Fair Use Guide

USING THE CREATIVE WORK OF OTHERS

If copyright creates a group of exclusive rights in the creator, that should mean permission is needed when you want to incorporate someone else’s creative work into your own. But permission is not always needed. Fair use is a concept that can protect you from a claim of infringement when using someone else’s work without permission. The question is, when is the use fair?

Use this guide to help you decide whether a use you plan to make of someone else’s work is fair or if someone has made fair use of your work.

The Four Factors of Fair Use

Four factors must be considered when thinking about fair use:

1. the purpose and character of the use including whether the 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 central purpose of the analysis is to see whether the new work merely supersedes the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message; it asks, in other words, whether and to what extent the new work is transformative.

United States Supreme Court, Campbell v. Acuff Rose Music (1994).

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