

# Must Courts Secure A <sup>TM</sup>/<sup>SM</sup> License Before Prosecuting?

Short answers in law

# Exceptions of <sup>TM</sup>/<sup>SM</sup> enforcement

## 17 U.S. Code § 107 - Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the **fair use** of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as **criticism, comment, news reporting, teaching** (including multiple copies for classroom use), **scholarship, or research, is not an infringement of copyright.**

**Does a court participate in ANY of these acts when prosecuting a case?**




# Exceptions of <sup>TM</sup>/<sup>SM</sup> enforcement

- **Criticism** is an attempt to correct the expression or act of another.
- **Comment** is a personal expressed opinion.
- **News reporting** is a faithful sharing of events, without coloring those events with personal preferences or influences.
- **Teaching** requires students and an educational environment, where events can be readily interrupted for on-the-spot reflection and analysis.
- **Scholarship** is a thoughtful reflection for the purpose of detailed analysis among students.
- **Research** is a systematic investigation into and study of a subject matter to establish facts and reach new conclusions.

**Courts award judgments and decisions that directly affect and influence others.**

# Exceptions of <sup>TM</sup>/<sup>SM</sup> enforcement

- Any/all court's business (commerce) is to hear cases in controversy
  - Evidence that a court **is in commerce** is the fact that it requires fees to begin an action, and awards fines and money judgments (not restitution) to the prevailing party (money transactions)
  - Further evidence that a court **is in commerce** is if its hearings are **closed** to the public to witness (private or acting as a tribunal)
  - Doesn't the court have an accounting office?
  - Who is the employer of court officers and staff?
- 

# Exceptions of <sup>TM</sup>/<sup>SM</sup> enforcement

- If the court asserts itself as a government body in any regard, the registration of the mark constitutes a **contract** with that jurisdiction that **the jurisdiction agrees not to use that mark without obtaining a license first**
- The existence of another concurrent contract **does not void** the effect of the eligibility of the mark's prosecution in the court
- 15 USC § 1122 - Liability of United States and States, and instrumentalities and officials thereof
  - (b)Waiver of sovereign immunity by States - Any State, **instrumentality of a State** or any officer or employee of a State or instrumentality of a State acting in his or her official capacity, **shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity**, from suit in Federal court by any person, including any governmental or nongovernmental entity for any violation under this chapter.

**Isn't the court an instrumentality of a state?**



## CONCLUSION:

Courts enjoy **no exceptions** in the requirement to obtain a license **before** prosecuting a registered <sup>TM</sup>/<sub>SM</sub> **by operation of law**

# WE CAN HELP YOU!

Scan or click



File your mark

Learn how to respond

Issue your offer

Enforce!

---