

Fair Use Guide

For making fair use determinations when using copyrighted works

Copyright Infringement

Using someone else's works without their permission.



Fair Use

A legal defense once a suit has been brought. Whether or something is deemed a "fair use" is performed on a case-by-case basis by the judge hearing the case.

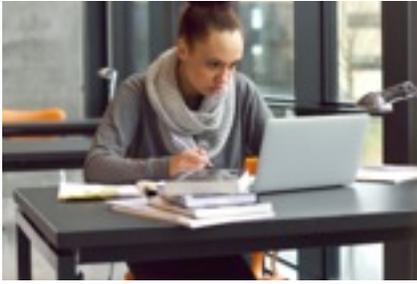


The Fair Use Analysis

Two words you never want to hear in your professional career- **copyright infringement**. Whether someone has infringed on your work or you are the infringer, the impact of a copyright infringement claim may be costly- financially and professionally (reputation).

What is copyright infringement? Using someone else's works without their permission.

One defense against copyright infringement is fair use. Fair use allows use without prior written permission, but it is never a straightforward matter. And you will only know if the defense works after a suit has been filed against you. All infringement determinations are done on a case-by-case basis by a judge; there are no clear black or white cases.



Scenario: Handouts

A teacher prints a classroom handout that includes a quotation from a book on the Grand Canyon, to show the class an example of "pithy writing,".. the "awful heat sucked out his thinking ability like a brain vampire..."

Analysis: Fair use or not fair use?

Result: This most likely will be deemed fair use. It prevails on all four factors and seems to be the type of usage that falls squarely under fair use.



Two-Pronged Test

"PURPOSE" CATEGORIES

There are two considerations to be done before using a copyright protected work to help guide your decision- **to use or not to use**. This fair use analysis consists of 2 prongs or steps. The first question you must ask your self is this: ***Is my use of this work for "purposes such as criticism, comment, news reporting, teaching, scholarship, or research."***

This is the first prong. If your use falls into one of these categories, you may move to the second prong of the fair use test.

THE FOUR FACTOR ANALYSIS

The second prong involves the courts consideration of four factors:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

If your use falls into one of the enumerated categories **AND** you are able to prevail factually on at least **two** of the **four** second-prong factors, you **might** succeed in proving that your use is fair and thus not copyright infringement.

ATTRIBUTION

Remember: TASL

T: Title: what is the name of the material? If a title is provided, include it. If it's not, don't worry about it.

A: Author: who owns the materials? Name all authors.

S: Source: where can it be found? Since you found the material, you know where/ how to find it. Provide the source of the material so others can find it, too. This is usually a URL.

L: License: how may I use the material? Most materials will state how it can be used. Abide by the terms and be certain to attribute as directed.



WHAT ABOUT...?

QUOTATIONS

A question like "is it OK" is hard to answer because in truth, the only way to know for sure if something is "OK" is by getting sued and then winning that lawsuit.

A better way to ask the question is: ***"If I get sued for quoting another book without seeking permission, what defenses may I posit in the lawsuit to increase the chances I will not lose?"***

Answering that question is possible, and the answer is that if you copy ten or fewer words from another book you may likely be able to defend yourself under the doctrine that titles and short phrases are not subject to copyright protection. If you use more than 10 or 15 words, then you should ask yourself if you might be able to invoke fair use as a defense if you get sued for copyright infringement. Number 1 rule to follow: when in doubt, seek permission. And, remember, attribution alone is not permission.

QUOTING OR REFERENCING FACTS

Facts are not copyrightable subject matter. For example, if Sam writes down a list of all the cities in PA and places that list in his book, I may copy that list exactly from his book and the defense, if sued, would be that such a list is a list of facts and are not subject to copyright protection. If, however, Cindy, made the list creative and made a photo collage out of it, copying the collage might be copyright infringement, but the underlying facts themselves are still not protected by copyright.

LINKING TO ONLINE WORKS

In most cases you may link to another's work, as long as you do not literally copy and reproduce all or most of the actual words at the linked story on your site.

QUOTING FROM TV, ADS, FILM

Television, film, and advertisements are all copyrightable subject matter, and copying from them without permission is subject to the same analysis.