

# CHECKLIST FOR FAIR USE

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project

Name: \_\_\_\_\_ Date: \_\_\_\_\_ Project: \_\_\_\_\_

Institution: \_\_\_\_\_ Prepared by: \_\_\_\_\_

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## PURPOSE

### *Favoring Fair Use*

- Teaching (including multiple copies for 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

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## 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- Unpublished work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

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## 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"

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## 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
- 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 the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on Web or in other public forum
- Repeated or long-term use

## Checklist for Fair Use

Please complete this analysis to determine whether your proposed use of a copyrighted work may be used within the scope of Fair Use. Review the completed form with the Copyright Licensing Office, 422-9339 or 3830 HBLL.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

### Citation/Description of work to be used:

Chapter/Article/Scene Title: \_\_\_\_\_

Total pages/minutes used: \_\_\_\_\_

Intended use:

\_\_\_\_\_

Course (if applicable): \_\_\_\_\_ # of students: \_\_\_\_\_

### Citation/Description of original work:

Author/Editor/Translator: \_\_\_\_\_

Publisher: \_\_\_\_\_

Book/Journal/Movie Title: \_\_\_\_\_

Total length of original work: \_\_\_\_\_

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**

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

**OPPOSES FAIR USE**

- Large portion or entire work to be used
- Portion used is central to work or “heart of the work”
- 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.

**FAVORS 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
- Lack of licensing mechanism

**OPPOSES 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 the copyrighted work
- Affordable license fee available for using work
- Numerous copies made
- Made openly accessible on the internet or in other public forum
- 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 attempt to obtain permission from the copyright owner before using the materials.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Position/Title: \_\_\_\_\_

**Notations:**

# Fair Use Checklist for Course Reserve

Check the boxes relevant to your intended use of copyrighted materials, evaluate the balance, and reach a conclusion.

A copy of this checklist must be turned in with each request to place materials on course reserve. In addition, you should retain a copy of this checklist for your files.

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Dept.: \_\_\_\_\_ Course: \_\_\_\_\_

Please attach a list citing the works to be placed on reserve using a claim of fair use.

## PURPOSE

### *Favoring Fair Use*

### *Opposing Fair Use*

- Teaching
- Research
- Scholarship
- Criticism
- Comment
- News Reporting
- Nonprofit Educational Use
- Transformative or Productive Use

- Commercial Activity
- Profit from Use
- Bad-faith Behavior

## NATURE

### *Favoring Fair Use*

### *Opposing Fair Use*

- Factual or Nonfiction
- Published Work
- Not Usually Available to User
- Easily Available to User

- Fiction
- Highly Creative Work
- Unpublished Work

## AMOUNT

### *Favoring Fair Use*

### *Opposing Fair Use*

- Portion Used Not Central to Work
- Small Quantity

- Portion Used Is Central to Work
- Substantial Portion or All of the Work

## EFFECT

***Favoring Fair Use***

***Opposing Fair Use***

No Significant Effect on Market  
Lack of Licensing Mechanism  
University or professor owns a legally  
acquired copy of the work  
Replaces Sale of the Copyrighted Work  
Available Licensing Mechanism

Repeated Use of the Work  
Significantly Impairs Market for Work

**CONCLUSION**

***Fair use applies***

***Fair use does not apply***

Please sign here: \_\_\_\_\_

This checklist is based on the "Checklist for Fair Use" provided by the Copyright Management Center, IUPUI, 530 W New York St., Indianapolis, IN 46202, <http://www.copyright.iupui.edu>

- » [OCC Home Page](#)
- » [What is Copyright Law?](#)
- » [Fair Use Information](#)
- » [The TEACH Act](#)
- » [Public Domain](#)
- » [CONFU Guidelines](#)
- » [PTC's Copyright Policy](#)
- » [Penalties](#)
- » [Clearance Form Process](#)
- » [Copyright Registration](#)
- » [Glossary of Terms](#)
- » [Learning Opportunities](#)
- » [Other Resources](#)
- » [Help on Campus](#)
- » [PTC Library](#)
- » [Instructional Support Ctr.](#)

## Fair Use Information

[Section 107 of the U.S. Copyright Law](#) provides for fair use exemption. Fair Use is intended to balance the needs of scholars and students with the rights of copyright owners. The law states that copyrighted materials may be used **one time only** under special circumstances which constitute fair use. While Fair Use Guidelines described on this page do not carry total legal force, they are usually considered a "safe harbor" for permissible use.

