

## A Simple Guide to Fair Use

### How To Apply Fair Use to Your Copyright Scenarios

Fair use requires an analysis and application of the fair use factors to each particular situation. Even then the application of fair use is not certain unless a judge in a court of law makes that fair use determination. You need to become comfortable with the basics of fair use, copyright risk management, and making judgment calls when applying fair use to your particular uses.

### Five Essential Facts About Fair Use

To effectively apply fair use to your situations, you need to understand as much as you can about this doctrine, read court decisions about fair use, and gain practice in applying fair use to different scenarios. The following five essential facts will help guide you through the fair use maze.

#### 1. Fair use is intentionally open and flexible

The U.S. Copyright Act addresses fair use in Section 107, “Limitations on exclusive rights: fair use.” The Act's language allows you to apply the doctrine to your own specific fact situations. Many who apply fair use complain that it's ambiguous and should be more specific to specific uses. It's intentionally open and flexible to apply to various situations. Every fair use determination must be carefully considered based on the particulars of the situation.

#### 2. Fair use may apply to a variety of purposes

Section 107 of the U.S. Copyright Act states that fair use may apply to the use of a copyrighted work “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research ....” These are illustrative and other purposes may also fall within fair use.

#### 3. There are four fair use factors to consider to determine if fair use applies

Fair use depends on the facts of your situation and how they fit within the four fair use factors set out in Section 107. The four fair use factors are the:

- Purpose and character of the use
- Nature of the copyrighted work
- Amount and substantiality of the portion used
- Effect of the use on the potential market for or value of the copyrighted work.

#### 4. The ultimate determinant of fair use is a judge in a court of law

Fair use is never a certain thing unless a judge in a court of law makes that determination. It's important to get comfortable with making fair use judgment calls, and to understand copyright risk management and your enterprise's position on fair use.

#### 5. Fair use applies to all users and both for- and nonprofit situations

Fair use applies to all users of content. It may apply in commercial or for-profit situations as well as nonprofit situations. It's less likely that you can claim fair use in for-profit situations, but it's still possible. And not all nonprofit uses of content are fair use.

Please do not rely on the information in this document as legal advice. Seek legal advice where necessary.

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