

# Fair Use Checklist

Project:  
 Copyrighted Item:  
 Description of Use:  
 Date:  
 Prepared by:



Factor 1: Purpose	
<p><b>Favoring Fair Use:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Teaching (including multiple copies for classroom use)</li> <li><input type="checkbox"/> Research</li> <li><input type="checkbox"/> Scholarship</li> <li><input type="checkbox"/> Nonprofit educational institution</li> <li><input type="checkbox"/> Criticism</li> <li><input type="checkbox"/> Comment</li> <li><input type="checkbox"/> News reporting</li> <li><input type="checkbox"/> Transformative or productive use (changes the work for new utility)</li> <li><input type="checkbox"/> Restricted access (to students or other appropriate group)</li> <li><input type="checkbox"/> Parody</li> </ul>	<p><b>Opposing Fair Use:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Commercial activity</li> <li><input type="checkbox"/> Profiting from the use</li> <li><input type="checkbox"/> Entertainment</li> <li><input type="checkbox"/> Bad-faith behavior</li> <li><input type="checkbox"/> Denying credit to original author</li> </ul>

Factor 2: Nature	
<p><b>Favoring Fair Use:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Published work</li> <li><input type="checkbox"/> Factual or nonfiction based</li> <li><input type="checkbox"/> Important to favored educational objectives</li> </ul>	<p><b>Opposing Fair Use:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Unpublished work</li> <li><input type="checkbox"/> Highly creative work (art, music, novels, films, plays)</li> <li><input type="checkbox"/> Fiction</li> </ul>

Factor 3: Amount	
<p><b>Favoring Fair Use:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Small quantity</li> <li><input type="checkbox"/> Portion used is not central or significant to entire work</li> <li><input type="checkbox"/> Amount is appropriate for favored educational purpose</li> </ul>	<p><b>Opposing Fair Use:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Large portion or whole work used</li> <li><input type="checkbox"/> Portion used is central to or “heart of the work”</li> </ul>

Factor 4: Effect	
<p><b>Favoring Fair Use:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> User owns lawfully purchased or acquired copy of original work</li> <li><input type="checkbox"/> One or few copies made</li> <li><input type="checkbox"/> No significant effect on the market or potential market for copyrighted work</li> <li><input type="checkbox"/> No similar product marketed by the copyright holder</li> <li><input type="checkbox"/> Lack of licensing mechanism</li> </ul>	<p><b>Opposing Fair Use:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Could replace sale of copyrighted work</li> <li><input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative</li> <li><input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work</li> <li><input type="checkbox"/> Affordable permission available for using work</li> <li><input type="checkbox"/> Numerous copies made</li> <li><input type="checkbox"/> You made it accessible on the Web or in other public forum</li> <li><input type="checkbox"/> Repeated or long-term use</li> </ul>

# Fair Use Checklist

## Introduction to the Checklist

The Fair Use Checklist and variations on it have been widely used for many years to help educators, librarians, lawyers, and many other users of copyrighted works determine whether their activities are within the limits of fair use under U.S. copyright law (Section 107 of the U.S. Copyright Act). The four factors used to determine whether the use of a work is fair use (purpose, nature, amount, effect) form the structure of this checklist. Congress and courts have offered some insight into the specific meaning of the factors, and those interpretations are reflected in the details of this form.

## Benefits of Using the Checklist

A proper use of this checklist should serve two purposes. **First, it should help you to focus on factual circumstances that are important in your evaluation of fair use.** The meaning and scope of fair use depends on the particular facts of a given situation, and changing one or more facts may alter the analysis. **Second, the checklist can provide an important mechanism to document your decision-making process.** Maintaining a record of your fair use analysis can be critical for establishing good faith; consider adding to the checklist the current date, detailed notes about your project, and specific information about the copyrighted item in use. Keep completed checklists and related documents on file for future reference.

## The Checklist as Roadmap

As you use the checklist and apply it to your situations, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will favor fair use and others may oppose fair use. A key issue is whether you are acting reasonably in checking any given box, with the ultimate question being whether the cumulative weight of the factors favors or turns you away from fair use. **This is not an exercise in simply checking and counting boxes. Instead, you need to consider the relative persuasive strength of the circumstances and if the overall conditions lean most convincingly for or against fair use.** Because you are most familiar with your project, you are probably best positioned to evaluate the facts and make the decision.

## Caveat

This checklist is provided as a tool to assist you when undertaking a fair use analysis. The four factors listed in the Copyright Statute are only guidelines for making a determination as to whether a use is fair. Each factor should be given careful consideration in analyzing any specific use. There is no magic formula; an arithmetic approach to the application of the four factors should not be used. Depending on the specific facts of a case, it is possible that even if three of the factors would tend to favor a fair use finding, the fourth factor may be the most important one in that particular case, leading to a conclusion that the use may not be considered fair.



The WMU Libraries Fair Use Checklist is an adaption of a checklist from the [Copyright Advisory Office of Columbia University](#), which was developed by Kenneth D. Crews and Wayne Buttler, and released under a [Creative Commons - Attribution 4.0 license](#). The WMU Libraries Fair Use Checklist is also released under a Creative Commons - Attribution 4.0 license.

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