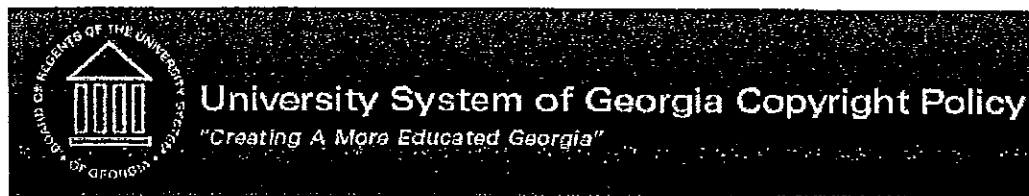


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Introduction to the Fair Use Checklist

The **fair use checklist** is a tool to assist you in making a reasoned and balanced application of the four fair use factors in determining whether a given use of a work is a fair use. The checklist outlines various factual circumstances that are important to the evaluation of a contemplated fair use. It derives from the four fair use factors and from judicial decisions interpreting copyright law.

As you use the checklist and apply it to your proposed use, 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 will weigh against fair use. The ultimate concern is whether the cumulative weight of the factors weighs in favor of fair use or weighs against fair use. Because you are most familiar with your project, you are probably best positioned to make that decision.

Before using the checklist to conduct a fair use analysis, the following threshold questions should be considered:

1. You should first determine whether the work to be used is protected by copyright. If not, a fair use analysis is not necessary. For example, works created by U.S. government employees as part of their official duties are not protected by copyright. Works first published prior to 1923 are no longer protected by copyright. All materials first published after 1978 should be presumed to be protected by copyright, even if no copyright notice is present.
2. You do not need to conduct a fair use analysis if you or your institution has a license (or permission) to use the work and your use falls within that license. For example, some materials are distributed with a license that specifically allows for nonprofit educational use. The work may also be available through an electronic database at your institution's library or legally available on the web. If so, you may be able to direct students to that work or link directly to that work without conducting a fair use analysis.
3. A separate exception in federal copyright law specifically allows for performance or display (but not copying and distribution) of a work by instructors or students in the course of "face-to-face" teaching activities. [17 U.S.C. § 110(1)]. If your proposed use falls into this statutory exception, you need not conduct a fair use analysis.

All uses of copyrighted materials, whether a "fair use," use under a license, or use under other exceptions, should include proper copyright notice and attribution.

A copy of the checklist can be found [here](#). Complete and retain a copy of this checklist 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.

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