

## Fair Use Analysis Checklist

Use this checklist to work through the decision of whether or not a use of a copyrighted work is a “fair use”. Remember that all four of these factors must be considered as you perform the evaluation. If you have any questions, don’t hesitate to contact [copyright@baylor.edu](mailto:copyright@baylor.edu) for assistance.

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

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

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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:

### Purpose

#### *Favoring Fair Use*

- Nonprofit educational institution and/or nonprofit objective
- Teaching (including multiple copies for classroom use and Blackboard, restricted to registered students)
- Research or Scholarship
- Transformative or productive use (changes the work for new utility; e.g., parody, review/critique of or commentary on the original work)
- News reporting
- Use will be directly related to an educational objective, and the amount used will be tailored to that objective
- Distribution or access restricted to current students
- Use will be occasional, limited, and sporadic
- Proper attribution will be given to the author/copyright holder

#### *Opposing Fair Use*

- Commercial activity or profiting from the use
- Use is primarily in furtherance of a private interest
- Use will be a translation, revision, or adaptation of the work; or is a derivative work based on the original
- Entertainment
- Broad distribution or access to the copyrighted materials
- Use will be repeated, systematic, or ongoing
- Use only loosely related to an educational objective, or is broader than necessary to meet that objective
- No copyright notice or acknowledgement

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strongly favors fair use

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somewhat favors fair use

○

neutral

○

somewhat weights against fair use

○

strongly weighs against fair use

**Nature**

*Favoring Fair Use*

*Opposing Fair Use*

- Published work
- Facts or non-fiction
- Work not specifically sold or marketed for use in the educational market
- Important to educational objectives

- Unpublished work
- Highly creative work (art, music, novels, films, plays, photography, choreography, etc.)
- Consumable work (once used, unusable by others)

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strongly favors fair use    somewhat favors fair use    neutral    somewhat weights against fair use    strongly weighs against fair use

**Amount/Substantiality**

*Favoring Fair Use*

*Opposing Fair Use*

- Small quantity (excerpt, extract, clip)
- Portion used is not central or significant to entire work
- Amount is appropriate for educational objectives or other public interest

- Extensive excerpts or entire work used
- Portion used is "heart of the work" or the most unique part of the work (even if limited in amount)
- Intended use will take more of the copyrighted work than is reasonably necessary to achieve educational objectives

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strongly favors fair use    somewhat favors fair use    neutral    somewhat weights against fair use    strongly weighs against fair use

**Market Effect (Actual and Potential Markets)**

*Favoring Fair Use*

*Opposing Fair Use*

- User owns lawfully acquired or purchased copy of the work
- No significant effect on the market or potential market for copyrighted work
- Use stimulates market for original work
- No similar product marketed by the copyright holder
- Work is out of print or the copyright holder is unidentifiable
- Nature of the use appeals to a different audience than the copyrighted work being used
- Lack of licensing mechanism
- One or few copies made

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Made accessible on the web or in other public forum
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made for non-educational purpose
- Repeated or long-term use

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strongly favors fair use    somewhat favors fair use    neutral    somewhat weights against fair use    strongly weighs against fair use