

Teaching Copyright

Trial Guide

Walt Disney Studios v. Faden is a fictional case where you will be putting Professor Faden's "A Fair(y) Use Tale" digital mashup to the test in a mock trial. Use what you now know about the fair use "four factors" and the stakeholders who are currently battling over copyright and fair use in the courts. Also feel free to include research from relevant articles or actual fair use court cases.

Your teacher will assign you trial roles. There will be two trial teams – one representing the plaintiff and the other representing the defendant. Each team will have four attorneys and one plaintiff or defendant. The remaining students will serve as jurors, decide the final verdict at the end of trial, and write up the basis for their verdict.

This project is a fun way to argue against your friends and classmates – do as much as you can to get into your roles as legal actors!

Trial Roles

1. Plaintiff (1 student)

- The plaintiff is the person or group who files a case/lawsuit against another in a court of law. In this case, the plaintiff is Walt Disney Studios, corporate copyright owner and distributor of all Disney content. Walt Disney is suing Professor Faden for infringing its copyright by using clips of Disney movies in "A Fair(y) Use Tale." The person appearing in court is a representative from Walt Disney Studios. The burden is on the plaintiff to prove his or her case.

2. Plaintiff's Attorneys (4 students)

- The plaintiff's attorneys will present Disney's case against Faden.

3. Defendant (1 student)

- The defendant is the person or group accused of causing harm to the plaintiff. In this case, the defendant is Eric S. Faden, an Associate Professor of English and Film Studies at Bucknell University. Professor Faden studies early cinema and digital image technologies, and creates film, video, and multimedia scholarship that imagine how scholarly research might appear as visual media. He claims that his use of the Disney clips was a fair use, and therefore legal.

4. Defendant's Attorneys (4 students)

- The defendant's attorneys present the defendant's response to the plaintiff's claims.

6. Judge (teacher)

- Ultimate arbiter of the trial. For purposes of this exercise, the judge also assigns parts and oversees trial preparation. In the "real world," the parties would choose

the jurors, and the judge would not oversee the preparation of trial strategies.

7. Jurors (remaining students)

- Neutral "finders of fact." Jurors are members of the community who determine what actually happened based on the evidence presented at trial. For purposes of this exercise, student jurors will help the parties prepare their cases. In the "real world," jurors would never have access to the parties while they are determining their strategies before trial.

Trial Schedule and Assignments

1. Opening Statements (3-5 minutes each side)
 - Plaintiff's Attorney #1 gives opening statement.
 - Defendant's Attorney #1 gives opening statement.
2. Testimony and Cross-Exam for Plaintiff (3-5 minutes each side)
 - Plaintiff's Attorney #2 calls plaintiff to the stand.
 - Defendant's Attorney #2 cross-examination of plaintiff.
3. Testimony and Cross-Exam for Defense (3-5 minutes each side)
 - Defendant's Attorney #3 calls defendant to the stand.
 - Plaintiff's Attorney #3 cross-examination of defendant.
4. Closing Arguments (3 minutes each side)
 - Plaintiff's Attorney #4 gives closing argument.
 - Defendant's Attorney #4 gives closing argument.
5. Jury Deliberations (5 minutes)
 - Jury discusses case and reaches verdict.
 - Verdict is written down and handed to Judge.
 - Judge reads verdict to class.
6. Post-Trial Debrief
 - Teacher debriefs student jury verdict with the class.

Things to Do to Prepare for Trial

Help Your Team's Attorneys Prepare Opening Statements.

The opening statement is the attorneys' first memorable pitch to the jury. Attorneys should appear confident and give clear evidence. Focus on the following questions and write an opening statement that lists three or four main evidence points:

- What is the lawsuit about?
- What's your client's story?
- Why is the other side wrong?

Prepare Testimony for the Plaintiff or Defendant and Prepare Questions for the Cross-Examination.

Make up professional backgrounds for the parties. Some questions to think about are:

- Who is this person? What is his or her story?
- Why did this person make "A Fair(y) Use Tale" or file a copyright infringement suit?
- What does this person think about the video "A Fair(y) Use Tale" and its effect?
- What does this person think of current copyright law terms in general?

- Think of three questions to ask the plaintiff or defendant on the other team that might undermine the other side's claims.
- Anticipate questions that the other side's attorneys will ask during the cross-examination.

Help Your Team's Attorneys Prepare Closing Statements.

Highlight and restate the three or four main points for your case and the testimony that backs up this evidence. Remember, this is your last chance to prove your case to the court and to undermine your opponent's case.

- Why should the jury rule in your favor?
- How did your client's testimony support your evidence?
- What amount of damages should be awarded?
- Why is your case a stronger, better argument?