The Fair Dealing Exception Explained: The Two Step Test & Six Fair Dealing Factors Applied, 2004-2024

Factors	Established by *CCH Canadian Ltd. v. Law Society of Upper Canada* (2004)	Applied by *CCH Canadian Ltd. v. Law Society of Upper Canada* (2004)	*SOCAN v. Bell Canada* (2012)	*Alberta v. Access Copyright* (2012)	*United Airline, Inc. v. Cooperstock* (2017)	*Wiseau Studios LLC, et, al. v. Richard Harper, et al.* (2020)	*York University v. Access Copyright* (2021)	*1395804 Ontario Ltd. (BR) v. Canada (Attorney General)* (2024)
Purpose	In Canada, the purpose of the dealing will be fair if it is for one of the allowable purposes under the *Copyright Act*, namely research, private study, criticism, review or news reporting: see ss. 29, 29.1 and 29.2 of the *Copyright Act*. As discussed, these allowable purposes should not be given a restrictive interpretation or this could result in the undue restriction of users' rights. This said, courts should attempt to make an objective assessment of the user/defendant's real purpose or motive in using the copyrighted work [53].	When the Great Library staff make copies of the requested cases, statutes, excerpts from legal texts and legal commentary, they do so for the purpose of research. Although the retrieval and photocopying of legal works are not research in and of themselves, they are necessary conditions of research and thus part of the research process. The reproduction of legal works is for the purpose of research in that it is an essential element of the legal research process. There is no other purpose for the copying; the Law Society does not profit from this service. Put simply, its custom photocopy service helps to ensure that legal professionals in Ontario can access the materials necessary to conduct the research required to carry on the practice of law. In sum, the Law Society's custom photocopy service is an integral part of the legal research process, an allowable purpose under s. 29 of the *Copyright Act* [65]. This [Access to the Law] policy provides reasonable safeguards that the materials are being used for the purpose of research and private study [66].	In considering whether previews are for the purpose of "research" under the first step of *CCH*, the Board properly considered them from the perspective of the user or consumer's purpose. And from that perspective, consumers used the previews for the purpose of conducting research to identify which music to purchase, purchases which trigger dissemination of musical works and compensation for their creators [30]. The predominant perspective in this case is that of the ultimate users of the previews, and *their* purpose in using previews was to help them research and identify musical works for online purchase. While the service providers sell musical downloads, the purpose of providing *previews* is primarily to facilitate the research purposes of the consumers [34]. There were reasonable safeguards in place to ensure that the users' dealing in previews was in fact being used for this purpose: the previews were streamed, short, and often of lesser quality than the musical work itself. These safeguards prevented the previews from replacing the work while still fulfilling a research function [35]. While research done for commercial reasons may be less fair than research done for non-commercial purposes (para. 54), the dealing may nonetheless be fair if there are "reasonable safeguards" in	Before this Court, there was generally no dispute that the first step in *CCH* was met and that the dealing — photocopying — was for the allowable purpose of research or private study [14]. There is no such separate purpose on the part of the teacher. Teachers have no ulterior motive when providing copies to students. Nor can teachers be characterized as having the completely separate purpose of "instruction"; they are there to facilitate the students' research and private study. It seems to me to be axiomatic that most students lack the expertise to find or request the materials required for their own research and private study, and rely on the guidance of their teachers. They study what they are told to study, and the teacher's purpose in providing copies is to enable the students to have the material they need for the purpose of studying. The teacher/copier therefore shares a symbiotic purpose with the student/user who is engaging in research or private study. Instruction and research/private study are, in the school context, tautological [23]. Photocopies made by a teacher and provided to primary and secondary school students are an essential element in the research and private study undertaken by those students. The fact that some copies were provided on request and others were not, did not change the significance of those copies for students engaged in	The legislation is silent as to the content, meaning, or scope of "parody". Therefore, the words of the legislation must be "read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" [110]. Parody should be understood as having two basic elements: the evocation of an existing work while exhibiting noticeable differences and the expression of mockery or humour. I would also note that the fair dealing exception for the purpose