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# Understanding Copyright & Transformative Fair Use

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# Understanding Copyright and Transformative Fair Use

*“The Congress shall have Power To... Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their Respective Writings and Discoveries.”*

— United States Constitution, Article I, Section 8, Clause 8

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# Copyright

- Grants authors certain exclusive rights for a limited period of time.
- Contains built-in exceptions. Fair Use is the most flexible of the exceptions.

Fair use balances the needs of the public with those of copyright owners and preserves copyright's purpose to promote “science and the useful arts.”

# Fair Use

The right to use copyrighted material without permission or payment under some circumstances:

- criticism
- comment
- news reporting
- teaching
- scholarship
- research

# Four Factors

Courts use these factors when reviewing Fair Use cases:

1. Purpose and Character of Use
2. Nature of the Work
3. Amount and Substantiality of the Portion Used
4. Effect on the Market

# Transformative Use

Is the work used in a new context, distinct from the intended uses of the original?

Examples:

- A search engine's use of image thumbnails in results
- Using short clips from newscasts in a documentary



# Key Questions in Determining Fair Use

1. Did the use “transform” the material by using it for purposes different than the original?
2. Was the kind and amount taken appropriate considering the nature of the source and its use?

# Is this Fair Use?

Prof. Jones is teaching a MOOC on the relationship between humans and the environment. One of the topics is the 2010 Russian wildfires, smoke from which affected Moscow. She found an online newspaper article with an AP image of tourists in Red Square wearing face masks to protect themselves from smog. She would like to use this image in her online lecture notes to show just how bad the smog in Moscow was.

*Is this fair use?*

# Analysis

*Did the use “transform” the original material?*

No, using the image was not transformative. In both situations it was used to show the impact of the fires.

*Was the kind and amount taken appropriate considering the nature and use of the original?*

No, the photo was a creative work used in its entirety, in a non-transformative way. The use was not appropriate in kind or amount.

# Conclusion

No, this would not be considered Fair Use.

As an alternative Professor Jones could substitute an image with an open license that would illustrate the effects of Moscow forest fires on air quality.

# Key Questions in Determining Fair Use

1. Did the use “transform” the material by using it for purposes different than the original?
2. Was the kind and amount taken appropriate considering the nature of the source and its use?

**For more information:**

**<http://uri.libguides.com/fairuse>**