

## Where Does Fair Use Go? An Insight into Regulating File-Sharing in Research and Education

Yueyue Wang

School of Law, University of Southampton

Email: [yueyue710@hotmail.com](mailto:yueyue710@hotmail.com)

### Abstract

Since Napster emerged in 1999, file-sharing technology, especially in the form of peer-to-peer (P2P) file sharing, has been met with hostility and panic. As a neutral technology, the issues surrounding the file sharing can be considered from a variety of angles, but previous research on the phenomenon has been too focused on the policy and rules to regulate the infringing use of the technology. The disputes over encouraging the lawful applications of file-sharing systems deserve particular attention as failure to protect the application has a negative impact on the development of the technology, as well as the social interests. This is especially so, given that the proposition that file sharing could be used in research and education is at present recognised by technicians, which has created some P2P research and education file sharing models, such as eduCommons, [SETI@home](#), Edutella, and LionShare, allowing users to share text, audio, and video files stored on computers to support learning and research.

This paper commences by looking at how fair use/ fair dealing doctrine has struggled in file-sharing circumstances, particularly in the P2P environment; and considers how fair use responds to these new attacks. Thereafter, by undertaking a study of relevant legislations and cases, such as Napster, Grokster, MP3.com, Sony, Diamond, the “who” issue, namely, the main body that is entitled to benefit from fair use defence will be discussed. In relation to the cases, the paper addresses the following questions: if parties who can take advantage of fair use defence in traditional media, as demonstrated in this paper, have been losing their benefits in file-sharing networks, how can the existing fair use system be made better? Is there a solution?

In seeking for solutions, attention is drawn to the model from the entertainment industry: the “fared” use approach, and the benefits of “fared” use system in balancing social benefits and rightholders’ interests are highlighted and discussed. Finally, in looking to the future, the hope is that a “fared” use system, which comprises the public levy model, the private contract model as well as the voluntary way model, will allow copyright works to be used in research and education for the benefit of society whilst at the same time ensure that right holders are being remunerated fairly for their efforts.