

Name:

Project:

Item Description:

Prepared by:

Fair Use Checklist

Date:

PURPOSE	
FAVORING FAIR USE <ul style="list-style-type: none"> <input type="checkbox"/> Teaching (including multiple copies for classroom use) <input type="checkbox"/> Research <input type="checkbox"/> Scholarship <input type="checkbox"/> Nonprofit educational institution <input type="checkbox"/> Criticism <input type="checkbox"/> Comment <input type="checkbox"/> News reporting <input type="checkbox"/> Transformative or productive use (changes the work for new utility) <input type="checkbox"/> Restricted access (to students or other appropriate group) <input type="checkbox"/> Parody 	OPPOSING FAIR USE <ul style="list-style-type: none"> <input type="checkbox"/> Commercial activity <input type="checkbox"/> Profiting from the use <input type="checkbox"/> Entertainment <input type="checkbox"/> Bad-faith behavior <input type="checkbox"/> Denying credit to original author

NATURE	
FAVORING FAIR USE <ul style="list-style-type: none"> <input type="checkbox"/> Published work <input type="checkbox"/> Factual/informational and educational in nature or nonfiction work <input type="checkbox"/> Important to educational objectives <input type="checkbox"/> Non-consumable 	OPPOSING FAIR USE <ul style="list-style-type: none"> <input type="checkbox"/> Unpublished work <input type="checkbox"/> Highly creative work (i.e., art, music, novels, films, plays, poetry) <input type="checkbox"/> Fiction <input type="checkbox"/> Consumable work (i.e., workbook, test)

AMOUNT	
FAVORING FAIR USE <ul style="list-style-type: none"> <input type="checkbox"/> Small portion of work <input type="checkbox"/> Portion used is not central or significant to the entire work as a whole <input type="checkbox"/> Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum 	OPPOSING FAIR USE <ul style="list-style-type: none"> <input type="checkbox"/> Large portion or whole work used <input type="checkbox"/> Portion used is central to or heart of the entire work <input type="checkbox"/> Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum

EFFECT	
FAVORING FAIR USE <ul style="list-style-type: none"> <input type="checkbox"/> User owns lawfully purchased or acquired copy of original work <input type="checkbox"/> One or few copies made <input type="checkbox"/> No significant effect on the market or potential market for copyrighted work <input type="checkbox"/> No similar product marketed by the copyright holder <input type="checkbox"/> Lack of licensing mechanism 	OPPOSING FAIR USE <ul style="list-style-type: none"> <input type="checkbox"/> Could replace sale of copyrighted work <input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative <input type="checkbox"/> Reasonably available licensing mechanism for use of copyrighted work <input type="checkbox"/> Affordable permission available for using work <input type="checkbox"/> Numerous copies made <input type="checkbox"/> You made it accessible on the web or in another public forum <input type="checkbox"/> Repeated or long-term use

Fair Use Checklist

Introduction to the Checklist

The Fair Use Checklist and variations on it have been widely used for many years to help educators, librarians, lawyers, and many other users of copyrighted works determine whether their activities are within the limits of fair use under U.S. copyright law (Section 107 of the U.S. Copyright Act). Fair use is determined by a balanced application of four factors set forth in the statute: (1) the purpose of the use; (2) the nature of the work used; (3) the amount and substantiality of the work used ; and (4) the effect of the use upon the potential market for or value of the work used. Those factors form the structure of this checklist. Congress and courts have offered some insights into the specific meaning of the factors, and those interpretations are reflected in the details of this form.

Benefits of the Checklist

A proper use of this checklist should serve two purposes. First, it should help you focus on factual circumstances that are important in your evaluation of fair use. The meaning and scope of fair use depends on the particular facts of a given situation, and changing one or more facts may alter the analysis. Second, the checklist can provide an important mechanism to document your decision-making process. Maintaining a record of your fair use analysis can be critical for establishing good faith; consider adding to the checklist the current date and notes about your project. Keep completed checklists on file for future reference.

The Checklist as Roadmap

As you use the checklist and apply it to your situations, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will favor fair use and others may oppose fair use. A key issue is whether you are acting reasonably in checking any given box, with the ultimate question being whether the cumulative weight of the factors favors or turns you away from fair use. This is not an exercise in simply checking and counting boxes. Instead, you need to consider the relative persuasive strength of the circumstances and if the overall conditions lean most convincingly for or against fair use. Because you are most familiar with your project, you are probably best positioned to evaluate the facts and make the decision.

Further Information

You can learn more about copyright and fair use from the US copyright office website: <https://www.copyright.gov/title17/>