
FAIR USE AND DIGITAL LENDING: A DOCTRINAL ANALYSIS OF MARKET HARM AND TRANSFORMATIVE USE IN HACHETTE V. INTERNET ARCHIVE

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ABSTRACT

Fair use has long served the purpose of reconciling copyright owners' monopolistic rights with the public interest in accessing knowledge. Although copyright law provides authors with exclusive rights to their works, the concept of fair use ensures that certain limited uses—education, research, and criticism—are permitted without the permission of the copyright owner. This research examines the fair use legal framework and how it can be used to promote creativity and public access to knowledge. The research also examines the four-factor test established by US courts and considers how purpose, character, substantiality, and effect on the market shape whether a use is fair. The topic also involves digital libraries and e-lending, where technological advancement has undermined traditional copyright conventions. A key case study is Hachette Book Group v. Internet Archive, where publishers sued the Internet Archive for unauthorised digital lending. The paper criticises the court's dismissal of the fair use defence, pointing out that digital lending raises serious legal and ethical questions regarding copyright enforcement in the digital age. Lastly, the research highlights the necessity of a more advanced approach to fair use in digital libraries that strikes a balance between public access and copyright protection.

Keywords: Fair Use, Copyright Law, Digital Libraries, E-Lending, Intellectual Property

I. Introduction

The word 'Intellectual property' is used to denote a set of legal principles that create an exclusive right in intangible "property of the mind."¹ Thus, the laws that regulate and establish these rights are called intellectual property rights.² These rights confer state-sanctioned exclusive rights for specific types of intangible things; in other words, they create a monopoly right for certain types of imaginary property.³ Although the state creates these rights in the form of copyrights and patents, it also allows some to breach them to a certain extent. Copyright is a monopoly "to prevent others from reproducing the copyrighted work."⁴ It is a type of intellectual property right granted by the government to the author of an original literary, dramatic, musical, artistic, or other eligible creative work that gives them the exclusive right to control how the work is published, reproduced, performed, or displayed, as well as whether or not derivative works may be produced.⁵ This means that a copyright doesn't grant one an exclusive right to their work. It creates a sort of 'boundary' within which others can use the original work to produce their own work. This right is merely a regulatory tool for the original copyright holder to control how their work is used to reproduce other works. Unlike the monopoly granted by a patent, it is not absolute. The patent monopoly grants the absolute and exclusive right to use the patented article; however, a copyright, on the contrary, is subject to the right of all persons into whose possession the work comes to make "fair use" of it.⁶ Because the copyright law allows for the use of the original work to some extent, it is more flexible as compared to patent law. Copyright is not an inexorable, divine, or natural right that confers on the authors the absolute ownership of their creation; rather, it is designed to stimulate activity and progress in the arts for the intellectual enrichment of the public.⁷ Even the preamble of the original British statute (statute of Anne 1709) declares the statute's purpose⁸ to be "for the Encouragement of Learned Men to compose and write useful books."⁹ The monopoly created by the Copyright Act "rewards the individual author in order to benefit the public," the idea being that authors and inventors will be more motivated to produce new works if they know

¹ Daniel Hunter, *The Oxford Introduction to U.S. Law: Intellectual Property* 01 (Oxford University Press, 2012).

² Ibid.

³ Ibid.

⁴ RCA Mfg. Co. v. Whiteman, 114 F. 2d 86, 88 (C.A. 2d, 1940).

⁵ David Kline and David Kappos, Introduction to Intellectual property 96 (OpenStax, Houston, 2021).

⁶ Leon R Yankwich, 'What Is Fair Use?' (1954) 22 U Chi L Rev 203.

⁷ Pierre N Leval, 'Toward a Fair Use Standard' (1990) Harv L Rev 1105.

⁸ Ibid 1109.

⁹ Copyright Act, 1709 (8 Ann. c. 21).

those works will be protected, and the public will benefit from both restricted access to those works in the short term and unfettered access in the long term, once the period of exclusive control expires.¹⁰ The Act therefore “reflects a balance of competing claims upon the public interest: creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts.”¹¹ However excessive protection would stifle the progress of society, therefore, the law allows some level of infringement, calling it ‘fair use’, as mentioned previously.

