



Fair Use FAQ for Students

What is copyright? How is it different from using proper attribution and avoiding plagiarism?

Copyright is actually a limited bundle of rights that the government grants to authors of original works such as novels, plays, essays, and movies. For a limited time (currently the life of the author plus 70 years, in most cases), copyright gives the author control over who can copy, distribute, publicly perform or display, or create derivative works (such as sequels or translations) based on their work. The purpose of copyright is to encourage the creation and dissemination of new works for the benefit of the public.

Copyright is therefore much broader than the norms against plagiarism. Plagiarism is the presentation of someone else's work as one's own; copyright infringement can take place even where the user is honest about the work's true author. As long as you use proper attribution, plagiarism should not be a worry for you. Copyright is somewhat more complex: unless your use satisfies one of the exceptions or limitations described in the Copyright Act, you cannot use copyright protected material without permission. Fair use is one of the most important limitations to copyright.

What is fair use?

Fair use is a part of copyright law that allows certain uses of copyrighted works, such as making and distributing copies of protected material, without permission. It evolved over time as judges made case-by-case exceptions to copyright to accommodate uses that seemed legitimate and justifiable regardless of the copyright holder's apparent rights. Typical early fair uses involved criticism, commentary, and uses in an educational or scholarly context. In

1978, fair use became part of the text of the Copyright Act - it's codified at [Section 107](#). In recent years, fair use has been a valuable way to accommodate innovative new uses that involve technology, such as the VCR, Internet search engines, reverse engineering of software, and the like.

As you can see from the text of Section 107, fair use is not a specific exception with clearly defined borders. It continues to evolve as judges consider and apply the four statutory factors to new cases. In every case, however, judges must consider the four factors - the purpose of the use, the nature of the work used, the amount and substantiality of the original work used, and the effect on the market for the original, as well as the overall purposes of copyright. In recent decades, however, fair use decisions have placed a strong emphasis on whether a use is "transformative," a concept first described by Judge Pierre N. Leval in a seminal [law review article](#) published in 1990. A [recent article](#) by UCLA scholar Neil Netanel concludes that transformativeness has come to dominate fair use decision making in the intervening decades. This form of analysis synthesizes the four statutory factors into two key questions:

- 1) Did you use the work in a different manner or for a different purpose than the original, in Leval's words: "as raw material, transformed in the creation of new information, new aesthetics, new insights and understandings"?
- 2) If so, did you use an amount of the original work that is appropriate to your new, transformative purpose?

Illustrative quotations, excerpts, images, and other material used in scholarly writing and teaching can present a very powerful case for transformative use. A [recent memo](#) from the US Patent and Trademark Office shows that even copying and distributing entire scholarly articles can be transformative in the right context.

What about creative commons materials? Licensed materials (as opposed to books the library owns)? Does fair use always apply the same way to everything?

As part of her copyrights, a copyright holder can license her work for whatever specific uses she likes. [Creative Commons](#) licensing provides a way for authors to announce publicly that their work is available for broad types of uses without specific permission, with certain conditions. Works under a CC license can be used in whatever ways and on whatever terms the license specifies, in addition to the uses available under fair use.

On the other end of the spectrum, a license can also limit a user's fair use rights. When a library licenses, rather than owning, collections materials, there may be clauses in the license that prevent users from sharing or re-using licensed works in ways that would be fair use in ordinary circumstances. Libraries need to be vigilant as they consider which materials to license and on what terms, and users need to be more careful in using materials governed by a license, such as electronic journal articles.

Why would a student need fair use? What kinds of things might I do that involve my fair use rights?

Do you ever [post videos online](#) that contain clips from existing media? Are you studying to be a [documentary filmmaker](#), a [poet](#), a [media educator](#), or an [open education innovator](#)? These are just a few of the groups who rely on fair use and have already come together to articulate their own codes of best practice in fair use. The [Code of Best Practices in Fair Use for Academic and Research Libraries](#) also gives hints as to how fair use might be relevant to students: accessing electronic materials posted on a course website or a library e-reserve platform, submitting theses, dissertations, and other student scholarship for inclusion in an institutional repository or similar place, browsing digitized versions of rare and unique materials held at remote institutions.

There are lots of guidelines on how much we can use under fair use. The 1976 Classroom Guidelines, for example, look very official. I can't exceed those rules, can I? How do I navigate the sea of guidelines and "rules of thumb" for fair use that I find online?

First, it's important to know that the only binding authority on the limits of fair use comes from the text of Section 107, where fair use is codified in the law (though the text was never really intended to do more than guide judges as they continued to evolve the doctrine, not bind them to a particular vision of it), and the court cases applying that text to particular facts. Guidelines like the ones created in 1976 do not have the force of law and were never intended to serve as outer boundaries that users would have to obey. Guidelines that give a numerical boundary, like "no more than 10% or 1000 words," are especially dubious, as courts have expressly abandoned such limits, looking instead to the interplay of the four statutory factors and the overarching purposes of copyright. Recent cases have found fair use where entire works were used in highly transformative contexts.

Second, it's important to look at the individuals and groups who sponsor the guidelines, FAQs, and websites about fair use as you try to determine how useful or trustworthy they are. Like its predecessors, the Code of Best Practices for Academic and Research Libraries is based on research into the challenges that libraries face and the fair use solutions that librarians themselves favor; it is grounded in two years of interviews and small group discussions with librarians, plus a round of review by a panel of copyright experts. As a statement of community practice, the Code adds a powerful new tool to the existing guidance available to librarians and library users with questions about fair use. Teachers can also look to codes developed by [media literacy educators](#), [open courseware designers](#), [poets](#), and [online video makers](#) for guidance.

How do I know whether my use of copyrighted material in my own scholarship and class projects is fair?

You will have to do your own fair use analysis, looking at the four factors and also the transformativeness questions described above. Are you using the copyrighted material for a new purpose or in a new way, to generate new insights and so on? Are you using an amount of the protected work that is appropriate to your transformative purpose? If you're working in one of the areas where a [code of best practices already exists](#), you may be able to find a good answer in the relevant code. You can also talk to people in the library, who often field these copyright questions and should be able to point you to useful resources and helpful experts on your campus.

How can I use material that I get from e-reserves or CMS (Blackboard, Moodle, etc.) sites? Is it free or “public domain” now that my professor has posted it for me there?

Absolutely not. Fair use makes it possible for your professor to share copyrighted materials relevant to their courses with you using these electronic platforms, but the material is still protected by copyright, and your own subsequent uses — if they involve copying, distributing, or other activities protected by copyright — have to be evaluated with a fresh fair use analysis, or else done with permission from the copyright holder. This is always the case: when you find material online, whether it's in an online exhibit, on a course website, or in some other context, you will always have to evaluate your own use on its own merits. Merely posting something online or on an educational site does not change its copyright status.