

The Four Factors of Fair Use

The fair use provision (Section 107 of the U.S. Copyright Act) has four factors for assessing 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. In addition, there are some key concepts about copyright and fair use that will help strengthen your understanding of the provision. Visit <http://www.k-state.edu/copyright/use/fairuse.html> for more information.

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:
 - Work has already been published
 - Work contains little to no creative expression
 - Work contains mostly factual information
 - Not in favor:
 - Work has never been published
 - 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 an image/graphic, reduced resolution/DPI used to achieve your objective.
 - Not in favor:
 - Entire work or “heart” of work is used
 - Portion used is greater than what is needed to achieve purpose
 - If an image/graphic, high resolution is used and is excessive for your purpose
4. **Market effect** – Does your use affect the market (i.e. economic value) of the copyrighted work, and if so, to what extent? (i.e. is your use act as an **effective substitute** for the original? If so, it likely affects the market value of the original)
 - In favor:
 - A market for the work is absent or negligible
 - Your specified use does not affect the current market (if any) of the copyrighted work
 - Not in favor:
 - The 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