

CHECKLIST FOR CONDUCTING A FAIR USE ANALYSIS BEFORE USING COPYRIGHTED MATERIALS

This checklist is a tool to assist you in applying the balancing test for determining whether you may make or distribute copies of works protected by copyright without having to obtain the permission of the copyright holder. It is recommended that you complete and retain a copy of this form in connection with each "fair use" of a copyrighted work. (In many cases, the College's Library or Instructional Media Center may have a license to use material. A fair use analysis does not have to be conducted where the desired use is permitted under the terms of an applicable license.)

Name: _____ Date: _____

Class or Project: _____

Title of Copyrighted Work: _____

Portion to be used (e.g. pages): _____

Directions: Check all boxes that apply. For each of the four sections below, determine whether that factor favors or disfavors a finding of fair use. Where the factors favoring "fair use" outnumber the factors weighing against a finding of "fair use," reliance on the fair use exception is justified. For cases in which less than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work. Please note that there MAY be fact patterns in which three of four factors favor use, however the remaining factor disfavoring fair use is so compelling that (1) either permission must be obtained or (2) a fair use exception is unjustified. If you have questions about interpretation, please contact the College's Copyright Officer Valerie Waldin @ 629-7319 or v.waldin@hvcc.edu.

PURPOSE OF THE USE

Favoring Fair Use

- Educational
 - Teaching (including multiple copies for classroom use)
 - Research
 - Scholarship
 - Criticism
 - Comment
- Transformative or Productive use (changes the work to serve a new purpose)
- Nonprofit use

Disfavoring Fair Use

- Commercial, entertainment or other
- Non-transformative, verbatim/exact copy
- Profit-generating use

NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use

- Factual, nonfiction, news
- Published work

Disfavoring Fair Use

- Creative (art, music, fiction), or consumable (workbooks, tests) work
- Unpublished work

AMOUNT COPIED

Favoring Fair Use

- Small quantity (e.g. a single chapter or journal article or other excerpt consisting of less than 10% of the work)
- Portion used is not central to entire work
- Amount is appropriate to education purpose

Disfavoring Fair Use

- Large portion or entire work
- Portion used is central or the "heart" of the work
- Includes more than necessary for education purpose

EFFECT ON THE MARKET FOR ORIGINAL

Favoring Fair Use

- No significant effect on the market or potential
- One or few copies made and/or distributed
- No longer in print; absence of licensing mechanism
- Restricted access (limited to students in a class or other appropriate group)
- One-time use, spontaneous use (no time to obtain permission)

Disfavoring Fair Use

- Cumulative effect of copying would be to substitute for purchase of the copyrighted work
- Numerous copies made and/or distributed
- Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available e.g. CCC licensing or off-prints available
- Will be making it publicly available on the Web using other means of broad dissemination.
- Repeated or long-term use

NOTES