**CONSTITUTIONAL BASIS:**

**U.S.C.A. Const. Art. I § 8, cl. 8—section enumerating congressional powers**

Section 8, Clause 8. Patents and Copyrights

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;

**PATENTS:**

**35 U.S.C.A. § 101**

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**COPYRIGHT:**

**17 U.S.C.A. § 102**

§ 102. Subject matter of copyright: In general

**(a)** Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

**(1)** literary works;

**(2)** musical works, including any accompanying words;

**(3)** dramatic works, including any accompanying music;

**(4)** pantomimes and choreographic works;

**(5)** pictorial, graphic, and sculptural works;

**(6)** motion pictures and other audiovisual works;

**(7)** sound recordings; and

**(8)** architectural works.

**(b)** In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

**17 U.S.C.A. § 107**

§ 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of [sections 106](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=17USCAS106&originatingDoc=N646536A0A06711D8B8FABFF7D35FC9C0&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Document)) and [106A](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=17USCAS106A&originatingDoc=N646536A0A06711D8B8FABFF7D35FC9C0&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Document)), 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.

**EXAMPLE: PUBLIC DOMAIN/FAIR USE IN ACTION**

Source: Sony Corp. of America v. Universal Studios, Inc., 464 U.S. 417, 432-33 (1984).

“Copyright protection ‘subsists ... in original works of authorship fixed in any tangible medium of expression.’ [17 U.S.C. § 102(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=17USCAS102&originatingDoc=I6b49770c9c2511d9bc61beebb95be672&refType=RB&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_8b3b0000958a4). This protection has never accorded the copyright owner complete control over all possible uses of his work. Rather, the Copyright Act grants the copyright holder ‘exclusive’ rights to use and to authorize the use of his work in five qualified ways, including reproduction of the copyrighted work in copies. *Id.,* § 106.

All reproductions of the work, however, are not within the exclusive domain of the copyright owner; some are in the public domain. Any individual may reproduce a copyrighted work for a ‘fair use;’ the copyright owner does not possess the exclusive right to such a use. Compare *id.,* § 106 with *id.,* § 107.”