of parody in s. 29 of the *Copyright Act* does not require a user to identify the source of the work being parodied. In addition, in my view, parody does not require that the expression of mockery or humour to be directed at the exact thing being parodied. It is possible, for example, for a parody to evoke a work such as a logo while expressing mockery of the source company, or to evoke a well-known song while expressing mockery of another entity entirely [119]. In my view, UNTIED.com falls within the definition of parody described above: it evokes existing works (the United website, the United logo, and the globe design) while showing some differences (such as content and disclaimers), and it expresses mockery (and criticism) of the plaintiff. Therefore, the first stage of the *CCH* test has	The defendants rely on both s. 29.1 and s. 29.2 of the *Copyright Act*, submitting that the purpose of *Room Full of Spoons* is to critique and review *The Room*. The defendants also submit that the documentary constitutes news reporting as it informs viewers of facts about the film and Wiseau. The dealing is therefore for an allowable purpose under s. 29.1. In *SOCAN 2012*, at para. 27, the Supreme Court observed, "*CCH* created a relatively low threshold for the first step so that the analytical heavy-hitting is done in determining whether the dealing was fair." The first step is easily met in this case [172]. A documentary can be many things, and can be positive or negative about its subject. To the extent that a documentary uses copyrighted material for the purposes of criticism, review or news reporting, then such use is for an allowable purpose under the fair dealing provisions of the *Copyright Act*. *Room Full of Spoons* meets each of those purposes [183]. As discussed above, the purpose of the documentary and its use of the plaintiffs' material are to provide review, critique and information about *The Room*, the phenomenon it has created, and the maker of the film, Tommy Wiseau. This is a permitted purpose. The copying was not for a commercial purpose but simply to make a documentary; the defendants had no expectation when making the documentary that they	It was common ground in this case that York's teachers make copies for their students for the allowable purpose of education at the first step of the analysis [97]. When teaching staff at a university make copies for their students' education, they are not "hid[ing] behind the shield of the user's allowable purpose in order to engage in a separate purpose that tends to make the dealing unfair" [102].	Our Court found that the Defendant, the AGC on behalf of the Department of Finance, was entitled to the protection afforded by s. 29 of the *Act*: its use of the articles constituted fair dealing for the purpose of research, private study, education, parody or satire. Fair dealing does not infringe copyright. In the view of Barnes J, "the fair dealing protection so obviously applicable to the acknowledged facts of this case that the litigation should have never been commenced let alone carried to trial" (Supplemental Judgment and Reasons as to costs, 2016 FC 1400, at para 18) [30]. It is without difficulty that our Court found that the use made of the BR's articles was for the purpose of research: "There is no question that the circulation of this news copy within the Department was done for a proper research" (para 33) [36].

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Purpose continued			place to ensure that the works are actually being used for research (para. 66) [36].	research and private study [25]. With respect, the word "private" in "private study" should not be understood as requiring users to view copyrighted works in splendid isolation. Studying and learning are essentially personal endeavours, whether they are engaged in with others or in solitude. By focusing on the geography of classroom instruction rather than on the *concept* of studying, the Board again artificially separated the teachers' instruction from the students' studying [27].	been met in this case [120]. I would note that it is questionable whether the parody exception may successfully be invoked when there is confusion. Parody depends on the recipient or viewer recognizing that the work in question is a spoof—therefore, it will be difficult to establish that the true purpose of a given work is parody when it is confusingly similar to the original work [123]. As the defendant pointed out during the trial, UNTIED.com has long claimed to be a "parody" website. However, the defendant did not satisfy the Court that there was ever any intent for humour rather, the defendant's intent was to embarrass and punish United for its perceived wrongdoings. Parody must include some element of humour or mockery—if extended too far, what may be designed in jest as parody may simply become defamatory [124]. I find that the defendant's real purpose or motive in appropriating the copyrighted works was to defame or punish the plaintiff, not to engage in parody [125].	would profit from it, nor did they appropriate *The Room* to their benefit. Further, as Sharp said, a documentary commenting on another work is unlikely to be as popular as the original work [185].		

