

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, generally, §§ 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, generally, §§ 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 portion used, § 3:129

Corporate photocopying, generally, §§ 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
- Artificial Intelligence Large
Language Models (AI
LLMs), § 5:3.10
- 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

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

- Sony, § 5:3
- Third factor of section 107, gener-
ally, §§ 5:1 to 5:4
- 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

**ANDERSON v. STABILITY AI,
MIDJOURNEY, AND
DEVIANT ART**

- Computers
 - copying to extract data, text &
data mining, § 3:53.50

**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

INDEX

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

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

ARTIFICIAL INTELLIGENCE

LARGE LANGUAGE MODELS (AI LLMS)

Generally, § 5:3.10

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

BARTZ v. ANTHROPIC

Computers

copying to extract data, text & data mining, § 3:53.30

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 prejudice sale of original work,

BIAS OR PREJUDICE—Cont'd
 Factor 3 of *Folsom v. Marsh*,
 § 1:23

BIOGRAPHIES

Generally, § 3:29
Eisenschiml v. Fawcett Publications, § 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
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, generally, §§ 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 taking, § 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
 Purpose and character of use, generally, §§ 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 taking, § 5:2

INDEX

- CAMPBELL v. ACUFF-ROSE MUSIC, INC.—Cont’d**
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
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
- 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)
treatment by courts, § 3:3
Purpose and character of use, generally, § 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 taking, § 5:3

Copying to extract data, § 3:53

Copying to extract data, text & data mining

Anderson v. Stability AI, Midjourney, and Deviant Art, § 3:53.50

Bartz v. Anthropic, § 3:53.30

Kadrey v. Meta Platforms, Inc., §§ 3:53.10, 3:53.20

In re OpenAI, Inc. copyright litigation, § 3:53.40

Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence, § 3:53.10

Data mining, § 3:53

Extraction of data by copying, § 3:53

Internet downloads, § 5:3

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 Ser-

COPY CENTER

PHOTOCOPYING—Cont'd

vices, 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

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

INDEX

CRITICISM AND COMMENT

—Cont'd

- 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
- NXIVM Corp. v. Ross Institute, § 3:60.20
- 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
- United Kingdom, fair dealing, § 8:6
- Whittingham v. Wooler, § 1:14

DATA MINING

- Computers, § 3:53

DECLARATORY JUDGMENTS

- Generally, § 2:5.10

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 taking, § 5:3

EARLY ENGLISH CASES

- Generally, § 1:5
- Amount and substantiality of taking, § 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

EARLY ENGLISH CASES

—**Cont'd**

- 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**
- 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, generally, §§ **3:104 to 3:113**

EDUCATIONAL AND GOVERNMENT PHOTOCOPYING—Cont'd

- 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 taking, 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**

INDEX

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)

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

FACTOR 3 OF FOLSOM v. MARSH—Cont'd

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

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 tak-
ing, § 5:2

Degree in which use may preju-
dice sale, or diminish profits,
or supersede objects, of origi-
nal 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

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

INDEX

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 taking, § 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 taking, § 5:1

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

Splunk Inc. v. Cribl, Inc., § 3:68.20

**INCIDENTAL,
NONFORTUITOUS USES
—Cont'd**

The Townsquare Media Cases,
§ 3:68.30

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

IN RE OPENAI, INC.

COPYRIGHT LITIGATION

Computers
copying to extract data, text &
data mining, § 3:53.40

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

Jamaica, § 8:12

Limitations and exceptions
generally, § 8:1

INTERNATIONAL LAW—Cont'd

Limitations and exceptions
—Cont'd

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

INDEX

**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

**KADREY v. META
PLATFORMS, INC.**

Computers
copying to extract data, text &
data mining, § 3:53.20

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

**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 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

Unpublished works, § App L

LEGISLATIVE REPORTS

—**Cont'd**

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 reproduc-
tion, 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**

INDEX

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

MESSENGER 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

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

Factual works distinguished from nonfactual works, § 4:1

Harper & Row, § 4:1

Informational works distinguished from entertainment works, § 4:1

**NATURE OF COPYRIGHTED
WORK—Cont'd**

- Meeropol v. Nizer, § 4:4
- National Rifle Association v.
Handgun Control Federation
of Ohio, § 3:131.10
- New Era Publications, § 4:2
- Orphan works, § 4:5
- 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
- Cable News Network v. Video
Monitoring Services of
America, § 3:75
- Fox News Network v. TVEyes,
Inc., § 3:81

**NEWS CLIPPING SERVICES
AND REBROADCASTS**

—Cont'd

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

INDEX

NORSE v. HENRY HOLT & CO.

