

Fair Use in a Nutshell

Fair use permits the limited use of copyrighted material without having to obtain a license or permission from the rights holder. Fair use is a flexible right that allows portions of any copyrighted work to be used. Fair use analysis is subjective, and users and copyright holders can disagree on whether a particular use is fair.

Digitizing an Entire Work

There is no easy answer to the question of how much of a film or other work can be digitized and reformatted relying on fair use. Due to that uncertainty, each case must be analyzed looking closely at what is being used, how it is being used, and the potential risk in asserting fair use rights. In rare cases, reformatting an entire film could qualify as fair use; in the vast majority of cases, however, use of an entire film will not constitute fair use and could be challenged by the film's owner or distributor.

Your fair use determination should be based on weighing and balancing the four factors below.

1. **Purpose and Character of the Use** - Using material in a non-commercial environment and for a nonprofit educational purpose, such as criticism and commentary, is generally favored under the fair use analysis. Courts will also look to whether the use is "transformative," meaning that you did not just copy the original, but added new expression or meaning to it. Reformatting a documentary or feature film for educational purposes, such as commentary and criticism, will strengthen your fair use argument since that use differs from the original purpose of the film - entertainment.
2. **Nature of the Work** - Films are generally creative works, which weakens the fair use argument.
3. **Amount Used** - The amount of film you use should be only as much as is necessary to support your lesson or illustrate your point. In some cases, digitizing an entire film could qualify as fair use.
4. **Effect on the Market** - There is an impact on the market if the film is available for purchase, so the library will not reformat media if it is available for purchase or streaming from a licensed source.