

© Copyright Fair Use Analysis

Qualitative—not quantitative

Favors Fair Use ⦿⦿ ⦿⦿ ⦿⦿ ⦿⦿ ⦿⦿ ⦿⦿ ⦿⦿ ⦿⦿ ⦿⦿ **Disfavors Fair Use**

Purpose and Character of Use

- | | | |
|---|----------------------------------|----|
| ⦿⦿ Nonprofit | For profit | ⦿⦿ |
| ⦿⦿ Educational | <u>*Entertainment</u> | ⦿⦿ |
| ⦿⦿ Personal | <u>*Failure to credit author</u> | ⦿⦿ |
| ⦿⦿ Teaching
<i>(including multiple copies for classroom use)</i> | Commercial | ⦿⦿ |
| ⦿⦿ <u>*Transformative</u> | | |
| ⦿⦿ Restricted access | | |

Nature of Copyrighted Work

- | | | |
|--|---------------------|----|
| ⦿⦿ Fact | <u>*Creative</u> | ⦿⦿ |
| ⦿⦿ Published | Imaginative | ⦿⦿ |
| ⦿⦿ Out of print | Unpublished | ⦿⦿ |
| ⦿⦿ <u>*Important to educational objectives</u> | <u>*Consumables</u> | ⦿⦿ |

Amount & Substantiality

- | | | |
|--|-------------------|----|
| ⦿⦿ Small part | Large part | ⦿⦿ |
| ⦿⦿ <u>*Appropriate to educational objectives</u> | Heart of the work | ⦿⦿ |

Effect of Use on Market (Actual and Potential)

- | | | |
|--------------------------------------|--|----|
| ⦿⦿ No effect | Major effort | ⦿⦿ |
| ⦿⦿ Permission unavailable | <u>*Copy is widely distributed</u> | ⦿⦿ |
| ⦿⦿ Copyright owner is unidentifiable | <u>*Repeated use</u> | ⦿⦿ |
| ⦿⦿ Original is unavailable | <u>*Avoids payment for permission in an established permissions market</u> | ⦿⦿ |
| ⦿⦿ User owns lawfully acquired copy | | |
| ⦿⦿ Few copies made | | |

Please also see

<https://www.heartland.edu/library/services/copyright.html>

* Glossary of terms found on page 2 of this document.

 **Copyright** Fair Use Analysis*Glossary for Copyright Terms***•• Transformative**

The work is changed in such a way as to create new meaning or content. A parody is a good example.

⊗⊗ Entertainment

Showing a movie in class as a "reward" when it has no connection with the curriculum.

⊗⊗ Failure to credit author

It is always best to include a complete citation on copies.

⊗⊗ Creative (Imaginative)

Includes novels, plays, poems, etc. For example, an article about Moby Dick is fact; Moby Dick is creative.

⊗⊗ Consumables

Most material that is designed for educational use by individual students, such as workbooks, is going to tend to disfavor fair use in Factors 2, 3, and 4.

•• Appropriate for educational objectives

For example, a Japanese film class might need to watch *The Seven Samurai* in its entirety; a women's studies class might need to watch only parts of an episode of *Sex in the City* rather than a whole season.

⊗⊗ Copy is widely distributed

Posting an article on a web page would constitute wide distribution while posting it in WebCT or in Library reserves, both of which are password protected, would tend not to be considered widely distributed.

⊗⊗ Avoids payment

While the Copyright Clearance Center has made getting permission easier, it does not necessarily trump the other considerations in this factor or the other 3 main Factors.

⊗⊗ Repeated Use

How many times is too many? No one knows but the more often a use occurs, the more it moves toward "unfair use."

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Please also see

<https://www.heartland.edu/library/services/copyright.html>

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