

Checklist for Fair Use

Please complete this analysis to determine whether your desired use of a copyrighted work may be used within the scope of Fair Use.

Name: _____ Date: _____

Course (if applicable): _____ # of students: _____

Indicate the term and year for which the item is needed:

Fall _____ Winter _____ Spring _____ Summer _____

Intended use:

Citation/Description

Author/Editor/Translator: _____

Publisher: _____

Book/Journal Title: _____

Chapter/Article Title: _____

1. What is the **PURPOSE** of the proposed use? Check all that apply.

FAVORS FAIR USE

- Teaching
- Research
- Scholarship
- Criticism
- Comment
- Parody
- News reporting
- Nonprofit Educational Institution
- Restricted Access (Available only to students or other appropriate group)
- Transformative or Productive use (Changes the work for new utility; adds value to the work; or does not diminish the market.)

OPPOSES FAIR USE

- Commercial Activity (Ask, will this be sold?)
- Profiting from the use
- Entertainment
- Bad-faith behavior (Ignoring the Copyright law)
- Denying credit to original author
(Lack of or no attribution given to original author.)

2. What is the **NATURE** of the copyright work from which it will be used? Check all that apply.

FAVORS FAIR USE

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

OPPOSES FAIR USE

- Unpublished work
- Highly creative work (Art, music, novels, films, plays.)
- Fiction

3. What **AMOUNT** of the copyrighted work will be used? Check all that apply.

You should measure the amount of material both quantitatively and qualitatively. Evaluate quantity relative to the length of the entire work and the amount needed. (The reproduction of an entire work weighs against fair use.) A reproduction that is relatively small but still uses the “heart” of the work will also weigh against fair use.

FAVORS FAIR USE

OPPOSES FAIR USE

- | | |
|--|---|
| <input type="checkbox"/> Small Quantity of work to be used | <input type="checkbox"/> Large portion or entire work to be used |
| <input type="checkbox"/> Portion used is not central or significant to entire work | <input type="checkbox"/> Portion used is central to work or “heart of the work” |
| <input type="checkbox"/> Amount is appropriate for favored educational purpose | <input type="checkbox"/> Fiction |

4. What is the **EFFECT** on the market or potential market if this item is used? Check all that apply.

Reproduction that substitutes for the purchase of the original weighs heavily against fair use. This factor is closely linked to the other factors.

FAVORS FAIR USE

OPPOSES FAIR USE

- | | |
|---|--|
| <input type="checkbox"/> User owns lawfully acquired or purchased copy of original work | <input type="checkbox"/> Could replace sale of copyrighted work |
| <input type="checkbox"/> One or few copies made | <input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative |
| <input type="checkbox"/> No significant effect on the market or potential market for copyrighted work | <input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work |
| <input type="checkbox"/> No similar product marketed by the copyright holder | <input type="checkbox"/> Affordable license fee available for using work |
| <input type="checkbox"/> Lack of licensing mechanism | <input type="checkbox"/> Numerous copies made |
| | <input type="checkbox"/> Made openly accessible on the internet or in other public forum |
| | <input type="checkbox"/> Repeated or long-term use desired |

Completed Analysis: (Check one of the following statements after completing the checklist.)

- Based on the fair use analysis completed above, I have determined that my use of the material falls within the fair use exception.
- Based on the fair use analysis completed above, I have determined that my use of the material does not fit within the fair use exception. I will obtain permission from the copyright owner before using the materials.

Signature: _____ Date: _____

Notations:

Adapted from documents prepared by the Copyright Management Center, Indiana University, Purdue University Indianapolis; University of North Carolina’s 2001 Copyright Policy; and existing copyright documents for Brigham Young University.