

CHECKLIST FOR FAIR USE ANALYSIS

Professor's Name: _____ Date: _____

Class or Project: _____

Title of Copyrighted Work: _____

Portion of Work to be Used: _____

This checklist is a tool to assist you in assessing fair use in order to determine whether or not you may make or distribute copies of works protected by copyright without having to obtain permission. You should check all boxes that apply for each of the sections to determine whether the analysis favors fair use. If the factors do not appear to favor fair use, you must obtain permission before copying or disseminating the work.

Please complete and retain a copy of this form in connection with each possible fair use of a copyrighted work.

PURPOSE OF USE

Favoring Fair Use

- Teaching (including multiple copies for classroom)
- Research
- Scholarship
- Criticism
- Comment
- News reporting
- Nonprofit educational use
- Transformative or productive use (changes the work to serve a new purpose)
- Restricted access (to students or appropriate group)

Opposing Fair Use

- Commercial activity
- Profiting from use
- Non-transformative, verbatim
- Bad-faith behavior
- Denying credit to original author
- Entertainment

NATURE OF COPYRIGHTED MATERIAL

Favoring Fair Use

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

Opposing Fair Use

- Unpublished work
 - Fiction work
 - Highly creative work (art, music, films)
 - Consumable work (workbook, test)
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AMOUNT COPIED

Favoring Fair Use

- Small quantity/percentage of work copied
- Portion used is not central to entire work as a whole
- Amount is appropriate for favored educational purposes

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to the work or is considered the “heart of the work”

EFFECT ON THE MARKET FOR THE ORIGINAL

Favoring Fair Use

- No significant effect on the market or potential market for the copyrighted work
- One or few copies will be made or distributed
- No longer in print or lack of licensing mechanism
- Spontaneous use with no time to obtain permission
- User owns lawfully acquired or purchased copy of the original work

Opposing Fair Use

- Significantly impairs market or potential market for the copyrighted work
 - Cumulative effect of copying would be to substitute for purchase of the copyrighted work
 - Reasonably available licensing mechanism for use of the work
 - Affordable permission available for using work
 - Numerous copies made
 - Repeated or long-term use
 - Will be made publicly available on the Web or other means of broad dissemination
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