

**Educ. Testing Serv. v. Katzman,**  
**793 F.2d 533 (3d Cir. 1986),**  
*abrogated on other grounds by*  
**eBay, Inc. v. MercExchange, LLC, 547 U.S. 388 (2006)**

Year	1986
Court	United States Court of Appeals for the Third Circuit
Key Facts	Plaintiff Education Testing Services (ETS) alleged that defendant John Katzman infringed standardized tests that ETS had developed and administered, including the <i>Scholastic Aptitude Test</i> and other subject-specific tests. In 1982, ETS discovered that Katzman possessed a stolen test and had distributed copies of it to students enrolled in his test preparation course, requiring ETS to cancel test results for those students who had access to the test before it was administered. The parties negotiated a settlement agreement under which Katzman promised to return all copies of the test and to refrain from copying or distributing ETS' copyrighted or copyrightable materials. ETS alleged that in May 1985 Katzman again distributed copies of stolen ETS test materials to students in his test preparation course. Claiming fair use, defendant appealed the district court's ruling in plaintiff's favor.
Issue	Whether defendant's unauthorized reproduction of a stolen copy of plaintiff's test, and distribution of those copies for test preparation purposes, constituted fair use.
Holding	The Third Circuit held that defendant's unauthorized copying and distribution of plaintiff's tests did not constitute fair use. Regarding the purpose of the use, the court noted that defendant's use was highly commercial, weighing against fair use. Concerning the nature of the copyrighted work, the court noted that the "unique nature of secure tests means that any use is destructive of ETS's rights." Concerning the amount and substantiality of the work used, while the court could not characterize the copying as taking "the heart" of the work, neither could it regard the copying as insubstantial. Finally, concerning the market effect, the court noted that even though defendant asserted it was not in competition with ETS, the copying rendered the materials worthless to ETS.
Tags	Third Circuit; Education/Scholarship/Research; Textual work
Outcome	Fair use not found

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