

FAIR USE

Section 107 of the Copyright Act of 1976. Limitations on exclusive rights: Fair Use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified in that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use) , scholarship, or research, is not an infringement of copyright.

In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

1. the **purpose and character** of the use, including whether such use is of a 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; and
4. the **effect** of the use upon the potential market for or value of the copyrighted work.

Just because the copying is done for a non-profit institution does not give the right to copy freely. All four factors must be considered to determine fair use.

Let's take these fair use factors one by one:

Purpose and character – A better word would be “use.” Nonprofit institutions easily qualify for this as long as it is used for teaching, scholarship, research, or if the use is for purposes of criticism, commentary, parody, reporting, or some other transformative use are strengthened by limiting access to enrolled students.

Nature - Nature asks about the original work. Published work is favored over unpublished works. The reason is that the author of unpublished works should have the right to decide when to publish or if to publish at all.

Amount - Overall, less is best to avoid copyright issues. However, there may be times when using a greater amount of work is legitimate by combining purpose and amount factors together. The greater amount you use of a given amount the more you will need to argue how critical that amount is to serve your goal of teaching.

Effect – This is the hardest factor to justify. Is there a market? The best question to ask yourself is whether or not the use will interfere with a sale.

Checklist for Fair Use:

	<u>Fair Use</u>	<u>Opposing Fair Use</u>
Purpose	Teaching Research Scholarship Criticism Comment News Transformative or productive use Parody	commercial extract profit entertainment deny credit to author
Nature	published work Factual or nonfiction Important to education objectives	unpublished work highly creative work fiction
Amount	Small Quantity Portion is not “heart” or significant to entire work	Large portion or whole work Portion is “heart” or significant to entire work
Effect	User owns lawfully obtained copy One or few copies No effect on the market No similar item by the copyright holder	Could replace/avoid the sale of item Several copies made Impairs market potential Affordable permission available Repeated or long-term use