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Appendix: What is Transformative? An Explanatory Synthesis of the Convergence of Transformation and Predominant Purpose in Copyright Fair Use Law

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Appendix

Complete Listing of Supreme Court and Court of Appeals Cases

Style and Citation	Fair Use	Outcome	Facts	Discussion
Campbell v. Acuff-Rose, 510 U.S. 569 (1994)	Parody	Fair Use	2LiveCrew HipHop group used old Roy Orbison rock ballad associated with motion picture fairy tale concerning prostitute (Pretty Woman) to make criticism of original. Original title, bass riff, and some lyrics were duplicated in the copy. Naïve sentimental lyrics about woman walking down street were replaced with bawdy crude lyrics pertaining to unappealing nature of prostitute streetwalkers.	Campbell changed fair use law in copyright by finding that all 17 U.S.C. § 107 factors were to be weighed together in case-by-case determination, no one factor predominates, commercial use factor is not dispositive, and a bad score on one factor of fair use can be outweighed by good scores on other factors. With parody, purpose and character of use to comment on and criticize the original is very favorable on the other § 107 factors—parodists can use famous creative works, use a great deal of them to "conjure up the original" and will not have a negative impact on the market for the original.
Murphy v. Millennium Radio Grp. LLC, 650 F.3d 295 (3d Cir. 2011)	News	No Fair Use	Murphy owned the copyright to a news and promotional photo of two radio station personalities that was commissioned by the radio station. Sometime later, the radio station slightly cropped the photo to remove Murphy's copyright notice, and otherwise reused the photo without permission for the same news and promotional purposes as the original.	The cropping served no transformative purpose and created no new meaning, message, or expression in the photo, nor did the radio station use the photo in a new context or for a different purpose than the original.
Bouchat v. Baltimore Ravens, 619 F.3d 301 (4th Cir. 2010)	Historical; Archival	No Fair Use	Bouchat's shield logo infringed by Ravens' Flying B Logo. No transformation found when Ravens display the logo in commercial films and promos, in spite of the editing and glitzy production values of the films and promos. No transformation meant no fair use in the court's ruling.	No transformation of the actual Bouchat logo. Logo was displayed as is, without alteration, in merchandise and advertising—NFL highlight films, promos, stadium entertainment.
Bouchat v. Baltimore Ravens, 619 F.3d 301 (4th Cir. 2010)	Historical; Archival	Fair Use	Historical and archival display of logos in corp. headquarters is fair use.	Different context of display—to show history of Ravens franchise—was also a change in function and purpose of use. It was transformative in purpose. Education and historical use emphasized Bouchat's work for its factual content, not creative content.
Salinger v. Colting, 607 F.3d 68 (2d Cir. 2010)	Comment; Criticism; Parody	No Fair Use	Colting wrote "60 Years Later: Coming Through the Rye" under the pen name "John David California" as an unauthorized sequel to the landmark work of fiction, J.D. Salinger's "Catcher in the Rye." "60 Years Later" replicated the character of Holden Caulfield, albeit as a 70-year-old, and other characters, and replicated many sequences of the plot and the story arc of the original work. Although, "Catcher" was held by the court to be semi-autobiographical, and Colting alleged his intention to	The "60 Years Later" book was not transformative and was not a fair use of Salinger's characters, plot events, story arc, and scenes of the story. The addition of Salinger, the original author, into the story was held not to be a significant transformation. The court rejected the testimony of experts that held that the two works were significantly different in style and purpose—"Catcher" being a work of fiction, and "60 Years Later" being an inventive, scholarly work of literary criticism taking the form of a novel.

			comment on and criticize and to parody the author, Salinger, and the original work, "Catcher;" the Court of Appeals affirmed the District Court's finding that Colting would not succeed on his fair use defense.	
