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# Copyright

A guide to copyright law as it relates to academic research, teaching, and publication.

## Copyright Basics

## Applying Fair Use

## Author Rights

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## Permission

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## NYU Permissions

## Copyright Small Claims

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## Fair Use in 2 Mins



- Transcript - Fair Use in 2 Mins

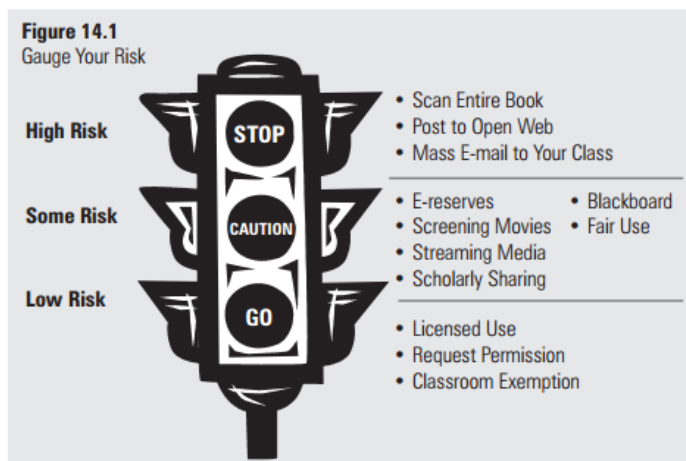
For additional questions, please email the Scholarly Communications and Information Policy department at [open.access@nyu.edu](mailto:open.access@nyu.edu), or contact your subject librarian.

## What is Fair Use?

In order to balance the interests of the creators of copyrighted works with the public's ability to benefit from those works, copyright law includes the exemption of **Fair Use**.

**Fair use allows limited use of copyrighted material without permission for purposes such as criticism, parody, news reporting, research and scholarship, and teaching.**

However, just because a use is educational does not mean that it automatically qualifies as fair use. Copyright law sets forth four factors, all of which must be considered when determining whether a use falls under fair use.



To gauge your risk, you may refer to the fair use stoplight infographic depicted above.

- Uses with High Risk (Stop): Scan entire book; post to open web; mass e-mail to your class.
- Uses with Some Risk (Caution): E-reserves; screening movies; streaming media; scholarly sharing; blackboard; fair use.
- Uses with Low Risk (Go): Licensed use; request permission; classroom exception.

Image credit: Figure 14.1. "Gauge Your Risk" stoplight model. Adapted from "Teaching Our Faculty: Developing Copyright and Scholarly Communication Outreach Programs," by J. Duncan, S. K. Clement, and B. Rozum, 2013, in S. Davis-Kahl and M. K. Hensley (Eds.), *Common ground at the nexus of information literacy and scholarly communication*, p. 280. Copyright 2013 by the Association of College and Research Libraries. Adapted with permission.

## Factor 1: Purpose & Character of Use

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**As a general matter, educational, nonprofit, and personal uses are favored as fair uses.** Making a commercial use of a work typically weighs against fair use, but a commercial use does not automatically defeat a fair use claim.

**"Transformative" uses are also favored as fair uses.** A use is considered to be transformative when it

- results in the creation of an entirely new work (as opposed to an adaptation of an existing work, which is merely *derivative* and not transformative); or
- uses the original work for a new and different purpose.

### ***Weighing in favor of fair use:***

1. Showing a film during class for the purpose of criticism and comment
2. Creating a parody of an existing work - transformative
3. Using a book as a prop in a stage performance - transformative

### ***Weighing against fair use:***

1. Showing a film on campus for a party or other social gathering
2. Adapting an existing work to a new medium, such from book to film or television to stage
3. Reading from a book during the course of a stage performance



## Factor 2: Nature of Copyrighted Work

**In general, published works and factual, non-fiction works are more likely to qualify for fair use.** Unpublished works tend to receive more copyright protection because the law values the creator's right to decide how and when to distribute a work. Likewise, "highly creative" works (e.g., poetry, art, entertainment film, fiction novels) tend to receive more protection than factual, non-fiction works (e.g., documentary films, informational displays, educational texts) because the law seeks to provide maximum protection to a creator's artistic effort.

