

# Teaching Copyright

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## Trial Guide for the Educator

*Walt Disney Studios v. Faden* is a fictional case where students will be putting Professor Faden's "A Fair(y) Use Tale" digital mashup to the test in a mock trial. Students should use what they have learned about the fair use "four factors" and the stakeholders who are currently battling over copyright and fair use in the courts. They may wish to include research from relevant articles or actual fair use court cases.

Preparation begins when you assign students various trial roles. There will be two trial teams – one representing the plaintiff and the other representing the defendant. The plaintiff's team will have four attorneys and the plaintiff, a representative of Walt Disney Studios; the defendant's team will have four attorneys and the defendant, Professor Eric Faden, creator of "A Fair(y) Use Tale." The remaining students will serve as jurors, who will give their verdict at the end of trial, and write up the basis for their verdict.

If appropriate, consider encouraging your students to dress for their roles during the mock trial to better replicate the atmosphere of the courtroom.

### **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.

### **Goals for the Plaintiff's Side**

- The plaintiff's side will argue that the "Fair(y) Use Tale" clip infringes on Disney's copyrights.
- The plaintiff's side should be encouraged to argue that the clip is infringing because it uses copies of Disney's copyrighted material. The plaintiff could bolster its argument by highlighting the importance of copyright, the effort that goes into creating characters and stories, and the expense of producing and distributing films. The plaintiff's side should find support for its position in the stakeholder research conducted as homework in Lesson 2.
- To win, the plaintiff must also convince the jury that Faden's use was not a fair

use.

- To that end, the plaintiff's side might note the length of "A Fair(y) Use Tale" and the number of Disney films used to make the remix video, thereby addressing the third "amount and substantiality" fair use factor. Another more complicated argument that the plaintiff may use is that the Disney video clips could have been licensed for a fee through Disney's official licensing channels, thereby addressing the fourth "effect of the use on the potential market" fair use factor.

### **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.

### **Goals for the Defendant's Side**

- The defendant's side will argue that Faden's movie is a fair use, and therefore noninfringing. The defendant's side should find supporting material in the fair use activities in Lesson 3.
- The defendant's side should be encouraged to go through each of the fair use factors. If the side seems to be having trouble, guide them with the *Activity Highlights* notes provided in Lesson 3.

### **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.
  - Explain the basis for the copyright infringement suit.
- Defendant's Attorney #1 gives opening statement
  - Preview the fair use arguments.

### **2. Testimony and Cross-Exam for Plaintiff (3-5 minutes each side)**

- Plaintiff's Attorney #2 calls plaintiff to the stand.
  - Ask the plaintiff questions that demonstrate whether unauthorized copying occurred and how Disney has been harmed by the infringement.



- Defendant's Attorney #2 cross-examination of plaintiff.
    - Ask the plaintiff questions that demonstrate that the original Disney footage is different from "A Fair(y) Use Tale" in key ways.
3. Testimony and Cross-Exam for Defense (3-5 minutes each side)
- Defendant's Attorney #3 calls defendant to the stand.
    - Ask the defendant questions that demonstrate that Faden used the Disney clips to educate others about the issue in a compelling way. Try to discuss the video clip's adherence to the fair use factors.
  - Plaintiff's Attorney #3 cross-examination of defendant.
    - Ask the defendant questions that demonstrate that Faden did a great deal of copying of Disney's copyrighted work.
4. Closing Arguments (3 minutes each side)
- Plaintiff's Attorney #4 gives closing argument.
    - Summarize and conclude that Faden committed copyright infringement.
  - Defendant's Attorney #4 gives closing argument.
    - Summarize and conclude that "A Fair(y) Use Tale" is a fair use and that Faden did not infringe Disney's copyrights.
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 Your Students Should Do to Prepare for Trial**

### *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.*

Consider the professional backgrounds of 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.

*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?