

phrases. Copyright owners have strong rights to prevent copying of their material, subject to the doctrine of "fair use." Copyrights arise when the work is fixed in a permanent form. Infringement consists of copying, publicly distributing, making changes to, or publicly distributing or performing the work without the author's permission.

Trademark only protects names and logo images that are used to label goods or services. Trademark does not require originality; its purpose is to identify the source of goods. In the U.S., trademark rights arise only when there is actual use in commerce. Infringement consists of selling goods or services under the same or a confusingly similar name. Trademark has its own types of "fair uses" including use for product comparison and criticism, news reporting, and parody.

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### **Question: What is copyright infringement? Are there any defenses?**

**Answer:** Infringement occurs whenever someone who is not the copyright holder (or a licensee of the copyright holder) exercises one of the exclusive rights listed [above](#).

The most common defense to an infringement claim is "fair use," a doctrine that allows people to use copyrighted material without permission in certain situations, such as quotations in a book review. To evaluate fair use of copyrighted material, the courts consider four factors:

1. the purpose and character of the use
2. the nature of the copyrighted work
3. the amount and substantiality of copying, and
4. the market effect.

[\(17 U.S.C. 107\)](#)