

Fair use

[Section 107 of Title 17](#) states the factors that are weighed in determining fair use. All four factors apply each time that copyrighted material is used.

Each point is considered separately, along with the cumulative balance of all four. No single factor determines fair use -- that's why educational use alone is not enough.

The four factors must be applied to each copyrighted work. Keep in mind that a single piece of material, such as a book, may contain many independently copyrighted works, such as essays, poems, or photographs.

FACTOR 1: What is the purpose of the proposed use?

<ul style="list-style-type: none"> • Nonprofit • Educational • Personal study or research • Spontaneous, one-time use vs. planned, repetitive use 	<ul style="list-style-type: none"> • Criticism • Commentary • News reporting • Parody 	<ul style="list-style-type: none"> • Commercial use, for profit • Entertainment • Publishing • Failure to give credit to the author or copyright holder
Usually weighs in favor of fair use.	May weigh in favor of fair use, especially if coupled with factor(s) in the left column.	Usually weighs in favor of the copyright owner.

Related questions...

- How many times are you copying from the same source and what is the duration of each use?
- Is your use spontaneous and brief, or continuing and systematic?
- Are you doing the copying yourself, or using a commercial service?

FACTOR 2: What is the nature of the copyrighted work to be used?

<ul style="list-style-type: none"> • Factual work • Published work • Based on public documents 	<ul style="list-style-type: none"> • Mixture of fact and imagination 	<ul style="list-style-type: none"> • Creative work • Unpublished work • Audiovisual or digital media
May weigh in favor of fair use.	May not work in either favor.	Usually weighs in favor of the copyright owner.

Related question...

- What is the medium? The courts have had more experience with fair use of printed material than with audio, visual, or digital material. In addition, the nature of digital material gives it a broader distribution potential, a fact that could undermine the market of a work and weigh against a finding of fair use (see Factor 4 below).

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FACTOR 3: How much of the work would you use?

<ul style="list-style-type: none">• Small percentage of the whole	<ul style="list-style-type: none">• More than a small percentage• The essential "heart" of the work
Tends to weigh in favor of fair use.	Tends to weigh in favor of the copyright owner.

FACTOR 4: What effect would such use have on the market for the work?

<ul style="list-style-type: none">• Copyright owner is unidentifiable or cannot be located• Original is out of print or otherwise unavailable• No established market for permissions	<ul style="list-style-type: none">• Takes away from potential sales of the original.• Avoids payment for permission (royalties) in an established permissions market
May weigh in favor of fair use.	May weigh in favor of the copyright owner.

Related questions.

- If the proposed use became widespread could the copyright owner lose a potential market?
- Could the value of the original work be reduced through widespread copying?