

Fair Use Promotes the Creation of New Knowledge



**fair use
week**

Fair use is an essential right under copyright law, supporting the constitutional purpose of copyright: to promote the progress of science and the useful arts. Where copyright law might otherwise act to prevent people from accessing knowledge, fair use permits everyone to use existing cultural and scientific material without permission, under certain circumstances. This fair use right promotes innovation, creativity, and scholarship, ultimately allowing new knowledge to be created and shared.



News reporting can be done more accurately.¹

Fair use allows reporters to show previously created content to provide appropriate context around current events, giving the audience a better understanding of events that are unfolding.



Information can be indexed and searched, expediting discovery.¹

Fair use allows for the copying and ingestion of copyrighted works into searchable databases, facilitating search engines for text, images, and audiovisual material, such as Google Books.²



Innovative products that depend on preexisting knowledge can be developed and these technologies can advance new ideas.

The creation of searchable databases is a transformative fair use in which the copyrighted work is being used for a different purpose than its original intent. Internet search engines,³ plagiarism detection software,⁴ and other databases⁵ have allowed for text and data mining to facilitate research, scholarship, and the creation of new knowledge.



New art can be created and enjoyed.

Fair use facilitates the use of culturally and historically significant clips and artifacts in various forms of entertainment. Appropriation art, such as Andy Warhol's paintings of Campbell's soup cans, relies extensively on preexisting works. Pieces of copyrighted works can also be used in movies, TV shows, and musicals—such as in *Jersey Boys*, where a clip of the Four Seasons being introduced on the *Ed Sullivan Show* illustrates an important moment in the band's career.⁶

1. See, e.g., *Religious Technology Center v. Pagliarina*, 908 F.Supp. 1353 (E.D. Va. 1995).
2. *Authors Guild v. Google*, 804 F.3d 202 (2d Cir. 2015).
3. *Kelly v. Arriba Soft*, 280 F.3d 934 (9th Cir. 2003).
4. *A.V. v. iParadigms*, 562 F.3d 630, 639 (4th Cir. 2009).
5. *Authors Guild v. HathiTrust*, 755 F.3d 87 (2d Cir. 2014).
6. See e.g., *SOFA Entertainment, Inc. v. Dodger Productions*, 709 F.3d 1273 (9th Cir. 2013).



Users can generate new content based on existing works.

Fair use permits the use of existing characters, songs, and audiovisual clips in the creation of new, user-generated content, including fan fiction, parodies, remixes of songs, and mash-up videos. User-generated content is sometimes so popular it goes viral on the internet, such as the mash-up of Justin Timberlake's "Can't Stop the Feeling" with dance clips from 60 movies.⁷



Documentary films can be created, to inform audiences through audiovisual media about historically and culturally significant events.

Documentary filmmakers rely on fair use to employ copyrighted material: as an object of social or political critique; to illustrate points of argument; in the process of filming something else; or in historical sequences.⁸ For example, *Our Nixon* uses home movie footage filmed by top White House aides in 1969–1973 to create an intimate portrait of the Nixon presidency.⁹



Documentary websites can provide digital gateways to history.

Curated websites can provide access to documents, photographs, audiovisual materials, and ephemera to contextualize events, such as the grassroots struggle for voting rights in the US Civil Rights Movement¹⁰ or the 1939–1940 New York World's Fair.¹¹



New ways to share information can be created.

Fair use encourages transformative uses and supports new ways to share information and allow for study or other interactions, including through audiovisual means, data visualizations, or three-dimensional renderings.



Computer programs can be reverse engineered to support new compatible creations.

Interoperable software is essential with the proliferation of technology and different operating systems. Fair use facilitates the use of reverse engineering for interoperability.¹²



Meaningful commentary can facilitate contributions to new scholarship.

Users can rely on existing copyrighted material for the creation of new scholarship. Quotations facilitate teaching, meaningful criticism, and commentary.

7. Movie Remixer, *66 Movie Dance Scenes Mashup with Can't Stop the Feeling by Justin Timberlake*, May 24, 2016, 4 min., <https://www.youtube.com/watch?v=oAG7ECgXjcs>.
8. Association of Independent Video and Filmmakers, Independent Feature Project, International Documentary Association, National Alliance for Media Arts and Culture, and Women in Film and Video (Washington, DC, chapter), *Documentary Filmmakers' Statement of Best Practices in Fair Use* (Washington, DC: Center for Social Media, School of Communication, American University, 2005), http://archive.cmsimpact.org/sites/default/files/fair_use_final.pdf. See also *Bouchat v. Baltimore Ravens*, 737 F. 3d 932 (4th Cir. 2013).
9. *Our Nixon*, directed by Penny Lane (Claryville, New York: Dipper Films LLC, 2013).
10. "One Person, One Vote: The Legacy of SNCC and the Fight for Voting Rights," SNCC Legacy Project and Duke University, accessed January 22, 2018, <http://onevotesncc.org/>.
11. *NYPL Biblion: World's Fair* (New York Public Library, Astor, Lenox and Tilden Foundations, 2011), iOS 6.0 or later, <https://itunes.apple.com/us/app/nypl-biblion-worlds-fair/id433418206?mt=8>.
12. *Sega v. Accolade*, 977 F.2d 1510 (9th Cir. 1992).