

The Fair Use Doctrine

Fair Use Defined. The Fair Use Doctrine provides for limited use of copyrighted materials for educational and research purposes without permission from the owners. It is not a blanket exemption. Instead, each proposed use must be analyzed under a four-part test.

Fair Use Applied. Unfortunately, the four-part test to determine fair use is necessarily vague and fact-dependent. In some instances, two reasonable people could apply the four factors to the same facts and reach opposite conclusions. If the weighing and balancing analysis below does not provide an answer, please refer to the Copyright and Fair Use Resources section below.

Fair Use Four Factor Test.

1. **What is the character of the use?** Educational, nonprofit and personal use is favored for fair use, while commercial use is disfavored. However, the fact that a use is educational or nonprofit in nature does not in and of itself mean the use is necessarily fair. More important than the educational or nonprofit nature of the use is whether the use is "transformative" in nature. A use is transformative if it builds upon, criticizes, comments on, parodies or otherwise adds something new to the original work. Put another way, the question is whether the new use, in the words of the Supreme Court, merely "supercedes the objects of the original, or instead adds something new, with a further purpose or different character."
2. **What is the nature of the work to be used?** Use of a work that is factual in nature weighs toward a finding of fair use. Use of imaginative works is more likely to require permission.

What is the amount and substantiality of the portion to be used? Using only a small portion of a copyrighted material tips towards fair use, while using large portions indicates a need for permission. Be careful with this factor, however; a court recently held that copying only 5% of a book into a coursepack was not fair use.

3. **Will the use negatively affect the value of the copyrighted material?** Where a work is available for purchase or license from the copyright owner, copying all or a significant portion of the work (in lieu of purchasing or licensing a sufficient number of "authorized" copies) would likely be unfair. If only a small portion of a work is to be copied, and one would likely forego using the portion if permission were required, then the balance tips towards fair use.
4. **Good Faith Fair Use Defense.** Even if a copyright infringement occurs, a court may refuse to award damages if the infringer reasonably believed that the use was fair.

<http://fairuse.stanford.edu/etchemendy-2003-03-copyright-reminder.html>