Wall Data, Inc. v. L.A. Cnty. Sheriff's Dep't,
447 F.3d 769 (9th Cir. 2006)

Year	2006
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Defendant Los Angeles County Sheriff's Department purchased 3,663 licenses for plaintiff Wall Data, Inc.'s computer software. Defendant installed the software in 6,007 computers, but configured it so that only 3,663 computers could use it at the same time. Plaintiff alleged that its software was "over-installed" in violation of the licensing agreement that restricted use of each license to a "single designated computer" and prohibited use "in any other multiple computer or multiple user arrangement." Defendant appealed the district court's ruling that limiting the number of "useable" copies to the number of licenses was not fair use.
Issue	Whether it was fair use to install software on more computers than permitted under a license where the total number of computers that may access the software at the same time never exceeds the total number of licenses purchased.
Holding	The court held that defendant's over-installation of software was not fair use, finding all four fair use factors supported that conclusion. In determining that the use was not transformative, the court noted that defendant's argument was weakened by the fact that it made exact copies of the software and used it for the same purpose as the original. Moreover, although defendant did not commercially compete with plaintiff, the use was still commercial because the repeated and exploitative use saved defendant the expense of purchasing more authorized copies or more flexible licenses. The court also determined that the copying affected plaintiff's potential market because defendant only purchased a few licenses and found a way to install the program on all its computers without paying the fee required for each installation. Defendant could have bargained for such flexibility in its license agreements, but it did not, leading to a negative effect on the potential market. The nature of the work and amount and substantiality factors went against fair use because computer programs are protected works, and the entire program was copied verbatim.
Tags	Ninth Circuit; Computer program
Outcome	Fair use not found