

Appendix D

APPENDIX D

FAIR USE CHECKLIST PERCENTAGE CHART

The chart below identifies the percentage of GSU instructors who checked each sub-factor on the GSU Fair Use Checklists in evidence for the works at issue (as identified in Plaintiffs' Revised Filing Concerning Plaintiff Works Alleged to Be Infringed at GSU During the 2009 Maymester, Summer 2009, and Fall 2009 Academic Terms (June 1, 2011), Docket No. 361). PX 558, 563-567, 570-603, 606, 608, 613, 629, 639, 643, 647-652, 654-662, 938; DX 346, 347, 348, 386, 428, 429, 473, 464, 474, 480, 481.

Factor 1: Purpose and Character of the Use

Weighs in Favor of Fair Use

Nonprofit Education: 97%

Teaching (includes multiple copies for classroom use): 92%

Research or Scholarship: 30%

Criticism, Comment, News Reporting, or Parody: 14%

Transformative (use changes work for new utility or purpose): 7%

Personal Study: 30%

Use is necessary to achieve your intended educational purpose: 64%

Weighs Against Fair Use

Commercial Activity: 0%

Profiting from use: 0%

Entertainment: 0%

Non-transformative: 32%

For publication: 0%

For public distribution: 0%

Use exceeds that which is necessary to achieve your intended purpose: 0%

Factor 2: Nature of the Copyrighted Work

Weighs in Favor of Fair Use

Published work: 71%
Factual or nonfiction work: 86%
Important to educational objectives: 97%

Weights Against Fair Use

Unpublished work: 0%
Highly creative work (art, music, novels, films, plays, poetry, fiction): 0%
Consumable work (workbook, test): 0%

Factor 3: Amount and Substantiality of Portion Used

Weights in Favor of Fair Use

Small portion of work used: 99%
Portion is not central or significant to work as a whole: 89%
Amount taken is narrowly tailored to educational purpose, such as criticism, comment, research, or subject being taught: 96%

Weights Against Fair Use

Large portion or entire work used: 0%
Portion used is central to work or “heart of the work”: 0%
Amount taken is more than necessary for criticism, comment, research, or subject being taught: 0%

Factor 4: Effect on Market for Original

Weights in Favor of Fair Use

No significant effect on market or potential market for copyrighted work: 81%
Use stimulates market for original work: 89%
No similar product marketed by copyright holder: 38%
No longer in print: 0%
Licensing or permission unavailable: 3%
Supplemental classroom reading: 38%
One or few copies made or distributed: 26%
User owns lawfully acquired or purchased copy of original work: 44%
Restricted access (to students or other appropriate groups): 64%

Weights Against Fair Use

Significantly impairs market or potential market for copyrighted work or derivative: 0%
Licensing or permission reasonably available: 14%
Numerous copies made or distributed: 4%
Repeated or long-term use that demonstrably affects the market for the work: 0%
Required classroom reading: 48%
User does not own lawfully acquired or purchased copy of original work: 0%
Unrestricted access on the web or the public form: 0%