

## Fair Use Evaluation Worksheet

### Understanding Fair Use

**Fair Use** allows limited use of copyrighted material without permission from the copyright owner under certain circumstances. To assess whether a particular use qualifies as fair use, courts consider the following four factors. This worksheet will help you evaluate each factor based on your specific situation.

#### Step 1: Purpose and Character of the Use

1. What is the purpose of your use?
  - ☐ [ ] Commercial (profit-driven)
  - ☐ [ ] Nonprofit educational
  - ☐ [ ] Transformative (adds new expression, meaning, or message)
2. Does your use add new expression or meaning to the original work?
  - ☐ [ ] Yes
  - ☐ [ ] No
  - ☐ If yes, explain how:
3. \_\_\_\_\_
4. Is your use for commentary, criticism, parody, news reporting, or teaching?
  - ☐ [ ] Yes
  - ☐ [ ] No

Evaluation Notes:

Score:

- Favoring Fair Use: Educational, non-commercial, or transformative uses.
- Opposing Fair Use: Purely commercial uses with no transformative element.

#### Step 2: Nature of the Copyrighted Work

1. Is the original work more factual or creative?
  - ☐ [ ] Factual (e.g., news articles, technical data)
  - ☐ [ ] Creative (e.g., novels, music, films)
2. Has the original work been published?
  - ☐ [ ] Yes

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- ☐ [ ] No

Evaluation Notes:

Score:

- Favoring Fair Use: Factual or published works.
- Opposing Fair Use: Creative or unpublished works.

### Step 3: Amount and Substantiality of the Portion Used

1. How much of the original work are you using?
  - ☐ [ ] Small portion (e.g., quotes, clips)
  - ☐ [ ] Large portion or entire work
2. Is the portion used the "heart" of the work? (The most significant or recognizable part)
  - ☐ [ ] Yes
  - ☐ [ ] No

Evaluation Notes:

Score:

- Favoring Fair Use: Small, less significant portions used.
- Opposing Fair Use: Large portions or the essential core of the work.

### Step 4: Effect of the Use on the Market

1. Does your use affect the market for the original work?
  - ☐ [ ] Yes, it could replace the original.
  - ☐ [ ] No, it serves a different purpose.
2. Would your use harm the potential market value of the original?
  - ☐ [ ] Yes
  - ☐ [ ] No

Evaluation Notes:

Score:

- Favoring Fair Use: No negative impact on the original's market.
- Opposing Fair Use: Direct market competition or harm to the original's value.

### Step 5: Final Assessment

Review your answers for each factor. Remember:

- No single factor decides the outcome; all four must be considered together.

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- Transformative use that adds new meaning or context generally weighs heavily toward fair use.

Overall Conclusion:

Based on the above analysis, my use:

- ☐ Likely qualifies for fair use.
- ☐ May qualify but needs further review.
- ☐ Likely does not qualify for fair use.

Final Notes and Next Steps:

Important Considerations:

- Fair use is a legal defense, not a right.
  - Courts evaluate fair use on a case-by-case basis.
  - When in doubt, consult an intellectual property attorney for advice.
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