

## Copyright and Fair Use Fact Sheet

**Copyright**, Title 17 of the U.S. Code, is one of several intellectual property right laws that govern ownership and use of works of creation. It's a complex law that changes with court decisions. Within the copyright law, certain exclusive rights are granted to the Author or copyright holder of a work. These rights include the right to copy, create derivative works, and to profit for their work for a limited period of time.

**Fair Use** is section 107 of Title 17 and is one of several sections that create exemptions in certain explicitly stated circumstances: news reporting, teaching, scholarship, or research. Bookstores and other commercial entities, no matter what their affiliation, are not able to take advantage of Fair Use. Here is section 107 in its entirety:

### **§ 107. Limitations on exclusive rights: Fair use**

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational 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The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

**The Four Factors** are how items 1-4 are referred to. In order to determine if a use is, indeed, Fair Use, the four factors are looked at in a balanced way. They are to be weighted evenly, though sometimes one factor has been weighted more strongly than others.

**Guidelines** were an attempt to provide a rule of thumb or assistance through the balancing the Fair Use, but they are not Fair Use. They were generally agreeable guidelines between publishers and educators on what constitutes acceptable use. The much-ballyhooed 10% of a work comes from these guidelines. They can be unnecessarily restrictive to an educator.

## **Balancing Fair Use**

It's probably less obvious but more advantageous to the educator to attempt to balance the four factors than to live by the guidelines. Kenneth Crewes and Dwayne K. Butler developed the following checklist. It is widely used by colleges and universities to help determine fair use.

**Further Assistance and information: please ask!**

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## Fair Use Worksheet

### PURPOSE

#### *Favoring Fair Use*

#### *Opposing 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

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

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### NATURE

#### *Favoring Fair Use*

#### *Opposing Fair Use*

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

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### AMOUNT

#### *Favoring Fair Use*

#### *Opposing Fair Use*

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

- Large portion or whole work used
- Portion used is central to work or "heart of the work"

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### EFFECT

#### *Favoring Fair Use*

#### *Opposing Fair Use*

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on Web or in other public forum
- Repeated or long term use