CHECKLIST FOR FAIR USE

Please complete and attach a copy of this form to each "fair use" of a copyrighted work for your course when you submit it to the Library for Reserve. If your work is in the common domain or your own, there is no need to use this checklist. (A printed work published before 1922 is in the common domain; the copyright has expired.) *If you post the item on Course Management Software (CMS), keep a copy of the checklist for your records.*

Name: _____ Date: _____

Course/section: _____ Author/title _____

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PURPOSE

Favoring Fair
_ Teaching
_ Research or Scholarship
_ Nonprofit Educational Institution
_ Restricted access (on Moodle)

Use Opposing Fair Use
_ Commercial activity
_ Profiting from the use
_ Entertainment
_ Bad-faith behavior

_____

NATURE

Favoring Fair Use
_ Published work
_ Factual or nonfiction based
_ Important to course objectives

Opposing Fair Use
_ Unpublished work
_ Highly creative work (art, music, novels, films, plays)
_ Fiction
_*Disposable work (e.g. workbook, survey, etc.)

_____

AMOUNT

Favoring Fair Use
_ Small portion of work used
_ Portion used is not central
or significant to entire work or "heart of the work"
_ Amount is no more than needed for instructional purpose

Opposing Fair Use
_ Large portion or whole work used
_ Portion used is central to work
_ More parts copied than strictly needed for instruction.

_____

EFFECT

Favoring Fair Use
_ Lawfully acquired or purchased copy
of original work owned by me or the library
_ One copy only
_ No significant effect on the market or
potential market for copyrighted work
_ Lack of timely and affordable licensing mechanism

Opposing Fair Use
_ Could replace sale of copyrighted work
_ Repeated or long-term use.
_ Numerous copies made
_ Significantly impairs market or potential market for
    copyrighted work or derivative
_ Affordable, timely licensing mechanism available for using work
_ You make it publicly accessible on Web or in other public forum

_____

*By their nature, "disposable works" are seldom subject to fair use and copyright clearance is probably necessary.

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Approved by the LSUA Faculty Senate in Spring 2006.

Checklist for Fair Use: An introduction

Prepared by LSUA Library Services*

January 4, 2006

We offer the "Checklist for Fair Use" as a helpful tool for LSUA faculty. We hope that it will serve two purposes. First, it should help you focus on factual circumstances that are important to the evaluation of a contemplated fair use of copyrighted works for your students. A reasonable fair-use analysis is based on four factors set forth in the fair-use provision of copyright law, Section 107 of the Copyright Act of 1976 et seq. The application of those factors depends on the particular facts of your situation, and changing one or more facts may alter the outcome of the analysis. The "Checklist for Fair Use" derives from those four factors and from the judicial decisions interpreting copyright law.

A second purpose of the checklist is to provide an important means for recording your decision-making process. Maintaining a record of your fair-use analysis is critical to establishing your "reasonable and good-faith" attempts to apply fair use to meet your students' needs in your course. Section 504 (c)(2) of the Copyright Act offers some protection for educators and librarians who act in good faith. Once you have completed your application of fair use to a particular need, keep your completed checklist in your files for future reference. If you are having auxiliary enterprises copy it or the library put it on reserve, please provide a copy of the checklist along with each submission.

As you use the checklist and apply it to your course, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will "favor fair use," and others may "oppose fair use." A key concern is whether you are acting reasonably in checking any given box; the ultimate concern is whether the cumulative "weight" of the factors favors or opposes fair use. Because you are most familiar with your project, you are probably best positioned to make that decision. A librarian can help you with the decision.

LSUA Library Services is not legal counsel to the university or to any members of the university community. A mission of LSUA Library Services is to provide information and education services to help members of the community better address their needs. The information is not legal advice. Individuals and organizations should consult their own attorneys.

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Required by US Code Title 17 when invoking fair use..

1. A photocopy of the *original* copyright page must accompany each item.

2. A notice such as the one below should be placed with Course Management Software or Library Reserves.

   "This material is made available for the educational purposes of students enrolled in a specific course offered by LSU Alexandria. The material is subject to U.S. Copyright law and is not for further reproduction or transmission. A single copy may be made, but may not be used for any purpose other than private study, scholarship, or research."