

# Greenberg Traurig

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August 20, 2009

Re: The Miami Herald

Dear Bill:

This firm represents *The Miami Herald*.

The Miami Herald is a strong supporter of fair use rights. I write, however, to address your unauthorized reproduction of complete *Miami Herald* articles on your blog, Random Pixels, <http://randompixels.blogspot.com>].

Fair use is determined by a multi-part balancing test that focuses on, among other things, the amount and substantiality of the portion used.

The reproduction of entire articles (or even verbatim copying of large portions of articles) does not qualify as commentary or parody and is not a fair use. *See, e.g., LA Times v. Free Republic*, 54 U.S.P.Q.2d 1453 (C.D. Cal. 2000). In *Free Republic*, the defendant operated a website where it and its users posted copies of *LA Times* articles (as well as large verbatim excerpts of other articles), arguing that the entire articles or large excerpts were necessary to reveal the alleged political bias of the newspaper. The court, however, rejected this argument, finding that the reproduction of entire articles and verbatim copying of large excerpts -- even when accompanied by commentary -- constitutes copyright infringement. Among other things, the court noted that where a site owner wanted to highlight an entire article it could do so by creating a link to the article, as posted on site of the publication where it appeared, rather than reproducing it. *Id.* at 1463.

It is clear from a review of your blog -- and the many advertisements you run on it -- that you have copied *Miami Herald* articles in their entirety so that you can earn money from these articles. While a commercial purpose is not the only relevant consideration in fair use analysis (the blogger in *Free Republic* for example posted complete articles for political purposes, not to make money, and the court found only a limited commercial purpose) it does go to the issue of fairness in this case.

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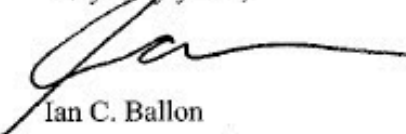
As a blogger, you are welcome to quote short excerpts from newspaper articles in connection with commentary on the article itself. You are also welcome to provide links to articles posted on *The Miami Herald's* website. As previously communicated to you, *The Miami Herald* further has no objection to your using thumbnail reproductions of photographs. Because fair use looks to the amount and substantiality of the portion taken (both in terms of quantity and quality) reproducing entire articles, large excerpts of articles or large-size photos is not permitted.

When you reproduce entire articles (just as when you copy photos from *The Miami Herald* website and post them in a large size, rather than in a smaller size more appropriate to fair use commentary on the photos themselves), you are basically taking what belongs to someone else. You would not think it fair if a local newspaper started reprinting your blog on its website without your permission -- so that visitors no longer needed to go to your site to read your blog. Likewise, you can appreciate that *The Miami Herald* does not think it is fair when you reproduce entire articles on your site or otherwise engage in wholesale verbatim copying.

*The Miami Herald* welcomes your continued commentary on the paper, including criticism (which I know you will not be shy about directing our way!). What we do not condone is taking something that is not yours and using it in a way that is neither fair nor lawful.

I therefore ask that you please remove copies of any entire articles from your blog and that you refrain in the future from copying entire articles or large segments of text, reproducing photographs in larger than thumbnail size or otherwise using *Miami Herald* content other than in a manner that constitutes fair use.

Very truly yours,



Ian C. Ballon

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