

Re: drug marketing upstaging science

Source: <http://sci.tech-archive.net/Archive/sci.med/2005-07/msg00085.html>

- *From:* "Barry" <barry@xxxxxxxxxxxxxxxx>
 - *Date:* 3 Jul 2005 21:48:57 -0700
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<http://www.law.cornell.edu/uscode/17/107.shtml> says:

In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--
(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.

I'll give you the benefit of the doubt on the first two. For a better idea on how to consider the above factors, I consulted <http://www.library.northwestern.edu/reserve/copyrightbasics.html> which says "Several university web sites present fair use checklists that may help you apply the fair use doctrine to individual cases." I clicked "University of Texas Fair Use Rules of Thumb" (<http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm#test>).

The rules of thumb page lists the four fair-use factors, with some example uses under each. "Uses on the left tend to tip the balance in favor of fair use. The use on the right tends to tip the balance in favor of the copyright owner – in favor of seeking permission."

In the example uses for "FACTOR 3: How much of the work will you use," "small amount" is on the left and "more than a small amount" is on the right. The explanation of factor 3 says "A nonprofit use of a whole work will weigh somewhat against fair use." It looks like factor three is against you.

The three example uses for "FACTOR 4: If this kind of use were widespread, what effect would it have on the market for the original or for permissions" are as follows:

Left: After evaluation of the first three factors, the proposed use is tipping towards fair use

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Center: Original is out of print or otherwise unavailable. No ready market for permission. Copyright owner is unidentifiable

Right: Competes with (takes away sales from) the original. Avoids payment for permission (royalties) in an established permissions market.

The "right" example fits best again. You republished an article from a commercial website that relies, at least in part, on Google ads for revenue, and you didn't even link to the page.

outrider wrote:

> We are making such material available in our efforts...

Who's we?

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- *Follow-Ups:*

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- ◇ *From:* outrider

- *References:*

- ◆ *Re: drug marketing upstaging science*

- ◇ *From:* outrider

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