

THE SCHOOL DISTRICT OF PINELLAS COUNTY
DEPARTMENT OF K-12 INSTRUCTIONAL MATERIALS AND LIBRARY MEDIA
SERVICES (DOP/AE)

FAIR USE CHECKLIST OF COPYRIGHTED MATERIAL

Copyright, a form of intellectual property, protects original works of authorship. The author or creator of the original work has the exclusive rights to reproduce, distribute, adapt, perform, or display the protected work. The owner also has the right to authorize and/or prohibit others from reproducing the copyrighted work. This right is subject, however, to certain limitations, including the doctrine of “fair use.” There is no specific definition of when use of copyrighted works constitutes “fair use;” however, section 107 of the Copyright Act of 1976 (17 U.S.C. §107), sets forth four factors to be considered in determining whether or not a particular use of copyrighted material is “fair.” These factors are as follows:

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit education purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

The distinction between “fair use” and infringement may be unclear and not easily determined. The application of the four factors depends on the particular facts of your situation.

This checklist will help you complete a fair use analysis. This checklist is also a record of your decision-making process. Maintaining a record of your fair use analysis is critical to the defense of an infringement claim. The checklist would be used in establishing that you believed and/or had reasonable grounds for believing that the use of the copyrighted work was a fair use and that you reasonably attempted to meet the objectives under Section 504(c)(2) of the Copyright Act (17 U.S.C. §504 (c)(2)), which offers some protection for educators and librarians who act in good faith. Once you have completed the checklist, it shall be kept on file per the District’s retention schedule.

You can check more than one box in each column and even check boxes across columns; therefore, the checklist may show arguments in a specific situation that both favor and oppose fair use. Your signature at the end of this document is an indication that you have analyzed the cumulative “eight” of the factors that favor or oppose fair use before copy use or duplication of the copyrighted work.

Name _____ School _____

Grade Level _____ Subject _____ Unit of Study _____

CITATION DESCRIPTION OF ITEM YOU INTEND TO USE OR DUPLICATE:

Author/Editor/Translator _____

Title of Work _____

Type of Work Literary Musical Dramatic Pantomimes and choreographic
 Sound recording Pictorial, graphic, or sculptural
 Motion pictures or other audiovisual work (including website and computer software)
 Architectural

Segment or portion used _____

Describe with Specificity the Intended Use of the Work

What is the PURPOSE and CHARACTER of the proposed use? (check all that apply)

FAVORING FAIR USE	OPPOSING FAIR USE
<input type="checkbox"/> Teaching (includes multiple copies restricted to single classroom use) <input type="checkbox"/> Transformative or productive use (changes the work for new utility) <input type="checkbox"/> Nonprofit educational institution <input type="checkbox"/> Restricted access (to students or other appropriate group) <input type="checkbox"/> Research <input type="checkbox"/> Parody <input type="checkbox"/> Comment <input type="checkbox"/> Scholarship <input type="checkbox"/> News reporting <input type="checkbox"/> Criticism <input type="checkbox"/> Commercial activity	<input type="checkbox"/> Profiting for the use <input type="checkbox"/> Entertainment <input type="checkbox"/> Bad-faith behavior <input type="checkbox"/> Denying credit to original author

What is the NATURE of the original copyright work? (check all that apply)

FAVORING FAIR USE	OPPOSING FAIR USE
<input type="checkbox"/> Small quantity of original work <input type="checkbox"/> Portion used is not central or significant to entire work <input type="checkbox"/> Amount is appropriate for educational objectives	<input type="checkbox"/> Large portion or whole work used <input type="checkbox"/> Portion used is central to work of "heart of the work"

What AMOUNT and SUBSTANTIALITY of the portion of the copyrighted work will be used? (check all that apply)

(You should measure the amount of material both quantitatively and qualitatively. Evaluate quantity relative to the length of the entire work and the amount needed. The reproduction of an entire work weighs against fair use. A reproduction that is small but still uses the "heart" of the work, will also weigh against fair use).

FAVORING FAIR USE	OPPOSING FAIR USE
<input type="checkbox"/> Small quantity of original work <input type="checkbox"/> Portion used is not central or significant to entire work <input type="checkbox"/> Amount is appropriate for educational objectives	<input type="checkbox"/> Large portion or whole work used <input type="checkbox"/> Portion used is central to work of "heart of the work" <input type="checkbox"/> Portion taken or used makes up the greater part of the User's work

What is the EFFECT on the market or potential market of the original work? (check all that apply) (Reproduction that substitutes for the purchase of the original weighs heavily against fair use.)

FAVORING FAIR USE	OPPOSING FAIR USE
<input type="checkbox"/> User owns a copy that was lawfully acquired or purchased <input type="checkbox"/> One or few copies made <input type="checkbox"/> No significant effect on the market potential market for copyrighted work <input type="checkbox"/> No similar product marketed by the Copyright holder <input type="checkbox"/> Lack of licensing mechanism	<input type="checkbox"/> Copy could replace scale of copyrighted work <input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative <input type="checkbox"/> Reasonably available licensing or mechanism for use of copyrighted work <input type="checkbox"/> Affordable permission available for using work <input type="checkbox"/> Numerous copies made <input type="checkbox"/> Plans include posting on the web or use in other public forum [contest] <input type="checkbox"/> Repeated or long term use

Complete the analysis by checking ONE of the following statements. A record of your analysis should remain on file in the school's main office.

Based on the fair use analysis completed above, I believe that my use of the copyrighted work falls within the fair use exception.

Based on the fair use analysis completed above, I believe that my use of the copyrighted work does not fit within the fair use exception. I will obtain permission from the copyright owner before using the copyrighted work.

Signature

Date