



COPYRIGHT LAW IN THE UNITED STATES

(17 U.S.C. §§ 101-1511)

Federal copyright law can cover original material works of authorship such as paintings, photographs, illustrations, musical compositions, sculptures, literary works, architectural works, sound recordings, audiovisual creations, etc.

It grants a legal right of ownership to a copyright holder (often the creator or publisher) by which only the holder can make copies of the original work.

Materials protected by copyright law cannot be legally reproduced or replicated without the copyright holder's permission. However, there are some exceptions.



EFFECT

Under this factor, courts review whether, and to what extent, the use harms the existing or future market for the copyright holder's original work.

- More Likely Fair Use:
 - No similar work marketed by the copyright holder.
 - Lack of licensing mechanism for original work.
- Less Likely Fair Use:
 - Could potentially replace the sale of original work and/or be in direct commercial competition.
 - Affordable permission available for using original work.

AMOUNT

There is no exact formula for determining what percentage of a copyrighted work can be used under the fair use doctrine. Courts will look at both the quantity and quality of the copyrighted material used on a case-by-case basis.



- More Likely Fair Use:
 - Small amount of the original work used.
 - Copyrighted material is not necessary for the core of new work to exist.
 - Only the necessary amount of original work to support the intended purpose.
- Less Likely Fair Use:
 - Using the "heart" of the original work or large portions of original work.



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NATURE

Courts will examine the characteristics of the copyrighted work being used.



- More Likely Fair Use:
 - Primarily factual, technical and/or nonfiction based.
 - Published original work.
 - Use is transformative (adds new purpose, new meaning or new messaging that was not present in the original work).
- Less Likely Fair Use:
 - Using a highly creative or imaginative original work.
 - Unpublished original work.

BEING FAIR WHILE YOU CREATE:



AN INTRO TO FAIR USE

PURPOSE

Under this factor, courts consider *why* and *how* the copyrighted material is being used.



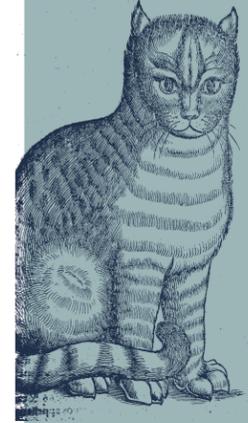
- More Likely Fair Use:
 - Noncommercial educational purposes.
 - Use is transformative (adds new purpose, new meaning or new messaging that was not present in the original work).
- Less Likely Fair Use:
 - Commercial use and/or entertainment.
 - Bad faith behavior such as denying credit to the original author.

FAIR USE (17 U.S.C. § 107)

Section 107 of the "United States Code" recognizes that some uses of copyrighted material do not require obtaining formal permission from the copyright holder.

This doctrine establishes the statutory framework for determining the fair unlicensed use of copyright-protected work and it identifies "criticism, comment, news reporting, teaching, scholarship, or research" as examples that may qualify as fair use.

Courts typically evaluate the practice of fair use based on **four key factors**:



1. The **Purpose** and character of the use.
2. The **Nature** of the copyrighted work.
3. The **Amount** of the portion used in relation to the copyrighted work as a whole.
4. The **Effect** upon the potential market value of the copyrighted work used.

THE FOUR FACTORS OF FAIR USE



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