

“FAIR USE”

Source: Jane E. Davis, Esq., CUNY Office of the General Counsel, 2004

Section 107 provides that the fair use of copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether a use is fair, four factors must be considered. A fair use analysis involves balancing the four factors. If the weight of the factors leans towards "favorable to fair use," then permission is not required. If the weight of the factors leans towards "unfavorable to fair use," then the use is not likely to be considered fair use and permission from the copyright owner must be obtained.

Conducting a fair use analysis can seem difficult. Reasonable people can come to different conclusions regarding the same use. At the end of this section are a series of links to web sites with some simple fair use guidelines for specific situations faced by educators.

FACTOR 1 - The purpose and character of the use.	
Favorable to fair use	teaching, scholarship, research, non-profit, personal use
Unfavorable to fair use	intent is to derive commercial benefit
NOTE: Parody, criticism, commentary, news reporting, and other transformative uses are core fair uses. If combined with other uses, they add weight to make them more fair.	
FACTOR 2 - The nature of the copyrighted work	
Favorable to fair use	factual, published
Unfavorable to fair use	imaginative, consumable materials (e.g., workbooks, answer sheets, surveys), unpublished
Little effect on balance	mixture of factual and imaginative

FACTOR 3 - Amount and Substantiality of portion used.	
Favorable to be fair use	small amount relative to the entire work
Unfavorable to fair use	an entire work, more than a small amount of the “heart” of the work
NOTE: The importance of this factor varies depending on whether the proposed use is educational or commercial.	
FACTOR 4 - Effect on the potential market for the work	
Favorable to fair use	Original is out of print or unavailable. No ready market for permissions. Reasonable attempts to obtain a copy or permission to copy have been documented.
Unfavorable to fair use	Use substitutes for purchase of the original work, or the work has been used in this course before. Avoids payment in an established permissions market.
NOTE: Courts have ruled that this factor cannot convert an otherwise fair use to an infringing use. If, after evaluation of the first 3 factors, the proposed use is favorable to fair use the analysis ends and the use is fair. On the other hand, if the proposed use is tipping toward infringement, this factor should be considered.	

Additional resources on fair use:

[University of Texas Rules of Thumb](#) – UT System’s fair use guidelines for using copyrighted works in coursepacks, distance learning, image archives, multimedia works, music, research copies and reserves

[Visual Resources Association Intellectual Property Rights Committee](#) – includes image collection guidelines and a “copy photography computer” to help determine the rights in a particular image

[Music Library Association Copyright for Music Librarians](#) – includes MLA’s guidelines on fair use, including reserve digital audio files

If my use isn’t “fair”, how do I get permission to use the work?

If your proposed use does not meet the fair use criteria, you must obtain permission to use copyrighted materials. Permission must be obtained from the copyright holder. In the case of textual materials, this is typically the author or publisher of the work.

Request permission as soon as you know you might need the material and decide if you can pay a licensing fee. In the event that your request cannot be granted or the license fee is too high, you will need time to substitute other materials or limit use so that it qualifies for fair use.

If you want permission to use a journal article or an excerpt from a book, a good place to begin is by contacting the [Copyright Clearance Center](#). CCC is the largest licensor of text reproduction rights in the world. It grants licenses for the reproduction and distribution of copyrighted materials in print and electronic formats throughout the world, including for classroom use, course packs (hard copy and electronic), reserves and distance learning.

If CCC doesn’t handle the material for which you seek permission, or if you think you may be able to negotiate a better deal through a direct contact, you should contact the copyright holder. The page containing the copyright notice typically shows who owns the copyright, the year of publication, and the publisher’s name. The acknowledgment page may also obtain information regarding copyright ownership. If the address of the publisher does not appear with the material, it may be obtained from sources such as Books in Print, Ulrich’s International Periodicals directory and the Literary Market Place directory. If publishers do not control the rights, they will tell you who to contact. The following resources should also help you in finding and contacting the correct copyright holder:

[The Association of American Publishers](#) (AAP) maintains a web site with much useful information regarding copyright and how to request copyright permission, including a [Standard Permission Request Form](#) and contact information for the permissions departments at member publishers.

[The WATCH File](#) (Writers, Artists, and Their Copyright Holders) is a database containing primarily the names and addresses of copyright holders or contact persons for authors and artists whose archives are housed, in whole or in part, in libraries and archives in North America and the United Kingdom. WATCH is a joint project of the Harry Ransom Humanities Research Center at The University of Texas at Austin and the University of Reading Library, Reading, England.

Some other resources for seeking permission to use copyrighted works are:

Freelance Writers: [Authors Registry](#)

Visual Artists: [Artists Rights Society](#)

Visual Artists and Galleries Association, Inc. (VAGA)
Robert Panzer
Executive Director
350 Fifth Avenue, Suite 6305
New York, NY 10118
Phone: (212) 736 6666
Fax: (212) 736 6767
E-mail: rpanzer@vagarights.com

Image Archives: [ARTstor](#)

[Art Museum Image Consortium](#)

[Art Resource Inc.](#)

Theatrical Rights: [Baker's Plays](#)

[Dramatists Play Services, Inc.](#)

[Samuel French, Inc.](#)

Music Publishers, Record Companies, Film and TV Clips:

The [Copyright Society of the USA](#) has information regarding obtaining permission from music publishers, records companies and for film and TV clips.