

# FAIR USE CHECKLIST

## Find the Balance - Is your Use Fair Use?

"Fair Use" is a concept in copyright law that attempts to balance the author or producer's right to manage his or her creative output with a potential user's right to make copies of that output in order to teach, or study or create new output.

- Review both of the lists below, and check all of the boxes that apply to your project
- Decide where the balance lies.
- No one factor rules. This is a subjective process, and none of us has the final answer.
- PCC expects us to comply with the law to the best of our abilities.

Name: \_\_\_\_\_ Date: \_\_\_\_\_ Project: \_\_\_\_\_

Institution: \_\_\_\_\_ Prepared by: \_\_\_\_\_

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### PURPOSE

#### *Favoring Fair Use*

#### *Opposing Fair Use*

- |  |  |
|--|--|
| <input type="checkbox"/> Teaching (including multiple copies for classroom use)              | <input type="checkbox"/> Commercial activity               |
| <input type="checkbox"/> Research  | <input type="checkbox"/> Profiting from the use            |
| <input type="checkbox"/> Scholarship   | <input type="checkbox"/> Entertainment                     |
| <input type="checkbox"/> Nonprofit Educational Institution                                   | <input type="checkbox"/> Bad-faith behavior                |
| <input type="checkbox"/> Criticism   | <input type="checkbox"/> Denying credit to original author |
| <input type="checkbox"/> Comment   |  |
| <input type="checkbox"/> News reporting  |  |
| <input type="checkbox"/> Transformative or Productive use (changes the work for new utility) |  |
| <input type="checkbox"/> Restricted access (to students or other appropriate group)          |  |
| <input type="checkbox"/> Parody  |  |

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### NATURE

#### *Favoring Fair Use*

#### *Opposing Fair Use*

- |  |  |
|--|--|
| <input type="checkbox"/> Published work                              | <input type="checkbox"/> Unpublished work  |
| <input type="checkbox"/> Factual or nonfiction based                 | <input type="checkbox"/> Highly creative work (art, music, novels, films, plays) |
| <input type="checkbox"/> Important to favored educational objectives | <input type="checkbox"/> Fiction   |

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### AMOUNT

#### *Favoring Fair Use*

#### *Opposing Fair Use*

- |  |   |
|--|---|
| <input type="checkbox"/> Small quantity  | <input type="checkbox"/> Large portion or whole work used                       |
| <input type="checkbox"/> Portion used is not central or significant to entire work | <input type="checkbox"/> Portion used is central to work or "heart of the work" |
| <input type="checkbox"/> Amount is appropriate for favored educational purpose     |   |

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### EFFECT

#### *Favoring Fair Use*

#### *Opposing Fair Use*

- |   |  |
|---|--|
| <input type="checkbox"/> User owns lawfully acquired or purchased copy of original work               | <input type="checkbox"/> Could replace sale of copyrighted work  |
| <input type="checkbox"/> One or few copies made   | <input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative |
| <input type="checkbox"/> No significant effect on the market or potential market for copyrighted work | <input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work            |
| <input type="checkbox"/> No similar product marketed by the copyright holder                          | <input type="checkbox"/> Affordable permission available for using work                                      |
| <input type="checkbox"/> Lack of licensing mechanism  | <input type="checkbox"/> Numerous copies made  |
|   | <input type="checkbox"/> You made it accessible on Web or in other public forum                              |
|   | <input type="checkbox"/> Repeated or long-term use   |
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