

## FAIR USE CHECKLIST

Name:

Date:

Class or Project:

Course and Term:

Title of Copyrighted Work:

Author and Publisher:

Portion(s) to be used (e.g., pages, timer counts):

### **Instructions:**

The checklist is a tool that allows you to perform a rigorous fair use analysis, and each portion of the checklist below should be completed. Not all of the factors will be present in any given situation. Check only those factors that apply to your use. Where there are counter factors, usually one or the other applies. No single item or factor is determinative of fair use, but several factors carry different weights as indicated below. The final determination is based on a holistic weighing or balancing of the four factors. Even so, you do not need to have all factors or all details pointing in favor of or against fair use. You should consult the Legal Affairs office at your institution or at the Office of the Board of Regents if you have questions regarding analysis of the four factors.

For more information regarding the fair use factors, please see the fair use sections of the Policy on the Use of Copyrighted Works in Education and Research for the University System of Georgia, which can be found on the web at <http://www.usg.edu/copyright/>.

Complete and retain a copy of this checklist for each “fair use” of a copyrighted work in order to establish a “reasonable and good faith” attempt at applying fair use should any dispute regarding such use arise.

## Factor 1: Purpose and Character of the Use

### Weighs in Favor of Fair Use

### Weighs Against Fair Use

<input type="checkbox"/> The use is for the purpose of teaching in a non-profit educational institution (including multiple copies for classroom use).	<input type="checkbox"/> The use is for a commercial purpose.
<input type="checkbox"/> The use is for criticism, comment, news reporting, or parody or transforms the presentation (alters the original work in a creative manner) or use.	<input type="checkbox"/> Mirror image copying without the addition of criticism, comment, news reporting or parody or transformation of presentation or use.
<input type="checkbox"/> The use is necessary to achieve an intended educational purpose.	<input type="checkbox"/> The use is not necessary to achieve an intended educational purpose.
<input type="checkbox"/> Distribution is limited by password to students within a class for the term of the course; student may download, print, or save the materials for own use, but not further distribute; student acknowledges copyrighted nature of the materials.	<input type="checkbox"/> Unlimited or uncontrolled distribution.

## Factor 2: Nature of the Work

*Give this factor less weight even when the work is published, non-consumable, and non-fictional.*

### Weighs in Favor of Fair Use

### Weighs Against Fair Use

<input type="checkbox"/> The work is non-fictional in nature.	<input type="checkbox"/> The work is fictional or highly creative (art, music, novel, film, play, poetry).
<input type="checkbox"/> The work is non-fictional in nature, and author opinion, subjective description and evaluative expression do not dominate the work.	<input type="checkbox"/> The work is non-fictional in nature and, author opinion, subjective description and evaluative expression dominate the work.
<input type="checkbox"/> The work is a “non-consumable” work (e.g., standard book or similar publication).	<input type="checkbox"/> The work is a consumable work (e.g., workbook or test).
<input type="checkbox"/> The original work has been published.	<input type="checkbox"/> The original work has never been published.

### Factor 3: Amount and Substantiality of Portion Used

*There is no bright line rule regarding the amount of use that will be deemed fair—amounts less than 10% have been deemed unfair whereas amounts more than 10% have been deemed fair based on the other factors. You should avoid using a portion that is the “heart of the work.”*

#### Weighs in Favor of Fair Use

#### Weighs Against Fair Use

<input type="checkbox"/> A decidedly small amount such as one chapter or less of the work is used.	<input type="checkbox"/> Large portion of the work is used <input type="checkbox"/> Multiple chapters of the work are used.
<input type="checkbox"/> Amount used is narrowly tailored to accomplish a legitimate purpose in the course curriculum.	<input type="checkbox"/> Amount used is more than necessary to accomplish a legitimate purpose in the course curriculum. <input type="checkbox"/> Portion used is central to the work or the “heart of the work”
<input type="checkbox"/> A small number of chapters of the work are used, and you have concluded that both the “effect on the market” (Factor 4) and the “purpose and character of the use” (Factor 1) favor fair use.	<input type="checkbox"/> Multiple chapters of the work are used, and you have not concluded that both the “effect on the market” (Factor 4) and the “purpose and character of the use” (Factor 1) favor fair use.

### Factor 4: Effect on Market for Original

*Please note that you must own a lawfully acquired or purchased copy of the original work that is used. This factor carries the most weight, but it is not so weighty that it determines the outcome of the fair use analysis. Favorable fair use results with respect to the above three factors (including a neutral finding regarding nature of the work) may outweigh unfavorable results here.*

#### Weighs in Favor of Fair Use

#### Weighs Against Fair Use

<input type="checkbox"/> The work as a whole is currently available for purchase, and a conveniently and efficiently accessible and reasonably priced digital license is <b>not</b> available.	<input type="checkbox"/> The work as a whole is currently available for purchase, and a conveniently and efficiently accessible and reasonably priced digital license <b>is</b> available.
<input type="checkbox"/> The work as a whole is not available for purchase, and a digital license is <b>not</b> available.	<input type="checkbox"/> The work as a whole is not available for purchase, and a digital license <b>is</b> available.