

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. 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. Where the factors favoring "fair use" outnumber the factors weighing against a finding of "fair use," reliance on the fair use exception is likely justified. Where less than half of the factors favor "fair use" or if they are evenly split, permission should be obtained before copying or disseminating copies of the work. Please feel free to contact Scholarly Communications at scholarlycommunications@liberty.edu if you have questions.

PURPOSE OF THE USE

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 to serve a new purpose)
- Restricted access (to students or other appropriate group)
- Parody

Disfavoring Fair Use

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

NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use

- Published work
- Factual or nonfiction based

Disfavoring Fair Use

- Unpublished work
- Creative (art, music, novels, films, plays) or consumable (workbooks, tests) work

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 or significant to entire work as a whole
- Amount is appropriate to education purpose

Disfavoring Fair Use

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

EFFECT ON THE MARKET FOR ORIGINAL

Favoring Fair Use

- One or few copies made and/or distributed
- No significant effect on the market or potential market for the copyrighted work
- 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
 - 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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Revised for use by Liberty University from the "Checklist for Fair Use" by Kenneth D. Crews of [Columbia University](#) and from a similar worksheet developed by the Copyright Resource Center at [Cornell University](#).