



## CHECKLIST FOR FAIR USE ANALYSIS

This checklist, adapted from Columbia University, is a tool to assist as you apply the fair use balancing test to specific situations in which you want to use copyrighted materials. If a particular use is fair use, it may proceed without authorization from the copyright owner; if the use does not fall within fair use, it will be necessary to request permission from the rights-holder. Therefore, if you have any checks in the 'opposing' column, please contact Course Reserves, Richter Library, 1st Floor, 305-284-3234, [richter.reserves@miami.edu](mailto:richter.reserves@miami.edu) to discuss further options.

The fair use analysis is always circumstantial and never entirely certain. For each of the four fair use factors below, determine whether each listed circumstance favors or opposes fair use based on the specific material in question and the use desired. Licensed electronic products and materials are governed by contracts that may limit or exclude provisions of Fair Use.

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### PURPOSE OF THE USE

#### Favoring Fair Use

- Educational
  - Teaching (including multiple copies for classroom use)
  - Research Scholarship
  - Criticism
  - Comment
- Transformative or Productive use (changes the work to serve a new Purpose)
- Nonprofit use

#### Opposing Fair Use

- Commercial, entertainment or other use
- Verbatim or exact copy, not transformative
- Profit generating use

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### NATURE OF THE COPYRIGHTED MATERIALS

#### Favoring Fair Use

- Factual, nonfiction, news
- Published work

#### Opposing Fair Use

- Creative or consumable work (art, music, feature film, fiction, workbook, case study or test)
- Unpublished work

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### AMOUNT COPIED

#### Favoring Fair Use

- Small quantity used (e.g., single chapter or journal article, other short excerpt (less than 10-15% of the whole work))
- Portion used is not central to work as a whole
- Amount is appropriate to the educational purpose

#### Opposing Fair Use

- Large portion or entire work
- Portion used is central or the "heart" of the work
- Includes more than necessary for Educational purpose



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**EFFECT ON THE MARKET FOR THE ORIGINAL**

Favoring Fair Use

- No significant effect on the market or potential market for the copyrighted work
- One or few copies made and/or distributed
- No longer in print; absence of licensing mechanism
- Restricted access (limited students in a class or other appropriate group)
- One-time, spontaneous use (no time To obtain permission)

Opposing Fair Use

- Cumulative effect of copying would be To substitute for purchase of work
- Numerous copies are made and/or distributed
- Reasonably available licensing mechanism for obtaining permission exists (CCC license or off-prints for sale)
- Copy will be available on the Web or Otherwise broadly distributed
- Repeated or long-term use