



# Fair Use Checklist

Name: \_\_\_\_\_

Institution: \_\_\_\_\_

Project: \_\_\_\_\_

Date: \_\_\_\_\_

Prepared By: \_\_\_\_\_

## PURPOSE

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit educational institution
- Criticism
- Comment
- News reporting
- Transformative or productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

Opposing Fair Use

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

Purpose Overall | Favoring ○ ○ ○ ○ ○ Opposing

## NATURE

Favoring Fair Use

- Published work
- Factual or nonfiction-based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

Nature Overall | Favoring ○ ○ ○ ○ ○ Opposing

## 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
- Portion used is central to the work or is the "heart of the work"

Amount Overall | Favoring ○ ○ ○ ○ ○ Opposing

## EFFECT

Favoring Fair Use

- User owns lawfully acquired or purchased 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 to potential market for copyrighted work or derivative
- Reasonable available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Internet or in other public forum
- Repeated or long-term use

Effect Overall | Favoring ○ ○ ○ ○ ○ Opposing



The checklist on this handout is the creative work of **Kenneth D. Crews** and **Dwayne Buttler** and is recreated from *Copyright law for librarians and educators: creative strategies and practical solutions*, 3rd edition.

The **Fair Use Evaluator**: An Online Tool (<http://librarycopyright.net/resources/fairuse/index.php>) This tool can help you quickly identify favoring or opposing aspects of Fair Use creating, a printable document to record your Fair Use evaluation.

## 17 U.S. Code § 107 - Limitations on Exclusive Rights: Fair Use

Notwithstanding the provisions of sections 106 and 106A, the **fair use of a copyrighted work**, including such use by reproduction in copies or phonorecords or by any other means specified by that section, **for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.** In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- the **purpose and character of the use**, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the **nature of the copyrighted work**;
- the **amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and
- the **effect of the use upon the potential market** for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546; Pub. L. 101-650, title VI, § 607, Dec. 1, 1990, 104 Stat. 5132; Pub. L. 102-492, Oct. 24, 1992, 106 Stat. 3145.)

### Are these Fair Use?

- Can I upload articles into a Course Management System (CMS) like Canvas or Blackboard?
- Can I distribute articles in journal clubs to unaffiliated participants?
- Can a researcher reuse his methods section in more than one article?
- Can I provide print or electronic articles for the Continuing Education class I am offering at my regional or national professional meeting?
- Can I embed YouTube or other videos in my CMS course?
- Are borrowed images fair use?
- Can I use heartbeat recordings found on the web?
- What's the deal with Harvard Business Journal and BMJ Case Studies?

### Take Away Message ...

- **Know that Fair Use is an option**
- **Use a Fair Use Checklist to evaluate and document**
- **Good faith evaluations**
- **may help protect you**
- **from paying damages**
- **Remember, checklists do not account for the weight of a specific aspect under the law**
- **Understand your rights**
- **to your publications**
- **Linking to library or campus subscriptions does not trigger a Fair Use evaluation and is preferred**

### Resources

1. Crews KD. *Copyright law for librarians and educators : creative strategies and practical solutions*. 3rd ed. Chicago: American Library Association; 2012.
2. Adler PS, Aufderheide P, Butler B, Jaszi P, Andrew W. *Code of best practices in fair use for academic and research libraries*. Association of Research Libraries; 2012.
3. Aufderheide P, Jaszi P. *Reclaiming fair use : how to put balance back in copyright*. Chicago ; London: The University of Chicago Press; 2011.
4. Hobbs R, National Council of Teachers of English. *Copyright clarity : how fair use supports digital learning*. Thousand Oaks, Calif.: Corwin; 2010.
5. *Code of best practices in fair use for scholarly research in communication*. Association of Research Libraries with the Center for Social Media School of Communication American University and the Program on Information Justice and Intellectual Property Washington College of Law American University | <http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf>; 2010.
6. Crews KD, Crews KD, Buttler DK. *Copyright law for librarians and educators : creative strategies and practical solutions*. 2nd ed. Chicago: American Library Association; 2006.
7. Lipinski TA. *The complete copyright liability handbook for librarians and educators*. New York: Neal-Schuman Publishers; 2006.
8. Russell C, Buttler DK, American Library Association. Office for Information Technology Policy. *Complete copyright : an everyday guide for librarians*. Chicago: American Library Association; 2004.
9. Crews KD. *Copyright essentials for librarians and educators*. Chicago, IL: American Library Association; 2000.
10. Medical Library Association. Legislation Committee. Subcommittee to Draft the Copyright Brochure. *The copyright law and the health sciences librarian*. Chicago: Medical Library Association; 1978.