

UC SANTA BARBARA LIBRARY FAIR USE CHECKLIST

This checklist is a tool to help you determine whether your proposed use of a copyrighted work is fair use. The FOUR FACTORS listed in the Copyright Statute (Section 107 of the U.S. Copyright Act) form the structure of this checklist. These factors are only guidelines. Although each factor should be given consideration, there is no magic formula.

Depending on the case, it is possible that even if three factors favor fair use, the fourth factor may be the most important one in that particular case, leading to a conclusion that the use may not be fair. Maintaining a record of your fair use analysis can be critical for establishing good faith. Keep a completed checklist on file for future reference.

Purpose

Favoring Fair Use

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

Opposing Fair Use

- Profiting from the use
- Commercial activity
- Entertainment
- Bad-faith behavior
- Denying credit to original author

Nature

Favoring Fair Use

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

Opposing Fair Use

- Unpublished work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

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Amount

Favoring Fair Use

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

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to or “heart of the work”

Effect

Favoring Fair Use

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

Opposing Fair Use

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using
- Numerous copies made
- You made it accessible on the Web or in other public forum
- Repeated or long-term use