FIVE YEARS OF FAIR USE:
Lessons from Recent Case Law on Fair Use in Copyright

Jack I. Lerner (jilerner@uci.edu)
University of California, Irvine School of Law

Over the past five years, students in the UCI Intellectual Property, Arts, and Technology Clinic, led by Prof. Jack Lerner, have developed the UCI Fair Use Jurisprudence Project. This comprehensive review of U.S. judicial opinions on fair use in copyright law includes a searchable, sortable database featuring abstracts and analysis of every written judicial opinion on fair use since January 1, 2019—over 250 in total—serving as a valuable resource for attorneys, scholars, and the public.

In this paper, Professor Lerner examines the evolution of fair use case law in recent years, considering the impact of two key Supreme Court decisions, a surge in copyright lawsuits from high-volume plaintiffs, and emerging decisions on generative AI. The study explores how judges have addressed conceptual and practical challenges in applying fair use, and have developed solutions that may be unfamiliar or counter-intuitive to both scholars and practitioners.

Building on previous empirical analyses by scholars such as Beebe (2008, 2019) and Asay et al. (2020), this paper demonstrates significant changes in fair use analysis since those studies, influenced by technological advancements and recent Supreme Court decisions in *Google v. Oracle* and *Warhol Foundation v. Goldsmith*.

In addition, the paper investigates how ongoing debates surrounding justice, fairness, and public benefit continue to shape, and be shaped by, the rapidly evolving case law. This analysis aims to inform contemporary copyright discussions worldwide, particularly regarding issues such as generative AI and the Creator Economy.