:23

nature and objects of selections made: Factor 1, § 1:21

quantity and value of materials used: Factor 2, § 1:22

Lewis v. Fullarton, § 1:18

Lord Hardwicke, § 1:7

Macklin v. Richardson, § 1:10

Mawman v. Tegg, § 1:15

Roworth v. Wilkes, § 1:12

Tonson v. Walker, § 1:8

Whittingham v. Wooler, § 1:14

Wilkins v. Aikin, § 1:13

QUANTITY

**Amount and Substantiality of
Taking** (this index)

Harm, potential market for or value of copyrighted work,
§ 6:11

Materials used, Folsom v. Marsh,
§ 1:22

RECOGNITION OF ORIGINAL

Parody, § 3:95

RED LABEL MUSIC

**PUBLISHING. V. CHILA
PRODUCTIONS**

Purpose and character of use,
§ 3:45.50

REGISTER OF COPYRIGHTS

Reports, libraries, photocopying,
§§ 7:10, 7:11

legislative history, § 9:31

RELATED MARKETS

Potential market for or value of copying and public benefit,
§ 6:7

RELIGIOUS USES

Generally, § 3:141

Penguin Books U.S.A. v. New
Christian Church of Full
Endeavor, § 3:145

Purpose and character of use, generally, §§ 3:141 to 3:146

In re DMCA subpoena, YouTube,
Google, § 3:146.10

Robert Stigwood Group v.
O'Reilly, § 3:143

Society of the Holy Transfiguration Monastery v. Archbishop
Gregory of Denver, Colorado, § 3:146

Wihtol v. Crow, §§ 3:142, 3:145

Worldwide Church of God v. Philadelphia Church of God,
§ 3:144

REPORTS

Legislative Reports (this index)

Register of copyrights, libraries,
photocopying, §§ 7:10, 7:11

REVERSE ENGINEERING

Purpose and character of use,
§ 3:52

REVIEW BY COURT

Applying proper standard, § 7:6

INDEX

REVISED EDITIONS

Nature of copyrighted work, § 4:4

ROBERT STIGWOOD GROUP v. O'REILLY

Religious uses, § 3:143

ROKEACH v. AVCO EMBASSY PICTURES

Biographies, § 3:37

ROSEMONT ENTERPRISES v. RANDOM HOUSE

Biographies, § 3:34

ROWORTH v. WILKES

Origins and purpose of fair use, § 1:12

RULE OF FAIR USE

Generally, § 1:2

SALES

Online sales, purpose and character of use, § 3:20

Potential Market For or Value of Copyrighted Work (this index)

Purpose and Character of Use (this index)

SALINGER v. RANDOM HOUSE, INC.

Biographies, § 3:39

Nature of copyrighted work, § 4:2

SCHUCHART & ASSOCIATES v. SOLO SERVE CORP.

Corporate photocopying, § 3:120

SECOND FACTOR OF SECTION 107

Nature of Copyrighted Work (this index)

SECTION 107

Amount and Substantiality of Taking (this index)

SECTION 107—Cont'd

First factor. **Purpose and Character of Use** (this index)

Fourth factor. **Potential Market For or Value of Copyrighted Work** (this index)

Libraries, photocopying, relationship between Sections 107 and 108, § 7:9

legislative history, § 9:30

Nature of Copyrighted Work (this index)

Potential Market For or Value of Copyrighted Work (this index)

Preamble

generally, § 2:9

list of illustrative uses, § 2:10

presumptive entitlement, § 2:10

Purpose and Character of Use (this index)

Second factor. **Nature of Copyrighted Work** (this index)

Statutory evolution, § App A

Third factor. **Amount and Substantiality of Taking** (this index)

Weighting factors, § 2:6

SECTION 108

Case law, photocopying, libraries, § 7:13

Limitation on exclusive rights, reproduction, libraries and archives, § 7:8

Photocopying, libraries, §§ 7:9 to 7:13

legislative history, §§ 9:30, 9:31

SELECTIONS MADE

Nature and objects of selections made, Factor 1 of Folsom v. Marsh, § 1:21

SELECTIONS MADE—Cont’d
Purpose and Character of Use
 (this index)

