

Fair Use and Educational Uses: Commercial Endeavors for Public Interest

Mehtab Khan

Libraries, universities, cultural institutions, and even for-profit corporations have been instrumental in shaping fair use for educational purposes in the United States. These entities have been using digital technologies to preserve educational materials and also provide access to the latest research. Rare works, books with limited circulation or no clear authorship can now reach wider audiences. In academic circles, online scholarship repositories serve as critical resources for students and other scholars. They are also often at the center of court disputes that have had an impact on how ordinary people access knowledge and cultural goods.

Court assessments of fair use usually include a consideration of whether a use is commercial or non-commercial. However, as recent decisions show, narrow examinations of certain commercial uses have led courts to not finding fair use despite the involvement of educational purposes. The assessment of commerciality in fair use reveals a wider disconnect between the law on paper and practices on the ground. Both commercial and non-commercial entities have been instrumental in shaping an expansive reading of fair use for educational uses. However, sometimes the role of the former in shaping fair use is overshadowed by the underlying commercial nature of their activities. Recent cases have instituted rules that might become further obstacles for educational uses, especially in the digital age.

The question of commercial/non-commercial use combined with the impact of digital technologies raises the need for a more complex calculus to assess fair use in educational contexts. This paper is an exploration of a nuanced framework that can be applied in cases involving educational uses. Part I will trace relevant cases and the analytical framework for commercial and non-commercial use. Part II will analyze recent decisions and the challenges posed to practices that facilitate educational uses. Part III will propose a more complex framework that can be developed to analyze the question of commerciality in the context of fair use for research and education.