Fair Use Checklist: Introduction

Prepared by the Indiana University Copyright Management Center

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http://www.iupui.edu/~copyinfo/

We are pleased to offer the following "Checklist for Fair Use" as a helpful tool for the academic community. We hope that it will serve two purposes. First, it should help educators, librarians, and others to focus on factual circumstances that are important to the evaluation of a contemplated fair use of copyrighted works. A reasonable fair-use analysis is based on four factors set forth in the fair- use provision of copyright law: Section 107 of the Copyright Act of 1976. The application of those factors depends on the particular facts of your situation, and changing one or more facts may alter the outcome of the analysis. The "checklist for fair use" derives from those four factors and from the judicial decisions interpreting copyright law.

For additional information about fair use and its application to the needs of education, read the following publications from the Copyright Management Center:

- Fair Use: Overview and Meaning for Higher Education, Kenneth D. Crews
- A Fair-Use Case Study: Using Copyrighted Materials On The World Wide Web, Dwayne K. Buttler

A second purpose of the checklist is to provide an important means for recording your decision-making process. Maintaining a record of your fair-use analysis is critical to establishing your "reasonable and good-faith" attempts to apply fair use to meet your educational objectives. The Indiana University Policy on Fair Use of Copyrighted Works for Education and Research requires reasonable and good-faith applications of fair use from all members of the university community. Once you have completed your application of fair use to a particular need, keep your completed checklist in your files for future reference.

As you use the checklist and apply it to your situation, 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 concern is whether you are acting reasonably in checking any given box; the ultimate concern is whether the cumulative "weight" of the factors favors or opposes fair use. Only you can make that decision, and the IU policy empowers you to make it in a reasonable and good-faith manner.

To learn more about fair use and other aspects of copyright law, visit the Copyright Management Center website at http://www.iupui.edu/~copyinfo/.

CHECKLIST FOR FAIR USE

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project

Name:		Date:	
Inc	titution		Drojecti
Institution:		Project:	
PVIDPOGE			
		<u>RPOSE</u>	
	Favoring Fair Use		Opposing Fair Use
	Teaching (including multiple copies for classroom use)		Commercial activity
_	Research	_	
	Scholarship		Entertainment
	Nonprofit Educational Institution		Bad-faith behavior
	Criticism		Denying credit to original author
	Comment		
	News reporting		
	Transformative or Productive use (changes the work for new utility)		
	Restricted access (to students or other appropriate group)		
	Parody		
NATURE			
	· · · · · · · · · · · · · · · · · · ·	TUKE	Omnosina Esin Usa
	Favoring Fair Use		Opposing Fair Use
	Published work		Unpublished work
	Factual or nonfiction based	_	Highly creative work (art, music, novels, films, plays)
	Important to favored educational objectives		
AMOVINE			
		<u> 10UNT</u>	
	Favoring Fair Use		Opposing Fair Use
П	Small quantity	П	Large portion or whole work used
	Portion used is not central		Portion used is central to work
_	or significant to entire work	_	or "heart of the work"
	Amount is appropriate for favored educational purpose		or nome or the morn
EFFECT			
	Favoring Fair Use		Opposing Fair Use
_	User owns lawfully acquired	П	Could replace sale of copyrighted work
_	or purchased copy of original work	_	
П	One or few copies made	_	market for copyrighted work or derivative
	No significant effect on the market or	П	Reasonably available licensing mechanism
_	potential market for copyrighted work	_	for use of the copyrighted work
D	No similar product marketed by the copyright holder		Affordable permission available for using work
	Lack of licensing mechanism		Numerous copies made
_		ā	You made it accessible on Web or in other public forum
			Repeated or long term use