



Fair Use Criteria and Checklist

Fair Use is not easily defined and each copyrighted piece under consideration for use must be evaluated to determine if it is advisable for use in the classroom. Favorable Fair Use factors *must* far outweigh factors opposing Fair Use. Please consider the statutory criteria:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

Please use the checklist below to assist you in evaluating the balance of factors in considering use of copyrighted work. This checklist is not meant to be used as an ultimate determination of Fair Use, or a substitute for legal advice. Keep a completed copy of this checklist in your records for each copyrighted piece used. If you have questions regarding the use of any work or assistance in evaluating a work, please contact the Office of Legal Services at (210) 485-0050.

****Remember to always include a statement indicating copyright protection and author credit when using copyrighted materials****

Purpose	
✓ Favoring Fair Use	✓ Opposing Fair Use
<input type="checkbox"/> Educational	<input type="checkbox"/> Commercial activity
<input type="checkbox"/> Research or Scholarship	<input type="checkbox"/> Profiting from the use
<input type="checkbox"/> Nonprofit Educational Institution	<input type="checkbox"/> Entertainment
<input type="checkbox"/> Criticism, Comment, Satire, Parody	<input type="checkbox"/> Bad-faith behavior
<input type="checkbox"/> Transformative or Productive Use (changes the work to serve a new purpose)	<input type="checkbox"/> Non-transformative, verbatim/exact copy
<input type="checkbox"/> News Reporting	<input type="checkbox"/> Denying credit to original author
Nature	
✓ Favoring Fair Use	✓ Opposing Fair Use
<input type="checkbox"/> Published work	<input type="checkbox"/> Unpublished work
<input type="checkbox"/> Factual, nonfiction	<input type="checkbox"/> Highly creative work (art, music, novels, films, plays)
<input type="checkbox"/> News	<input type="checkbox"/> Fiction
<input type="checkbox"/> Important to course objectives	<input type="checkbox"/> Consumable work (workbooks, quizzes, exams, survey, etc.)
Amount	
✓ Favoring Fair Use	✓ Opposing Fair Use
<input type="checkbox"/> Small portion of work used (e.g. chapter, journal article or small excerpt)	<input type="checkbox"/> Large portion or complete work used
<input type="checkbox"/> Portion used is not central or significant to entire work or "heart of the work"	<input type="checkbox"/> Portion used is central to work
<input type="checkbox"/> Amount is no more than needed for instructional purpose (appropriate amount)	<input type="checkbox"/> More parts copied than strictly needed for instruction or educational purpose
<input type="checkbox"/> No similar product marketed by the copyright holder	
<input type="checkbox"/> No significant effect on the market or potential market for copyrighted work	
Effect	
✓ Favoring Fair Use	✓ Opposing Fair Use
<input type="checkbox"/> Lawfully acquired or purchased copy of original work by College	<input type="checkbox"/> Could replace sale of copyrighted work
<input type="checkbox"/> One copy only	<input type="checkbox"/> Repeated or long-term use
<input type="checkbox"/> No significant effect on the market or potential market for copyrighted work	<input type="checkbox"/> Numerous copies made
<input type="checkbox"/> Lack of timely and affordable licensing mechanism	<input type="checkbox"/> Significantly impairs market or potential market for copyrighted work
<input type="checkbox"/> No longer in print; absence of licensing mechanism	<input type="checkbox"/> Affordable, timely licensing mechanism available for using work
<input type="checkbox"/> Restricted access (limited to students in class or other appropriate group)	<input type="checkbox"/> You make it publicly accessible on Web or in other public form
	<input type="checkbox"/> Required course reading or materials
	<input type="checkbox"/> Cumulative effect of copying would be to substitute for purchase of the work