

Fair Use Checklist

Name: _____ Date: _____

Class or Project: _____

Course and Term: _____

Title of Copyrighted Work: _____

Author and Publisher: _____

Portion(s) to be used (e.g., pages, timer counts): _____

Instructions: Where the factors favoring fair use outnumber those against it, reliance on fair use is justified. Where fewer than half the factors favor fair use, instructors should seek permission from the rights holder. Where the factors are evenly split, instructors 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. Not all of the facts will be present in any given situation. Check only those facts that apply to your use. No single item or factor is determinative of fair use.

Complete and retain a copy of this checklist for each “fair use” of a copyrighted work in order to establish a “reasonable and good faith” attempt at applying fair use should any dispute regarding such use arise.

Purpose

Favoring Fair Use

- Directly related to classroom use
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- News reporting
- Transformative or Productive use
(changes the 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

Favoring Fair Use

- Published work
- Factual or nonfiction based

- Important to favored educational objectives

Opposing Fair Use

- Unpublished work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

Amount

Favoring Fair Use

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

Opposing Fair Use

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

Effect

Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder

Opposing Fair Use

- Impairs market or potential market for copyrighted work or derivative
- Could replace sale of copyrighted work
- Available licensing mechanism for use of the copyrighted work
- You made it accessible on Web or in other public forum
- Permission available for using work
- Numerous copies made
- Repeated or long term use