

*NEM VÉSZ EL, CSAK ÁTALAKUL –
AZ AMERIKAI FAIR USE TESZT
ELMÚLT 15 ÉVE*

**MIE Szellemi Tulajdon Konferencia
Mátraháza, 2023. november 10.**

Prof. Dr. Mezei Péter

Szegedi Tudományegyetem
Állam- és Jogtudományi Kar
Összehasonlító Jogi és Jogelméleti Intézet

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IPARJOGVÉDELMI ÉS SZERZŐI JOGI SZEMLE

3. (113.) ÉVFOLYAM 6. SZÁM

2008. december

Szulmanné dr. Binet Mariann

**Versenyfutás az idővel: lajstromok és adatbázisok szerepe
a hagyományos tudás megőrzésében és oltalmában**

Mezei Péter

Mitől fair a fair? Szerzői művek felhasználása a fair use-teszt fényében

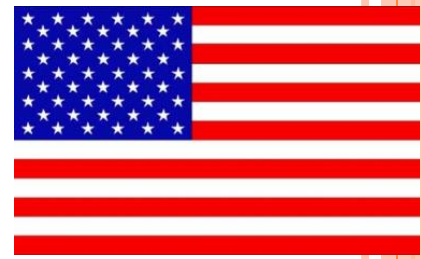
Kacsuk Zsófia

**Az európai elsőbbségi jog elemzése
az Európai Szabadalmi Hivatal joggyakorlatának tükrében –
avagy hogyan igényeljük a serpenyő elsőbbségét műanyag pohárra?**

Dr. Vida Sándor

Közösségi védjegyjog és nyelvhasználat





17 U.S.C §107: *fair use teszt*

„Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include –

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”



USCA §107

Alperes

Felperes

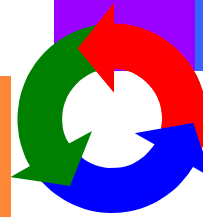


Nem feltétlenül unfair,
(Acuff-Rose, 1994)



(a) Kereskedelmi jelleg

(b) Átalakító jelleg



Tényszerű

Kifejező



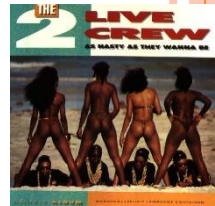
„idea – expression”
dichotómia mentén

1%

100%



„Single most
important factor”
(Sony, 1984)



1. A felhasználás célja és jellege

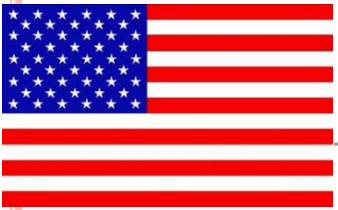
A felhasználás akkor transzformatív, ha a másodlagos mű „adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.” (Acuff-Rose)

2. A forrásmű természete

3. A felhasználás mennyisége és minősége

4. A jogvédett mű potenciális piacára gyakorolt hatás

Döntő körülmény: a másodlagos mű képes lehet-e helyettesíteni a forrásművet a piacon?



LIMITATIONS AND EXCEPTIONS UNDER THE US COPYRIGHT LAW

Matthew Sag: Predicting Fair Use, *Ohio State Law Journal*, 2012, p. 47-91.: 280, az 1978-2012-es időszak közé eső fair use döntés elemzése nyomán (többek között) úgy találta, hogy...

- az alperesi siker várható aránya 39.92%;
- a *fair use mellett* szóló három legfontosabb körülmény: (1) a forrásmű kreatív/transzformatív felhasználása; (2) részleges felhasználás; (3) a felperes természetes személy; **ahol ez a három feltétel egyszerre teljesül, ott az alperesi siker várható aránya 87%**;
- a *fair use ellen* szóló két legfontosabb körülmény: (1) közvetlen kereskedelmi célok; (2) az „underdog” alperest a fair use tesztben kevésbé tapasztalt jogász képviseli.



