



DANICA MATHES EXPLORES FAIR USE IN DBA'S HEADNOTES

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Bell Nunnally Partner Danica L. Mathes authored the Dallas Bar Association (DBA) *Headnotes* article titled, "Don't Get Defensive...It's Only Fair Use." The piece delves into the "fair"/legal use of original content by a new entity, as codified in Section 107 of the Copyright Act of 1976. In offering historical background on "fair use," Mathes notes that the U.S. Supreme Court considers it a means of balancing "the interests of authors and inventors in the control and exploitation of their writings and discoveries on the one hand, and society's competing interest in the free flow of ideas, information, and commerce on the other hand." She then goes on to break down the court's past examination of the concept. Absent "fair use," employing content created by a third party without permission is copyright infringement.

When wrestling with legality concerns over "fair use," a key aspect courts consider, as detailed by Mathes, is whether the new work is "transformative," "add[ing] something new, with a further purpose or different character, altering the first with new expression, meaning, or message." She notes that the more transformative a use, in general, the more likely it is that the use of content is not an infringement.

Mathes closes her article with a note of caution and some thoughts on how best to avoid potential disputes: "Given the litigation uncertainties surrounding a 'fair use' defense (and quite apart from the ultimate merits of whether a given use is fair), it may, as a practical matter, be cheaper to obtain a license than to litigate. Even if the copyright owner refuses to license the work, seeking a license as part of a good-faith effort to avoid litigation should not weigh against a finding of fair use."

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