

The Four Factors of Fair Use

For fair use, there are four factors to assess your use. Each factor should be weighed evenly, though it should be noted that the fourth factor has been weighed more heavily in fair use lawsuits.

1. **Purpose of your use** – why are you using the material?
 - In favor of fair use:
 - Scholarly and/or educational purposes
 - Transformative use (meaning that your work uses the existing work in a new and creative way)
 - Use is socially beneficial (promotes learning, creation of new knowledge, etc)
 - Use is not-for-profit
 - Not in favor of fair use:
 - Original work is simply duplicated, reused to its original intention
 - Use is not for criticism, comment, news reporting, teaching, scholarship or research
 - Use is for-profit

2. **Nature of the copyrighted work** – What kind of work are you reusing?
 - In favor:
 - Original work has already been published
 - Original work contains little to no creative expression
 - Original work contains mostly factual information
 - Not in favor:
 - Original work has never been published
 - Original work contains a significant amount of new knowledge, information, or creative expression

3. **Amount used** – How much of the work are you using?
 - In favor:
 - Only limited portions used
 - Portion is not the “heart” of the work (central to the entire work)
 - Only the amount used achieves the stated purpose (from Factor 1)
 - If entire work used, it is needed to achieve the stated purpose
 - If using an image, a lower resolution or low DPI is used.
 - Not in favor:
 - Entire work or “heart” of work is used
 - Portion used is greater than what is needed to achieve purpose
 - High resolution of an image is used (higher than needed to complete objective).

4. **Market effect** – Does your use affect the market (i.e. economic value) of the copyrighted work, and if so, to what extent?
 - In favor:
 - A market for the original work is absent or negligible
 - Your specified use does not affect the current market (if any) of the original copyrighted work
 - Not in favor:
 - The original copyrighted work has a clearly established market or a clear potential for a future market
 - Your intended use harms the market or potential market of the copyrighted work