

TERMS OF USE – ARRIVANOICORTI.IT



0. Summary

A. In brief:

- 1) you must retain all the rights or authorizations on every part of the work you are sending to Arrivano I Corti, in the limits of fair use (read the final note in this document for informations about “fair use”);
- 2) you must be at least 18 years old (or have an adult that represents you) and grant the content of your work not to be offensive in the common moral sense;
- 3) **if you specify it, you agree with Arrivano i Corti in publishing your work (the entire video or a trailer) on www.arrivanoicorti.it domain (this is NOT REQUIRED to join the festival, this regards website only);**
- 4) **if you specify it, you agree with Arrivano i Corti in publishing your work (the entire video or a trailer) on correlated projects' websites and eventually on other video host services over the internet (like YouTube, Google Video, Revver, Myspace, AtomFilms...), in order to broaden the audience on a selection of submitted works (this is NOT REQUIRED to join the festival, this regards website only);**
- 5) you agree with Arrivano i Corti in using your work (or parts of it) for public broadcasting (during the festival or out of the festival), advertising, and for archive/documentation purposes;
- 6) registered users can send videos and articles/reviews: they will be published on www.arrivanoicorti.it after moderation; Arrivano i Corti can ban permanently a registered user without notice;
- 7) Arrivano i Corti decides what content can be published; Arrivano i Corti can delete a video/article/review post without notice; Arrivano i Corti maintains a file repository containing also unpublished and deleted videos;
- 8) Arrivano i Corti does not endorse any User Submission or any opinion, recommendation, or advice expressed therein, and Arrivano i Corti expressly disclaims any and all liability in connection with User Submissions;

- 9) Arrivano i Corti will send an e-mail to all registered users on every revision of this document.



B. Publishing complete short films or their trailers on the Internet

User declares and grants that his work:

- a) does not attack or demean a particular gender, sexual orientation, race, religion, ethnic origin, veteran status, color, age, disability or nationality;
- b) does not contain images of people, without their authorization;
- c) does not contain pornography, sexually explicit content or child exploitation;
- d) does not contain direct, indirect or subliminal advertisements;
- e) is original and do not violates copyright laws.

User declares and grats also:

- a) that he/she and he/she solely is the owner of copyright, and no third party is involved in it;
- b) that he retains written authorization from eventual co-authors, artists/interpreters of the opera.

User, checking the corresponding fields during his/her subscription, permits to Arrivano i Corti to:

- a) broadcast with every technical mean, transmit a spread the submitted work, via internet or with every kind of communication system (for example Wap, Umts, Iptv, Dsl, or invented in future) that can permit to browse internet websites, using every communication protocol, file format and compression method (for example Mp3, Podcast, Mov, Flc, Wma, Mpeg, Avi, Jpeg, or invented in future), with every content fruition mode (for example streaming, video on demand, podcast, or invented in future);**
- b) use the entire Opera or parts of it, and insert it in archives;**
- c) publish the work on other websites and video communities (for example YouTube, Google Video, Revver, Myspace, AtomFilms) in Arrivano i Corti's**

thematic channel, in order to promote the best works and document festival activities.



1. Your Acceptance

A. By using and/or visiting this website (collectively, including all content and functionality available through the Arrivanoicorti.it domain name, the "Arrivano i Corti Website", or "Website"), you signify your agreement to (1) these terms and conditions (the "Terms of Service"), (2) Arrivano i Corti's privacy notice, incorporated here by reference, and (3) Arrivano i Corti's Community Guidelines, also incorporated here by reference. If you do not agree to any of these terms, the Arrivano i Corti privacy notice, or the Community Guidelines, please do not use the Arrivano i Corti Website.

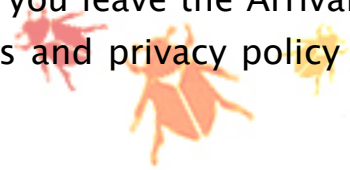
B. Although we may attempt to notify you when major changes are made to these Terms of Service, you should periodically review the most up-to-date version. Arrivano i Corti may, in its sole discretion, modify or revise these Terms of Service and policies at any time, and you agree to be bound by such modifications or revisions. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

2. Arrivano i Corti Website

A. These Terms of Service apply to all users of the Arrivano i Corti Website, including users who are also contributors of video content, information, articles, and other materials or services on the Website.

