

# FAIR USE QUICK-GUIDE

When can you reproduce and use another person's work? You can reproduce and use another person's work if the reproduction may be considered "fair," such as where it is being used for criticism, comment, teaching, scholarship, and research.

Consider these four factors:

## **1. Is the purpose and character of your use to transform the original work?**

- Does your work add something new to the copyrighted material? If yes, then it does transform the work. Examples include:
  - Adding commentary or analysis to the original work.
  - Providing new insight to the original work.
  - Building upon or extending to the original work.
  - Adding new meaning to the original work.
  - Providing a different purpose or manner to the original work.

If the copyrighted material is reproduced verbatim without any supplementary or changing material, it is not transformative.

## **2. What is the nature of the original work?**

- Does the original work contain factual information? Fair use is more frequently found if the original work is factual rather than creative or artistic.
- Has the original work been published? Fair use is more frequently found if the original work is published rather than unpublished, because legislative policy supports that an author has the right to control the first publication of his/her work.

## **3. What amount and substantiality of the original work is being used?**

- Does your work only use the portion of the original work that is necessary to make your point? Fair use is more frequently found if you do not take more than you need.
- Is the portion of the original work that you are using the "heart" of the original work? Even if you use only a small portion of the original work, that portion cannot be the most important feature of the work.

There is no set amount or percentage of the original work that may be used to determine fair use. Comparing the word counts between the original work and your work may be used as a guide, but the amount of the original work that may be used as fair use varies depending on the **context** of your use – look at how you add something new or otherwise transform the original work.

## **4. Would your work serve as a substitute for the original work?** Fair use is more frequently found if your work will not compete with the original work in the marketplace.

After considering these four factors, how is it determined if fair use applies?

Meeting factor #1 above is necessary for a determination of fair use. After determining #1 has been satisfied, the next step is to weigh the other three (3) factors. If your use leans toward fair use in at least two (2) of the remaining factors, fair use should apply. Many times, your analysis will fall in the gray area. If this is the case, contact Corwin Press Editorial for assistance.