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Character	In assessing the character of a dealing, courts must examine how the works were dealt with. If multiple copies of works are being widely distributed, this will tend to be unfair. If, however, a single copy of a work is used for a specific legitimate purpose, then it may be easier to conclude that it was a fair dealing. If the copy of the work is destroyed after it is used for its specific intended purpose, this may also favour a finding of fairness. It may be relevant to consider the custom or practice in a particular trade or industry to determine whether or not the character of the dealing is fair [55].	The character of the Law Society's dealings with the publishers' works also supports a finding of fairness. Under the Access Policy, the Law Society provides single copies of works for the specific purposes allowed under the *Copyright Act*. There is no evidence that the Law Society was disseminating multiple copies of works to multiple members of the legal profession [67].	If a single copy of a work is used for a specific legitimate purpose, or if the copy no longer existed after it was used, this would favour a finding of fairness [37]. SOCAN's argument was based on the fact that consumers accessed, on average, 10 times the number of previews as full-length musical works. However, no copy existed after the preview was heard. The previews were streamed, not downloaded. Users did not get a permanent copy, and once the preview was heard, the file was automatically deleted from the user's computer. The fact that each file was automatically deleted meant that copies could not be duplicated or further disseminated by users [38].	First, unlike the single patron in *CCH*, teachers do not make multiple copies of the class set for their own use, they make them for the use of the *students*. Moreover, as discussed in the companion case *SOCAN v. Bell*, the "amount" factor is not a quantitative assessment based on aggregate use, it is an examination of the proportion between the excerpted copy and the entire work, not the overall quantity of what is disseminated. The quantification of the total number of pages copied, as the Court noted in *CCH*, is considered under a different factor: the "character of the dealing" [29]. Under the "character of the dealing" factor, the Board focused its analysis on the fact that multiple copies of the *same* excerpt are made, at any one time, to be *disseminated to the whole class* (Board, at para. 100). Accordingly, on my reading of the Board's reasons, there was no double counting; the Board's conclusions of unfairness under the "character of the dealing" and the "amount of the dealing" factors were arrived at independently, taking into consideration different aspects of the dealing [53].	In this case, the works were published online. They were made available to any person with Internet access and were likely widely distributed (although there was no evidence adduced as to website traffic) [127].	In this case, the copyrighted material was almost invariably accompanied by commentary illustrating or supporting points made by the narrator or interviewees. This is a common technique in documentaries and in providing review and criticism, as confirmed by the defendants' evidence. As in *Time Warner,* use of the clips for the purpose of commentary is a character of dealing that is appropriate and supports a conclusion that the dealing was "fair" [186].	In the educational context, instructors are facilitating the education of each of their individual students who have fair dealing rights (*Alberta (Education)*, at paras. 22-23). However, courts are not required to completely ignore the institutional nature of a university's copying practices and adopt the fiction that copies are only made for individual isolated users. When an institution is defending its copying practices, its aggregate copying is necessarily relevant, for example, to the character of the dealing and the effect of the dealing on the work [99]. And while it is true that "aggregate dissemination" is "considered under the 'character of the dealing' factor" (*SOCAN*, at para. 42; see also *CCH*, at para. 55; *Alberta (Education)*, at para. 29), as this Court cautioned in *SOCAN*, "large-scale organized dealings" are not "inherently unfair" (para. 43). In *SOCAN*, where copies could easily be distributed across the internet in large numbers, this Court warned that focussing on the "aggregate" amount of dealing could "lead to disproportionate findings of unfairness when compared with non-digital works" (para. 43). By extension, the character of the dealing	What occurred here was no more than the simple act of reading by persons with an immediate interest in the material. The act of reading, by itself, is an exercise that will almost always constitute fair dealing even when it is carried out solely for personal enlightenment or entertainment [38]. a) BR's website was not hacked or accessed by illicit means. A subscription was purchased; b) the subscription was used for a legitimate business reason, that is to identify articles targeting Parks Canada to seek to