

Fair Use for Media Makers

You can use copyrighted material in your own media project without permission or payment when your use is fair, and you are the one responsible for reasoning that out.

Start with two questions

Fair use has no checklist and no magic number. Judges weigh four factors, but their decisions keep coming back to two questions. Ask them about every clip, image, song or text you borrow.

1. **Did I transform it?** Am I using this material for a different purpose than the original, adding new meaning or value? Or am I just repeating it for the same reason it was made?
2. **Did I take the right amount?** Is the kind and amount I used appropriate to my new purpose, and no more than that purpose needs?

If you can answer yes to both and explain why, your use is likely fair. If you cannot, ask permission, pay for a license, or choose different material.

The four factors behind those questions

Section 107 of the Copyright Act tells courts to weigh these together. No single factor decides the outcome.

Factor	What the law weighs	Ask about your project
Purpose	Why and how you use the work, including commercial or nonprofit educational use	Am I commenting on, critiquing, illustrating or recontextualizing it, or just reusing it?
Nature	What kind of work you borrowed	Is it highly creative (film, song, art) or mostly factual? Creative works get more protection.
Amount	How much you took, and how important that part is	Did I take only what my point requires, and avoid the "heart" of the work unless I need it?
Market effect	Harm to the market for, or value of, the original	Could someone watch or hear my project instead of buying or streaming the original?

Make the call, step by step

1. **List what you borrowed.** Write down every piece of media in your project that you did not create.
2. **Check whether you need fair use at all.** Public domain works, Creative Commons material used under its license, and media your school has licensed need no fair use claim.
3. **Name both purposes.** State why the original was made and why you are using it. If the two match, your use is not transformative.
4. **Trim to fit.** Cut each excerpt to what your purpose needs. Sometimes that is a few seconds; sometimes it is a whole image.
5. **Test for substitution.** If your project could stand in for the original, change your approach.
6. **Credit your sources.** Attribution is good ethical practice, but credit alone does not make a use fair.
7. **Think about your audience.** Sharing within a class is a favorable position. Before posting publicly or adding work to a portfolio, make sure your transformation is strong, and consider licensing what is not.

Stronger and weaker fair use claims

Project	Stronger claim	Weaker claim
Video essay	Short film clips that you analyze in voice-over	Full scenes strung together with little commentary
Podcast	A passage of a song that you then critique or discuss	A hit song as intro or background music to set a mood
Remix	Ads juxtaposed to expose a stereotype they share	A "best moments" compilation of a favorite show
Image or poster	A news photo reframed to question how it told the story	A photo restyled but used for the same job as the original

Music deserves extra care. You cannot rely on fair use when a song is there only to create a mood or borrow its popularity.

Myths to drop

- **"Thirty seconds or 10 percent is always safe."** No rule of thumb exists. The right amount depends on your purpose.
- **"I gave credit, so it is fair."** Attribution does not turn an infringing use into a fair one.
- **"It is for school and I am not making money, so it is fair."** Noncommercial use helps, but some public uses are unfair even when no money changes hands.
- **"I changed how it looks, so it is transformative."** In *Warhol v. Goldsmith* (2023), the Supreme Court said new expression is not enough when the use serves substantially the same purpose as the original.
- **"Fair use is only for lawyers."** Fair use belongs to everyone. You claim it by reasoning carefully; there is no form to file.

Write your fair use reasoning

Complete one statement for each borrowed work and submit it with your project.

- I am using _____ (title, creator, source).
- The original was made to _____. I am using it to _____.
- I used _____ (portion) because my purpose requires _____.
- My project will not replace the original because _____.
- I will share my project with _____.
- My decision: claim fair use / ask permission / pay for a license / replace the material.

Sources

- Renee Hobbs, *Copyright Clarity: How Fair Use Supports Digital Learning* (Corwin, 2010).
- [Code of Best Practices in Fair Use for Media Literacy Education](#) (2008), Principles Four and Five and "Common Myths."
- [17 U.S.C. § 107](#), the fair use statute.
- U.S. Copyright Office, [More Information on Fair Use](#).
- [Andy Warhol Foundation v. Goldsmith](#) (2023), case summary by Davis Wright Tremaine.