

*Law Firm Copying and Transformative Fair Use:
An Examination of Different Purpose*

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In several recent lawsuits, publishers sued law firms for copyright infringement. The lawsuits focused on making unlicensed copies of scholarly articles to file with patent applications, including copies for the firms and the firms' clients. In two of these cases, lower court judges determined that the making of unlicensed copies was fair use. The decisions hinged on transformative use, focusing on the defendant's purpose for using the works. There was no alteration or change in the works. The judges found fair use, despite the possible availability of licensing. The focus on purpose in these cases fits well within the evolving analysis of transformative use. This paper uses these cases as a vehicle to review the use of purpose in fair use analysis. The cases also offer a study in the determination of a fair use market when licensing is available. This determination requires a more in-depth analysis of a purpose and its societal benefits without regard for the transformative use designation.

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