
Professional Certificate in Copyright Protection

Fair Use and Public Domain

Adaptation – Related terms: derivative work, transformation. An adaptation is a new work that reshapes an existing copyrighted piece into a different form, such as turning a novel into a screenplay. While the original author retains rights, the adapter must obtain permission unless the source is in the Public Domain or the use qualifies as Fair Use. Example: A filmmaker creates a movie based on a 19th-century novel that is no longer protected; no permission is needed. Challenge: Determining whether a modernized adaptation is sufficiently transformative to meet the “purpose and character” factor of Fair Use.

Affirmative Defense – Related terms: fair use defense, copyright infringement. An affirmative defense is a legal argument that, if successful, negates liability even if the plaintiff’s claim is otherwise valid. In copyright cases, the most common affirmative defense is Fair Use. Example: A blogger reposts a short excerpt of a news article for commentary and asserts Fair Use as an affirmative defense. Challenge: The burden of proof lies with the defendant, who must demonstrate the four statutory factors support the claim.

Berne Convention – Related terms: international copyright, national treatment. The Berne Convention is an international treaty that standardizes copyright protection among member countries, requiring them to grant foreign works the same rights as domestic works. It also eliminates the need for formal registration. Example: A European author’s work is automatically protected in the United States because both nations are parties to the convention. Challenge: The convention does not harmonize the scope of Fair Use, leading to divergent interpretations across jurisdictions.

Copyright – Related terms: exclusive rights, moral rights, public domain. Copyright is a bundle of exclusive rights granted by law to creators of original works fixed in a tangible medium. These rights include reproduction, distribution, public performance, and creation of derivative works. Example: An artist holds copyright over a painting and can control its reproduction. Challenge: Balancing copyright protection with the public’s interest in access, especially when works approach the end of their term and may enter the Public Domain.

Copyright Notice – Related terms: © symbol, year of first publication. A copyright notice is a statement placed on a work to inform the public of the claim of rights, typically consisting of the © symbol, the year of first publication, and the name of the rights holder. Example: “© 2023 Jane Doe” on a website’s footer. Challenge: While not required for protection, omission can affect the ability to claim statutory damages in some jurisdictions.

Copyright Term – Related terms: life of the author, public domain. The copyright term defines the duration of protection. In most countries, it lasts for the life of the author plus 70 years; for works of corporate authorship, it is typically 95 years from publication or 120 years from creation, whichever is shorter. Example: A song composed in 1970 by a solo artist will remain protected until 2040 (70 years after the author’s death, assuming the author dies in 1970). Challenge: Determining the exact expiration date for

older works, especially when renewal records are incomplete.

Derivative Work – Related terms: adaptation, transformative use. A derivative work is a new creation that incorporates, modifies, or builds upon a pre-existing copyrighted work. The new work must be original in its expression and typically requires permission from the original rights holder. Example: A remix of a copyrighted song that adds new beats and vocals. Challenge: Assessing whether the new elements are sufficiently original or merely a copy of the underlying protected expression.

Digital Millennium Copyright Act (DMCA) – Related terms: takedown notice, safe harbor. The DMCA is a U.S. Statute that implements international copyright treaties and provides mechanisms for rights holders to request removal of infringing material from online services. It also grants “safe harbor” protection to service providers if they comply with notice-and-takedown procedures. Example: A YouTube creator files a DMCA takedown against a user who uploaded a full movie without permission. Challenge: The DMCA’s notice-and-takedown system can be abused, and claimants must balance the need for rapid removal with the possibility of legitimate Fair Use.

Fair Use – Related terms: four factors, transformative use. Fair Use is a statutory exception that permits limited use of copyrighted material without permission for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. The analysis hinges on four factors: (1) Purpose and character of the use, (2) nature of the copyrighted work, (3) amount and substantiality of the portion used, and (4) effect on the market. Example: A professor copies a short excerpt of a novel for classroom discussion, citing the educational purpose as a factor in favor of Fair Use. Challenge: The doctrine is flexible and case-by-case, making risk assessment difficult for creators and institutions.