### FAIR USE SCALE

What constitutes fair use is expressed in the form of guidelines rather than explicit rules. When ruling in "fair use" cases, courts consider four factors: purpose, nature, proportion and impact. In the table below, we have summarized fair use guidelines for each of these factors. Consider where you stand on each factor and use the provided scale to determine how you will proceed.

<b>4 out of 4</b>  Your use of the copyrighted work is fair.	<b>3 out of 4</b>  You are probably protected under Fair Use.	<b>2 out of 4</b>  Use the copyrighted work at your own risk.	<b>1 out of 4</b>  You are strongly advised not to use the work.
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### PURPOSE

***Favoring Fair Use***

- Non-Profit
- Educational
- Teaching
- Research
- Scholarship
- Criticism
- Comment
- News Reporting
- Transformative or productive use
- Restricted access
- Parody

***Opposing Fair Use***

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

**NATURE**

***Favoring Fair Use***

- Published work
- Fact-based or nonfiction work
- Important to stated educational objectives

***Opposing Fair Use***

- Unpublished work
- Highly creative or fictional work
- Work was intended created for the Education Market (ex. textbooks, workbooks)

**PROPORTION or AMOUNT**

***Favoring Fair Use***

- Small portion of the work
- Section used is not central or critical to entire work; it is not the "heart of the work"
- Amount is suitable for stated educational objectives
- Thumbnail image

***Opposing Fair Use***

- Large or entire portion of the work
- Section used is central to the work

(not to exceed 100 x 125 or 125 x 100 pixels)

**IMPACT or EFFECT**  
(most important of the Four Factors)

*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
- Lack of licensing mechanism
- Original is out of print or otherwise unavailable
- Copyright owner cannot be identified
- Use is spontaneous

*Opposing Fair Use*

- Competes with sales of the original work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism available
- Affordable permission available for using work
- Numerous copies made
- User makes work accessible on Web or in other public forum
- Repeated or long term use
- What if "everybody did it"

**4 out of 4**

Your use of the copyrighted work is fair.

**3 out of 4**

You are probably protected under Fair Use.

**2 out of 4**

Use the copyrighted work at your own risk.

**1 out of 4**

You are strongly advised not to use the work.

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### Sources

Some of the information used on this page came from these sources:

- **PBS Teacher Source: Copyright**  
[http://www.pbs.org/teachersource/copyright/copyright\\_ed\\_multi.shtm](http://www.pbs.org/teachersource/copyright/copyright_ed_multi.shtm)

### Disclaimer

**Please note that the information presented in the Online Copyright Center is for information purposes only. It should not be used as a substitute for actual legal advice.**

# CHECKLIST FOR CONDUCTING A FAIR USE ANALYSIS BEFORE USING COPYRIGHTED MATERIALS

This checklist is a tool to assist you in applying the balancing test for determining whether you may make or distribute copies of works protected by copyright without having to obtain the permission of the copyright holder.<sup>1</sup> It is recommended that you complete and retain a copy of this form in connection with each "fair use" of a copyrighted work.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Class or Project: \_\_\_\_\_

Title of Copyrighted Work: \_\_\_\_\_

Portion to be used (e.g. pages): \_\_\_\_\_

**Directions:** Check all boxes that apply. For each of the four sections below, determine whether that factor favors or disfavors a finding of fair use. Where the factors favoring "fair use" outnumber the factors weighing against a finding of "fair use," reliance on the fair use exception is justified. Where less than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work. Where the factors appear evenly split or you have questions about interpretation, please feel free to contact or Patricia McClary in the Office of University Counsel (5-5126; pam4@cornell.edu) or the Copyright Information Center ([www.copyright.cornell.edu](http://www.copyright.cornell.edu)).

