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[The court] decline[s] to accept [this suit]

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In 2011 Sony Pictures Classics released the hugely popular movie "Midnight in Paris," written and directed by Woody Allen. The story centers on the character Gil Pender, a disillusioned Hollywood screenwriter who longs to be a serious novelist. Pender, played by Owen Wilson, is on vacation in Paris with his fiancée, played by Rachel McAdams.

Pender feels he is living in the wrong time, and soon is magically transported to the Bohemian Paris of the 1920s, where he meets such luminous figures as Ernest Hemingway,

Gertrude Stein, F. Scott Fitzgerald, Pablo Picasso and Salvador Dali. This gives him the occasion to talk to his artistic heroes about his own work.

At one point Pender accuses his fiancée of having an affair. Incredulous, the fiancée asks where he came up with such a notion. He mentions Hemingway, Fitzgerald and Stein, which even his fiancée realizes are long dead, and she scorns the notion. Pender replies, "The past is not dead! Actually, it's not even past. You know who said that? Faulkner. And he was right. And I met him, too. I ran into him at a dinner party."

The inclusion of this short quote in the movie motivated Faulkner Literary Rights, LLC, which manages the Faulkner's literary estate, to bring suit for copyright infringement and unfair competition against Sony in federal court in Mississippi. The quote is from the Faulkner book "Requiem for a Nun" set in the fictional Yoknapatawpha County, Miss.

It is unusual for a copyright infringement lawsuit to be based on the use of such short quote in a movie. Granted, Faulkner is a famous, acclaimed author, but what was borrowed here was an 8-second line of dialogue in a 94-minute movie. The movie is not based on the plot of any of Faulkner's stories, but is an original creation from the imagination of Woody Allen.

Sony did not contest any of the facts as alleged in the lawsuit and moved for the court to summarily dismiss the complaint.

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Under the fair use doctrine, copyright law allows the right of the public to draw upon copyrighted works to produce separate works of authorship. Such uses include fair comment and criticism, parody, news reporting, teaching, scholarship and research. Thus, a movie or literary critic does not need permission to include a small quote from a work being reviewed. It is sometimes said of writers, that if you borrow extensively from another's work, you are a thief; but if you borrow bits from thousands, you are a scholar. Of course, the scholar adds value by synthesizing information from prior works and creating something new. This is what known as a "transformative use." Here, however, Woody Allen's use of the Faulkner material is not part of a literary review or news reporting. Woody Allen is borrowing the quote for use in an entertaining movie, which was a huge commercial hit, grossing \$151 million at the box office.

In determining whether the use of a copyrighted work is a fair use, courts weigh four factors: (1) the purpose and character of the work; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion borrowed in relation to copyrighted work as a whole; and (4) the potential adverse effect on the market for, and value of, the copyrighted work.

In applying these factors to a specific factual situation, it can often be difficult to predict whether a use will fall within the doctrine. Generally speaking, a greater amount of material may be borrowed from nonfiction works than from fictional works. Clearly, a writer can borrow historical facts from a previous work without infringing upon the first author's copyright, because of both the fair use doctrine and because historical facts are not copyrightable. Moreover, since factual works, unlike works of fiction, may be capable of being expressed in relatively few ways, only verbatim reproduction or close paraphrasing will be an infringement.

One encounters a lot of gray areas in applying the fair use doctrine. It is safe to say that a schoolteacher will be protected if she photocopies a Newsweek article and distributes it to her class on one occasion. If the schoolteacher, however, photocopies an entire textbook and distributes it to her students in order to save them the expense of purchasing their own texts, this would not be a fair use. But there are many situations that lie between these two extremes; and in those cases it can be difficult to predict whether the fair use doctrine will be an adequate defense.

In one case a biographer paraphrased large sections of unpublished letters written by the famous author J.D. Salinger. Although the public could easily read these letters at a university library, the author had never authorized their reproduction. Salinger brought suit and succeeded in preventing their publication. *Salinger v. Random House*, 811 F.2d 90 (2d Cir. 1987).

In another case, publisher Larry Flynt made disparaging statements about the Reverend Jerry Falwell on one page of Hustler magazine. Without permission, the Rev. Falwell reprinted several hundred thousand copies of the page and distributed them as part of his own fund-raising effort. Flynt then sued Falwell. Here the court found this was a fair use, perhaps because the copying did not reduce sales of the magazine, which was already off the market. *Hustler Magazine, Inc. v. Moral Majority, Inc.*, 606 F. Supp. 1526 (C.D. Cal. 1985).

After reviewing all the facts, Michael p. Mills, chief judge of the U.S. District Court for the Northern District of Mississippi, found in favor of Sony and dismissed the complaint. The Faulkner quote at issue was considered to be "of miniscule quantitative importance to the work as a whole ... [and] no substantial similarity exists between the copyrighted work and the allegedly infringing work." Moreover, the judge said that it was, "highly doubtful that any relevant markets have been harmed by the use in *Midnight*. How Hollywood's flattering and artful use of literary allusion is a point of litigation, not celebration, is beyond this court's comprehension. The court, in its appreciation for both William Faulkner as well as the homage paid him in Woody Allen's film, is more likely to suppose that the film indeed helped the plaintiff and the market value of *Requiem* if it had any effect at all."

The court found that Sony's use of the quote was a fair use. However, the fact that Sony had to incur considerable legal fees to defend itself might will discourage an independent filmmaker with modest resources to rely on the fair use doctrine.

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