



O Arquivo Vivo
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Fair Use
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Fair Use

Fair use is a principle of copyright based on the belief that the public has the right to freely use parts of copyrighted materials for the purpose of **commentary** and **criticism** or **parody**. These uses may be made without permission of the copyright owner, provided they are for a limited and “**transformative**” purpose. If your use qualifies as fair, then, in general terms, it will not be considered an infringement.

Commentary and Criticism

If you are commenting on or criticizing a copyrighted work — for example, writing a book review — the principles of *fair use* allow you to copy some of the work to achieve your goals. Some examples of commentary and criticism include:

- quoting a few lines from a poem by Alexandre Dáskalos in a literary review;
- summarizing and quoting from a curatorial text in an essay about an artist;
- copying a few paragraphs from a news article for use by a lecturer, teacher or student in a class.

The rationale this is that the public benefits from your review, which is enhanced by including some of the copyrighted material.

Parody

A parody is a work that ridicules another, usually well-known work, by imitating it for comic or ironic purposes. By its nature, parody requires the use of elements from the original work to be parodied. Unlike other forms of *fair use*, a rather extensive use of the original work in a parody is permitted in order to “conjure” the original.

How do you know your use is fair?

Measuring *fair use*: The Four Factors

Unfortunately, the only way to get a definitive answer as to whether a particular use is a fair use is to have it resolved in court. If your use of copyrighted material is the subject of a legal dispute, any of the four factors listed below, as well as others not covered here, may be used to resolve the dispute.

It is important to understand that these factors are only guidelines that the courts are free to adapt to particular situations on a casuistic basis. In other words, a judge has a great deal of freedom when making a *fair use* determination, so the outcome of any case can be difficult to predict.



The four factors that may be considered are:

- the purpose and character of your use
- the nature of the copyrighted work
- the amount and substantiality of the portion taken, and
- the effect of the use on the potential market

The “transformative” factor: the purpose and character of your use

The question is whether the material was used to help create something new or merely copied literally into another work. When taking parts of a copyrighted work, ask yourself the following questions:

- Has the material taken from the original work been transformed by adding new expression or meaning?
- Was value added to the original by creating new information, new aesthetics, new insights and understandings?

In a parody, for example, the parodist transforms the original by holding it up to ridicule. At the same time, a work does not become a parody simply because the author models characters after those found in a famous work.

Purposes such as scholarship, research or education may also qualify as transformative uses, because the work is subject to review or commentary.

Example:

Yeze, a sociology student at Lusíada University, uses several citations from the book *Plantation Memories* by Grada Kilomba in her thesis on contemporary Afrodescendant identities. By juxtaposing the citations with her own opinions on the subject, Yeze enriches her thesis, basing it on other works addressing the same subject. This act would probably be permitted as a fair use.

The nature of the copyrighted work

Because the dissemination of facts or information benefits the public, you have more leeway to copy from factual works such as biographies than you do from fictional works such as plays or novels.

Furthermore, it is a fairer use to copy material from a published work than from an unpublished work. The scope of fair use is narrower for unpublished works because an author has the right to control the first public appearance of her, his or their work.

Example:

Paulo and André, both philosophy seniors at the Faculty of Letters, discuss similar aspects of their theses. Paulo notices that André’s research is more thoroughly done than his and decides to borrow portions of André’s research to fill gaps in his thesis. This would not qualify as fair use. It would be seen as plagiarism.

The amount and substantiality of the portion taken

The less you use, the fairer it will be. However, even if you take a small portion of a work, its use will not be fair if the portion taken is the “heart” of the work. I.e., you are more likely to encounter problems if you use the most memorable aspect of a work.



Example:

It will probably not be a fair use to copy the opening words of the poem “*Havemos de Voltar*” to write a poem entitled “*Havemos de Voltar*”.

This rule — ‘less is more’ — is not necessarily true in cases of parody. A parodist is allowed to use much of the original work, even the “heart” of the original work, so that its use is evident.

Example:

A humorist who proposes to make a parody of a prominent politician can imitate her, his or their dress, mannerisms, and speeches to clearly convey who is being parodied.

The effect of the use on the potential market

Another important factor of fair use is whether its use deprives the copyright owner of income or damages a new or potential market for the copyrighted work. Depriving the copyright owner of the income is very likely to trigger legal proceedings. This is true even if it is not in direct competition with the original work.

Example:

An art collector buys a copyrighted photograph from an artist. Without the artist’s permission, the collector makes hundreds of prints of the copyrighted photograph to be sold as home décor at furniture franchise stores. The artist accuses the art collector of copyright infringement. The collector claims that as the photograph is now hers, she has the right to do with it as she pleases. They go to court. Who do you think won this dispute?

What does the law say?

The Angolan Law 15/14 on Copyrights and Related Rights (see PDF), determines the various licit uses of works already lawfully disseminated, with or without the author’s permission, provided that the title of the work and name of the author are mentioned, and its originality and integrity is respected.

For more information, please refer to Section V, *Limits and Exceptions to Copyrights and Related Rights* — Articles 51 to 60 — of the aforesaid law.

The violation of these licit uses may make you liable for damages or criminally responsible before the law. For more information, see Chapter IV, *Violation, Protection and Defense of Copyrights and Related Rights* — Articles 80 to 88 — of the aforesaid law.

Support fair use. Know the law, register, protect your rights and respect the rights of others.

Note of thanks: this policy would not have been written without this invaluable source:

<https://fairuse.stanford.edu/overview/fair-use/>

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