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Is The Associated Press Attempting to Re-define What Constitutes Fair Use?

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Apparently the AP is taking issue with the use of its content (including both text and photos) by bloggers who are relying on the U.S. Copyright law doctrine of "Fair Use" (which allows the use/reproduction of copyrighted material for the purposes of critiquing such content without the permission of the copyright holder) as a shield from liability for copyright infringement claims. In recent months the AP has issued multiple DMCA-takedown notices to social discussion/blog websites, including seven notices to the news discussion site "Drudge Retort" (<http://www.drudge.com/cadenhead.htm>), written by Rogers Cadenhead, and a notice to the blog site known as "Snapped Shot", which features and critiques certain news photos. The AP is claiming that such sites are misappropriating its content and that such sites' claims of "fair use" in connection therewith are invalid.

In fact, in its attempt to prevent future instances of what the AP is claiming to be copyright infringement by bloggers, it has made public its intention to develop guidelines for what would be considered permissible use (e.g., a "fair use") of AP's content. Is it just me, or does the all-too-familiar law school term "slippery slope" come to mind? Is the AP essentially trying to create its own legal definition of what qualifies as "fair use"? The AP says no, but many bloggers, and I'm sure many intellectual property attorneys alike, are skeptical. Although Cadenhead's attorney seems to think that it might be helpful to have insight into what AP considers to be acceptable use of their content in blogs (<http://www.msnbc.msn.com/id/25329749/from/ET/>), courts traditionally make fair use determinations on a case-by-case basis, depending on a variety of fact-specific circumstances surrounding the way in which a particular piece of copyrighted content is used. Therefore, the AP's guidelines could be construed as an encroachment upon the legal process of evaluating arguments of fair use.

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