

Marist College FAIR USE CHECKLIST

It is the policy of Marist College to comply with all existing United States copyright laws including the U.S. Copyright Act of 1976, the TEACH Act of 2002, and the Digital Millennium Copyright Act. ***All college faculty, staff and students are expected to act both responsibly and ethically when using copyrighted works (such as print and electronic documents, web-based content, visual materials, photographs, music and other forms of creative works) which includes making informed decisions based on the “fair use” exemptions to these laws.***

The College strongly recommends that members of the Marist community limit their use of copyright protected materials to the hundreds of thousands of resources available through the James A. Cannavino Library (for which the college already holds the necessary licenses) or the millions of works available for educational use under Creative Commons licenses. If copyright protected materials that are not available through these sources are vital to your work, you may request assistance, through the Library, in seeking the acquisition of, or permission to use these materials.

If you are unable to find appropriate materials that are already licensed for your use and do not have time to seek permission to use the materials, you can, at your own risk, consider using it under fair use.

Section 107 of the Copyright Act suggests that some limited uses of copyrighted work, in certain circumstances, may be permissible under the U.S. Copyright Act. Four factors are 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.

The following checklist is intended to help instructors make informed decisions about the use of copyrighted materials against the four factors. Some boxes favor fair use while others oppose it. ***Users are advised against simply tallying up boxes; rather, one needs to consider the overall strength of the conditions arguing for or against fair use.***

Decisions to use materials under the fair use exemption should be made on a case-by-case basis, re-evaluated each time the materials are used, and be documented in writing as means to record the rationale.

The College does not provide legal advice and does not assume legal or financial responsibility for any independent application of copyright principles made by College faculty or staff that does not meet the terms of related copyright law or this policy. Neither faculty nor staff are authorized by the College to provide any such advice, and they cannot represent the College in this respect.

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