

# *Political Fair Use*

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This project examines the unauthorized use of an author's copyrighted work for political purposes under copyright law's fair use doctrine. There seems to be a presumption among the general public (and certain politicians and political groups) that the unauthorized political use of another's copyrighted work—i.e. for the purpose of political commentary, political criticism, or other political purposes—is automatically considered fair use. While it is true that courts commonly find political uses of copyrighted works to be fair use and have explained that this type of use may be “precisely what the Copyright Act envisioned as a paradigmatic fair use,” political use is not always fair. Courts have warned that “the fair use doctrine is not a license for corporate theft, empowering a court to ignore a copyright whenever it determines the underlying work contains material of possible public importance,” and have clarified that fair use is not designed to protect “lazy appropriators” who could have chosen from noncopyrighted alternatives.

This project analyzes how the unauthorized political use of a copyrighted work changes the analysis of the four factors under Section 107 of the Copyright Act and influences the balancing of those factors. It examines the factual inquiries that courts undertake in order to determine whether a defendant's unauthorized use of a copyrighted work for political purposes was fair use. In this paper, I will challenge the assumption that political uses of copyrighted works are de facto presumptively fair. Instead, political use alters the analysis and balance of the four fair use factors, and requires courts to focus on facts that are specifically relevant to political fair use. While it may be easier for courts to find political uses to be fair under this analysis, political fair use remains a factual inquiry analyzed on a case-by-case basis.