



Publishing Nonfiction Books on Spirituality
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MODULE 2
COMPLETING YOUR MANUSCRIPT

THE BASICS OF FAIR USE

The fair use doctrine is a legal defense for using copyrighted materials. The premise is yes, you have infringed upon another's copyright, but that infringement is allowed by the law because of... and then you support that defense by arguing the five factors for consideration when determining the viability of a fair use defense.

We are not teaching you law here and certainly not giving a legal opinion on whether your specific use of copyrighted material will fall within the scope of fair use. However, the chart on the next few pages will help you understand what those five factors for fair use consideration are. You can use a bit of common sense to determine whether your use would fall within the scope of fair use and, if it gets serious, then you can talk to an attorney.



Supplemental Online Resources:

Copyright.gov, U.S. Copyright Fair Use Index, <http://copyright.gov/fair-use/>

Cornell University Law School, Legal Information Institute, 17 U.S. Code § 107 - Limitations on exclusive rights: Fair use, <https://www.law.cornell.edu/uscode/text/17/107>

Stanford University Libraries, Copyright & Fair Use, <http://fairuse.stanford.edu/>

BitLaw, Fair Use in Copyright Law, http://www.bitlaw.com/copyright/fair_use.html

Columbia University Library, Copyright Advisory Office, Fair Use Checklist, <https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html>

University of Texas Libraries, Fair Use of Copyrighted Materials, <https://copyright.lib.utexas.edu/copypol2.html>

Teaching Copyright, What is fair use, <https://www.teachingcopyright.org/handout/fair-use-faq>

<i>Factor for Consideration</i>	<i>Assessment and Analysis</i>	<i>For Authors</i>
<p>Purpose of Use</p>	<p>Educational</p> <ul style="list-style-type: none"> <input type="checkbox"/> Scholarship <input type="checkbox"/> Research <input type="checkbox"/> Commentary <input type="checkbox"/> Teaching <input type="checkbox"/> Non-Profit 	<ul style="list-style-type: none"> ▪ Not-for-profit uses of copyright material in educational workshops or in the classroom are granted stronger consideration for a fair use defense. ▪ A book for sale, even if it's educational in purpose, is still "Commercial," so would <u>not</u> be covered here. ▪ In establishing your author platform, the free educational workshops you provide would likely fall within the scope of this factor.
	<p>Commercial</p> <ul style="list-style-type: none"> <input type="checkbox"/> Social or political speech <input type="checkbox"/> News reporting <input type="checkbox"/> Satire, parody <input type="checkbox"/> Commentary 	<ul style="list-style-type: none"> ▪ In the United States, political speech is granted a wide breadth of protection. ▪ If you use copyrighted material to comment directly <i>about</i> that copyrighted work, it is generally within the scope of fair use as Commentary, even if your work is commercial in nature. For example, quoting a few lines from an author to comment about the substance of the quote would likely fall within the scope of this factor. ▪ For best practices, any time you are using copyrighted material, even if it falls within the scope of fair use, cite your sources and credit the original author of the copyrighted work
	<p>Transformative Value</p> <ul style="list-style-type: none"> ▪ New expression or meaning added ▪ New value or insights ▪ Significant or notable creative modification 	<ul style="list-style-type: none"> ▪ The most important point about fair use is your work must be transformative if you are to cite the fair use defense. ▪ If your use of the copyrighted work is transformative in value, such as a parody or is commentary, then you do not need to get the permission of the author to use that copyrighted work, assuming all other factors of consideration for fair use are also met.
<p>Nature of Copyright</p>	<ul style="list-style-type: none"> ▪ Published vs. Unpublished ▪ Fiction vs. Nonfiction ▪ Art vs. Nonfiction <p><input type="checkbox"/> Favors educational objectives</p>	<ul style="list-style-type: none"> ▪ Unpublished works can still be copyrighted, and are granted the strongest protection. Therefore, copying unpublished works and making it public before the author of that copyrighted work has made it public is almost always a no-no. ▪ Fair use as a defense is stronger in cases involving nonfiction than in cases involving

	<ul style="list-style-type: none"> ❑ Factual or nonfiction 	<p>fiction. Fiction, since it is art, is granted a great deal of copyright protection. Likewise artistic works are granted more protection than nonfiction.</p> <ul style="list-style-type: none"> ▪ Your chance of a successful fair use defense when the copyrighted work is nonfiction will be higher than when the copyrighted work is fiction, though of course, all factors must be considered in totality.
<p>Substantiality</p>	<ul style="list-style-type: none"> ▪ Amount of work copied ▪ Percentage of original work used 	<ul style="list-style-type: none"> ▪ A common rule cites 10% of the work <u>if the purpose is educational</u> will be considered fair use, but that’s not codified as law at this point. ▪ There are no bright line rules for “safe” percentages. ▪ Generally, if your use of the copyrighted material is not central to your work and is not significant to the main premise of your work, then you have a strong argument favoring fair use.
	<p>De Minimis</p>	<ul style="list-style-type: none"> ▪ The de minimis doctrine holds that a trifling amount of copyrighted work being used isn’t “worth” the court’s attention to litigate. Thus, if the use of copyrighted work is considered “de minimis,” minimal or a trifling amount, then it falls within the scope of fair use. ▪ There are no bright line rules for what constitutes “de minimis” and is often more of an intuitive plus common sense exercise.
<p>Effect on Market Value</p>	<p>Measurable, substantial adverse impact on the profitability of the copyrighted work.</p> <p><i>Sub-factors to consider:</i></p> <ul style="list-style-type: none"> ▪ Number of copies produced ▪ Does your work replace sales of the copyrighted work ▪ Practicability of obtaining a license to use that work 	<ul style="list-style-type: none"> ▪ Does your copying of the copyrighted work hurt the sales of that copyrighted work? If yes, then that’s problematic when trying to cite a fair use defense. ▪ If your use of the copyrighted work arguably increases that copyrighted work’s profitability or repute, then you have a good chance at successfully arguing the fair use defense. ▪ How practicable was it for you to obtain permission to use that copyrighted work? If a license would have been easily affordable or there was arguable accessibility to obtaining permission, then these points weaken any claims of fair use. ▪ What is the print run of copies made of your work? Widespread distribution can hurt

		<p>your argument here for “effect on market value.” On the other hand, if minimal copies were made, then such a claim is favorable for a fair use defense.</p>
<p>Standards of Use</p>	<p>Industry customs Standard practices of the profession</p>	<ul style="list-style-type: none"> ▪ Courts will consider as a factor for a fair use defense what the “commonly accepted” industry customs are for similar uses. ▪ An example of this might be commonly accepted standards of use of copyrighted material in adult entertainment, where it may not otherwise be clear whether it is “parody” or “commentary.” Nonetheless, given the established industry customs, certain uses of copyrighted material in that industry could be considered fair use by an argument of standard industry practices.
	<p>Unambiguous disassociation</p>	<ul style="list-style-type: none"> ▪ You often see work titles such as “The Unauthorized _____” when a new work takes substantial amounts of copyrighted material, such as for use in a parody or social commentary. That is called unambiguous disassociation. ▪ Although not a guaranteed protection, doing so can support an argument for fair use, especially if it is a parody or political/social commentary.