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 turns 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.)

<table>
<thead>
<tr>
<th>Factor # 1 - Purpose</th>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
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</thead>
<tbody>
<tr>
<td>Teaching (including multiple copies for classroom use).</td>
<td></td>
<td>Commercial activity</td>
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<tr>
<td>Research</td>
<td></td>
<td>Profiting from the use</td>
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<tr>
<td>Scholarship</td>
<td></td>
<td>Entertaining</td>
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<tr>
<td>Nonprofit educational institution</td>
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<td>Bad-faith behavior</td>
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<tr>
<td>Criticism</td>
<td></td>
<td>Denying credit to original author</td>
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<tr>
<td>Comment</td>
<td></td>
<td>Use exceeds that which is necessary to achieve your intended educational purpose</td>
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<tr>
<td>News reporting</td>
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<tr>
<td>Transformative or productive use (changes work for new utility)</td>
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<tr>
<td>Restricted access (only accessible to students enrolled in the course)</td>
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<td>Parody</td>
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</table>
### Factor # 2 - Nature

**Favoring Fair Use**
- Published work
- Factual or nonfiction based
- Important to favored educational objectives

**Opposing Fair Use**
- Unpublished
- Highly creative work (art, music, novels, Films, poetry and plays)
- Fiction

### Factor # 3 - Amount

**Favoring Fair Use**
- Small Quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

**Opposing Fair Use**
- 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)
- Portion used is central to or “heart of the work” Example, using section in Gerald Ford’s memoirs explaining why he pardoned Nixon

### Factor # 4 - Effect

**Favoring Fair Use**
- User owns lawfully purchased or acquired copy of original work.
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the Copyright holder
- Lack of licensing mechanism

**Opposing Fair Use**
- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Web or in other public forums / access not limited
- Repeated or long-term use

### Fair Use Analysis Results:
- Favors fair use and use the material
- Does not favor fair use and obtain copyright permission from the rightsholder.

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