

FAIR USE CHECKLIST

for Mrs. Flood's Math class

(project name)

Student Name(s): _____ Date: _____

Copyrighted work (e.g. owner, site, title): _____

Please complete this form for each possible "fair use" of a copyrighted work and submit the form(s) with your project.

Directions: Check all boxes that apply. For each of the four sections below, determine whether that factor favors or opposes a finding of fair use.

Favoring Fair Use

Opposing Fair Use

PURPOSE

- Teaching (includes multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit educational institution
- Criticism
- Comment
- News reporting
- Transformative or productive use
(changes the work for new utility or purpose)
- Restricted access (to students or other appropriate group)
- Parody
- Mash-up

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author
- Non-transformative, verbatim, or exact copy

NATURE

- Published work
- Factual, news, or nonfiction based
- Important to favored educational objectives

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction
- Consumable (workbook, test)

AMOUNT

- Small quantity
- Portion used is not central or significant
- Amount is appropriate for educational purpose

- Large portion or whole work used
- Portion used is central or "heart of the work"
- Amount is more than necessary for educational purpose

EFFECT

- User owns lawfully purchased or acquired copy of original work
- One or few copies made and/or distributed
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism; no longer in print

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for obtaining permission to use the copyrighted work is currently available (e.g. Copyright Clearance Center (CCC) licensing or off-prints available)
- Affordable permission available for using work
- Numerous copies made and/or distributed
- You made it accessible on the web or in another public forum
- Repeated or long-term use

INTRODUCTION to the FAIR USE 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). 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.

Benefits of 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 Roadmap

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.

Further Information

You can learn more about fair use from many sources, including the website of the Copyright Advisory Office of Columbia University: www.copyright.columbia.edu.

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