

## ***FAIR USE CHECKLIST***

For each of the four factors, check as many statements as apply. 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 ((INSERT CONTACT INFO HERE)) for additional assistance.

This checklist is not a substitute for legal advice and does not insure against liability for copyright infringement. Rather, this checklist is a tool to assist in making a determination of whether fair use exists for a proposed use. 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; rather, it is a balancing of all facts that determines whether a proposed use falls within the fair use exception.

For more information regarding copyright and fair use, please see the information and resources available at ((WEBSITE)).

### FACTOR 1: PURPOSE AND CHARACTER OF USE

<b>Facts Favoring Fair Use</b>	<b>Facts Opposing Fair Use</b>
<input type="checkbox"/> Nonprofit educational institution	<input type="checkbox"/> Commercial Activity
<input type="checkbox"/> Use supports teaching	<input type="checkbox"/> Profit from use
<input type="checkbox"/> Research or Scholarship	<input type="checkbox"/> Entertainment
<input type="checkbox"/> Criticism, comment, news reporting or parody	<input type="checkbox"/> Non-transformative – use fulfills original purpose
<input type="checkbox"/> Transformative – work is used for different purpose than original utility	<input type="checkbox"/> For publication
<input type="checkbox"/> Personal study	<input type="checkbox"/> For public distribution
<input type="checkbox"/> Use is necessary to achieve pedagogical goals	<input type="checkbox"/> Use exceeds that which is necessary for stated educational purpose
<input type="checkbox"/> <b>Weight in Favor of Fair Use</b>	<input type="checkbox"/> <b>Weight Against Fair Use</b>

### FACTOR 2: NATURE OF THE WORK

<b>Facts Favoring Fair Use</b>	<b>Facts Opposing Fair Use</b>
<input type="checkbox"/> Published work	<input type="checkbox"/> Unpublished work
<input type="checkbox"/> Factual or nonfiction; technical	<input type="checkbox"/> Highly creative work (art, music, film, fiction, dramatic work)
<input type="checkbox"/> Essential for learning objectives	<input type="checkbox"/> Consumable work (workbook, test book)
<input type="checkbox"/> <b>Weight in Favor of Fair Use</b>	<input type="checkbox"/> <b>Weight Against Fair Use</b>

FACTOR 3: AMOUNT AND SUBSTANTIALITY OF PORTION USED

<b>Facts Favoring Fair Use</b>	<b>Facts Opposing Fair Use</b>
<input type="checkbox"/> Small portion of work used	<input type="checkbox"/> Large portion or entire work used
<input type="checkbox"/> Portion used is not central or significant to crux of the entire work	<input type="checkbox"/> Portion used is central to work or “heart of the work” or a “spoiler”
<input type="checkbox"/> Selection is narrowly tailored to educational purpose, such as criticism, comment, research, or subject matter	Selection is more than necessary for criticism, comment, research, or subject matter of the course
<input type="checkbox"/> <b>Weight in Favor of Fair Use</b>	<input type="checkbox"/> <b>Weight Against Fair Use</b>

FACTOR 4: EFFECT ON THE MARKET

<b>Facts Favoring Fair Use</b>	<b>Facts Opposing Fair Use</b>
<input type="checkbox"/> Absence of significant effect on market for copyrighted work	<input type="checkbox"/> Significantly impairs market or potential market for work or its derivative
<input type="checkbox"/> Use stimulates market for original work	<input type="checkbox"/> Use is repetitive and long-term, affecting the market for the work
<input type="checkbox"/> No similar product marketed by rights holder	<input type="checkbox"/> Reasonably available licensing mechanism for use of the work
<input type="checkbox"/> Licensing or permission unavailable	<input type="checkbox"/> Affordable permission available for use of work
<input type="checkbox"/> Individual or institution owns lawfully acquired or purchased copy of original work	<input type="checkbox"/> Individual or institution does not own a lawfully acquired or purchased copy of the original work
<input type="checkbox"/> Access restricted to students enrolled in course	<input type="checkbox"/> Unrestricted access on the web or in some other public forum
<input type="checkbox"/> One or few copies made	<input type="checkbox"/> Numerous copies made or distributed
<input type="checkbox"/> <b>Weight in Favor of Fair Use</b>	<input type="checkbox"/> <b>Weight Against Fair Use</b>