SEMICONDUCTOR
COMPUTER CHIPS
 Design, legislative history, fair
 use, § **9:34**

SINGAPORE
 Fair use provisions, § **8:14**

SMALL USES
 Potential market for or value of
 copyrighted work, § **6:12**
 Statutory recognition of fair use,
 § **2:8**

SOCIETY OF THE HOLY
TRANSFIGURATION
MONASTERY v.
ARCHBISHOP GREGORY
OF DENVER, COLORADO
 Religious uses, § **3:146**

SONY BMG MUSIC
ENTERTAINMENT v.
TENENBAUM
 File sharing, § **3:63**

SONY CORP OF AMERICA v.
UNIVERSAL CITY
STUDIOS
 Affirmative defense, § **6:3**
 Amount and substantiality of tak-
 ing, § **5:3**
 Nature of copyrighted work, § **4:1**
 Off-air taping
 generally, §§ **3:85 to 3:87**
 Court of Appeals, § **3:87**
 District Court, § **3:86**
 Supreme Court, § **3:89**
 Potential market for or value of
 copyrighted work
 generally, § **6:1**
 affirmative defense, § **6:3**
 presumption, §§ **6:4, 6:6**

SONY CORP OF AMERICA v.
UNIVERSAL CITY
STUDIOS—Cont’d
 Potential market for or value of
 copyrighted work—Cont’d
 problems with decision, §§ **6:2**
 to 6:4
 relevant potential market, § **6:9**
 Presumption, §§ **6:4, 6:6**
 Problems with decision, §§ **6:2 to**
 6:4
 Purpose and character of use,
 §§ **3:85 to 3:87**

SOUTH KOREA
 Fair use provisions, § **8:13**

SPECIFIC TYPES OF USES
Purpose and Character of Use
 (this index)

SPECULATIVE HARM
 Potential market for or value of
 copying and public benefit,
 § **6:7**
 Potential market for or value of
 copyrighted work, § **6:9**

STANDARD OF REVIEW
 Applying proper standard, § **7:6**

STATUTE OF ANNE
 International law, § **8:1**
 Origins and purpose of fair use,
 §§ **1:2, 1:5**

STATUTORY EVOLUTION
 Section 107, § **App A**
 Sections 108(f)(2) and (4), § **App**
 C
 Section 118(f), § **App E**
 Sections 504(c)(2)(i) and (ii),
 § **App G**

STATUTORY PROVISIONS
 Generally, §§ **1:1, App A et seq.**
 Affirmative defense, generally,
 §§ **2:4, 2:5**

INDEX

STATUTORY PROVISIONS

—Cont'd

- Campbell v. Acuff-Rose Music, Inc., § 2:1
- Codification distinguished from statutory recognition, § 2:1
- Common-law
 - actions and proceedings, § 2:3
 - analysis, § 2:2
- De minimis uses, § 2:8
- Jury trial right, § 1:4
- Origins and purpose of fair use, § 1:4
- Parody defense, §§ 2:7, 2:8, 2:10
- Preliminary injunctions, § 2:7
- Recognition of fair use
 - affirmative defense, § 2:7
 - affirmative defense, generally, § 2:5
 - codification distinguished from statutory recognition, § 2:1
 - common-law analysis, § 2:2
 - de minimis uses, § 2:8
 - preliminary injunctions, § 2:7
- Section 107 preamble
 - generally, § 2:9
 - illustrative uses only listed, § 2:10
 - presumptive entitlement, § 2:10
- Statute of Anne, §§ 1:2, 1:5, 8:1
- Weighting factors, § 2:6

SUBSEQUENT EDITIONS

- Nature of copyrighted work, § 4:4

SUMMARY JUDGMENT

MOTIONS

- Other considerations, § 7:5

SUPERSEDED OBJECTS

- Degree in which use may prejudice sale, or diminish profits, or supersede objects, of original work, Folsom v. Marsh, § 1:23

SWATCH GROUP

MANAGEMENT SERVICES, LTD. v. BLOOMBERG, LP.

- Purpose and character of use, § 3:82

TARGETING THE ORIGINAL

- Parody, § 3:93

TELEVISION DIGEST v.