B. The Arrivano i Corti Website may contain links to third party websites that are not owned or controlled by Arrivano i Corti. Arrivano i Corti has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, Arrivano i Corti will not and cannot censor or edit the content of any third-party site. By using the Website, you expressly relieve Arrivano i Corti from any and all liability arising from your use of any third-party website.

C. Accordingly, we encourage you to be aware when you leave the Arrivano i Corti Website and to read the terms and conditions and privacy policy of each other website that you visit.



3. Arrivano i Corti Accounts

A. In order to access some features of the Website, you will have to create an account. You may never use another's account without permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify Arrivano i Corti immediately of any breach of security or unauthorized use of your account.

B. Although Arrivano i Corti will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of Arrivano i Corti or others due to such unauthorized use.

4. General Use of the Website – Permissions and Restrictions

Arrivano i Corti hereby grants you permission to access and use the Website as set forth in these Terms of Service, provided that:

A. You agree not to distribute in any medium any part of the Website, including but not limited to User Submissions (defined below), without Arrivano i Corti 's prior written authorization.

B. You agree not to alter or modify or hack any part of the Website, including but not limited to any of its related technologies.

C. You agree not to use the Website, without the prior written authorization of Arrivano i Corti. Prohibited commercial uses include any of the following actions taken without Arrivano i Corti's express approval:

- * sale of access to the Website or its related services on another website;

- * use of the Website or its related services for the primary purpose of gaining advertising or subscription revenue;
- * the sale of advertising, on the Arrivano i Corti website or any third-party website, targeted to the content of specific User Submissions or Arrivano i Corti content;
- * and any use of the Website or its related services that Arrivano i Corti finds, in its sole discretion, to use Arrivano i Corti's resources or User Submissions with the effect of competing with or displacing the market for Arrivano i Corti.

E. Prohibited commercial uses do not include:

- * uploading an original video to Arrivano i Corti to promote your business or artistic enterprise;
- * showing Arrivano i Corti videos on a blog or website, provided the primary purpose of using the Embeddable Player is not to gain advertising revenue or compete with Arrivano i Corti.

F. You agree not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the Website in a manner that sends more request messages to the Arrivano i Corti servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser. Notwithstanding the foregoing, Arrivano i Corti grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials. Arrivano i Corti reserves the right to revoke these exceptions either generally or in specific cases. You agree not to collect or harvest any personally identifiable information, including account names, from the Website, nor to use the communication systems provided by the Website (e.g. comments, email) for any commercial solicitation purposes. You agree not to solicit, for commercial purposes, any users of the Website with respect to their User Submissions.

G. In your use of the website, you will otherwise comply with the terms and conditions of these Terms of Service, Arrivano i Corti Community Guidelines, and all applicable local, national, and international laws and regulations.

H. Arrivano i Corti reserves the right to discontinue any aspect of the Website at any time.

5. Your Use of Content on the Site

In addition to the general restrictions above, the following restrictions and conditions apply specifically to your use of content on the Arrivano i Corti Website.

A. The content on the Website, except all User Submissions (as defined below), including without limitation, the text, software, scripts, graphics, photos, sounds, music, videos, interactive features ("Content") and the trademarks, service marks and logos contained therein ("Marks"), are owned by or licensed to Arrivano i Corti, subject to copyright and other intellectual property rights under the law. Content on the Website is provided to you AS IS for your information and personal use only and may not be downloaded, copied, reproduced, distributed, transmitted, broadcasted, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners. Arrivano i Corti reserves all rights not expressly granted in and to the Website and the Content.

B. You may access User Submissions solely:

- * for your information and personal use;
- * as intended through the normal functionality of the Arrivano i Corti Service; and
- * for Streaming.

"Streaming" means a contemporaneous digital transmission of an audiovisual work via the Internet from the Arrivano i Corti Service to a

user's device in such a manner that the data is intended for real-time viewing and not intended to be copied, stored, permanently downloaded, or redistributed by the user. Accessing User Videos for any purpose or in any manner other than Streaming is expressly prohibited. User Videos are made available "as is".

C. You agree to not engage in the use, copying, or distribution of any of the Content other than expressly permitted herein, including any use, copying, or distribution of User Submissions of third parties obtained through the Website for any commercial purposes.

D. You agree not to circumvent, disable or otherwise interfere with security-related features of the Website or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Website or the Content therein.

