



Copying to Prevent Copying is Fair

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The Fourth Circuit affirmed the Eastern District of Virginia's decision that an online plagiarism detection service does not infringe students' copyright ownership in papers submitted through the system. *A. V. v. iParadigms, LLC*, Case No. 1:07-cv-00293-CMH-BRP (E.D.Va., 2008), *aff'd* Case Nos. 08-1424, 08-1480, 2009 U.S. App. LEXIS 7892 (4th Cir. April 16, 2009).

Plaintiffs argued that iParadigms' plagiarism detection service, which was designed to evaluate the originality of written works and prevent plagiarism, infringed their copyright ownership in the essays and other papers that they submitted for high school classes.

Plaintiffs alleged that the system could allow their unpublished manuscripts to be displayed or distributed throughout the world without their permission, in violation of their rights to copy, publish and distribute their own works under the Copyright Act, 17 U.S.C. § 101 *et seq.* However, the Court opined that plaintiffs' copyright rights were limited by the doctrine of fair use, which allows for uses of a copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship and research. 17 U.S.C. § 107.

The court analyzed the four 'fair use' factors under the Copyright Act, namely the (1) purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the whole, and (4) the effect of the use upon the potential market for the work. 17 U.S.C. § 107.

First, the court said defendant's use was transformative because, although the students' works were not modified or altered by defendant, the purpose of the system was to prevent plagiarism by archiving the works in digital code to compare against other works, rather than to express or exploit the original work. Second, although fair use is more limited for unpublished

works because the authors have the right to control the work's first publication, defendant's use of the works did not have the intended purpose or incidental effect of supplanting plaintiffs' rights to first publication.

The Court also concluded that the third factor did not weigh in favor of either party, because, even though defendant used the entire work, the use was limited in purpose and scope to electronic comparison. Finally, the Court found that no market substitute was created by archiving student works, where the only alleged marketplace for the papers was to other students, which would encourage plagiarism and cheating. The Court glossed over the argument that the papers may be marketable to college journals or other magazines.

The case raises the issue of whether archiving unpublished works in a database to which any client of the system can gain access constitutes a publication such that a copyright owner's right to control the work's first publication is eviscerated by the use...maybe an interesting question for the U.S. Supreme Court.

Related People

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