

UNIVERSITY OF ARIZONA -- INTELLECTUAL PROPERTY TOOL KIT

FAIR USE CHECKLIST

1. Identify the title, author and copyright owner of the copyrighted work you wish to use:

2. Describe how you plan to use the copyrighted work:

3. Is the copyrighted work being used for purposes of criticism, comment, news reporting, teaching (including multiple print copies for classroom use), scholarship or research?

- NO. If not, the use probably does not qualify for the Fair Use defense.
- YES. If so, proceed to apply the four balancing factors below:

I. PURPOSE OR CHARACTER OF USE

Favoring Fair Use

- The use is for a non-profit objective
- The use is in the public interest
- Proper attribution will be given to the author
- My use will transform the nature of original work (*e.g.* it is a parody of the original work; it is a review of or commentary on the original work, etc.)
- Distribution or access will be restricted to current students
- The use will be only occasional, limited and sporadic
- Use will be directly related to a favored objective, and the amount used will be tailored to that objective

Opposing Fair Use

- Use is in connection with commercial activity
- The use is primarily in furtherance of a private interest
- No copyright notice or acknowledgement
- My use will be a translation, revision or adaptation of the work; or is a derivative work based on the original
- There will be broad distribution or access to my materials
- The use will be repeated, systematic or ongoing
- The use is only loosely related to a favored objective, or is broader than necessary to meet that objective

II. NATURE OF THE WORK BEING USED

Favoring Fair Use

- The work being used has already been published
- The work being used is a collection of facts, or is a non-fiction work
- The work being used is not specifically sold or marketed for use in the educational market

Opposing Fair Use

- The work being used has not been published
- The work being used is fiction, or involves a high degree of creativity (*e.g.*, music, choreography, fine artwork, film, photography)
- The work being used is a consumable (*i.e.*, intended for one-time or in-class use) such as a workbook or case study; or is specifically sold for use in the educational market

*This Fair Use Checklist was prepared by
The Office of the General Counsel, The University of Arizona.*

III. AMOUNT AND SUBSTANTIALITY OF THE USE

Favoring Fair Use

- My use will involve limited excerpts, representing an insignificant portion of the whole copyrighted work
- The portion of the work being used is not central or significant to the work as a whole
- The amount of the work being used is appropriate for, and tailored to, the educational use or other public interest
- The amount being used is within the parameters set forth in the Agreement for Guidelines on Classroom Copying; or the Guidelines for Educational Uses of Music

Opposing Fair Use

- My intended use involves the entire work, or extensive excerpts
- The portion of the work being used is the “heart of the work” or the most unique part of the work (even if limited in amount)
- The intended use will take more of the copyrighted work than is reasonably necessary to achieve a favored purpose (see Point I above)
- The amount being used exceeds the Agreement for Guidelines on Classroom Copying, or the Guidelines for Educational Uses of Music

IV. EFFECT ON THE MARKET FOR THE WORK BEING USED*

**NOTE: Factor IV applies to both actual and potential markets for the copyrighted work. Recent court decisions have placed heavy emphasis on this factor.*

Favoring Fair Use

- I will use a lawfully acquired copy of the copyrighted work
- The nature of my work appeals to a different audience than the copyrighted work that I will be using
- The copyright owner does not market or sell the work in a manner that is similar to my use of the work
- The copyrighted work is out of print, or the copyright owner is unidentifiable
- Only one or a few copies of the original copyrighted work were made, and these are not generally available
- My use of this copyrighted work is sporadic or spontaneous, and there is no time to request permission
- Only a limited number of copies of my work will be available and access restricted to a specific group of users
- I will include a statement that the work being used is copyrighted and the copyright owner’s permission is required for further copying or distribution

Opposing Fair Use

- I do not know whether the copy of the work that I am using was lawfully made or obtained
- My use of the copyrighted material will provide an alternative to purchasing the original
- The copyrighted work that I plan to use is sold or marketed primarily to non-profit, educational users
- The copyright owner has requested a permission fee that is too high
- Numerous copies of my work will be available, or it will be broadly available online
- My use of this copyrighted work will continue beyond a single semester
- My use of the copyrighted work will be freely available to others, either within my institution or to the general public
- I have not provided copyright notice or other attribution of authorship

4. CONCLUSION:

Is it reasonable to conclude that, in balance, the foregoing factors favor “Fair Use”?

- YES. Maintain a copy of this worksheet for reference in the event of an infringement claim.
- NO. Seek permission of the copyright owner.

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