Gaylor v. U.S., 595 F.3d 1364 (Fed. Cir. 2010)	Transformation	No Fair Use	U.S. Postal Service issued stamp depicting photograph of "The Column" soldier sculptures in Korean War memorial in Wash. DC. Sculptor brought copyright infringement action. Photo of "The Column" sculpture showed original work covered in snow and muted the coloration of the work, allegedly creating a new narrative (patrol lost in the snow) and altering the content of the original work (cold weary soldiers). The Stamp further altered the coloration making the scene monochromatic and "colder." Court of Appeals found that the government's use of the sculptures was not fair use.	Court of Appeals focused on the "further purpose or different character" of the use standards as defined in <i>Campbell</i> , and ignored the physical transformations in the appearance of the actual Korean War Memorial compared to the photograph and the stamp, and focused exclusively on the purpose of the works, finding the purpose of the sculpture, the photo, and the stamp to be the same: to depict the memorial and honor Korean War Veterans. Because the purpose of the three was the same, the court found there was no transformation. The Court of Appeals also found the coloration and "mood" changes did not make enough change in the character of the work, which was "dreamlike" to begin with. The court found the alternations did not change the character, meaning, or message of the original sculpture.
Bridgeport Music v. UMG Recordings, 585 F.3d 267 (6th Cir. 2009)	Transformation	No Fair Use	Famous George Clinton funk anthem, "Atomic Dog," was sampled by hip-hop group, Public Announcement, in the song "D.O.G. in Me" on their All Work, No Play album. Public Announcement sampled the refrain "Bow wow wow, yippie yo, yippie yea," and the repetition of the word "dog" in a low tone of voice at regular intervals, and the sound of rhythmic panting. The two songs differed in theme, tempo, and style, characteristics that are partially attributable to the funk genre vs. hip-hop genre of music. The court reviewed the jury verdict finding of no fair use, and affirmed.	The Court of Appeals affirmed the jury verdict of no fair use on the basis that three of the four fair use factors (all but the first factor, purpose and character of use) weighed against UMG's defense of fair use. The court held, "D.O.G. in Me' is certainly transformative (first factor), having a different theme, mood, and tone from 'Atomic Dog.'" But this transformativeness did not outweigh the other factors to a degree that would overturn the jury verdict on the "against the great weight of the evidence" standard of review.
A.V. ex rel. Vanderhye v. iParadigms, LLC, 562 F.3d 630 (4th Cir. 2009)	Transformation	Fair Use	iParadigms, owner of Turnitin plagiarism-checking computer service, had fair use defense allowing wholesale copying of student essays for purpose of checking for percentage of non-original content (i.e., plagiarism). Essays also were archived for later checking or retrieval.	iParadigm's use was held to be transformative in purpose, even with no transformation of content. iParadigms' use of the works was completely unrelated to their expressive content. The literary or scholastic purpose of essays was transformed into a functional, instrumental database for plagiarism-checking.

<p>Peter Letterese and Assocs., Inc. v. World Institute of Scientology Enters., 533 F.3d 1287 (11th Cir. 2008)</p>	<p>Transformation</p>	<p>No Fair Use</p>	<p>Peter Letterese and Assocs. (PLA) sued Scientology organizations including World Institute of Scientology Enters. (WISE) to end copying of sales training information taken from <i>Big League Sales</i> book owned by PLA. Many defenses were raised—permission and consent, implied license, de minimis use—but did not dispose of copyright claims. Fair use defense arose from defendants' allegation that they adapted the course materials into a different format, incorporated pedagogical tools such as sales drills, and condensed the material in the book. Other than these format changes, the content was not altered, and the purpose of the materials remained the same.</p>	<p>Defendants' use of <i>Big League Sales</i> in their course materials falls short of a transformative use. The original book selected, ordered, and described a number of sales techniques with the purpose of educating its readers to become more effective salesmen. The same is true of defendants' course materials. As the district court noted, "Defendants' courses and materials merely attempt to provide a user-friendly method of reading and learning from [<i>Big League Sales</i>]." The course materials do not reshape the instructional purpose or character of the book, or cast the book in a different light through a new meaning, message, or expression. Although the course materials adopt a different format, incorporate pedagogical tools, such as sales drills, and condense the material in the book, these changes do not alter the educational character of the material taken from the book; they merely emphasize, rather than transform, the overall purpose and function of the book.</p>
<p>Leadsinger, Inc. v. BMG Music Publ'g, 512 F.3d 522 (9th Cir. 2008)</p>	<p>Education; Pubic Interest</p>	<p>No Fair Use</p>	<p>Leadsinger, manufacturer of karaoke device, claimed fair use to copy and display lyrics to accompany musical compositions for which it obtained compulsory 17 U.S.C. § 115 licenses.</p>	<p>No alteration of lyrics or music; no new purpose; no new context. No fair use.</p>
