

Fair Use in Academic Settings

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Copyright & Licensing Librarian

Copyright

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Copyright

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Fair Use

Four Factors:

1. Purpose and character of the use
2. Nature of the original copyrighted work
3. Amount and substantiality of the portion copied as a whole
4. Effect of the use upon the potential market for or value of the original copyrighted work



Factor One: Purpose and Character of the Use

- Educational and nonprofit uses such as teaching, research, scholarship, criticism, commentary, parody, and reporting are favored under the first factor.
- Transformative uses are also treated favorably -- new purpose, different character, altering the original with a new expression, meaning, or message.



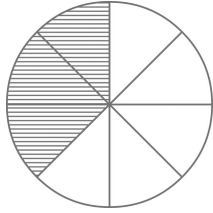
Factor Two: Nature of the Original Work

- Use of factual content such as nonfiction and news is more likely to be considered fair.
- Use of creative works and unpublished works is less likely to be considered fair.



Factor Three: Amount Being Used

- Use a small amount that is appropriate for a favored educational or nonprofit use.
- Both quantitative and qualitative.
- Possible to use the entire original and still be engaged in a fair use.
- This factor is rarely decisive.



Factor Four: Effect on the Market for the Original

- How significant is the effect of your use on the market for the original?
- Does the use simply replace a sale of the original copyrighted work?



Example 1: Bob Dylan Documentary



A group of students creates a documentary about Bob Dylan's anti-war activism, combining public domain government clips about the Vietnam War with clips from various Dylan songs that have anti-war themes. The students want to reveal how the lyrical content of the songs reflected Dylan's personal thoughts on the war and influenced the anti-establishment culture of the early 1960s. Is this a fair use of the songs?

Fair Use Factors:

1. Purpose and character of the use
 - Nonprofit, educational, transformative uses favored
2. Nature of the original work
 - Fiction/nonfiction, published/unpublished
3. Amount and substantiality of portion used in relation to whole
 - Use no more than needed; don't use the heart of the work
4. Effect on the market for the original
 - Replacing sale of the original?

Example 2: Survey Questions



A graduate student creating an online health survey copies a few questions from studies previously published by Publisher, and alters the wording to better fit her research. She requested permission to use the questions from Publisher, but got no response. Student is not directly reproducing figures from the previously published study, but adapting and implementing individual questions, and plans to cite Publisher's studies as the origin of the altered questions. Is this fair use?

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Example 3: Textbook Copying

A professor, wanting to save her students money, scans an in-copyright Sociology textbook and posts it on the course canvas site. Is this fair use?



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Example 4: Comedic Blogger

A blogger downloads photos of suburban mansions from a commercial real estate website. The photos were posted by real estate agents from across the country. The blogger uses the photos to offer comedy-oriented tear-downs of architectural styles that developed in the suburbs in the 20th century. Is this a fair use of the photos?

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Example 4: Comedic Blogger




Getting Permission



- Identify yourself and your institution (nonprofit, educational)
- Identify the portions of the work you want to use
- Describe your proposed use, including changes
- Describe any restrictions you'll place on the audience
- Request contact information for other rightsholders
- Offer to provide attribution, and ask for preferred format

Finding Openly Licensed Materials

- Creative Commons licenses:  <https://creativecommons.org/licenses/>
- Google advanced image search: https://www.google.com/advanced_image_search
- Google Scholar, institutional repositories

Questions?



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