protect its reputation and to correct mistakes, errors or misrepresentations in the public interest; c) the use made by Parks Canada was limited to its valid business purpose; d) the circulation of the articles was limited to persons who needed to know for business reasons linked to the Agency's core mandate; e) there was no commercial advantage either sought or obtained by Parks Canada; g) as established in the uncontradicted testimony of Mr. Frédéric Baril, there was a reasonable basis for concern between January 2013 and September 2013 about articles which contained citations seen as misleading and alarmist which called for the sharing with appropriate officials; h) as in the *Department of Finance* case, the Terms and Conditions were not ignored. They were not known. Justice Barnes noted: "In any event, and as noted below, those provisions did not unambiguously prohibit the circulation of Blacklock's copy for personal or non-commercial purposes"; i) this constitutes the simple act of

Character continued							factor must be carefully applied in the university context, where dealings conducted by larger universities on behalf of their students could lead to findings of unfairness when compared to smaller universities. This would be discordant with the nature of fair dealing as a user's right [105].	reading by officials with an immediate interest in the articles for business related reasons. There is no evidence that this was in the nature of a frolic in territory protected by copyright. This is the very purpose of the balance that includes fair dealing; j) there is a significant public interest in reading articles with a view to protecting the public, and the press, against errors and omissions [101].
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Amount	Both the amount of the dealing and importance of the work allegedly infringed should be considered in assessing fairness. If the amount taken from a work is trivial, the fair dealing analysis need not be undertaken at all because the court will have concluded that there was no copyright infringement. As the passage from *Hubbard* indicates, the quantity of the work taken will not be determinative of fairness, but it can help in the determination. It may be possible to deal fairly with a whole work. As Vaver points out, there might be no other way to criticize or review certain types of works such as photographs: see Vaver, *supra*, at p. 191. The amount taken may also be more or less fair depending on the purpose. For example, for the purpose of research or private study, it may be essential to copy an entire academic article or an entire judicial decision. However, if a work of literature is copied for the purpose of criticism, it will not likely be fair to include a full copy of the work in the critique [56].	The Access Policy indicates that the Great Library will exercise its discretion to ensure that the amount of the dealing with copyrighted works will be reasonable. The Access Policy states that the Great Library will typically honour requests for a copy of one case, one article or one statutory reference. It further stipulates that the Reference Librarian will review requests for a copy of more than five percent of a secondary source and that, ultimately, such requests may be refused. This suggests that the Law Society's dealings with the publishers' works are fair. Although the dealings might not be fair if a specific patron of the Great Library submitted numerous requests for multiple reported judicial decisions from the same reported series over a short period of time, there is no evidence that this has occurred [68].	Since fair dealing is a "user's" right, the "amount of the dealing" factor should be assessed based on the individual use, not the amount of the dealing in the aggregate. The appropriate measure under this factor is therefore, as the Board noted, the proportion of the excerpt used in relation to the whole work. That, it seems to me, is consistent with the Court's approach in *CCH*, where it considered the Great Library's dealings by looking at its practices as they related to specific works requested by individual patrons, not at the total number of patrons or pages requested. The "amount of the dealing" factor should therefore be assessed by looking at how each dealing occurs on an individual level, not on the aggregate use [41].	As discussed in the companion case *SOCAN v. Bell*, the "amount" factor is not a quantitative assessment based on aggregate use, it is an examination of the proportion between the excerpted copy and the entire work, not the overall quantity of what is disseminated [29].	The amount of dealing is substantial. The defendant has copied the entirety of the home page of the plaintiff's website (as it then was) including colours, layout, some functionality/movement, and logos. The work is also extremely important [129].	