<p>Zomba Enters., Inc. v. Panorama Records, Inc., 491 F.3d 574 (6th Cir. 2007)</p>	<p>Education; Transformation</p>	<p>No Fair Use</p>	<p>Panorama produced karaoke disks of copyrighted music and lyrics without license. Performers played and recorded the compositions, but no lyrics, composition, or any other changes to the music were made.</p>	<p>No alteration of lyrics or music; no new purpose; no new context. No fair use.</p>
<p>Perfect 10 v. Amazon.com, 508 F.3d 1146 (9th Cir. 2007)</p>	<p>Transformation</p>	<p>Fair Use</p>	<p>Google and others were accused by Perfect 10 of copying and infringing on Perfect 10's photos when Google performed in-line linking to images, framing of images (without duplication), and creation and storage of thumbnail-size versions of Perfect 10 images as references in search results. Only the thumbnails were actual copies—duplications in reduced size of the original images. Other rights (publication/distribution, and display) were involved in in-line linking and framing.</p>	<p>Court found Google's use to be highly transformative. Court found a completely different purpose for the images in all three of Google's activities. Most importantly, the creation of thumbnail versions for reference in internet search results was held to be highly transformative in purpose and context even if there were no physical changes (other than reduction in size and resolution) of the original images, and it was held to be highly beneficial to the public and thus supportive of copyright clause and 1st A public policy goals. Transformation was described as "the central purpose" of the purpose and character of use inquiry. Search engine use transforms the function and purpose of the original images completely, and is directly analogous to the way a successful parody transforms the original work. Search engine use also changes the context in a highly transformative way producing an entirely new creation.</p>

Blanch v. Koons, 467 F.3d 244 (2d Cir. 2006)	Satire; Transformation	Fair Use	Famous artist, Jeffrey Koons, took Blanch's fashion photo of woman's legs and silk sandals and inverted the image to place it in a new context where it was displayed with other images of dangling women's legs and feet overlaying an image of Niagra Falls and accompanied by large colorful images of junk food.	The court found the use to be highly transformative and fair. Although the use of the images was held not to be parody, and more likely an example of satire, the court found the use to be fair because of the additional artistic meaning and message created by Koons and the different purpose for the use of the image in the new work. The work was highly transformed, with a completely new meaning, character, and purpose because of Koon's additions to and recontextualization of the original image.
Wall Data, Inc. v. L.A. Cnty. Sheriff's Dep't, 447 F.3d 769 (9th Cir. 2006)	Public Interest	No Fair Use	L.A. County Sheriff's office installed more copies of software than its licenses permitted. Sheriff Dep't programmed network so that only a certain number of people could actually use the software at any given time, as many people as it had actual licenses for. No other changes to the software were made. Sheriff Dep't saved money by not having to buy authorized copies or licenses for each desktop.	There were no physical alterations of the software. It was used in the same location, same context, and for the same purpose as the original. Transformation was held to be the "primary concern" of the first factor, purpose and character of use. Transformation requires changes to the original work or the use of the work in a new context such that the work is transformed into a new creation. Hard drive imaging did not produce any new creation for benefit of public.
Bill Graham Archives v. Dorling Kindersley Ltd., 448 F.3d 605 (2d Cir. 2006)	Historical; Archival; Education	Fair Use	Artistic concert posters and tickets for Grateful Dead were reproduced in color but in reduced size for heavily pictorial biography of the band, the Grateful Dead, produced by Dorling Kindersley (DK). Bill Graham owned the copyrights to the posters. DK had permission for most of the material from Grateful Dead Productions, its partner in the project, but not the rights to the concert posters.	Court described transformative analysis to be the "most important" part of the purpose and character of the use analysis. Biographies are often given fair use status when they copy or redisplay copyrighted historical material in a new format for information, education, comment, or simple historical-archival uses. The physical changes to the images of the posters and tickets (reduced size) and their placement in a new context (timelines that combined original images in visual-textual collage with other graphics and text) in the biographical publication changed their purpose from advertisement and artistic expression to historical and archival purposes. The use of the images in this heavily pictorial biography was likened to a quotation of text in text-oriented biographies.
NXIVM Corp. v. Ross Inst., 364 F.3d 471 (2d Cir. 2004)	Comment and Criticism	Fair Use	Ross Institute criticized NXIVM materials and methods and copied portions to quote and comment on them.	The copied quotes were used in a highly transformative manner to comment on and criticize the original material.
