# Checklist for Conducting a Fair Use Analysis before Using Copyrighted Materials in Your CUP Book**[[1]](#footnote-1)**

**Cornell University Press** authors are responsible for clearing their own permissions for copyrighted material they wish to include in their manuscript. In some cases, an author may be able to assert “fair use” of copyrighted material. **This determination must be made on a case-by-case basis and may not be made by CUP on your behalf (but we and other Cornell colleagues may help).**

**Cornell University Press is a proponent of fair use and recommends you discuss permissions with your editor before requesting them from a third party.** Because of the restrictions of production schedules later in the process, you should have this discussion as early as possible in the development of your manuscript.

The Fair Use Checklist and variations on it have been widely used for many years to help educators, librarians, lawyers, and other users of copyrighted works determine whether their activities are within the limits of fair use under U.S. copyright law (Section 107 of the U.S. Copyright Act). **Fair use is determined by a balanced application of four factors set forth in the statute**: (1) the *purpose* of the use; (2) the *nature* of the work used; (3) the *amount and substantiality* of the work used; and (4) the *effect of the use* on the potential market for or value of the work used. Those four factors form the structure of this checklist. Congress and courts have offered some insights into the specific meaning of the factors, and those interpretations are reflected in the details of this form.

## Benefits of the Checklist

A proper use of this checklist should serve two purposes. First, it should help you to focus on factual circumstances that are important in your evaluation of fair use. The meaning and scope of fair use depends on the particular facts of a given situation and changing one or more facts may alter the analysis. Second, the checklist can provide an important mechanism to document your decision-making process. Maintaining a record of your fair use analysis can be critical for establishing good faith: **Please retain a copy of the checklist in connection with each "fair use" assertion you are making in your book project, submitting it as you would a permission letter from a third-party publisher.** Use of this checklist is vital to making a correct and appropriate determination.

## The Checklist as Roadmap

As you use the checklist and apply it to your situations, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will favor fair use, and others may oppose fair use. A key issue is whether you are acting reasonably in checking any given box, with the ultimate question being whether the cumulative weight of the factors favors or turns you away from fair use. ***This is not an exercise in simply checking and counting boxes*** (although that is a part of the task).

Instead, you need to consider the relative persuasive strength of the circumstances and whether the overall conditions lean most convincingly for or against fair use. Because you are most familiar with your project, you are probably best positioned to evaluate the facts and make the decision.

**Your Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Your Book Title**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CUP Editor Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Work to be used (Full citation and detail, e.g., pages, lines, word count, etc.)**:

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**Directions:** Check all boxes that apply. For each of the four sections below, determine whether that factor favors or disfavors a finding of fair use. If there are additional details or circumstances that may impact the determination, list them in “Additional Information.” Where the factors favoring "fair use" outnumber the factors weighing against a finding of "fair use," reliance on the fair use exception is justified. Where less than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work. **Where the factors appear evenly split or you have questions about interpretation, please contact your CUP editor or consult with your own institutional or personal legal counsel.**

## Purpose of the Use

*We’ve premarked two boxes in this section, as these are true for all*

*Cornell University Press publications because they are offered for sale.*

|  |  |
| --- | --- |
| Favoring Fair Use | Disfavoring Fair Use |
| Educational: teaching (including multiple copies for classroom use); research; scholarship; criticism; comment | Commercial, entertainment or other |
| Transformative or productive use (changes the work to serve a new purpose) | Nontransformative, verbatim/exact copy |
| Nonprofit use | Profit-generating use |
| Additional Information | |
|  | |

## Nature of Copyrighted Material

|  |  |
| --- | --- |
| Favoring Fair Use | Disfavoring Fair Use |
| Factual, nonfiction, news | Creative (art, music, fiction) or consumable (workbooks, tests) work |
| Published works | Unpublished work |
| Additional Information | |
|  | |

## Amount Copied

|  |  |
| --- | --- |
| Favoring Fair Use | Disfavoring Fair Use |
| Small quantity or excerpt of work | Large portion or entire work |
| Portion used is not central to entire work | Portion used is central or the "heart" of the work |
| Amount is appropriate to education purpose | Includes more than necessary for education purpose |
| Additional Information | |
|  | |

## Effect on the Market for Original

|  |  |
| --- | --- |
| Favoring Fair Use | Disfavoring Fair Use |
| No significant effect on the market or potential market for the copyrighted work | Cumulative effect of copying would be to substitute for purchase of the copyrighted work |
| One or few copies made and/or distributed | Numerous copies made and/or distributed |
| No longer in print; absence of licensing mechanism | Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available, e.g., CCC[[2]](#footnote-2) licensing or off-prints available |
| Restricted access (limited to students in a class or other appropriate group) | Will be making it publicly available on the Web or using other means of broad dissemination |
| One-time use, spontaneous use (no time to obtain permission) | Repeated or long-term use |

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| --- |
| Additional Information |
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## Summary & Decision

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| Total Factors Favoring Fair Use | Total Factors Disfavoring Fair Use |
|  |  |
| Additional Information | |
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1. CC-BY Cornell University, remixed from “The Fair Use Checklist”, CC-BY Kenneth D. Crews (Columbia University) and Dwayne K. Buttler (University of Louisville). [↑](#footnote-ref-1)
2. Copyright Clearance Center <http://www.copyright.com/>. [↑](#footnote-ref-2)