While the documentary's use of footage from *The Room* is not trivial, it is also not excessive. *Room Full of Spoons*, which is 109 minutes long, uses 7 minutes of footage in 69 short clips from *The Room,* which is itself 99 minutes in length. This is less than 7% of the source work and an even smaller percentage of the documentary. The longest clip is 21 seconds [188]. While use of excerpts from *The Room* and some other material belonging to the plaintiffs is important to conveying the messages in the documentary, such use is limited and linked to the objectives of the documentary. The purpose of the copying was not to replace *The Room*. To repeat the evidence of the plaintiffs' witness, documentary filmmaker Synthian Sharp said he might have used more clips if he had been making the film. In my view, therefore, the amount of the plaintiffs' work is not excessive and does not support a conclusion that the fair dealing exception does not apply [189].	"Since fair dealing is a 'user's' right, the 'amount of the dealing' factor should be assessed based on the individual use, not the amount of the dealing in the aggregate" [104].	f) a small number of articles (15) was shared among a small number of relevant officials for the specific business reasons linked to the Agency's mandate [101]. There was no reason to think that sharing a very limited number of articles to a limited number of officials solely interested in the content for business reasons having to do with the Agency's mandate and reputation could constitute somehow a violation of the *Act*. I appreciate that the intent to violate is not a constituent element of a breach, but the actions guided by fair dealing, which are for a purpose clearly recognized by copyright law, are protected from liability. Once again, fair dealing is an integral part of the *Act*: it is not merely a defence [104].

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Alternatives	Alternatives to dealing with the infringed work may affect the determination of fairness. If there is a non-copyrighted equivalent of the work that could have been used instead of the copyrighted work, this should be considered by the court. I agree with the Court of Appeal that it will also be useful for courts to attempt to determine whether the dealing was reasonably necessary to achieve the ultimate purpose. For example, if a criticism would be equally effective if it did not actually reproduce the copyrighted work it was criticizing, this may weigh against a finding of fairness [57].	It is not apparent that there are alternatives to the custom photocopy service employed by the Great Library. As the Court of Appeal points out, the patrons of the custom photocopying service cannot reasonably be expected to always conduct their research on-site at the Great Library. Twenty percent of the requesters live outside the Toronto area; it would be burdensome to expect them to travel to the city each time they wanted to track down a specific legal source. Moreover, because of the heavy demand for the legal collection at the Great Library, researchers are not allowed to borrow materials from the library. If researchers could not request copies of the work or make copies of the works themselves, they would be required to do all of their research and note-taking in the Great Library, something which does not seem reasonable given the volume of research that can often be required on complex legal matters [69]. The availability of a licence is not relevant to deciding whether a dealing has been fair. Any act falling within the fair dealing exception will not infringe copyright. If a copyright owner were allowed to license people to use its work and then point to a person's decision not to obtain a licence as proof that his or her dealings were not fair, this would extend the scope of the owner's monopoly over the use of his or her work in a manner that would not be consistent with the *Copyright Act*'s balance between owner's rights and user's interests [70].	Allowing returns is an expensive, technologically complicated, and market-inhibiting alternative for helping consumers identify the right music. And none of the other suggested alternatives can demonstrate to a consumer what previews can, namely, what a musical work *sounds* like. The Board found that "listening to a preview probably is the most practical, most economical and safest way for users to ensure that they purchase what they wish" (para. 114). As a result, it concluded that short, low-quality streamed previews are reasonably necessary to help consumers research what to purchase. I agree [46].	In my view, buying books for each student is not a realistic alternative to teachers copying short excerpts to supplement student textbooks. First, the schools have already purchased originals that are kept in the class or library, from which the teachers make copies. The teacher merely facilitates wider access to this limited number of texts by making copies available to all students who need them. In addition, purchasing a greater number of original textbooks to distribute to students is unreasonable in light of the Board's finding that teachers only photocopy short excerpts to complement existing textbooks. Under the Board's approach, schools would be required to buy sufficient copies for every student of every text, magazine and newspaper in Access Copyright's repertoire that is relied on by a teacher. This is a demonstrably unrealistic outcome. Copying short excerpts, as a result, is reasonably necessary to achieve the ultimate purpose of the students' research and private study [32].	