This does not mean, however, that unpublished works or highly creative works can never be used without permission. A determination of fair use depends on the balance of all four factors.

### ***Weighing in favor of fair use:***

1. A documentary film on the migration of Canadian geese
2. A poster outlining the structure of amino acids
3. A book explaining the economic ramifications of the Civil War

### ***Weighing against fair use:***

1. A performance of Arthur Miller's *The Crucible*
2. A display of Ansel Adams's photographs
3. A showing of the latest Blockbuster film



Image Credit: Tibetan Musical Score 42, leaves from a musical score, Wellcome Library, London.



## Factor 3: Amount and Substantiality

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The law does not set bright lines or absolute limits on how much of a work may be used to be considered fair use. **Generally, the less of a work you use, the more likely it is to fall under fair use.**

However, it is important to be aware that this factor considers not just the quantity of what is used but also qualitatively assesses whether the use includes the so-called "heart of the work." **Even small portions may exceed fair use if the most notable or creative aspects of a work are used.**

While using an entire work is less favored under the amount factor, there are nevertheless many instances in which doing so will still qualify as fair use. If you have a legitimate need to use an entire work--e.g. an image that is being critiqued in a scholarly presentation--this may be appropriate and permissible as a fair use.

### ***Weighing in favor of fair use:***

1. Posting a 30-second clip of a film online for students to critique
2. Distributing a chapter of a text for class discussion
3. Displaying an entire painting for the purposes of commentary during a presentation



### ***Weighing against fair use:***

1. Posting an entire film online for students to view
2. Distributing copies (print or digital) of an entire text for class discussion
3. Playing audio of an entire symphony performance during a presentation on a subject completely unrelated to music

## Factor 4: Effect Upon the Potential Market

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**The final consideration is whether the use results in economic harm to the creator or copyright owner.** In evaluating this factor, it is important to consider not just whether your particular use has a negative impact, but also whether widespread use of the same type would have an effect on the work's potential market.

**Courts have established that licensing is part of the potential value of a copyrighted work;** evaluating this factor may require an investigation into whether there is a reasonably available licensing mechanism for the work. If so, this weighs against relying on fair use.

On the other hand, **use of works that are considered "out of commerce" (e.g., out-of-print books) is more likely to be considered fair use.**

### ***Weighing in favor of fair use:***

1. Distributing copies of significant portions of an out-of-print book for class discussion
2. Posting a journal article on a password-protected course website for supplemental reading
3. Showing a film that is no longer in distribution



### ***Weighing against fair use:***

1. Distributing copies of significant portions of a required textbook for class discussion
2. Posting a journal article on the open web for supplemental reading
3. Showing a film that is currently in distribution and available for licensing

## Fitting the Factors Together

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Image Credit: *Puzzle*, Olga Berrios on Flickr



As you go through the four factors for fair use, it is important to keep in mind that **all the factors work together in balance**. It is not all or nothing. Lack of one factor is not likely to disqualify a use for fair use. Likewise, a use may contain elements of all factors and still not qualify as fair use.

The purpose in using the four-factor analysis is to weigh those factors as a whole to determine if the balance is tipped in the direction of fair use. This can be difficult to determine, but it also allows for a lot of flexibility for users.



## Classroom Exception

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Copyright law provides a classroom exception in section 110(1) that allows instructors to display or show entire copyrighted works during the course of a face-to-face classroom session. This exception exists independently of fair use and may be a more applicable option for exposing students to copyrighted material.

Keep in mind that the exception only applies to **face-to-face instruction**. Separate rules apply for material posted online for courses. See the section on Online Course Sites for more information.

## Fair Use Evaluation Tools

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Fair Use Checklist - Columbia University Libraries Copyright Advisory Services

Fair Use Evaluator - Library Copyright

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