FAIR USE WEEK: FIGURING OUT FAIR USE

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SCHOLARLY COMMUNICATIONS LIBRARIAN

COPYRIGHT BASICS

- Any tangible form of expression
- Attaches automatically
- Regardless of publication or access → Material on the internet IS covered by copyright
- Fair use provides an exception to copyright exclusions

guides.nyu.edu/fairuse

N.B. We're discussing fair use of copyrighted material that is not subject to a license. Licenses always prevail over fair use.

SECTION 107

Notwithstanding the provisions of sections 106 and 106A, the **fair use of a copyrighted work**, including such use by reproduction in copies or phonorecords or by any other means specified by that section, **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 the use made of a work in any particular case is a **fair use the factors** to be considered shall include—

- (1) the **purpose and character of the use**, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the **nature of the copyrighted work**;
- (3) the **amount and substantiality** of the portion used in relation to the copyrighted work as a whole; and
- (4) the **effect of the use upon the potential market** for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Fair use...

is a
right, **is a**
defense, **is**
flexible,
and benefits
EVERYONE.

FAIR USE: FOUR FACTORS

What are you using it for?

- Commentary and criticism > Entertainment
- Transformative use > Original use

What are you using?

- Nonfictional, instructional > Fictional, highly creative

How much are you using? How far are you spreading it?

- Excerpts > Entire works
- Password-protected sites > Open web

How much would it cost?

- Not readily available for license > Available for educational license
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FAIR USE FOR IMAGES

Favors Fair Use

- Medium- to low-res
- Thumbnail, reduced size
- Accompanied by contextual text for criticism/commentary
- Pedagogical/scholarly purpose

Disfavors Fair Use

- High-res
- Original size
- No contextual text for criticism/commentary
- Entertainment/design purpose

Be sure to credit images properly.

Crediting images does not guarantee fair use but is still an important part of scholarly practice.

guides.nyu.edu/copyright/images

Crediting Images: Best Practices

It can be tricky to determine the creator of a web image. To make giving credit easy, look for images that give you enough information to attribute them.

At minimum, do your best to:

1. Link to back to the original work
2. Give credit to the image creator
3. Follow attribution instructions provided by the source

Generic Image Credit Format:

Title by **A. Creator**, via **source** (**CC License Type**).

Examples:

Image credit: Jack in Sink (again) by J. Smith, via [Flickr.com](#) (CC NC-BY 2.0).

Image credit: 13694 by A. Mills, via [CDC](#).

Image credit: Mrs. Claire... by D. DeMarisco, via Library of Congress, Prints & Photographs Division, [NYWT&S Collection](#).

FAIR USE FOR AUDIO/VIDEO

Favors Fair Use

- Clips and excerpts
- Accompanied by contextual text for criticism/commentary
- Pedagogical/scholarly purpose
- Made available via streaming
- Behind password protection
- Out of distribution, difficult to locate/purchase

Disfavors Fair Use

- Full content
- No contextual text for criticism/commentary
- Entertainment purpose
- Made available for download
- Posted on the open web
- Currently in distribution, readily available for licensing

N.B. Linking and embedding full A/V content from original source is generally okay and does not implicate copyright or fair use concerns on your part.

FAIR USE PRACTICE

- Posting the scans of 3 short chapters of a book into a password-protected course management system for students to access?
- Ripping a full-length blockbuster film into a password-protected streaming system so your friends and family can enjoy it?
- Ripping a full-length blockbuster film into a password-protected streaming system so your students can study it at home for scholarly critique?
- Making the full-text of a journal article, the rights to which you do not own, available for download on your public website?
- Posting clips of a sound recording on your scholarly website so you can discuss the nuances of musicology?
- Embedding a YouTube video of a dancing kitten with mittens onto your blog because . . . dancing kitten with mittens?

RESOURCES

NYU Policy on Educational and Research Uses of Copyrighted Materials

- <http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/educational-and-research-uses-of-copyrighted-materials-policy-st.html>

Copyright Basics Research Guide

- www.guides.nyu.edu/copyright

Copyright for Authors and Creators

- www.guides.nyu.edu/copyrightforauthors

Fair Use Listserv

- FairUse@nyu.edu

Scholarly Communications Librarian

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