

# Fair Use Fundamentals



fair use  
week

Copyright law is a carefully balanced system meant to encourage creativity as well as cultural and scientific progress. The law encourages authors by giving them limited control over certain uses of their works, and it encourages everyone (including authors) to use existing cultural and scientific material without permission, under certain circumstances, to engage in a wide variety of vital activities. Many parts of the law favor the freedom to use culture, but by far and away the most flexible, powerful, and universal user's right is fair use. As you'll see below: fair use is a right, fair use is vitally important, fair use is for everyone, and fair uses are everywhere.

## Fair Use is a Right



Some people think fair use is a minor exception or a marginal carve-out from the expansive protection for authors, but **fair use is a fundamental right**.



JUSTICE RUTH BADER GINSBURG

### the notorious r.b.g.

Thanks to Justice Ruth Bader Ginsburg, the Supreme Court said fair use is a **"First Amendment Safeguard"**.

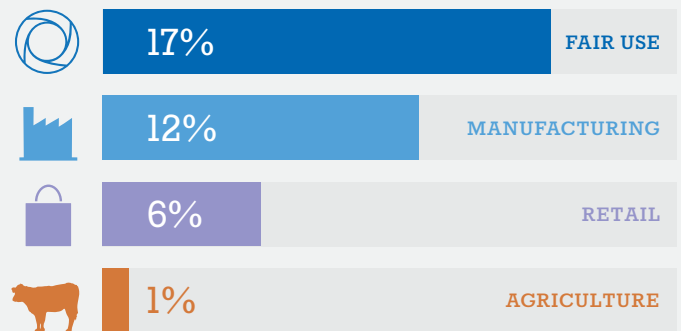


Like the First Amendment itself, fair use is **broad, flexible, and responsive to change**. That's why fair use supports the constitutional purpose of copyright: **to "promote the progress of science and the useful arts"**.

## Fair Use is Vitally Important

### to the economy

Experts estimate that industries reliant on fair use contributed \$2.4 trillion to the U.S. economy in 2008–2009, or approximately 17 percent of the US GDP.<sup>1</sup> In comparison:



### to innovation

Fair use enables new technologies and advancements, including new products like DVRs and search engines.



### to creativity

Without fair use, there would be no parody, no critique and commentary, no transformative mash-ups, and no homage or pastiche.



### to scholarship

Imagine trying to prove your brilliant theory about Ernest Hemingway without quoting Hemingway?



1. CCIA, Fair Use in the US Economy, <http://www.cciainet.org/wp-content/uploads/library/CCIA-FairUseintheUSEconomy-2011.pdf>

2. US BEA Statistics, [http://www.bea.gov/industry/gdpbyind\\_data.htm](http://www.bea.gov/industry/gdpbyind_data.htm)

## Fair Use is for Everybody



## Fair Use is Everywhere

Critics say that fair use is unpredictable, technical, legal stuff that the everyday person can't understand or apply in daily life. In fact, fair uses are all around. Copyright law provides four factors for courts to consider in determining whether a use is fair:

### FOUR FAIR USE FACTORS

1 the purpose and character of the use

2 the nature of the copyrighted work

3 the portion used in relation to the copyrighted work as a whole

4 the effect of the use upon the potential market

The most important factor is the purpose: is the use transformative? Courts are much more likely to uphold a use as fair use if it transformative, meaning that it adds something new, with a different character, expression, meaning or message, or function. Here are just some examples of uses courts have specifically considered, upholding fair use in all of these cases:



**GOOGLE, TVEYES**  
Creating databases to make information searchable is a fair use.



**NEW YORK TIMES**  
Quoting and reprinting to report the news is a fair use.



**BRAILLE**  
Making books accessible to the blind and print-disabled is a fair use.



**CODE**  
Copying a computer program to make new programs that work with it is a fair use.



**SOUTH PARK**  
Making fun of culture in parodies is a fair use.



**ANDY WARHOL**  
Using old art to make new art is a fair use.



**DISH Network, VHS, VCR**  
Using recorders in your home to record television and watch later is a fair use.



**BALTIMORE RAVENS**  
Documenting history in a world rich with logos and cultural artifacts is a fair use.

3. "Baltimore Ravens logo" by Source. Licensed under Fair use via Wikipedia - [http://en.wikipedia.org/wiki/File:Baltimore\\_Ravens\\_logo.svg#mediaviewer/File:Baltimore\\_Ravens\\_Logo.svgtm](http://en.wikipedia.org/wiki/File:Baltimore_Ravens_logo.svg#mediaviewer/File:Baltimore_Ravens_Logo.svgtm)  
4. South Park logo by VECTOR.ME

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