DOCUMENTING THE FAIR USE REASONING PROCESS

Fair use allows the use copyrighted works without permission in certain circumstances. In order to make a good faith fair use determination, you must consider how each of the four factors from 17 U.S. Code §107 applies to your specific context. Keep the completed worksheet on file. Learn more about fair use at guides.oregonstate.edu/copyright

Name: 

Project: 

Citation for copyrighted work you will be using: 

FACTOR ONE – PURPOSE OF THE USE

What is the purpose of your project? 

Favoring Fair Use

- Educational
  - Teaching (including multiple copies for classroom use)
  - Research
  - Scholarship
  - Criticism
  - Comment
- Transformative (changes the work to serve a new purpose, such as parody)
- Nonprofit use

Disfavoring Fair Use

- Commercial, entertainment, or other use
- Verbatim or exact copy, not transformative
- For-profit use
- Bad faith
- Failing to give attribution to original creator

FACTOR TWO – NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use

- Factual, nonfiction, news
- Published work

Disfavoring Fair Use

- Creative (art, music, feature film, fiction)
- Consumable work (workbook, test)
- Unpublished work (manuscript, letters)
**FACTOR THREE – AMOUNT COPIED**

Explain why you used the portion you did (Example: *I think this brief article in Nature did a good job presenting the controversy surrounding GMOs, so I wanted my students to read it*):

<table>
<thead>
<tr>
<th>FAVORING FAIR USE</th>
<th>DISFAVORING FAIR USE</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Small quantity used (e.g., single chapter or journal article, other short excerpt)</td>
<td>□ Large portion or entire work</td>
</tr>
<tr>
<td>□ Portion used is not central to the work as a whole</td>
<td>□ Portion is central to the work</td>
</tr>
<tr>
<td>□ Amount used is appropriate to the educational or scholarly purpose</td>
<td>□ Includes more than is necessary to meet the purpose (including images of higher resolution than needed to make your point)</td>
</tr>
</tbody>
</table>

**FACTOR FOUR – EFFECT ON THE MARKET FOR THE ORIGINAL**

<table>
<thead>
<tr>
<th>FAVORING FAIR USE</th>
<th>DISFAVORING FAIR USE</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ No significant effect on the market or potential market for the original</td>
<td>□ Cumulative effect of copying would be to substitute for purchase of work</td>
</tr>
<tr>
<td>□ One or few copies made and/or distributed</td>
<td>□ Numerous copies are made/distributed</td>
</tr>
<tr>
<td>□ No longer in print; absence of licensing mechanism</td>
<td>□ Reasonably available licensing mechanism for obtaining permission exists</td>
</tr>
<tr>
<td>□ Restricted access (limited to students in a class, working group, committee, etc.)</td>
<td>□ Copy will be available on the Web or otherwise broadly distributed</td>
</tr>
<tr>
<td>□ One-time use</td>
<td>□ Repeated or long-term use</td>
</tr>
</tbody>
</table>

Courts have rejected formulaic approaches to fair use. Consider if the overall circumstances lean for or against fair use. If the factors seem to weigh against your use, consider asking the copyright holder for permission, using a work that’s in the public domain, or using a work released under a Creative Commons license.

Contact Michaela Willi Hooper (Michaela.WilliHooper@oregonstate.edu), the OSU Scholarly Communication Librarian, for further resources and information.

This worksheet borrows heavily from previous work done by Kevin L. Smith, Kenneth Crews, Dwayne Buttler, and Sue Kunda.