

Understanding Fair Use

1. Fair Use

1.1 Start

Understanding Fair Use.

To begin, click the START button.

1.2 Introduction

Welcome to the Understanding Fair Use tutorial!

This tutorial is designed to help you understand Fair Use, and how to conduct a Fair Use evaluation.

You can listen to or view the contents of this tutorial on the left menu.

To navigate forward click the NEXT button located on the bottom right hand corner of this screen.

To utilize closed-captioning, click the caption icon to the left of the scrollbar, next to the volume icon.
Once enabled, captioning will continue until it is disabled.

1.3 Learning Outcomes

After completing this tutorial, you will be able to:
Recognize Fair Use in everyday situations
Understand the four factors of Fair Use
Conduct a Fair Use evaluation

1.4 Copyright law

In order to learn about Fair Use, you'll need to have some basic understanding of copyright law. The constitution of the United States establishes copyright as a power of Congress, in order "To promote the progress of Science and the Useful Arts, by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries."

The idea is that, by giving creators certain exclusive rights, at least for a while, it will provide an incentive for them to create.

1.5 Copyright law specifics

Copyright protects works of original authorship that are fixed in a tangible expression, and takes effect as soon as a work has been fixed - no registration is necessary. The term of copyright has increased through time, from 14 years when copyright was originally established, to 70 years after the death of the author now.

1.6 Exclusive rights of Copyright Holders

Copyright holders have these exclusive rights, which means they are the only ones allowed to:

Make copies of their work

Distribute, publish, and share their work

Make derivative works based on their original work, for example, write a playscript based on their novel

Publicly perform their work, such as a song, dance, or a film

Publicly display their work, such as an art exhibition

1.7 Why Fair Use?

However, if these exclusive rights were set in stone, so that any use of copyrighted material required permission or a license, our use of the works of others would be exceedingly restricted.

There are many situations where it is impossible, or impractical, to secure permission from a copyright holder.

1.8 Fair Use Brings Flexibility

Fair Use brings flexibility to copyright protections. It is vitally important to innovation, creativity, and scholarship. Fair use is a fundamental right, and has been recognized by the Supreme Court as a safeguard of the First Amendment. It permits the use of copyrighted material without permission from the rights holder under certain circumstances and has been called the “safety valve” of U.S. copyright law. Fair use is a broad and flexible doctrine that is responsive to change and can accommodate new technologies and developments.

1.9 Examples of Fair Use in Action

Fair use is relied upon by everyone, including both users of copyrighted content as well as creators. It’s almost impossible to create something entirely new, without drawing some inspiration from works that already exist.

We use Fair Use every day - every time you repost something on social media, or forward pictures taken by someone else. Each time you search the internet for images or look for a quote from a book, you’re benefiting from Fair Use.

1.10 Knowledge Check

Choose the best response. When finished click **SUBMIT**.

1.11 Fair Use

So what exactly is fair use?

As section 107 of the U.S. Copyright Act, Fair Use allows us to

discuss, quote, copy, annotate, parody, and build upon copyrighted works, for purposes “such as criticism, comment, news reporting, teaching, scholarship, or research.” Fair Use is purposely vague to allow for unanticipated uses.

1.12 4 Factors

Fair use is evaluated by these four factors:

- The purpose of the use
- The nature of the work
- The amount used

The effect of the use on the market

The Supreme Court has explicitly stated that the factors are not to “be treated in isolation from one another. All are to be explored and weighed together, in light of copyright’s purpose.” Let’s dig a little deeper into each factor:

1.13 Purpose and character of the Use

The purpose and character of the use is where you consider why you’re using the work: Are you creating something you’ll sell? Are you incorporating it into a course syllabus or assignment? Are you reporting on or reviewing it?

Because teaching and scholarship are specifically mentioned as reasons for fair use in copyright law, those are generally weighed in favor of fair use. However, just because it’s an educational use, that doesn’t mean it’s always fair - you still have to consider the other three factors.

Additionally, if a use is transformative, that is, it creates a new purpose or new understanding, it is a strong argument for fair use.

1.14 Nature of the work being used

The second factor is the nature of the work being used. Is it a creative work - such as poetry, music, art, dance, or is it more factual, such as a history book, or scientific article? Uses of factual works tend weigh more in favor of fair use than creative. Another element is whether the original work was ever published - that is, made public by the creator. For example, using someone's private diary is less likely to be fair than if they'd published their memoirs.

1.15 Amount and Substantiality

The third factor is the amount and substantiality of the use, which tends to be where much of the confusion about fair use lies. How much can you use?

There are no specific amounts that are considered safe in copyright law, despite the many guidelines you might see about using 2 minutes or 10% of a work. There are some Fair Use cases where using an entire work was considered fair (such as scanning an entire book to enable screen readers or Braille translators to make it accessible), and some cases where using only 30 seconds of a work was not considered fair.

The important concept to remember is that you've used only as much as is needed to meet your purpose.

1.16 Effect of the Use

Finally, the effect of the use on the market has a strong impact on whether a use is considered fair. Would your use have an impact on the potential market for the original work? Could it be used as a substitute for the original work?

You should consider your use honestly. For example, if you are uploading 3 chapters of a commercial textbook to your online course page to avoid making your students purchase the book, it's very unlikely this would be considered a Fair Use since it has a direct impact on the market for the textbook.

1.17 Summarizing Fair Use

After considering the four factors, a final test you can use are to ask these three questions, which help define whether your use is transformative.

Is this material needed to help me make my new point?

Will my use help my audience understand my new point?

Have I used no more than is needed for them to understand?

If you can honestly answer yes to these questions, you can feel fairly confident that your use is likely to be fair.

1.18 Identifying Fair Use Activity

1.20 Fair Use Evaluation

There are many tools that can help you walk through making your own Fair Use decisions - This Fair Use evaluation tool, or a Fair Use checklist are useful guides, asking questions about each one of the four factors to help you build confidence in your justification.

1.21 Codes of Best Practice

And the Center for Media Studies has gathered a number of Codes of Best Practice for specific uses and audiences. These codes are developed by professionals in consultation with copyright lawyers to provide fair use guidance for common uses and situations in a particular setting, such as creating online video, film and media educators, and Fair Use of images for teaching, research and study. These codes are great resources.

1.22 Practice practice practice

Understanding Fair Use helps you avoid the fear, uncertainty, and doubt surrounding your use of copyrighted works. As you consider your uses, whether as a student, instructor, or creator, you will build your confidence and comfort level in making fair use decisions.

ASU Library also has a copyright library guide with more resources about Fair Use.

1.23 Learning Outcomes

Now that you have completed this tutorial, you can:

- Recognize Fair Use in action in everyday situations**
- Understand the four factors of Fair Use**
- Conduct a Fair Use evaluation**

1.24 Congratulations!

Congratulations! You've completed the *Understanding Fair Use* tutorial!

Click on "Tutorials" to return to the tutorials page, or "Next" to complete a brief quiz.