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## Press Release

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FOR IMMEDIATE RELEASE  
Monday – September 19, 2016

### PHOENIX CENTER PROVIDES NEW ECONOMIC FRAMEWORK FOR COPYRIGHT'S "FAIR USE" IN DIGITAL AGE

#### *Where Digital Piracy is Rampant, Fair Use Should Be Narrowed*

WASHINGTON, D.C. – Copyright provides broad protection for artists and creators, but these rights are not without limit. In the United States, for instance, the U.S. Copyright Act permits the "fair use" of copyrighted works without infringing under certain circumstances. The copyright laws of other nations include similar exceptions and limitations, and overwhelmingly employ the comparable concept of "fair dealing." Drawing the line between fair use and infringement has proven tricky for the courts, and technology hasn't made their task any easier.

In an effort to help guide both reviews of copyright law abroad and the judicial consideration of fair use disputes in the United States, the Phoenix Center released a new paper today entitled *Fair Use in the Digital Age*. In this paper, Phoenix Center scholars have constructed an economic model to derive an optimal level of fair use (or fair dealing). This model is rooted in the purpose of copyright (i.e., the creation of new works) and informed by judicial precedent.

Among other things, the Phoenix Center's economists find that "optimal" fair use should be stricter when: (1) the cost of the original work is high; (2) the size of the market for the original work is small; (3) piracy and other forms of leakages, which simply reduce the market potential for the original work, are large; (4) the cost of distributing secondary works is lower; (5) small amounts of transformation matter a lot to consumers; and (6) the fixed cost of producing secondary works are smaller. The authors then offer recommendations on legislative reform, especially for nations considering more flexible fair use policies. Additionally, this economic framework recasts the statutory fair use factors of U.S. Copyright Law in a more cohesive, economically-sensible way.

"By analyzing fair use formally and rationally, we can better contemplate how to view copyright law for the Digital Age and avoid costly mistakes" said study co-author and Phoenix Center Chief Economist Dr. George S. Ford. "For instance, some of the characteristics of digital technologies used by advocates to call for expanding exceptions and limitations actually suggest exceptions and limitations should be *contracting* – particularly for works that experience high rates of copyright theft and high costs of enforcement."

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Study co-author and Phoenix Center Senior Fellow Professor T. Randolph Beard added that “Our paper suggests, at a minimum, that the thinking on expanding exceptions and limitations requires much more research.”

Finally, study co-author and Phoenix Center Senior Fellow Professor Michael Stern noted that “Our work suggests that US courts’ review of fair use cases, while in many cases consistent with economic logic, is too often disorganized and narrowly construed. A more systematic approach informed by the economics underlying infringement may prove helpful.”

A full copy of PHOENIX CENTER POLICY PAPER NO. 51, *Fair Use in the Digital Age*, may be downloaded free from the Phoenix Center’s web page at: <http://www.phoenix-center.org/pcpp/PCPP51Final.pdf>.

*The Phoenix Center is a non-profit 501(c)(3) organization that studies broad public-policy issues related to governance, social and economic conditions, with a particular emphasis on the law and economics of the digital age.*