

## Appendix C: Fair Use Analysis Checklist

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. This form should be used for individual works, and not applied to groups of works or sets of materials. This form is only required for material which will be placed online for which you do not have permission, from the copyright holder to use. If the work is already licensed by NSU, is a work for which you are the author and either NSU or you hold the copyright, the work is clearly in the public domain or used through a creative commons license, then you need not submit this form.

For more information regarding the fair use factors, please see the Fair Use Doctrine section of Nova Southeastern University's *Policy on the Use of Copyright-Protected Works in Education and Research*, which can be found on the web at <http://www.nova.edu/hr/policies/index.html>, or the Fair Use section of the NSU copyright website which can be found at <http://copyright.nova.edu/fair-use/>

Complete and submit a copy of this checklist to the Library Office of Copyright for each "fair use" of a copyrighted work in order to establish a "reasonable and good faith" attempt at applying fair use should any dispute regarding such use arise. It is recommended that you retain a copy of the completed form in connection with *each* "fair use" of a copyrighted work.

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

Course: \_\_\_\_\_

Title of Copyrighted Work:  
\_\_\_\_\_

Type of work (book, audio visual, etc) \_\_\_\_\_

If an audio-visual work total time: \_\_\_\_\_

If a book, total number of pages \_\_\_\_\_ and number of chapters \_\_\_\_\_.

Portion to be used

If an audio visual work, number of minutes \_\_\_\_\_.

If a book, the number of pages \_\_\_\_\_ and number of chapters used \_\_\_\_\_.

\_\_\_\_\_

**Directions:** Check all boxes that apply.. This list is not meant to be exhaustive and is meant to guide in determining whether the use as a “whole unit” is a fair use. Just because the factors favoring "fair use" outnumber the factors weighing against a finding of "fair use," does not mean that reliance on the fair use exception is justified. Extra weight and consideration should be given to those factors listed below which support the advancement of not for profit educational activities and on those factors which indicate that the portion of the work used will harm the commercial market for the work in question or act as a substitute for commercially available works. If you have questions about interpretation, please contact the University Copyright Officer, [Stephen Carlisle at: scarlisle@nova.edu](mailto:scarlisle@nova.edu) or at (954) 262-4608.

### ***Weighs in Favor of Fair Use***

- Nonprofit educational institution
- Used for purpose of teaching (including multiple copies for classroom use) and/or scholarship, criticism, comment, news reporting, or parody
- Used for noncommercial, nonprofit educational use
- Transformative (use changes work for new utility or purpose which no longer competes against or substitutes for the original)
- Use is necessary to achieve your intended educational purpose.
- Published work
- Factual/informational and educational in nature or scientific/ medical research, procedures, processes, systems, methods of operation
- Non-consumable work
- Small portion of work used, when compared to the size of the work as a whole
- Portion used is not central or significant to entire work as a whole
- Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum and narrowly tailored to accomplish that purpose
- Access limited to students enrolled in course

### ***Weighs Against Fair Use***

- Commercial activity, profit from use
- For public distribution
- Used for entertainment
- Mirror image copying
- Use exceeds that which is necessary to achieve your intended educational purpose
- Unpublished work
- Fiction or highly creative work (art, music, novels, films, plays, poetry)
- Consumable work (workbook)
- Large portion of the work when compared to the size of the work as a whole or entire work used
- Portion used is central to work or “heart of the work”
- Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum or is not narrowly tailored to accomplish a demonstrated legitimate purpose in the course curriculum
- Access not limited to students enrolled in the course

***Weighs in Favor of Fair Use***

- Original work is out of print or not commercially available
- Permission for digital excerpt is not readily available from publisher or Copyright Clearance Center at a reasonable price
- User owns lawfully acquired or purchased copy of original work
- Use stimulates market for original work

***Weighs Against Fair Use***

- Original work is in print or commercially available
- Permission for digital excerpt is readily available from publisher or Copyright Clearance Center at a reasonable price
- User does not own lawfully acquired or purchased copy of original work
- Use replaces market for original work

I have determined, to the best of my ability that this item that I am submitting for inclusion within an NSU electronic course service/site, for the \_\_\_\_\_semester, qualifies as educational Fair Use. I understand that I may be held personally responsible should legal action be taken by the copyright holder.

Signature (Required) \_\_\_\_\_ Date \_\_\_\_\_

*Revised for use by the Nova Southeastern University, based upon the Copyright Advisory Office at Columbia University's "Fair Use Checklist," <http://www.copyright.columbia.edu/fair-use-checklist>.*