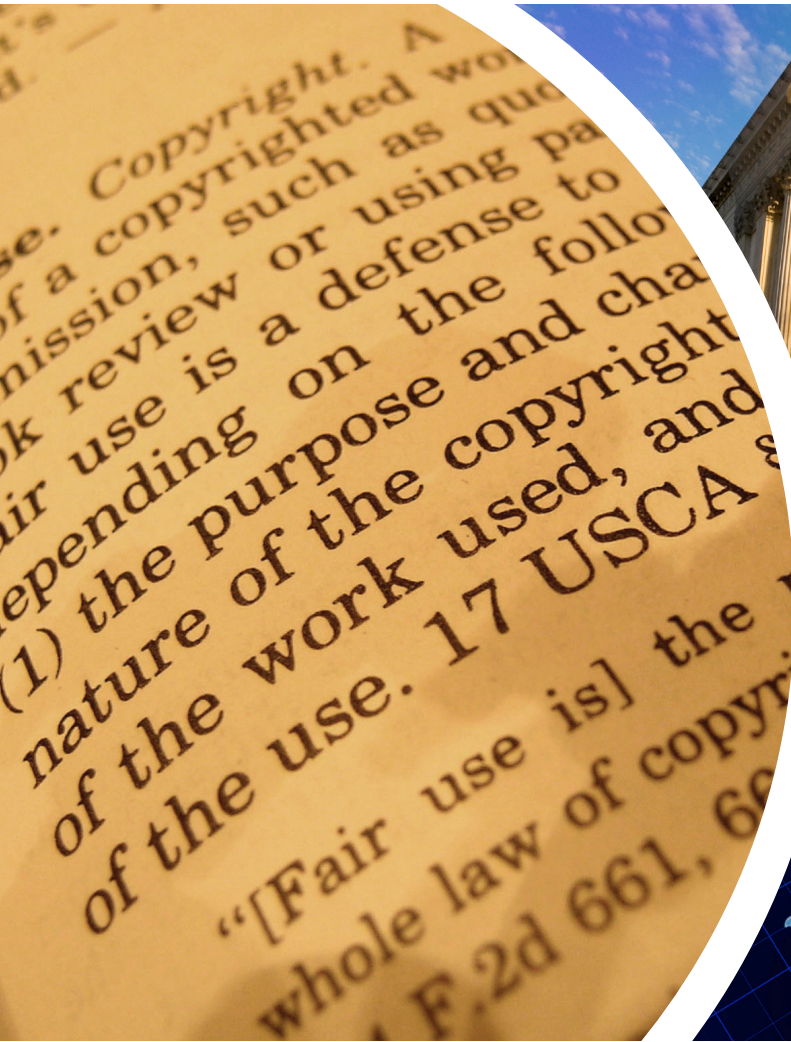


FAIR USE IN THE U.S. ECONOMY



2011

Appendices

PREPARED BY

Thomas Rogers
Andrew Szamosszegi
Capital Trade, Incorporated

PREPARED FOR

Computer & Communications
Industry Association

Prepared for the Computer and Communications Industry Association (CCIA) by Thomas Rogers and Andrew Szamosszegi, economic consultants with Capital Trade, Incorporated. Capital Trade is a Washington, D.C.-based economic consulting firm that specializes in international trade, economic studies, and statistical analysis of large-scale databases. Portions of the report updated herein were prepared with the assistance of Professor Peter Jaszi of American University Washington College of Law.

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APPENDIX I: FAIR USE INDUSTRY DEFINITIONS

CORE

Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Photographic and Photocopying Equipment Mfg	333315	This U.S. industry comprises establishments primarily engaged in manufacturing photographic and photocopying equipment, such as cameras (except television, video and digital) projectors, film developing equipment, photocopying equipment, and microfilm equipment.	107 (fair use copying); Sony principle
Computer and Peripheral Equipment Manufacturing	3341	This industry comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers; and computer peripheral equipment, such as storage devices, printers, monitors, input/output devices and terminals. Computers can be analog, digital, or hybrid. Digital computers, the most common type, are devices that do all of the following: (1) store the processing program or programs and the data immediately necessary for the execution of the program; (2) can be freely programmed in accordance with the requirements of the user; (3) perform arithmetical computations specified by the user; and (4) execute, without human intervention, a processing program that requires the computer to modify its execution by logical decision during the processing run. Analog computers are capable of simulating mathematical models and comprise at least analog, control, and programming elements.	102(b) (non-copyrightability of interface specifications); 107 (fair use: browser copies; buffer copies; time and space shifting; reverse engineering); 117(a) (backup, essential step copies); Sony principle; see also exceptions listed under NAICS 5112, 5171, 5179, 5182, 519, 3341, 334413
Audio and Video Equipment Manufacturing	3343	This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.	107 (fair use: buffer copies, time and space shifting); Sony principle; see also exceptions listed under NAICS 3346, 334413
Semiconductors and Related Device Manufacturing	334413	This U.S. industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices. Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.	107 (fair use: reverse engineering); Sony principle; see NAICS 3341
Manufacturing and Reproducing Magnetic and Optical Media	3346	This industry comprises establishments primarily engaged in (1) manufacturing optical and magnetic media, such as blank audio tape, blank video tape, and blank diskettes and/or (2) mass duplicating (i.e., making copies) audio, video, software, and other data on magnetic, optical, and similar media.	107 (fair use: time and space shifting; browser, cache copies); Sony principle; see also exceptions listed under NAICS 3341, 3343; 3342

Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Electronic Shopping	454111	This U.S. Industry comprises establishments engaged in retailing all types of merchandise using the Internet.	107 (fair use: browser copies; search); 109(a) (first sale); 512 (ISP safe harbors); Sony principle; see also exceptions listed under NAICS 5171, 5179, 5182, 519, 3341, 5112, 5415, 33413, 3346
Electronic Auctions	454112	This U.S. Industry comprises establishments engaged in providing sites for and facilitating consumer-to-consumer or business-to-consumer trade in new and used goods, on an auction basis, using the Internet. Establishments in this industry provide the electronic location for retail auctions, but do not take title to the goods being sold.	107 (fair use: browser copies; search); 109(a) (first sale); 512 (ISP safe harbors); Sony principle; see also exceptions listed under NAICS 5171, 5179, 519, 5182, 3341, 5112, 5415, 33413, 3346
Newspaper Publishers	51111	This industry comprises establishments known as newspaper publishers. Establishments in this industry carry out operations necessary for producing and distributing newspapers, including gathering news; writing news columns, feature stories, and editorials; and selling and preparing advertisements. These establishments may publish newspapers in print or electronic form.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: criticism, comment, news reporting); 105 (no copyright in U.S. government works)
Directory, Mailing List, and Other Publishers	51114	This industry comprises establishments known as newspaper publishers. Establishments in this industry carry out operations necessary for producing and distributing newspapers, including gathering news; writing news columns, feature stories, and editorials; and selling and preparing advertisements. These establishments may publish newspapers in print or electronic form.	102(a) (non-copyrightability of facts); 105 (no copyright in U.S. government works)
Other Publishers	51119	This industry comprises establishments known as publishers (except newspaper, magazine, book, directory, mailing list, and music publishers). These establishments may publish works in print or electronic form.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: scholarship, research, teaching); 302-304 (copyright term); 105 (no copyright in U.S. government works).
Software Publishers	5112	This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only.	102(b) (non-copyrightability of interface specifications); 107 (fair use: reverse engineering); 117(a) (back up, essential step copies); Sony principle; see also exceptions listed under NAICS 5171, 5179, 519, 5182, 3341, 5415, 334413, 3346

Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Motion Picture and Video Industries	5121	This industry group comprises establishments primarily engaged in the production and/or distribution of motion pictures, videos, television programs, or commercials; in the exhibition of motion pictures; or in the provision of postproduction and related services.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: criticism, comment, parody, research); 302-304 (copyright term); 105 (no copyright in U.S. government works) see also exceptions listed under NAICS 3342
Sound Recording Industries	5122	This industry group comprises establishments primarily engaged in producing and distributing musical recordings, in publishing music, or in providing sound recording and related services.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: criticism, comment, parody, research); 302-304 (copyright term) see also exceptions listed under 3343
Data Processing, Hosting, and Related Services	5182	This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting, provide application service provisioning, or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services.	107 (fair use: browser copies); 512 (ISP safe harbors); Sony principle; see also exceptions listed under NAICS 3341, 5112, 5415, 334413, 5171, 5179, 519, 3346
Other Information Services	519	Industries in the Other Information Services subsector group establishments supplying information, storing and providing access to information, searching and retrieving information, operating Web sites that use search engines to allow for searching information on the Internet, or publishing and/or broadcasting content exclusively on the Internet. The main components of the subsector are news syndicates, libraries, archives, exclusive Internet publishing and/or broadcasting, and Web Search Portals.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy, non-copyrightability of interface specifications); 107 (fair use: criticism; comment; news reporting; browser, cache copies; teaching; scholarship; research); 108 (library uses); 109 (first sale doctrine); 512 (ISP safe harbors); Sony principle; 302-304 (copyright term); 105 (no copyright in U.S. government works); see also exceptions listed under NAICS 3341, 5112, 5415, 334413, 3346

Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Securities, Commodity Contracts, and Investments	5231	This industry group comprises establishments primarily engaged in putting capital at risk in the process of underwriting securities issues or in making markets for securities and commodities; and those acting as agents and/or brokers between buyers and sellers of securities and commodities, usually charging a commission.	102(a) (non-copyrightability of facts); 107 (fair use: research); see also exceptions listed under NAICS 3341, 5182, 5415, 5171
Other Financial Investment Activities	5239	This industry group comprises establishments primarily engaged in one of the following: (1) acting as principals in buying or selling financial contracts (except investment bankers, securities dealers, and commodity contracts dealers); (2) acting as agents (i.e., brokers) (except securities brokerages and commodity contracts brokerages) in buying or selling financial contracts; or (3) providing other investment services (except securities and commodity exchanges), such as portfolio management; investment advice; and trust, fiduciary, and custody services.	102(a) (non-copyrightability of facts); 107 (fair use: research); see also exceptions listed under NAICS 3341, 5171, 5182, 5415
Insurance Carriers	5241	This industry group comprises establishments primarily engaged in underwriting (assuming the risk, assigning premiums, and so forth) annuities and insurance policies and investing premiums to build up a portfolio of financial assets to be used against future claims. Direct insurance carriers are establishments that are primarily engaged in initially underwriting and assuming the risk of annuities and insurance policies. Reinsurance carriers are establishments that are primarily engaged in assuming all or part of the risk associated with an existing insurance policy (or set of policies) originally underwritten by another insurance carrier. Industries are defined in terms of the type of risk being insured against, such as death, loss of employment because of age or disability, and/or property damage. Contributions and premiums are set on the basis of actuarial calculations of probable payouts based on risk factors from experience tables and expected investment returns on reserves.	102(a) (non-copyrightability of facts); 107 (fair use: research); see also exceptions listed under NAICS 3341, 5171, 5182, 5415
Other Investment Pools and Funds	5259	This industry group comprises legal entities (i.e., investment pools and/or funds) organized to pool securities or other assets (except insurance and employee-benefit funds) on behalf of shareholders, unitholders, or beneficiaries.	102(a) (non-copyrightability of facts); 107 (fair use: research); see also exceptions listed under NAICS 3341, 5171, 5179, 519, 5415
Video Tape and Disc Rental	53223	This industry comprises establishments primarily engaged in renting prerecorded video tapes and discs for home electronic equipment.	109(a) (first sale); see also exceptions listed under NAICS 3343, 3346

Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Legal Services	5411	This industry comprises offices of legal practitioners known as lawyers or attorneys (i.e., counselors-at-law) primarily engaged in the practice of law. Establishments in this industry may provide expertise in a range or in specific areas of law, such as criminal law, corporate law, family and estate law, patent law, real estate law, or tax law.	102(b) (idea/expression dichotomy); 105 (no copyright in U.S. government works); 107 (fair use: research); see also exceptions listed under NAICS 3341, 5171, 5172, 5174, 5179, 519, 5415
Architectural, Engineering, and Related Services	5413	This industry comprises establishments primarily engaged in planning and designing residential, institutional, leisure, commercial, and industrial buildings and structures by applying knowledge of design, construction procedures, zoning regulations, building codes, and building materials.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: criticism, comment, parody, research); 302-304 (copyright term); 105 (no copyright in U.S. government works)
Graphic Design Services	54143	This industry comprises establishments primarily engaged in planning, designing, and managing the production of visual communication in order to convey specific messages or concepts, clarify complex information, or project visual identities. These services can include the design of printed materials, packaging, advertising, signage systems, and corporate identification (logos). This industry also includes commercial artists engaged exclusively in generating drawings and illustrations requiring technical accuracy or interpretative skills.	102(b) (non-copyrightability of interface specifications); 107 (fair use: comment, parody, research, search; browser, cache copies); 302-304 (copyright term); 105 (no copyright in U.S. government works); 117(a) (backup, essential step copies)
Scientific Research and Development Services	5417	This industry group comprises establishments engaged in conducting original investigation undertaken on a systematic basis to gain new knowledge (research) and/or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development). The industries within this industry group are defined on the basis of the domain of research; that is, on the scientific expertise of the establishment.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: scholarship, research, comment, criticism); see NAICS 3341, 5171, 5179, 5112, 5171, 5172, 519, 5415, 333315, 334413

Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Education Services (pt.)	6111, 6112, 6113	Industries in the Educational Services subsector provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers. The subsector is structured according to level and type of educational services. Elementary and secondary schools, junior colleges and colleges, universities, and professional schools correspond to a recognized series of formal levels of education designated by diplomas, associate degrees (including equivalent certificates), and degrees. The remaining industry groups are based more on the type of instruction or training offered and the levels are not always as formally defined. The establishments are often highly specialized, many offering instruction in a very limited subject matter, for example ski lessons or one specific computer software package. Within the sector, the level and types of training that are required of the instructors and teachers vary depending on the industry. Establishments that manage schools and other educational establishments on a contractual basis are classified in this subsector if they both manage the operation and provide the operating staff. Such establishments are classified in the educational services subsector based on the type of facility managed and operated.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: criticism, comment, teaching, scholarship, research); 110(1), 110(2) (displays and performances in educational contexts); see also exceptions listed under NAICS 3341, 5112, 5415, 5171, 5172, 5179, 519, 333315, 334413
Performing Arts Companies	7111	This industry group comprises establishments primarily engaged in producing live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists, and other performing artists.	102(b) (idea/expression dichotomy); 107 (fair use: criticism, comment, parody, research); 302-304 (copyright term);
Independent Artists, Writers, and Performers	7115	This industry comprises independent (i.e., freelance) individuals primarily engaged in performing in artistic productions, in creating artistic and cultural works or productions, or in providing technical expertise necessary for these productions. This industry also includes athletes and other celebrities exclusively engaged in endorsing products and making speeches or public appearances for which they receive a fee.	102(b) (idea/expression dichotomy); 107 (fair use: criticism, comment, parody, research); 302-304 (copyright term);
Computer and Office Machine Repair and Maintenance	811212	This industry comprises establishments primarily engaged in repairing and maintaining computers and office machines without retailing new computers and office machines, such as photocopying machines; and computer terminals, storage devices, printers; and CD-ROM drives.	117(c) (machine maintenance or repair); see also exceptions listed under NAICS 3341