Biographies, § 3:42

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

Political uses, § 3:136

**NXIVM CORP. v. ROSS
INSTITUTE**

Criticism and comment, § 3:60.20

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, gen-
erally, §§ 3:83 to 3:87

Sony Corp of America v. Univer-
sal 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

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, generally, §§ 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

Fairey v. Associated Press, § 3:139

Grant v. Trump, § 3:140.50

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

Keep Thomson Governor Committee v. Citizens for Gallen Committee, § 3:133

MasterCard International Inc. v. Nader 2000 Primary Committee, Inc., § 3:138

New York Tribune v. Otis & Co., § 3:135

NRA v. Handgun Control Federation of Ohio, § 3:136

POLITICAL USES—Cont'd

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

Favorable impact on market, § 6:14

Folsom v. Marsh, § 1:23

Fourth factor of section 107, generally, §§ 6:1 to 6:16

INDEX

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

- 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

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
- Amount of appropriation in
parody, § 3:101
- Amsinck v. Columbia Pictures
Industries , incidental,
nonfortuitous uses, § 3:66
- Appropriation art, § 3:103

PURPOSE AND CHARACTER OF USE—Cont'd

Appropriation, parody, § **3:101**
 Architectural plans, § **3:28**
 Arica Institute v. Palmer , criticism 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 services and rebroadcasts, § **3:75**
 Calculation of harm from parody, § **3:102**
 Calligraphers, § **3:50**

PURPOSE AND CHARACTER OF USE—Cont'd

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**
 Catalogue raisonne and other museum uses, § **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**
 Class actions, § **3:60.50**
 College Entrance Examination Board v. Cuomo , educational and government photocopying, § **3:111**
 Comments. Criticism and Comment (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, § **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**
 Disabled persons, § **3:46**
 Discovery, § **3:72**

INDEX

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

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
Greenbie v. Noble , biographies,
§ 3:32
Harper & Row v. American
Cyanamid Co. , corporate

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

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
Legislative history
nonprofit educational purposes,
§ 3:6

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

- Leibovitz v. Paramount Pictures ,
advertisements, § 3:24
- Libraries and archives, § 3:72.30
- Licensing material used in litigation,
§ 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 photocopying,
§ 3:108
- MasterCard International Inc. v.
Nader 2000 Primary Committee, 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
government photocopying,
§ 3:113
- Nature and objects of selections
made, Folsom v. Marsh,
§ 1:21

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

- 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 original
when the use is
transformative, § 3:9.50
- Nonfortuitous use. Incidental,
Nonfortuitous Uses (this
index)
- Norse v. Henry Holt & Co. , biographies,
§ 3:42
- NRA v. Handgun Control Federation
of Ohio , political uses,
§ 3:136
- Obscene fair use parodies, § 3:94
- Off-Air Taping (this index)
- Online sales, § 3:20
- Pacific & Southern v. Duncan ,
news clipping services and
rebroadcasts, § 3:74
- Parodies (this index)

INDEX

PURPOSE AND CHARACTER OF USE—Cont'd

- 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**
- 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 Services, Inc. , photocopying by copy centers, § **3:122**
- Rebroadcasts. News Clipping Services and Rebroadcasts (this index)
- Recognition of original, parody, § **3:95**
- Red Label Music Publishing. v. Chila Productions, § **3:45.50**
- Religious Uses (this index)

PURPOSE AND CHARACTER OF USE—Cont'd

- 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 Transfiguration Monastery v. Archbishop Gregory of Denver, Colorado , religious uses, § **3:146**
- Sony BMG Music Entertainment v. Tenenbaum, § **3:63**
- Sony Corp of America v. Universal City Studios , off-air taping
 - 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 Services, Ltd. v. Bloomberg, LP., § **3:82**
- Targeting the original, parody, § **3:93**
- Television Digest v. United States Telephone Association ,

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

- 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**
Romanova v. Amilus, Inc.,
§ **3:1.50**
- 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**
- Wright v. Warner Books , biogra-
phies, § **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 preju-
dice 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 Tak-
ing (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**

INDEX

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

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

ROMANOVA v. AMILUS, INC.

Purpose and character of use transformative use, § 3:1.50

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)
First factor. Purpose and Character of Use (this index)
Fourth factor. Potential Market For or Value of Copyrighted

SECTION 107—Cont'd

- 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
- 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 taking, § 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
 - 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

INDEX

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

SPLUNK INC. v. CRIBL, INC

Incidental, nonfortuitous uses, § 3:68.20

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

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

STATUTORY PROVISIONS

—Cont'd

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

declaratory judgments, § 2:5.10

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
- THOMSON REUTERS ENTERPRISE CENTRE GMBH V. ROSS INTELLIGENCE**
Computers
copying to extract data, text & data mining, § 3:53.10
- 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
- TOWNSQUARE MEDIA CASES**
Incidental, nonfortuitous uses the, § 3:68.30
- 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
Romanova v. Amilus, Inc., § 3:1.50
- 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

INDEX

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**

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**
- 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**

PATRY ON FAIR USE

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