

Takeaways From Fair Use Rejection of Free E-Book Library

Media Mentions

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Bracewell's **Jonathon Hance** discussed with *Law360* the Second Circuit's recent decision shutting down a [fair use argument](#) by non-profit Internet Archive over its system of scanning physical books and converting them into e-books to lend for free.

"I think there's this idea that if we're a nonprofit, and we're serving the public good, then it's fair use," said Hance, adding that the four fair use factors must be weighed — the purpose and character of the work, which is where transformativeness comes in; the nature of the copyrighted work; the amount that was used; and the impact on the potential market.

The three-judge panel upheld the findings from a lower court that Internet Archive's e-book library did not make fair use of the publishers' books, stating in their published opinion that what Internet Archive did was not transformative at all, and that the nonprofit's digital books served "the same exact purpose as the originals: making authors' works available to read."

"And a big [factor] is whether you're supplanting the market for the copyright holder, whether you're a nonprofit or not and whether it's an educational use or not," Hance said.

The ruling was an important reminder that a nonprofit's actions cannot always be shielded from infringement with a fair use defense.

US District Judge John Koeltl had previously ruled in March 2023 that Internet Archive's practice of scanning copyright-protected print books to deliver free digital copies online was not excused by the fair use doctrine.

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