APPENDIX I: FAIR USE INDUSTRY DEFINITIONS

Non-Core

Non-Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Printing and Related Support Activities	3231	Industries in the Printing and Related Support Activities subsector print products, such as newspapers, books, labels, business cards, stationery, business forms, and other materials, and perform support activities, such as data imaging, platemaking services, and bookbinding. The support activities included here are an integral part of the printing industry, and a product (a printing plate, a bound book, or a computer disk or file) that is an integral part of the printing industry is almost always provided by these operations. Processes used in printing include a variety of methods used to transfer an image from a plate, screen, film, or computer file to some medium, such as paper, plastics, metal, textile articles, or wood. The most prominent of these methods is to transfer the image from a plate or screen to the medium (lithographic, gravure, screen, and flexographic printing). A rapidly growing new technology uses a computer file to directly “drive” the printing mechanism to create the image and new electrostatic and other types of equipment (digital or nonimpact printing)....	See exceptions listed under NAICS 51111, 51114, 51119
Communications Equipment Manufacturing	3342	This industry group comprises establishments primarily engaged in one or more of the following manufacturing activities: telephone equipment; radio and television broadcasting and wireless communications equipment; and other communications equipment.	102(b) (non-copyrightability of interface specifications); 107 (fair use: browser copies, reverse engineering); Sony principle; see NAICS 3341, 3346, 5112, 5415, 5171, 5172, 5174, 5175, 5179, 5152, 515120
Communication and Energy Wire and Cable Manufacturing	335920	This industry comprises establishments insulating fiber-optic cable, and manufacturing insulated nonferrous wire and cable from nonferrous wire drawn in other establishments.	See exceptions listed under NAICS 3342
Computer and Peripheral Equip Merchant Wholesalers	4234301	This industry comprises establishments primarily engaged in the merchant wholesale distribution of new and used computer hardware and computer peripheral equipment.	See exceptions listed under NAICS 3341
Computer Software (Packaged) Merchant Wholesalers	4234302	This industry comprises establishments primarily engaged in the merchant wholesale distribution of packaged computer software primarily for end use.	See exceptions listed under NAICS 5112

Non-Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Electric Appliance, TV and Radio Merchant Wholesalers	42362	This industry comprises establishments primarily engaged in the merchant wholesale distribution of household-type electrical appliances, room air-conditioners, gas and electric clothes dryers, and/or household-type audio or video equipment.	See exceptions listed under NAICS 3343
Communications Equipment and Supp Merchant Wholesalers	4236901	This industry comprises establishments primarily engaged in the merchant wholesale distribution of household-type electrical appliances, room air-conditioners, gas and electric clothes dryers, and/or household-type audio or video equipment.	See exceptions listed under NAICS 3342
Business to Business Electronic Markets	42511	This industry comprises business-to-business electronic markets bringing together buyers and sellers of goods using the Internet or other electronic means and generally receiving a commission or fee for the service. Business-to-business electronic markets for durable and nondurable goods are included in this industry.	See exceptions listed under NAICS 5171, 5179, 5182, 519, 3341, 5112, 5415, 334413, 3346
Electrical and Electronic Goods Agents and Brokers	42512036	This industry (425120) comprises wholesale trade agents and brokers acting on behalf of buyers or sellers in the wholesale distribution of goods. Agents and brokers do not take title to the goods being sold but rather receive a commission or fee for their service. Agents and brokers for all durable and nondurable goods are included in this industry. Electrical and electronic goods agents and brokers are a subset of this industry and are classified under NAICS 42512036.	See exceptions listed under NAICS 3341, 5112, 3343
Radio, Television and Other Electronics Stores	443112	This U.S. industry comprises: (1) establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.	See exceptions listed under NAICS 3343
Computer and Software Stores	44312	This U.S. industry comprises: (1) establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.	See exceptions listed under NAICS 3341, 5112, 334413
Book, Periodical, and Music Stores	4512	This industry group comprises establishments primarily engaged in retailing new books, newspapers, magazines, and prerecorded audio and video media.	109(a) (first sale); see also exceptions listed under NAICS 5111, 5121, 5122

Non-Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Radio and Television Broadcasting	5151	This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: criticism, comment, news reporting, parody); 112 (ephemeral recordings); 114(a) (exception to sound recording performance right); see also exceptions listed under NAICS 3343, 3342
Cable Networks	5152	This industry group comprises establishments primarily engaged in operating broadcast studios and facilities for over-the-air or satellite delivery of radio and television programs. These establishments are often engaged in the production or purchase of programs or generate revenues from the sale of air time to advertisers, from donations and subsidies, or from the sale of programs.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: criticism, comment, news reporting, parody); 114(a) (exception to sound recording performance right); see also exceptions listed under NAICS 3343, 3342
Wired Telecommunications Carriers	5171	This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.	See exceptions listed under NAICS 3341, 5112, 5415, 5182, 334413, 3346, 3342
Wireless Telecommunications Carriers (Except Satellite)	5172	This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.	See exceptions listed under NAICS 3341, 5112, 5415, 5182, 334413, 3346, 3342

Non-Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Satellite Telecommunications	5174	This industry comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.	See exceptions listed under NAICS 3341, 5112, 5415, 5182, 334413, 3346, 3342
Other Telecommunications	5179	This industry comprises establishments primarily engaged in (1) purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households; (2) providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation; (3) providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems; or (4) providing Internet access services or Voice over Internet protocol (VoIP) services via client-supplied telecommunications connections. Establishments in this industry do not operate as telecommunications carriers. Mobile virtual network operators (MVNO) are included in this industry.	See exceptions listed under NAICS 3341, 5112, 5415, 5182, 3342
Securities and Commodity Exchanges	5232	This industry comprises establishments primarily engaged in furnishing physical or electronic marketplaces for the purpose of facilitating the buying and selling of stocks, stock options, bonds, or commodity contracts.	See exceptions listed under NAICS 5231, 5182, 5415, 5171, 5411
Agencies, Brokerages, and Other Insurance Related Activities	5242	This industry group comprises establishments primarily engaged in (1) acting as agents (i.e., brokers) in selling annuities and insurance policies or (2) providing other employee benefits and insurance related services, such as claims adjustment and third party administration.	See exceptions listed under NAICS 5231, 5239, 5241, 5415
Insurance and Employee Benefit Funds	5251	This industry group comprises legal entities (i.e., funds, plans, and/or programs) organized to provide insurance and employee benefits exclusively for the sponsor, firm, or its employees or members.	See exceptions listed under NAICS 5231, 5239, 5241

Non-Core Industry	NAICS Codes	Detailed NAICS Description	Reliance on Fair Use
Computer System Design and Related Services	5415	This industry comprises establishments primarily engaged in providing expertise in the field of information technologies through one or more of the following activities: (1) writing, modifying, testing, and supporting software to meet the needs of a particular customer; (2) planning and designing computer systems that integrate computer hardware, software, and communication technologies; (3) on-site management and operation of clients' computer systems and/or data processing facilities; and (4) other professional and technical computer-related advice and services.	See exceptions listed under NAICS 5171, 5179, 519, 5182, 3341, 5112, 454111, 454112, 42511, 334413, 3346
Management, Scientific, and Technical Consulting Services	5416	The industry NAICS 54161 comprises establishments primarily engaged in providing advice and assistance to businesses and other organizations on management issues, such as strategic and organizational planning; financial planning and budgeting; marketing objectives and policies; human resource policies, practices, and planning; production scheduling; and control planning. Establishments providing sanitation or site remediation consulting services are included in this industry.	102(a) (non-copyrightability of facts); 102(b) (idea/expression dichotomy); 107 (fair use: scholarship, research, comment, criticism); see also exceptions listed under NAICS 3341, 5112, 5415, 5171, 5172, 5179, 519, 333315, 334413
Education Services (pt.)	6114, 6115, 6116, 6117	See description of education services listed under core industry NAICS 6111, 6112, 6113	See exceptions listed under NAICS 6111, 6112, 6113
Promoters of Performing Arts, Sports, and Similar Events	7113	This industry comprises establishments primarily engaged in (1) organizing, promoting, and/or managing live performing arts productions, sports events, and similar events, such as state fairs, county fairs, agricultural fairs, concerts, and festivals, held in facilities that they manage and operate and/or (2) managing and providing the staff to operate arenas, stadiums, theaters, or other related facilities for rent to other promoters. It also comprises promoters primarily engaged in organizing, promoting, and/or managing live performing arts productions, sports events, and similar events, such as state fairs, county fairs, agricultural fairs, concerts, and festivals, in facilities that are managed and operated by others. Theatrical (except motion picture) booking agencies are included in this industry.	See exceptions listed under NAICS 5121, 7111, 7115
Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures	7114	This industry comprises establishments of agents and managers primarily engaged in representing and/or managing creative and performing artists, sports figures, entertainers, and other public figures. The representation and management includes activities, such as representing clients in contract negotiations; managing or organizing client's financial affairs; and generally promoting the careers of their clients.	See exceptions listed under NAICS 5121, 7111, 7115

