### Fair Use Checklist

#### Purpose Overall | Favoring | Opposing
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#### Nature Overall | Favoring | Opposing
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#### Amount Overall | Favoring | Opposing
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#### Effect Overall | Favoring | Opposing
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**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- Unpublished work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 the work or is the “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 to potential market for copyrighted work or derivative
- Reasonable available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Internet or in other public forum
- Repeated or long-term use
The checklist on this handout is the creative work of Kenneth D. Crews and Dwayne Buttler and is recreated from Copyright law for librarians and educators: creative strategies and practical solutions, 3rd edition.

The Fair Use Evaluator: An Online Tool (http://librarycopyright.net/resources/fairuse/index.php) This tool can help you quickly identify favoring or opposing aspects of Fair Use creating, a printable document to record your Fair Use evaluation.

17 U.S. Code § 107 - Limitations on Exclusive Rights: Fair Use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.


Are these Fair Use?

- Can I upload articles into a Course Management System (CMS) like Canvas or Blackboard?
- Can I distribute articles in journal clubs to unaffiliated participants?
- Can a researcher reuse his methods section in more than one article?
- Can I provide print or electronic articles for the Continuing Education class I am offering at my regional or national professional meeting?
- Can I embed YouTube or other videos in my CMS course?
- Are borrowed images fair use?
- Can I use heartbeat recordings found on the web?
- What’s the deal with Harvard Business Journal and BMJ Case Studies?

Take Away Message ...

- Know that Fair Use is an option
- Use a Fair Use Checklist to evaluate and document
- Good faith evaluations
- may help protect you
- from paying damages
- Remember, checklists do not account for the weight of a specific aspect under the law
- Understand your rights
- to your publications
- Linking to library or campus subscriptions does not trigger a Fair Use evaluation and is preferred

Resources