

SCHOOLCRAFT COLLEGE
18600 Haggerty Road, Livonia, Michigan 48152-2696

FAIR USE OF COPYRIGHTED MATERIALS

Fair use is a legal doctrine that promotes freedom of expressing by permitting the unlicensed use of copyright protected works, without the permission from the owner or author, in certain circumstances. *Section 107 of the Copyright Act* provides the statutory framework for determining whether something is a fair use and identifies certain types of uses – such as criticism, comment, news reporting, teaching, scholarship, and research as examples of activities that may qualify as fair use.

U.S. law no longer requires a copyright notice for a work to be protected; all works should be treated as copyrighted unless they fall into one of the following categories:

- Works that lack originality
- (Logical, comprehensive compilations, e.g., a phone book)
- Works in the public domain
- U.S. government works
- Facts

If the work meets any of the above, it can be freely reproduced; if not, the Fair Use Tests will dictate copying action.

If copying falls under the definition of “Fair Use,” copyright permission need not be obtained. The law is not crystal clear on the differentiation between “fair use” and copyright infringement. Several tests are used to determine if “fair use” applies to the situation.

The “Checklist for Fair Use” is a helpful tool for the academic community and serves two purposes. First, it should help educators, librarians, and others to focus on factual circumstances that are important to the evaluation of a contemplated fair use of copyrighted works. A reasonable fair use analysis is based on four factors set forth in the fair use provision of copyright law: *Section 107 of the Copyright Act of 1976*. The application of those factors depends on the particular facts of your situation, and changing one or more facts may alter the outcome of the analysis. The “Checklist for Fair Use” derives from those four factors and from the judicial decisions interpreting copyright law.

A second purpose of the checklist is to provide an important means for recording your decision-making process. Maintaining a record of your fair use analysis is critical to establishing your “reasonable and good-faith” attempts to apply fair use to meet your educational objectives.

As you use the checklist and apply it to your situation, 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 concern is whether you are acting reasonably in checking any given box; the ultimate concern is whether the cumulative “weight” of the factors favors or opposes fair use. Only you can make that decision in a reasonable and good faith manner.

When materials are reproduced in excess of fair use standards, all Schoolcraft College employees are required to obtain written permission to reproduce copyrighted material prior to such reproduction.

Adopted—Cabinet May 10, 2000
Revised—Cabinet May 23, 2001
Reviewed—Cabinet December 4, 2001
Reviewed—VP and CFO
October 28, 2004
Revised—Cabinet
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Checklist for Fair Use

Please complete and retain a copy of this form as documentation of your review of "Fair Use"

Name: _____ Date: _____

Material to be Copied: _____

Purpose and Character of the Use—How will the "work" be used by you?

<i>Favoring Fair Use</i>	<i>Opposing Fair Use</i>
<input type="checkbox"/> Teaching (including multiple copies for classroom use)	<input type="checkbox"/> Commercial activity
<input type="checkbox"/> Research	<input type="checkbox"/> Profiting from the use
<input type="checkbox"/> Scholarship	<input type="checkbox"/> Entertainment
<input type="checkbox"/> Nonprofit educational institution	<input type="checkbox"/> Bad-faith behavior
<input type="checkbox"/> Criticism	<input type="checkbox"/> Denying credit to original author
<input type="checkbox"/> Comment	
<input type="checkbox"/> News reporting	
<input type="checkbox"/> Transformative or productive use (changes the work for new utility)	
<input type="checkbox"/> Restricted access (to students or other appropriate group)	
<input type="checkbox"/> Parody	

Nature of the Copyrighted Work—What is the nature of the "work"?

<i>Favoring Fair Use</i>	<i>Opposing Fair Use</i>
<input type="checkbox"/> Published work	<input type="checkbox"/> Unpublished work
<input type="checkbox"/> Factual or nonfiction based	<input type="checkbox"/> Fiction
<input type="checkbox"/> Important to educational objectives	<input type="checkbox"/> Highly creative work (art, music, novels, films, plays)

Amount and Substantiality of the Portion Used in Relation to the Copyrighted Work as a Whole—How much of the "work" do you plan to copy?

<i>Favoring Fair Use</i>	<i>Opposing Fair Use</i>
<input type="checkbox"/> Small quantity	<input type="checkbox"/> Large portion or whole work used
<input type="checkbox"/> Portion used is not central or significant to entire work	<input type="checkbox"/> Portion used is central to work or "heart of the work"
<input type="checkbox"/> Amount is appropriate for educational purpose	

Effect of the Use on the Market for or Value of the Copyrighted Work—As a result of your copies, will the copyright holder be deprived of sales revenue?

<i>Favoring Fair Use</i>	<i>Opposing Fair Use</i>
<input type="checkbox"/> User owns lawfully acquired or purchased copy of original work	<input type="checkbox"/> Could replace sale of copyrighted work
<input type="checkbox"/> One or few copies made	<input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative
<input type="checkbox"/> No significant effect on the market or potential market for copyrighted work	<input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work
<input type="checkbox"/> No similar product marketed by the copyright holder	<input type="checkbox"/> Affordable permission available for using work
<input type="checkbox"/> Lack of licensing mechanism	<input type="checkbox"/> Numerous copies made
	<input type="checkbox"/> You made it accessible on Web or in other public forum
	<input type="checkbox"/> Repeated or long term use

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