

Fair Use In The U.S. Economy: Economic Contribution of Industries Relying on Fair Use

EXECUTIVE SUMMARY

While policymakers pay much attention to copyrights, exceptions to copyright protection also promote innovation and are a major catalyst of U.S. economic growth. Specific exceptions to copyright protection under U.S. and international law, generally classified under the broad heading of Fair Use, are vital to many industries and stimulate growth across the economy. Companies benefiting from fair use generate substantial revenue, employ millions of workers, and, in 2006, represented one-sixth of total U.S. GDP.

Under guidelines published by the World Intellectual Property Organization (WIPO), economic activity associated with copyrights has been studied extensively. To date, however, the economic contribution of industries dependent on fair use has not been quantified. Thus, a primary objective of this study is to fill the gap and provide an initial assessment of the economic contribution generated by companies benefiting from fair use.

Fair use is an important restriction to the rights conferred on original works by the U.S. Copyright Act of 1976: “The fair use of a copyrighted work ... is not an infringement of copyright.”¹ The fair use doctrine, and other limitations and exceptions, have grown in importance with the rise of the digital economy, as fair use permits a range of activities that are critical to many high technology businesses and are an important foundation of the Internet economy.

The beneficiaries of fair use encompass a broad range of companies, particularly those whose business activities involve the Internet, as well as consumers. The ubiquity of the Internet means that its benefits are widespread as well.

Industries that depend on or benefit from fair use include:

- manufacturers of consumer devices that allow individual copying of copyrighted programming;
- educational institutions;
- software developers; and
- internet search and web hosting providers.

As summarized in the enclosed report, the courts have held that fair use is integral to many industries. The courts have established, for example, that fair use permits the main service provided by search engines, that software development depends on making

¹ 17 U.S.C. § 107.

temporary copies to facilitate the programming of interoperability, and that consumers can make copies of television and radio programming for personal use.

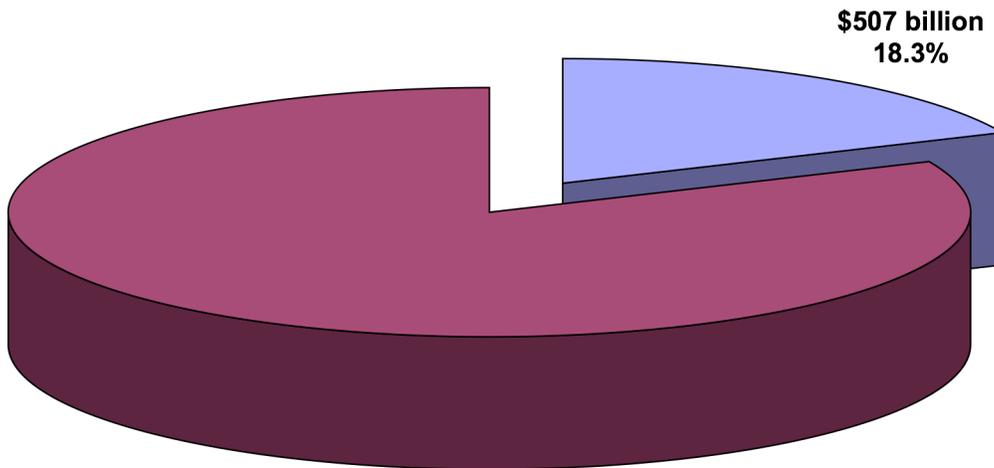
Industries benefiting from fair use have grown dramatically within the past 20 years, and their growth has had a profound impact on the U.S. economy. The report contains detailed data by industry and summarizes activity and growth in five areas:

Revenue - In 2006, fair use industries generated revenue of \$4.5 trillion, a 31 percent increase over 2002 revenue of \$3.5 trillion. In percentage terms, the most significant growth occurred in electronic shopping, audio and video equipment manufacturing, Internet publishing and broadcasting, Internet service providers and web search portals, and other information services.

Value Added - Value added equals a firm's total output minus its purchases of intermediate inputs and is the best measurement of an industry's economic contribution to national GDP. In 2006, fair use-related industry value added was \$2.2 trillion, 16.6 percent of total U.S. current dollar GDP.

Fair use industries also grew at a faster pace than the overall economy. From 2002 to 2006, the fair use industries contributed \$507 billion to U.S. GDP growth, accounting for 18.3 percent of U.S. current dollar economic growth.

Chart ES1: Fair Use Industries' Contribution to Current Dollar GDP Growth, 2002-2006



Sources: See Appendix II, Table 2.

Employment - Employment in industries benefiting from fair use increased from 10.5 million in 2002 to 10.8 million in 2006. Thus, about one out of every eight workers in

the United States is employed in an industry that benefits from the protection afforded by fair use.

Further illustrating the rapid growth of fair use industries, total payrolls expanded rapidly, rising from \$908 billion in 2002 to \$1.2 trillion in 2006.

Productivity – Productivity, the amount of goods and services that can be produced with a given number of inputs, is the foundation for rising living standards. From 2002 to 2006, the productivity of U.S. fair use industries increased to over \$128,000 per employee in 2006, far exceeding economy-wide productivity of \$90,000 per employee. Numerous researchers have determined that information technology companies, including those depending on fair use, have fueled U.S. productivity growth.

Exports – Exports related to fair use industries increased by nearly 50 percent from \$131 billion in 2002 to an estimated \$194 billion in 2006. Exports of trade-related services, including Internet or online services, rose from \$578 million in 2002 to an estimated \$2.6 billion in 2005, representing an annual growth rate of 65 percent, the most rapid growth among all the industries represented.

By any measure, the growth rate of fair use industries has outpaced overall economic growth in recent years, fueled productivity gains, and helped the overall economy sustain continued strong growth rates.

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The U.S. economy is an increasingly knowledge-based economy that benefits from the dynamic diversity of industries that depend on fair use exceptions to copyright protection. Through the growth of the Internet and related information technology revolution, the U.S. economy has benefited from the creation and rapid expansion of new industries, and a revival of productivity growth that supports higher living standards.

The research indicates that the industries benefiting from fair use and other limitations and exceptions make a large and growing contribution to the U.S. economy. The fair use economy in 2006 accounted for \$4.5 trillion in revenues and \$2.2 billion in value added, roughly one-sixth of total U.S. GDP. It employed more than 17 million people and supported a payroll of \$1.2 trillion. It generated \$194 billion in exports and rapid productivity growth.

The protection afforded by fair use has been a major contributing factor to these economic gains, and will continue to support growth as the U.S. economy becomes even more dependent on information industries.