II. The Fair Use Defence

Not long after the enactment of the statute of Anne of 1709¹² (8 Ann. c. 19), which created copyright, courts recognised certain instances of unauthorised reproduction of copyrighted material, first referred to as “fair abridgement,” later “fair use,” would not infringe the author’s rights.¹³ The fair use doctrine is evidently not a new concept but as old as the concept of copyright itself.¹⁴ Benjamin Kaplan in his work ‘An Unhurried View of Copyright,’ has noted that ‘Education, after all, proceeds from a kind of mimicry, and “progress,” if it is not entirely an illusion, depends on generous indulgence of copying.’¹⁵ The human race won’t be able to progress if we don’t allow at least some level of mimicry. Disallowing copying in its entirety would even stifle education, as one cannot educate another without relying on already produced material or knowledge. However, granting exorbitant rights to private interest will lead to—as Kaplan observes—no mimicry and bad education, whereas granting expansive interest to the public would lead to no novels, no movies, and no songs.¹⁶ We must, therefore, find a balance between a private right while granting rights to copy so as to make sure to not let the defendant get away with colourable imitation but at the same allowing some level of copying to further knowledge.¹⁷ It is important to note that the copyright holder is not entitled to the idea itself but rather the manner in which he chooses to express them or the form in which he embodies them.¹⁸ No idea is inherently original.¹⁹ All intellectual creative activity is in some way or

¹⁰ Hachette Book Group, Inc. v. Internet Archive 664 F.Supp.3d 370 (S.D.N.Y. 2023).

¹¹ Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156 (1975).

¹² Act, (n 9).

¹³ See Gyles v. Wilcox, 26 Eng. Rep. 489, 2 Atk. 141 (1740) (No. 130)

¹⁴ Ibid.

¹⁵ Hunter, (n 1) 26.

¹⁶ Ibid 27.

¹⁷ Daniel Hunter, *The Oxford Introduction to U.S. Law: Intellectual Property* 27 (Oxford University Press, 2012)

¹⁸ Yankwich (n 6) 207; Leval (n 7) 1109.

¹⁹ Leval (n 7) 1109.

another derivative.²⁰ Additionally, disciplines like history, philosophy, and even the natural sciences require continuous reexamination of yesterday's theses.²¹ These subjects simply cannot be studied without quoting 'original work.' One needs to review old work to better it or revamp it if its completely outdated. Therefore, the law itself allows copying of original work to some extent, calling it 'fair use'. However, courts have, time and again, failed to fashion a set of governing principles or values for employing fair use.²² This defence finds its roots in the case of *Folsom v. Marsh*.²³ In the aforementioned case, Judge Story introduced some factors to help in deciding whether a use of work is a substitute of another work or fair use.²⁴ The original factors by Judge Story included the nature, value, and object of each work and the degree to which the authors of each work had relied on the same common materials in producing their works.²⁵ The current copyright law in the United States, which allows for fair use, embodies Justice Story's original judgement. The law labels four factors to weigh while determining the defence of fair use, namely: (1) the purpose and character of use of the copyrighted work;²⁶ (2) the nature of the copyrighted work;²⁷ (3) the amount of substantiality of the use;²⁸ and (4) the effect of the use on the market for or value of the copyrighted work.²⁹ These factors are weighed against the interest of the copyright holder. The defence of fair use is granted where the use of copyright material furthers the copyright objective of stimulating productive thought and public instruction without excessively diminishing the incentive for creativity.³⁰ Thus, the fair use defence limits the use of the copyrighted work and does not grant one a free reign over using copyrighted works.

A. Purpose and character

The first fair use factor is "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes."³¹ In determining the first factor, courts consider two things regarding the secondary use: (i) the extent to which the

²⁰ *Ibid.*

²¹ *Ibid.*

²² Leval (n 7) 1105.

²³ 9 F. Cas. 342 (C.C.D. Mass. 1841)

²⁴ Hunter (n 17) 70.

²⁵ *Ibid.*; also see *Folsom v. Marsh* 9 F. Cas. 342 (C.C.D. Mass. 1841).

²⁶ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107(1).

²⁷ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107(2).

²⁸ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107(3).

²⁹ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107(4).

