

Fair Use Checklist

SMU Libraries Copyright Team

www.smu.edu/copyright

Section 107 of U.S. Copyright Law provides for “fair use” of copyrighted materials as determined by four factors listed below. The four factors are meant as guidelines, not fixed rules, and **all four are considered in relation to each other** to determine whether or not a use is fair. This checklist is a tool to help you evaluate the fair use claim potential for your intended use of copyrighted materials.

Purpose and Character of Use

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> Educational (teaching, research, scholarship, criticism, comment)	<input type="checkbox"/> Commercial activity
<input type="checkbox"/> Transformative (work differs from the original presentation or is transformed to serve a new purpose)	<input type="checkbox"/> Entertainment
<input type="checkbox"/> Non-commercial use	<input type="checkbox"/> For-profit use
<input type="checkbox"/> News reporting	<input type="checkbox"/> Denying credit to the original author(s)
<input type="checkbox"/> Parody	

Nature of the Copyrighted Work(s)

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> Published work	<input type="checkbox"/> Unpublished work
<input type="checkbox"/> Factual or nonfiction	<input type="checkbox"/> Fiction
<input type="checkbox"/> Important to educational objectives	<input type="checkbox"/> Highly creative work (art, poetry, music, novels, films, plays)

Amount and Substantiality of the Portion Used

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> Small quantity	<input type="checkbox"/> Large portion or whole work
<input type="checkbox"/> Portion used is not central or significant to the entire work	<input type="checkbox"/> Portion used is central or significant to the entire work
<input type="checkbox"/> Amount is appropriate for educational purposes	<input type="checkbox"/> Includes more than is necessary for educational purposes

Effect of Use on the Potential Market of the Work

Favoring Fair Use	Disfavoring Fair Use
<input type="checkbox"/> One or few copies made	<input type="checkbox"/> Many copies made
<input type="checkbox"/> No significant effect on the market or potential market for the copyrighted work	<input type="checkbox"/> Significantly impairs market or potential market
<input type="checkbox"/> User owns a lawfully acquired copy of the original work	<input type="checkbox"/> User does not own a lawfully acquired copy of the original work
<input type="checkbox"/> No similar product marketed by the copyright holder; work no longer in print	<input type="checkbox"/> Able to obtain permission
<input type="checkbox"/> Lack of licensing mechanism	<input type="checkbox"/> Reasonably available licensing mechanism
<input type="checkbox"/> One-time use	<input type="checkbox"/> Repeated or long-term use
<input type="checkbox"/> Restricted access	<input type="checkbox"/> Broad access or posting on the Web

This document combines insights from the Fair Use Checklist of the Copyright Advisory Office of Columbia University Libraries (<https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html>) devised by Kenneth D. Crews (formerly of Columbia University) and Dwayne K. Buttler (University of Louisville) and used under a CC BY/NC license from Copyright Advisory Services of Columbia University, with the University of Michigan Fair Use Assessment Checklist as published as Appendix 2 in Jeremy Evans and Mellissa Hernández Dunán's article, "Rights Review for Sound Recordings: Strategies and Fair Use Assessments" published in *The American Archivist*, Vol. 81, No. 2, Fall/Winter 2018.