

White v. West Pub. Corp.
No. 12-cv-1340-JSR (S.D.N.Y. Jul. 3, 2014)

Year	2014
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff, Edward White, is a lawyer and obtained copyright registrations for briefs he submitted in an unrelated legal proceeding through the PACER database. PACER “allows members of the public to retrieve and download a copy of [] document[s].” Defendants, West Publishing Corp. (“West”) and Reed Elsevier, Inc. (“Lexis”), create and license databases which “offer users access to,” among other things, “select legal documents . . . filed, without seal, in state and federal courts.” Defendants downloaded White’s briefs from PACER and added them to their respective databases after converting the briefs into “text-searchable” documents and adding other characteristics to enhance their searchability (<i>e.g.</i> , metadata codes, links to related materials, and unique identifiers). Plaintiff sued defendants for infringement based on their unauthorized inclusion of his briefs in their commercial databases.
Issue	Whether the unauthorized inclusion of the entirety of publicly-filed court documents in a commercial database after conversion into more searchable files is fair use.
Holding	On summary judgment, the court ruled that defendants’ unauthorized copying and inclusion of the entirety of legal briefs in their commercial databases constituted fair use. The court held that three of the four statutory fair use factors weighed in favor of fair use and that the remaining factor was neutral. With regard to the first factor, purpose and character of the use, the court reasoned that the defendants’ use was transformative because the briefs were created “solely for the purpose of providing legal services to [plaintiff’s] clients[, while] . . . defendants used the brief[s] . . . [to] creat[e] an interactive legal research tool.” Further, defendants’ “processes of reviewing, selecting, converting, coding, linking, and identifying the documents ‘add[ed] something new, with a further purpose or different character’ than the original briefs.” The court also held that the second factor, the nature of the work, weighed in favor of fair use because the briefs were “functional presentations of law and fact” and, although technically unpublished, were “intentionally made . . . publicly available by filing them with the court.” Next, although noting that “copying the entirety of a work is sometimes necessary to make a fair use,” the court held that the third factor, the amount of work used, did not weigh for or against fair use because defendants’ copying and inclusion of the entirety of the briefs in their databases “was reasonably necessary for their transformative use.” Lastly, the court found that the fourth factor, the effect of the use on the market for the work, weighed in favor of fair use because “no potential [secondary licensing] market exists because the transactions costs in licensing attorney works would be prohibitively high” and defendants’ “usage of the briefs [was] in no way economically a substitute for the use of the briefs in their original market,” <i>i.e.</i> , the provision of legal advice to an attorney’s clients.
Tags	Second Circuit; Textual work; Used in government proceeding; Education/Scholarship/Research
Outcome	Fair use found

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