

## Plagiarism, Copyright, and Fair Use

**Brief:** To avoid plagiarism, all paraphrases should include appropriate attribution the original source, unless the paraphrase is a statement of common knowledge.

**Learning Objective:** Define “copyright” and “fair use” and understand the relationship of each to plagiarism.

**Key Terms:**

- Copyright: A legal right that grants the creator of an original work exclusive rights to determine whether, and under what conditions, this original work may be used by others.
- Fair Use: A legal doctrine states that there are certain circumstances in which it is legal to use copyrighted materials without the permission of the copyright holder.
- Plagiarism: Copying someone else’s ideas, text, or other creative work and presenting it as one’s own.

### Plagiarism and Copyright

While plagiarism and copyright infringement are related matters, they are not identical. Plagiarism (passing off someone else’s words, ideas, images, etc. as one’s own) is a matter of professional ethics. Copyright is a legal right that grants the creator of an original work exclusive rights to determine whether, and under what conditions, this original work may be used by others.



The copyright symbol

Copyright protects exact expression, not ideas. One can plagiarize even a work that is not protected by copyright, for example by passing off a line from Shakespeare as one's own.

Conversely, attribution prevents accusations of plagiarism, but it does not prevent infringement of copyright. For example, reprinting a copyrighted book without permission, while citing the original author, would be copyright infringement but not plagiarism.

A different concept that also relies on copyright is the American legal doctrine of “fair use” of copyrighted materials. This doctrine states that there are certain circumstances in which it is legal to use copyrighted materials without the permission of the copyright holder.

Fair use came about from federal court decisions in the nineteenth century that sought to balance the entitlements provided by copyright legislation with the interest of free speech specified by the first amendment to the U.S. Constitution.

### Four Considerations for Fair Use

Fair use came about from federal court decisions in the nineteenth century that sought to balance the entitlements provided by copyright legislation with the interest of free speech specified by the first amendment to the U.S. Constitution.

While the origin of fair use lies with federal court decisions, it was also entered into legislation, specifically the Copyright Act of 1976, which included four areas of consideration.

### ***The Purpose and Character of the Use***

The first consideration is the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes. When it comes to purpose and character, courts have ruled that a work can be considered fair use if the new work is not merely derivative of the original, but transformative of it.

### ***The Nature of the Copyrighted Work***

The second consideration is the nature of the copyrighted work. This includes whether the work is fiction or non-fiction, and takes into account the concept of “idea-expression dichotomy,” which holds that facts may not be copyrighted, only expressions of facts. This consideration also allows for fair use of non-published material.

### ***The Amount and Substantiality of the Work Copied***

The third consideration is the amount and substantiality of the work copied. This consideration explains why a single textbook cannot simply be (legally) copied in its entirety for each student to use even though “teaching (including multiple copies for classroom use), scholarship, or research” is specifically listed as part of the rationale for this section of legislation. However, there is no simple percentage that can be used to determine how much copying is too much copying. Even copying a small portion of a work may not be fair use if it is considered to be the core of the larger work.

### ***The Effect of the Copy’s Monetary Value on the Original Work***

The fourth consideration is the effect of the copy’s monetary value on the original work. The more the copying might negatively affect the monetary value of the original, the weaker the claim to fair use becomes. Conversely, arguing that fair use may actually increase the value of the original work through popularizing it does not appear to hold much weight.

## **From Concept to Action**

Have you, or someone you know, ever taken someone else’s original work, such as an essay, a poem or an image, and transformed it into something new? Do you think this new creation would have been considered legal under the first consideration of fair use doctrine? In the future, what steps can you take to make sure you comply with fair use doctrine?

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"Fair Use." Wikipedia. [https://en.wikipedia.org/wiki/Fair\\_use](https://en.wikipedia.org/wiki/Fair_use). Accessed 23 November 2018. [Creative Commons Attribution-ShareAlike 3.0 Unported License]

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