Four Factors of Fair Use – Related terms: purpose and character, market effect. The four statutory factors are the analytical framework courts use to decide whether a particular use qualifies as Fair Use. 1) Purpose and character – whether the use is commercial or non-commercial and whether it is transformative. 2) Nature – the degree of creativity versus factual content. 3) Amount – the quantity and qualitative significance of the portion used. 4) Market effect – whether the use usurps the market for the original. Example: A news outlet reproduces a photograph to illustrate a story, weighing each factor to argue that the use is non-commercial and transformative. Challenge: No factor is dispositive; courts balance them, leading to unpredictable outcomes.

Good Faith Use – Related terms: fair use, intent. Good faith use refers to a user’s sincere belief that a particular use complies with Fair Use or other statutory exceptions. While good faith does not guarantee legal protection, it can influence judicial discretion and may mitigate damages. Example: An educator copies a short video clip for a lecture believing it falls under Fair Use. Challenge: Courts may still find infringement if the use is not sufficiently transformative or harms the market, regardless of the user’s intent.

Infringement – Related terms: direct infringement, contributory infringement. Infringement occurs when a party violates any exclusive right of the copyright holder without authorization. Direct infringement involves the unauthorized copying, distribution, or performance of a protected work. Contributory infringement occurs when a party materially contributes to another’s infringing act. Example: A website that hosts user-uploaded pirated movies may be liable for contributory infringement. Challenge: Proving knowledge

and intent can be complex, especially for intermediaries protected by safe harbor provisions.

International Copyright – Related terms: Berne Convention, World Intellectual Property Organization (WIPO). International copyright refers to the network of treaties and agreements that harmonize protection across borders, ensuring that works created in one member nation receive comparable rights elsewhere. Example: A Canadian author's novel is protected in Australia due to both countries' participation in the Berne Convention. Challenge: Differences in Fair Use doctrines (e.g., The U.S. Versus "fair dealing" in other jurisdictions) create uncertainty for cross-border users.

License – Related terms: exclusive license, non-exclusive license. A license is a contractual permission granted by a copyright holder allowing another party to use the work under defined conditions. Licenses can be exclusive (granting sole rights) or non-exclusive (allowing multiple licensees). Example: A music publisher grants a streaming service a non-exclusive license to play a catalog of songs. Challenge: Drafting licenses that preserve the holder's rights while enabling legitimate uses such as educational Fair Use.

Market Effect – Related terms: four factors, potential market. Market effect assesses whether the alleged Fair Use harms the copyright owner's ability to profit from the original work or its derivatives. This factor examines actual and potential market substitution. Example: A documentary includes a short excerpt of a copyrighted song; the court evaluates whether the excerpt diminishes the song's licensing revenue. Challenge: Quantifying hypothetical market loss is speculative, and courts may differ on how much weight to give this factor.

Moral Rights – Related terms: right of attribution, right of integrity. Moral rights protect the personal and reputational interests of authors, granting them the right to be credited for their work and to object to derogatory modifications. These rights are separate from economic rights and are more robust in civil-law jurisdictions. Example: An artist objects to a commercial alteration of a painting that distorts its original meaning. Challenge: In the United States, moral rights are limited to visual arts, creating gaps for other categories.

Parody – Related terms: transformative use, fair use. Parody is a form of expression that imitates a copyrighted work for comic or critical effect, targeting the original work itself. Parody is often considered highly transformative, strengthening a Fair Use argument. Example: A satirical video that mimics a well-known commercial to critique consumer culture. Challenge: The parody must comment on the original, not merely use it as a vehicle for unrelated commentary.

Public Domain – Related terms: copyright expiration, dedication. The Public Domain comprises works that are not protected by copyright because the term has expired, the rights holder has waived rights, or the work never qualified for protection. Anyone may freely use, reproduce, or adapt public domain material without permission. Example: Shakespeare's plays are in the public domain and can be performed or adapted without licensing. Challenge: Determining whether a work truly belongs to the public domain can be complex due to differing national terms and incomplete records.

