Fair Use in Post-publication Peer Review

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The Wikipedia page on fair use (http://en.wikipedia.org/wiki/Fair_use) states: "In United States copyright law, fair use is a doctrine that permits limited use of copyrighted material without acquiring permission from the rights holders. Examples of fair use include commentary, search engines, criticism, parody, news reporting, research, teaching, library archiving and scholarship. It provides for the legal, unlicensed citation or incorporation of copyrighted material in another author's work under a four-factor balancing test." The exact wording of U.S. Code § 107 is described in Appendix 1.

In plain speak, provided that the ultimate objective is academic or educational, parts of a manuscript can be used to display errors, or to make commentary or criticisms. Since post-publication peer review (PPPR), a tool used to correct the literature through critical analysis of the already published literature (Teixeira da Silva 2015a), often relies on the use of visual aids to make comparisons between duplicated material, to facilitate understanding by the readership, fair use thus plays a central role in PPPR, and forms part of the road map to achieve structured, reliable, understandable and sound PPPR (Teixeira da Silva 2015b).

Scientists who wish to engage in PPPR are reticent, as they do not know their legal or ethical limitations. Thus three key questions arise, and answers are provided to address these.

1) Is fair use copyright infringement? No, since it is an exception to copyright law, within reasonable limits.
2) Is fair use duplication or partial duplication (of text, tables, or figures)? No, since the source is fully described and permission is not required to reuse parts of copyrighted material for academic purposes, within reasonable limits, such as PPPR.
3) Is fair use unethical? If used correctly, while referencing the original source of the copyrighted material, there are no ethical constraints.

According to the DCMA (http://www.dmca.com/FAQ/Fair-Use), fair use is now widely accepted around the world, and thus the limited academic use of copyrighted material from any country would thus not constitute copyright infringement. It is expected, however, that as more literature becomes challenged, that some publishers may turn to DCMA take-down notices to try and silence the voices of academic criticism.

Conflicts of interest

The author declares no conflicts of interest.

References

Teixeira da Silva JA (2015a) Debunking post-publication peer review: what it is and what it's not. *International Journal of Education and Information Technology (Public Science Framework)* 1(2): 34-37.
Teixeira da Silva JA (2015b) A PPPR road-map for the plant sciences: cementing a road-worthy action plan. *Journal of Educational and Social Research* 5(2): 15-21.

Appendix 1

http://www.copyright.gov/title17/92chap1.html#107
"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. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.
The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."