

**Fair use is a legal doctrine in United States copyright law that permits limited use of copyrighted material without permission from the copyright holder, serving as a balance between protecting creators' rights and promoting the progress of science and useful arts.** It is codified under Section 107 of the Copyright Act of 1976, which states that the fair use of a copyrighted work—including reproduction in copies or phonorecords—for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright.

**To determine whether a particular use qualifies as fair use, four factors must be evaluated and weighed together, with no single factor being determinative.**

**These factors are:**

The purpose and character of the use, including whether it is of a commercial nature or is for **nonprofit educational purposes**. Uses that are transformative—adding new expression, meaning, or message—are more likely to be considered fair use. Nonprofit educational and noncommercial uses are generally favored, but not automatically fair, and commercial uses are not automatically unfair.

The nature of the copyrighted work, with greater protection afforded to creative works (such as art and music) compared to factual works. Published works are more likely to be subject to fair use than unpublished works.

The amount and substantiality of the portion used in relation to the copyrighted work as a whole. Fair use is stronger when only the amount necessary for the intended purpose is used. Using the most significant or central parts of a work, especially if it replaces the original, is less likely to be considered fair.

The effect of the use upon the potential market or value of the copyrighted work. Uses that harm the market for the original work or diminish its value are less likely to be considered fair. If the use substitutes for the original work in the marketplace, it is less likely to qualify as fair use.

Fair use is not limited to the listed purposes such as criticism or research, and uses outside these categories can still be fair if they meet the four-factor test. **The doctrine originated as a judicially created common law principle to prevent copyright law from stifling creativity and has since been enshrined in statutory law.** It is considered a flexible defense, and courts may consider additional factors beyond the four statutory ones.

The U.S. Supreme Court has reaffirmed the doctrine in key decisions, including *Campbell v. Acuff-Rose Music, Inc.* (1994), which emphasized the importance of transformative use, and *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith* (2023), which further clarified the application of fair use in contemporary contexts. The doctrine also supports First Amendment values by allowing for free expression, criticism, and innovation.

Fair use is not a right but an affirmative defense to copyright infringement, meaning the user must prove their use is fair if challenged. While express permission from the copyright owner eliminates the need for a fair use analysis, it is often the most advisable approach to avoid legal risk. The U.S. Copyright Office provides guidance and resources, including the Fair Use Index, to help users understand and apply the doctrine.