Fair Use Checklist

WESTERN MICHIGAN UNIVERSITY
University Libraries

Project:

Copyrighted item:

Description of use:

Date:

Prepared by:

Factor 1: Purpose	
Favoring Fair Use:	**Opposing Fair Use:**
Teaching (including multiple copies for classroom use)	Commercial activity
Research	Profiting from the use
Scholarship	Entertainment
Nonprofit educational institution	Bad-faith behavior
Criticism	Denying credit to original author
Comment	
News reporting	
Transformative or productive use (changes the work for new utility)	
Restricted access (to students or other appropriate group)	
Parody	

Factor 2: Nature	
Favoring Fair Use:	**Opposing Fair Use:**
Published work	Unpublished work
Factual or nonfiction based	Highly creative work (art, music, novels, films, plays)
Important to favored educational objectives	Fiction

Factor 3: Amount	
Favoring Fair Use:	**Opposing Fair Use:**
Small quantity	Large portion or whole work used
Portion used is not central or significant to entire work	Portion used is central to or "heart of the work"
Amount is appropriate for favored educational purpose	

Factor 4: Effect	
Favoring Fair Use:	**Opposing Fair Use:**
User owns lawfully purchased or acquired copy of original work	Could replace sale of copyrighted work
One or few copies made	Significantly impairs market or potential market for copyrighted work or derivative
No significant effect on the market or potential market for copyrighted work	Reasonably available licensing mechanism for use of the copyrighted work
No similar product marketed by the copyright holder	Affordable permission available for using work
Lack of licensing mechanism	Numerous copies made
	You made it accessible on the Web or in other public forum
	Repeated or long-term use

Introduction to the Checklist

The Fair Use Checklist and variations on it have been widely used for many years to help educators, librarians, lawyers, and many other users of copyrighted works determine whether their activities are within the limits of fair use under U.S. copyright law (Section 107 of the U.S. Copyright Act). The four factors used to determine whether the use of a work is fair use (purpose, nature, amount, effect) 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.

Benefits of Using the Checklist

A proper use of this checklist should serve two purposes. **First, it should help you to focus on factual circumstances that are important in your evaluation of fair use.** The meaning and scope of fair use depends on the particular facts of a given situation, and changing one or more facts may alter the analysis. **Second, the checklist can provide an important mechanism to document your decision-making process.** Maintaining a record of your fair use analysis can be critical for establishing good faith; consider adding to the checklist the current date, detailed notes about your project, and specific information about the copyrighted item in use. Keep completed checklists and related documents on file for future reference.

The Checklist as Roadmap

As you use the checklist and apply it to your situations, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will favor fair use and others may oppose fair use. A key issue is whether you are acting reasonably in checking any given box, with the ultimate question being whether the cumulative weight of the factors favors or turns you away from fair use. **This is not an exercise in simply checking and counting boxes. Instead, you need to consider the relative persuasive strength of the circumstances and if the overall conditions lean most convincingly for or against fair use.** Because you are most familiar with your project, you are probably best positioned to evaluate the facts and make the decision.

Caveat

This checklist is provided as a tool to assist you when undertaking a fair use analysis. The four factors listed in the Copyright Statute are only guidelines for making a determination as to whether a use is fair. Each factor should be given careful consideration in analyzing any specific use. There is no magic formula; an arithmetic approach to the application of the four factors should not be used. Depending on the specific facts of a 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.