Reproduction Right – Related terms: copying, exclusive rights. The reproduction right is one of the exclusive rights granted to copyright owners, allowing them to control the making of copies of the work. This

includes both physical and digital reproductions. Example: A publisher reproduces a novel in both print and e-book formats under its exclusive right. Challenge: Unauthorized reproductions, even of small excerpts, may trigger infringement claims unless defended by Fair Use.

Safe Harbor – Related terms: DMCA, intermediary liability. Safe harbor provisions protect online service providers from liability for user-generated infringing content, provided they comply with statutory requirements such as promptly removing content after a valid takedown notice. Example: A social media platform implements a DMCA takedown system to retain safe harbor protection. Challenge: Failure to adopt appropriate policies or to act expeditiously can forfeit safe harbor benefits, exposing the platform to infringement suits.

Statutory License – Related terms: compulsory license, mechanical royalties. A statutory license is a law-mandated permission that allows certain uses of copyrighted works without negotiation, typically in exchange for a set royalty rate. In the United States, the mechanical license for sound recordings is a common example. Example: A cover artist records a rendition of a song and pays the statutory royalty to the copyright owner. Challenge: Statutory rates may not reflect market realities, and the process can be cumbersome for new creators.

Transformative Use – Related terms: fair use, parody. Transformative use occurs when a new work adds new expression, meaning, or message to the original, thereby altering its purpose. This is a key consideration under the “purpose and character” factor of Fair Use. Example: A documentary incorporates a short clip of a news broadcast to illustrate a point, changing the original’s context. Challenge: Courts differ on how much transformation is required; minimal changes may not satisfy the standard.

Work for Hire – Related terms: joint authorship, copyright ownership. A work for hire is a creation made by an employee within the scope of employment or a commissioned work where parties expressly agree in writing that the work is a work for hire. In such cases, the employer or commissioning party is deemed the copyright owner. Example: A graphic designer creates a logo for a corporation under a work-for-hire agreement; the corporation owns the copyright. Challenge: Misclassification can lead to disputes over ownership and licensing rights.

Derivative Rights – Related terms: adaptation, translation. Derivative rights are the exclusive rights to prepare, authorize, or license adaptations of a protected work, such as translations, dramatizations, or film versions. These rights are part of the copyright holder’s bundle of exclusive rights. Example: A publisher obtains the derivative right to produce a foreign-language edition of a novel. Challenge: Unauthorized derivative works can be infringing even if the underlying original is in the public domain in certain jurisdictions (e.g., Moral rights considerations).

Digital Rights Management (DRM) – Related terms: technological protection measures, anti-circumvention. DRM refers to technological tools used to control access to copyrighted digital content, preventing unauthorized copying or distribution. Anti-circumvention provisions in law protect DRM from being bypassed. Example: An e-book vendor encrypts files to restrict copying. Challenge: DRM can impede legitimate Fair Use, such as educators attempting to excerpt portions for classroom instruction.

Educational Use – Related terms: fair use, section 110. Educational use is a specific category of Fair Use that encompasses activities like teaching, scholarship, and research within an academic setting. In the United States, Section 110 of the Copyright Act also provides a limited exemption for classroom performances of copyrighted works. Example: A professor shows a short film clip in a lecture hall, relying on both Fair Use analysis and Section 110's classroom exemption. Challenge: Determining the permissible length and whether the use is "incidental" versus "central" to instruction can be ambiguous.

Excerpt – Related terms: fair use, substantiality. An excerpt is a portion of a larger work that is reproduced or quoted. The legality of excerpting depends on the amount used, its qualitative significance, and the purpose of the use. Example: A journalist quotes three sentences from a 500-page book to illustrate a point. Challenge: Even a small excerpt can be deemed "substantial" if it captures the "heart" of the work, jeopardizing a Fair Use claim.

