Is it Fair Use?

The term "Fair Use" is frequently misused. Many people do not truly understand the term and apply it to general legal use of intellectual property by the public. The term instead defines the parameters of how certain people performing certain functions in society may use IP without permission.

Complicating this situation greatly is section 110 of the copyright law which appears to allow for much less restricted use of IP in classrooms. However, that section was changed by the TEACH Act which has to do with distance and online learning and does NOT apply to regular classrooms. Read ASU’s interpretation of the TEACH Act and copyright here.

Even if section 110 of the copyright law applied to regular classrooms, it is the position of the Education Technology faculty of the Mary Lou Fulton Teachers College that teaching respect for intellectual property is a higher ethical standard to uphold. It is the higher standard, based on the final report of the Conference on Fair Use (CONFU) that forms the basis of information in this graphic chart.

For further information go to: http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/index.html
Are you a student, teacher, librarian, journalist, or humorist/satirist wanting to use this IP in your capacity as a student, teacher, librarian, journalist or humorist/satirist?

No

STOP

Only certain people performing certain functions that benefit society as outlined in copyright law are permitted to use someone else's IP without permission under Fair Use guidelines.

No

STOP

Do not confuse Fair Use with legal use of IP that applies to the general public. For instance, when you record a TV program to watch it later that is general legal use and it applies to the general public. If you are a teacher and record the program to use in class, that's Fair Use.

Yes

Is the purpose of your use education, research, scholarship, journalism, or humor?

No

STOP

Give credit for the IP

Yes

What is the nature of the work?

Published, actual, widely available

Unpublished, creative, limited availability

STOP

Under most circumstances you may NOT alter the IP

More Likely Fair Use

Small amount, not the "heart" of the work

Substantial amount, the "heart" of the work

STOP

Include this statement somewhere in your work: "Portions of this presentation (or document, work, etc.) are used under Fair Use guidelines. Further duplication or distribution is prohibited."

More Likely Fair Use

Less Likely Fair Use

Less Likely Fair Use

More Likely Fair Use

Little to no effect

Substantial negative effect

STOP

Your use is allowed under Fair Use guidelines

*see portion limitation diagram

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Up to 10% or 30 seconds whichever is less

Due to the nature of photographs and illustrations, portion limitations on individual photographs and illustrations don't make sense therefore a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be used. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be used.

Up to 10% or 2500 fields or cell entries, whichever is less.

Up to 10% or 1000 words, whichever is less. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

Under most circumstances these limitations should be followed closely, however, if meeting an educational objective depends on using more IP than these guidelines allow, it might be considered Fair Use in some circumstances. For instance, if you are in a film class it doesn't make sense to be limited to 3 minutes of film when the instructional objective is to analyze a whole movie. However, if the objective was more narrow such as analyzing ways of setting a mood or tone, that could likely be illustrated within the normal 3 minute limitation.

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