



Leyendecker & Lemire, LLC
An Intellectual Property and Business Law Firm



WHAT IS AND WHAT IS NOT FAIR USE

One of the most common initial reactions to a claim of copyright infringement is that the defendant's use constituted "fair use." While often claimed in cases of alleged infringement, it is in reality one of the most misunderstood defenses by the public at large. The fair use doctrine was originally created by courts but was subsequently included in the 1976 copyright act.

The preamble of the act sets out several categories of use that will be considered "Fair Use" including criticism, comment, news reporting, teaching (including multiple copies for class room use), scholarship, or research. The list is not exhaustive and Fair use has been found to extend to other categories such as parody (note to the unwary - the requirements for parody are fairly strict - beware that what you consider parody may not actually be considered parody under the law!!!). Once again, interpreting whether or not a particular use will fall into one of the allowed categories is a very complex process and should be left to experienced copyright attorney's - such as ourselves.

Additionally, there is a four part test to determine whether or not a particular use, is fair use. (note - this test still applies to the above mentioned categories set forth as fair use) The factors include 1) the purpose and character of the use (whether it is commercial in nature); 2) the nature of the copyrighted work in question; 3) the amount used in relation to the whole work; 4) the effect on the potential market or value of the work. Once again, the application and interpretation of the factors are quite complex and are governed by a substantial body of law - before making any determinations please contact a qualified attorney.

Leyendecker & Lemire, LLC is a Denver-based law firm offering a full spectrum of Intellectual Property, Business and Entertainment related legal services for entrepreneurs, individual inventors, and businesses of all sizes. We pride ourselves in providing large firm quality, but with personalized service and attention the large firms do not provide to their smaller clients. Our strength is working with a client from the beginning of his/her venture to maximize the venture's value and potential, as well as, help minimize the risk of legal disputes. Call (303) 768-0123 or e-mail us at info@coloradoiplaw.com today to see how we can help you!

www.coloradoiplaw.com