

Note: The information provided in this document is for information and guidance purposes only and may not be construed as legal advice. If you have specific issues or areas that need clarification, you are encouraged to consult with a qualified attorney.

Educational Fair Use

Fair Use is a provision in the copyright law that permits educators, scholars and students to use portions of copyrighted works for non-profit educational purposes, without securing permission.

Title 17, Section 107 of the Copyright Acts outlines four factors that determine whether a use is a Fair Use. The factors are:

1. The purpose and character of the use.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion in relation to the whole.
4. The effect of the use on the potential market for or value of the work.

Each factor should be considered independently, but the interpretation and overall cumulative impact must be the basis for a decision. The process has been compared to a balance scale, with factors lending weight on the side 'for' or 'against' Fair Use.

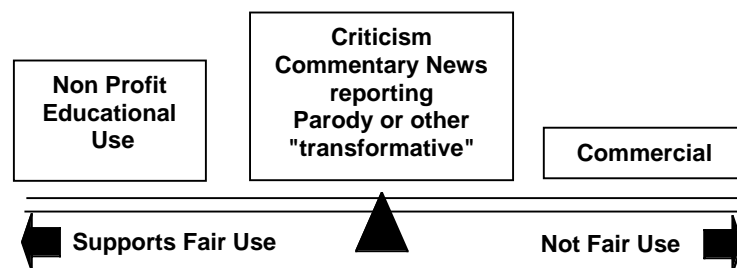
The 'Test' for Fair Use

Applying the Fair Use test to interpret the factors is subjective- there are no specific rules about how factors weigh against each other- or what values might sway the interpretation for or against fair use. A case by case analysis is the best approach.

The Test has 3 basic parts:

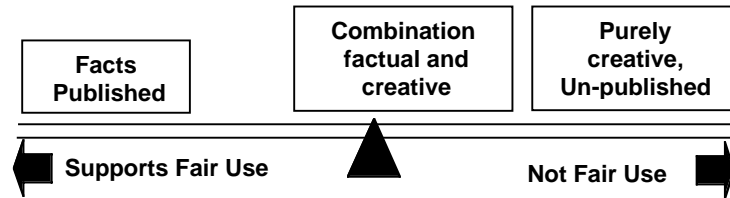
1. With a specific use in mind- think about each of the following questions.
2. Answer each question about your use and decide how much the balance would tip for or against Fair Use.
3. Make a judgment about the final balance: Overall does the balance tip in favor of fair use, or in favor of getting permission?

Factor 1 - What is the purpose and character of the use?



If the use is for non-profit, educational or personal purposes, the balance tips in favor of a claim of Fair Use. If the use is for the purposes of criticism, commentary, news reporting, parody and other interpretive use based upon the copyrighted work, the case for Fair Use remains fairly strong. If the use can be considered commercial, for the purpose of generating income Fair Use does not apply.

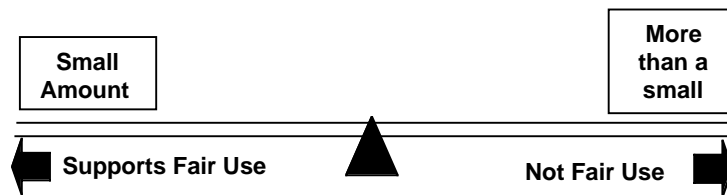
Factor 2 - What is the nature of the copyrighted work?



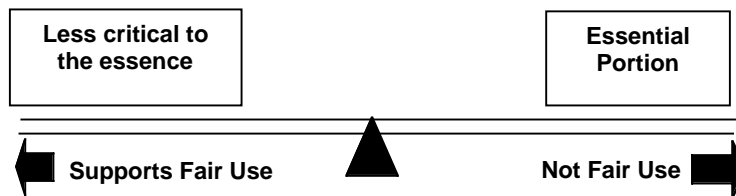
If the work in question presents factual material and has been widely published, the balance tips in favor of a claim of Fair Use. If the work is a combination of factual materials and creative work, the case for Fair Use is not as strong. If the work is purely creative or if it has never been published, the case for Fair Use is much more difficult to support.

Factor 3 - The amount and substantiality of the portion of the work in relation to the whole.

There are two factors to consider: the size of the portion you want to use and the relative importance of that portion.

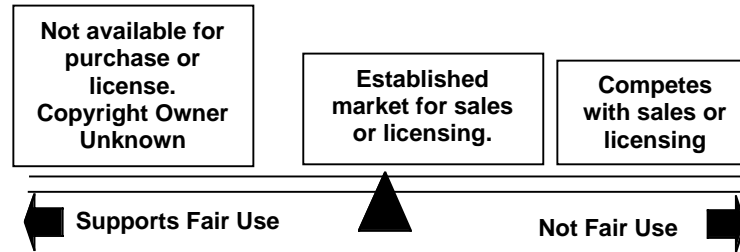


The size of the portion must be considered in relation to the entire work. Three minutes of Beethoven's Ninth Symphony might be a reasonable Fair Use. Three minutes of Martin Luther King's "I Have A Dream" speech might not be acceptable. In general: small portions are acceptable Fair Use. Using an entire work usually does not qualify as a Fair Use.



