

## Fair Use Analysis Checklist

Use this checklist to help analyze whether a use of a copyrighted work could be a fair use.

**Remember:** No single item or factor is determinative of fair use

Find the annotated version of this checklist and the PDF at <http://copyright.psu.edu/checklist!>

Name:

Class or Project:

Date:

Course and Term:

Title of Copyrighted Work:

Author and Publisher:

Portion(s) to be used (e.g., pages, timer counts):

### Factor 1: Purpose and Character of the Use

#### FAVORS FAIR USE

- Nonprofit Educational Institution
- Teaching (including multiple copies for classroom use)
- Research or Scholarship
- Criticism, Comment, News Reporting, or Parody
- Transformative (use changes work for new utility or purpose)
- Personal Study

#### OPPOSES FAIR USE

- Commercial activity
- Profiting from the use
- Entertainment
- Non-transformative
- For publication or public distribution
- Bad-faith behavior
- Failure to provide appropriate credit to original author

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Factor Weighs in Favor of Fair Use

Factor Weighs Against Fair Use

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### Factor 2: Nature of Copyrighted Work

#### FAVORS FAIR USE

- Factual or nonfiction work
- Important to educational objectives

#### OPPOSES FAIR USE

- Unpublished work
- Highly creative work (art, music, novels, films, plays, fiction, poetry)

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Factor Weighs in Favor of Fair Use

Factor Weighs Against Fair Use

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### Factor 3: Amount and Substantiality of Portion Used

#### FAVORS FAIR USE

- Small portion of work used
- Portion used is not central or significant to entire work as a whole
- Amount is tailored to acceptable purpose

#### OPPOSES FAIR USE

- Large portion or entire work used
- Portion used is central to work or “heart of the work”
- Amount taken is more than is necessary

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Factor Weighs in Favor of Fair Use

Factor Weighs Against Fair Use

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### Factor 4: Effect on Market for Original Work

#### FAVORS FAIR USE

- No significant effect on the market on actual or potential market for copyrighted work
- Use stimulates market for original work
- One or few copies made
- No similar product marketed by the copyright holder
- Lack of licensing mechanism or out of print
- User owns lawfully acquired or purchased copy of original work
- Restricted Access
- Supplemental Reading

#### OPPOSES FAIR USE

- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available and affordable licensing mechanism for use of the copyrighted work
- Numerous copies made
- Repeated and/or long-term use that could diminish market for original work
- Could replace sale of copyrighted work
- Unrestricted access online or by other means
- Required Reading

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Factor Weighs in Favor of Fair Use

Factor Weighs Against Fair Use

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### Fair Use Analysis

- Based on the fair use analysis and weighing all the factors together, the use of the copyrighted material falls within the fair use exception.
- Based on the fair use analysis and weighing all the factors together, the use of the copyrighted material does not fit within the fair use exception. Permission should be obtained.

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