Fair Use Checklist

The Trocaire College Libraries and Columbia University Copyright Advisory Office is pleased to offer the following fair use checklist to the academic community. We hope that it will serve two purposes. First, it should help educators, librarians, and others to focus on factual circumstances that are important to the evaluation of a contemplated fair use of copyrighted works. A reasonable fair use analysis is based on four factors set forth in the fair use provision of copyright law, Section 107 of the Copyright Act of 1976. The application of those factors depends on the particular facts of your situation, and changing one or more facts may alter the outcome of the analysis. The checklist derives from those four factors and from the judicial decisions interpreting copyright law.

A second purpose of the checklist is to provide an important means for recording your decision-making process. Maintaining a record of your fair use analysis is critical to establishing your "reasonable and good-faith" attempts to apply fair use to meet your educational objectives. Section 504 (c)(2) of the Copyright Act offers some protection for educators and librarians who act in good faith. **Once you have completed your application of fair use to a particular need, keep your completed checklist in your files for future reference.**

As you use the checklist and apply it to your situation, 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 concern is whether you are acting reasonably in checking any given box; the ultimate concern is whether the cumulative "weight" of the factors favors or opposes fair use. Because you are most familiar with your project, you are probably best positioned to make that decision.

Thanks to Dwayne K. Buttler, now at the University of Louisville, for his assistance with creating the checklist.

Name: _____

Institution: _____

Project: _____

Date: _____

Prepared by: _____

Purpose

Favoring Fair Use	**Opposing Fair Use**
❑ Teaching (including multiple copies for classroom use)	❑ Commercial activity
❑ Research	❑ Profiting from the use
❑ Scholarship	❑ Entertainment
❑ Nonprofit educational institution	❑ Bad faith behavior
❑ Criticism	❑ Denying credit to the original author
❑ Comment	
❑ News reporting	
❑ Transformative or productive use (changes the work for new utility)	
❑ Restricted access (to students or other appropriate group)	
❑ Parody	

Nature

Favoring Fair Use	**Opposing Fair Use**
❑ Published work	❑ Unpublished work
❑ Factual or nonfiction based	❑ Highly creative work (art, music, novels, films, plays)
❑ Important to favored educational objectives	❑ Fiction

Amount

Favoring Fair Use	Opposing Fair Use
❑ Small quantity	❑ Large portion or whole work used
❑ Portion used is not central or significant to entire work	❑ Portion used is central to work or "heart of the work"
❑ Amount is appropriate for favored educational purpose	

Effect

Favoring Fair Use	Opposing Fair Use
❑ User owns lawfully acquired or purchased copy of original work	❑ Could replace sale of copyrighted work
❑ One or few copies made	❑ Significantly impairs market or potential market for copyrighted work or derivative
❑ No significant effect on the market or potential market for copyrighted work	❑ Reasonably available licensing mechanism for use of the copyrighted work
❑ No similar product marketed by the copyright holder	❑ Affordable permission available for using work
❑ Lack of licensing mechanism	❑ Numerous copies made
	❑ You made it accessible on the Web or in other public forum
	❑ Repeated or long term use

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