How critical is the portion to the essence of the work? If the portion presents the central message or relates the most important ideas of the work, it is considered more critical and valuable. Consider the Martin Luther King speech: the "I Have A Dream" sentences are more critical to conveying King's message than others, are more recognizable, and less likely to hold up as a Fair Use.

Factor 4 - The effect on the potential market for or value of the work.



The last factor weighs all the previous factors in relation to the access to and market value of the work. If the work is not available for purchase or license, and the holder of the copyright interests can't be identified, the previous decisions supporting Fair Use prevail. Access to the work in an established market for sales or licenses weighs heavily against Fair Use, and can outweigh the cumulative effect of all the other considerations. A use that competes with sales of the original or avoids licensing fees is not Fair Use- and could result in an infringement action.

Fair Use Guidelines for Educational Media 1996

Because the test is so open to interpretation a group of educators, copyright owners, and media producers devised guidelines for **fair use of copyrighted material in multimedia projects**. The Guidelines have been cited as 'justification' for almost any educational use of any material, in any situation. **It is important to understand:**

- The Guidelines represent this group's idea of how to extend the scope of Fair Use to allow the creation of educational multimedia projects. Many institutions and organizations did not endorse the guidelines, citing them as too restrictive.
- They do not carry the weight of law. They offer suggestions about how to interpret Fair Use within an 'acceptable' range.
- Uses that *exceed* the guidelines may or may not be fair use.
- The more you exceed the guidelines, the greater the risk that fair use does *not* apply.

When do the guidelines apply?

- When the use is intended without securing legal permission.
- When only portions of the work are used.
- When the material is copied from a lawfully acquired, copyrighted work.
- The work is being used in educational multimedia projects.
- Educators or students are creating the projects.
- The projects are part of a systematic learning activity.
- The activity is for use by a nonprofit educational institution.

The Guidelines recognize that students and educators have different needs for the fair use of copyrighted materials:

Student Uses:

- May incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a *specific course*.
- May perform and display their own projects in the course for which they were created.
- May retain them in their own portfolios as examples of their academic work for later personal uses such as job and school interviews.

Time Limitations:

Students may use their projects:

- During the course for which the project was created.
- Indefinitely for use in portfolios as examples of their academic work.

Portion Limits

Describe how much of a copyrighted work can reasonably be used in a project regardless of the original medium from which the copyrighted works are taken.

- The limits apply cumulatively to each project for the academic semester, cycle or term.
- It was recognized that students in K - 6 might not be able to adhere rigidly to the portion limitations in their independent development of projects.
- Are defined by media type

Motion Media: Film, video, animated sequences.

Up to 10% or 3 minutes, whichever is less, of a single copyrighted motion media work.

Text Material - Prose

Up to 10% or 1000 words, which ever is less, of a single copyrighted work of text.

Text Material - Poetry

An entire poem of less than 250 words, but

- no more than three poems by one poet, or
- five poems by different poets from any single anthology.

Text Material - Poetry

For poems of greater length, up to 250 words, but

- no more than three excerpts by a single poet, or
- five excerpts by different poets from a single anthology.

Music, Lyrics, and Music Video

- Up to 10% of the work but no more than 30 seconds of music and lyrics from a single musical work
- Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

Illustrations and Photographs

- A photograph or illustration may be used in its entirety.
- No more than 5 images by a single artist or photographer.
- Not more than 10% or 15 images, whichever is less, from a single published collected work.

Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less, from a database or data table.

- A field entry is a specific item in a record of a database file.
- A cell entry is the intersection where a row and a column meet on a spreadsheet.

Copying and Distribution Limitations

Including the original, only a limited number of copies may be made of a project.

- Two use copies.
- An additional copy archived, to be used or copied only to replace a use copy that has been lost, stolen, or damaged.
- For jointly created projects, each principal creator may retain one copy but only as permitted by use and time restraints previously outlined.

The Guidelines recommend caution on several points:

1. Downloading from the Internet

Caution is advised in using digital material downloaded from the Internet:

- Internet access does not automatically mean that works can be reproduced and reused without permission or license.
- Some copyrighted works may have been posted to the Internet without the authorization of the copyright holder.

2. Attribution & Acknowledgement

Credit the sources, display the copyright notice © and copyright ownership information for all incorporated works including those prepared under fair use.

Appropriate attribution and acknowledgement includes:

- Crediting copyright ownership
- Identifying the source
- Including the copyright notice
- Special provisions for remote use

Credit and copyright notice information may be combined and shown in a separate section of the project (e.g. credit section) except for images incorporated into the project for remote use.

3. Notice of Use Restrictions

The opening screen of a program and any accompanying print material must include a notice that:

- certain materials are included under the fair use exemption of U.S. Copyright Law

- materials are included in accordance with the multimedia fair use guidelines, and
- materials are restricted from further use.

4. Future Uses Beyond Fair Use

If there is a possibility that a project could result in broader dissemination, whether or not as a commercial product, individuals should take steps to obtain permissions during the development process rather than waiting until after completion of the project.

5. Alterations to Copyrighted Works

There is a general understanding that for uses other than parody, the Fair Use of the work should not alter *the fundamental nature and intent of the work*.

Full text of the *Fair Use Guidelines* is available on the Web at:

<http://www.libraries.psu.edu/avs/fairuse/default.html>