

# FAIR USE IN EDUCATION

Fair use is a copyright exception. Put simply, “U.S. copyright law contains a provision that allows limited use of copyrighted works without the permission of the owner for certain teaching and research purposes” (The Copyright Site).

The dictionary definition below gives more information.

## FAIR USE DEFINED

a legal doctrine [which states] that portions of copyrighted materials may be used without permission of the copyright owner provided the use is fair and reasonable, does not substantially impair the value of the materials, and does not curtail the profits reasonably expected by the owner

Merriam-Webster

Not all educational use is fair use. As the definition points out, there are conditions or factors for determining if permission of the copyright owner must be obtained before using copyrighted materials. “[These factors are] technology neutral, so the analysis may be used for any medium” (Purdue).

## 4 DETERMINING FACTORS

1. The **purpose** and **character** of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
2. The **nature** of the copyrighted work
3. The **amount** and substantiality of the portion used in relation to the copyrighted work as a whole
4. The **effect** of the use upon the potential **market** for, or value of, the copyrighted work

U.S. Copyright Office

Purdue University Copyright Office explains how these four factors determine fair use:

There is a four-factor analysis which must be applied to each use to determine whether the use is fair. Each factor is given equal weight. The goal is to achieve a balance between the rights of the copyright holder with the rights of the public...

It's...	If...
Fair use	4 factors favor fair use
More than likely fair use	3 factors favor fair use
May be fair use	2-2 tie. You must assess the risk
Not fair use	1 factor favors fair use

It is important that the four factors be understood and applied diligently. Should someone claim that their copyright has been infringed, the court can reduce the amount of money damages if the alleged infringer can show that they understood the fair use analysis and made a good faith determination that their use was fair.

Evaluate the use for each factor and then make a good faith determination as to whether the use, in light of all four factors, can be considered fair use. If it is not fair use and none of the other exceptions apply, then permission must be obtained to use the material.

# THE FACTORS

## PURPOSE & CHARACTER

**1** The **purpose** and **character** of the use, including whether such use is of commercial nature or is for nonprofit educational purposes

Stanford introduces two questions that should be asked before using part of a copyrighted work:

1. Has the material you have taken from the original work been transformed by adding new expression or meaning?
2. Was value added to the original by creating new information, new aesthetics, new insights, and understandings?

Stanford adds, "Purposes such as scholarship, research, or education may also qualify as transformative uses because the work is the subject of review or commentary." Use of copyrighted material must be strictly educational - no profit can be made from use of the material.

# THE FACTORS CONT'D

## NATURE OF WORK

# 2

The **nature** of the copyrighted work

Is the copyrighted work creative or factual? According to Purdue, “Creative works have more protection than factual ones, so the more creative a work is the less likely the use will be considered fair under this factor.”

Is the work published or unpublished? Purdue states, “Fair use tends to favor published works more so than unpublished works. The rationale for this is that authors should be able to decide when to publish their work.”

## AMOUNT

# 3

The **amount** and substantiality of the portion used in relation to the copyrighted work as a whole

The portion of the work taken can determine if use is fair. This factor can be tricky because, as Purdue says, “There is no magic number or formula which determines an acceptable amount.” Generally, using a small amount of the work qualifies as fair use, but in some cases even a small amount of “copying will not be a fair use if the portion taken is the ‘heart’ of the work” (Stanford).

## MARKET EFFECT

# 4

The **effect** of the use upon the potential **market** for, or value of, the copyrighted work

The market effect refers to whether “use deprives the copyright owner of income or undermines a new or potential market for the copyrighted work” (Stanford). If the work to be used is widely available and licensing or permissions for the work can be obtained, the work probably will not fall under fair use. However, if licensing or permissions are unavailable, the work is not widely distributed, and the user (or the institution sponsoring the user) owns a legal copy, the work probably will fall under fair use.

The U.S. Copyright Office warns

The distinction between what is fair use and what is infringement in a particular case will not always be clear or easily defined... Copyright protects the particular way authors have expressed themselves. It does not extend to any ideas, systems, or factual information conveyed in a work...The safest course is to get permission from the copyright owner before using copyrighted material.

# WORKS CITED

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