³⁰ Leval (n 7) 1110

³¹ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107(1); *Hachette Book Group, Inc. v. Internet Archive* 664 F.Supp.3d 370 (S.D.N.Y. 2023).

secondary use is transformative and (ii) the commerciality of the secondary work.³² The justification of the secondary use for the first factor rests heavily upon whether and to what extent the work is transformative³³ Here, the court tries to see whether the new work merely supplants the original, “or instead adds something new, with a further purpose or different character, altering the original with new expression, meaning, or message.”³⁴ The use of a work to achieve “a purpose that is the same as, or highly similar to, that of the original” is more likely to substitute or supplant the original work and less likely to be considered transformative.³⁵ This means that if the use of the original work produces something that has the same use or is highly similar to the original work, then it is merely a substitution of the original work rather than transformative, as it does not add something new but rather repackages and presents the same thing. Transformative uses may include criticism, summarisation to rebut or defend it³⁶ or quoting it to prove your own stance (This list is not exhaustive and may vary upon different jurisdictions). A secondary work may also be considered transformative if it “improves the efficiency of delivering the original content”³⁷ or expands the utility of the original.³⁸ The quoted work must be productive in nature, meaning it should contribute to society and must utilise the quoted material in a different manner or for a different purpose than the original work.³⁹ If the quoted material add value to the original, then this is exactly what the fair use doctrine intends to protect and prosper, i.e., ‘enrichment of society.’⁴⁰ However, the “borrowing” of the original material cannot be unlimited in the name of being transformative.⁴¹ The ‘transformative’ factor is the ‘soul’ of the fair use defence and the strength of justification by the defendant must be weighed against the remaining factors, which focus on the incentives and entitlements of the copyright owner.⁴² When the secondary use is only moderately transformative, the commercial nature of the secondary use is then weighed against the finding of the fair use.⁴³

³² Hachette Book Group, Inc. v. Internet Archive 664 F.Supp.3d 370 (S.D.N.Y. 2023).

³³ Leval (n 7) 1111; also see, Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 579 (1994).

³⁴ Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 579 (1994).

³⁵ Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith, 598 U.S. 508 (2023).

³⁶ Leval (n 7) 1111.

³⁷ Fox News Network, LLC v. TVEyes, Inc. 883 F.3d 169 (2d Cir. 2018).

³⁸ Authors Guild v. Google, Inc. 804 F.3d 202 (2d Cir. 2015).

³⁹ See, Cary v. Kearsley, 170 Eng. Rep. 679, 681-82, 4 Esp. 168, 170-71 (1802).

⁴⁰ Leval (n 7) at 1111.

⁴¹ Ibid.

⁴² Leval (n 7) 1116.

⁴³ Fox News Network, LLC v. TVEyes, Inc. 883 F.3d 169 (2d Cir. 2018).

B. Nature of the copyrighted work

The second factor for the use of an original work to be considered fair use is “the nature of the copyrighted work.”⁴⁴ It is derived from Justice Story’s mention in the Folsom case of “value of the material used.”⁴⁵ In determining this factor, the court usually considers whether the work is expressive or creative, with “greater leeway being allowed to claim of fair use where the work is factual or informational.”⁴⁶ It also looks into the question “whether the work is published or unpublished, with the scope of fair use involving unpublished works being considerably narrower.”⁴⁷ This factor, however, is considered to rarely play an important role in determining if the use of the copyrighted material can be considered fair use.⁴⁸ This factor recognises that some works are more important than others and closer to the “core of intended copyright protection than others,”⁴⁹ making them more susceptible to the ‘fair use’ defence than others. Let's consider letters as an example. Letters written for private communication also receive copyright protection;⁵⁰ however, there is still a significant difference between pieces written in an artistic pursuit with the intention of publication and letters written in response for a private purpose, never meant for publication.⁵¹ One is at the heart of the purpose of the copyright, i.e., the stimulation of creative endeavour for public education⁵², while another is a private conversation never meant to reach the public eye. Thus, this factor should favour the one who created it for publication. This factor seeks to enquire about the “nature” or “value” of the work, as in, it seeks to see if this is what the copyright seeks to protect.⁵³ A text written in pursuit of publication or on its way to publication presents a far stronger case for protection against fair use than matter written exclusively for private purposes.⁵⁴ The job of the copyright law is to create an incentive to further artistic pursuits and not the encouragement of the exchange of letters or private communication. Although this does have protection but not under the copyright law since that is not what the copyright law seeks to encourage or is its objective. My conversation with a third party does not add to the public pool of knowledge, nor is it done

⁴⁴ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107(2).

