



Intelligence

[The Trademark Modernization Act: New Rules and New Tools for Brand Owners](#)

Tucked into last December's stimulus and relief package were critical reforms in intellectual property law, designed to empower trademark and copyright owners by providing stronger enforcement tools. The Trademark Modernization Act of 2020 (TMA), which was signed into law on December 27, 2020, effects a round of the most significant changes in our U.S. trademark statute in more than 20 years. The U.S. Patent and Trademark Office issued the implementing TMA rules on November 17, 2021, which will come into force on **December 18, 2021**.

The TMA rules provide a range of tools intended to restore pace and efficiency to the prosecution of applications, and to provide timely and cost-efficient methods for brand owners to clear away "deadwood" trademarks and challenge fraudulent applications/registrations lurking on the U.S. Trademark Register. Further, when the TMA was signed into law in 2020, it restored the irreparable harm presumption to brand owners seeking injunctive relief against infringement. A plaintiff's burden of proof no longer requires an evidentiary showing of irreparable harm in the first instance, resolving a split in the federal Courts of Appeals that existed for over 15 years.

The aim of the TMA rules is to improve the quality of the Trademark Register and Trademark Office efficiency, but the rules also have a defensive impact on brand owners. The TMA rules carry a potent reminder that the U.S. is a "use it or lose it" jurisdiction for trademark rights. A trademark owner is obligated to effect actual, continuous, and consistent use of its registered mark for all the goods and/or services claimed. It is strongly recommended that a trademark owner take stock of its registration early - to "true up" the registration to actual use - by filing timely amendment(s) to remove goods or services for which a mark is no longer used. Failure to do so invites third-party challenge, now made easier, with lasting consequences. [Read more](#)

[Transformation or Derivation: Modern Trends in the Fair Use Doctrine from Software to Photography](#)

"Fair Use" is a flexible defense to claims of copyright infringement. It is a doctrine that evolves as technology and the way in which people use copyrighted works advance. As an exception to the general law prohibiting copying others' works, [it permits copying](#) for a limited and "transformative" purpose, such as commentary, criticism, teaching, news reporting, scholarship, or research.

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Naturally, the way courts analyze the “fair use” defense must adapt as technology advances and the way in which creative content is developed evolves. Earlier this year, for example, the U.S. Supreme Court ruled on a landmark fair use case involving the “copying” of an Application Programming Interface (API). In [Google, LLC v. Oracle America, Inc.](#), the Court held that Google did not commit copyright infringement when it used key aspects of Oracle’s programming code in the Android operating system. Using Oracle’s programming language as a building block constituted a legitimate “fair use” because Google used “only what was needed to allow users to put their accrued talents to work in a new and transformative program.” While much has been written on *Google v. Oracle*, we believe that a deeper understanding of that case—and modern trends in fair use more broadly—can be found in precedents arising from the world of high art.

This article was published in IPWatchdog. [Read more](#)

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