

The Fair Use Doctrine

Background

“Fair use” permits the limited use of portions of a copyrighted work without the copyright owner’s permission. It exempts limited uses of materials from copyright infringement liabilities. This is allowed when the material is used for criticism, comment, news reporting, teaching, scholarship, or research.

Four statutory factors found in Section 107 of the Copyright Act need to be collectively considered to determine if the material falls under the “Fair Use” doctrine.

1. The purpose and character of the use

Educational, personal or non-profit use would be more likely to be considered fair use. Commercial use would be less likely to be considered fair use.

2. The nature of the copyrighted work.

Use of non-fiction published works are more likely to fall under fair use than drama or fiction.

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

In other words, the more substantial the amount used (qualitative and quantitative) the weaker the case for “fair use”.

4. The effect of the use upon the potential market or value of the copyrighted work.

Does the use of this material deprive publishers and authors of royalty income?

All four factors must be considered collectively in making the determination that the use of the material falls under the “Fair Use” Doctrine.

How does the Fair-Use Doctrine Apply to Instructors?

While fair use is meant to apply to teaching situations, scholarship, and research plus the making of copies for classroom use, there is no blanket exemption from copyright liability for educational uses.

Since there is no specific number of words, lines or notes that may be safely taken to avoid a copyright infringement, the safest path for the instructor to take is to seek permission from the copyright owner.

Other options include:

- Use the library resources to find out if the work you are interested in is part of the library's collection. If it is, providing a link to the work in Blackboard may be allowable under our license agreements. <http://www.baker.edu/library/>
- Find another source in the public domain: <http://guides.baker.edu/publicdomain>
- Find another source that is available and licensed through the Library/Academic Resource Center. <http://www.baker.edu/library/>
- Get permission through the Copyright Clearance Center: <http://www.copyright.com/>

Fair Use in the Digital Environment

The same copyright protections apply when the material is in a digital format. The Internet is not public domain. It contains both copyrighted and un-copyrighted material.

References

U.S. Copyright Office: <http://www.copyright.gov/fls/fl102.html>

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