⁴⁵ *Supra* note 42 at 1117.

⁴⁶ *Hachette Book Group, Inc. v. Internet Archive* 664 F.Supp.3d 370 (S.D.N.Y. 2023).

⁴⁷ *Ibid.*

⁴⁸ *Authors Guild v. Google, Inc.* 804 F.3d 202 (2d Cir. 2015); also see *Authors Guild v. HathiTrust*, 755 F.3d 87 (2d Cir. 2014).

⁴⁹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

⁵⁰ See, *Pope v. Curl*, 26 Eng. Rep. 608, 2 Atk. 342 (1741).

⁵¹ *Leval* (n 7) 1117.

⁵² *Ibid.*

⁵³ *Leval* (n 7) 1119.

⁵⁴ *Ibid.*

with the intent of public enrichment. Hence, it cannot be considered “valued” under a copyright law, although it will have some degree of protection.

C. Amount and substantiality of a commercial nature

The third fair use factor is “the amount and substantiality of the portion used in relation to the copyrighted work as a whole.”⁵⁵ Here, The greater the amount used, the greater the infringement of the author’s rights and the less likely it is to qualify as fair use.⁵⁶ This factor is closely related to the first and fourth factors, i.e., the nature and purpose of the work and the impact of the derivative work on the potential market of the copyright holder, respectively. With respect to the first factor, the court tries to see if the amount used is justifiable for the purpose of the secondary use.⁵⁷ And for the fourth factor, the more the amount of work taken, the greater is the impact on the market of the user.⁵⁸ The relevant question here is not what is the amount of copyrighted material used, but “the amount of copyrighted material made available to the public.”⁵⁹

D. Market effect

The fourth and ultimate factor in consideration of the fair use defence is “the effect of the use upon the potential market for or value of the copyrighted work.”⁶⁰ This factor focuses on “whether the copy brings to the marketplace a competing substitute for the original, or its derivative, so as to deprive the rights holder of significant revenues because of the likelihood that potential purchasers may opt to acquire the copy rather than the original.”⁶¹ Analysis of this factor “requires the court to balance the benefit the public will derive if the use is permitted” against “the personal gain of the copyright owner if the use is denied.”⁶² The United States Supreme Court labelled this as the “single most important element of fair use.”⁶³ The utilitarian concept underlying the copyright promises authors the opportunity to internalise the rewards emanating from their work in order to incentivise them to create.⁶⁴ By definition, every

⁵⁵ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107(3).

⁵⁶ Leval (n 7) 1122.

⁵⁷ Leval (n 7) 1123.

⁵⁸ Ibid.

⁵⁹ Fox News Network, LLC v. TVEyes, Inc. 883 F.3d 169 (2d Cir. 2018).

⁶⁰ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107(4).

⁶¹ Authors Guild v. Google, Inc. 804 F.3d 202 (2d Cir. 2015).

⁶² Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith, 598 U.S. 508 (2023).

⁶³ Harper & Row, Publishers, Inc. v. Nation Enters., 471 U.S. 539 (1985).

⁶⁴ Leval (n 7) 1124.

fair use warrants some loss in revenue to the original author, as the secondary user does not pay royalties.⁶⁵ However, this cannot be labelled as the ‘single most important factor.’ A bad review of a book could also impair the marketability of the author. Labelling this as the most important factor would simply disallow criticism or review, as it would discourage readers from going and purchasing the original work. Why would I spend my money on something that has already been labelled as ‘bad’ or ‘not in good taste’ by a reviewer? When an author puts their work out there in public, it is assumed that they are inviting review, criticism, or analysis of their work or its use as a basis for furthering the development in a field. What they are not inviting is the ‘unfair use’ of it, i.e., use to garner commercial benefit at the expense of the author’s effort. Although it is definitely an important factor, it most certainly cannot be labelled as ‘the most important factor.’

III. Hachette Book v. Internet Archive: Fair use in e-lending case

In the case of *Hachette Book Group, Inc. v. Internet Archive*,⁶⁶ the defendant, i.e., Internet Archive, is a non-profit organisation that creates electronic copies of printed books and uploads these on its website, making them freely available in their entirety to any member of the public through a service called the "Free Digital Library." In 2020, four book publishers sued the Internet Archive for infringement of their copyrights in 127 books of the “Free Digital Library.” They sought damages, declaratory, and injunctive relief. The Internet Archive relied on fair use, Section 107 of the Copyright Act.⁶⁷ However, the district court dismissed this defence.

