

Mount Saint Mary College
Fair Use Checklist for Instructors

Instructors can assess whether a particular use of a copyrighted work falls within the fair use provisions of copyright law by evaluating their intended use against the four factors shown in the checklist below. Generally, where factors favoring fair use outnumber those against it, reliance on fair use is justified. Where fewer than half the factors favor fair use, instructors should seek permission from the rights holder.

The Fair Use Checklist is an important means for recording your fair use analysis. Demonstrating that a “reasonable and good faith” attempt at applying fair use was made is essential should any dispute arise. **Complete and retain a copy of this checklist** for each fair use determination as a record of this good faith attempt.

Instructor Name: _____ **Date:** _____

Class or Project: _____

Course and Term: _____

Title of Copyrighted Work: _____

Author and Publisher: _____

Portion(s) of work to be used: _____

FOUR FACTORS OF FAIR USE

Not all characteristics will be present in any given situation. Check only those that apply to your specific use. No single characteristic or factor determines fair use.

Factor 1: Purpose and Character of the Use

Characteristics Favoring Fair Use

- Directly related to classroom use
- Research or scholarship
- Nonprofit educational institution
- Criticism, comment, parody, or news reporting
- Transformative use (changes the work for new utility or purpose)
- Use is necessary to achieve intended educational purpose

Characteristics Opposing Fair Use

- Commercial activity
- Profiting from use
- Entertainment
- Denying credit to original author
- For publication or public distribution
- Non-transformative
- Use exceeds that which is necessary to achieve intended educational purpose

Factor 2: Nature of Copyrighted Work

Characteristics Favoring Fair Use

- Published work
- Factual or non-fiction work
- Important to educational objectives

Characteristics Opposing Fair Use

- Unpublished work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

Factor 3: Amount and Substantiality of Portion Used

Characteristics Favoring Fair Use

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

Characteristics Opposing Fair Use

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

Factor 4: Effect on Market for Original

Characteristics Favoring Fair Use

- No significant effect on market or potential market for original work
- One or few copies made or distributed
- No longer in print
- Licensing or permission unavailable
- User owns lawfully acquired or purchased copy of original work
- Restricted access (to students or other appropriate group)
- No similar product marketed by copyright holder
- Supplemental classroom reading

Characteristics Opposing Fair Use

- Significantly impairs market or potential market for original work or derivative
- Could replace sale of work
- Numerous copies made
- Affordable license or permission available
- Copy of work not lawfully acquired or purchased
- Unrestricted access on the web or other public forum
- Repeated or long-term use
- Required classroom reading

The MSMC Fair Use Checklist was drawn in its entirety from checklists published by the University System of Georgia (http://www.usg.edu/copyright/fair_use_checklist/), the Copyright Clearance Center (http://www.copyright.com/Services/copyrightoncampus/basics/fairuse_list.html), and **Copyright Basics for Librarians and Educators, 2nd edition** by Kenneth D. Crews, published in 2006 by the American Library Association.