APPENDIX II: METHODOLOGY AND DATA SOURCES

i. Revenue

The revenue data for the core and non-core industries were based on statistics in the Economic Census, issued by the U.S. Census Bureau (“Census”) of the Department of Commerce, and updated using data maintained by the Department’s Bureau of Economic Analysis (“BEA”). The underlying revenue data for each industry appear in Appendix III. The economic census data were used for 2002 and 2007.¹ Because the Economic Census provides the most detailed, and presumably the most accurate, picture of industry revenues, data for subsequent years are based on adjustments to the Census data. For most industries, those data are adjusted using the detailed estimates underlying the GDP-by-industry accounts available on the BEA’s website.² To calculate 2008 revenue for an industry, the 2007 value from the economic census is multiplied by the ratio of 2008 gross output to 2007 gross output. The same procedure is used to estimate revenue for 2009. When there is not an exact match in the GDP-by-industry accounts, revenue is drawn from the *Annual Survey of Manufacturers—Statistics for Industry Groups and Industries*³ or from the *Services Annual Survey*,⁴ both published by Census.

ii. Value Added

Revenue data are an important measurement of company growth, but value added data are a better indicator of the contribution of an industry to overall economic growth. The reason is simple. Revenues include the values of intermediate inputs purchased from other industries and from within the same industry. In contrast, value added excludes intermediate purchases, and thereby captures the value that is added by the labor and capital resources within each industry. Industry value added is analogous to GDP, and can be used to assess the contribution of an industry or industries to U.S. economic growth.

The *Economic Census* and *Annual Survey of Manufactures* provide value added data for fair use industries in manufacturing. However, neither report provides value added data for services. To estimate value added data for fair use service industries, this report applies the value-added-to-gross-output ratio to industry revenues, the same methodology used in the inaugural fair use report.⁵ Gross output and value added data from BEA’s GDP-by-industry accounts are used.⁶ For retail and wholesale industries, revenues from the economic census include the value of the products being sold. To eliminate this distortion, the value added for these industries is adjusted by the ratio of gross output to census revenue.

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1. Data from the Economic Census can be accessed at <http://www.census.gov/econ/census07/index.html>.
 2. http://www.bea.gov/industry/gdpbyind_data.htm. Gross output is similar to revenue in most industries, but there are some differences in how the two concepts are calculated. See the discussion above under Value Added.
 3. <http://www.census.gov/manufacturing/asm/>.
 4. <http://www.census.gov/services/>.
 5. In many instances, the value added and gross output data for services, published by the BEA, are at higher levels of aggregation than the various fair use industries. The BEA industries offering the best match for each core or non-core industry were used.
 6. The underlying data for both value added and gross output has been updated since the last publication of this report. This update resulted in new value-added-to-output ratios for 2006 and 2007. Thus value added was recalculated for those years by applying the revised ratios.

APPENDIX III: REVENUE DATA FOR FAIR USE INDUSTRIES

(MILLIONS OF DOLLARS)

Core Industries

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
333315	Photographic and Photocopying Equipment Manufacturing	2,139	2,281	2,191	2,172	2,162
3341	Computer and Peripheral Equipment Manufacturing	73,562	67,403	64,414	64,864	63,813
3343	Audio and Video Equipment Manufacturing	8,522	9,588	7,331	5,703	4,682
334413	Semiconductor and Related Device Manufacturing	61,471	70,213	72,398	68,864	56,227
3346	Manufacturing and Reproducing Magnetic and Optical Media	7,550	6,945	6,237	4,740	4,083
454111	Electronic Shopping	32,143	72,262	85,505	83,213	78,415
454112	Electronic Auctions	1,208	2,881	3,410	3,318	3,127
51111	Newspaper Publishers	46,179	49,113	47,016	43,064	36,235
51114, 51119	Directory, Mailing List, and Other Publishers	24,422	25,102	26,193	25,953	23,459
5112	Software Publishers	103,597	118,000	128,938	135,958	134,928
5121	Motion Picture and Video Industries	62,951	75,711	79,842	80,641	78,923
5122	Sound Recording Industries	15,338	15,987	15,350	16,224	15,382
5182	Data Processing, Hosting, and Related Services	57,706	66,124	68,489	72,471	72,978
519	Other Information Services (inc. Internet Publishing and Broadcasting and Web Search Portals)	32,982	32,950	37,674	41,620	42,091
5231	Securities and Commodity Contracts Intermediation and Brokerage	212,236	403,867	388,220	293,722	339,119
5239	Other Financial Investment Activities	102,809	208,843	234,229	177,215	204,605
5241	Insurance Carriers	332,460	519,381	513,924	528,607	511,477
5259	Other Investment Pools and Funds	22,874	32,120	36,514	40,565	38,383
53223	Video Tape and Disc Rental	9,364	10,288	9,242	8,732	7,399
5411	Legal Services	182,098	238,654	254,611	260,473	251,994
5413	Architectural, Engineering, and Related Services	158,366	235,812	256,612	273,850	241,395
54143	Graphic Design Services	8,096	8,147	8,378	8,158	6,821
5417	Scientific Research and Development Services	93,082	88,160	96,595	10,5439	108,465
6111, 6112, 6113	Elementary and Secondary Schools, Junior Colleges, Colleges, Universities, and Professional Schools	121,300	156,066	162,647	176,380	190,734
7111	Performing Arts Companies	10,864	14,049	13,753	14,566	13,618

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
7115	Independent Artists, Writers, and Performers	9,338	12,375	12,726	12,912	12,582
811212	Computer and Office Machine Repair and Maintenance	6,380	7,202	7,948	7,839	7,605
	Core Industries Subtotal	1,799,037	2,549,524	2,640,388	2,556,725	2,550,702
	Estimated ISP Revenues ¹	0	0	11,933	11,406	11,123
	Core Industries Total	1,799,037	2,549,524	2,652,321	2,568,131	2,561,825

1. In the 2007 NAICS, the revenues of Internet service providers are no longer included in NAICS 518, but are instead included in NAICS 5171 and 5179, which this report treats as non-core. Estimated ISP revenues have been added to the core revenues of 2007 in order to maintain comparability with prior years' estimates.

Sources See APPENDIX II.

