**What is the “Fair Use” Doctrine for Copyrighted Material?**

The “fair use” doctrine allows for promoting freedom of expressing by enabling others to use portions of copyrighted material without having to get permission from its owner. The statutory framework for this rule is found in [Section 107 of the Copyright Act](http://www.copyright.gov/title17/92chap1.html#107). The Fair Use Doctrine provides thorough guidelines for determining whether using a copyrighted material in a certain way falls under the doctrine of “fair use.” It also identifies certain types of uses, such as:

* Comment
* News reporting
* Parody
* Criticism
* Teaching, allowing teachers to make copies of copyrighted works for educational purposes in the classroom
* Scholarship and research

However, often times, it is unclear whether a particular way of using copyrighted content is right or considered as infringement. To ensure you are not overstepping the legal boundaries, you should consider four factors of “fair use” to evaluate your intended use of the copyrighted material.

**The Four Factors for Determining Fair Use**

Under the Copyright Act, the following four factors can be used as guidelines for determining “fair use” of any copyrighted content:

1. *The Purpose and Character of Use*

It is important to take into account whether the use is for nonprofit, education purposes or of a commercial nature. It generally depends on the degree of transformation – meaning the use should be transformative, leading to changes to the original work, like creating new ideas or information while treating it as the source of those changes.

1. *The Nature of the Copyrighted Material*

The nature of the work, i.e. whether it is factual or creative, or unpublished or published, influences the “fair use” doctrine. Factual works, such as scientific studies and history accounts, are given lower protection than creative works because the exchange of ideas will be beneficial to society. On the other hand, creative works, such as pictures, creative nonfiction, fiction, and graphic works, are given more protection. Writers and authors have the discretion of when they want to publish their work. This means using the unpublished work without asking permission of the owner will be less acceptable as compared to published works.

1. *The Amount and Substantiality of the Copyrighted Work Used*

Another important factor is how the material was used or copied or whether the copied material was the core part of the entire original work. If you are using a central part or large portion of the work, it is less likely to be considered as “fair use” of the copyrighted material.

1. *The Effect of the Copyrighted Material’s Use Upon the Potential Market*

The last critical factor for “fair use” is whether the copied work has affected the value of the original work, reducing its worth on a potential or existing market. In other words, if your use of the copyrighted work deprives the owner of the income generated from its launch in a potential market, this factor can be weighed against you .

The copyright law is complex due to its many facets leading to confusion whether a particular use of such material is considered ”fair.” It is best you consult with an [experienced intellectual property attorney](http://mlgiplaw.com/services/) to ensure you bring an appropriate action against parties that use your work in violation of the “fair use” doctrine. [Contact](http://mlgiplaw.com/contact/) John Maldjian at Maldjian Law Group LLC today to schedule an initial consultation and discuss your intellectual property needs.