

LYNN UNIVERSITY FAIR USE GUIDE

In determining whether faculty members may use portions of copyrighted works in their teaching and scholarship, the law permits some uses for nonprofit educational purposes, including fair uses.

The following worksheets and handout are intended guide faculty in making fair use determinations.

GENERAL INFORMATION:

Name: _____

Course, if applicable: _____

Number of *total* students: _____

Semester: Fall _____ Spring _____ Summer _____ Year: _____

Other Potential Use: _____

Description of Material(s)

1. Author/Editor/Translator: _____

Publisher: _____

Material Title: _____

Specific Material to be Used: _____

2. Author/Editor/Translator: _____

Publisher: _____

Material Title: _____

Specific Material to be Used: _____

3. Author/Editor/Translator: _____

Publisher: _____

Material Title: _____

Specific Material to be Used: _____

4. Author/Editor/Translator: _____

Publisher: _____

Material Title: _____

Specific Material to be Used: _____

5. Author/Editor/Translator: _____

Publisher: _____

Material Title: _____

Specific Material to be Used: _____

Check-off all the categories that apply below. Sign, date, and retain with appropriate accompanying materials for three years from the use of the use.

THE “FIVE” FAIR USE FACTORS: THE FOUR “OFFICIAL” AND THE ONE “REAL” FACTOR

1. WHAT IS THE PURPOSE OF THE PROPOSED USE?

- | | | |
|-----------------------------------|--|---|
| <input type="radio"/> Nonprofit | <input type="radio"/> Criticism | <input type="radio"/> Commercial use |
| <input type="radio"/> Teaching | <input type="radio"/> Commentary | <input type="radio"/> Entertainment |
| <input type="radio"/> Scholarship | <input type="radio"/> Parody that is
funny to the court | <input type="radio"/> Parody that is
offensive to the
court |
| <input type="radio"/> Research | <input type="radio"/> Restricted access | <input type="radio"/> Bad faith behavior |
| <input type="radio"/> Personal | <input type="radio"/> News reporting | <input type="radio"/> “Only” profit |
| | <input type="radio"/> Otherwise
transformative use | <input type="radio"/> Lack of attribution |

Guide: Uses on the left tend to tip the balance in favor of fair use. Uses on the right tend to tip the balance in favor of seeking permission from the copyright holder. The uses in the middle, if they apply, are favorable to fair use: they add weight to the tipping force of uses on the left.

Total: Favors Fair Use: _____

Does Not Favor Fair Use: _____

2. WHAT IS THE NATURE OF THE COPYRIGHTED WORK TO BE USED?

- | | | |
|---------------------------------|--|--|
| <input type="radio"/> Factual | <input type="radio"/> A mixture of
factual and
imaginative | <input type="radio"/> Unpublished |
| <input type="radio"/> Published | | <input type="radio"/> Creative |
| | | <input type="radio"/> Entertainment |
| | | <input type="radio"/> Consumable
Materials
(Workbooks,
Answer Sheets) |

Guide: Again, uses on the left tend to tip the balance in favor of fair use while uses on the right favor seeking permission. In this case, uses in the middle have little effect on the balance.

Total: Favors Fair Use: _____

Does Not Favor Fair Use: _____

3. HOW MUCH OF THE COPYRIGHTED WORK WILL BE USED?

- Small amount
- Amount is “just enough” to get the point across, but no more
- Large portion or whole work
- Portion used is qualitatively substantial

Guide: The amount of material should be measured both quantitatively and qualitatively. Quantity should be evaluated 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 relatively small, but still uses the “heart” of the work will weigh against fair use.

Total: Favors Fair Use: _____ **Does Not Favor Fair Use:** _____

4. WHAT IS THE EFFECT ON THE MARKET OR POTENTIAL MARKET FOR THE COPYRIGHTED WORK?

- User owns lawfully acquired copy
- No significant effect on the Market/Potential market for the Work
- Copyright holder is (truly) unidentifiable
- Replaces sale of copyrighted work
- Significantly impairs market, or potential market, for the work
- Numerous copies made or digital potentially “infinite” delivery
- Use makes it publicly accessible on the web

Guide: Reproduction that substitutes for purchase of the original weighs heavily against fair use. This factor is closely linked to the other factors.

Total: Favors Fair Use_____ **Does Not Favor Fair Use**_____

5. INVISIBLE FACTOR: WILL A JUDGE OR JURY THINK YOU ARE A GOOD PERSON OR A BAD PERSON?

- Good
- Bad

Guide: Good people win fair use cases. Tabloids, lazy people, and those who seem to do things “just” for money lose. Gut check: Are you really just “ripping someone off”?

DETERMINATION: Based on my fair use analysis completed above, I have determined the following:

- Materials numbered _____ falls within the fair use exception.
- Materials numbered _____ does not fit within the fair use exception. I will obtain *written* permission before using the material.

Signature: _____

Date: _____