

The Fair Use Doctrine and Trackjacking: Beautiful Animal or Destroyer of Worlds?

ABSTRACT

“Trackjacking” is the unauthorized replacement of the original soundtrack of an audiovisual recording, such as a movie or television show, with another that is designed to alter substantially the plot and/or characters of the original work. While trackjacking is a creative and entertaining form of art, it may also constitute copyright infringement if the original work is one that is copyrighted. However, if certain criteria are met, the “fair use” doctrine provides a mechanism for courts to excuse what otherwise would be considered copyright infringement. Because the unique nature of trackjacking allows the new work to be distributed in such a way as to benefit the market for the infringed underlying work, this note concludes that trackjacking is an exceptional candidate for a fair use defense. This note details the reasons that courts should find trackjacking to be a fair use and recommends ways for trackjackers to ensure that courts will protect their works.

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