APPENDIX III: REVENUE DATA FOR FAIR USE INDUSTRIES

(MILLIONS OF DOLLARS)

Non-Core Industries

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
3231	Printing and Related Support Activities	95,592	99,800	103,217	98,600	85,849
3342	Communications Equipment Manufacturing	66,143	70,195	64,510	53,866	45,163
33592	Communication and Energy Wire and Cable Manufacturing	11,360	16,041	15,793	15,044	11,760
4234301	Computer and Peripheral Equip Merchant Wholesalers	217,790	249,764	252,876	262,518	218,586
4234302	Computer Software (Packaged) Merchant Wholesalers	14,730				
42362	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	59,830	63,223	87,043	90,362	75,240
4236901	Communications Equipment Merchant Wholesalers	78,309	103,000	100,750	104,591	87,088
42511	Business to Business Electronic Markets	2,843	5,110	5,447	5,655	4,709
42512036	Electrical and Electronic Goods Agents and Brokers	50,618	76,913	78,896	81,904	68,197
443112	Radio, Television, and Other Electronics Stores	48,451	62,820	67,599	65,787	61,994
44312	Computer and Software Stores	16,696	18,575	20,064	19,526	18,400
4512	Book, Periodical, and Music Stores	23,096	20,850	21,227	20,658	19,467
5151	Radio and Television Broadcasting	48,873	53,629	54,085	53,236	46,789
5152	Cable and Other Subscription Programming	25,375	42,364	45,608	50,269	52,023
5171	Wired Telecommunications Carriers (inc. ISP) ¹	241,948	199,344	294,377	304,568	303,242
5172	Wireless Telecommunications Carriers (except Satellite) (inc. ISP)	99,158	151,953	167,720	173,526	172,771
5175	Cable and other program distribution ²	57,706	91,865			
5174 and 5179	Satellite and other communications ¹	17,096	22,254	30,043	31,083	30,948
5232	Securities and Commodity Exchanges			8,947	6,769	7,815
5242	Agencies, Brokerages, and Other Insurance Related Activities	126,406	160,325	154,220	158,627	153,486
5251	Insurance and Employee Benefit Funds	Not covered	Not covered	Not covered	Not covered	Not covered

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
5415	Computer Systems Design and Related Services	173,480	198,441	273,513	289,878	286,017
5416	Management, Scientific, and Technical Consulting Services	105,452	119,776	132,156	138,430	126,532
6114, 6115, 6116, 6117	Business Schools and Computer and Management Training, Technical and Trade Schools, Other Schools and Instruction, and Educational Support Services	39,312	47,794	49,109	52,364	53,298
7113	Promoters of Performing Arts, Sports, and Similar Events	11,698	14,726	16,133	16,393	16,446
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures	4,073	4,479	5,075	5,371	5,089
	Non-Core Industries Subtotal	1,636,035	1,893,241	2,048,408	2,099,025	1,950,909
	Estimated ISP Revenues ¹	0	0	11,933	11,406	11,123
	Non-Core Industries Total	1,636,035	1,893,241	2,036,475	2,087,619	1,939,786

1. In the 2007 NAICS, the revenues of Internet service providers are no longer included in NAICS 518, but are instead included in NAICS 5171 and 5179, which this report treats as non-core. Estimated ISP revenues have been added to the core revenues of 2007 in order to maintain comparability with prior years' estimates.

Sources See APPENDIX II.

APPENDIX IV: VALUE ADDED DATA FOR FAIR USE INDUSTRIES

(MILLIONS OF DOLLARS)

Core Industries

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
333315	Photographic and Photocopying Equipment Manufacturing	861	1,229	1,250	1,276	1,200
3341	Computer and Peripheral Equipment Manufacturing	25,955	35,049	33,647	35,756	31,553
3343	Audio and Video Equipment Manufacturing	3,007	3,278	3,456	2,017	2,093
334413	Semiconductor and Related Device Manufacturing	21,690	54,476	52,621	50,919	39,326
3346	Manufacturing and Reproducing Magnetic and Optical Media	2,664	3,260	2,992	2,582	2,342
454111	Electronic Shopping	5,353	17,163	20,334	19,281	18,809
454112	Electronic Auctions	201	684	811	769	750
51111	Newspaper Publishers	22,787	21,301	21,586	19,870	16,664
51114, 51119	Directory, Mailing List, and Other Publishers	12,051	10,887	12,026	11,975	10,788
5112	Software Publishers	51,120	51,178	59,197	62,731	62,051
5121	Motion Picture and Video Industries	29,200	44,207	47,561	45,814	45,183
5122	Sound Recording Industries	7,115	9,335	9,144	9,217	8,806
5182	Data Processing, Hosting, and Related Services	27,100	42,906	36,995	39,626	39,496
519	Other Information Services (inc. internet publishing and Broadcasting and Web Search Portals)	15,489	21,381	18,173	20,251	20,399
5231	Securities and Commodity Contracts Intermediation and Brokerage	132,963	179,914	153,061	144,756	134,263
5239	Other Financial Investment Activities	71,142	93,035	92,348	87,337	81,006
5241	Insurance Carriers	172,031	298,594	294,960	266,418	324,487
5259	Other Investment Pools and Funds	6,128	12,434	12,714	14,201	17,726
53223	Video Tape and Disc Rental	4,879	6,763	5,824	5,251	4,447
5411	Legal Services	130,992	179,767	192,623	201,825	196,064
5413	Architectural, Engineering, and Related Services	89,695	155,763	167,646	181,316	165,229
54143	Graphic Design Services	4,585	5,382	5,473	5,401	4,669
5417	Scientific Research and Development Services	52,720	58,233	63,106	69,811	74,242
6111, 6112, 6113	Elementary and Secondary Schools, Junior Colleges, Colleges, Universities, and Professional Schools	70,439	101,701	105,600	114,354	123,014
7111	Performing Arts Companies	6,814	8,823	8,409	8,546	8,071

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
7115	Independent Artists, Writers, and Performers	5,858	7,771	7,781	7,576	7,457
811212	Computer and Office Machine Repair and Maintenance	3,500	4,340	4,811	4,568	4,559
	Core Industries Subtotal	976,339	1,428,854	1,434,149	1,433,444	1,444,694
	Estimated ISP Revenues ¹	0	0	6,298	6,465	6,324
	Core Industries Total	976,339	1,428,854	1,440,447	1,439,909	1,451,018

1. In the 2007 NAICS, the data for Internet service providers are no longer included in NAICS 518, but are instead included in NAICS 5171 and 5179, which this report treats as non-core. Estimated ISP revenues have been added to the core revenues of 2007 in order to maintain comparability with prior years' estimates.

Sources See APPENDIX II.

Non-Core Industries

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
3231	Printing and Related Support Activities	45,865	60,357	63,643	59,597	51,699
3342	Communications Equipment Manufacturing	23,338	36,906	35,037	29,829	24,940
33592	Communication and Energy Wire and Cable Manufacturing	5,505	5,631	4,921	4,901	4,093
4234301	Computer and Peripheral Equip Merchant Wholesalers	28,916	33,938	35,078	35,492	33,676
4234302	Computer Software (Packaged) Merchant Wholesalers	1,956				
42362	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	7,944	8,591	12,074	12,217	11,592
4236901	Communications Equipment Merchant Wholesalers	10,397	13,996	13,976	14,141	13,417
42511	Business to Business Electronic Markets	378	694	756	765	725
42512036	Electrical and Electronic Goods Agents and Brokers	6,721	10,451	10,944	11,073	10,507
443112	Radio, Television, and Other Electronics Stores	10,780	14,921	16,076	15,243	14,870
44312	Computer and Software Stores	3,715	4,412	4,771	4,524	4,414
4512	Book, Periodical, and Music Stores	5,139	4,952	5,048	4,787	4,669
5151	Radio and Television Broadcasting	23,160	28,858	30,705	30,177	26,603
5152	Cable and Other Subscription Programming	12,025	22,796	25,893	28,495	29,579

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
5171	Wired Telecommunications Carriers (inc. ISP)	114,654	107,270	167,126	172,646	172,417
5172	Wireless Telecommunications Carriers (except Satellite) (inc. ISP)	46,989	81,768	95,219	98,364	98,234
5175	Cable and Other Program Distribution ¹	27,346				
5174 and 5179	Satellite and Other Communications	8,101	11,975	17,056	17,620	17,596
5232	Securities and Commodity Exchanges			3,527	3,336	3,094
5242	Agencies, Brokerages, and Other Insurance Related Activities	65,408	92,172	88,513	79,948	97,373
5251	Insurance and Employee Benefit Funds					
5415	Computer Systems Design and Related Services	134,075	145,278	197,542	204,699	201,985
5416	Management, Scientific, and Technical Consulting Services	79,653	79,117	86,338	91,655	86,608
6114, 6115, 6116, 6117	Business Schools and Computer and Management Training, Technical and Trade Schools, Other Schools and Instruction, and Educational Support Services	22,829	31,145	31,885	33,950	34,374
7113	Promoters of Performing Arts, Sports, and Similar Events	7,338	9,247	9,864	9,618	9,748
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures	2,555	2,813	3,103	3,151	3,017
	Non-Core Industries Subtotal	694,787	807,288	959,095	966,228	955,230
	Estimated ISP Revenues ¹	0	0	6,298	6,465	6,324
	Non-Core Industries Total	694,787	807,288	952,797	959,763	948,906

1. In the 2007 NAICS, the revenues of Internet service providers are no longer included in NAICS 518, but are instead included in NAICS 5171 and 5179, which this report treats as non-core. Estimated ISP revenues have been subtracted from the non-core revenues of 2007 in order to maintain comparability with prior years' estimates.

