

CHECKLIST FOR CONDUCTING A FAIR USE ANALYSIS BEFORE USING COPYRIGHTED MATERIALS

This checklist is a tool to assist the balancing test for determining whether you may make or distribute copies of works protected by copyright without having to obtain permission of the copyright holder. 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 the factor favors or disfavors a finding of fair use.

PURPOSE OF USE

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> Educational Teaching (including multiple copies for classroom use) <ul style="list-style-type: none"> • Research • Scholarship • Criticism • Comment 	<input type="checkbox"/> Commercial, entertainment or other
<input type="checkbox"/> Transformative or productive use	<input type="checkbox"/> Non-transformative, verbatim/exact copy
<input type="checkbox"/> Non-profit use	<input type="checkbox"/> Profit-generating use

NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> Factual, nonfiction, news	<input type="checkbox"/> Creative (art, music, fiction), or consumable workbooks, tests) work
<input type="checkbox"/> Published work	<input type="checkbox"/> Unpublished work

AMOUNT COPIED

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> Small quantity (e.g. a single chapter or journal article or other excerpt consisting of less than 10% of the work)	<input type="checkbox"/> Large portion or entire work
<input type="checkbox"/> Portion used is not central to entire work as a whole	<input type="checkbox"/> Portion used is central or the “heart” of the work
<input type="checkbox"/> Amount is appropriate to education purpose	<input type="checkbox"/> Includes more than necessary for education purpose

EFFECT ON THE MARKET FOR ORIGINAL

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> No significant effect on the market or potential market for the copyrighted work	<input type="checkbox"/> Cumulative effect of copying would be to substitute for purchase of the copyrighted work
<input type="checkbox"/> One or few copies made and/or distributed	<input type="checkbox"/> Numerous copies made and/or distributed
<input type="checkbox"/> No longer in print; absence of licensing mechanism	<input type="checkbox"/> Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available e.g. CCC licensing or off-prints available
<input type="checkbox"/> Restricted access (limited to students in a class or other appropriate group)	<input type="checkbox"/> Will be making it publicly available on the Web or using other means of broad dissemination
<input type="checkbox"/> One-time use, spontaneous use (no time to obtain permission)	<input type="checkbox"/> Repeated or long-term use

FAVORING TOTAL: _____	DISFAVORING TOTAL: _____
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If factors that favor “fair use” outnumber those that disfavor “fair use” using the “fair use” exception is acceptable. If the factors disfavor more than favor, then permission from the author should be obtained prior to copying or disseminating copies of the work. If factors are evenly split or close to split feel free to contact Darci Adolf, OCCC Librarian, or the Copyright Information Center (www.copyright.cornell.edu).

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