

FAIR USE WORKSHEET

In determining whether people may use portions of copyrighted works in their teaching and scholarship, the law permits some uses for nonprofit educational purposes, including fair uses. The following worksheet is to guide faculty in making fair use determinations. A fair use analysis should be done *each* time a fair use of a work is contemplated. The fair use doctrine, as codified in §17 U.S.C. 107, sets forth four general factors to be considered when evaluating whether a proposed use of a copyrighted work is a fair use and thus, does not require permission from the copyright holder. The legislative history of this section and court decisions have provided further insight into the application of these factors to particular situations. The following areas should be carefully considered and balanced in making a reasonable, good faith fair use determination, whether for teaching, research, or other purposes. Reliance upon fair use should be limited to those cases that meet the fair use balancing test in favor of the intended use, and are carefully documented to support that conclusion.

This document should be read in conjunction with the Copyright Primer and any questions should be addressed to your legal counsel and/or campus copyright resource.

General Information

Name: _____
Course, if applicable: _____ # of students: _____
Semester: Fall _____ Spring _____ Summer _____ Year: _____
Other Use: _____

Description of Material(s)

1. Author/Editor/Translator: _____
Publisher: _____
Book/Journal Title: _____
Chapter/Article Title: _____
2. Author/Editor/Translator: _____
Publisher: _____
Book/Journal Title: _____
Chapter/Article Title: _____
3. Author/Editor/Translator: _____
Publisher: _____
Book/Journal Title: _____
Chapter/Article Title: _____
4. Author/Editor/Translator: _____
Publisher: _____
Book/Journal Title: _____
Chapter/Article Title: _____
5. Author/Editor/Translator: _____
Publisher: _____
Book/Journal Title: _____
Chapter/Article Title: _____

Circle all the categories that apply below. Sign, date, and retain with appropriate accompanying materials for three years.

The Four Factors

1. What is the purpose of the proposed use?

- Nonprofit
- Teaching
- Scholarship/Research
- Personal

- Criticism
- Commentary
- Parody
- Restricted Access
- News Reporting
- Otherwise “Transformative” Use

- Commercial
- Entertainment
- Bad Faith Behavior
- Profit
- Lack Of Attribution

Uses on the left tend to tip the balance in favor of fair use. Uses on the right tend to tip the balance in favor of seeking permission from the copyright holder. The uses in the middle, if they apply, are favorable to fair use: they add weight to the tipping force of uses on the left.

Tally: Favors Fair Use: _____ Does Not Favor Fair Use: _____

2. What is the nature of the copyright work to be used?

- Factual
- Published

- A Mixture Of Factual And Imaginative
- Unpublished (Right of 1st publication)

- Creative
- Entertainment
- Consumable Materials (Workbooks, Answer Sheets)

Again, uses on the left tend to tip the balance in favor of fair use while uses on the right favor seeking permission. In this case, uses in the middle have little effect on the balance.

Tally: Favors Fair Use: _____ Does Not Favor Fair Use: _____

3. How much of the copyrighted work will be used?

- Small Amount
- Amount Is Appropriate For A Favored Educational Use

- Large Portion Or Whole Work
- Portion Used Is Qualitatively Substantial

The amount of material should be measured both quantitatively and qualitatively. Quantity should be evaluated relative to the length of the entire work and the amount needed. The reproduction of an entire work weighs against fair use. A reproduction that is relatively small, but still uses the “heart” of the work will weigh against fair use.

Tally: Favors Fair Use: _____ Does Not Favor Fair Use: _____

4. What is the effect on the market or potential market for the copyrighted work?

- After An Evaluation Of First Three Factors, Proposed Use Is Tipping Towards Fair Use
- User Owns Lawfully Acquired Copy
- No Significant Effect On The Market Or Potential Market For The Work
- No Similar Product Marketed By The Copyright Holder
- Copyright Holder Unidentifiable

- Replaces Sale Of Copyrighted Work
- Significantly Impairs Market Or Potential Market For The Work
- Numerous Copies Made
- Use Makes It Publicly Accessible On The Web

Reproduction that substitutes for purchase of the original weighs heavily against fair use. This factor is closely linked to the other factors.

Tally Favors Fair Use _____ Does Not Favor Fair Use _____

Determination

Based on the fair use analysis completed above, I have determined that my use of the materials numbered _____ falls within the fair use exception.

Based on the fair use analysis completed above, I have determined that my use of the materials numbered _____ does not fit within the fair use exception. I will obtain permission before using the material.

Signature _____

Date _____