Fair Use Checklist: Purpose, Nature, Amount, and Effect

**Favoring Fair Use**

**Purpose**
- Teaching, research, scholarship, criticism, comment, or news reporting
- Not for profit use
- Transformative use (art, parody, etc.)
- Access is restricted to users through restricted access and duration
- One-time or last minute use

**Nature**
- Published work
- Factual or nonfiction based
- Important for stated educational objectives
- Work was not created for the stated proposed use

**Amount**
- Less than 10% of a work or no more than 5 images from the same author
- Portion used not central to the entire work
- Amount appropriate for stated educational or scholarly purpose
- If the entire work is to be used (which does not favor Fair Use), it is because it is essential to the purpose of use

**Opposing Fair Use**

**Purpose**
- Commercial or entertainment use
- Profit from use
- Bad-faith behavior (i.e. denying or omitting credit to the creator, no Fair Use analysis attempted)
- Work is simply duplicated or it is an exact derivative (i.e. translation)

**Nature**
- Unpublished work
- Highly creative work (art, audiovisual, plays, fiction, etc.)
- Work is consumable (i.e. workbooks, one-use only educational materials)
- Work was created for the purpose of the proposed use

**Amount**
- Large portion or the whole work is used
- Portion used is central to or “heart of the work”
- The amount of the work used exceeds what is needed to achieve the purpose of use
Favoring Fair Use

Effect
- User lawfully purchased or acquired copy of the original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- No way to license the work
- The copyright holder cannot be identified, found, or does not respond to requests for permission
- The copy to be used was legally obtained and proper credit is given to the original creator

Opposing Fair Use

Effect
- The work is currently available commercially and the use would prevent a purchase of a copy of the work
- Significantly impairs market or potential market for copyrighted work or derivative work
- The copy of the work used was not obtained legally
- The copyright holder denies permission for use
- Numerous copies made
- The work is made available on the Internet or in a way that unauthorized users could potentially access the work
- Repeated or long-term use

**This checklist is a tool to help you think about Fair Use, it should not be used as legal advice.**

Fair Use is only a principle within the copyright law, it is not a law itself. This checklist was adapted from the below sources which were derived from court decisions on Fair Use.

There is no equation or official application of the four Fair Use principles to determine if a use falls under Fair Use. Often the fourth factor, Effect, trumps the other three factors. The final determination of Fair Use is always in a court of law. This checklist helps you establish “good faith” should your use ever be called into question.

Adapted from the following under Creative Commons:
