

JURY INSTRUCTIONS

Your Duty as Jurors. Ladies and gentlemen of the jury: As the judge, it is my duty to instruct you in the law that applies to this case. As jurors, you must follow these instructions. Your duty will be to decide what the facts are in this case based on the evidence you heard. You must then apply the rules of law to those facts. When you apply the rules of law, you may not use your own judgment. You may not rely on your own opinion about what the law should be. You must base your verdict only on the law that I give you in these instructions.

Consider Only the Evidence. To decide this case, you must consider the evidence. Evidence consists of the witnesses' testimony and the exhibits you saw. Any arguments or opinions the lawyers expressed are not evidence. Anything you have seen or heard outside the courtroom is not evidence. In addition, you must disregard any evidence that was objected to if I sustained the objection. You may not use any other source of information to help you decide this case.

Copyright Law. Original motion pictures are protected by United States copyright law. Only the owner of the motion picture may create works based on that motion picture. It is a violation of United States copyright law for someone else to create a work based on the copyrighted movie. As jurors, it is your duty to determine whether Honda created a work based on the "James Bond" films.

"Fair Use" Defense. Someone accused of violating a copyright may defend themselves on the ground that they made "fair use" of the copyrighted work. It is not a violation of copyright law to use a copyrighted work for criticism, comment, news reporting, teaching, or research. This is called "fair use." You will determine fair use based on three factors:

- 1) Purpose of the Use. The first factor is the "purpose of the use." If the original work was copied in order to make money, this factor weighs against fair use. However, if the original work was transformed in order to make fun of it or criticize it, this factor weighs in favor of fair use. In addition, the more the copy transforms the original, the less it matters whether the copy was used to make money.
- 2) How Much was Copied. The second factor asks how much of the original was copied. If the copy steals the "heart" of the original, this factor weighs against fair use. This means that the copy has the same style and feel as the original. Even if it does, the purpose of the use and the amount of transformation may override the fact that the copy has the same style and feel as the original.
- 3) Effect on Market for Original. The third factor is the effect on the market for the original. If people would buy the copy instead of buying the original, this factor weighs against fair use. Ask whether anything about the copy would make the original less valuable or make people not want to buy the original.

Balancing the Factors. You must balance these three factors together to decide whether, as a whole, they weigh in favor of fair use. If you find that Honda made "fair use" of the James Bond idea, you must find that Honda is not guilty of copyright violation even if Honda copied the James Bond idea. If you find that Honda copied the James Bond idea but did not make "fair use" of the idea, you must find that Honda violated U.S. copyright law.