Sources See APPENDIX II.

APPENDIX V: ESTIMATED CONTRIBUTION OF CORE INDUSTRY VALUE ADDED TO GDP

2007 NAICS Codes	Description	Chain-type quantity index			Real value added ¹		Contribution to change in GDP 2006=100
		2002	2006	2009	2002	2009	
333315	Photographic and Photocopying Equipment Manufacturing	100	146	121	840	1,018	0.01%
3341	Computer and Peripheral Equipment Manufacturing	100	213	243	16,487	40,134	1.72%
3343	Audio and Video Equipment Manufacturing	100	172	139	1,910	2,662	0.05%
334413	Semiconductor and Related Device Manufacturing	100	395	363	13,777	50,022	2.64%
3346	Manufacturing and Reproducing Magnetic and Optical Media	100	193	176	1,692	2,979	0.09%
454111	Electronic Shopping	100	322	294	5,338	15,681	0.75%
454112	Electronic Auctions	100	341	312	201	625	0.03%
51111	Newspaper Publishers	100	95	73	22,395	16,259	-0.45%
51114, 51119	Directory, Mailing List, and Other Publishers	100	95	102	11,461	11,735	0.02%
5112	Software Publishers	100	102	121	50,241	60,546	0.75%
5121	Motion Picture and Video Industries	100	140	137	31,519	43,269	0.86%
5122	Sound Recording Industries	100	122	110	7,680	8,433	0.05%
5182	Data Processing, Hosting, and Related Services	100	166	167	25,772	42,962	1.25%
519	Other information services (inc. Internet Publishing and Broadcasting and Web Search Portals) ²	100	145	197	14,730	29,068	1.05%
5231	Securities and Commodity Contracts Intermediation and Brokerage	100	116	76	155,317	117,803	-2.74%
5239	Other Financial Investment Activities	100	112	86	83,103	71,076	-0.88%
5241	Insurance Carriers	100	149	156	200,550	313,850	8.26%
5259	Other Investment Pools and Funds	100	219	297	5,669	16,844	0.82%
53223	Video Tape and Disc Rental	100	121	75	5,604	4,188	-0.10%
5411	Legal Services	100	112	104	160,354	166,320	0.44%
5413	Architectural, Engineering, and Related Services	100	152	149	102,709	152,922	3.66%
54143	Graphic Design Services	100	102	82	5,251	4,321	-0.07%
5417	Scientific Research and Development Services	100	96	114	60,368	68,712	0.61%
6111, 6112, 6113	Elementary and Secondary Schools, Junior Colleges, Colleges, Universities, and Professional Schools	100	112	114	90,705	103,099	0.90%
7111	Performing Arts Companies	100	110	91	8,017	7,272	-0.05%

2007 NAICS Codes	Description	Chain-type quantity index			Real value added ¹		Contribution to change in GDP 2006=100
		2002	2006	2009	2002	2009	
7115	Independent Artists, Writers, and Performers	100	113	97	6,891	6,719	-0.01%
811212	Computer and Office Machine Repair and Maintenance	100	106	98	4,095	4,014	-0.01%
	TOTAL CORE						19.68%

1. Represents the dollar-denominated level of output when the chain-type index ratios (2002 to 2006 and 2006 to 2009) are applied to estimated nominal industry output for 2006.

2. Includes ISP value added.

Sources APPENDIX 4; Bureau of Economic Analysis (http://www.bea.gov/industry/gdpbyind_data.htm); J. Steven Landefeld and Robert P. Parker, "BEA's Chain Indexes, Time Series, and Measures of Long-Term Economic Growth," Survey of Current Business (May 1997) at 63.

APPENDIX VI: EMPLOYMENT DATA FOR FAIR USE INDUSTRIES (THOUSANDS)

Core Industries

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
333315	Photographic and Photocopying Equipment Manufacturing	22	6	6	6	5
3341	Computer and Peripheral Equipment Manufacturing	250	196	186	183	166
3343	Audio and Video Equipment Manufacturing	42	31	30	27	23
334413	Semiconductor and Related Device Manufacturing	252	229	218	208	186
3346	Manufacturing and Reproducing Magnetic and Optical Media	55	42	38	34	28
454111	Electronic Shopping	54	74	83	93	95
454112	Electronic Auctions					
51111	Newspaper Publishers	389	360	347	324	277
51114, 51119	Directory, Mailing List, and Other Publishers	84	72	73	70	61
5112	Software Publishers	253	244	255	264	258
5121	Motion Picture and Video Industries	361	354	359	350	337
5122	Sound Recording Industries	27	21	22	21	20
5182	Data Processing, Hosting, and Related Services	304	263	268	260	249
519	Other Information Services (inc. Internet Publishing and Broadcasting and Web Search Portals)	218	121	126	134	135
5231	Securities and Commodity Contracts Intermediation and Brokerage	528	511	519	516	476
5239	Other Financial Investment Activities	261	308	330	348	336
5241	Insurance Carriers	1,413	1,413	1,397	1,397	1,377
5259	Other Investment Pools and Funds	38	40	40	41	39
53223	Video Tape and Disc Rental	157	131	118	104	85
5411	Legal Services	1,115	1,173	1,175	1,162	1,125
5413	Architectural, Engineering, and Related Services	1,246	1,386	1,432	1,439	1,325
54143	Graphic Design Services	71	70	74	72	64
5417	Scientific Research and Development Services	538	592	602	620	616
6111, 6112, 6113	Elementary and Secondary Schools, Junior Colleges, Colleges, Universities, and Professional Schools	2,213	2,369	2,386	2,457	2,499
7111	Performing Arts Companies	121	119	118	118	114
7115	Independent Artists, Writers, and Performers	40	48	49	49	45
811212	Computer and Office Machine Repair and Maintenance	48	44	42	43	40
Core Industries Subtotal		10,099	10,216	10,293	10,340	9,979

Sources See APPENDIX II.

