INTRODUCTION to the FAIR USE CHECKLIST

The Fair Use Checklist and variations on it have been widely used for many years to help educators, librarians, lawyers, and many other users of copyrighted works determine whether their activities are within the limits of fair use under U.S. copyright law (Section 107 of the U.S. Copyright Act). Fair use is determined by a balanced application of four factors set forth in the statute: (1) the purpose of the use; (2) the nature of the work used; (3) the amount and substantiality of the work used; and (4) the effect of the use upon the potential market for or value of the work used. Those factors form the structure of this checklist. Congress and courts have offered some insights into the specific meaning of the factors, and those interpretations are reflected in the details of this form.

Benefits of the Checklist

A proper use of this checklist should serve two purposes. First, it should help you to focus on factual circumstances that are important in your evaluation of fair use. The meaning and scope of fair use depends on the particular facts of a given situation, and changing one or more facts may alter the analysis. Second, the checklist can provide an important mechanism to document your decision-making process. Maintaining a record of your fair use analysis can be critical for establishing good faith; consider adding to the checklist the current date and notes about your project. Keep completed checklists on file for future reference.

The Checklist as Roadmap

As you use the checklist and apply it to your situations, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will favor fair use and others may oppose 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. This is not an exercise in simply checking and counting boxes.

Instead, you need to consider the relative persuasive strength of the circumstances and if the overall conditions lean most convincingly for or against fair use. Because you are most familiar with your project, you are probably best positioned to evaluate the facts and make the decision.

Further Information

You can learn more about fair use from many sources, including the website of the Copyright Advisory Office of Columbia University: www.copyright.columbia.edu.

Creative Commons: Want to reproduce or adapt this checklist (and this introduction) for your needs?

Please do. Regard the checklist and introduction as "Creative Commons Attribution Only"

(http://creativecommons.org/licenses/) with credit to the original creators of the checklist, Kenneth D. Crews (Columbia University) and Dwayne K. Buttler (University of Louisville).

Simple requests to users: Please do include a version of this introduction to help users of the checklist. Please send us an email (to copyright [at] columbia [dot] edu) with your thoughts or just to let us know how you may have found the checklist to be helpful.

Thank you!

FAIR USE CHECKLIST for Pacific Union College _____

Instructor _____ Date _____ Prepared by _____

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project.

Favoring fair use	Opposing fair use

PURPOSE

☐ Teaching (includes multiple copies for classroom use)	☐ Commercial activity
☐ Research	☐ Profiting from the use
☐ Scholarship	☐ Entertainment
☐ Nonprofit educational institution	☐ Bad-faith behavior
☐ Criticism	☐ Denying credit to original author
☐ Comment	
☐ News reporting	
☐ Transformative or productive use (changes the work for new utility)	
☐ Restricted access (to students or other appropriate group)	
☐ Parody	

NATURE

☐ Published work	☐ Unpublished work
☐ Factual or nonfiction based	☐ Highly creative work (art, music, novels, films, plays)
☐ Important to favored educational objectives	☐ Fiction

AMOUNT

☐ Small quantity	☐ Large portion or whole work used
☐ Portion used is not central or significant	☐ Portion used is central to or "heart of the work"
☐ Amount is appropriate for favored educational purpose	

EFFECT

☐ User owns lawfully purchased or acquired copy of original work	☐ Could replace sale of copyrighted work
☐ One or few copies made	☐ Significantly impairs market or potential market for copyrighted work or derivative
☐ No significant effect on the market or potential market for copyrighted work	☐ Reasonably available licensing mechanism for use of the copyrighted work
☐ No similar product marketed by the copyright holder	☐ Affordable permission available for using work
☐ Lack of licensing mechanism	☐ Numerous copies made
	☐ You made it accessible on the web or in other public forum
	☐ Repeated or long-term use

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