

# Fair Use Checklist

Name:

Date:

Prepared by:

Project:

Item Description:

This tool is to help you determine whether your activities are within the limits of fair use under Section 107 of the U.S. Copyright Act. Check all boxes that apply, then assess whether the cumulative weight of the checked factors favor or oppose fair use. It is recommended that you retain a completed copy of this form for each fair use of a copyrighted work. This tool is for planning purposes only and not to be construed as legal advice.

## PURPOSE OF USE

### 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 use
- Entertainment
- Bad-faith behavior
- Denying credit to original author
- Non-transformative use, verbatim/exact copy

## NATURE OF COPYRIGHTED MATERIAL

### FAVORING FAIR USE

- Published work
- Factual or nonfiction based
- Important to educational objectives
- Non-consumable work

### OPPOSING FAIR USE

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction
- Consumable work (i.e., workbook, test)
- Work made for the educational market (i.e. casebook)

## AMOUNT COPIED

### FAVORING FAIR USE

- Small portion of work
- Portion used is not central or significant to entire work
- Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum

### OPPOSING FAIR USE

- Large portion of whole work used
- Portion used is central to or "heart of the work"
- Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum

## EFFECT ON MARKET FOR ORIGINAL

### FAVORING FAIR USE

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

### OPPOSING FAIR USE

- Could replace sale of, or significantly impair market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of copyrighted work
- Affordable permission available for using work
- Numerous copies made
- Made accessible on web or in another public forum
- Repeated or long-term use