E. You understand that when using the Website, you will be exposed to User Submissions from a variety of sources, and that Arrivano i Corti is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such User Submissions. You further understand and acknowledge that you may be exposed to User Submissions that are inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Arrivano i Corti with respect thereto, and agree to indemnify and hold Arrivano i Corti, its Owners/Operators, affiliates, and/or licensors, harmless to the fullest extent allowed by law regarding all matters related to your use of the site.

6. Your User Submissions and Conduct

A. As a Arrivano i Corti account holder you may submit video content ("User Videos") and textual content ("User Comments"). User Videos and User Comments are collectively referred to as "User Submissions." You understand that whether or not such User Submissions are published,

Arrivano i Corti does not guarantee any confidentiality with respect to any User Submissions.



B. For clarity, you retain all of your ownership rights in your User Submissions. However, by submitting User Submissions to Arrivano i Corti, you hereby grant Arrivano i Corti a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the User Submissions in connection with the Arrivano i Corti Website and Arrivano i Corti's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Arrivano i Corti Website (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Arrivano i Corti Website a non-exclusive license to access your User Submissions through the Website, and to use, reproduce, distribute, display and perform such User Submissions as permitted through the functionality of the Website and under these Terms of Service. The above licenses granted by you in User Videos terminate when you remove or delete your User Videos from the Arrivano i Corti Service. You understand and agree, however, that Arrivano i Corti may retain, but not display, distribute, or perform, server copies of User Submissions that have been removed or deleted. The above licenses granted by you in User Comments are perpetual and irrevocable.

D. In connection with User Submissions, you further agree that you will not submit material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant Arrivano i Corti all of the license rights granted herein.

E. Arrivano i Corti does not endorse any User Submission or any opinion, recommendation, or advice expressed therein, and Arrivano i Corti expressly disclaims any and all liability in connection with User Submissions. Arrivano i Corti does not permit copyright infringing activities and infringement of intellectual property rights on its Website, and Arrivano

i Corti will remove all Content and User Submissions if properly notified that such Content or User Submission infringes on another's intellectual property rights. Arrivano i Corti reserves the right to remove Content and User Submissions without prior notice.

7. Account Termination Policy

A. Arrivano i Corti will terminate a User's access to its Website if, under appropriate circumstances, they are determined to be a repeat infringer.

B. Arrivano i Corti reserves the right to decide whether Content or a User Submission is appropriate and complies with these Terms of Service for violations other than copyright infringement, such as, but not limited to, pornography, obscene or defamatory material, or excessive length. Arrivano i Corti may remove such User Submissions and/or terminate a User's access for uploading such material in violation of these Terms of Service at any time, without prior notice and at its sole discretion.

8. Warranty Disclaimer

YOU AGREE THAT YOUR USE OF THE ARRIVANO I CORTI WEBSITE SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, ARRIVANO I CORTI, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE WEBSITE AND YOUR USE THEREOF. ARRIVANO I CORTI MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THIS SITE'S CONTENT OR THE CONTENT OF ANY SITES LINKED TO THIS SITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR WEBSITE, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR WEBSITE, (IV) ANY BUGS, VIRUSES, TROJAN HORSES, OR

THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR WEBSITE BY ANY THIRD PARTY, AND/OR (V) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE ARRIVANO I CORTI WEBSITE. ARRIVANO I CORTI DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE ARRIVANO I CORTI WEBSITE OR ANY HYPERLINKED WEBSITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND ARRIVANO I CORTI WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

9. Indemnity

You agree to defend, indemnify and hold harmless Arrivano i Corti, its parent corporation, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Website; (ii) your violation of any term of these Terms of Service; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that one of your User Submissions caused damage to a third party. This defense and indemnification obligation will survive these Terms of Service and your use of the Arrivano i Corti Website.

10. Ability to Accept Terms of Service

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of

Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Arrivano i Corti Website is not intended for children under 13. If you are under 13 years of age, then please do not use the Arrivano i Corti Website. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you.

11. Arrivano i Corti Community Guidelines

A. Respect the Arrivano i Corti Community

We're not asking for the kind of respect reserved for nuns, the elderly, and brain surgeons. We mean don't abuse the site. Every cool new community feature on Arrivano i Corti involves a certain level of trust. We trust you to be responsible, and millions of users respect that trust, so please be one of them.

