

Fair Use Checklist

This checklist can help instructors and researchers assess whether their use of copyrighted materials in teaching, research, and creative endeavors can be considered fair use under [Section 107 of the U.S. Copyright Act](#). Fair use is a limitation on the rights of the copyright holder that allows others to use portions of a copyrighted work or the whole work without permission from the rights holder. It is determined by a **balanced application** of the four factors set forth in the statute; these factors form the structure of the checklist:

1. Purpose of the use
2. Nature of the copyrighted work
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. Effect of the use upon the potential market for or value of the copyrighted work.

The Library's Circulation Team will apply this checklist to materials submitted for course reserve, but we encourage you to complete it before posting or linking to content in Blackboard or using others' material in your projects.

How to Use 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 helpful for establishing good faith. You should keep completed checklists on file for future reference (the Library will keep a record for course reserve material).

As you use the checklist, not all of the options may apply to your desired use. **You are likely to check more than one box in each column and even check boxes across columns. Some checkboxes will favor fair use and others may oppose fair use.** Often the checklists' factors favoring and opposing fair use will clearly oppose each other (e.g., use in scholarship vs. use in entertainment), but others will not have an exact opposite (e.g., important to educational objectives).

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.

If you would like a second opinion about the checklist or your use of copyrighted content, please contact Liz Svoboda, Head of Circulation & Instruction Librarian, esvoboda@umich.edu.

Library Subscriptions, Public Domain, and Open Education Resources

If the library has electronic access to the article or book, creating links to that licensed resource in your Blackboard course or through the library's course reserve system is preferred to uploading a PDF copy. This use of licensed material is highly favored with regard to fair use as opposed to making an electronic copy of the material and uploading that copy. Linking to or embedding licensed multimedia content (i.e., films or music) through the library is also possible.

Original works in the [Public Domain](#) are no longer protected by copyright and can be used without fear of infringement.

Open Education Resources and Open Access Journals are typically licensed under Creative Commons (CC). These licenses allow sharing, reusing, and adapting in accordance with the [type of CC license](#) chosen by the copyright holder, without the need to seek additional permissions. CC licenses often allow for more uses than a traditional fair use determination.

Name:

Date:

Class or Project:

Title of Copyrighted Work:

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

Favoring Fair Use	Opposing Fair Use
PURPOSE of Your Use	
<input type="checkbox"/> Teaching (includes multiple copies for teaching) <input type="checkbox"/> Research or scholarship <input type="checkbox"/> Nonprofit educational institution <input type="checkbox"/> Criticism <input type="checkbox"/> Comment <input type="checkbox"/> News reporting <input type="checkbox"/> Transformative use (changes work for new utility, repurposes or recontextualizes for new audience) <input type="checkbox"/> Parody	<input type="checkbox"/> Commercial activity <input type="checkbox"/> Profiting from the use <input type="checkbox"/> Entertainment <input type="checkbox"/> Bad-faith behavior (e.g., circumventing user agreements) <input type="checkbox"/> Denying credit to original creator <input type="checkbox"/> Non-transformative use (no repurposing or recontextualizing) <input type="checkbox"/> Verbatim/exact copy of work
NATURE of Original Work	
<input type="checkbox"/> Published work <input type="checkbox"/> Factual or nonfiction based <input type="checkbox"/> Important to educational objectives	<input type="checkbox"/> Unpublished work <input type="checkbox"/> Fiction <input type="checkbox"/> Highly creative work (poetry, art, music, films, play)
AMOUNT of the Original Work You Want to Use	
<input type="checkbox"/> Small quantity (no "rule" for % used) <input type="checkbox"/> Portion used is not central or significant <input type="checkbox"/> Amount is appropriate for educational use	<input type="checkbox"/> Large portion of work used <input type="checkbox"/> Portion used is central, "heart" of work, or most memorable aspect of work <input type="checkbox"/> Includes more than necessary for educational purpose
EFFECT of Your Use on the Original Work's Value	
<input type="checkbox"/> User owns lawfully purchased or acquired original <input type="checkbox"/> One or few (just enough) copies made <input type="checkbox"/> No significant effect on market or potential market for copyrighted work (consider in tandem with the amount of the work you wish to use) <input type="checkbox"/> Reasonably available licensing mechanism (e.g. linking to library subscription) <input type="checkbox"/> No similar product marketed by copyright holder <input type="checkbox"/> Lack of licensing mechanism <input type="checkbox"/> Out of print <input type="checkbox"/> Restricted access (library reserves or Blackboard class) <input type="checkbox"/> One time use, no time to obtain permission	<input type="checkbox"/> Numerous copies made, or potentially made by students downloading PDF <input type="checkbox"/> Significantly impairs market or potential market for copyrighted work, cumulative effect of copying would substitute for purchase of work <input type="checkbox"/> Affordable permission available for using work <input type="checkbox"/> Made accessible on open web or other public forum <input type="checkbox"/> Repeated or long term use

Fair Use Assessment ☐ Fair Use ☐ Not Fair Use

If you have questions, please contact Liz Svoboda, Head of Circulation & Instruction Librarian, at esvoboda@umich.edu.

Find additional information and FAQs on the UM-AA Copyright Office's guide [Copyright and Course Websites](#).