UNITED STATES

TELEPHONE

ASSOCIATION

- Corporate photocopying, § 3:125

TEXT MINING

- Computers, § 3:53

THIRD FACTOR OF SECTION 107

- Amount and Substantiality of Taking (this index)

THIRD PARTIES

- Third-party claims, § 7:3

THREE-STEP TEST

- International Law (this index)

TIME-SHIFTING

- Amount and substantiality of taking, § 5:3

TIME-SKIPPING

- Fox Broadcasting Co., Inc. v. Dish Network L.L.C., § 3:88

TIN PAN APPLE v. MILLER BREWING

- Advertisements, § 3:23

TOKSVIG v. BRUCE PUBLISHING

- Biographies, § 3:30

TONSON v. WALKER

- Origins and purpose of fair use, § 1:8

TOTALITY OF FACTORS

Amount and substantiality of taking, § 5:2

TRANSFORMATIVE USE

Amount and substantiality of taking, § 5:2

Label, § 3:9

No need for a transformative use, no need to change the original when the use is transformative, § 3:9.50

Origins and purpose of fair use, § 1:21

Potential market for or value of copyrighted work, § 6:4

Purpose and character of use, § 3:1

TREATIES AND CONVENTIONS

International Law (this index)

TWIN PEAKS PRODUCTIONS v. PUBLICATIONS INTERNATIONAL

Criticism and comment, § 3:59

TY, INC. v. PUBLICATIONS INTERNATIONAL

Criticism and comment, § 3:61

TYPE OF HARM

Potential market for or value of copying and public benefit, § 6:7

UNITED KINGDOM

Early English Cases (this index)

Fair dealing provisions, § 8:6

Statute of Anne, §§ 1:2, 1:5, 8:1

UNPUBLISHED WORKS

Fair use, generally, § App K

Legislative history, fair use, § 9:36

Legislative reports, § App L

Nature of copyrighted work, § 4:2

UPSTAIRS-DOWNSTAIRS

TALKS

Legislative history, fair use, § 9:20

U.S. CONSTITUTION ART 1, SEC 8, CL 8

Purpose of fair use, § 1:2

VALUE AND VALUATION

Materials used, *Folsom v. Marsh*, § 1:22

Potential Market For or Value of Copyrighted Work (this index)

VARMER STUDY

Legislative history, fair use, § 9:2

VIDEO CLIPPING SERVICES

Legislative history, fair use, § 9:37

VIDEO GAMES

Statutory provisions, § 1:1

VIEWING AT LATER TIME

Amount and substantiality of taking, § 5:3

VISUAL ARTISTS' RIGHTS ACT OF 1990

Generally, § App I

Legislative history, fair use, § 9:35

Legislative reports, § App J

VISUALLY IMPAIRED PERSONS

Purpose and character of use, § 3:46

VULGAR FAIR USE PARODIES

Purpose and character of use, § 3:94

WAINWRIGHT SECURITIES v. WALL STREET TRANSCRIPT CORP.

Abstracting and indexing, § 3:14

INDEX

WARREN PUBLISHING CO. v. SPURLOCK

Biographies, § 3:45

WEIGHING HARM

Potential market for or value of copying and public benefit, § 6:7

Potential market for or value of copyrighted work, § 6:8

WELL-KNOWN ORIGINAL

Parody, § 3:95

WHITTINGHAM v. WOOLER

Origins and purpose of fair use, § 1:14

WIDESPREAD HARM

Potential market for or value of copyrighted work, § 6:12

WIHTOL v. CROW

Educational and government photocopying, § 3:105

Religious uses, §§ 3:142, 3:145

WILKINS v. AIKIN

Origins and purpose of fair use, § 1:13

WILLIAMS & WILKINS

Amount and substantiality of taking, § 5:3

WILLIAMS & WILKINS

—Cont'd

Educational and government photocopying, § 3:106

WIPO COPYRIGHT TREATY OF 1996

International law, limitations and exceptions, § 8:5

WITHDRAWAL FROM MARKET

Nature of copyrighted work, § 4:4

WORDS AND PHRASES

Amount and substantiality of taking, defining the “work,” § 5:4

“WORK”

Amount and substantiality of taking, defining the “work,” § 5:4

WORLDWIDE CHURCH OF GOD v. PHILADELPHIA CHURCH OF GOD

Religious uses, § 3:144

WRIGHT v. WARNER BOOKS

Biographies, § 3:41

Nature of copyrighted work, § 4:2

WRONGFUL DENIAL

Additional factors, § 7:1