

Old Dominion University

Fair Use Checklist

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.

Name: _____ Date: _____

Class or Project: _____

Course and Term: _____

Title of Copyrighted Work: _____

Author, Publisher, Date: _____

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

Instructions:

Complete the checklist below. 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.

- 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.

Instructors should consult the University Counsel office if they have questions regarding analysis of the four factors.

FACTOR 1: Purpose and Character of the Use

Weights in Favor of Fair Use

- Nonprofit Educational
- Teaching (including multiple copies for classroom use)
- Research or Scholarship
- Criticism, Comment, News Reporting, or Parody
- Transformative (use changes work for new utility or purpose)
- Personal Study
- Use is necessary to achieve your intended educational purpose

Factor 1 Weighs in Favor of Fair Use

Weights Against Fair Use

- Commercial activity
- Profiting from use
- Entertainment
- Non-transformative
- For publication
- For public distribution
- Use exceeds that which is necessary to achieve your intended educational purpose

Factor 1 Weighs Against Fair Use

FACTOR 2: Nature of Copyrighted Work

Weighs in Favor of Fair Use

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

- Factor 2 Weighs in Favor of Fair Use**

Weighs Against Fair Use

- Unpublished work
 - Highly creative work (art, music, novels, films, plays, poetry, fiction)
 - Consumable work (workbook, test)

 - Factor 2 Weighs Against Fair Use**
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FACTOR 3: Amount and Substantiality of Portion Used

Weighs in Favor of Fair Use

- Small portion of work used
- Portion used is not central or significant to entire work as a whole
- Amount taken is narrowly tailored to educational purpose, such as criticism, comment, research, or subject being taught

- Factor 3 Weighs in Favor of Fair Use**

Weighs Against Fair Use

- Large portion or entire work used
 - Portion used is central to work or “heart of the work”
 - Amount taken is more than necessary for criticism, comment, research, or subject being taught

 - Factor 3 Weighs Against Fair Use**
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FACTOR 4: Effect on Market for Original

Weighs in Favor of Fair Use

- No significant effect on market or potential market for copyrighted work
- Use stimulates market for original work
- No similar product marketed by the copyright holder
- No longer in print
- Licensing or permission unavailable
- Supplemental classroom reading
- One or few copies made or distributed
- User owns lawfully acquired or purchased copy of original work
- Restricted access (to students or other appropriate group)

- Factor 4 Weighs in Favor of Fair Use**

Weighs Against Fair Use

- Significantly impairs market or potential market for copyrighted work or derivative
 - Licensing or permission reasonably available
 - Numerous copies made or distributed
 - Repeated or long-term use that demonstrably affects the market for the work
 - Required classroom reading
 - User does not own lawfully acquired or purchased copy of original work
 - Unrestricted access on the web or other public forum

 - Factor 4 Weighs Against Fair Use**
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