Non-Core Industries

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
3231	Printing and Related Support Activities	707	634	622	594	522
3342	Communications Equipment Manufacturing	186	136	128	127	121
33592	Communication and Energy Wire and Cable Manufacturing	25	34	34	34	30
4234301	Computer and Peripheral Equip Merchant Wholesalers	268	247	248	244	222
4234302	Computer Software (Packaged) Merchant Wholesalers					
42362	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	218	198	199	195	180
4236901	Communications Equipment Merchant Wholesalers					
42511	Business to Business Electronic Markets	81	57	54	50	44
42512036	Electrical and Electronic Goods Agents and Brokers	26	23	24	24	24
443112	Radio, Television, and Other Electronics Stores	245	310	325	330	312
44312	Computer and Software Stores	155	136	134	131	119
4512	Book, Periodical, and Music Stores	227	187	181	174	154
5151	Radio and Television Broadcasting	130	238	237	233	215
5152	Cable and Other Subscription Programming	93	90	89	86	85
5171	Wired Telecommunications Carriers (inc. ISP)	651	669	665	666	635
5172	Wireless Telecommunications Carriers (except Satellite) (inc. ISP)	197	200	203	201	187
5175	Cable and Other Program Distribution	130	144			
5174 and 5179	Satellite and Other Communications	208	178	163	153	144
5232 1/	Securities and Commodity Exchanges					
5242	Agencies, Brokerages, and Other Insurance Related Activities	820	891	910	909	887
5251	Insurance and Employee Benefit Funds	47	48	49	49	49
5415	Computer Systems Design and Related Services	1,153	1,285	1,372	1,440	1,423
5416	Management, Scientific, and Technical Consulting Services	734	886	953	1,002	995
7113	Promoters of Performing Arts, Sports, and Similar Events	83	101	107	108	109
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures					
6114, 6115, 6116, 6117	Business Schools and Computer and Management Training, Technical and Trade Schools, Other Schools and Instruction, and Educational Support Services	430	532	555	583	591
Core Industries Subtotal		6,815	7,225	7,251	7,332	7,047

APPENDIX VII: ANNUAL PAYROLL DATA FOR FAIR USE INDUSTRIES

(MILLIONS OF DOLLARS)

Core Industries

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
333315	Photographic and Photocopying Equipment Manufacturing	401	1,229	277	241	235
3341	Computer and Peripheral Equipment Manufacturing	8,284	5,809	5,117	4,840	4,193
3343	Audio and Video Equipment Manufacturing	927	832	736	617	464
334413	Semiconductor and Related Device Manufacturing	9,808	9,281	11,100	10,451	9,385
3346	Manufacturing and Reproducing Magnetic and Optical Media	1,367	1,310	1,356	1,430	1,289
454111	Electronic Shopping	1,673	3,561	4,934	7,758	8,834
454112	Electronic Auctions	469		764	638	727
51111	Newspaper Publishers	13,752	14,401	13,976	13,576	11,093
51114, 51119	Directory, Mailing List, and Other Publishers	3,704	4,576	4,454	4,235	3,863
5112	Software Publishers	34,966	37,793	43,596	47,732	46,609
5121	Motion Picture and Video Industries	10,402	13,450	15,604	16,816	15,969
5122	Sound recording industries	2,251	1,813	2,203	2,437	2,414
5182	Data Processing, Hosting, and Related Services	21,398	24,116	27,017	29,741	27,944
519	Other Information Services (inc. Internet Publishing and Broadcasting and Web Search Portals)	8,759	13,247	10,455	55,123	53,221
5231	Securities and Commodity Contracts Intermediation and Brokerage	69,048	89,924	92,331	94,853	79,994
5239	Other Financial Investment Activities	30,047	57,777	69,804	79,473	67,023
5241	Insurance Carriers	83,555	97,137	103,765	112,082	109,952
5259	Other Investment Pools and Funds	1,283	1,737	1,847	754	725
53223	Video Tape and Disc Rental	1,666	1,713	1,743	1,593	1,447
5411	Legal Services	69,875	85,125	88,554	90,634	87,197
5413	Architectural, Engineering, and Related Services	66,709	91,335	99,845	104,403	100,444
54143	Graphic Design Services	2,769	3,065	2,813	2,539	2,442
5417	Scientific Research and Development Services	43,699	58,862	55,455	53,599	51,567
6111, 6112, 6113	Elementary and Secondary Schools, Junior Colleges, Colleges, Universities, and Professional Schools	61,678	73,557	78,876	85,086	87,128
7111	Performing Arts Companies	3,267	3,913	4,037	4,061	4,156
7115	Independent Artists, Writers, and Performers	4,324	5,846	5,021	5,355	5,480
811212	Computer and Office Machine Repair and Maintenance	2,252	2,548	2,412	1,823	1,643
	Core Industries Subtotal	558,333	703,957	748,092	831,890	785,438
	Estimated ISP Value Added ¹	0	0	2,747	2,560	2,615
	Core Industries Total	558,333	703,957	750,839	834,450	788,053

1. In the 2007 NAICS, the annual payroll data of Internet service providers are no longer included in NAICS 518, but are instead included in NAICS 5171 and 5179, which this report treats as non-core. Estimated ISP revenues have been subtracted from the non-core revenues of 2007 in order to maintain comparability with prior years' estimates.

Sources See APPENDIX II.

Non-Core Industries

2007 NAICS Codes	Description	2002	2006	2007	2008	2009
3231	Printing and Related Support Activities	25,626	25,110	25,682	25,437	21,502
3342	Communications Equipment Manufacturing	10,693	8,336	9,263	6,027	5,418
33592	Communication and Energy Wire and Cable Manufacturing	1,715	1,514	1,515	1,498	1,302
4234301	Computer and Peripheral Equip Merchant Wholesalers	19,649	23,088	25,904	29,283	28,053
4234302	Computer Software (Packaged) Merchant Wholesalers	2,528	2,970		3,767	3,609
42362	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	2,202	2,652	2,754	2,946	2,635
4236901	Communications Equipment Merchant Wholesalers	9,944	12,859	11,935	14,676	13,125
42511	Business to Business Electronic Markets	62	353	379	165	147
42512036	Electrical and Electronic Goods Agents and Brokers	1,464	2,187	2,386	2,186	1,940
443112	Radio, Television, and Other Electronics Stores	5,287	7,639	6,569	5,772	5,341
44312	Computer and Software Stores	1,832	2,791	2,182	1,894	1,464
4512	Book, Periodical, and Music Stores	2,617	2,727	2,384	2,360	2,120
5151	Radio and Television Broadcasting	11,655	14,516	14,165	14,205	12,789
5152	Cable and Other Subscription Programming	2,849	3,664	3,811	4,015	4,144
5171	Wired Telecommunications Carriers (inc. ISP)	47,805	41,102	54,143	73,884	70,911
5172	Wireless Telecommunications Carriers (except Satellite) (inc. ISP)	13,117	13,578	15,639	17,433	17,404
5175	Cable and Other Program Distribution	8,553	11,586			
5174 and 5179	Satellite and Other Communications	2,932	1,764	5,029	11,992	12,758
5232	Securities and Commodity Exchanges		1,020	1,384	1,147	968
5242	Agencies, Brokerages, and Other Insurance Related Activities	37,076	49,281	50,822	51,711	50,108
5251	Insurance and Employee Benefit Funds					
5415	Computer Systems Design and Related Services	72,399	90,808	102,255	108,333	104,225
5416	Management, Scientific, and Technical Consulting Services	43,089	67,861	52,311	45,745	44,011
6114, 6115, 6116, 6117	Business Schools and Computer and Management Training, Technical and Trade Schools, Other Schools and Instruction, and Educational Support Services	10,164	15,060	15,048	16,474	17,199
7113	Promoters of Performing Arts, Sports, and Similar Events	2,020	2,665	2,973	3,070	3,141
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures	1,415	1,579	1,743	1,982	2,028
	Non-Core Industries Subtotal	336,693	406,711	410,276	446,003	426,340
	Estimated ISP Value Added ¹	0	0	2,747	2,560	2,615
	Non-Core Industries Total	336,693	406,711	407,529	443,443	423,725

1. In the 2007 NAICS, the annual payroll data of Internet service providers are no longer included in NAICS 518, but are instead included in NAICS 5171 and 5179, which this report treats as non-core. Estimated ISP revenues have been subtracted from the non-core revenues of 2007 in order to maintain comparability with prior years' estimates.

Sources See APPENDIX II.

