

Fair Use Analysis Checklist

Use this checklist to help analyze whether a use of a copyrighted work could be a fair use.

Remember: No single item or factor is determinative of fair use.

Learn about fair use and download this checklist: <http://copyright.psu.edu/fair-use>

Learn about attribution: <http://copyright.psu.edu/attribution>

Factor 1: Purpose and Character of the Use

The first factor is one of the most important of the four factors.

FAVORS FAIR USE

- Nonprofit Educational Institution
- Teaching/Educational Purpose
(including multiple copies for classroom use)
- Research or Scholarship
- Criticism, Comment, News Reporting,
or Parody
- Transformative (use is for purpose
different from purpose for which work
was created)
- Personal Study

OPPOSES FAIR USE

- Commercial/for-profit
 - Bad-faith behavior
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Factor 2: Nature of Copyrighted Work

The second factor typically is the least important of the four fair use factors.

FAVORS FAIR USE

- Factual or nonfiction work

OPPOSES FAIR USE

- Unpublished work
 - Highly creative work (art, music,
novels, films, plays, fiction, poetry)
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Factor 3: Amount and Substantiality of Portion Used

FAVORS FAIR USE

- Small portion of work used
- Portion used is not central or significant to entire work as a whole
- Amount is tailored to acceptable purpose

OPPOSES FAIR USE

- Large portion or entire work used
 - Portion used is central to work or “heart of the work”
 - Amount taken is more than is necessary
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Factor 4: Effect on Market for Original Work

The fourth factor is one of the most important of the four factors.

FAVORS FAIR USE

- No significant effect on actual or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism
- User owns lawfully acquired or purchased copy of original work
- Restricted Access

OPPOSES FAIR USE

- Significantly impairs market or potential market for copyrighted work or derivative
 - Reasonably available licensing mechanism for use of the copyrighted work
 - Numerous copies made
 - Repeated and/or long-term use that could diminish market for original work
 - Could replace sale of copyrighted work
 - Unrestricted access online or by other means
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My Fair Use Determination

- Based on the fair use analysis and weighing all the factors together, the use of the copyrighted material is fair use.
 - Based on the fair use analysis and weighing all the factors together, the use of the copyrighted material is not fair use. The material should not be used without permission.
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