USCO FAIR USE INDEX (1841-2023)

Search Cases

Select jurisdiction or jurisdictions to search

U.S. Supreme Court

First Circuit

Second Circuit

Third Circuit

Fourth Circuit

Fifth Circuit

Sixth Circuit

Seventh Circuit

Eighth Circuit

Ninth Circuit

Tenth Circuit

Eleventh Circuit

District of Columbia Circuit

Federal Circuit

Select/Deselect All

Select category or categories to search

Computer program

Education/Scholarship

/Research

Film/Audiovisual

Format shifting/Space shifting

Internet/Digitization

Music

News reporting

Painting/Drawing/Graphic

Parody/Satire

Photograph

Review/Commentary

Sculpture

Textual work

Unpublished

Used in government proceeding

Other

Select/Deselect All

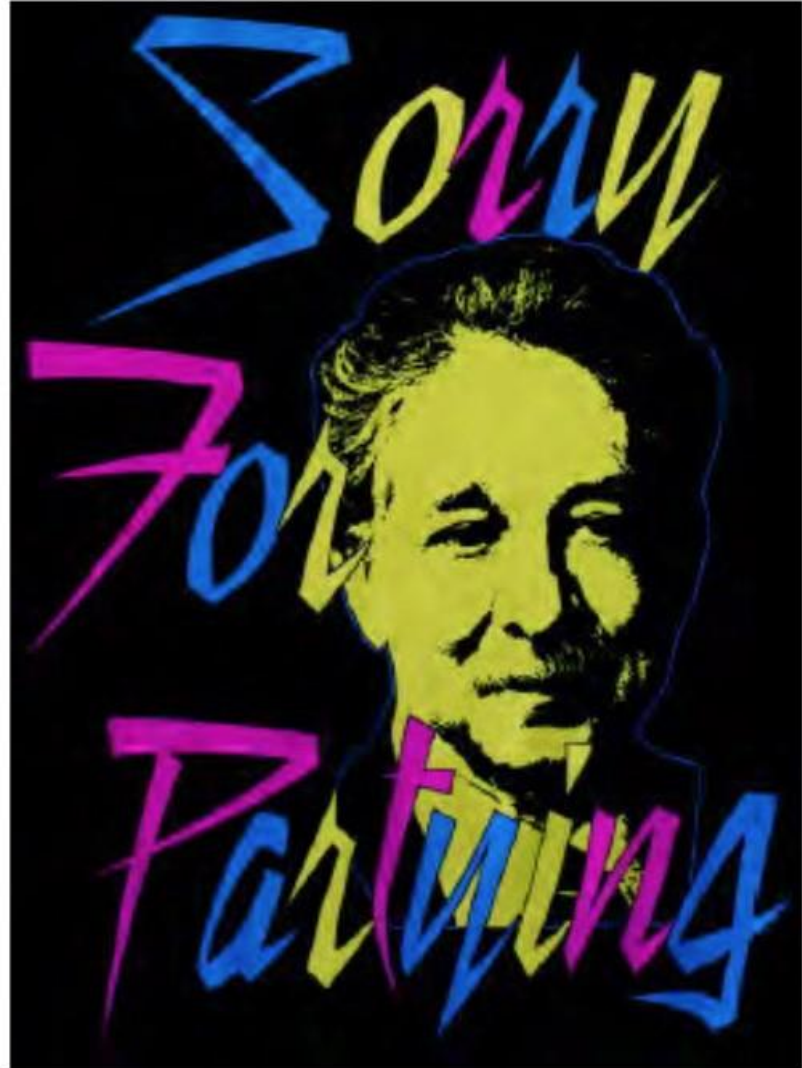
Monge, et al., v. Maya Magazines, Inc., 688 F.3d 1164 (2012)



Cariou v. Prince, 714 F.3d 694 (2013)



