

FAIR USE CHECKLIST*

Prepared by: _____

Name: _____ Institution: _____

Project: _____ Date: _____

Directions: Check all boxes that apply. For each of the four sections below, determine whether that factor favors or disfavors a finding of fair use. Where the factors favoring "fair use" outnumber the factors weighing against a finding of "fair use," reliance on the fair use exception is justified. Where fewer than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work.

PURPOSE OF USE

Favoring Fair Use

- Educational:
 - Nonprofit educational institution
 - Teaching (incl. multiple copies for classroom use)
 - Research or scholarship
 - Criticism or commentary
- Parody
- News reporting
- Transformative or productive use (changes the work for a new utility)

Opposing Fair Use

- Commercial activity
- Profiting from this use
- Entertainment
- Bad-faith behavior
- Denying credit to original author
- Non-transformative, verbatim/exact copy

NATURE OF WORK

Favoring Fair Use

- Published work
- Factual, news or non-fiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, fiction)
- Consumable (e.g. workbook, test)

AMOUNT USED

Favoring Fair Use

- Small quantity:
 - one chapter of a book with 10 or more chapters
 - if fewer than 10 chapters, 10% of total page count
 - one article from a particular journal or magazine
- Portion is not central to the work as a whole
- Amount is appropriate to educational purpose

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to or "the heart of the work"
- Amount is more than necessary for educational purpose

EFFECT ON THE MARKET FOR THE ORIGINAL

Favoring Fair Use

- User (professor or GC library) owns lawfully purchased or acquired copy of the original work
- One or only a few copies made
- No significant effect on the market or potential market for the copyrighted work
- No similar product is marketed by copyright holder
- Restricted access (to students/ appropriate group)
- No longer in print; absence of licensing mechanism
- One-time and/or spontaneous use (no time to obtain permission)

Opposing Fair Use

- Could replace the sale of the copyrighted work
- Numerous copies made and/or distributed
- Significantly impairs the market or potential market for the copyrighted work or a derivative of the work
- Reasonably available and affordable licensing mechanism exists (e.g. CCC, off-prints)
- You made it accessible on the web or in some other public forum
- Repeated or long-term use

*Adapted from C, Kenneth D. Crews (Columbia University) and Dwayne K. Buttler (University of Louisville), "Creative Commons Attribution Only" (<http://creativecommons.org/licenses/>), <http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/>.

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