

Copyright Infringement & Obscenity Laws

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## Part I: Copyright Infringement

### What is Copyright?

Copyright, a collection of requests that requires a person who develops the progression of authorship (books, music, movies, etc.). The copyrighted work and distributes the media as a person wants to publish the authorship. The objective of copyright in media law, people should develop an art where the audience listens, watch, and read.

According to *Copyright Alliance*, “a copyright is a collection of rights that automatically vest to someone who creates an original work of authorship – like a literary work, song, movie or software. These rights include the right to reproduce the work, to prepare derivative works, to distribute copies, and to perform and display the work publicly. The primary objective of copyright is to induce and reward authors, through the provision of property rights, to create new works and to make those works available to the public to enjoy. The theory is that, by granting certain exclusive rights to creators, which allow them to protect their creative works against theft, they receive the benefit of economic rewards and the public receives the benefit of the creative works that might not otherwise be created or disseminated.”

### How you could determine the Fair Use doctrine?

You determine the Fair Use doctrine when you figure the situation of copyright infringement. The plaintiff held the copyright infringement to accuse the suspect to steal or take an advantage of the victim’s work who owns the copyright.

According to *NOLO*, “a determination of fair use usually occurs during a copyright infringement lawsuit. The holder of a copyright (the plaintiff) will accuse someone of infringing

on protected work (the defendant). At this point, the defendant accused of infringement may argue that the infringement is excused under the fair use doctrine.”

What are the four factors of the Fair Use doctrine?

According to *NOLO*, “in order to guide judges in making determinations of fair use, the drafters of the Copyright Act included four factors: the purpose and character of the use, including whether it is of a commercial nature or for nonprofit educational purposes, the nature of the copyrighted work, the amount of the portion used in relation to the copyrighted work as a whole and the effect of the use upon the potential market for or value of the copyrighted work.” The four factors of the Fair Use doctrine also concentrates on the copyright infringement incident. On the website of *NOLO*, the four factors of Fair Use doctrine became very important in the United States Supreme Court. The United States Supreme Court confirms the four factors used in the progression of copyright infringement and how the four factors connect copyright law.

“In theory, all four factors are equally important. In practice, however, courts often focus on the first and fourth factors, considering the nature of the infringement and the effect on the copyright holder's market. The U.S. Supreme Court has noted that "transformative" uses of copyrighted work can deeply affect the analysis of the first factor. And courts often focus on the impact of the use on the potential market for the original, under the fourth factor, as a proxy for the harm done by the infringement.”

### Purpose and Character of The Use

The fair use doctrine occupies the purpose and character of the use during the copyright infringement case. The development of the purpose and character of the fair use of the material on four terms to discuss the case to identify the defendant.

“The first fair use factor refers mainly to the function for which the copied material is being used. Since copyright law favors encouraging scholarship, research, education, and commentary, a judge is more likely to make a determination of fair use if the defendant's use is noncommercial, educational, scientific, or historical. However, an educational or scientific use that is for commercial purposes may not be excused by the fair use doctrine.”

### Nature of Copyrighted Work

The fair use doctrine focuses on the nature of copyrighted material. During the copyright infringement case, the court determines whether the defendant uses as “pieces of work” or copying the owner’s work. The court would also determine the evidence that shows if the defendant published or unreleased their work.

“The second factor in the fair use determination is the nature of the work that is being copied. In addition, the court will consider whether the work that is copied is published or unpublished. The scope of fair use is narrower with respect to unpublished works because of the author's right to control the first public appearance of his or her expression.”

### Amount of Copyrighted Work Used

The fair use doctrine uses the third factor in the amount of copyrighted work used. When you study media law, you need to learn on how the copyright works and how you develop the copyright. When you review copyright law, you need to review all forms of media: music,

movies, literature, and television shows. You need to study the media on where the music publishes or the location of end credits as finishing the movie or television and the beginning of the front page of the book.

“How much of the original work did the infringer take? One sentence of a book, or an entire chapter? A five-second clip of a film, or the whole movie? One detail of a painting, or the entire painting? This factor will also weigh on a judge's mind. When considering the amount and "substantiality" of the portion taken, the court looks at not just the quantity of the material but its quality. In rare cases, copying of a complete work may be considered as a fair use.”

#### Effect of the Use on Potential Market for the Work

The fair use doctrine attracts the affection of the use on the potential market for the work to participate in court during the copyright infringement case. However, the fair use doctrine considers the defendant to determine whether the owner gave the defendant permission or use the owner as recognition or personal gain. The court request on the decision to review on any marketing purposes to find the development of copyright.

“The fourth factor in a fair-use determination is the effect of the use on the potential market for the work that was copied. Consideration of this factor is intended to strike a balance between the benefit that the public will derive if the use is permitted and the personal gain that the copyright owner will receive if the use is denied. A judge must consider the effect on the potential market for the copyrighted work. This consideration goes beyond the author's or creator's past intentions or the means by which he or she is currently exploiting the work.”

## Part II: Obscenity Laws

What is an obscenity?

Obscenity, a quality of behaviors and language that concentrates on the speech which the First Amendment law of the United States did not prevent the obscenity. The principles of obscenity focus on the censorships that the law tolerates offensive words and images.

According to the *Cornell Law School*, “obscenity is a category of speech unprotected by the First Amendment. Obscenity laws are concerned with prohibiting lewd, filthy, or disgusting words or pictures. Indecent materials or depictions, normally speech or artistic expressions, may be restricted in terms of time, place, and manner, but are still protected by the First Amendment. There are major disagreements regarding obscene material and the government's role in regulation. All fifty states have individual laws controlling obscene material.”

### Community Standards

Community standards examines where the material consider as obscenity or not. The community standards based on the 1957 Supreme Court in *Roth v. United States*. During the defendant case in the late 1950s, the court examines the obscenity on the defendant (Roth).

According to *US Legal*, “the term contemporary community standards is a standard used to test descriptions or depictions of sexual matters, which was first adopted by the United States Supreme Court in 1957 in *Roth v. United States*, 354 U.S. 476. In the Roth case, the Court put forth its test for determining whether a work is obscene as ‘whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a

whole appeals to prurient interest.’ Jurors are the judges of contemporary community standards, based upon their knowledge of the norms of the community from which they may come.”

#### Reasonable Person

Reasonable person, a person creates an hypothetical knowledge in order to determine the situation in court. An reasonable person developed an appropriate standard to prepare in courtroom and jury duties to determine the action of the defendant. Whatever the case would be, it does not depend on right or wrong correction.

According to *Trial Law*, “*reasonable person* is a hypothetical individual who approaches any situation with the appropriate amount of caution and then sensibly takes action. It is a standard created to provide courts and juries with an objective test that can be used in deciding whether a person’s actions constitute negligence. This does not mean they must be perfect. Mistakes are made, and when it is an error that is reasonable under the circumstances, a person may not be liable. There are also unavoidable accidents in which injuries occur, or cases that are impossible to tell what a person did in the critical moments.”

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