

Fair Use Analysis: Fair Use is an exemption in copyright law that allows the public to use copyrighted material under certain circumstances without obtaining permission, or payment of royalties or fees. There are four factors of Fair Use: purpose, nature, amount, and market effect. Each of these factors is combined to determine the need for obtaining permission of a copy-righted item. Educational use is not automatically Fair Use.

Purpose: What is the purpose and character of the use? If the purpose of using the work is for education, then it is Fair Use. If the use is for a commercial purpose then it is less likely Fair Use. The character of the use ranges from good-faith behavior to bad-faith behavior. On the scale below, a not-for-profit educational course packet is always a 1, a book is a 4, a for-profit educational course packet is a 5, a movie is a 7, and an advertisement for a product is a 10. If the intention is to deny credit to the original author, the value is 10.

Educational Use			Informational Use			Entertainment Use			Commercial Use			Your Score:
1	2	3	4	5	6	7	8	9	10		_____	

Nature: Is the work factual or creative, and has it been published? If the work is completely factual, such as a phone book, then it is Fair Use. If it is entirely fictional and creative, then it is less likely Fair Use. On the scale below, a scholarly work is a 2, an educational play is a 4, a photograph is an 8 and a work of art is a 10.

Factual Work			Creative Factual			Fictional Work			Creative Artistic			Your Score:
1	2	3	4	5	6	7	8	9	10		_____	

Amount: How much of the work will be used or copied? If the amount used is small, such as less than 30 percent of the entire work, then it is Fair Use. If the entire work is used, then it is less likely Fair Use. For this analysis, consider a single article from a journal to be a portion of the whole journal. On the scale below, a few pages of a book is a 1, a single chapter of a book is a 2, part of an article is a 2, a whole journal article is a 4, 30 percent of a book is a 7, and an entire book or journal is a 10.

Small Portion			Journal Article			>30% of Work			Entire Work			Your Score:
1	2	3	4	5	6	7	8	9	10		_____	

Market Effect: How will copying this work effect its place in the marketplace? If there is no market effect, then it is more likely Fair Use. If there is a large market effect, then it is less likely Fair Use. On the scale below, if copying the item does not reduce the number of original copies that will be bought, then it is a 1. If the use might be in competition with the original, then it is a 6. If the item would be bought if it were not copied, then it is a 10.

No Market Effect			'Possible Market Effect				Large Market Effect			Your Score:
1	2	3	4	5	6	7	8	9	10	_____

Calculation of Average:

Purpose:	Nature:	Amount:	Market Effect:
Total:	Divide by 4-	Average:	
1	Fair Use	Questionable	Obtain Permission
2	3	4	5
6	7	8	9