



DIGITAL RULES RESOURCE CENTER

1. Essential Guide and Checklist - The Doctrine of Fair Use

Introduction - This section of the Meridian Stories website details the Doctrine of Fair Use and what you need to know to make use of it in your creative projects. Start with this Essential Guide and Checklist for the Doctrine of Fair Use, which will give you a summary of all the qualities of a piece of creative work that would be looked at by judges if the piece was challenged under fair use. For further clarification on this complex, but highly relevant topic for digitally literate users, please see the following:

1. *Appropriate Uses – The Doctrine of Fair Use*
2. *Case Studies – The Doctrine of Fair Use*
3. *Myths and Misunderstandings – The Doctrine of Fair Use*

Essential Guide and Checklist - When a person in the United States sets down their own idea or creation in a physical medium (a video, book, song, poem, or scholarly article, for example), their work is protected automatically by copyright law. This means that, to a certain extent, others must get the express permission of the copyright holder before they use or recreate their work for their own purposes. Luckily, however, there is a provision within US copyright law called ‘fair use’ which gives individuals the right to use limited portions of copyright-protected works without the express permission of the copyright holder, provided they credit the owner with a citation. Generally speaking, there are four main aspects of your use of another’s work to consider when trying to determine whether it constitutes a “fair use” under the law. Take a look at the checklist below, and apply it to your use of others copyrighted work.

— 1) *My use of copyrighted material is transformative and non-commercial.*

If your use of copyrighted work adds some new meaning to the material, meaning that it did not have in its original form, then that use is “transformative” and is likely to be fair use. Furthermore, if the use of the

copyrighted material is non-commercial (you are not trying to profit from its use) then it is more likely to be considered fair use.

___ 2) *The copyrighted work I am borrowing is primarily factual.*

Using material from a work that is primarily factual in nature (i.e., a scholarly article, research paper, or news article) is more likely to be declared fair use than the use of material from a work of creative fiction (i.e., a poem or a short story).

___ 3) *I have only borrowed a small portion of a copyrighted work and this portion is not the most significant part of the work.*

The use of copyrighted material is more likely to be called ‘fair’ if the portion used is small relative to the size of the work. However, using the most significant part of a work (e.g., the chorus from “Let It Be” by the Beatles) is likely to lead the use to be declared **NOT** fair.

___ 4) *My use of copyrighted material does not harm the potential market for or value of the original work.*

If your use of copyrighted material harms the potential monetary value of the original material (i.e., by revealing it early or otherwise allowing people to satisfy their desire for the work without actually purchasing the original), then it is likely **NOT** fair.

If you checked **all** of the above boxes that apply to your use of copyrighted material, it is most likely fair. **However**, it is important to note that, because each dispute over fair use is examined individually in court, none of these factors alone is enough to guarantee fair use. No matter what, please be sure to see our page on [citation](#) – even if use is fair, you are still ethically required to give credit to the creator of a copyrighted work through proper citation.