

Секция «Юриспруденция»

Reflection of the American legal doctrine of «fair use in judicial practice of the United States Of America

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Legal doctrine of «fair use» is provided for in Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code (Section 107 «Limitations on exclusive rights: Fair use»), which states:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright[1].

Here is a list of requirements under which such use does not infringe copyright of authors and any other rightholders and is admissible as considered doctrine. To be recognized as «fair use» there have to be compliance with all requirements named in this Act.

Considered doctrine is a reflection of the American law, which is focused on the board powers of the court, so the court has a right to determine in each case, whether the use of work of art meets this requirements, and therefore can qualify this use as fair use or recognize it as infringement of copyright.

In virtue of the fact that considered doctrine may be applied in unlimited and countless cases, there is diverse judicial practice, which provides us with different answers to the question of the presence or absence of fair use.

Consider several lawsuits, where the legal doctrine of «fair use» is reflected.

In the recent case *SOFA Entertainment, Inc. v. Dodger Productions, Inc.*, No. 2:08-cv-02616 (9th Cir. Mar. 11, 2013) judge qualified the use of a seven-second clip as fair use alleging to the fact that «Being selected by Ed Sullivan to perform on his show was evidence of the band's enduring prominence in American music. By using it as a biographical anchor, Dodger (defendant) put the clip to its own transformative ends»[2]. There was a list of arguments in court decision, proving the compliance with all named requirements. Court is obliged to consider the secondary use's impact on the market for the original work and the market for derivative works. In this case judge studied all the evidences and concluded that «Dodger's use of the clip advances its own original creation without any reasonable threat to SOFA's business model».

The same explanation refers to the case *The Author's Guild v. Hathitrust*, No. 1:11-cv-06351-HB (S.D.N.Y., October 10, 2012), where court also did not find any evidence of monetary harm, so that the use was also fair.

There are also vast majority of Internet cases, one of them deals with use of Internet articles. In the case *Righthaven LLC v. Realty One Group, Inc.*, No. 2:10-cv-LRH-PAL, 2010 WL 4115413 (D. Nev. October 19, 2010) there was no proof of pecuniary loss for the plaintiff, besides the defendant did not copy the «valuable» section of the article.

Regarded legal doctrine of «fair use» is a real mechanism, which allows the use of work of art in permitted quantity, that is why this legal doctrine is very widespread in restraints rightholders' rights.

Литература

1. <http://www.copyright.gov/title17/92chap1.html#107>;
2. <http://cdn.ca9.uscourts.gov/datastore/opinions/2013/03/11/10-56535.pdf>