

Four Factor Fair Use Checklist – Olin & Chalmers Libraries

This checklist is to assist you in determining if a use falls under “Fair Use”. A key issue is whether you are acting reasonably in checking any given box, with the ultimate question being whether the cumulative weight of the factors favors or turn you away from fair use. Where the factors favoring fair use outnumber those against it, reliance on fair use could be justified. Where fewer than half the factors favor fair use, permission from the rightsholder should be secured. No single factor is determinative of fair use.

The checklist is a mechanism to document your decision-making process. Maintaining a record of your fair use analysis can be useful for establishing a good faith effort in complying with copyright law. *It is encouraged to submit this form along with your submission for electronic reserve requests.*

Instructor:	Date:
Course and Term:	
Title of Copyrighted Work:	
Author and Publisher:	
Portion(s) to be used (pages, etc.)	

Factor # 1 - Purpose	
<p>Favoring Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> Teaching (including multiple copies for classroom use). <input type="checkbox"/> Research <input type="checkbox"/> Scholarship <input type="checkbox"/> Nonprofit educational institution <input type="checkbox"/> Criticism <input type="checkbox"/> Comment <input type="checkbox"/> News reporting <input type="checkbox"/> Transformative or productive use (changes work for new utility) <input type="checkbox"/> Restricted access (only accessible to students enrolled in the course) <input type="checkbox"/> Parody 	<p>Opposing Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> Commercial activity <input type="checkbox"/> Profiting from the use <input type="checkbox"/> Entertainment <input type="checkbox"/> Bad-faith behavior <input type="checkbox"/> Denying credit to original author <input type="checkbox"/> Use exceeds that which is necessary to achieve your intended educational purpose

Factor # 2 - Nature	
<p>Favoring Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> Published work <input type="checkbox"/> Factual or nonfiction based <input type="checkbox"/> Important to favored educational objectives 	<p>Opposing Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> Unpublished <input type="checkbox"/> Highly creative work (art, music, novels, Films, poetry and plays) <input type="checkbox"/> Fiction
Factor # 3 - Amount	
<p>Favoring Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> Small Quantity <input type="checkbox"/> Portion used is not central or significant to entire work <input type="checkbox"/> Amount is appropriate for favored educational purpose 	<p>Opposing Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> Large portion or whole work used (more than 10% of a work having less than 10 chapters or using more than 1 chapter of 10 chapter work) <input type="checkbox"/> Portion used is central to or “heart of the work” <i>Example, using section in Gerald Ford’s memoirs explaining why he pardoned Nixon</i>
Factor # 4 - Effect	
<p>Favoring Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> User owns lawfully purchased or acquired copy of original work. <input type="checkbox"/> One or few copies made <input type="checkbox"/> No significant effect on the market or potential market for copyrighted work <input type="checkbox"/> No similar product marketed by the Copyright holder <input type="checkbox"/> Lack of licensing mechanism 	<p>Opposing Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> Could replace sale of copyrighted work <input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative <input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work <input type="checkbox"/> Affordable permission available for using work <input type="checkbox"/> Numerous copies made <input type="checkbox"/> You made it accessible on the Web or in other public forums / access not limited <input type="checkbox"/> Repeated or long-term use
Fair Use Analysis Results:	
<input type="checkbox"/> Favors fair use and use the material	<input type="checkbox"/> Does not favor fair use and obtain copyright permission from the rightsholder.

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