

Fair Use Checklist: Introduction

Prepared by the Indiana University Copyright Management Center

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We are pleased to offer the following “Checklist for Fair Use” as a helpful tool for the academic community. We hope that it will serve two purposes. First, it should help educators, librarians, and others to focus on factual circumstances that are important to the evaluation of a contemplated fair use of copyrighted works. A reasonable fair-use analysis is based on four factors set forth in the fair-use provision of 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 for fair use” derives from those four factors and from the judicial decisions interpreting copyright law.

For additional information about fair use and its application to the needs of education, read the following publications from the Copyright Management Center:

- [Fair Use: Overview and Meaning for Higher Education](#), Kenneth D. Crews
- [A Fair-Use Case Study: Using Copyrighted Materials On The World Wide Web](#), Dwayne K. Buttler

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. The [Indiana University Policy on Fair Use of Copyrighted Works for Education and Research](#) requires reasonable and good-faith applications of fair use from all members of the university community. 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. Only you can make that decision, and the IU policy empowers you to make it in a reasonable and good-faith manner.

To learn more about fair use and other aspects of copyright law, visit the Copyright Management Center website at <http://www.iupui.edu/~copyinfo/>.

CHECKLIST FOR FAIR USE

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project

Name: _____

Date: _____

Institution: _____

Project: _____

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

Opposing Fair Use

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

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

- 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 Web or in other public forum
- Repeated or long term use