Mattel Inc. v. Walking Mountain Prods., 353 F.3d 792 (9th Cir. 2003)	Comment and Criticism	Fair Use	Forsythe, an artist and owner of Walking Mnt Prods, depicted Barbie dolls unclothed and in unusual settings with kitchen appliances and food preparations. Forsythe claimed he was commenting on the objectification of women in society through iconic figures such as Barbie.	New context and setting and unusual depictions of Barbie nude, frazzled, and in strange juxtaposition with appliances transformed the meaning of the doll's image and communicated a parodic purpose of comment and criticism. As parody, the works scored high on fair use factors in favor of defendant. New works often build on those that came before, and here the reference was made in a critical context.

Elvis Presley Enters. v. Passport Video, 349 F.3d 622 (9th Cir. 2003)	Comment and Criticism	No Fair Use	Passport created comprehensive biography video set (16 hrs) on Elvis. Used portions of videos, photos, and recordings of Elvis owned by plaintiffs without license or permission. Basically, debt used too much—clips ran too long for intended transformative purpose.	Biography lacked transformative purpose to justify extent and length of copies. Passport often used the heart of the original in a commercial enterprise. Used clips and portions for same basic purpose as original, thus market substitution possible.
Video Pipeline v. Buena Vista Home Enter., 342 F.3d 191 (3d Cir. 2003)	Archival	No Fair Use	Video Pipeline made verbatim copies of two-minute segments of motion pictures for its own internet database purposes. It did not alter the segments in any way. The clips functioned exactly like authorized trailers from the copyright owners.	Simply copying and compiling in one internet service did not change purpose or evince creativity (new purpose, meaning, expression) in the copies, so failed on transformation, failed on purpose and character of use, and was not a fair use.
Bond v. Blum, 317 F.3d 385 (4th Cir. 2003)	Evidence; Public Interest	Fair Use	Attorneys copied Bond's unpublished autobiographical manuscript of "Self-Portrait of a Patricide: How I Got Away with Murder" book to use as evidence against Bond in child custody proceeding.	Although the court did not mention or rely on the transformative test, it did hold that the book was used for a completely different function and purpose (legal evidence) separate from the literary and expressive purposes of the original, and the use was fair.
L.A. News Serv. v. CBS Brdcast., 305 F.3d 924 (9th Cir.), amended & reh'g denied, 313 F.3d 1093 (9th Cir. 2002)	News-reporting	No Fair Use	LA News Serv. had captured video of events of LA riots, including the beating of Reginald Dempsey. CBS aired footage without license or permission. Other defendants aired in a montage and in conjunction with trial footage.	Copying and rebroadcasting of the key few seconds of footage from news video was not fair use in spite of news-reporting context. Montage use combined with trial footage was slightly transformative, but not enough to outweigh the misuse for same news purposes as original.
Ty, Inc. v. Publ'ns Int'l Ltd, 292 F.3d 512 (7th Cir. 2002)	Reference	No Fair Use	Photographing of Ty Beanie Baby toys for advertising in collectors guides and catalogs was not fair use. Court (Posner, J.) did not apply traditional <i>Campbell</i> fair use analysis, relying instead on economic analysis.	Photography of Beanie Babies for collectors guides and catalogs was substitute for original copyright owners' complementary derivative works, and as substitute, was not fair use.
Kelly v. Arriba Soft Corp., 336 F.3d 811 (9th Cir. 2003)	Transformation; Reference; Research	Fair Use	Arriba Soft Corp. created thumbnails of copyrighted images found on internet as references in search results as part of functioning of Arriba's internet search engine. Images were not altered except in reduced size and lowered resolution, but were placed in new context for the purpose of directing viewers to the actual location of the original images on the internet.	Thumbnails created and stored for functioning of internet search engine was new purpose and created new meaning for the images copied. Public purpose (search function, education, research) furthered by the limited copying. Images were placed in new context for new purpose which was held to be transformative. The incidental copying that took place to make the thumbnail reference images did not compete in any way with the creative, artistic purposes of the original images.
Suntrust Bank v. Houghton Mifflin Co., 268 F.3d 1257 (11th Cir. 2001)	Parody; Comment and Criticism	Fair Use	Author of "The Wind Done Gone" made critical comment on the white-centric racist views of "Gone With the Wind" novel through a parody adaptation of the famous novel copying and incorporating several of the major characters (albeit with altered names) and plot lines and copying portions of the original text and character dialogue from the original work.	Parody was found in the second work, criticizing the original work. The second work transformed the content and purpose of the original to create an entirely new work with a new meaning and purpose that was critical of the original work and its themes and prejudices.

On Davis v. The Gap, Inc., 246 F.3d 152 (2d Cir. 2001)	Reference	No Fair Use	The Gap used Davis's Onoculii work as eye jewelry (eye wear) in a print ad. The jewelry was used without alteration in the commercial ad.	Davis's Onoculii work was worn as eye jewelry in the manner it was made to be worn—looking much like an ad Davis himself might have sponsored for his copyrighted design. There was no transformation in form or appearance, nor in purpose or function. The use was not transformative and not fair.
A&M Records v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001)	Single-Copy, Home Use; Public Interest	No Fair Use	Napster facilitated the finding and transfer of unauthorized copies of copyrighted music. Some music was converted from CD or other formats to MP3 format, but was otherwise copied by Napster's users verbatim in its entirety.	The fair use discussion touched on the lack of transformation of the music. The music was copied and used in the same contexts and for the same purposes that the original music was created.
Veeck v. So. Bldg. Code Cong. Int'l, 241 F.3d 398 (5th Cir. 2001), <i>rev'd on other grounds</i> , 293 F.3d 791 (5th Cir. 2002)	Education; Public Interest	No Fair Use	Website operator copied the text of two building codes that had been enacted by municipalities for purpose of posting the text on informational website. Text of enacted legislation was the same as allegedly copyrighted model building code and was copied verbatim when posted on site.	First opinion found no fair use. There was no transformation of any kind, although arguably the information and research purposes of the website were different and the context created a different purpose for the laws' text compared to the model code. The first opinion was reversed and the second opinion held that enacted legislation was non-copyrightable, and building codes were "facts" which merged with the idea and formula of the legislation within the meaning of the merger doctrine.
Nunez v. Caribbean Int'l News Corp., 235 F.3d 18 (1st Cir. 2000)	News-reporting	Fair Use	Private photographer's modeling portfolio photographs of Puerto Rico's Miss Universe candidate were copied and displayed in conjunction with reporting news about the candidate. The photos were not altered and were copied verbatim in their entirety.	The use of the modeling portfolio photographs in a new context and for a new purpose of news-reporting was transformative. The photos were "the news story" as opposed to being used to illustrate an unrelated news story. The photos were newsworthy in and of themselves because the candidate appeared nude or partially clothed in the photos.
Worldwide Church of God v. Phila. Church of God, 227 F.3d 1110 (9th Cir. 2000)	Education; Public Interest	No Fair Use	Religious works of founder of Church of God sect were at first licensed for duplication and distribution, and then withheld from further publication and distribution. New church, Philadelphia Church of God, continued to duplicate, publish, and distribute the texts without license or permission. Works were copied and republished verbatim.	No transformation of any kind. Texts were used in same form for same purposes as original.
Sony Computer Entm't America, Inc. v. Bleem, LLC, 214 F.3d 1022 (9th Cir. 2000)	Comment and Criticism; Comparative Advertising	Fair Use	Use of screen shot images in comparative advertising. Screen shots were only partially displayed and in small size.	Use of screen shots in comparative advertising was fair use. No discussion of transformative test, but images were modified and were used for new function and purpose to compare computer emulator's screen shots with original console screen shots.
Sony Computer Entm't v. Connectix Corp., 203 F.3d 596 (9th Cir. 2000)	Transformation	Fair Use	Connectix produced virtual Game Station emulator program to allow personal computers to emulate Sony's PlayStation game console so as to allow the users of Connectix's program to play PlayStation games on their personal computers without purchasing and using a Sony game console. In order to reengineer the Sony BIOS code,	The court allowed the interim copying for purposes of reverse engineering because it was the only means for Connectix to access the merger doctrine uncopyrightable material (process and functioning) of Sony's BIOS program. The interim copying allowed Connectix to create an entirely new computer program running on an entirely new platform (personal computer OS). Although similar in function to Sony's program (i.e., it played PlayStation games), the program was a

			Connectix had to make copies of the code without license or permission in order to study how it worked. Copies made were only temporary and only for observation and study of the functioning of the computer program. No part of Sony's code was copied or incorporated into Connectix's end product emulator program.	transformed creation and the interim copying was a fair use of Sony's BIOS code material.
