

FRC Conversion/Digitization Fair Use Checklist

The Fair Use Checklist has 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). Fair use is determined by a balanced application of four factors set forth in the statute: (1) the purpose of the use; (2) the nature of the work used; (3) the amount and substantiality of the work used; and (4) the effect of the use upon the potential market for or value of the work used. Those factors form the structure of this checklist.

Purpose

Favoring Fair Use

- Work will be used for teaching, research, and scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- Transformative or productive use (changes the work for new utility)

Opposing Fair Use

- Work will be used for commercial activity or personal use.
- Profiting From the Use
- Work will be used for entertainment only.
- Bad-Faith Behavior

Notes:

Nature of the Work

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to educational objectives

Opposing Fair Use

- Unpublished
- Highly creative (art, music, novels, films)
- Fiction

Notes:

Amount Being Used

Favoring Fair Use

- Small quantity being digitized/copied.
- Portion used is not the “heart of the work”
- The amount used is appropriate for the educational objective of the use

Opposing Fair Use

- Large portion or whole being digitized/copied.
- Portion used is central to or “heart of the work”

Notes:

(over)

Effect Upon the Market

Favoring Fair Use

- User owns a lawfully purchased or acquired copy of original work
- No significant effect on the market or potential market for original work (work is not for sale in desired format).
- Limited copies being made (1 is recommended).
- No licensing mechanism available

Opposing Fair Use

- A copy of this work is available for purchase in the desired format.
- FRC reproduction could replace the sale of the work.
- Numerous copies made
- Reasonably available licensing mechanism for use of the work

Notes:

I (the undersigned) hereby request that the Faculty Resource Center to convert/digitize the item listed above. This request is made with the purpose of teaching, scholarship, or research and I certify that this request, in my opinion, qualifies for the exemption found in 17 U.S.C. § 110(2).

Instructor Signature: _____ Date: _____