

Fair Use Checklist

Purpose

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit educational institution
- Criticism
- Comment
- News reporting
- Transformative use (alters the original work in a creative manner)
- Transformative use (uses the work for a purpose other than the original purpose)
- Restricted access
- Parody

Opposing Fair Use

- Commercial activity
- Profiting from the use
- Straight reproduction (copying without modification)
- Nontransformative use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

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- Unpublished work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
- Consumable work

Amount

Favoring Fair Use

- Small quantity
- Portion used is not central or significant to entire work
- Amount used is tailored to meet the favored purpose

Opposing Fair Use

- Large portion or whole work used beyond the favored purpose
- Portion used could interfere with a reasonable market for the use (e.g., multiple chapters from a single book)
- Portion used is central to work or "heart of the work"

Effect

Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work
- Few or modest number of copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of a reasonable licensing mechanism for the work and the intended use

Opposing Fair Use

- Straight copying that is not transformative
- Portion used could interfere with a reasonable market for the use or derivatives (e.g., multiple chapters from a single book)
- Reasonably available licensing mechanism for the use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- Posted to the internet or otherwise made widely accessible
- Repeated or long-term use