APPENDIX VIII: U.S. EXPORTS FOR FAIR USE INDUSTRIES, GOODS

(MILIONS OF DOLLARS)

Goods	2002	2006	2007	2008	2009
Printed Matter and Related Products, NESOI	4,509	5,798	6,278	6,473	5,735
Photographic and Photocopying Equipment	1,187	1,185	1,101	1,025	841
Computer Equipment	29,150	29,780	28,908	27,526	20,618
Communications Equipment	12,262	14,995	17,514	17,896	13,962
Audio and Video Equipment	3,986	4,232	4,320	4,163	3,741
Semiconductors and Related Devices	31,605	37,327	36,384	36,671	25,632
Magnetic and Optical Media	1,226	1,298	630	469	393
Communication and Energy Wires and Cables	2,320	3,710	4,095	4,258	3,434
Software, NESOI	312	1,007	901	799	765
Goods total	86,559	99,332	100,130	99,279	75,121

Source US Census Bureau, accessed through the dataweb maintained by the U.S. International Trade Commission.

APPENDIX VIII: U.S. EXPORTS FOR FAIR-USE INDUSTRIES, SERVICES

(MILIONS OF DOLLARS)

Sector	2002	2006	2007	2008	2009
Financial Services	24,496	47,882	61,393	60,798	55,446
Insurance Services	4,415	9,445	10,184	13,538	14,651
Telecommunications	3,890	7,105	8,043	9,425	9,284
Education Services	12,626	14,647	15,956	17,938	19,911
Computer and Information Services	7,079	10,079	11,638	13,354	13,378
Management and Consulting Services	14,339	21,421	25,331	29,091	28,191
Research, Development, and Testing	8,678	12,810	14,293	17,421	18,234
Tape Rentals	9,350	12,823	14,422	13,455	13,809
Architectural, Engineering, and Other Technical Services	1,679	4,702	5,338	5,914	5,687
Legal Services	3,099	5,256	6,409	7,327	7,256
Sports and Performing Arts	170	431	635	747	1,099
Trade-related Services ¹	578	3,611	5,216	6,129	4,234
Total	90,400	150,212	178,858	195,137	191,180

1. Includes Internet or online services.

Note: figures reflect data revisions as of May 2011

Source US Census Bureau, accessed through the dataweb maintained by the U.S. International Trade Commission

Glossary of Fair Use Provisions

17 U.S.C. § 102(a) (non-copyrightability of facts)

The fact/expression dichotomy is a limitation on the scope of copyright that renders facts non-copyrightable. This principle limits severely the scope of protection in fact-based works. The result of Section 102(a)'s requirement of originality is that raw facts may be copied at will. See *Feist Publ'ns, Inc. v Rural Tel. Serv. Co.*, 499 U.S. 340, 350 (1991).

17 U.S.C. § 102(b) (idea/expression dichotomy)

Articulated in *Baker v. Selden*, 101 U.S. 99, 102-04 (1879) the idea/expression dichotomy represents the principle that copyright may extend to the expression of an idea, but not the idea itself. Section 102(b) explicitly withholds protection from “any idea, procedure, process, system, method of operation, concept, principle, or discovery...” This principle is the source of the merger doctrine, which limits copyright when the number of possible variations for expressing an idea are externally limited. In such case, the limited possibilities of expression merge with the ‘idea’ and become non-copyrightable.

17 U.S.C. § 102(b) (non-protectability of interface specifications)

An application of the idea/expression dichotomy, the non-protectability of interface specifications has been established in a line of U.S. copyright cases, notably *Lotus Dev. v. Borland Int'l*, 49 F.3d 807 (1995) and *Computer Assocs. v. Altai, Inc.*, 982 F.2d 693 (2d Cir. 1992). These courts ruled that interface specifications are not copyrightable, either because they are unprotectable “methods of operation” or because elements dictated by efficiency or necessity lose protection under the merger doctrine.

17 U.S.C. § 105 (no copyright in U.S. government works)

The Copyright Act prohibits the Federal Government from taking copyright in the works that it authors. As a result, all works authored by the Federal Government employees immediately enter the public domain and become freely available for public use.

17 U.S.C. § 107 (fair use: criticism, comment, news reporting, teaching, scholarship, research, etc.)

Section 107 of the Copyright Act explicitly protects the fair use of a copyrighted work for purposes including but not limited to criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. Such use is not an infringement of copyright.

17 U.S.C. § 107 (fair use: reverse engineering)

Under the fair use doctrine, a person may disassemble a computer program in order to gain an understanding of the unprotected functional elements of the program, where there is a legitimate reason for doing so and no other means of access to the unprotected elements exists. *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510 (9th Cir. 1992); *Atari v. Nintendo*, 975 F.2d 832 (Fed. Cir. 1992).

17 U.S.C. § 107 (fair use: browser copies)

Under the fair use doctrine, local cache reproductions of copyrighted works by the web browsers of individual users are fair use, as they are noncommercial, transformative, necessary for essential Internet functions, and do not supersede copyright holders' exploitation of their works. *Perfect 10, Inc. v. Amazon.com, Inc.*, 487 F.3d 701 (9th Cir. 2007).

17 U.S.C. § 107 (fair use: search engine cache copies)

Under the fair use doctrine, search engines' reproduction in their search databases of images and text they crawled on the World Wide Web, and subsequent display of these materials in search results, are permitted because of their significant social utility. *Kelly v. Arriba Soft*, 336 F.3d 811 (9th Cir. 2003); *Field v. Google*, 412 F. Supp. 2d 1106 (D. Nev. 2006); *Perfect 10, Inc. v. Amazon.com, Inc.*, 487 F.3d 701 (9th Cir. 2007).

17 U.S.C. § 107 (fair use: time and space shifting)

Under the fair use doctrine, users may utilize technological devices to shift the context in which they view copyrighted works, i.e., to tape a program for later viewing on the same or different device. Such use has been held to be paradigmatic noncommercial personal use entirely consistent with the purposes of the Copyright Act. See *Sony Corp. of Am v. Universal City Studios*, 464 U.S. 417 (1984); *Recording Indus. Ass'n of Am. v. Diamond Multimedia Sys.*, 180 F.3d 1072, 1079 (9th Cir. 1999).

17 U.S.C. § 108 (library uses)

The Copyright Act permits libraries and archives to make reproductions for purposes of preservation, replacement of damaged copies, and inter-library loans.

17 U.S.C. § 109(a) (first sale doctrine)

The Copyright Act permits the owner of a lawfully made copy to sell or lend that copy to others.

17 U.S.C. §§ 110(1)–110(2) (displays and performances in educational contexts)

The Copyright Act permits the performance and display of copyrighted works in the course of face-to-face teaching activities as well as distance education.

17 U.S.C. § 112 (ephemeral recordings)

Under the Copyright Act, a radio station may make ephemeral copies of sound recordings for use in its own transmissions in its local service area.

17 U.S.C. § 114(a) (exception to sound recording performance right)

Under the Copyright Act, there is no performance right in sound recordings, except for performances by digital audio transmission, e.g., webcasting.

17 U.S.C. § 117(a) (backup, essential step copies)

The Copyright Act permits the owner of a copy of a computer program to make a copy of that program: as an essential step in the utilization of the program in conjunction with a computer; or for archival purposes.

17 U.S.C. § 117(c) (machine maintenance or repair)

The Copyright Act permits the owner or lessee of a computer, for purposes of maintaining or repairing that computer, to make or authorize the making of a copy of a computer program which is made solely by virtue of activating the computer.

17 U.S.C. §§ 302–304 (copyright term)

Consistent with the Constitution's mandate that Congress may provide authors with exclusive rights for "limited times," copyrights expire after a statutory period and enter the public domain. *Eldred v. Ashcroft*, 537 U.S. 186 (2003).

17 U.S.C. § 512 (service provider safe harbors)

Section 512 of Title 17, which originated in the Digital Millennium Copyright Act, limits the copyright remedies available against online service providers engaged in the following activities: transitory communications, system caching, storage of information on systems or networks at direction of users, and information location tools.

Sony principle

Under *Sony Corp. of Am v. Universal City Studios*, 464 U.S. 417 (1984), the sale of an article of commerce that may be used for both infringing and non-infringing uses will not lead to secondary infringement if the product is capable of substantial noninfringing use.