

"Copyright Fair Use: Courts Poised to Seek Limiting Principles Amid the Labels," Los Angeles Daily Journal

Publications

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Jenner & Block Partner Andrew J. Thomas and Associate Farnaz M. Alemi wrote "Copyright fair use: courts poised to seek limiting principles amid the labels," which was recently published as the January 2012 "Content Matters" column in the *Los Angeles Daily Journal* and *San Francisco Daily Journal*. In this article, they examine the Copyright Act's fair use doctrine, and report that, since the Supreme Court's 1994 decision in *Campbell v. Acuff-Rose Music*, courts, in weighing a fair use defense to an infringement claim, have emphasized the "purpose and character of the use" factor - treating "transformativeness" as the linchpin of the four-factor test. That is, was the original work used as raw material and then transformed in the creation of new information, aesthetics, insights, and understandings? The authors suggest that fair use law requires a limiting principle that is not supplied by the "raw materials" notion alone, in order to avoid conflict with the copyright owner's right to control the creation of derivative works. They conclude that appeals that will be heard this year in the 2nd and 9th Circuits, raising the question whether the defendant's use must comment on the original work in order to be transformative, will provide opportunities for the appellate courts to define some of these limits.

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