

## APPENDIX A: FAIR USE CHECKLIST

This checklist is a tool to assist University of Delaware faculty, staff and students to determine if the intended use may be considered fair use. Check only those factors that apply to the specific intended use. For each of the four sections below, determine whether a factor favors or disfavors fair use. No single item or factor is determinative of fair use, as some factors may weigh more heavily than others, but a tally of factors favoring and weighing against fair use will help the decision-making process.

Keep the completed checklist in your files in case you need to show evidence of a decision made in "reasonable and good-faith." If you have any questions, please contact a reference librarian at the University of Delaware Library, 302-831-2965. Legal questions will be referred to campus counsel.

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

Class or project: \_\_\_\_\_ Title of copyrighted work: \_\_\_\_\_

Author and publisher: \_\_\_\_\_ Portion to be used (i.e. pages): \_\_\_\_\_

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### FACTOR 1: PURPOSE OF THE USE

#### Favoring Fair Use

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

#### Weighing against Fair Use

- Commercial, entertainment or for profit
- Public distribution
- Verbatim or exact copy, not transformative

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### FACTOR 2: NATURE OF THE COPYRIGHTED MATERIAL

#### Favoring Fair Use

- Factual, nonfiction, news
- Published Work

#### Weighing against Fair Use

- Creative (art, music, fiction) or consumable work (workbook, test)
- Unpublished work

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### FACTOR 3: AMOUNT COPIED

#### Favoring Fair Use

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

#### Weighing against Fair Use

- Large portion or entire work)
- Portion used is central or the “heart” of the work
- Includes more than necessary for the educational purpose

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### FACTOR 4: EFFECT ON THE MARKET FOR THE ORIGINAL

#### Favoring Fair Use

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

#### Weighing against Fair Use

- Cumulative effect of copying would be to substitute for purchase of work
- Numerous copies are made and/or distributed
- Reasonably available licensing mechanism for obtaining permission exists (CCC license or off-print for sale)
- Repeated or long-term use

Revised for use by the University of Delaware from the “Checklist for Fair Use,” a project directed by Kenneth D. Crews, formerly at the IUPUI Copyright Management Center and the Copyright Advisory Office at Columbia University ([www.copyright.columbia.edu/fair-use-checklist](http://www.copyright.columbia.edu/fair-use-checklist))