*Kienitz v. Sconnie Nation, LLC,
766 F.3d 756 (2014)*



*The Authors Guild, Inc., et al. v.
HathiTrust, et al., 755 F.3d 87 (2014)*



HATHI
TRUST

*The Authors Guild, Inc., et al. v.
Google Inc., 804 F.3d 202 (2015)*

Google books



*Szöveg és
adatbányászat?*



*Estate of James Oscar Smith, et ano.,
v. Cash Money Records, Inc., et al.,
253 F.Supp.3d 737 (2017)
aff'd 799 Fed.Appx. 36 (2020)*

Jimmy Smith: *Jimmy Smith Rap (1982)*

Good God Almighty, like back in the old days

You know, years ago they had the A & R men to tell you what to play, how to play it and you know whether it's disco rock, but we just told Bruce that we want a straight edge jazz so we got the fellas together Grady Tate, Ron Carter, George Benson, Stanley Turrentine.

Stanley was coming off a cool jazz festival, Ron was coming off a cool jazz festival. And we just went in the studio and we did it.

We had the champagne in the studio, of course, you know, compliments of the company and we just laid back and did it.

Also, Grady Tate's wife brought us down some home cooked chicken and we just laid back and we was chomping on chicken and having a ball.

Jazz is the only real music that's gonna last. All that other bullshit is here today and gone tomorrow. But jazz was, is and always will be.

We may not do this sort of recording again, I may not get with the fellas again. George, Ron, Grady Tate, Stanley Turrentine.

So we hope you enjoy listening to this album half as much as we enjoyed playing it for you. Because we had a ball.

Drake: *Pound Cake/Paris Morton Music 2 (2013)*

Good God Almighty, like back in the old days.

You know, years ago they had the A & R men to tell you what to play, how to play it and you know whether it's disco rock, but we just went in the studio and we did it.

We had champagne in the studio, of course, you know, compliments of the company, and we just laid back and did it.

So we hope you enjoy listening to this album half as much as we enjoyed playing it for you. Because we had a ball.

Only real music is gonna last, all that other bullshit is here today and gone tomorrow.



Google LLC v. Oracle Am., Inc. 141 S.Ct. 1183 (2021)

