

# COPYRIGHT FAIR USE CHECKLIST



## I. WHAT ARE THE FACTORS RELEVANT TO DETERMINING FAIR USE?

To prevail on a fair use defense, you must establish the following four factors:

1. The purpose and character of the use;
2. The nature of the copyrighted work;
3. The substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect on the potential market for or value of the copyrighted work.

## II. A DEEPER DIVE INTO THE FACTORS

### 1. The purpose and character of the use.

- Favoring Fair Use. An educational or non-profit use. Teaching, research, criticism or comment. Transformation of the product to serve a new purpose. A parody.
- Opposing Fair Use. A commercial, profit generating activity. A non-transformative or exact copy. Used for entertainment.

### 2. The nature of the copyrighted work.

- Favoring Fair Use. A published work. Factual or non-fiction work such as news.
- Opposing Fair Use. An unpublished work. Creative work such as fiction, art or music. Consumable work, such as workbooks or tests.

### 3. The substantiality of the portion used in relation to the copyrighted work as a whole.

- Favoring Fair Use. Small quantity of the work used. Portion used was not significant to the work as a whole. Amount of the work used appropriate to a legitimate educational purpose.
- Opposing Fair Use. Large portion or entire work used. Portion used was central to the work.

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4. The effect on the potential market for or value of the copyrighted work.

- Favoring Fair Use. No significant effect on the market or potential market for the work. User lawfully purchased or acquired a copy of the original work. Only a few copies were made and/or distributed. Work no longer in print.
- Opposing Fair Use. Could replace the sale of the copyrighted work or significantly impair the market for the work. Numerous copies were made. The work was used repeatedly over a long term.

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