

The fair use dispute I chose to discuss has just begun to unfold in the media, Twitter specifically. Therefore it has not resulted in a judicial decision and is ripe for a thorough analysis concerning fair use. Within this article, the NFL is bothered by the use of game footage highlights being used in GIFs by the sports publications, Deadspin and SB Nation. A GIF is defined as a series of still images shown in rapid succession appearing to be an actual movie image when in reality it is not. The NFL is claiming copyright violations due to the use of the footage being used on Twitter in Twitter posts to attract sports fans to the websites for Deadspin and SB Nation. Twitter has reportedly suspended the accounts of these companies. This article, literally, raises the question: Do GIFs of sports highlights qualify as fair use?

The parent company of SB Nation, Vox Media said that the company always tries to “keep our use of unlicensed third party footage within the bounds of fair use.” Parker Higgins, director of copyright activism at civil liberties non-profit Electronic Frontier Foundation is on the side of Deadspin and SB Nation. He thinks that they have a defense.

Each side of this argument has not made official statements regarding this case since it is still unfolding. Both the NFL and Deadspin/SB Nation may have strong opposing arguments. On the side of Deadspin and SB Nation, Section 107 states that “the fair use of a copyrighted work...for purposes such as criticism, comment, news reporting ... or research, is not an infringement of copyright.” These two companies could argue that the GIFs being used in their Twitter posts are for news reporting and criticism and therefore not an infringement of copyright. These companies could also argue that even though they use these GIFs to attract sports fans to their websites, they do not take the

fans away from the actual live sporting events when they air on television. Fans go to these websites merely to rattle off their opinions on the latest news in sports which they could not do on the television as they are watching these live events. It is the constant back and forth by sports fans on the internet that make the fans want to watch the next football game and so on. The GIFs that are being discussed are taken from sports highlights. A sports highlight is small percentage of the actual sporting event and the GIF is an even smaller percentage of the sports highlight. Deadspin and SB Nation are barely using any material in the GIFs at all. These companies could also argue that this is for non commercial purposes since most if not all sports fans simply comment on what is going on in sports. They are not purchasing anything.

The NFL on the other hand can argue that the GIFs do not pass the fair use test because they are being used commercially. That is the first question one must ask them when considering fair use. Secondly, the nature of this copyrighted work is factual and not creative. The NFL couldn't use that in their case. The NFL isn't creating the copyrighted material. They are broadcasting it. The NFL also couldn't stand on the third factor of the fair use test because the GIFs used are highlights of highlights and encompass a fraction of fraction of the live broadcast. The NFL might be able to argue on the fourth factor of the fair use test. They could say that the GIFs contain the most important part of the live broadcast and if they were to allow Deadspin and SB Nation to use them then it could possibly draw fans away from the live broadcast if they know that they are going to get the guts of the game on the internet and not on television.

I am on the side of Deadspin and SB Nation in this dispute.

These GIFs that are being created and used in their Twitter posts are mere fraction of a fraction of the broadcast a highlight of a highlight. I would deem this fair use. The act of a sports fan seeing the GIF on Twitter and clicking on the link that sends the fan to Deadspin or SB Nation is not a commercial act. Not to mention that the NFL, like most corporations is a colossal corporation that contains assets in the millions if not billions. They don't need the money.

<http://www.npr.org/sections/alltechconsidered/2015/10/13/448378976/twitters-suspension-of-sports-media-revives-debate-over-fair-use>

Part 2

A situation in an archive that might qualify for fair use is one where a local film archive gets a donation from a local university of student films. Assuming the university owned the student films after completion, the film archive, if they so desire could digitize them and display them on a website. This would be considered fair use because the use of these student films is not of a commercial nature. The archive isn't getting paid for the viewing on the internet. It would be for nonprofit, educational purposes. The nature of the copyrighted work is creative and would not matter since the university handed over the copyright to the archive with the donation. The amount of the portion would not be of any concern. There is also no potential market for these films.