Fair Use Checklist

The Fair Use Checklist has been widely used for many years to help 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). The four factors of fair use form the structure of this checklist. Congress and courts have offered some insight into the specific meaning of the factors, and those interpretations are reflected in the details of this form.

Benefits of Using the Checklist

1. 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.
2. 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 a 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.

This checklist is provided as a tool to assist you when undertaking a fair use analysis. The four factors listed in the Copyright Statute are only guidelines for making a determination as to whether a use is fair. Each factor should be given careful consideration in analyzing any specific use. There is no magic formula; an arithmetic approach to the application of the four factors should not be used. Depending on the specific facts of a case, it is possible that even if three of the factors would tend to favor a fair use finding, the fourth factor may be the most important one in that particular case, leading to a conclusion that the use may not be considered fair.

Fair Use Checklist

Prepared by: _____

Project: _____

Date: _____

Notes: _____

_____

_____

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

Nature

Favoring Fair Use

- ❏ Published work

- ❏ Factual or nonfiction work

- ❏ Important to favored educational objectives

Opposing Fair Use

- ❏ Unpublished work

- ❏ Highly creative works (e.g., art, music, novels, films, plays)

- ❏ Fiction

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 or "heart of the work"

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 online or in other public forum

- ❏ Repeated or long-term use

Additional Resources

Fondren Library Research Guide on Copyright and Fair Use:
http://libguides.rice.edu/c.php?g=45195&p=287353

American Library Association *Fair Use Evaluator Tool*:
http://librarycopyright.net/resources/fairuse/index.php

Association of Research Libraries' *Fair Use Myths & Facts*:
http://fairuseweek.org/wp-content/uploads/2017/02/fair-use-myths-and-facts-infographic-feb2017.pdf

Authors Alliance *Fair Use Guide*:
https://www.authorsalliance.org/resources/fair-use/

If you have additional questions about Fair Use or other copyright issues, please contact Fondren Library's Digital Scholarship Services:

cds@rice.edu

http://library.rice.edu/dss