## PURPOSE OF THE USE

### Favoring Fair Use

- Educational
  - Teaching (including multiple copies for classroom use)
  - Research
  - Scholarship
  - Criticism
  - Comment
- Transformative or Productive use (changes the work to serve a new purpose)
- Nonprofit use
- 

### Disfavoring Fair Use

- Commercial, entertainment or other
- Non-transformative, verbatim/exact copy
- Profit-generating use
- 

## NATURE OF THE COPYRIGHTED MATERIAL

### Favoring Fair Use

- Factual, nonfiction, news
- Published work
- 

### Disfavoring Fair Use

- Creative (art, music, fiction), or consumable (workbooks, tests) work
- Unpublished work
- 

<sup>1</sup>In many cases, the University Library may have a license to use material. A fair use analysis does not have to be conducted where the desired use is permitted under the terms of an applicable license. Similarly, other provisions of the copyright law cover such matters as library copying, in-class use, and distance learning. This checklist is not needed where other specific statutory provisions authorize the activity.

### AMOUNT COPIED

#### Favoring Fair Use

- Small quantity (e.g. a single chapter or journal article or other excerpt consisting of less than 10% of the work)
- Portion used is not central to entire work as a whole
- Amount is appropriate to education purpose

#### Disfavoring Fair Use

- Large portion or entire work
- Portion used is central or the "heart" of the work
- Includes more than necessary for education purpose

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### EFFECT ON THE MARKET FOR ORIGINAL

#### Favoring Fair Use

- No significant effect on the market or potential market for the copyrighted work
- One or few copies made and/or distributed
- No longer in print; absence of licensing mechanism
- Restricted access (limited to students in a class or other appropriate group)
- One-time use, spontaneous use (no time to obtain permission)

#### Disfavoring Fair Use

- Cumulative effect of copying would be to substitute for purchase of the copyrighted work
- Numerous copies made and/or distributed
- Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available e.g. CCC licensing or off-prints available
- Will be making it publicly available on the Web or using other means of broad dissemination
- Repeated or long-term use

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Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project

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Date: \_\_\_\_\_

Institution: \_\_\_\_\_

Project: \_\_\_\_\_

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### *Favoring Fair Use*

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- Research
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- 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

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## NATURE

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

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## 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"

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## 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
- 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 the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on Web or in other public forum
- Repeated or long term use

**Circle all the categories that apply below. Sign, date, and retain with appropriate accompanying materials for three years.**

**The Four Factors**

**1. What is the purpose of the proposed use?**

- Nonprofit
- Teaching
- Scholarship/Research
- Personal

- Criticism
- Commentary
- Parody
- Restricted Access
- News Reporting
- Otherwise “Transformative” Use

- Commercial
- Entertainment
- Bad Faith Behavior
- Profit
- Lack Of Attribution

Uses on the left tend to tip the balance in favor of fair use. Uses on the right tend to tip the balance in favor of seeking permission from the copyright holder. The uses in the middle, if they apply, are favorable to fair use: they add weight to the tipping force of uses on the left.

Tally: Favors Fair Use: \_\_\_\_\_ Does Not Favor Fair Use: \_\_\_\_\_

**2. What is the nature of the copyright work to be used?**

- Factual
- Published

- A Mixture Of Factual And Imaginative
- Unpublished (Right Of 1<sup>st</sup> Publication)

- Creative
- Entertainment
- Consumable Materials (Workbooks, Answer Sheets)

Again, uses on the left tend to tip the balance in favor of fair use while uses on the right favor seeking permission. In this case, uses in the middle have little effect on the balance.

Tally: Favors Fair Use: \_\_\_\_\_ Does Not Favor Fair Use: \_\_\_\_\_

**3. How much of the copyrighted work will be used?**

- Small Amount
- Amount Is Appropriate For A Favored Educational Use

- Large Portion Or Whole Work
- Portion Used Is Qualitatively Substantial

The amount of material should be measured both quantitatively and qualitatively. Quantity should be evaluated 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 weigh against fair use.

Tally: Favors Fair Use: \_\_\_\_\_ Does Not Favor Fair Use: \_\_\_\_\_

**4. What is the effect on the market or potential market for the copyrighted work?**

- After An Evaluation Of First Three Factors, Proposed Use Is Tipping Towards Fair Use
  - User Owns Lawfully Acquired Copy
- No Significant Effect On The Market Or Potential Market For The Work
  - No Similar Product Marketed By The Copyright Holder
  - Copyright Holder Unidentifiable

- Replaces Sale Of Copyrighted Work
- Significantly Impairs Market Or Potential Market For The Work
  - Numerous Copies Made
- Use Makes It Publicly Accessible On The Web