

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 as evidence of making a "good faith attempt" in determining if permission is needed. If the use does not weigh in favor of fair use, permission must be obtained before the work is used.

Name: _____ Date: _____ Project: _____
Institution: _____ Prepared by: _____
Description of material being used: _____

PURPOSE

Favoring Fair Use

- The work is being used for the purpose of teaching, research or scholarship (*includes multiple copies for classroom use*)
- The work is being used in a criticism, comment, or news report
- The use of the work will be transformative or productive (*i.e., will change the work for a new utility*)
- The work will be used in a parody
- Access to the work will be restricted to the students in the class or other appropriate group
- The work is being used by a nonprofit educational institution

Opposing Fair Use

- The work is being used in commercial activity
- The use of the work will result in profit
- The work is being used for entertainment
- "Bad faith" effort is involved in use of work (*i.e., using illegally obtained work, removal of copyright notice from work, use of the work will not include credit to the original author, no effort made to determine if work is protected by copyright, or knowingly use copyright protected work*)

The PURPOSE of the use of the copyrighted work: FAVORS fair use DOES NOT FAVOR fair use

NATURE

Favoring Fair Use

- The work being used is published
- The work being used is factual or nonfiction based
- The use of the work is important to identified educational or research objectives

Opposing Fair Use

- The work being used is unpublished
- The work being used is highly creative (*i.e., art, music, novels, films, plays*)
- The work being used is fictional

The NATURE of the use of the copyrighted work: FAVORS fair use DOES NOT FAVOR fair use

AMOUNT

Favoring Fair Use

- Only a small quantity of the protected work is being used
- The portion being used is not central or significant to the entire work
- The amount being used is consistent with the research or educational purposes identified in the first fair use factor (purpose for use of the work)

Opposing Fair Use

- A large portion or the whole work is being used
- The portion being used is central to work or is the "heart of the work"

The AMOUNT of the copyrighted work being used: FAVORS fair use DOES NOT FAVOR fair use

EFFECT ON POTENTIAL MARKET

Favoring Fair Use

- The work being used is a lawfully acquired or purchased copy of original work
- Only one or a few copies are being made
- Use of the work will produce no significant effect on the market or potential market for copyrighted work
- There is no similar product marketed by the copyright holder
- There is no licensing mechanism in place for the use of the protected work

Opposing Fair Use

- Use of the work could replace a sale of the copyrighted work
- Use of the work significantly impairs market or potential market for copyrighted work or derivative
- There is a reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission is available for use of the protected work
- Numerous copies are being made
- The work being used will be accessible on Web or in other public forum
- Use of the work will be repeated or long term

The EFFECT OF THE USE ON THE POTENTIAL MARKET: FAVORS fair use DOES NOT FAVOR fair use

Decision Made for Use of Copyrighted Material: _____

Rationale for Decision: (*Use back of form for more space*)

