

## Fair Use Checklist

Name:	Date:
Course or Project:	
Portions to be Used: <i>See Recommended Portions guidelines on page 2.</i>	Permission Status: <i>Check box after conducting your fair use analysis.</i> <input type="checkbox"/> Permission Required <input type="checkbox"/> Fair Use – no permission needed for this use
Copyrighted Work: (artist, author, title, etc.)	

**Directions:** Check all boxes that apply. 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. A key concern is whether you are acting reasonably in checking any given box; the ultimate concern is whether the cumulative "weight" of the **four factors** favors or opposes fair use. If the factors favoring "fair use" outnumber the factors weighing against a finding of "fair use," reliance on the fair use exception is justified. Where less than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work.

**1 – PURPOSE & CHARACTER OF THE USE****Favors Fair Use**

- Educational
- Teaching (including multiple copies for classroom use)
- Research or Scholarship
- Criticism, Comment, News Reporting, Parody
- Transformative use (changes work for new utility)

**Weighs Against Fair Use**

- Commercial activity
- Profiting from use
- For publication or public distribution
- Entertainment
- Bad-faith behavior
- Non-transformative
- Denying credit to original author

**2 – NATURE OF THE COPYRIGHTED MATERIAL****Favors Fair Use**

- Published work
- Factual, nonfiction, news

**Weighs Against Fair Use**

- Unpublished work
- Highly creative work (art, music, novel, film, play)

**3 – AMOUNT & SUBSTANTIALITY OF PORTION USED**

*See recommended portions on page 2.*

**Favors Fair Use**

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for educational use

**Weighs Against Fair Use**

- Large portion or whole work is used
- Portion used is central to or "heart of the work"
- Portion used exceeds what is necessary to achieve the intended educational goal

## Fair Use Checklist

**4 – EFFECT ON THE MARKET FOR THE ORIGINAL****Favors Fair Use**

- User owns lawfully purchased or acquired copy of original work
- No significant effect on market or potential market for copyrighted work
- No similar product marketed by copyright holder
- Lack of licensing mechanism
- One or few copies made and/or distributed
- Restricted access
- One-time use, spontaneous use

**Weights Against Fair Use**

- Significantly impairs market or potential market for copyrighted work or derivative
- Could replace sale of copyrighted work
- Reasonably affordable and available licensing mechanism for obtaining permission to use the copyrighted work
- Numerous copies made and/or distributed
- Will be making it publicly available (web, broadcast or other public forum)
- Repeated or long-term use

**Recommended Portions**

These are general guidelines that many educators have agreed upon and follow with regard to the copying of analog and digital content and the creation of multimedia objects or presentations. These guidelines can assist you in determining what may be permissible under fair use, with the warning that these are simply guidelines and have not been adopted as law.

It is important to keep in mind that, in general, fair use does not give permission for copying works in their entirety. Limited portions may be incorporated into a new production by a student for a class project or by an instructor for purposes of criticism, comment, news reporting, teaching, scholarship, or research.

- A **photograph or illustration** may be used in its entirety but no more than 5 images by an artist or photographer
- For **photographs and illustrations** from a published collective work, not more than 10% or 15 images, whichever is less
- Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted **motion media** work
- Up to 10%, but in no event more than 30 seconds, of the **music and lyrics** from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works
- Any **alterations to a musical work** shall not change the basic melody or the fundamental character of the work
- Up to 10% or 1000 **words**, whichever is less, in the aggregate of a copyrighted work consisting of **text material**
- An entire **poem** of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used
- For **poems** of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used
- Up to 10% or 2500 fields or cell entries in a **data set**, whichever is less

**Copying, Retention & Distribution**

- Only **two copies** of an educational multimedia project may be made, only one of which may be placed on reserve.
- If an educational multimedia project is created by two or more people, **each creator may retain one copy** for the educational purpose for which it was created.
- An additional **archival copy** may be made for preservation purposes, to be used only to replace the original if it has been lost, stolen or damaged.
- **Instructors** may use their multimedia works for teaching courses for up to two years after the first use.
- **Permission** is required for any **commercial use**, or any uses that go beyond the proposed guidelines for educational use.

Additional information and copyright education materials can be found at Copyright @ Hamilton.

<http://www.hamilton.edu/hillgroup/copyright/copyright-home>