

Fair Use Checklist

If works are not protected by copyright (copyright expired, work dedicated to public domain, federal government created document), this checklist is not necessary. When determining whether you may use copyrighted works in teaching, scholarship, and student works, the law permits some uses for nonprofit educational purposes, including *fair uses*. Fair uses do not require permission from the copyright owner. You must make a reasonable and good-faith determination that your proposed use is a "fair use". This checklist helps make that determination.

Check all boxes that apply; retain a copy of this form with the corresponding materials. Remember, you do not need all the factors in your favor to justify fair use of a copyrighted work. If the factors appear evenly split or you have questions, please contact your College/University Intellectual Property Coordinator for assistance.

Name: _____ Date: _____

Class or Project: _____

Title of Copyrighted Work: _____

PURPOSE AND CHARACTER OF THE USE

Supports Fair Use

- Educational
 - Teaching (including multiple copies for classroom use)
 - Research
 - Scholarship
 - Criticism
 - Comment
- Transformative Use (change work to serve a new purpose)
- Nonprofit use
- Restricted Access (to students or other appropriate groups)

Opposes Fair Use

- Commercial activity
- Entertainment, etc.
- Non-transformative, verbatim/exact copy
- Profit-generating use
- Bad faith behavior

NATURE OF THE COPYRIGHTED MATERIAL

Supports Fair Use

- Factual, nonfiction, news
- Important to favored educational objectives
- Published work

Opposes Fair Use

- Creative (art, music, fiction), or
- Consumables (workbooks, tests, quizzes)
- Unpublished work

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AMOUNT AND SUBSTANTIALITY OF PORTION USED IN RELATION TO WHOLE

Supports Fair Use

- Small amount used
- Portion used is not central or significant to entire work
- Amount is appropriate for a favored educational use

Opposes Fair Use

- Large portion or entire work used
- Portion used is qualitatively substantial, most significant part of work

EFFECT ON VALUE OR COMMERCIAL MARKET FOR ORIGINAL WORK

Supports Fair Use

- No significant effect/*de minimus* effect on the market or economic value for the work
- No similar product marketed by the copyright holder
- Using a lawfully acquired copy
- Copyright holder unidentifiable
- Publicly available on Internet or other public forum for free viewing

Opposes Fair Use

- Replaces sale of copyrighted work
- Significantly impairs commercial market or diminishes economic value of work
- Reasonably available licensing mechanism for use of the copyrighted work
- Reasonably affordable permission available for using work
- Repeated or long term use*

*Recent cases disregard this factor: See *Cambridge University Press v. Becker, (a.k.a Georgia State University) 2012 case.*

Conclusion

Supports Fair Use

Fair Use not favored

Form located at <http://www.copyright.mnscu.edu/forms/index.html>