



Limiting the Author's Moral Right by Applying the Doctrine of Fair Use in the American Legal System

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Abstract

Within the copyright system, exceptions and limitations have consistently served as pivotal mechanisms for balancing authors' rights with the broader interests of society. Concurrently, the doctrine of fair use stands out as a paramount principle in constraining copyright, enabling courts to judiciously apply exceptions in light of the unique circumstances of individual cases. The degree of safeguarding moral rights diverges contingent on the legal framework within each respective country. For instance, in common law jurisdictions, these rights are often accompanied by a multitude of conditions and exceptions. In contrast, civil law systems afford a broader scope of protection. Consequently, the extent of this right diverges significantly between these two legal frameworks. Conversely, the manner in which moral rights are safeguarded varies between these two systems. In the civil law framework, the protection of moral rights is unequivocally acknowledged and isn't contingent upon specific conditions. However, within the common law system, moral rights, to the extent they are recognized, come with numerous exceptions. One of the foremost among these exceptions is the doctrine of fair use, which is the focal point of this research. Furthermore, the protection of these rights is contingent upon establishing that it results in harm to the creator's and performer's reputation and dignity. Despite the numerous articles written about this doctrine in recent years and the revisions made to national laws in many countries in light of it, one crucial aspect remains unexplored: the potential application of this doctrine to an author's moral rights. While the theory of fair use holds a broad scope and can be applied across various domains of intellectual property rights, this research specifically aims to scrutinize and elucidate its significance within the realm of author's moral rights. The doctrinal origins are well-established; hence, this article refrains from an exhaustive treatment of all its facets and intricacies. Instead, it delves into the foundational principles and background of limiting author's moral rights, seeking to assess the feasibility of employing this doctrine in this context. Hence, the central inquiry of this article pertains to the process of aligning moral rights and the potential application of the doctrine of fair use to author's moral rights in written law jurisdictions like Iran. To address this, the article conducts a comparative analysis of legal systems in specific countries, with a particular focus on the United States. This



approach is adopted due to the extensive scope of the issue and the direct invocation of Article 107 of the Copyright Law in relation to the subject at hand. In Iranian law, expressions akin to "fair use" are occasionally employed. For instance, Article 7 of the Law on the Protection of Authors' Rights states: "Quoting published works and citing them for literary, scientific, technical, educational, and training purposes, as well as in the form of criticism and review, with proper attribution within customary boundaries, is permitted." While this article specifies particular purposes for utilization and incorporates the notion of customary limits, evoking thoughts of fair use as seen in American law, it is important to clarify that this provision exclusively addresses allowable quotations from literary and artistic works. It refrains from delineating precise rules for customary use, deferring to customary practice or the discretion of the judge. Therefore, it would be inaccurate to deem the wording of this article directly influenced by the doctrine of fair use in American law.

Given that the application of this doctrine in American law, its birthplace and primary sphere of influence, has been fraught with numerous challenges and uncertainties, with commentators and judges frequently critiquing or struggling with its implementation, it is foreseeable that this issue in the legal systems of written law countries, characterized by both a restricted framework of exceptions and a broad spectrum of protection for author's moral rights, will be even more fraught with difficulties and ambiguities. This, in turn, may hinder the accurate delineation and application of this doctrine in the context of author's moral rights. Hence, while this theory is characterized as a flexible concept, it's important to acknowledge that its applicability may not be universally feasible across all legal systems. Nevertheless, its adaptability can prove invaluable for shaping policies related to exceptions and limitations on authors' rights, particularly in the context of emerging and cutting-edge technologies. Ultimately, when implementing these exceptions in domestic law, several criteria should be taken into account:

1. When considering the application of this doctrine, it is imperative to take into account the purpose and essence of the work, including whether it was utilized for commercial, non-profit, or educational purposes.
2. Evaluate the extent and depth of alterations made to the work. This entails recognizing that the greater the degree of modification and the less discernible the traces of the original work, the fairer the work is considered. This is because originality is more pronounced in the modified version.
3. Assess the proportion and significance of the portion used in relation to the entire work. This evaluation may vary significantly from one work to another, contingent upon the purpose and nature of its utilization.

Establishing clear boundaries and parameters for the application of exceptions and limitations in authors' rights is of paramount importance in safeguarding public interests. This significance is heightened in the realm of an author's moral rights, given its direct link to the author's personality and reputation. While the doctrine of fair use was conceived to serve the broader societal good, it should not be exploited to the detriment of an author's moral rights and their integrity.

Keywords: moral rights, authors, fair use, limitation, American legal system.



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