

## Claremont Colleges Library Fair Use Checklist

Name: \_\_\_\_\_

Project: \_\_\_\_\_

Date: \_\_\_\_\_

*This checklist is not legal advice.*

It is provided as a tool to assist you when undertaking a fair use analysis. The four factors listed in the Copyright Statute are only guidelines for making a determination as to whether a use is fair. Each factor should be given careful consideration in analyzing any specific use.

### **Purpose**

#### **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

Adapted from Columbia University Libraries

copyright.columbia.edu/content/dam/copyright/PrecedentDocs/fairusechecklist CC-BY Kenneth D. Crews  
(formerly of Columbia University) and Dwayne K. Buttler (University of Louisville).

## Claremont Colleges Library Fair Use Checklist

### **Nature**

#### **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- Unpublished work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

### **Amount**

#### **Favoring Fair Use**

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

#### **Opposing Fair Use**

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

### **Effect**

#### **Favoring Fair Use**

- User owns lawfully purchased or acquired 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

#### **Opposing Fair Use**

- 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 the Web or in other public forum
- Repeated or long-term use

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## A Framework for Analyzing any Copyright Problem

One of the most difficult issues when faced with a copyright problem, is simply knowing where to begin—which parts of the legal rules and doctrines apply to this specific problem.

To deal with this uncertainty, we suggest working through the following five questions, in the order they are presented. They are simple questions, but they are not easy to answer. But by working through them *in order*, it is possible to identify which of the parts of copyright law apply to the specific problem or fact pattern that you need to address.

**The five questions that form this framework for copyright analysis are:**

**1. Is the work protected by copyright?**

- a. Is the work I want to use protected by copyright, or is it in the public domain?
- b. If I wrote it, do I still own copyright, or did I sign over rights for my intended use to the publisher?

**2. Is there a specific exception in copyright law that covers my use?**

- a. Is my intended use covered by a specific exception to the exclusive rights in the copyright law, such as the one for libraries or for classroom performances and displays?

**3. Is there a license that covers my use?**

- a. Is there a Creative Commons license attached to the work? If so, can I comply with the terms of the license, or can I find another useful work that is CC-licensed?
- b. If affiliated with an educational institution, is there a license that governs how the copyrighted material I'm accessing through my library can be used? If so, can I comply with the license terms? If you are uncertain, your librarian should be able to help you.

**4. Is my use covered by fair use?**

- a. Four factors are:
  - i. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
  - ii. the nature of the copyrighted work;
  - iii. the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
  - iv. the effect of the use upon the potential market for or value of the copyrighted work.
- b. Questions for transformative fair use under factor one are:
  - i. Does the copyrighted material help me make my new point?
  - ii. Will it help my readers or viewers get my point?
  - iii. Have I used no more than is needed to make my point? (Is it “just right”?)

**5. Do I need permission from the copyright owner for my use?**

- a. If so, first locate the copyright owner and fully explain your intended use in your permission request.
- b. If no response or answer is no, reconsider your use of this work to see if you can make a fair use, or consider using another work.

**Still unsure? Ask a librarian!**

<http://libraries.claremont.edu/contact/directories/librarians.asp>

Reference & Research help, 909-607-3959

Scholarly Communication, Publishing, Copyright 909-607-0893

This image/article/quotation/clip is great!  
**CAN I USE IT?**

<p>Is this work covered by copyright?</p> <p style="font-size: 2em; color: white;">YES</p>	<p>Is the work eligible for © protection? </p> <p>Is the work in the public domain? </p>	Looks like you can make a legal* use!
<p>Is your intended use already permitted?</p> <p style="font-size: 2em; color: white;">NO</p>	<p>Is there a Claremont Colleges Library subscription available for your use?</p> <p>Are there donor restrictions (per some special collections material)?</p> <p>Is the work available under a Creative Commons license or other open license?</p>	
<p>Is your intended use a fair Use?</p> <p style="font-size: 2em; color: white;">NO</p>	<p>Have you done your due diligence and examined all four Fair Use factors (see <i>copyright guide</i>) and other relevant issues, and concluded that your use seems likely to be fair?</p>	
<p>Seek permission</p>	<p>If permission is denied, consider alternatives:</p> <ul style="list-style-type: none"> <li>Revise planned use or use a different work (see open access guide or a librarian for suggestions)</li> <li>Seek further legal advice</li> </ul>	

**\* This is intended to be a guide and not legal advice.**

These questions are not always easy to answer. For more information, talk to a librarian <http://libraries.claremont.edu/contact/directories/librarians.asp>

Copyright guide <http://libguides.libraries.claremont.edu/copyright-resources>  
 Open access resources guide <http://libguides.libraries.claremont.edu/OpenAccess>