

Fair Use Checklist

Name: _____

Date: _____

Class or Project: _____

Course and Term: _____

Title of Copyrighted Work: _____

Author and Publisher: _____

Portion(s) to be used (e.g., pages, timer counts): _____

Instructions:

Where the factors favoring fair use outnumber those against it, reliance on fair use is justified. Where fewer than half the factors favor fair use, you should seek permission from the rights holder. Where the factors are evenly split, you should consider the total facts weighing in favor of fair use as opposed to the total facts weighing against fair use in deciding whether fair use is justified. Not all of the facts will be present in any given situation. Check only those facts that apply to your use. No single item or factor is determinative of fair use. Instructors should consult the Legal Affairs office at their institution if they have questions regarding analysis of the four factors. Complete and retain a copy of this checklist for each "fair use" of a copyrighted work in order to establish a "reasonable and good faith" attempt at applying fair use should any dispute regarding such use arise.

Factor 1: Purpose and Character of the Use

Weighs in Favor of Fair Use

- Used for the purposes of teaching (including multiple copies for classroom use) and/or scholarship or criticism, comment, news reporting, or parody
- Used for nonprofit, noncommercial educational use
- Transformative use (used for purpose other than use originally intended by the creator)
- Use is necessary to achieve your intended educational purpose
- Restricted access

Weighs Against Fair Use

- Commercial activity, profit from use
- For public distribution
- Used for entertainment
- Mirror image copying
- Use exceeds that which is necessary to achieve your intended educational purpose
- Denying credit to the creator

Factor 2: Nature of Copyrighted Work

Weighs in Favor of Fair Use

- Published work
- Factual/informational in nature or nonfiction work
- Non-consumable work

Weighs Against Fair Use

- Unpublished work
- Fiction or highly creative work
- Consumable work (i.e. workbook)

Factor 3: Amount and Substantiality of Portion Used

Weighs in Favor of Fair Use

- Small quantity
- Portion used is not significant or central to the entire work
- Amount is appropriate for favored educational use

Weighs Against Fair Use

- Large portion or whole work is used
- Portion used is central to or "the heart of the work"

Factor 4: Effect on Market for Original

Weighs in Favor of Fair Use

- User owns lawfully purchased or acquired copy of the original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism for use

Weighs Against Fair Use

- Could replace sale of the original work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of copyrighted work
- Affordable permission available for licensing use of work
- Numerous copies made
- You make is publicly accessible via the web or other public forum
- Repeated or long-term use

CONCLUSION:

Is it reasonable to conclude that, in balance, the foregoing factors favor "Fair Use"?

- YES - Maintain a copy of this worksheet for reference in the event of an infringement claim.
- NO - Seek permission of the copyright owner.