Plaintiffs-Appellees—”Hachette Book Group, Inc., HarperCollins Publishers LLC, John Wiley & Sons, Inc., and Penguin Random House LLC” (collectively "Publishers")—are four of the top book publishers in the US. They gain exclusive rights from authors to publish their works in a variety of media, including hardcover, paperback, and eBook. This agreement benefits both publishers and authors by increasing sales in each format. They distribute ebooks in the same way as traditional libraries do, but only to partner ebook lending libraries in their geographic area, allowing only one customer to check out an ebook at a time. Between 2010 and 2020, library visitors checked out eBooks via OverDrive in record numbers. This increase in lending translates into higher earnings for publishers, with library eBook licensing accounting for a growing share of their overall eBook income. With over 93% of public

⁶⁵ Ibid.

⁶⁶ 664 F.Supp.3d 370 (S.D.N.Y. 2023).

⁶⁷ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107.

libraries renting eBooks, publishers and authors have tapped into a profitable and growing market.

Enter the Internet Archive (henceforth, IA), a non-profit organisation whose declared aim is "to provide universal access to all knowledge." When IA scans a book, it uploads the digital copy on its website, where IA account users can read it in full for free. IA charges no fees to open an account or for any further services, including digital book borrowing. Account holders can borrow up to ten digital books at a time for up to fourteen days apiece, reading them on IA's BookReader web browser platform or downloading an encrypted PDF or EPUB version. In 2018, IA introduced the "Open Libraries Project," which allows libraries to "contribute" their "noncirculating print books to the number of concurrent checkouts available" on IA's website.

Participating libraries submit a catalogue of their noncirculating books to IA, which conducts an "overlap analysis." If the library's catalogue contains a book for which IA already possesses a digital copy, IA increases the number of concurrent checkouts by one. In 2020, in response to the COVID-19 epidemic, IA established the "National Emergency Library" (the "NEL"). IA lifted its one-to-one owned-to-loaned ratio, allowing up to 10,000 users to check out digital books at a time, regardless of the "number of physical books in storage or in partner libraries' possession." This practice was acknowledged as a "deviation from controlled digital lending." IA's website stores more than 3.2 million digital copies of copyrighted literature. Its 5.9 million customers make around 70,000 book "borrows" per day, totalling around 25 million per year. Critically, IA and its users do not have authority from copyright holders to engage in any of these activities. They do not "license" these "resources" from "publishers" or "compensate" writers for the digitisation and distribution of their works. "On June 1, 2020, Publishers sued IA and five Doe defendants in the Southern District of New York, saying that IA violated their copyrights in 127 works. All 127 Works are available as authorised eBooks that may be purchased by consumers or licensed to libraries; and, at the time of the complaint, all 127 Works were available for free digital download on IA's website." IA responded to the lawsuit, denying that its actions violate Publishers' copyrights and invoking an affirmative defence of fair use under the Copyright Act.

On March 24, 2023, the district court granted Publishers summary judgement, finding that "Publishers established the elements of copyright infringement" and that "IA's infringement

was not excused by the fair use defence.

The case was further appealed to the United States Court of Appeals for the Second Circuit, where the issue was raised, "Is it "fair use" for a nonprofit organisation to scan copyright-protected print books in their entirety and distribute those digital copies online, in full, for free. all without authorisation from the copyright-holding publishers or authors?" The court of appeals addressed the question negatively and upheld the district court's decision. The challenged methods, such as lending "own" digital books that are commercially available for sale or license in any electronic text format, the Open Libraries Project, and the NEL, are not considered fair use based on fair use principles.

