Your fair use determination should be made by weighing and balancing four factors:

**Purpose of the use:** Specifically, ask if your use of the work is transformative. Using a work for educational and teaching purposes strengthens the argument in favor of fair use, though not all educational uses automatically are fair uses.

**Nature of the work:** Using works that are mostly factual in nature strengthens the argument in favor of fair use; using a highly creative work—even a small portions—often is not a fair use.

**Amount used:** Less is usually better, though “amount” refers not only to the quantity but also the specific content used. Using even a small portion that is central to the heart of the work is not a fair use.

**Effect on the market:** Uses that alter or impair the actual or potential value of the work significantly weaken the argument in favor of fair use. Your use should not be a substitute for purchasing the original work.

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The following checklist can assist you in making these judgments when submitting materials for inclusion on your electronic course reserves pages.

### Purpose

**Favoring Fair Use**
- Teaching/research/scholarship
- Nonprofit educational institution
- Criticism/commentary
- News reporting
- Transformative/productive use (changes the work for a new utility)
- Parody
- Restricted access (use is limited)

**Opposing Fair Use**
- Commercial activity
- Profiting from use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

### Nature

**Favoring Fair Use**
- Published work
- Factual or nonfiction based
- Important to favored educational objectives

**Opposing Fair Use**
- Unpublished work
- Highly creative work (e.g., art, music, novels, films, plays)
- Fiction

### Amount

**Favoring Fair Use**
- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational objectives

**Opposing Fair Use**
- Large portion or whole work used
- Portion used is central to or “heart of the work”
Effect
Favoring Fair Use
☐ User owns lawfully purchased or acquired copy of original work
☐ One or few copies made
☐ No significant effect on the market or potential market for copyrighted work
☐ No similar product marketed by the copyright holder
☐ Lack of licensing mechanism

Opposing Fair Use
☐ Could replace sale of copyrighted work
☐ Significantly impairs market or potential market for copyrighted work or derivative
☐ Reasonably available licensing mechanism for use of the copyrighted work
☐ Affordable permission available for using work
☐ Numerous copies made
☐ Unrestricted access (web or in other forum)
☐ Repeated or long-term use

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