B. We Review Videos Flagged As Inappropriate

Okay, this one is more about us than you. When a user sends us an email to suggest a video moderation, that video gets flagged as inappropriate: we review the video to determine whether it violates our Terms of Use. Flagged videos are not automatically taken down by the system. If we remove your video after reviewing it, you can assume that we removed it purposefully, and you should take our warning notification seriously. Take a deep breath, read our Terms of Use and try to see it from our perspective. If you find other videos on Arrivano i Corti with the same violations, please flag them so we can review them as well!

C. Don't Cross the Line

Here are some common-sense rules that will help you steer clear of trouble:

* Arrivano i Corti is not for pornography or sexually explicit content. If this describes your video, even if it's a video of yourself, don't post it on Arrivano i Corti. Also, be advised that we work closely with law enforcement and we report child exploitation. Please read our Safety Tips and stay safe on Arrivano i Corti.

* Don't post videos showing bad stuff like animal abuse, drug abuse, or bomb making.

* Graphic or gratuitous violence is not allowed. If your video shows someone getting hurt, attacked, or humiliated, don't post it.

* Arrivano i Corti is not a shock site. Don't post gross-out videos of accidents, dead bodies and similar things.

* Respect copyright. Only upload videos that you made or that you have obtained the rights to use. This means don't upload videos you didn't make, or use content in your videos that someone else owns the copyright to, such as music tracks, snippets of copyrighted programs, or videos made by other users, without their permission. Read our Copyright Tips for more information.

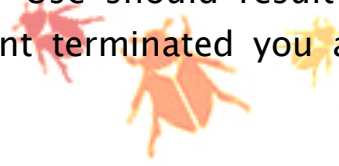
* We encourage free speech and defend everyone's right to express unpopular points of view. But we don't permit hate speech, which is content intended to attack or demean a particular gender, sexual orientation, race, religion, ethnic origin, veteran status, color, age, disability or nationality.

* There is zero tolerance for predatory behavior, stalking, threats, harassment, invading privacy, or the revealing of other members' personal information. Anyone caught doing these things may be permanently banned from Arrivano i Corti.

* Everyone hates spam. Do not create misleading descriptions, tags, titles or thumbnails in order to increase views. Promoting your channel is one thing, but it's not okay to post large amounts of untargeted, unwanted or repetitive content, including comments and private messages.

Please take these rules seriously and take them to heart. Don't try to look for loopholes or try to lawyer your way around them—just understand them and try to respect the spirit in which they were created. Violations of the Terms of Use may result in a warning notification or may result in termination of your account and deletion of all your videos. We decide

whether we believe your violation of our Terms of Use should result in termination of your account. If you have an account terminated you are prohibited from ever signing up for another account!



D. Arrivano i Corti is for the Community

Remember that this is your community! Each and every user of Arrivano i Corti makes the site what it is, so don't be afraid to dig in and get involved!

- * Have fun with the site. There's a lot here to see, and lots of folks making amazing stuff—one of them might be you! Equipment's getting cheaper and easier to use all the time, so dive in and enjoy.

- * Let folks know what you think. Feedback's part of the experience, and when done with respect, can be a great way to make friends, share stories, and make your time on Arrivano i Corti richer. So leave comments, rate videos, make your own responses to videos that affect you, enter contests of interest—there's a lot going on and a lot of ways to participate here.

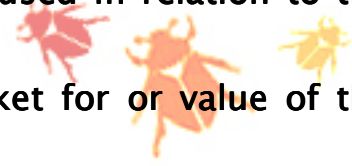
- * You may not like everything you see. Some of the content here may offend you—if you find that it violates our Terms of Use, then send us an email with the address of the video you're watching, to submit it for review by Arrivano i Corti staff. If it doesn't, then consider just clicking on something else—why waste time watching videos you don't like?

12. About “Fair Use” of copyrighted material

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;
4. the effect of the use upon the potential market for or value of the copyrighted work.



A. Purpose and character

The first factor is about whether the use in question helps fulfill the intention of copyright law to stimulate creativity for the enrichment of the general public, or whether it aims to only "supersede the objects" of the original for reasons of personal profit. To justify the use as fair, one must demonstrate how it either advances knowledge or the progress of the arts through the addition of something new. A key consideration is the extent to which the use is interpreted as transformative, as opposed to merely derivative.

B. Nature of the copied work

Although the Supreme Court of the United States has ruled that the availability of copyright protection should not depend on the artistic quality or merit of a work, fair use analyses consider certain aspects of the work to be relevant, such as whether it is fictional or non-fictional.

