

Instructions for Fair Use Checklist

This checklist is a tool to help you determine whether your proposed copying/distribution of someone else's copyrighted materials would qualify as "fair use," and therefore not require permission from the copyright holder. You should complete and retain a copy of this form whenever you rely on fair use to copy, distribute, or incorporate into your own work someone else's copyrighted material.

Check all of the boxes that apply in each of the four categories, and for each category determine whether that factor favors or disfavors fair use. If more categories favor fair use than disfavor, then relying on fair use would most likely be justified. Where less than half of the categories favor fair use, you should obtain permission from the copyright holder before copying or distributing all or part of the copyrighted materials.

Keep in mind that the University Libraries may have a license to use the materials as you intend, in which case there would be no need to consider whether fair use applies – and no need to use this checklist. Similarly, other provisions of the copyright law may allow your intended use, obviating the need to conduct a fair use analysis if your use was consistent with those provisions. Examples would include library copying, in-classroom use, and distance learning.

Fair Use of Copyrighted Materials

Name: _____

Date: _____

Project: _____

PURPOSE OF USE

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit educational Institution
- Criticism
- Comment
- News reporting
- Transformative or productive use (changes work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

Opposing Fair use

- Commercial activity
- Profiting from the use
- Entertainment
- Bad faith behavior
- Denying credit to original author

NATURE OF MATERIALS BEING USED

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair use

- Unpublished works
- Highly creative work (art, music, novels, films, plays)
- Fiction

AMOUNT OF USE

Favoring Fair Use

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose (only use as much as is necessary)

Opposing Fair use

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

EFFECT OF USE

Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work
- One or few copies are 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

Opposing Fair use

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on Web or other public forum
- Repeated or long-term use