



FAIR USE IN A DAY IN THE LIFE OF A LEGISLATIVE ASSISTANT

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At the start of Jessica's day, she turns on her laptop to check her email. Her mother sent her a joke Jimmy Fallon told the previous evening on the *Tonight Show*.¹ She sends off a quick reply, telling her mother that she enjoyed the joke.² She also forwards the joke to her roommate's email account.³

On her bus ride to work, Jessica watches the previous night's episode of *The Daily Show*, which has been "slung" to her cellphone from her DVR.⁴ Jessica arrives at her office in the Rayburn House Office Building, where she works as a legislative assistant for Congressman Smith from California. She checks out the website of the *New Town Herald*, the local newspaper in her boss's district.⁵ The website contains an editorial critical of a recent vote cast by her boss. She copies and pastes the editorial electronically and forwards it to the legislative director and the other LAs.⁶ She also prints the editorial out and leaves it on her boss's desk.⁷

She spends most of the day working on a memo for a boss on a recently introduced bill to limit agricultural subsidies, an important issue in the boss's rural district. In the memo, she quotes from trade association and public interest group letters supporting and opposing the legislation.⁸ She uses a search engine to find relevant white papers on the websites of the Heritage Foundation, the Brookings Institution, and the Cato Institute, which she prints out.⁹ She attaches to the memo scans of letters from constituents and newspaper articles relating to the bill.¹⁰

¹ Jessica's mother copied the joke from the *Tonight Show*. Jessica, by opening her email, makes a temporary copy of the joke in her laptop's random access memory.

² At the bottom of her reply is the text of her mother's email. Jessica thus makes a digital copy of the Fallon joke.

³ Jessica makes another digital copy of the joke when she forwards it to her roommate. The friend makes a temporary copy when she opens the email.

⁴ Jessica's DVR made a copy of *The Daily Show*. Temporary copies are made on servers as the program is forwarded to her cellphone, where another temporary copy is made.

⁵ Jessica's computer makes a temporary copy of the website when she views it.

⁶ Jessica makes a temporary copy of the editorial, as well as more permanent digital copies on the email server of the LD and LAs.

⁷ Jessica makes a copy of the editorial when she prints it out for her boss.

⁸ These quotations are copies of portions of the letters.

⁹ The search engine makes copies of the white papers in its search database. Jessica makes temporary copies of the white papers when she sees them online. She then makes hard copies when she prints them out. She copies portions of the white papers when she quotes them.

¹⁰ Jessica makes copies of the letters and articles when she scans them.

As she's waiting for the bus after a long day at work, Jessica sees an advertisement on the bus stop with a large picture of Alex Ovechkin. A big hockey fan, Jessica takes a "selfie" of herself with Alex Ovechkin, and posts it to her Facebook page.¹¹ After a quick dinner back at her apartment, Jessica works on a chapter of her fan fiction novel based on *The Hunger Games*, and then uploads it to FanFiction.net.¹² Before she goes to bed, Jessica makes a video of herself lip-synching and dancing to Taylor Swift's *Shake It Off*, which she emails to her boyfriend, who had a rough day.¹³

Copyright law treats temporary digital copies, longer-term digital copies, and hard copies alike. Because copyright infringement is a strict liability offense, Jessica could be liable for thousands of dollars of statutory damages for the copies she makes during the course of her day. Fortunately, the fair use doctrine permits all this copying.

¹¹ Jessica makes a copy of the image of Alex Ovechkin, and further disseminates that copy via Facebook.

¹² Jessica's fan fiction is a derivative work of *The Hunger Games*. Posting it to FanFiction.net makes additional copies of the derivative work.

¹³ Jessica copies the song when she makes the video, and makes additional temporary and more permanent copies when she transmits it to her boyfriend.