

Fair Use Checklist

The following checklist, created by the Copyright Advisory Office at Columbia University, is designed to help educators, librarians, and others to focus on factual circumstances that are important to evaluating the "fair use" of copyrighted works. A reasonable fair use analysis is based on four factors set forth in the fair use provision of U.S. copyright law, Section 107 of the Copyright Act of 1976. The application of those factors depends on the particular facts of your situation, and changing one or more facts may alter the outcome of the analysis. The checklist derives from those four factors and from the judicial decisions interpreting copyright law.

A second purpose of the checklist is to provide an important means for recording your decision-making process. Maintaining a record of your fair use analysis is critical to establishing your "reasonable and good-faith" attempts to apply fair use to meet your educational objectives. Section 504 (c)(2) of the Copyright Act offers some protection for educators and librarians who act in good faith. Once you have completed your application of fair use to a particular need, keep your completed checklist in your files for future reference.

As you use the checklist and apply it to your situation, 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 concern is whether you are acting reasonably in checking any given box; the ultimate concern is whether the cumulative "weight" of the factors favors or opposes fair use. Because you are most familiar with your project, you are probably best positioned to make that decision.

Fair Use Checklist ([hyperlink](#))

Purpose

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 for new utility)
- Restricted access (to students or other appropriate group)
- Parody

Opposing Fair Use

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

Nature

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work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

Amount

Favoring Fair Use

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

Effect

Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to work or "heart of the work"

Opposing Fair Use

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Web or in other public forum
- Repeated or long term use