Nihon Keizai Shimbun, Inc. v. Comline Bus. Data, Inc., 166 F.3d 65 (2d Cir. 1999)	News-reporting	No Fair Use	Comline copied Nihon Keizai's financial data (on Nikkei index and other information) for its own bundling and republishing news-reporting services. The data was copied and republished verbatim. Comline prepared abstracts of the material but left much of the text and information intact.	Lack of creative alteration or transformation of the material, and use in the same contexts and for the same purposes as the original led to a finding of no fair use by the court. Repackaging and abstracting of news even for additional news-reporting purpose is not recognized as a proper transformation of the material for fair use analysis.
Micro Star v. Formgen Inc., 154 F.3d 1107 (9th Cir. 1998)	Transformation	No Fair Use	Micro Star compiled and sold 300 user-generated levels for expansion of the play in Formgen's Duke Nukem 3D video game. Formgen had allowed and encouraged the creation of expansion levels by providing a level-development kit with the Duke Nukem game. Micro Star did not do any creation or alteration of the character and appearance of Duke Nukem and the images and sequences from the original work that was included in the compiled work and the trade dress on the packaging of the Micro Star compilation.	The court first determined the user-generated levels to be unauthorized, unlicensed derivative works of the original Duke Nukem game. Formgen's provision of a level-development kit was not construed to also offer a blanket implied license for users to create <i>and own</i> the rights to the levels created by using the kit. The subsequent bundling and repackaging of infringing derivative works did not transform the infringing works in any proper way. The levels were created and sold for the same purpose and for use in the same context as the original. The lack of transformation combined with a commercial purpose led to the determination that the use was not fair.
LA News Serv. v. Reuters Television Int'l Ltd., 149 F.3d 987 (9th Cir. 1998)	News-reporting	No Fair Use	LA News Serv. had captured video of events of LA riots, including the beating of Reginald Dempsey. Reuters aired and distributed, and rebroadcast small portions of the footage without license or permission.	In spite of news-reporting context, copyrights news video may not be copied by others wishing to rebroadcast the same material for the same purpose of news-reporting. Use of a very small portion (a few seconds of footage) is not fair use simply because of the small amount taken if what is taken is significant and more than de minimis.
Infinity Broad. Corp. v. Kirkwood, 150 F.3d 104 (2d Cir. 1998)	Transformation	No Fair Use	Kirkwood created dial-up telephone service to rebroadcast copyrighted radio transmissions over the telephone. Various purposes were offered for the service—to audition radio talent, check for placement of advertising, and more.	Retransmission and rebroadcast in new medium for slightly modified purposes was not a creative, original use of the material, and the original material was not transformed in a proper manner. Simple repackaging or retransmission in a new media is not transformation and is not fair use.

Castle Rock Entm't v. Carol Publ'g Grp., 150 F.3d 132 (2d Cir. 1998)	Comment and Criticism	No Fair Use	Castle Rock, owner of the rights to the <i>Seinfeld</i> TV program, sued the creators of the Seinfeld Aptitude Test (SAT) trivia book. The book collected and copied multiple items of text, character information, plot, dialogue, and other copyrighted material from the television show in order to compile the questions for the trivia book.	The SAT book did not comment on or criticize the <i>Seinfeld</i> show, it celebrated the show, and its purpose was to entertain its readers—the same purpose for which the original show was created. The different media and format and the massive excerpting and reforming of the material into trivia questions was held not to be transformative. Instead, the court held that the book merely repacked the original material for a new media format but for the same entertainment purpose.
Sundeman v. The Seajay Soc'y, 142 F.3d 194 (4th Cir. 1998)	Comment and Criticism; Research; Education	Fair Use	Posthumous copying of unpublished work for inclusion in lectures and handouts of literature professor who commented on and critiqued the work in her research.	Copying was held to be fair for purposes of comment and criticism, research, and education. Both the original author and her earlier unpublished work were critiqued by the second user of the material. The use of the material was transformative in purpose and context if not in content.
