

Guide to Fair Use

Fair Use is a part of U.S. copyright law that allows limited use of copyrighted material in certain circumstances. This legal doctrine says use of copyright-protected material, under certain circumstances, is allowed without permission from the copyright holder.

This guide explains how Fair Use works and how to think about it when producing content for broadcast.

What is Copyright?

Copyright protects creative works like music, movies and television shows, photographs, artwork, written text, graphics and sound recordings. In general, the creator or copyright holder controls how their work is copied, shared or reused. This means that, as a general rule, you cannot use someone else's work in your program without permission.

However, there are some important exceptions covered under Fair Use.

What is Fair Use?

Fair Use allows limited use of copyrighted material without permission when the use serves a broader purpose such as:

- Commentary or criticism
- News reporting
- Education
- Education
- Parody

Fair Use often applies when copyrighted material is used to illustrate a point, analyze something, or provide context, rather than simply reusing the material for entertainment.

Four Factors of Fair Use

Courts evaluate Fair Use using four factors. No single factor determines the answer — they are considered together. The four factors of fair use are:

1. The purpose and character of the use, including whether it is commercial in nature or is for educational purposes. Why are you using the material? Courts typically focus on whether the use of copyright-protected material is “transformative” — adding commentary, criticism, new expression or meaning to the original. Using music, clips, or images to make your program more entertaining usually does not qualify as Fair Use.

2. The nature of the copyrighted work. Using material that is factual or informational is more likely to qualify as Fair Use than using highly creative works. For example, using news footage or government reports is more favorable than feature films or music recordings.
3. The amount used relative to the copyrighted work as a whole. Using a short excerpt from a copyrighted work is more likely to be considered Fair Use than using large sections of it. However, if the portion you use is the most memorable or important part of the work (sometimes called the “heart” of the work), even a small amount may count against Fair Use.
4. The effect of the use on the value of the original work or the copyright holder's ability to profit from it. Uses that replace the need for the original work or allow viewers to experience it without paying for it are less likely to be fair uses. Courts have sometimes made an exception under this factor in cases involving parodies.

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Examples: Common Fair Use Situations

✗ NOT ALLOWED UNDER FAIR USE	✓ ALLOWED UNDER FAIR USE
Playing full movie scenes from films in your program because they are interesting or entertaining (unless the film is in the Public Domain).	Reviewing a new movie and including short clips to discuss acting, cinematography, or themes.
A compilation show that includes clips from TV shows, movies, or YouTube videos without discussing them or transforming their meaning.	A segment that analyzes political campaign ads and shows short excerpts while explaining messaging strategies.
Using a popular song under a montage or opening credits simply because it sounds good.	In a program about hip-hop history, you play short excerpts from songs while discussing lyrics, production style, or influence.
Showing videos or images found online without discussing them or transforming their meaning.	Your documentary about social media culture shows short clips of viral videos while discussing their impact.

Fair Use is a Judgment Call

Fair Use is not a guaranteed rule or a simple checklist. It is a legal judgment based on the context of your project.

Community media producers are responsible for making their own decisions about how they use copyrighted material.

Open Signal staff cannot provide legal advice, but we encourage producers to think carefully about how copyrighted material appears in their programs.

Questions to Ask Yourself

Before including copyrighted material, consider:

- Am I commenting on or analyzing this material?
- Am I using only what I need?
- Would my program still work without it?
- Could this replace the original work for viewers?

If the answer is “I’m using it mainly for entertainment,” it probably is not Fair Use.

Alternatives to using copyrighted material

Many producers choose to avoid copyright issues by using:

- Original footage and photography
- Creative Commons licensed media
- Royalty-free music libraries
- Public domain material
- Work created by collaborators with permission

Resources:

[Archive.org](https://archive.org)

[Wikimedia Commons](https://commons.wikimedia.org)

[Creative Commons](https://creativecommons.org)

[Free Music Archive](https://freemusicarchive.org)

These free options reduce risk and give you more freedom to distribute your work widely. It is your responsibility to ensure you are following any restrictions or terms for the material used in your content.