

RIT FAIR USE ANALYSIS CHECKLIST FOR USE BEFORE USING COPYRIGHTED MATERIALS

This checklist is a tool to assist you in applying the balancing test for determining whether you may make or distribute copies of works protected by copyright without having to obtain the permission of the copyright holder¹. You shall complete and retain a copy of this form in connection with each "fair use" of a copyrighted work.

Name: _____ Date: _____

Class, Use, or Project: _____

Title of Copyrighted Work: _____

Portion to be used (*i.e.* pages): _____

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. Where the factors favoring "Fair Use" clearly 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, as appropriate, the Wallace Library Publishing and Scholarship Support Services Manager, the Provost or his/her designee, or the Director of the Educational Technology Center.

PURPOSE OF THE USE

Favoring Fair Use

- Educational
 - Teaching
 - Research
 - Scholarship
 - Criticism
 - Comment
- Transformative or Productive use (changes the work to serve a new purpose)
- Nonprofit use

Disfavoring Fair Use

- Commercial, entertainment or other
- Non-transformative, verbatim/exact copy
- Profit-generating use

¹ Check with the Wallace Library or other RIT sources to determine whether RIT has already obtained a license to use the material. A Fair Use analysis does not have to be conducted where the desired use is permitted under the terms of an applicable license. Similarly, other provisions of the copyright law cover such matters as library copying, in-class use, and distance learning. This checklist is not needed where other specific statutory provisions authorize the activity.

NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use

- Factual, nonfiction, news
- Published work

Disfavoring Fair Use

- Creative (art, music, fiction) or consumable (workbooks, test) work
 - Unpublished work
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AMOUNT COPIED

Favoring Fair Use

- Small quantity (i.e. a single chapter or journal article or other excerpt consisting of a small amount of the work)
- Portion used is not central to entire work as a whole
- Amount is appropriate to education purposes

Disfavoring Fair Use

- Large portion or entire work
 - Portion used is central or the “heart” of the work
 - Includes more than necessary for education purpose
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EFFECT ON THE MARKET FOR ORIGINAL

Favoring Fair Use

- No significant effect on the market or potential market for the copyrighted work
- One or few copies made and/or distributed
- No longer in print; absence of licensing mechanism
- Restricted access (limited to students in a class or other appropriate group)
- One-time use, spontaneous use (no time to obtain permission)

Disfavoring Fair Use

- Cumulative effect of copying would be to substitute for purchase of the copyrighted work
 - Numerous copies made and/or distributed
 - Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available (i.e. CCC licensing or off-prints available)
 - Will be making it publicly available on the Web or using other means of broad dissemination
 - Repeated or long-term use
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