

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: Check only those facts that apply to your use. No single item or factor is determinative of fair use. Total up the number of checkmarks to give an approximate weighting for comparison purposes.

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.

For more information regarding the fair use factors, please see the fair use information provided by the Copyright Education Committee at uknow.drew.edu/confluence/display/copyright

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.

Factor 1: Purpose and Character of the Use

Weights in Favor of Fair Use

- Nonprofit Educational Institution
- Used for Purpose of Teaching (including multiple copies for classroom use) and/or Scholarship or Criticism, Comment, News Reporting, or Parody
- Used for noncommercial, nonprofit educational use
- Transformative (use changes work for new utility or purpose)
- Use is necessary to achieve your intended educational purpose

___ *Factors Weighing in Favor of Fair Use*

Weights Against Fair Use

- Commercial activity, profit from use
- For public distribution
- Used for entertainment
- Mirror image copying
- Use exceeds that which is necessary to achieve your intended educational purpose

___ *Factors Weighing Against Fair Use*

Factor 2: Nature of Copyrighted Work

Weighs in Favor of Fair Use

- Published work
- Factual/informational and educational in nature or nonfiction work
- Non-consumable work

___ *Factors Weighing in Favor of Fair Use*

Weighs Against Fair Use

- Unpublished work
- Fiction or highly creative work (art, music, novels, films, plays, poetry)
- Consumable work (workbook, test)

___ *Factors Weighing Against Fair Use*

Factor 3: Amount and Substantiality of Portion Used

Weighs in Favor of Fair Use

- Decidedly small portion of work used (no more than 10% of work not divided into chapters or having less than 10 chapters or no more than 1 chapter of a 10 or more chapter work)
- Portion used is not central or significant to entire work as a whole
- Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum and must be narrowly tailored to accomplish that purpose
- Access limited to students enrolled in course for only the term of the course

___ *Factors Weighing in Favor of Fair Use*

Weighs Against Fair Use

- Large portion or entire work used (more than 10% of work not divided into chapters or having less than 10 chapters or more than 1 chapter of a 10 or more chapter work)
- Portion used is central to work or "heart of the work"
- Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum or is not narrowly tailored to accomplish a demonstrated legitimate purpose in the course curriculum
- Access not limited

___ *Factors Weighing Against Fair Use*

Factor 4: Effect on Market for Original

Weighs in Favor of Fair Use

- Permission for digital excerpt is not readily available from publisher or Copyright Clearance Center at a reasonable price
- Decidedly small portion used
- User owns lawfully acquired or purchased copy of original work
- Use stimulates market for original work

___ *Factors Weighing in Favor of Fair Use*

Weighs Against Fair Use

- Permission for digital excerpt is readily available from publisher or Copyright Clearance Center at a reasonable price
- Large portion or entire work used
- User does not own lawfully acquired or purchased copy of original work
- Use impairs the market or potential market for original work

___ *Factors Weighing Against Fair Use*

Revised for use at Drew University based on the Fair Use Checklists of the University System of Georgia, http://www.usg.edu/images/copyright_docs/fair_use_checklist.pdf and Columbia University, <http://www.copyright.columbia.edu/fair-use-checklist>