



## Fair Use Checklist

"Fair use" is a provision of the Copyright Act that provides that certain uses of copyrighted works do not constitute copyright infringement. The Copyright Act establishes a four-factor test, the "fair use checklist," to determine whether a use of a copyrighted work is fair use that does not require the permission of the copyright owner.

### To Use this Fair Use Checklist

- fill in the blanks about the copyrighted work and your proposed use of it;
- check the boxes that apply to your use (many uses will require that you check more than one box under each category);
- some checked boxes will favor a finding of fair use and others may oppose a finding of fair use;
- the ultimate concern is whether the cumulative “weight” of the checked factors favors or opposes fair use. Because you are most familiar with your proposed use of the copyrighted work, you are probably best positioned to make that determination;
- if all four sections favor “fair use” you may feel comfortable to use the material. If less than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work;
- where the factors appear evenly split or you have questions about interpretation, contact Diane Hassler, Instructional Technology and Media Services Coordinator [dhassler@cartersvilleschools.org](mailto:dhassler@cartersvilleschools.org)
- once you have completed the checklist, keep a copy in your files in case you need to show evidence of “reasonable and good-faith” efforts used to evaluate fair use.

Name: \_\_\_\_\_ Course/Subject/Grade: \_\_\_\_\_

Date to be used: \_\_\_\_\_ Title of Copyrighted Work: \_\_\_\_\_

Author and Publisher: \_\_\_\_\_ Portion(s) to be used (e.g., pages, timer counts): \_\_\_\_\_

Purpose: \_\_\_\_\_

### Purpose of the Use

Consider the purpose of your work

| Favoring Fair Use   | Opposing Fair Use   |
|---|---|
| <input type="checkbox"/> Educational: Teaching (including multiple copies for classroom use); Research, Scholarship; Criticism; Comment | <input type="checkbox"/> Entertainment / Commercial activity  |
| <input type="checkbox"/> Transformative or Productive use (changes the work to serve a new purpose)                                     | <input type="checkbox"/> Non-Transformative (verbatim or exact copy and is used for the same purpose as original) |
| <input type="checkbox"/> Nonprofit use  | <input type="checkbox"/> Profiting from the use   |
| <input type="checkbox"/> Parody   | <input type="checkbox"/> Denying credit to original author  |
|   | <input type="checkbox"/> Bad-faith behavior (have knowledge of possible wrong doing)                              |

## Nature of Copyrighted Material

Consider the copyrighted work that you want to use

| Favoring Fair Use                                    | Opposing Fair Use  |
|--|--|
| <input type="checkbox"/> Published Work              | <input type="checkbox"/> Unpublished work  |
| <input type="checkbox"/> Factual or nonfiction, news | <input type="checkbox"/> Creative work (art, music, fiction, novels, films, plays) |
|  | <input type="checkbox"/> Consumable work (workbooks, tests)                        |

## Amount Copied

Consider how much of the copyrighted work you want to use

| Favoring Fair Use   | Opposing Fair Use   |
|---|---|
| <input type="checkbox"/> Small quantity (e.g. a single chapter or journal article or other excerpt consisting of less than 10% of the work) | <input type="checkbox"/> Large portion or entire work                       |
| <input type="checkbox"/> Portion used is not central or significant to entire work  | <input type="checkbox"/> Portion used is central or the "heart" of the work |
| <input type="checkbox"/> Amount is appropriate to education purpose   | <input type="checkbox"/> Includes more than necessary for education purpose |

## Effect on the Market for the Original (*carries most weight*)

Consider what effect your use of the copyrighted work will have on the original work's market value

- *In general, do not do anything that impairs the publisher's ability to profit from their products. For example, reproducing several chapters from a textbook/book in order to avoid purchasing the book is not considered fair use.*

| Favoring Fair Use   | Opposing Fair Use  |
|---|--|
| <input type="checkbox"/> User owns lawfully purchased or acquired copy of original work   | <input type="checkbox"/> Could replace sale of copyrighted work  |
| <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 for copyrighted work or derivative                               |
| <input type="checkbox"/> One or few copies made and/or distributed OR number of users to whom work is made accessible is one or few                             | <input type="checkbox"/> Numerous copies made and/or distributed   |
| <input type="checkbox"/> No longer in print; absence of licensing mechanism   | <input type="checkbox"/> Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available |
| <input type="checkbox"/> Restricted access (limited to students in a class or other appropriate group)  | <input type="checkbox"/> Will be making it publicly available on the Web or using other means of broad dissemination                       |
| <input type="checkbox"/> No similar product marketed by the copyright holder  | <input type="checkbox"/> Repeated or long-term use   |
| <input type="checkbox"/> The copyright holder cannot be identified or cannot be found after a reasonable search (or does not respond to request for permission) |  |

This checklist was last revised in June 2022. It is adapted from Columbia University Fair Use Checklist by Kenneth D. Crews (formerly of Columbia University) and Dwayne K. Buttler (University of Louisville), used under CC BY 4.0. This checklist is also licensed under CC BY 4.0.