First Sale Doctrine – Related terms: exhaustion, distribution right. The First Sale Doctrine limits the copyright holder's distribution right after the lawful sale of a copy, allowing the owner to resell, lend, or otherwise dispose of that particular copy. Example: A library can lend a purchased book to patrons without seeking permission from the author. Challenge: The doctrine does not apply to digital copies, where each download creates a new copy, raising questions about resale of e-books.

Four-Step Test (US) – Related terms: fair use analysis, statutory factors. The Four-Step Test is a practical framework derived from the four statutory factors, guiding practitioners through: (1) Identify the purpose and character, (2) Assess the nature of the work, (3) Measure the amount used, (4) Evaluate market impact. Example: A content creator runs through each step to justify using a song snippet in a vlog. Challenge: The test is not a checklist; weighing each step requires nuanced legal judgment.

General Exemption (Section 107) – Related terms: fair use, copyright act. Section 107 of the U.S. Copyright Act codifies the Fair Use doctrine, listing the four factors and establishing the legal basis for the exemption. Example: A researcher cites a short passage from a copyrighted article under Section 107. Challenge: The statute provides no bright-line rules, leaving interpretation to courts and leading to litigation risk.

Harassment Exception – Related terms: fair use, copyright misuse. The harassment exception is a limited doctrine that may allow the use of copyrighted material to expose wrongdoing, such as whistleblowing or public interest reporting. While not a formal statutory exception, courts sometimes view such uses favorably under Fair Use. Example: A journalist publishes excerpts of a corporate report to reveal environmental violations. Challenge: Courts balance the public interest against potential market harm, and the exception is not universally recognized.

Incidental Inclusion – Related terms: fair use, background music. Incidental inclusion occurs when a copyrighted work appears unintentionally or peripherally in a new work, such as a song playing faintly in a background of a video. Courts may deem such inclusion non-infringing if it is not the focus of the new work. Example: A vlog records a street scene where a copyrighted billboard is visible. Challenge: Determining whether the inclusion is "incidental" or "substantial" can be subjective.

Joint Authorship – Related terms: co-author, derivative rights. Joint authorship arises when two or more

individuals contribute original expression to a work with the intention of creating a unified piece. Each joint author holds an undivided interest in the copyright. Example: Two musicians co-write a song; each can license the entire work, subject to accounting with the other. Challenge: Disputes may occur over the proportion of contribution and the right to grant licenses.

Licensee – Related terms: license, grantor. A licensee is a party who receives permission from a copyright holder to use a work under specific terms. Example: A streaming platform is a licensee of a movie studio's catalog. Challenge: Licensees must ensure compliance with the license scope; exceeding it can lead to infringement claims, even if the original holder intended to allow broader use.

Market Substitute – Related terms: market effect, fair use. A market substitute is a use that competes directly with the original work, potentially diminishing its market value. This concept is central to the fourth Fair Use factor. Example: An unauthorized full-length upload of a film on a file-sharing site serves as a market substitute for the official distribution channels. Challenge: Courts assess whether the alleged use is a "direct competitor" or a "different market," affecting the analysis.

Non-Commercial Use – Related terms: fair use, educational use. Non-commercial use refers to uses that are not primarily intended for profit. While non-commercial intent can favor a Fair Use finding, it is not dispositive. Example: A nonprofit organization creates a video montage using short clips for a public awareness campaign. Challenge: The line between non-commercial and commercial can blur when organizations monetize ancillary services (e.G., Sponsorships).

Paratext – Related terms: metadata, copyright notice. Paratext includes ancillary material surrounding a primary work, such as titles, prefaces, or captions. While generally not protected, paratext can be copyrighted if it contains original expression. Example: A book's foreword written by a guest author is protected separately from the main text. Challenge: Determining whether paratextual elements contribute to a Fair Use analysis can be nuanced.