When considering parody, available alternatives to the dealing cannot be weighed too heavily. This is because although alternatives may be available, they may not be as effective in meeting the goals of parody (i.e., mocking or criticizing in a humorous manner). In this case, the appropriate question would seem to be this: would the defendant's use of alternative logos and website design be as effective in mocking and criticizing the plaintiff? In fact, the defendant acknowledged that there were alternatives to the dealing, but argued that his criticism would be less humorous and less effective if he made use of such alternatives [132]. In my view, alternatives to the current design of UNTIED.com would be effective in meeting the goals of the website. It is unclear why substantial copying of the United website or the other copyrighted works was necessary in order to meet the parodic goal of humorously criticizing the plaintiff. Parody requires humour, whereas the defendant's website was simply mean-spirited. The minimal use of certain parodic elements in the past (i.e., "fly the unfriendly skies" and the wordplay between "united" and "untied") present an example of an alternative to the current dealing. [133].	*Room Full of Spoons* is about *The Room* and Wiseau. There is no alternative to the copyrighted material to make the points that are made. As Harper stated, without the clips it would have been a different film [190].	Not addressed.	Not addressed.

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Nature	The nature of the work in question should also be considered by courts assessing whether a dealing is fair. Although certainly not determinative, if a work has not been published, the dealing may be more fair in that its reproduction with acknowledgement could lead to a wider public dissemination of the work — one of the goals of copyright law. If, however, the work in question was confidential, this may tip the scales towards finding that the dealing was unfair [58].	I agree with the Court of Appeal that the nature of the works in question — judicial decisions and other works essential to legal research — suggests that the Law Society's dealings were fair. As Linden J.A. explained, at para. 159: "It is generally in the public interest that access to judicial decisions and other legal resources not be unjustifiably restrained." Moreover, the Access Policy puts reasonable limits on the Great Library's photocopy service. It does not allow all legal works to be copied regardless of the purpose to which they will be put. Requests for copies will be honoured only if the user intends to use the works for the purpose of research, private study, criticism, review or use in legal proceedings. This further supports a finding that the dealings were fair [71].	The fact that a musical work is widely available does not necessarily correlate to whether it is widely disseminated. Unless a potential consumer can locate and identify a work he or she wants to buy, the work will not be disseminated [47].	Not addressed.	In *CCH*, the Supreme Court indicated that the nature of the work should be considered, giving the examples of published, unpublished, and confidential works. This factor "examines whether the work is one which should be widely disseminated" (*Socan*, at paragraph 47) [135]. The United website was published online and available openly to the public, as was UNTIED.com [136].	The material is not confidential, nor is it unpublished; quite the contrary. *The Room* has been widely available for close to two decades, plays frequently in cinemas, is available free online (and there is no evidence that Wiseau has attempted to stop such access), and has been viewed online by over one million viewers. In my view, this factor also favours the defendants [193].	Not addressed.	The relevance of a paywall and of terms and conditions to applying the fair dealing provision is recognized. However, the copyright's owner must not only establish some prohibition, but it must be shown that the person involved was aware of the limitations. "All that is required is an acknowledgement at the time of acquiring access that the terms in question were read and accepted." (para 38). That was not done and the subscriber had no reason to think a violation of the *Act* would occur by sharing articles of special and direct interest with people affected by them. Indeed, the Terms and Conditions were found by our Court to be ambiguous which results in the drafter of the conditions to be bound to the most favourable interpretation to the user of the copy: I do not accept that [the subscriber] or the Department should be taken to be aware of Blacklock's web-based terms of use. But even if they had been aware they would have been no further ahead. Blacklock's Terms and Conditions contain a material ambiguity concerning downstream distribution. On the one hand they seemingly prohibit distribution by subscribers but, on the other, they permit it for personal, or non-commercial uses [39].

