



I. WHAT ARE THE FACTORS RELEVANT TO DETERMINING FAIR USE?

To prevail on a fair use defense, you must establish the following four factors:

1. The purpose and character of the use;
2. The nature of the copyrighted work;
3. The substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect on the potential market for or value of the copyrighted work.

II. A DEEPER DIVE INTO THE FACTORS

1. The purpose and character of the use.

- Favoring Fair Use. An educational or non-profit use. Teaching, research, criticism or comment. Transformation of the product to serve a new purpose. A parody.
- Opposing Fair Use. A commercial, profit generating activity. A non-transformative or exact copy. Used for entertainment.

2. The nature of the copyrighted work.

- Favoring Fair Use. A published work. Factual or non-fiction work such as news.
- Opposing Fair Use. An unpublished work. Creative work such as fiction, art or music. Consumable work, such as workbooks or tests.

3. The substantiality of the portion used in relation to the copyrighted work as a whole.

- Favoring Fair Use. Small quantity of the work used. Portion used was not significant to the work as a whole. Amount of the work used appropriate to a legitimate educational purpose.
- Opposing Fair Use. Large portion or entire work used. Portion used was central to the work.

4. The effect on the potential market for or value of the copyrighted work.

- Favoring Fair Use. No significant effect on the market or potential market for the work. User lawfully purchased or acquired a copy of the original work. Only a few copies were made and/or distributed. Work no longer in print.
- Opposing Fair Use. Could replace the sale of the copyrighted work or significantly impair the market for the work. Numerous copies were made. The work was used repeatedly over a long term.