



"Fair Use" Disclaimer



FAIR USE NOTICE

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Additionally, it is highly recommended that in some cases the purchase of an original copy of the material will . . .*provide you with unlimited access/use.*

Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. [Section 107 of the Copyright Act](#) provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use. Section 107 calls for consideration of the following four factors in evaluating a question of fair use:

FACTOR 1: THE PURPOSE AND CHARACTER OF THE USE

"This factor considers whether the use helps fulfil the intention of copyright law to stimulate creativity for the enrichment of the general public."

This and factor four are probably the most important parts of the fair use test. The key to this prong of the test is whether the use is **(1) commercial or non-commercial, and (2) transformative rather than merely derivative.** Non-commercial use of copyrighted material is much more likely to be considered fair use than commercial use, since particularly in video there is an established market for licensing material for commercial use. However, this does not necessarily mean that a commercial use *cannot* be fair use, but the burden of proof will be higher.

The most important part of this point is whether the new use is *transformative*, which means that it must somehow alter the original work either quantitatively or qualitatively. *"The more transformative the use, the more likely it is to be fair, whereas if defendant merely reproduces plaintiff's work without putting it to a transformative use, the less likely this use will be held to be fair."* Even if a use does not necessarily alter the original in substance, if it does something to add a new meaning or message to it, it is still likely to be considered transformative.

FACTOR 2: THE NATURE OF THE COPYRIGHTED WORK

"The more creative, and less purely factual, the copyrighted work, the stronger its protection. In order to prevent the private ownership of work that rightfully belongs in the public domain, facts and ideas are separate from copyright--only their particular expression or fixation merits such protection. Second, if a copyrighted work is unpublished, it will be harder to establish that defendant's use of it was fair."

This is probably the least important part of the fair use test, and rarely makes the difference between a use being considered fair or not. Basically if your use of copyrighted material involves facts rather than creative works like movies or music, and if it involves published material rather than unpublished material, it is slightly more likely to be considered fair use. Note: Since the original creation of the Fair Use Doctrine, Congress has amended it to explicitly say, "The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."

FACTOR 3: THE AMOUNT AND SUBSTANTIALITY OF THE PORTION DEFENDANT USED

"In general, the less of the copyrighted work that is used, the more likely the use will be considered fair. If, however, the defendant copied nearly all of, or the heart of, the copyrighted work, his or her use is less likely to be considered fair."

This point is closely related to whether your use is transformative or not, and is also very important. The key here is that in order to be fair use, you must use no more of the original copyrighted work than necessary for your purpose. Incorporating small amounts of copyrighted material into a larger presentation is much more likely to be considered fair use than something that makes use of the entire original. This point not only looks at how much of the original you used *quantitatively*, but also *qualitatively*, and a use is less likely to be fair use if you used "the heart" of the original work.

However, even if you do use the entire original work, this point can be outweighed by the first point if your use is sufficiently transformative. A good example of this would be anime music videos and film mashups, which in my opinion qualify as fair use for the video portion because *quantitatively* they only use brief clips of much larger works, and for the music portion because even though they use entire copyrighted songs, the addition of the

video footage *qualitatively* imparts a new message and is sufficiently transformative to outweigh the fact that the entire song is used.

FACTOR 4: THE EFFECT OF DEFENDANT'S USE ON THE POTENTIAL MARKET OF THE COPYRIGHTED WORK

"This factor is generally held to be the most important factor. This factor considers the effect that the defendant's use has on the copyright owner's ability to exploit his or her original work. The court will consider whether the use is a direct market substitute for the original work. The court may also consider whether harm to a potential market exists.

This factor is key to the whole analysis, and considers whether the new use of copyrighted content directly competes with the original work. To decide this, ask yourself if your use of copyright content would be likely to serve as a substitute for the original. In the context of online video, could someone watch your video *instead of* buying the original work and still obtain the same value as from the original? If the answer to that question is yes, your video is likely not fair use. If it is no, that weighs significantly in favour of your video being considered fair use.

In addition to the above, other factors may also be considered by a court in weighing a fair use question, depending upon the circumstances. Courts evaluate fair use claims on a case-by-case basis, and the outcome of any given case depends on a fact-specific inquiry. This means that there is no formula to ensure that a predetermined percentage or amount of a work—or specific number of words, lines, pages, copies—may be used without permission.

The burden of proof here rests on the defendant for commercial uses, but on the copyright owner for non-commercial uses. ... It is important to note that courts recognize that some market harm may come from fair uses such as parodies or negative reviews, but that such market harm does not militate against a finding of fair use." This means that in the context of a lawsuit, the copyright holder would have the burden to prove that your use *does* harm their market. This market harm must be shown to come from *direct competition* between your work and the original. It is not enough to say that your use criticizes the original and might make someone not want to buy it. That is still fair use.

Fair Use for Teaching and Research

The "fair use" doctrine allows limited reproduction of copyrighted works for educational and research purposes. The relevant portion of the copyright statute provides that the "fair use" of a copyrighted work, including reproduction "for purposes such as criticism, news reporting, teaching (including multiple copies for classroom use), scholarship, or research" is not an infringement of copyright. The law lists the following factors as the ones to be evaluated in determining whether a particular use of a copyrighted work is a permitted "fair use," rather than an infringement of the copyright:

the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

the nature of the copyrighted work;

the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and;

the effect of the use upon the potential market for or value of the copyrighted work.

For certain works, permission may also be sought from the Copyright Clearance Center (CCC) which will quote a charge for works for which they are able to give permission. The Copyright Clearance Center can be contacted at www.copyright.com or (978) 750-8400, but it may be easier to go through a copying service that deals regularly with the CCC.

The federal copyright statute governs the reproduction of works of authorship. In general, works governed by copyright law include such traditional works of authorship as books, printed material, photographs, music, drama, video and sculpture, and also software, multimedia, and databases. Copyrighted works are protected regardless of the medium in which they are created or reproduced; thus, copyright extends to digital works and works transformed into a digital format. Copyrighted works are not limited to those that bear a copyright notice. As a result of changes in copyright law, works published since March 1, 1989 need not bear a copyright notice to be protected under the statute.

This is a general description of the applicability of the copyright law and the so-called "fair use" exemptions to the copyright law's general prohibition on copying. It also describes "safe harbor" guidelines applicable to classroom copying.

Two provisions of the copyright statute are of particular importance to teachers and researchers:

provision that codifies the doctrine of "fair use," under which limited copying of copyrighted works without the permission of the owner is allowed for certain teaching and research purposes; and

A provision that establishes special limitations and exemptions for the reproduction of copyrighted works by libraries and archives.

The copyrighted material may only be reproduced in whole for personal or classroom use. It may not be edited, altered, or otherwise modified, except with the express permission of the copyright owner and to include extending credit to owner of the material

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http://www.educationworld.com/a_curr/curr280b.shtml#sthash.BJb1M67f.dpuf

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Most copyright owners don't want to take teachers or school systems to court. They just want to stop the copyright infringement. If you make a mistake in good faith and you're asked to stop using a particular work, do so immediately.

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Keep in mind that the author of the work is not always the copyright owner. The author of the work is the original owner of the copyright, but rights to copyrighted works can be (and often are) assigned or transferred to other individuals or to companies.

While the fair use doctrine isn't an excuse to get out of paying for copyrighted works, it is a useful concept that allows students and teachers to take advantage of the vast wealth of knowledge in the world without having to shell out for every minor use of a copyrighted work. Recruiting personnel and support personnel are still responsible for paying for works when their use exceeds the fair use threshold, however, and it is important for educational institutions to educate all levels of command.

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