To prevent the private ownership of work that rightfully belongs in the public domain, facts and ideas are separate from copyright; only their particular expression or fixation merits such protection. On the other hand, the social usefulness of freely available information can weigh against the appropriateness of copyright for certain fixations.

C. Amount and substantiality

The third factor assesses the quantity or percentage of the original copyrighted work that has been imported into the new work. In general, the less that is used in relation to the whole, e.g., a few sentences of a text for a book review, the more likely that the sample will be considered fair use.

D. Effect upon work's value



The fourth factor measures the effect that the allegedly infringing use has had on the copyright owner's ability to exploit his original work. The court not only investigates whether the defendant's specific use of the work has significantly harmed the copyright owner's market, but also whether such uses in general, if widespread, would harm the potential market of the original. The burden of proof here rests on the defendant for commercial uses, but on the copyright owner for non-commercial uses.

In evaluating the fourth factor, courts often consider two kinds of harm to the potential market of the original work: first, courts consider whether the use in question acts as a direct market substitute for the original work: "when a commercial use amounts to mere duplication of the entirety of the original, it clearly supersedes the object of the original and serves as a market replacement for it, making it likely that cognizable market harm to the original will occur". In one instance, a court ruled that this factor weighed against a defendant who had made unauthorized movie trailers for video retailers, since his trailers acted as direct substitutes for the copyright owner's official trailers. Second, courts also consider whether potential market harm might exist beyond that of direct substitution, such as in the potential existence of a licensing market.

Courts recognize that certain kinds of market harm do not oppose fair use, such as when a parody or negative review impairs the market of the original work. Copyright considerations may not shield a work against adverse criticism: "For example, if you wish to criticize a novelist, you should have the freedom to quote a portion of the novelist's work without asking permission. Absent this freedom, copyright owners could stifle any negative comments about their work".

E. Fair Use and Professional Communities



Courts when deciding fair use cases, in addition to looking at context, amount and value of the use, also look to the standards and practices of the professional communities where the case comes from.

Documentary filmmakers organized and created the Documentary Filmmakers' Statement of Best Practices in Fair Use [2], which has had a dramatic effect on fair use practice in documentary film. Since the release of the Statement in 2005, PBS, ITVS and IFC use it. Furthermore, four out of seven of the national errors and omissions insurers now issue fair use coverage routinely. Several documentary films have also used it, allowing both theatrical and television releases. Other professional communities are beginning to plan their own best practices standards in fair use as well.

F. Summaries of Fair Use Cases

The best method of understanding the flexible principle of fair use is to review actual cases decided by the courts. Below are summaries of a series of fair use cases.

1. Cases Involving Text

* Not a fair use. An author copied more than half of an unpublished manuscript to prove that someone was involved in the overthrow of the Iranian government. Important factors: A substantial portion was taken (half of the work) and the work had not yet been published. (*Love v. Kwitny*, 772 F. Supp. 1367 (S.D. N.Y. 1989).)

* Fair use. A biographer of Richard Wright quoted from six unpublished letters and ten unpublished journal entries by Wright. Important factors: No more than 1% of Wright's unpublished letters were copied and the purpose was informational. (*Wright v. Warner Books, Inc.*, 953 F.2d 731 (2d Cir. 1991).)

* Not a fair use. A biographer paraphrased large portions of unpublished letters written by the famed author J.D. Salinger. Although people could

read these letters at a university library, Salinger had never authorized their reproduction. In other words, the first time that the general public would see these letters was in their paraphrased form in the biography. Salinger successfully sued to prevent publication. Important factors: The letters were unpublished and were the "backbone" of the biography--so much so that without the letters the resulting biography was unsuccessful. In other words, the letters may have been taken more as a means of capitalizing on the interest in Salinger than in providing a critical study of the author. (*Salinger v. Random House*, 811 F.2d 90 (2d Cir. 1987).)

* Not a fair use. The Nation magazine published excerpts from ex-President Gerald Ford's unpublished memoirs. The publication in The Nation was made several weeks prior to the date of serialization of Mr. Ford's book in another magazine. Important factors: The Nation's copying seriously damaged the marketability of Mr. Ford 's serialization rights. (*Harper & Row v. Nation Enters.*, 471 U.S. 539 (1985).)

