FAIR USE

There is more than one way to graphically present whether or not the use of information falls within the fair use exemptions for educational institutions.

Because of individual preferences on which fair use chart was preferred for use at Moravian College, the following pages represent the same information in different formats.
FAIR USE

1. Commercial/Profit
2. Entertainment
3. Verbatim
4. Not transformative

Creative & Consumable:
Art, music, feature film, fiction, workbook, case study or test

YES

1. Teaching
2. Research
3. Scholarship
4. Criticism
5. Comment
6. Transformative
7. Nonprofit use

Transformative:
The work is changed to serve a new purpose

NO

1. Factual
2. Nonfiction
3. News
4. Published Work

1. Large portion of work
2. Entire work
3. Portion used is central part
4. Includes more than necessary to make specific educational point

NO

1. Creative
2. Consumable
3. Unpublished

1. Cumulative effect of copying substitutes purchase
2. Numerous copies made & distributed
3. Available licensing mechanism
4. Copy will be placed on web or freely available
5. Repeated or long-term use planned

NO

1. Small quantity (less than 10-15%) of work
2. Portion is not central to work as a whole
3. Amount is appropriate to make specific educational point

YES

1. No significant market effect for not purchasing
2. One or few copies made and distributed
3. No longer in print; no licensing mechanism
4. Access is limited to students in class
5. One-time spontaneous use, no time to obtain permission

NO

YES

J. Ohles 7/2014
Fair Use Flow Chart

1. **Purpose**
   - Commercial / For Profit / Entertainment
   - Nonprofit / Educational Use / Criticism
   - Away from Fair Use
   - Toward Fair Use

2. **Nature**
   - Unpublished work
   - Published work
   - Creative work (plays, music, art...)
   - Factual or Nonfiction based
   - Away from Fair Use
   - Toward Fair Use

3. **Amount**
   - Large portion or whole text
   - Small quantity (=<15%)
   - Portion used is central to entire work or heart of the work
   - Not significant or central to entire work
   - Amount is appropriate to make pedagogical point
   - Away from Fair Use
   - Toward Fair Use

4. **Effect**
   - Replaces sale of work
   - User owns lawfully purchased copy of work
   - Impairs market or potential market
   - One of few copies made (e.g., difficult to obtain)
   - Licensing is available
   - No significant effect on market or potential market
   - Permission can be obtained to use
   - No similar product marketed by copyright holder
   - Numerous copies made or available
   - No licensing mechanism
   - Repeated or long term use
   - You make it available on Web / public forum
   - Away from Fair Use
   - Toward Fair Use

Chart Credit: University of Minnesota
Fair Use Checklist
Copyright Advisory Office
Columbia University Libraries
Kenneth D. Crews, Director
http://copyright.columbia.edu

Name: _______________________________________________________________________
Institution: ___________________________________________________________________
Project: _______________________________________________________________________
Date: _________________________________________________________________________
Prepared by: ___________________________________________________________________

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
### 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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