Copyright infringement happens when a person or entity "violates any of the exclusive rights of the copyright owner."⁶⁸ IA argues that their "Free Digital Library" is "transformative" because it uses technology "to make lending more convenient and efficient" and "delivers the work only to one already entitled to view it—the one person borrowing the book at a time." Furthermore, IA claims that its Free Digital Library "enables uses not possible with print books and physical borrowing," such as letting "authors writing online articles to link directly to" a digital book in IA's collection. Accordingly, IA believes that each digital book "serves a new and different function from the original work and is not a substitute for it." Publishers, on the other hand, argue that IA's Free Digital Library "does nothing more than repackage or republish' the works." Publishers argue that deeming IA's use transformative would undermine their exclusive right to create derivative works, including the ability to publish authors' works as eBooks. "Without a different objective than the original," publishers say that "IA's ebooks are not transformative." The court found that IA's use of the Works was not transformative.

IA does nothing more than repackage the same work and present it⁶⁹ without adding anything new or altering the way of expression. As mentioned previously, copyright does not protect the information presented but the way in which it is expressed.⁷⁰ In no way does it contribute to the society. However, it does make accessibility of the work easier, which is also a contributing factor to "transformativeness of the work."⁷¹ However, this is only moderately transformative and does not have enough weightage to be excused as fair use. IA's Free Digital Library merely

⁶⁸ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 501(a).

⁶⁹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

⁷⁰ Pierre N. Leval, "Toward a Fair Use Standard" 103 *Harvard Law Review* 1109 (1990).

⁷¹ See, *Fox News Network, LLC v. TVEyes, Inc.* 883 F.3d 169 (2d Cir. 2018).

serves as a substitute for the original works.⁷² The degree of change does not “go beyond that required to qualify as derivative.”⁷³ Changing the medium of a work is a derivative use and not a transformational one.⁷⁴ Although transformative use is not required for a fair use determination, transformative works are central to the fair use doctrine, and repackaging or republishing copyrighted material is unlikely to be considered fair use.⁷⁵

It is undisputed that IA “copies the works in their entirety and distributes them to the general public.” However, IA claims that the third component, i.e., “the amount and substantiality of the portion used in relation to the copyrighted work as a whole,”⁷⁶ is neutral because “copying the entire work is necessary for controlled digital lending.” As IA acknowledges, this argument is solely based on the idea that their use of the works is transformative.⁷⁷ However, IA scans the works in their entirety not for a transformational secondary purpose but rather to substitute IA's digital books for publishers' print books and eBooks. IA creates unauthorised digital copies of the works and makes them available to the public in their entirety.

As mentioned previously, the more the amount of work used, the greater the impact of the secondary work on the market of the original creator.⁷⁸ IA is not simply using a small part of the protected work, but the work in its entirety. It is substituting the original work and not providing a review or commentary. It can be said that IA is trying to capture the entire market of the publishers and creators, as the publishers are also lending the works for a fee, whereas IA is doing it for free, making it more attractive to potential readers.

IV. Conclusion

Hachette Book Group, Inc. v. Internet Archive is an interesting case that leaves no stone unturned on the uncertainty surrounding the application of the doctrine of fair use, especially as it applies to the digital medium. The doctrine of fair use was established as a scale to weigh the copyright holder's rights against the desire of the people to access knowledge. But still, the doctrine of fair use remains replete with confusion. This case is also of great importance regarding the delicate balance between public access to information and economic interest in

⁷² Hachette Book Group, Inc. v. Internet Archive 664 F.Supp.3d 370 (S.D.N.Y. 2023).

⁷³ Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith, 598 U.S. 508 (2023).

⁷⁴ Ibid.

⁷⁵ Fox News Network, LLC v. TVEyes, Inc. 883 F.3d 169 (2d Cir. 2018).

⁷⁶ Copyright Act, 1976 (17 U.S.C. §§ 201-216) s. 107(3).

⁷⁷ Hachette Book Group, Inc. v. Internet Archive 664 F.Supp.3d 370 (S.D.N.Y. 2023).

⁷⁸ See, Leval (n 7) 1123.

the authors and publishers. It further repeats the restrictions put on free e-lending by courts, especially when this practice has any chance to change the market place for authorised eBooks as well as the hard copy version of books.

Thus, for students and academicians, this case serves as a reminder that fair use only allows for some activities with respect to educational or non-commercial purposes but does not entitle full access to information under copyright. Educational institutions and researchers must be quite alert and ensure that the usage under fair use does not infringe upon actual producers' rights who have produced that content. The public's right to know, at the same time as digital access to such educational resources expands, needs to be struck in a manner whereby both the public's right to know and the incentive of the author in creating such intellectual property are kept intact.