Leibovitz v. Paramount Pics. Corp., 137 F.3d 109 (2d Cir. 1998)	Parody	Fair Use	Paramount's movie ad for "Naked Gun 3 1/3" mimicked famous Leibovitz "Vanity Fair" cover photo of pregnant Demi Moore by replacing Moore's head with that of comic actor Leslie Neilson. Paramount reshot the scene with a different actress but attempted to replicate the photo image except for Neilson's head replacement.	The movie ad, although commercial speech, was found to target the original photograph for comment and criticism through parody. The court found that the ad spoofed the serious if not pretentious artistic posing of Demi Moore in a "modest Venus" pose and turned the meaning and purpose of the photo on its head by replacing the female head of Moore with a comic male actor's head. The ad was found to be highly transformative in style, subject matter, content, and purpose.
Ringgold v. Black Entm't Television, 126 F.3d 70 (2d Cir. 1997)	De Minimis Use	No Fair Use	Ringgold's story quilt was the subject of an art poster from the High Museum of Art in Atlanta, and the poster depicting the story quilt was used as set decoration visible in an episode of "Roc" on BET. The poster-quilt image was seen for no more than a few seconds at a time, and never in a full screen shot, but there was no alteration of the image or appearance of the poster-quilt.	The court found that the poster-quilt image was used without transformation for the exact same purpose and context as the original work. Thus, no fair use. De minimis use exception argument also failed.
Dr. Seuss Ents., LP v. Penguin Books USA, 109 F.3d 1394 (9th Cir. 1997)	Parody; Satire	No Fair Use	Penguin produced self-described "parody" work discussing the OJ Simpson trial and its many characters (OJ and his attorneys and adversaries) using the same style and similar graphic images of characters and settings as in Dr. Seuss's "The Cat in the Hat" work. The OJ book, "The Cat Not in the Hat," did not appear to comment on or criticize Theodore Geisel (Dr. Seuss) or "The Cat in the Hat" work in any way, but the work told an entirely new story for an entirely new purpose of critiquing the OJ trial and the U.S. court system.	In spite of "The Cat Not in the Hat"'s telling an entirely new story with an entirely new purpose of spoofing and criticizing the OJ trial and the court system, the court made its decision on the basis that the work could not be a fair use of Dr. Seuss material because it did not target the original work or its author for criticism or comment. Thus, the purpose and character of the work could not be categorized as a true parody, but instead was a satire. The work was largely transformative, but not for a properly accepted purpose. The discussion of the transformative test was slight and not in depth. The court preferred to dwell on the distinction between satire and parody, the latter being fair use and the former being not fair use.

L.A. New Serv. v. KCAL-TV Channel 9, 108 F.3d 1119 (9th Cir. 1997)	News-reporting	No Fair Use	LA News Serv. had captured video of events of LA riots, including the beating of Reginald Dempsey. KCAL-TV copied and rebroadcast small portions of the footage without license or permission.	In spite of news-reporting context, copyrights news video may not be copied by others wishing to rebroadcast the same material for the same purpose of news-reporting. Use of a very small portion (a few seconds of footage) is not fair use simply because of the small amount taken if what is taken is significant and more than de minimis.
Princeton Univ. Press v. Mich. Doc. Servs., Inc., 99 F.3d 1381 (6th Cir. 1996)	Education; Research	No Fair Use	Copying of scholarly and literary works for educational course packets sold for profit at book stores. Most works were excerpted, and all were combined with other materials to make up a course packet.	The educational context of university-course packet-university bookstore did not insulate the commercial sale of excerpted and repackaged copyrighted materials. The works were not transformed other than by cutting and recombining the work into packets with other materials. This "transformation" did not change the fact that the works were created and sold for use in the exact same contexts and for the exact same purposes as the original works.
Allen v. Academic Games League of Am., 89 F.3d 614 (9th Cir. 1996)	Education	Fair Use	Defendant's performance of Plaintiff's games in public for not-for-profit educational, academic purposes.	The playing of the games in public contests in a not-for-profit educational setting was a fair use for a new purpose of education.
Am. Geophysical Union v. Texaco, Inc., 60 F.3d 913 (2d Cir. 1995)	Research; Education; Reference	No Fair Use	Texaco copied, excerpted, and abstracted material from copyrighted scientific journals for internal distribution within the corporation.	Copying of material from scientific articles, albeit for research, education, or reference uses but within a for-profit business setting, was not fair use. Cutting, rearranging, or repackaging the material was not recognized as proper transformation to support fair use.