

## Copyright Fair Use Statute

17 U.S.C. § 107 =>

“Notwithstanding the provisions of sections 106 and 106A, the **fair use** of a copyrighted work, **including** such use by **reproductions** 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The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”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 Factor 1: Purpose and Character of Use**

<b>Favors Fair Use</b>	<b>Weighs Against Fair Use</b>
Educational	
Non-Profit	Commercial
Transformative (e.g., for comment, critique, or parody)	Simple Reproduction

- **Fair Use Factor 2: Nature of Copyrighted Work**

<b>Favors Fair Use</b>	<b>Weighs Against Fair Use</b>
Factual/Practical Works	Highly Creative Works
Published Work	Unpublished Work

- **Fair Use Factor 3: Amount and Substantiality Used**

	<b>Favors Fair Use</b>	<b>Weighs Against Fair Use</b>
Quantitative	Copy a small amount	Copy a large amount
Qualitative		Copy heart of work

- **Fair Use Factor 4: Effect upon Potential Market or Value**

<b>Favors Fair Use</b>	<b>Weighs Against Fair Use</b>
Little or no impact on current or potential market	Affects copyright owner's ability to sell product
	Affects copyright owner's ability to adapt work

## Special Teaching Exemption

17 U.S.C. § 110(1) =>

“Notwithstanding the provisions of section 106, the following are not infringement of copyright:

(1) performance or display of a work by instructors or pupils in the course of **face-to-face teaching activities** of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made[.]”

## TEACH Act

17 U.S.C. § 110(2) =>

“Notwithstanding the provisions of section 106, the following are not infringement of copyright:

\* \* \*

(2) ... the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

(i) students officially enrolled in the course for which the transmission is made; or

- (ii) officers or employees of governmental bodies as part of their official duties or employment; and
- (D) the transmitting body or institution—
  - (i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and
  - (ii) in the case of digital transmissions—
    - (I) applies technological measures that reasonably prevent—
      - (aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and
      - (bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and
    - (II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination

## **Remedy Protection**

17 U.S.C. § 504(c)(2) =>

“... The court shall remit the award of statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords ...”

This statute is intended to “provide innocent teachers ... with broad insulation against unwarranted liability for infringement.” H. Rep. No. 94-1476 at 67 (Sept. 3, 1976).