

Fair Use Checklist

Name:

Date:

Course or project name:

Title of copyrighted work:

Author:

Publisher:

Portion(s) to be used (pages, stanzas, timer counts):

Brief description of the intended use:

There is no absolute definition of what constitutes fair use. Title 17 section 107 of the United States Code provides four (4) factors that must be considered and weighed together. The following checklist is provided to help you in determining whether your intended use is fair use.

Instructions: Check all conditions and only those conditions that apply to your intended use.

Factor 1: The purpose and character of the use

Favoring Fair Use

- ☐ Nonprofit educational use
- ☐ Teaching (including multiple copies for classroom use)
- ☐ Research or Scholarship
- ☐ Criticism, Commentary, or Parody
- ☐ News reporting
- ☐ Personal use
- ☐ Transformative use (augmenting or changing the existing work for a new purpose)

Opposing Fair Use

- ☐ Commercial activity
- ☐ Profiting from use
- ☐ Entertainment
- ☐ For publication
- ☐ For public access or distribution
- ☐ Fails to provide attribution to original authors

Factor 2: The nature of the copyrighted work

Favoring Fair Use

- ☐ Published work
- ☐ Factual or nonfiction work

Opposing Fair Use

- ☐ Unpublished work
- ☐ Creative work (novel, poem, art, music)
- ☐ Consumable (workbooks, answer sheets)

Factor 3: The amount and substantiality of the portion used in relation to the copyrighted work as a whole

Favoring Fair Use

- ☐ Small portion of work (quantitative)
- ☐ Portion used is not central or significant to the work as a whole (qualitative)
- ☐ Amount used is limited to what is necessary to educational purpose

Opposing Fair Use

- ☐ Large portion or entire work (quantitative)
- ☐ Portion used is central, the “heart of the work” (qualitative)

Factor 4: The effect of the use upon the potential market for or value of the copyrighted work

Favoring Fair Use

- ☐ User owns a lawfully acquired copy
- ☐ Single or few copies will be made
- ☐ New work will not compete with the original work
- ☐ Copyrighted work is out of print
- ☐ Supplemental reading for the course
- ☐ No licensing or permissions mechanism available
- ☐ Access will be restricted

Opposing Fair Use

- ☐ Use could replace the sale of copyrighted work
- ☐ Numerous copies will be made
- ☐ Significantly impacts the market or potential market for the copyrighted work
- ☐ Repeated or long-term use
- ☐ Required reading for the course
- ☐ Licensing or permissions are available
- ☐ Access will be public

Evaluation: No single condition or factor is determinative of fair use. Where the conditions favoring fair use outnumber those opposing it, reliance on fair use is generally justified. Where fewer than half the conditions favor fair use, you should seek permission from the rights holder or return to the *Copyright Compliance Decision Guide* and explore other options. Where the conditions are evenly split, you should consider the collective impact of the conditions in favor of fair use as opposed to the collective impact of the conditions weighing against fair use in deciding whether fair use is justified.

Conclusion: The proposed use ☐ IS fair use ☐ IS NOT fair use

Documentation: Complete and retain a copy of this checklist for each use of a copyrighted work in order to establish a “reasonable and good faith” attempt at applying fair use should any dispute arise. You may save a copy of the completed form to your hard drive or print a hard copy. *Remember to submit a copy of this form to the Campus Print Shop when requesting duplication of copyrighted material.*