

A reasonable fair use analysis is based on four factors set forth in the fair use provision of copyright law, Section 107 of the Copyright Act of 1976. The application of those factors depends on the particular facts of your situation, and changing one or more facts may alter the outcome of the analysis. The checklist derives from those four factors and from the judicial decisions interpreting copyright law.

Understanding the Four Factors of Fair Use

The fair use provision may be applied to the use of all copyrighted works, even those in digital form. To determine whether any particular use is a fair use, you should conduct a case-by-case analysis based on the factors below.

First Factor: Purpose and Character of the Use

Nonprofit, educational, and personal uses are generally favored fair uses while commercial uses are less likely to be deemed fair use. Although educational use in and of itself will not assure that your use is a fair use, by the same token not every commercial use will fail as a fair use. Transformative uses, uses that result in the creation of a new work, with a new purpose and different character are favored as fair uses over uses that merely reproduce an original work. The more transformative a particular use is the less significant the other factors will be as they weigh against fair use.

Second Factor: The Nature of the Copyrighted Work

Factual works, published works and scientific articles that are factual in nature are more likely to be considered available for fair use than are creative, imaginative, artistic, or unpublished works. Additionally certain "consumable" works, e.g. workbooks and standardized tests are not likely to be considered available for fair use.

Third Factor: Amount and Substantiality of the Portion Used

The statute gives no bright line indication concerning how much of a work may be used under fair use but the implication is that use of the whole work is less likely to be considered a fair use. Thus, use of only a small portion of a work is favored. However in some circumstance e.g. uses like research, classroom use, personal use that already weigh in favor of fair use, you may use more of a work. In fact in such cases use of the entire work may be appropriate and allowable as a fair use if using that much is required to accomplish your purpose. A commercial use of the same material in the same amount could weigh heavily against fair use. Amount and substantiality is also a qualitative measure and at times use of even a small portion of a work may be considered too much to qualify as a fair use if that portion used is considered to be the "heart of the work."

Fourth Factor: Effect on the Potential Market for or Value of the Work

Generally, the consideration for this factor is whether or not there is some economic harm to the owner of the copyright as a result of your use. Courts have established the availability of permissions or licenses as one of the potential values for copyrighted works. This factor alone, however, cannot determine whether or not a use is fair. Positioned as the fourth factor it is a bit easier to consider market effects. If the first three factors

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