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.

Learn about fair use and download this checklist: [http://copyright.psu.edu/fair-use](http://copyright.psu.edu/fair-use)

Learn about attribution: [http://copyright.psu.edu/attribution](http://copyright.psu.edu/attribution)

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

The first factor is one of the most important of the four factors.

**FAVORS FAIR USE**
- Nonprofit Educational Institution
- Teaching/Educational Purpose (including multiple copies for classroom use)
- Research or Scholarship
- Criticism, Comment, News Reporting, or Parody
- Transformative (use is for purpose different from purpose for which work was created)
- Personal Study

**OPPOSES FAIR USE**
- Commercial/for-profit
- Bad-faith behavior

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**Factor 2: Nature of Copyrighted Work**

The second factor typically is the least important of the four fair use factors.

**FAVORS FAIR USE**
- Factual or nonfiction work

**OPPOSES FAIR USE**
- Unpublished work
- Highly creative work (art, music, novels, films, plays, fiction, poetry)
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

Factor 4: Effect on Market for Original Work

The fourth factor is one of the most important of the four factors.

FAVORS FAIR USE
- No significant effect on actual or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism
- User owns lawfully acquired or purchased copy of original work
- Restricted Access

OPPOSES FAIR USE
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available 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

My Fair Use Determination

- Based on the fair use analysis and weighing all the factors together, the use of the copyrighted material is fair use.
- Based on the fair use analysis and weighing all the factors together, the use of the copyrighted material is not fair use. The material should not be used without permission.

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