

Electronic Reserve Service - Fair Use Determinations

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.

The vast majority of materials submitted for inclusion in the electronic reserves service will be for teaching, scholarship, and/or research. Consequently, it will be the rare case in which this factor will cause fair use concerns.

PURPOSE

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- News reporting
- Transformative or Productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

Opposing Fair Use

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

2. The nature of the copyrighted work.

Is the request for a type of material such as: case studies, commercial tests, copied portions of required textbooks, sheet music, substantial selection of poetry?

NATURE

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

Amount is measured both quantitatively and qualitatively. No exact measures of allowable quantity exist in the law. Quantity must be evaluated relative to the length of the entire original and in light of the amount needed to serve a proper objective. Is the material a substantial portion (e.g. 1/3 to 1/2) of the work as a whole? Can the educational purpose be met with a smaller portion?

AMOUNT

Favoring Fair Use

- Small quantity
- Portion used is not central
- Amount is appropriate for favored educational purpose

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to work or significant to entire work or "heart of the work"

4. The effect of the use upon the potential market for or value of the copyrighted work.

Effect on the market is perhaps even more complicated than the other three factors. This factor means fundamentally that if you make a use for which a purchase of an original theoretically should have occurred, then this factor may weigh against fair use.

EFFECT

Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder

Opposing Fair Use

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- Lack of licensing mechanism
- You made it accessible on Web or in other public forum
- Repeated or long-term use

Some of the language used to discuss the four factors as well as the checklists provided for each factor are from the Copyright Management Center, IUPUI.
<http://www.copyright.iupui.edu/highered.htm>