

Is Liability for Copyright Infringement Strict?

Patrick R. Goold

It is routinely said that copyright infringement is a strict liability tort. A copyright owner can make a prima facie case of copyright infringement by establishing that a defendant copied the protected work and that the copying resulted in the production of a substantially similar work. The plaintiff is not required to show that the defendant intended to copy or that the defendant negligently copied the work.

However, such a characterization forgets the importance of the fair use doctrine. This defense allows the court to engage in a fine-grained factual analysis much like the concept of reasonableness in negligence. Therefore, this article explores the idea that, due to the fair use doctrine, copyright infringement is actually a negligence based tort.