Google

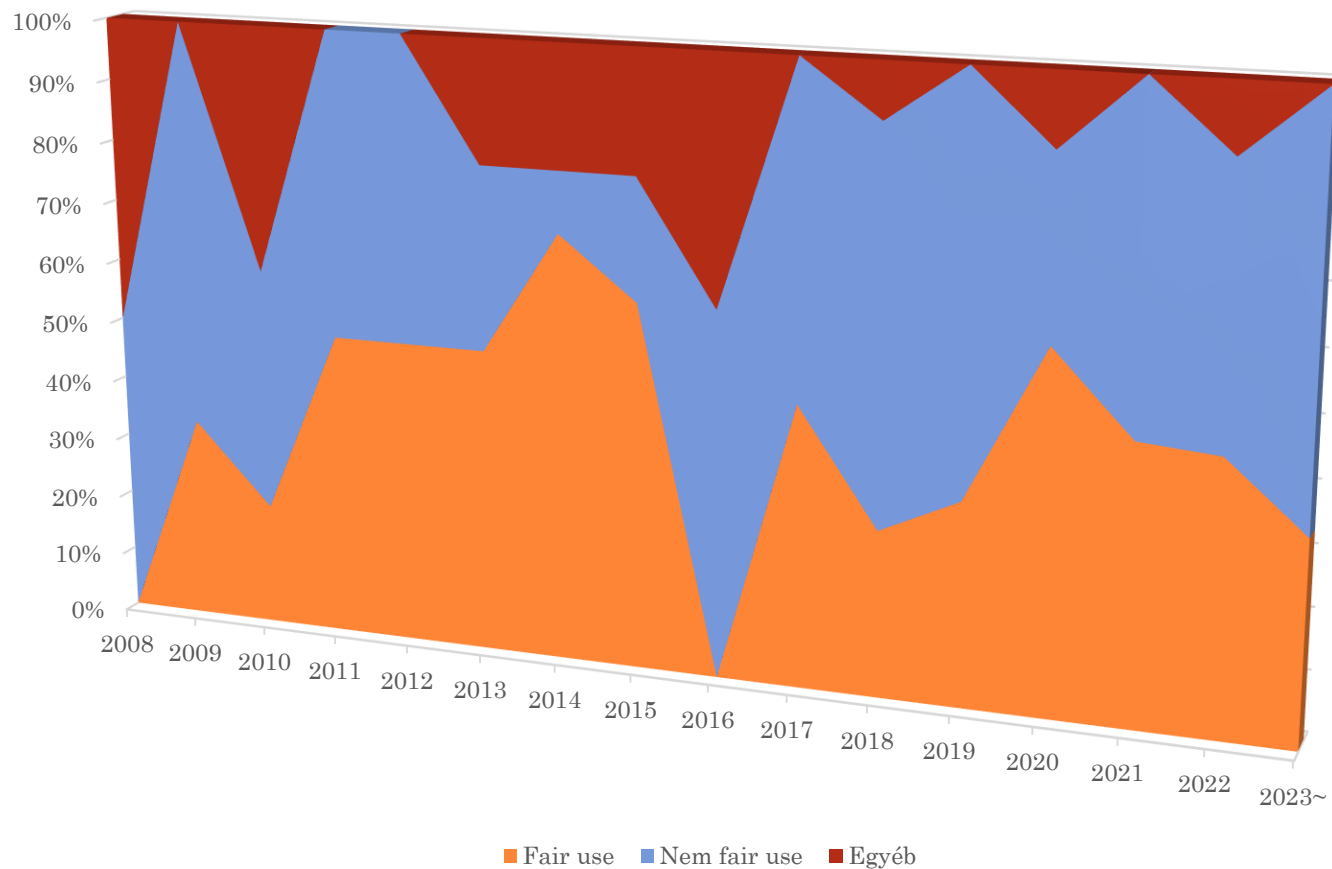


ORACLE®

Warhol Foundation v. Goldsmith, 598 U.S. ___ (2023)



USCO FAIR USE INDEX (2008-2023~)



Az alperesi siker aránya: 43.6%+.



GLOBALIS FAIR USE?

- Fair use más országokban: Izrael, Dél-Korea ... és talán mások is? (Dél-Afrika, Kína stb.)
- Európai fair use?
 - Pro: jogirodalmi álláspontok (pl. Hugenholtz, Senftleben, Geiger, Rendas, Aplin-Bently, Sganga-Signoretta) – többnyire „átvitt értelemben fair use”
 - Kontra:
 - AG Szpunar és az EUB a „szerzői jogi trilógiában” (Pelham, Funke Medien, Spiegel Online)
 - Néhány kritikus(abb) gondolkodó...

Does Andy Warhol Foundation v Goldsmith Mark the End of the European Fair Use Fetish?

Bernd Justin Jütte

University College Dublin, Vytautas Magnus University

Péter Mezei

University of Szeged, Vytautas Magnus University

GLOBÁLIS FAIR USE?

○ Európai fair use? (folyt.)

- Pastiche?



Bundesgerichtshof

Das Gericht Entscheidungen Presse Verfahrensarten

🏠 > Presse > Pressemitteilungen > Nr. 157/2023

Bundesgerichtshof legt Gerichtshof der Europäischen Union Fragen zum urheberrechtlichen Begriff des Pastiches vor

Ausgabejahr 2023
Erscheinungsdatum 14.09.2023

- Q1: “the question first arises whether the exception for use for the purpose of pastiche within the meaning of Article 5(3)(k) of Directive 2001/29/EC is a **catch-all provision** at least for an artistic treatment of a pre-existing work or other subject matter, including sampling, and *whether restrictive criteria such as the requirement of humour, imitation of style or homage apply to the concept of pastiche.*”



QUO VADIS, FAIR USE?

KÖSZÖNÖM A FIGYELMET!

