

"Fair use" is not a right. It is a limited exception found in the U.S. Copyright Act that allows the use of a copyrighted work in particular circumstances without the need to pay the copyright owner or obtaining the owner's permission. Examples of fair use might be use of a work in a limited classroom setting, in a parody, or as part of a news report or commentary. It is a fact-based concept and a court considering it will weigh various factors, including:

- The purpose and character of the use. Fair use is less likely to be found when the use is for commercial purposes and more likely where the use is for such purposes as scholarship or criticism. Also, fair use is less likely where the use is similar to that of the original work ( *e.g.*, when one newspaper reprints a story from another paper or magazine) and more likely to be found where the new work is highly "transformative," in the sense that a new and different work is created -for example, where a news photo is incorporated into an artistic collage.
- The nature of the copyrighted work. Fair use is less likely to be found when the work is highly creative, as opposed to factual, in nature.
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole. Copying all, or most of, a work is less likely to be a fair use than taking only a small part of it. Both the amount taken and its importance to the original ( *e.g.*, whether the portion taken represents the most valuable part of the work) are considered.
- The effect of the use upon the potential market for, or value of, the copyrighted work. If the use in question harms a market for the copyrighted work - whether it's an actual market or a potential one - fair use is unlikely. For example, if the copyright holder generally earns revenue by licensing the use of the work, fair use will probably not apply to someone who uses the work in the same way without paying for it. It is not unusual for this factor to be given more weight by a court than the other three factors.

While fair use is one of the most frequently-discussed and recognized phrases in copyright law, it is a narrow legal concept and is often misunderstood, particularly as it applies to business uses. Assuming that an unauthorized copy is "fair use" because it is "no big deal" or "only one copy" is usually a mistake. Employees using content from third parties should consult an attorney before engaging in any unauthorized copying or distribution of copies on the belief that the actions might be fair use.

While there is no "rule of thumb" for determining with 100% certainty whether a court will find any particular copying to be "fair use," often it will be obvious that a proposed use probably will

not qualify as fair use. Such cases would include where all, or substantially all, of a work is copied in a business setting, or where the copying potentially competes with the original work (by removing the need to buy a licensed or copy of the work).

Mistakenly assuming -- or hoping -- that copying is fair use can lead to an expensive lawsuit and significant penalties against you or your company.