Instructions: Four factors must be analyzed in determining whether or not the intended use of a copyrighted item falls under fair use. Check all items (favoring/opposing) that apply to your intended use.

Factor 1: Purpose and Character of the Use

**Favoring Fair Use**
- Teaching including multiple copies for classroom use
- Research
- Scholarship
- Nonprofit educational institution
- Criticism
- Comment
- News Reporting
- Transformative or productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

**Opposing Fair Use**
- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

Factor 2: Nature of the Copyrighted Work

**Favoring Fair Use**
- Published work
- Factual or nonfiction based
- Important to favored educational objectives

**Opposing Fair Use**
- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction
Factor 3: Amount and Substantiality of the Portion Used

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Small quantity</td>
<td>□ Large portion or whole work used</td>
</tr>
<tr>
<td>□ Portion used is not central or significant to entire work</td>
<td>□ Portion used is central to or “heart of the work”</td>
</tr>
<tr>
<td>□ Amount is appropriate for favored educational purpose</td>
<td></td>
</tr>
</tbody>
</table>

Factor 4: Effect of the Use Upon the Potential Market for the work

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ User owns lawfully purchased or acquired copy of original work</td>
<td>□ Could replace sale of copyrighted work</td>
</tr>
<tr>
<td>□ One or few copies made</td>
<td>□ significantly impairs market or potential market for copyrighted work or derivative</td>
</tr>
<tr>
<td>□ No significant effect on the market or potential market for copyrighted work</td>
<td>□ Reasonably available licensing mechanism for use of the copyrighted work</td>
</tr>
<tr>
<td>□ No similar product marketed by the copyright holder</td>
<td>□ Affordable permission available for using work</td>
</tr>
<tr>
<td>□ Lack of licensing mechanism</td>
<td>□ Numberous copies made</td>
</tr>
<tr>
<td></td>
<td>□ You made it accessible on the Web or in other public forum</td>
</tr>
<tr>
<td></td>
<td>□ Repeated or long-term use</td>
</tr>
</tbody>
</table>

All four factors must be considered when analyzing your completed checklist. When analyzing your completed checklist, if more checks appear in the “favoring” column than the “opposing” column, your use most likely falls under fair use. If you find that more checks appear in the “opposing” column, permission to use the item should be obtained.

A copy of the completed checklist should be kept to establish that a “good faith” effort to apply fair use was made.

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