University of California, Merced
CHECKLIST FOR FAIR USE

It is recommended that you complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work.

Faculty Name: _____

Course #: _____ Date: _____

Email: _____

Checklist Prepared by: _____

PURPOSE

Favoring Fair Use	*Opposing Fair Use*
❑ Teaching (including 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

Favoring Fair Use	*Opposing Fair Use*
❑ Published work	❑ Unpublished work
❑ Factual or nonfiction based	❑ Highly creative work (art, music, novels, films, plays)
❑ Important to favored educational objectives	❑ Fiction

AMOUNT

Favoring Fair Use	*Opposing Fair Use*
❑ Small quantity	❑ Large portion or whole work used
❑ Portion used is not central or significant to entire work	❑ Portion used is central to work or "heart of the work"
❑ Amount is appropriate for favored educational purpose	

EFFECT

Favoring Fair Use	*Opposing Fair Use*
❑ User owns lawfully acquired or purchased copy of original work	❑ Could replace sale of copyrighted work
❑ One or few copies	❑ Significantly impairs market or potential made 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

Introduction to the 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). The four factors 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

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 a Road Map

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.

Caveat

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.