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Effect	Finally, the effect of the dealing on the work is another factor warranting consideration when courts are determining whether a dealing is fair. If the reproduced work is likely to compete with the market of the original work, this may suggest that the dealing is not fair. Although the effect of the dealing on the market of the copyright owner is an important factor, it is neither the only factor nor the most important factor that a court must consider in deciding if the dealing is fair [59].	Another consideration is that no evidence was tendered to show that the market for the publishers' works had decreased as a result of these copies having been made. Although the burden of proving fair dealing lies with the Law Society, it lacked access to evidence about the effect of the dealing on the publishers' markets. If there had been evidence that the publishers' markets had been negatively affected by the Law Society's custom photocopying service, it would have been in the publishers' interest to tender it at trial. They did not do so. The only evidence of market impact is that the publishers have continued to produce new reporter series and legal publications during the period of the custom photocopy service's operation [72].	Because of their short duration and degraded quality, it can hardly be said that previews are in competition with downloads of the work itself. And since the effect of previews is to *increase* the sale and therefore the dissemination of copyrighted musical works thereby generating remuneration to their creators, it cannot be said that they have a negative impact on the work [48].	Access Copyright pointed out that textbook sales had shrunk over 30 percent in 20 years. However, as noted by the Coalition, there was no evidence that this decline was linked to photocopying done by teachers. Moreover, it noted that there were several other factors that were likely to have contributed to the decline in sales, such as the adoption of semester teaching, a decrease in registrations, the longer lifespan of textbooks, increased use of the Internet and other electronic tools, and more resource-based learning [33]. It is difficult to see how the teachers' copying competes with the market for textbooks, given the Board's finding that the teachers' copying was limited to short excerpts of complementary texts. If such photocopying did not take place, it is more likely that students would simply go without the supplementary information, or be forced to consult the single copy already owned by the school [36].	In this case, it is not the effect on the market that ought to be considered, but rather the confusion caused by the similarity between UNTIED.com and the United website [138]. In my view, it is the substantial copying of the plaintiff's copyrighted material that is having a harmful impact, not the criticism contained on UNTIED.com. Negative commentary regarding the plaintiff abounds on the Internet. The plaintiff is not so much concerned with the informational aspect of UNTIED.com (which may lead customers to purchase tickets with other airlines) as it is with the potential that customers will believe they are interacting with the plaintiff when they are actually interacting with UNTIED.com (which may, in turn, cause customers to believe that the plaintiff is unprofessional or that it does not respond to complaints) [140].	*Room Full of Spoons* is not an alternative to *The Room* and does not replicate or replace the unique experience of attending a showing of the original work, where people dress up as characters in the film, throw footballs around, throw spoons, and shout at the screen. Watching *Room Full of Spoons* is more likely to create interest in *The Room*, than to compete with it [196]. The fact that festivals and cinemas have been interested in playing double features of *The Room* and *Room Full of Spoons* together suggests that the films complement, rather than compete, with one another. There is no evidence that the limited screenings of the documentary have had any negative impact on the *The Room*. To the extent there may be a negative impact, which is entirely speculative, it would more likely be due to the film's criticism of *The Room* and Wiseau, and the reporting of facts about him, but that does not make the dealing with his work unfair [197].	When an institution is defending its copying practices, its aggregate copying is necessarily relevant, for example, to the character of the dealing and the effect of the dealing on the work [99].	Not addressed.