

GOOD-FAITH FAIR USE ANALYSIS

Are you considering sending a “takedown notice” to remove content from the Internet because you believe the content infringes your copyrighted work? Before you do, here’s how your organization can evaluate whether the content is actually a **non-infringing fair use**.

Identify allegedly infringing content



Initial fair-use evaluation (intern or clerk)

CORE QUESTION:

IS THE ALLEGEDLY INFRINGING CONTENT A SUBSTITUTE FOR YOUR WORK?

In other words: would a consumer who wants to buy your copyrighted work buy the allegedly infringing content instead?

Specific questions to guide your evaluation:

- Does the content contain new expression in addition to your copyrighted work?**
- Does the expression comment on your work, use the work for a different purpose, or use your work to express a new meaning or message?**
- Does the content use an amount of your work that is appropriate to facilitate the new expression?**

If the answer to all three questions is “**yes**,” the content is likely a fair use — so don’t send a takedown notice!

If the answer to any of these three questions may be “**no**,” consider raising the issue with a supervisor, or seek legal guidance, before sending a takedown notice.

Confirm decision to send takedown notice (supervisor)



Seek guidance in difficult cases (legal counsel)



DOCUMENT THE DECISION PROCESS
(But protect the confidentiality of privileged communications with counsel!)