

Fair Use Checklist

Name: _____ Date: _____

Class or Project: _____

Course and Term: _____

Title of Copyrighted Work: _____

Author and Publisher: _____

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

Instructions: Where the factors favoring fair use outnumber those against it, reliance on fair use is justified. Where fewer than half the factors favor fair use, instructors should seek permission from the rights holder. Where the factors are evenly split, instructors should consider the total facts weighing in favor of fair use as opposed to the total facts weighing against fair use in deciding whether fair use is justified. Not all of the facts will be present in any given situation. Check only those facts that apply to your use. No single item or factor is determinative of fair use. Instructors should consult the Legal Affairs office at their institution or at the Office of the Board of Regents if they have questions regarding analysis of the four factors.

For more information regarding the fair use factors, please see the fair use sections of the Policy on the Use of Copyrighted Works in Education and Research for the University System of Georgia, which can be found on the web at <http://www.usg.edu/copyright/>.

Complete and retain a copy of this checklist for each “fair use” of a copyrighted work in order to establish a “reasonable and good faith” attempt at applying fair use should any dispute regarding such use arise.

Factor 1: Purpose and Character of the Use

Weighs in Favor of Fair Use

- Nonprofit Educational Institution
- Used for Purpose of Teaching (including multiple copies for classroom use) and/or Scholarship or Criticism, Comment, News Reporting, or Parody
- Used for noncommercial, nonprofit educational use
- Transformative (use changes work for new

Weighs Against Fair Use

- Commercial activity, profit from use
- For public distribution
- Used for entertainment
- Mirror image copying

utility or purpose)

Use is necessary to achieve your intended educational purpose

Factor Weighs in Favor of Fair Use

Use exceeds that which is necessary to achieve your intended educational purpose

Factor Weighs Against Fair Use

Factor 2: Nature of Copyrighted Work

Weighs in Favor of Fair Use

- Published work
- Factual/informational and educational in nature or nonfiction work
- Non-consumable work

Factor Weighs in Favor of Fair Use

Weighs Against Fair Use

- Unpublished work
- Fiction or highly creative work (art, music, novels, films, plays, poetry)
- Consumable work (workbook, test)

Factor Weights Against Fair Use

Factor 3: Amount and Substantiality of Portion Used

Weighs in Favor of Fair Use

- Decidedly small portion of work used (no more than 10% of work not divided into chapters or having less than 10 chapters or no more than 1 chapter of a 10 or more chapter work)
- Portion used is not central or significant to entire work as a whole
- Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum and must be narrowly tailored to accomplish that purpose

Access limited to students enrolled in course for only the term of the course

Factor Weighs in Favor of Fair Use

Weighs Against Fair Use

- Large portion or entire work used (more than 10% of work not divided into chapters or having less than 10 chapters or more than 1 chapter of a 10 or more chapter work)
- Portion used is central to work or “heart of the work”
- Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum or is not narrowly tailored to accomplish a demonstrated legitimate purpose in the course curriculum

Access not limited

Factor Weighs Against Fair Use

Factor 4: Effect on Market for Original

Weighs in Favor of Fair Use

- Permission for digital excerpt is not readily available from publisher or Copyright Clearance Center at a reasonable price
- Decidedly small portion used
- User owns lawfully acquired or purchased copy of original work
- Use stimulates market for original work

- Factor Weighs in Favor of Fair Use*

Weighs Against Fair Use

- Permission for digital excerpt is readily available from publisher or Copyright Clearance Center at a reasonable price
- Large portion or entire work used
- User does not own lawfully acquired or purchased copy of original work
- Use impairs the market or potential market for original work

- Factor Weighs Against Fair Use*

*Revised for use by the University System of Georgia, based upon the Copyright Advisory Office at Columbia University's "Fair Use Checklist",
<http://www.copyright.columbia.edu/fair-use-checklist>*