

## Calling All Digital Citizens

## CASE STUDY

## BETA TEST GONE HAYWIRE

All right, here's the deal. My name's Sam Goodall (no relation to Jane), and I'm a junior at Westminster High. I consider myself a pretty well-rounded person: I play soccer, I run track, and I'm in more clubs than I can count on all 11 fingers. Oh, and I like to joke around a bit as well.

Out of all my extra-curriculars, I'm most passionate about the Environmental Club at school. I get teased a bit at soccer and track practice, but I don't care. I love the "En Club." (Get it? In Club? Never mind...)

So, I got a "new" used car for my 16th birthday, and since gas is around \$20 a gallon (or so it seems), and my car gets about 0.5 mpg, I've become really interested in fuel conservation.

Recently, I've been working night and day on a program for my smart phone that basically lets me enter in my car's mpg, the distance I'm planning on traveling, and the current cost of gasoline in order to see exactly how much the trip's going to cost me. And I figure if I care so much about rising gas prices, then *other* similarly broke students will care too.

I showed the prototype to my best friend Tim and to my parents, and they all think it's an awesome idea. I even made a trial version for my parents to test out on their work commute and it worked great!

Basically, with this program I want to let drivers see the impact they're making on the environment by putting the x-ray where it hurts: their wallets. If people realize just how much they're spending for every road trip, maybe they'll do their part to save by carpooling, riding bikes, and stuff like that.

Anyway, I tweaked the program design a bit and put it on a file-sharing Web site under a special, secret name only the En Club members knew so they could beta test it. I also specifically told them not to show anyone outside the club because I didn't want it stolen. I trust these guys, so I slept easy that night without worrying about anything. I may have slept a little too easy...

See, one of our club members, Kelly, is really, really absentminded. (One time she called her mom from her car to tell her that she thought she had lost her cell phone. Uhhh...) She's a genius when it comes to environmental issues, but in the real world she's missing a screw or five.





## Case Study: Beta Test Gone Haywire

Anyway, when I gave out the secret name, Kelly immediately forgot it was supposed to be a secret and blabbed all about it to her sister, Kramer. She even uploaded it to her sister's phone for her!

Problem is, Kramer works as an intern in the marketing department of the biggest auto insurance provider in the Northeast. (Can you see where this is going?) She's also really into environmental stuff, and she's a really ambitious person. Kramer wanted to impress her bosses and so she uploaded my program onto the company's Intranet to encourage her co-workers to carpool whenever they could.

The VP of marketing got wind of the program, and fell in love with it. They were in the middle of preparing a "Green" pitch to satisfy their shareholders' concerns and the VP thought that my program would be the perfect headliner for it.

Kramer saw her chance to get ahead and proposed a big plan — that they partner with a GPS company to make a GPS device with the program built into it. She forgot to mention the most important part of her "big plan"...uhhh, that the program was not hers!

Kelly came into En Club yesterday really excited, telling us all about how her sister was going to get a sweet job with the insurance company because of *her* idea (to put *my* program in the GPS). I flipped out and she finally realized what had happened.

I called Kramer and told her that she'd better tell the company whose program it was or she'd be in big trouble. She got really smart with me over the phone and said that because the program was on a file-sharing site, I couldn't do anything about it.

I hung up the phone so angry I smashed the phone on my fingers. I told Kelly what her sister had done and Kelly called her sister right away to talk her out of it. No luck.

I drove home to lie down in my room until I could think without using four-letter words.

After I had calmed down, I remembered a computer class where my teacher explained that copyright law protects computer programs. I didn't think Kramer could just use the program however she wanted, so I fired off a quick email telling her that just because I let a few people run my program — and used online file-sharing to make it easy for those people to get it — I hadn't given it away to the whole world. At the end I asked if her "big plan" was really worth it if it got her company into a big copyright lawsuit.

The next morning, I had a response from Kramer sitting in my inbox. She said she had been having second thoughts about her "big plan." After she read my email, she decided to do the right thing and call her boss at the insurance company. After her boss talked to the company's legal department, they said they had to be absolutely clear about the copyright to the computer program. Basically, my email really saved her neck!

Two days later I got a call and a follow-up email from the company, offering me \$5,000 for the rights to my program and a paid research and development internship in their brand new Environmental Conservation department! Sweet!



