

Copyright laws and the Photo Booth business

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Whether or not you can use an image or graphic you find in the Internet is a question that comes up frequently. The information provided below is gathered from the US Copyright Office, Columbia University, and curated sites with relevant information to copyright in the United States.

While the question does open the door to a lot of information and reading, the answer generally is:

No. Without permission, don't use it.

From the US Copyright Office - "Copyright, a form of intellectual property law, protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture."

The Copyright Act grants five rights to a copyright owner:

- The right to reproduce the copyrighted work.
- The right to prepare derivative works based upon the work.
- The right to distribute copies of the work to the public.
- The right to perform the copyrighted work publicly.
- The right to display the copyrighted work publicly.

Fair Use

Fair Use was intended to allow for the use of copyright protected works in a group of very specific circumstances. Commercial use of material, such as for a photo booth operation, would not qualify under the Fair Use requirements.

Fair Use counts on 4 factors to determine whether or not a work is suitably covered under Fair Use terms. Please note that all 4 factors must be met in order to be considered as qualifying.

FACTOR 1: THE PURPOSE AND CHARACTER OF THE USE

The fair use statute itself indicates that nonprofit educational purposes are generally favored over commercial uses. In addition, the statute explicitly lists several purposes especially appropriate for fair use, such as criticism, comment, news reporting, teaching, scholarship, or research. These activities are also common and important at the university. But be careful: Not all nonprofit educational uses are “fair.” A finding of fair use depends on an application of all four factors, not merely the purpose. However, limiting your purpose to some of these activities will be an important part of claiming fair use.

FACTOR 2: THE NATURE OF THE COPYRIGHTED WORK

This factor centers on the work being used, and the law allows for a wider or narrower scope of fair use, depending on the characteristics or attributes of the work. For example, the unpublished “nature” of a work, such as private correspondence or a manuscript, can weigh against a finding of fair use. The courts reason that copyright owners should have the right to determine the circumstances of “first publication.” Use of a work that is commercially available specifically for the educational market is generally disfavored and is unlikely to be considered a fair use. Courts are usually more protective of art, music, poetry, feature films, and other creative works than they might be of nonfiction works.

FACTOR 3: THE AMOUNT OR SUBSTANTIALITY OF THE PORTION USED

Although the law does not set exact quantity limits, generally the more you use, the less likely you are within fair use. The “amount” used is usually evaluated relative to the length of the entire original and in light of the amount needed to serve a proper objective. However, sometimes the exact “original” is not always obvious. A book chapter might be a relatively small portion of the book, but the same content might be published elsewhere as an article or essay and be considered the entire work in that context. Photographs and artwork often generate controversies, because a user usually needs the full image, or the full “amount,” and this may not be a fair use.

FACTOR 4: THE EFFECT OF THE USE ON THE POTENTIAL MARKET FOR OR VALUE OF THE WORK

Effect on the market is perhaps more complicated than the other three factors. Fundamentally, this factor means that if you could have realistically purchased or licensed the copyrighted work, that fact weighs against a finding of fair use. To evaluate this factor, you may need to make a simple investigation of the market to determine if the work is reasonably available for purchase or licensing.

List of resources

<https://www.copyright.gov/help/faq/faq-general.html>

<https://copyright.columbia.edu/basics/fair-use.html>

<https://www.rivaliq.com/blog/guide-copyright-fair-use-laws-online-images/>

<http://www.copyrightlaws.com/legally-using-images/>

<https://blog.kenkaminesky.com/photography-copyright-and-the-law/>

Stock image sites

A short list of sites to get you started:

[Getty Images](#)

[Fotolia](#)

[iStock](#)

[Cutcaster](#)