

Fair Use Checklist

Use this checklist to help evaluate whether your intended use would be considered fair use. Items in the checklist are taken from Section 107 of the Copyright Act of 1976 and from judicial decisions regarding copyright law.

To use the checklist: Enter your name, date, and project. Place a checkmark in each box that applies to your situation. The checklist may be filled in electronically.

To interpret results: Compare the number of checkmarks in “Favoring Fair Use” column to those in the “Opposing Fair Use” column. If the clear majority of checkmarks are in the “Favoring Fair Use” column, it's likely your intended use would be considered fair use by the courts. If the majority of checkmarks are in the “Opposing Fair Use” column or if the checkmarks are evenly balanced between the two columns, your case may not be fair use. The checklist cannot provide a definitive ruling, but the total number of checkmarks favoring and opposing fair use will indicate whether your situation is likely to be considered fair use or not.

Keep the completed checklist in your files in case you need to show evidence of “reasonable and good-faith” efforts to evaluate fair use.

If you have questions on using the checklist or interpreting the results, please contact the Libraries' Copyright Consultation Service, (785) 532-2830, copyright@k-state.edu.

Fair Use Checklist

Name:

Date:

Project:

Purpose

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- 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
- Verbatim or exact copy; not transformative
- Denying credit to original author

Nature

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to 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- Unpublished work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 educational purpose

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to work or "heart of the work"
- Includes more than necessary for educational purpose

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 or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on Web or in other public forum
- Repeated or long term use

 Signature