

FAIR USE CHECKLIST

This checklist is a tool to assist you in determining whether you may make or distribute copies of works protected by copyright without having to obtain the permission of the copyright owner. It is recommended that you complete a copy of this form in connection with each "fair use" you make of a copyrighted work. The U.S. Copyright Act says that you as a faculty member of an accredited, non-profit educational institution are immune from damages resulting for an infringement if you have made a good faith effort to determine whether a use is "fair" under the copyright laws. Therefore you will want to retain this form for your records.

Name: _____ Date: _____

Class or Project: _____

Title of Copyrighted Work: _____

Portion to be used (e.g. pages): _____

For each of the four sections below, determine whether that factor favors or disfavors a finding of fair use. No single factor is determinative of fair use. You must consider each factor whether or not, in your opinion it has the same degree of relevance as the other factors. Check all boxes that apply. Where the factors favoring a fair use outnumber the factors weighing against a finding of "fair use," reliance on the fair use exception is justified. Where less than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work or you should consider using other material. Where the factors appear evenly split or you have questions about interpretation, please feel free to contact Louis P. Svendsen in the Office of General Counsel (615-366-3909; louis.svendsen@tbr.edu).

PURPOSE OF THE USE

Favoring Fair Use

- Educational
 - Teaching (including multiple Copies for classroom use)
 - Research
 - Scholarship
 - Criticism
 - Comment
- Transformative or Productive use (changes the work to serve a new purpose)
- Nonprofit use

Disfavoring Fair Use

- Commercial, entertainment or other
- Non-transformative, verbatim/exact copy
- Profit-generating use

NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use

- Factual, nonfiction, news
- Published work

Disfavoring Fair Use

- Creative (art, music, fiction), or consumable (workbooks, tests) work
 - Unpublished work
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AMOUNT AND SUBSTANTIALITY OF PORTION USED IN RELATION TO WORK AS A WHOLE

Favoring Fair Use

- Small quantity (e.g. a single chapter or journal article or other excerpt consisting of less than 10% of the work)
- Portion used is not central to entire work
- Amount is appropriate to education purpose

Disfavoring Fair Use

- Large portion or entire work
 - Portion used is central or the “heart” of the work
 - Includes more than necessary for educational purposes
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EFFECT ON THE MARKET FOR ORIGINAL

Favoring Fair Use

- No significant effect on the market or potential market for the copyrighted work
- One or few copies made and/or distributed
- No longer in print; absence of licensing mechanism
- Restricted access (limited to students in a class or other appropriate group)
- One-time use, spontaneous use (no time to obtain permission)

Disfavoring Fair Use

- Cumulative effect of copying would be to substitute for purchase of the copyrighted work
 - Numerous copies made and/or distributed
 - Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available e.g. CCC licensing or off-prints available
 - Will be making it publicly available on the Web or using other means of broad dissemination
 - Repeated or long-term use
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