

WHAT IS “FAIR USE”?

Adapted from Copyright Basics
www.benedict.com

Prior to the 1990s, the Fair Use provision in the Copyright Act primarily applied to making copies for the classroom and using portions of works in academics treatises. But after the 2 Live Crew Case in the early 1990s, the Fair Use provision was dramatically fleshed out.

Fair use means that certain uses of a copyright work are not infringing; including reproduction in copies or phonorecords for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

I. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

1. Commercial nature or non-profit educational purposes.

Was the work created primarily as a for-profit venture or for a non-profit educational purpose? Preferences will be granted to works that were created for non-profit educational purposes.

2. Preamble Purposes

- * Criticism
- * Comment
- * News reporting
- * Teaching
- * Scholarship
- * Research

3. Degree of Transformation

Does the new work merely supplants the original, or does it adds something new, with a further purpose or different character, thereby altering the first with new expression, meaning or message?

II. the nature of the copyrighted work;

Some works are more deserving of copyright protection than others. This portion of the test looks at the original work and attempts to determine where that work is in the spectrum of worthiness of copyright protection.

III. the amount and substantiality of the portion used in relation to the copyrighted work as a whole;

How much of the original work was taken? Was it a reasonable amount?

IV. the effect upon the value of the copyrighted work



In the early 1990s, Roy Orbison sued 2 Live Crew for recording a racy version of his hit “Pretty Woman.” In ruling for the Miami rappers, the Supreme Court found that the 2 Live Crews’s song was a parody and constituted a “fair use” of Orbison’s original.