* Not a fair use. A company published a book entitled *Welcome to Twin Peaks: A Complete Guide to Who's Who and What's What*, containing direct quotations and paraphrases from the television show "Twin Peaks" as well as detailed descriptions of plot, character and setting. Important factors: The amount of the material taken was substantial and the publication adversely affected the potential market for authorized books about the program. (*Twin Peaks v. Publications Int'l, Ltd.* 996 F.2d 1366 (2d Cir. 1993).)

* Not a fair use. A company published a book of trivia questions about the events and characters of the "Seinfeld" television series. The book included questions based upon events and characters in 84 "Seinfeld" episodes and used actual dialogue from the show in 41 of the book's questions. Important factors: As in the "Twin Peaks" case, the book affected the owner's right to make derivative "Seinfeld" works such as trivia books. (*Castle Rock Entertainment, Inc. v. Carol Publ. Group*, 150 F.3d 132 (2d Cir. 1998).)

* Fair use. Publisher Larry Flynt made disparaging statements about the Reverend Jerry Falwell on one page of *Hustler* magazine. Rev. Falwell made several hundred thousand copies of the page and distributed them as part of a fund-raising effort. Important factors: Rev. Falwell's copying did not

diminish the sales of the magazine (since it was already off the market) and would not adversely affect the marketability of back issues. (*Hustler Magazine, Inc. v. Moral Majority, Inc.*, 606 F. Supp. 1526 (C.D. Cal. 1985).)

2. Artwork and Audiovisual Cases

* Not a fair use. A television news program copied one minute and 15 seconds from a 72-minute Charlie Chaplin film and used it in a news report about Chaplin's death. Important factors: The court felt that the portions taken were substantial and part of the "heart" of the film. (*Roy Export Co. Estab. of Vaduz v. Columbia Broadcasting Sys., Inc.*, 672 F.2d 1095, 1100 (2d Cir. 1982).)

* Fair use. The makers of a movie biography of Muhammad Ali used 41 seconds from a boxing match film in their biography. Important factors: A small portion of film was taken and the purpose was informational. (*Monster Communications, Inc. v. Turner Broadcasting Sys. Inc.*, 935 F. Supp. 490 (S.D. N.Y. 1996).)

* Not a fair use. A television station's news broadcast used 30 seconds from a fourminute copyrighted videotape of the 1992 Los Angeles beating of Reginald Denny. Important factors: The use was commercial, took the heart of the work and affected the copyright owner's ability to market the video. (*Los Angeles News Service v. KCAL-TV Channel 9*, 108 F.3d 1119 (9th Cir. 1997).)

* Fair use. In a lawsuit commonly known as the Betamax case, the Supreme Court determined that the home videotaping of a television broadcast was a fair use. This was one of the few occasions when copying a complete work (for example, a complete episode of the "Kojak" television show) was accepted as a fair use. Evidence indicated that most viewers were "time-shifting" (taping in order to watch later) and not "library-building" (collecting the videos in order to build a video library). Important factors: The Supreme Court reasoned that the "delayed" system of viewing did not deprive the copyright owners of revenue. (*Universal City Studios v. Sony Corp.*, 464 U.S. 417 (1984).)

* Not a fair use. A poster of a "church quilt" was used in the background of a television series for 27 seconds. Important factors: The court was

influenced by the prominence of the poster, its thematic importance for the set decoration of a church and the fact that it was a conventional practice to license such works for use in television programs. (*Ringgold v. Black Entertainment Television, Inc.*, 126 F.3d 70 (2d Cir. 1997).)

* Fair Use. A search engine's practice of creating small reproductions ("thumbnails") of images and placing them on its own website (known as "inlining") did not undermine the potential market for the sale or licensing of those images. Important Factors. The thumbnails were much smaller and of much poorer quality than the original photos and served to index the images and help the public access them. (*Kelly v. Arriba-Soft*, 03 C.D.O.S. 5888 (9th Cir. 2003).)

3. Internet Cases

* Not a fair use. Entire publications of the Church of Scientology were posted on the Internet by several individuals without Church permission. Important factors: Fair use is intended to permit the borrowing of portions of a work, not complete works. (*Religious Technology Center v. Lerma*, 40 U.S.P.Q. 2d 1569 (E.D. Va. 1996).)

* Fair use. The Washington Post used three brief quotations from Church of Scientology texts posted on the Internet (see previous case). Important factors: Only a small portion of the work was excerpted and the purpose was for news commentary. (*Religious Technology Center v. Pagliarina*, 908 F. Supp 1353 (E.D. Va. 1995).)

