

Where is the fair use doctrine codified?

Written by Patrick McKay
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Answer: The fair use doctrine was originally a judge-made doctrine embodied in case law. See *Folsom v. Marsh*, 9 F.Cas. 342 (1841). Congress later codified it at Title 17 of the United States Code, Section 107.

This section provides:

Section 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A [setting forth copyright owners' exclusive rights and visual artists' artistic rights], the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include ?

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

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