## Calling All Digital Citizens

# FOUR FACTORS OF FAIR USE

Four factors are used to determine whether the specific use of a creative work is considered “fair.” All of the following four factors are considered – individually and as a whole – when making a fair use determination. However, it is important to note that fair use determinations can be highly subjective; different courts may look at the same facts, yet come to opposite conclusions.

## Factor 1: Purpose of the Work

Ask yourself, *“For what purpose is the creative content being used? Is the use ‘transformative’?”*

**More likely fair use:** Creative content is being used to teach, research, report, comment, or parody. Creative work is being transformed or changed in some way rather than used in its original state.

**Less likely fair use:** Creative content is being used to make money, entertain, or for some other commercial activity. Creative work is used in its original state in a non-transformative way.

## Factor 2: Nature of the Copyrighted Work

Ask yourself, *“What is the original creative content that is being used?”*

**More likely fair use:** Content that is non-fiction or factual in nature, or that is educational.

**Less likely fair use:** Content that is fictional, commercial, or entertaining.

## Factor 3: Amount of the Work Used

Ask yourself, *“How much of the original creative content is being used?”*

**More likely fair use:** A small amount or percentage of the original work; just enough of the original work used to meet the purpose of the new work; a part of the work that is not the most significant section or part.

**Less likely fair use:** A large part or percentage of the original work; more of the original than necessary to meet the purpose of the new work; the most important part of the work.

## Factor 4: Effect of the Use on the Market for the Original Work

Ask yourself, *“Does the new work negatively affect or harm the original work? Does the new work substitute for the original?”*

**More likely fair use:** User is not hurting the market for the original work from making money or sales; new work is transformative and therefore is not a substitute; new work not for sale or able to be licensed.

**Less likely fair use:** User is making money; new creation is non-transformative and therefore, it may substitute for sales of original work.

Source: <http://www.copyright.gov>



## Calling All Digital Citizens

# FAIR OR NOT?

**Scenario #1:** Tyrone loves music. It is something that he knows a lot about and he has started a blog dedicated to the subject called, "Tyrone's Tunes." In the blog, he tells readers about new music coming out, concerts that are worth buying tickets to, and updates on his favorite musicians. His latest entry is dedicated to Coldplay, one of his favorite bands. It talks about how great their latest album is. In the entry, Tyrone quotes a few lines from his favorite track on the new album. Is quoting the lines to the Coldplay song on the blog fair use or not?

**Scenario #2:** Brady is the manager of her high school lacrosse team. Throughout the season, she has taken pictures of the team at practices and games. She decides to create a video slide show of the photos to sell at the team's end-of-year banquet. She uses many of the team's "theme songs," including Queen's "We Are the Champions," and Kanye West's "Stronger," as background music in the slide show. Is the use of these songs in the slide show fair use or not?

**Scenario #3:** Dean is very concerned about the environment. He finds an application on one of his favorite green Web sites where users can measure their carbon and ecological footprints by answering a series of questions. The application also gives the users specific ideas for reducing their footprints using environmentally friendly behaviors. It's really cool! Dean decides to download the application and put it on his Facebook page so his friends can do it too. Is Dean's use of the application fair use or not?

**Scenario #4:** Jae was lucky enough to go with her Dad to the Beijing Summer Olympic Games. She even got tickets to see Michael Phelps win his historic eighth gold medal. She knew her friends would never believe she was there. When she got home, she watched the race back on the NBC Web site and realized she was actually in the shot when Michael Phelps jumped into the crowd to hug his family! She uploaded the video to her Habbo page. Is Jae's use of the footage fair use or not?

**Scenario #5:** Josie wants to be a photographer when she gets older and she loves to go to exhibits to learn about new techniques and to admire the work of other photographers. The latest exhibit she checked out was by a new local artist who takes photographs that depict the life of the city's homeless population. Josie was very moved by the exhibit. She took photos of most of the images on her cell phone and then uploaded them onto her personal Web site. She hopes they will move her friends as much as they moved her. Is Josie's use of the photographs fair use or not?

**Scenario #6:** Blake watched the two-hour Presidential debate with great interest. She had always been politically motivated and wanted to learn more about the candidate whose views most closely matched hers. One particular exchange in the debate about the candidates' energy plan helped to make up her mind about whom she would vote for. She decided to download the six-minute video of that exchange and put it up on her Facebook page to educate her friends about the issue and to justify her choice for President. For some dramatic effect, she mixed in some music from her favorite band. Is Blake's use of the debate footage and music fair use or not?