

Fair Use Analysis Checklist

Name: _____ Date: _____

Project: _____

This checklist is not legal advice. It is provided as a tool to assist you in determining whether your use of copyrighted works is within the limits of fair use under U.S. copyright law (Section 107 of the U.S. Copyright Act). Four factors form the structure of this checklist. Congress and courts have offered some insight into the specific meaning of the factors, and those interpretations are reflected in the details of this form.

This checklist serves two purposes: (1) it will help you to focus on factual circumstances that are important in your evaluation of fair use; (2) the checklist is an important mechanism for you to document your decision-making process. Maintaining a record of your fair use analysis can be critical for establishing good faith. Consider adding notes about your project as you complete this checklist and then keep it for your records and future reference.

Each fair use factor should be given careful consideration in analyzing your use of copyrighted works. Check all boxes that apply under each factor.

After completing the checklist it is up to you to determine if the circumstances and conditions of your use lean most convincingly for or against fair use. Because you are most familiar with your project, you are best positioned to evaluate the facts and make this decision. Be advised that there is no magic formula to determining fair use. You cannot just add up each column and assume if you have more checks favoring fair use your use falls under fair use. Depending on the specific facts of your case, it is possible that even if three of the factors would tend to favor a fair use finding, the fourth factor may be the most important one in that particular case, leading to a conclusion that the use may not be considered fair.

Purpose of Use

Favoring Fair Use

- Teaching (including multiple copies for commercial activity classroom use)
- Research
- Scholarship
- Non Profit 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 or original author

Nature of Use

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novel, plays, poetry, films, etc.)
- Fiction

Amount of Use

Favoring Fair Use

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

Opposing Fair Use

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

Effect of Use

Favoring Fair Use

- User owns lawfully purchased or acquired 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 the web or in other public forum
- Repeated or long-term use