

# Fair Use Quick Reference

Copyright law is written to balance the protection of owners, but also to empower creators. Section 107 of the US Copyright Act sets forth four factors to evaluate and balance in the analysis of fair use. In an effort to ensure that content created by the K20 Center uses copyrighted material legally and ethically, follow these guidelines when evaluating and selecting materials.

Fair use is flexible and highly dependent on the specific facts of each situation. When evaluating materials for possible fair use exemptions, consider the perspective of the K20 Center’s purpose and intent behind using the material. Each of the four factors should be given equal weight when making a judgment, and a final determination should be made based on a holistic view and a cumulative weight of the factors favoring or opposing fair use. Consider the relative persuasive strength of the circumstances and if the overall conditions lean most convincingly for or against fair use.

<b>Fair Use Factors</b> <i>These considerations justify usage</i>	<b>Considerations Explained</b>
The <b>purpose and character</b> of the use, including whether such use is of a commercial nature or is for nonprofit, educational purposes	Does the new work transform the original work or offer something beyond the original? A transformative use may occur when the work is altered into something new or when it is used in a new manner or context, distinct from the intended uses of the original (for example, a photo of street art used in a scholarly context). Copyrighted works that are altered significantly are more likely considered fair use. Copyrighted works used for nonprofit or educational purposes are more likely to be considered fair use.
The <b>nature</b> of the copyrighted work being used	Is the copyrighted work published or unpublished? Published works are more likely to be considered fair use. Out of print works are more likely to be considered fair use. Is the copyrighted work factual or creative? Fair use is typically applied more generously to works of nonfiction simply because a central purpose of copyright law/fair use is to protect and reward creativity, but also to allow for the growth of knowledge.
The <b>amount and substantiality</b> of the portion used in relation to the copyrighted work as a whole	The smaller the percentage of the work used, the more likely it is to qualify as fair use. The less significant the portion of the work used, the more likely it is to be considered fair use. No exact measure of allowable quantities exists in the law.
The <b>effect</b> of the use upon the potential market for or value of the copyrighted work	Does the new work appeal to the same audience as the original work? Copyrighted works that are used for another purpose or designed to appeal to a different audience are more likely to be considered fair use.

## Citations

All sources, including but not limited to outside links, graphics, and referenced works, should be cited in a Resources section (or similar) using APA formatting.

## Additional Tips

- The copyediting team is available to create professional readings that combine information from multiple sources.
- The graphic artists’ team is available to create images, icons, etc. to fit the needs of the content.
- Check for resources that are in the public domain or that have a Creative Commons license whenever possible. These items should still be cited, but allow for maximum flexibility in usage.

# Fair Use Checklist

## Purpose

### Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit educational institution
- Criticism
- Comment
- News reporting
- Transformative use (alters the original work in a creative manner)
- Transformative use (uses the work for a purpose other than the original purpose)
- Restricted access (for only students or other appropriate group)
- Parody

### Opposing Fair Use

- Commercial activity
- Profiting from the use
- Straight reproduction (copying without modification)
- Nontransformative use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

## Nature

### Favoring Fair Use

- Published work
- Factual or nonfiction-based
- Important to favored educational objectives

### Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction
- Consumable work (e.g., worksheets and standard exam forms)

## Amount

### Favoring Fair Use

- Small quantity
- Portion used is not central or significant to entire work
- Amount used is tailored to meet the educational or otherwise favored purpose

### Opposing Fair Use

- Large portion or whole work used beyond the favored purpose
- Portion used could interfere with a reasonable market for the use (e.g., multiple chapters from a single book)
- Portion used is central to work or "heart of the work"

## Effect

### Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work
- Few or modest number of copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of a reasonable licensing mechanism for the work and the intended use

### Opposing Fair Use

- Straight copying that is not transformative
- Portion used could interfere with a reasonable market for the use or derivatives (e.g., multiple chapters from a single book)
- Reasonably available licensing mechanism for the use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- Posted to the Internet or otherwise made widely accessible
- Repeated or long-term use