

Fair Use Analysis

Instructor Name: _____

Class or Project: _____

Course and Term: _____

Item Information: _____

Pedagogical Purpose: _____

Introduction to the Checklist

The Fair Use Checklist, created by Kenneth D. Crews (Columbia University) and Dwayne K. Buttler (University of Louisville), is a tool to assist you in determining whether your activities are within the limits of fair use under U.S. copyright law. 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 of the work used; and (4) the effect of the use upon the potential market for or value of the work.

Exceptions to Fair Use

A fair use analysis is not necessary if:

- The work is not protected by copyright. For example:
 - Works created by U.S. government employees as part of their official duties are not protected by copyright.
 - Works first published prior to 1923 are no longer protected by copyright. (All materials first published after 1978 should be presumed to be protected by copyright, even if no copyright notice is present.)
- The library owns the physical book and you have that book placed on the physical reserve shelf.
- The library has a license to use the work and your use falls within that license (e.g., all EBSCO databases allow linking for course reserves.
- It is legally available on the web, you link directly to it, and abide by reasonable requests posted on the site by the author of the content.

Instructions

For each item and every semester, instructors should review reserve materials using this checklist and articulate the pedagogical purpose for using copyrighted materials

When filling out the checklist, not all of the factors will be present in every situation. Check only those factors that apply to your use. Where the factors favoring fair use outnumber those against it, reliance on fair use is justified. Where fewer than half of the factors favor fair use, you should seek permission from the rights holder. Where the factors are evenly split, you should consider the total facts weighing in favor of fair use as opposed to the total facts weighing against fair use in deciding whether fair use is justified. Note that no single factor is determinative of fair use.

You should retain a copy of this checklist for each fair use in order to establish a reasonable and good faith attempt at applying fair use should any dispute regarding your use arise.

Purpose of the Use

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research/scholarship
- Restricted access (to students or other appropriate groups)
- Nonprofit educational institution
- Criticism
- Comment
- Transformative or productive use (changes the work for new utility)

Opposing Fair Use

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

Nature of the Work

Favoring Fair Use

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

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novel, film, play)
- Fiction

Amount Used

Favoring Fair Use

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for educational purpose

Opposing Fair Use

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

Effect on Market/Value

Favoring Fair Use

- User owns lawfully purchased or acquired copy of the original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by 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 copyrighted work
- Affordable permission available for using work
- Numerous copies made
- Repeated or long-term use