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New Report: Misinterpretation of 'Fair Use' Stifles Free Expression

Artists, Writers and Bloggers Targeted for Using Copyrighted Material

New York, NY-Today, the Brennan Center for Justice at NYU School of Law released a new report, "*Will Fair Use Survive?*" which documents the increasing number of artists, writers, bloggers and others who are unjustly targeted for using copyrighted or trademarked material without permission.

Fair use allows anyone to publish, copy, distribute or reproduce part or all of copyrighted work without permission for the purpose of commentary, news reporting, criticism, and scholarship. There are similar free expression safeguards in trademark law.

Marjorie Heins, co-author of the report and founder of the Free Expression Policy Project (FEPP) at the Brennan Center explained: "Fair use is an essential part of our political and cultural life. Requiring permission every time someone copies a document, or uses a quote or image to produce a new work, cripples our ability to share ideas."

"Although copyright issues are in the news every day – from battles over online music-sharing to plans for the Google print library – threats to fair use actually present a greater challenge to creativity and democratic discussion," she added.

The report also documents the surge in "take-down" notices from copyright owners to Internet service providers to remove material from their servers, based on their "good faith" belief it is infringing. The 1998 Digital Millennium Copyright Act (DMCA) allows companies to send these notices without any legal judgment supporting their "good faith" belief. Artists and others also receive threatening "cease and desist" letters from companies claiming copyright or trademark infringement.

The report shares firsthand stories from artists, scholars, and others, many of whom have forfeited their rights to fair use for fear of being sued. This pressure stems from a "clearance culture," particularly in the film and publishing industries, which ignores fair use and forces everybody to seek permission – which is sometimes denied – and even if it is granted, often entails high license fees in order to use even small amounts of copyrighted or trademarked material. The report also includes an online survey, phone interviews, and statistical analysis of more than 300 cease and desist and take down letters.

Filmmakers and scholars have already praised this comprehensive report on the threats to fair use today. Gordon Quinn, maker of *Hoop Dreams*, writes: “*What’s great about the Brennan Center report is it highlights how this issue is affecting newer mediums, like the Internet. ... This report is part of a wider movement to educate people about fair use, and it’s going to help us users organize and reassert the right to fair use.*” Biographers Hazel Rowley and Roxana Robinson also praised the report; Robinson said: “Fair use makes critical discourse possible, and this lively and thoughtful report makes fair use more likely to survive.”

To protect and strengthen fair use, the report recommends: creating an information clearinghouse, working with ISPs to help users prepare counter take-down notices; and changing the law to reduce penalties for guessing wrong about fair use.

For a copy of the report or more information, please contact Natalia Kennedy at (212) 998-6736. Will Fair Use Survive? Free Expression in the Age of Copyright Control is available at www.fepproject.org/policyreports/WillFairUseSurvive.pdf.

The endorsements by Gordon Quinn and others are available at <http://www.fepproject.org/policyreports/Endorsementsfairuse.pdf>

Please visit www.brennancenter.org

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