

Marist College FAIR USE CHECKLIST

Section 107 of the Copyright Act states that use of copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright. The section also sets forth four factors to be considered in determining fair use of copyrighted work: 1) The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes; 2) The nature of the copyrighted material; 3) The amount and substantiality of the portion used in relation to the whole work; and 4) The effect of the use on the potential market for or value of the copyrighted work. There are no exact answers when it comes to using copyrighted material. The following checklist is intended to help Marist faculty members evaluate their use of copyrighted work against the four factors.

All faculty members who use copyrighted work are encouraged to:

- Try to link to the work rather than make a copy
- Seek a license or other legal permission to copy the work
- Seek alternative works that are licensed by Marist College or are available through the Creative Commons
- Complete the following Fair Use checklist and return it to Julia Hughes, Assistant Librarian, LB _____.

Name _____

Department _____

Email _____ Extension _____

Course title or project name _____

Title of copyrighted work _____

What portion of the whole is being copied _____

Number of copies made _____

Duration of use (one semester, multiple semesters) _____

Pedagogical reason for the use _____

Is the work uploaded onto iLearn? _____

Supporting Fair Use

PURPOSE OF THE USE

- ☐ Educational purposes
 - Teaching/instruction
 - Research/Scholarship
- ☐ Transformative use (changing the work to make something new)
- ☐ Nonprofit use
- ☐ Restricted audience (finite group of students)

NATURE OF THE MATERIAL

- ☐ Published work
- ☐ Nonfiction, factual, news

AMOUNT COPIED

- ☐ Small amount (a single chapter or journal article, less than 10% of the whole work)
- ☐ The portion is not central to the entire work
- ☐ Amount is appropriate to the educational purpose

EFFECT ON THE MARKET FOR THE ORIGINAL

- ☐ No significant effect on the potential market for the work
- ☐ One or a few copies made/distributed
- ☐ No longer in print/no licensing mechanism
- ☐ Limited audience (students in a class)
- ☐ One-time spontaneous use (no time to seek permission)

Opposing Fair Use

- ☐ Entertainment
- ☐ Non-transformative (exact copy)
- ☐ For-profit, commercial use
- ☐ Unlimited audience (anyone can access)
- ☐ Unpublished work
- ☐ Creative work (art, fiction, music, films, plays)
- ☐ Large portion or entire work
- ☐ Portion used constitutes the heart of the work
- ☐ Amount is more than necessary for educational purpose
- ☐ Could replace the purchase of the work
- ☐ Numerous copies made
- ☐ Reasonably available licensing mechanism
- ☐ Publicly available on the Web or other means of broad dissemination
- ☐ Repeated or long-term use