

*Directions: Check all boxes that apply. For each of the four sections below, determine whether that factor favors or disfavors a finding of fair use. Where the factors favoring “fair use” outnumber the factors weighing against a finding of “fair use,” reliance on the fair use exception is justified. Where fewer than half of the factors favor “fair use,” permission should be obtained from the copyright owner before copying or disseminating copies of the work. Note using same work year to year will require copyright permission and repeated use is not fair use.*

### **PURPOSE OF USE**

What is the work being used for? Not-for-profit and education is more favored fair use.

#### **Favoring Fair Use**

- ☐ Educational:
  - Nonprofit educational institution
  - Teaching (incl. multiple copies for classroom use)
  - Research or scholarship
  - Criticism or commentary
- ☐ Parody
- ☐ News reporting
- ☐ Transformative or productive use (changes the work for a new utility)
- ☐ Research

#### **Opposing Fair Use**

- ☐ Commercial activity
- ☐ Profiting from this use
- ☐ Entertainment
- ☐ Bad-faith behavior
- ☐ Denying credit to original author
- ☐ Non-transformative, verbatim/exact copy

### **NATURE OF WORK**

Determine the degree the work relates to the copyright purpose. Using factual information is more likely a fair use.

#### **Favoring Fair Use**

- ☐ Published work
- ☐ Factual, news or non-fiction based
- ☐ Important to favored educational objectives

#### **Opposing Fair Use**

- ☐ Unpublished work
- ☐ Highly creative work (art, music, novels, films, fiction)
- ☐ Consumable (e.g. workbook, test)

### **AMOUNT USED**

Consider quantity and quality used. The less used is more likely fair use unless the small amount is at the heart of the work.

#### **Favoring Fair Use**

- ☐ Small quantity:
  - one chapter of a book with 10 or more chapters
  - if fewer than 10 chapters, 10% of total page count
  - one article from a particular journal or magazine
- ☐ Portion is not central to the work as a whole
- ☐ Amount is appropriate to educational purpose

#### **Opposing Fair Use**

- ☐ Large portion or whole work used
- ☐ Portion used is central to or “the heart of the work”
- ☐ Amount is more than necessary for educational purpose

### **EFFECT ON THE MARKET FOR THE ORIGINAL**

Is use hurting the current market (by displacing sales of the original) and/or could use cause substantial harm if widespread.

#### **Favoring Fair Use**

- ☐ User owns lawfully purchased or acquired copy of the original work
- ☐ One or only a few copies made
- ☐ No significant effect on the market or potential market for the copyrighted work
- ☐ No similar product is marketed by copyright holder
- ☐ Restricted access (to students/appropriate group)
- ☐ No longer in print; absence of licensing mechanism
- ☐ One-time and/or spontaneous use (no time to obtain permission)

#### **Opposing Fair Use**

- ☐ Could replace the sale of the copyrighted work
- ☐ Numerous copies made and/or distributed
- ☐ Significantly impairs the market or potential market for the copyrighted work or a derivative of the work
- ☐ Reasonably available and affordable licensing mechanism exists (e.g. off-prints)
- ☐ Made accessible on the web or in some other public forum
- ☐ Repeated or long-term use

\*Adapted from C. Kenneth D. Crews (Columbia University) and Dwayne K. Butler (University of Louisville), “Creative Commons Attribution Only” (<http://creativecommons.org/licenses/>), <http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/>, adding definitions and deleting biographical information.

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