

Many libraries may be offering **virtual storytimes** on their websites, YouTube, or Facebook Live. Please be aware that there may be copyright issues involved.

For example, even though an author may allow their books to be read online, the publisher may hold the copyright. Many authors are working with their publishers to waive copyright during the COVID-19 quarantine and shelter-in-place period.

Of course, the **safest course of action is to use books that are in the public domain**, typically books published in the United States prior to 1923.

If one wishes to use **books or songs that are not in public domain**, then it is recommended that one act in accordance with the provisions of the [Fair Use doctrine](#). Section 107 of the Copyright Act calls for consideration of the following **four factors in evaluating a question of fair use**:

1. *Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes*: Courts look at how the party claiming fair use is using the copyrighted work, and are more likely to find that nonprofit educational and noncommercial uses are fair. This does not mean, however, that all nonprofit education and noncommercial uses are fair and all commercial uses are not fair; instead, **courts will balance the purpose and character of the use against the other factors below**. Additionally, “transformative” uses are more likely to be considered fair. Transformative uses are those that add something new, with a further purpose or different character, and do not substitute for the original use of the work.
2. *Nature of the copyrighted work*: This factor analyzes the degree to which the work that was used relates to copyright’s purpose of encouraging creative expression. Thus, **using a more creative or imaginative work (such as a novel, movie, or song) is less likely to support a claim of a fair use than using a factual work** (such as a technical article or news item). In addition, use of an unpublished work is less likely to be considered fair.
3. *Amount and substantiality of the portion used in relation to the copyrighted work as a whole*: Under this factor, courts look at both the quantity and quality of the copyrighted material that was used. **If the use includes a large portion of the copyrighted work, fair use is less likely to be found**; if the use employs only a small amount of copyrighted material, fair use is more likely. That said, some courts have found use of an entire work to be fair under certain circumstances. And in other contexts, using even a small amount of a copyrighted work was determined not to be fair because the selection was an important part—or the “heart”—of the work.
4. *Effect of the use upon the potential market for or value of the copyrighted work*: Here, courts review whether, and to what extent, the unlicensed use harms the existing or future market for the copyright owner’s original work. In assessing this factor, **courts consider whether the use is hurting the current market for the original work (for example, by displacing sales of the original) and/or whether the use could cause substantial harm if it were to become widespread**.

Most experts believe it is very unlikely that a public library would be taken to court, though a cease and desist letter or a request to remove any videos are certainly real possibilities. A more serious consequence might be an out-of-court settlement between the copyright holder and the library’s governing body. Ultimately, **every use of copyrighted material is open to legal judgment if the holder of the copyright decides a court challenge is needed**.

The American Library Association (ALA) has [more information on copyright law](#), including a free webinar. (The webinar focuses on schools, but it does address public libraries as well.)

School Library Journal—"[Tackling Copyright Concerns When Taking Storytime Online](#)."