4. Music Cases

* Fair use. A person running for political office used 15 seconds of his opponent's campaign song in a political ad. Important factors: A small portion of the song was used and the purpose was for purposes of political debate. (*Keep Thomson Governor Comm. v. Citizens for Gallen Comm.*, 457 F. Supp. 957 (D. N.H. 1978).)

* Fair use. A television film crew, covering an Italian festival in Manhattan, recorded a band playing a portion of a copyrighted song "Dove sta Zaza." The music was replayed during a news broadcast. Important

factors: Only a portion of the song was used, it was incidental to the news event and did not result in any actual damage to the composer or to the market for the work. (*Italian Book Corp, v. American Broadcasting Co.*, 458 F. Supp. 65 (S.D. N.Y. 1978).)

5. Summaries of Parody Cases

* Fair use. The rap group 2 Live Crew borrowed the opening musical tag and the words (but not the melody) from the first line of the song "Pretty Woman" ("Oh, pretty woman, walking down the street "). The rest of the lyrics and the music were different. Important factors: The group's use was transformative and borrowed only a small portion of the "Pretty Woman" song. The 2 Live Crew version was essentially a different piece of music and the only similarity was a brief musical opening part and the opening line. (Note: The rap group had initially sought to pay for the right to use portions of the song but were rebuffed by the publisher who did not want "Pretty Woman" used in a rap song.) (*Campbell v. Acuff–Rose Music*, 510 U.S. 569 (1994).)

* Fair use. The composers of the song, "When Sunny Gets Blue," claimed that their song was infringed by "When Sonny Sniffs Glue, " a 29second parody that altered the original lyric line and borrowed six bars of the song. A court determined this parody was excused as a fair use. Important factors: Only 29 seconds of music were borrowed (not the complete song). (*Fisher v. Dees*, 794 F.2d 432 (9th Cir. 1986).) (Note: As a general rule, parodying more than a few lines of a song lyric is unlikely to be excused as a fair use. Performers such as Weird Al Yankovic, who earn a living by humorously modifying hit songs, seek permission of the songwriters before recording their parodies.)

* Fair use. Comedians on the late–night television show "Saturday Night Live" parodied the song "I Love New York" using the words "I Love Sodom." Only the words "I Love" and four musical notes were taken from the original work. Important factors: The "Saturday Night Live" version of the jingle did not compete with or detract from the original song. (*Elsmere Music, Inc. v. National Broadcasting Co.*, 482 F. Supp. 741 (S.D. N.Y.), *aff'd* 632 F.2d 252 (2d Cir. 1980).)

* Not a fair use. An author mimicked the style of a Dr. Seuss book while re-telling the facts of the O.J. Simpson murder trial in *The Cat NOT in the Hat! A Parody* by Dr. Juice. The Ninth Circuit Court of Appeals determined that the book was a satire, not a parody, because the book did not poke fun at or ridicule Dr. Seuss. Instead, it merely used the Dr. Seuss characters and style to tell the story of the murder. Important factors: The author's work was nontransformative and commercial. (*Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394 (9th Cir. 1997).)

* Fair use. A movie company used a photo of a naked pregnant woman and superimposed the head of actor Leslie Nielsen. The photo was a parody using similar lighting and body positioning of a famous photograph taken by Annie Leibovitz of the actress Demi Moore for the cover of *Vanity Fair* magazine. Important factors: The movie company's use was transformative because it imitated the photographer's style for comic effect or ridicule. (*Leibovitz v. Paramount Pictures Corp.*, 137 F.3d 109 (2d Cir. N.Y. 1998).)

* Not a fair use. An artist created a cover for a *New Yorker* magazine that presented a humorous view of geography through the eyes of a New York City resident. A movie company later advertised their film *Moscow on the Hudson* using a similar piece of artwork with similar elements. The artist sued and a court ruled that the movie company's poster was not a fair use. Important factors: Why is this case different than the previous case involving the Leslie Nielsen/Annie Leibovitz parody? In the Leibovitz case, the use was a true parody, characterized by a juxtaposition of imagery that actually commented on or criticized the original. The *Moscow on the Hudson* movie poster did not create a parody; it simply borrowed the *New Yorker's* parody (the typical New York City resident's geographical viewpoint that New York City is the center of the world). (*Steinberg v. Columbia Pictures Industries, Inc.*, 663 F. Supp. 706 (S.D. N.Y. 1987).)

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