Public Performance Right – Related terms: exclusive rights, digital streaming. The public performance right allows the copyright holder to control the broadcast, streaming, or live presentation of a work to the public. Example: A theater company must obtain a license to perform a copyrighted play publicly. Challenge: Online platforms often need multiple licenses (e.G., For music, video) to avoid infringement.

Reproduction vs. Distribution – Related terms: exclusive rights, first sale doctrine. Reproduction involves making copies of a work; distribution concerns the transfer of those copies to the public. Both are exclusive rights, but they are distinct. Example: Scanning a book creates a reproduction; uploading that scan to a website constitutes distribution. Challenge: In digital contexts, a single act may trigger both rights, increasing liability exposure.

Section 110 Exemption – Related terms: educational use, public performance. Section 110 of the U.S. Copyright Act provides a limited exemption for performances of copyrighted works in certain nonprofit educational settings, allowing teachers to show or play works without a license under specific conditions. Example: A school shows a short film during a lesson, meeting the statutory criteria. Challenge: The exemption does not cover longer performances or commercial schools, and the "face-to-face" teaching

requirement can be restrictive for online learning.

Statutory Damages – Related terms: infringement, actual damages. Statutory damages are predetermined monetary awards set by law that a court can impose on a copyright infringer, ranging from \$750 to \$30,000 per work, and up to \$150,000 for willful infringement. Example: A court awards \$15,000 per infringed song after finding willful violation. Challenge: The possibility of high statutory damages motivates caution but can also pressure parties into settlement, even when a Fair Use defense is viable.

Transformation – Related terms: fair use, derivative work. Transformation examines whether a new work adds new expression, meaning, or message to the original, thereby changing its purpose. It is a core component of the “purpose and character” factor. Example: A meme that juxtaposes a copyrighted image with original text to comment on social issues is considered transformative. Challenge: Courts differ on the threshold for transformation; mere repackaging may not suffice.

Two-Step Test (UK) – Related terms: fair dealing, public interest. The United Kingdom applies a two-step test for “fair dealing” exceptions: (1) The work must be used for a permitted purpose (e.G., Criticism, review, news reporting); (2) the dealing must be fair, considering factors like the amount used and the effect on the market. Example: A blogger quotes a paragraph of a novel for a review, satisfying both steps. Challenge: The UK’s narrower scope compared to U.S. Fair Use means fewer permissible uses, requiring careful analysis.

Use-Case Analysis – Related terms: risk assessment, fair use. Use-case analysis is a systematic approach to evaluating whether a contemplated use of copyrighted material is likely to be defended as Fair Use. It involves documenting purpose, amount, market impact, and transformation. Example: A content creator prepares a memo outlining each Fair Use factor before publishing a video that incorporates copyrighted clips. Challenge: The analysis must be thorough and realistic; overly optimistic assessments may not withstand judicial scrutiny.

Visual Arts Exception – Related terms: moral rights, fair use. In the United States, the Visual Artists Rights Act (VARA) provides limited moral rights for works of visual art, protecting against distortion or destruction that would harm the artist’s reputation. Example: An artist can sue if a gallery permanently modifies a sculpture. Challenge: VARA applies only to a narrow category (e.G., Paintings, sculptures) and does not affect the broader Fair Use analysis.

Work-Made-For-Hire (Commissioned) – Related terms: joint authorship, contractual agreement. When a work is commissioned, parties may agree that the creator is an independent contractor but the commissioning party will own the copyright as a work-made-for-hire, provided the agreement meets statutory requirements. Example: A software company contracts a developer to write code, specifying that the code is a work-made-for-hire. Challenge: Failure to meet the writing requirement or to specify the work’s category can render the agreement ineffective, leaving the developer as the copyright owner.

Zero-Cost Fair Use – Related terms: public domain, open access. Zero-cost Fair Use refers to situations where the user can invoke Fair Use without incurring licensing fees, often for educational or non-commercial purposes. Example: A teacher copies a short poem for classroom distribution, relying on Fair Use rather than purchasing a license. Challenge: Even when costs are low, the legal risk remains,

especially if the use is borderline or the market effect is uncertain.