



Fair Use Analysis Checklist for Using Copyrighted Materials

Directions

Check all boxes that apply. For each of the four sections below, determine whether that factor favors or disfavors a finding of fair use. If there are additional details or circumstances that may impact the determination, list them in "Additional Information." Where the factors favoring "fair use" outnumber the factors weighing against a finding of "fair use," reliance on the fair use exception is justified. Where less than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work.

As you use the checklist and apply it to your work, 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 (although that is a part of the task). 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.

You should retain a copy of the checklist in connection with each "fair use" assertion you are making in your project.

Name:

Institution:

Project:

Date:

Prepared by:

Purpose of the Use

Consider the purpose of your work.

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> Educational: Teaching (including multiple copies for classroom use); Research; Scholarship; Criticism; Comment	<input type="checkbox"/> Commercial, entertainment or other
<input type="checkbox"/> Transformative or Productive use (changes the work to serve a new purpose)	<input type="checkbox"/> Non-transformative, verbatim/exact copy
<input type="checkbox"/> Nonprofit use	<input type="checkbox"/> Profit-generating use

Additional notes:

Nature of Copyrighted Material

Consider the copyrighted work that you want to use.

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> Factual, nonfiction, news	<input type="checkbox"/> Creative (art, music, fiction) or consumable (workbooks, texts) work
<input type="checkbox"/> Published works	<input type="checkbox"/> Unpublished work

Additional notes:

Amount copied

Consider how much of the copyrighted work you want to use.

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> Small quantity (e.g., a single chapter or journal article or other excerpt consisting of less than 10% of the work)	<input type="checkbox"/> Large portion or entire work
<input type="checkbox"/> Portion used is not central to entire work	<input type="checkbox"/> Portion used is central or the “heart” of the work
<input type="checkbox"/> Amount is appropriate to education purpose	<input type="checkbox"/> Includes more than necessary for education purpose

Additional notes:

Effect on the Market for Original

What effect will your use of the copyrighted work have on the original work's market value?

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> No significant effect on the market or potential market for the copyrighted work	<input type="checkbox"/> Cumulative effect of copying would be to substitute for purchase of the copyrighted work
<input type="checkbox"/> One or few copies made and/or distributed	<input type="checkbox"/> Numerous copies made and/or distributed
<input type="checkbox"/> No longer in print; absence of licensing mechanism	<input type="checkbox"/> Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available e.g., CCC2 licensing or off-prints available

Additional notes:

Summary and Decision

Total Factors Favoring Fair Use	Total Factors Disfavoring Fair Use

Additional notes: