

COPYRIGHT 101: Fair Use

Fair use recognizes that certain types of use of other people's copyright-protected works do not require the copyright holder's authorization. In these instances it is presumed the use is minimal enough that it does not interfere with the copyright holder's exclusive rights to reproduce and otherwise re-use the work. Fair use is primarily designed to allow the use of the copyright-protected work for commentary, parody, news reporting, research and education. However, fair use is not an exception to copyright compliance so much as it is a "legal defense." That is, if you use a copyright-protected work and the copyright owner claims copyright infringement, you may be able to assert a defense of fair use, which you would then have to prove.

Section 107 of the U.S. Copyright Act lists four factors to help judges determine, and therefore to help you predict, when content usage may be considered fair use.

- 1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit, educational purposes.**
 - If a particular usage is intended to help you or your organization to derive financial or other business benefit from the copyright-protected material, then that is probably not fair use.
- 2. The nature of the copyrighted work.**
 - Use of a purely factual work is more likely to be considered fair use than use of someone's creative work.
- 3. The amount and substantiality of the portion used in relation to the copyright-protected work as a whole.**
 - There are no set page counts or percentages that define the boundaries of fair use. Courts exercise common-sense judgment about whether what is being used is too much of, or so important to, the original overall work as to be beyond the scope of fair use.
- 4. The effect of the use on the potential market for or value of the copyright-protected work.**
 - This factor looks at whether the nature of the use competes with or diminishes the potential market for the form of use that the copyright holder is already employing, or can reasonably be expected soon to employ, in order to make money for itself through licensing.
 - At one extreme, simple reproduction of a work (i.e., photocopying) is commonly licensed by copyright holders, and therefore routine photocopying is not likely to be considered fair use in a business environment.
 - At the other extreme, true parody is more likely to be considered fair use because it is unlikely that the original copyright holder would create a parody of his or her own work.

While the factors above are helpful guides, they do not clearly identify uses that are or are not fair use. Fair use is not a straightforward concept, therefore the fair use analysis must be conducted on a case-by-case basis.

Understanding the scope of fair use and becoming familiar with those situations where it applies and those where it does not can help guard you and your organization from unauthorized use of copyright-protected materials, but many individuals do not want this responsibility. Corporate copyright policies often provide employees with guidelines for determining whether a use may be considered fair use, although in some cases a complete risk analysis is required. In general, most organizations prefer to follow the motto "when in doubt, obtain permission."

Thousands of cases, and many, many books and articles have attempted to analyze fair use in order to define specific examples.

Examples of fair use:

- Quotation of excerpts in a review or criticism for purposes of illustration or comment.

- Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations.

- Reproduction of material for classroom use where the reproduction was unexpected and spontaneous—for example, where an article in the morning's paper is directly relevant to that day's class topic.

- Use in a parody of short portions of the work itself.

- A summary of an address or article, which may include quotations of short passages of the copyright-protected work.