LYNN UNIVERSITY FAIR USE GUIDE

In determining whether faculty members may use portions of copyrighted works in their teaching and scholarship, the law permits some uses for nonprofit educational purposes, including fair uses.

The following worksheets and handout are intended guide faculty in making fair use determinations.

GENERAL INFORMATION:

Name: ______________________________
Course, if applicable: ______________________________
Number of total students: __________
Semester: Fall_____ Spring_____ Summer_____ Year: _______

Other Potential Use: __________________________________________
____________________________________________________________________________

Description of Material(s)

1. Author/Editor/Translator: ______________________________
   Publisher: ______________________________
   Material Title: ______________________________
   Specific Material to be Used: ______________________________

2. Author/Editor/Translator: ______________________________
   Publisher: ______________________________
   Material Title: ______________________________
   Specific Material to be Used: ______________________________

3. Author/Editor/Translator: ______________________________
   Publisher: ______________________________
   Material Title: ______________________________
   Specific Material to be Used: ______________________________

4. Author/Editor/Translator: ______________________________
   Publisher: ______________________________
   Material Title: ______________________________
   Specific Material to be Used: ______________________________

5. Author/Editor/Translator: ______________________________
   Publisher: ______________________________
   Material Title: ______________________________
   Specific Material to be Used: ______________________________
Check-off all the categories that apply below. Sign, date, and retain with appropriate accompanying materials for three years from the use of the use.

THE “FIVE” FAIR USE FACTORS: THE FOUR “OFFICIAL” AND THE ONE “REAL” FACTOR

1. WHAT IS THE PURPOSE OF THE PROPOSED USE?

- Nonprofit
- Teaching
- Scholarship
- Research
- Personal

- Criticism
- Commentary
- Parody that is funny to the court
- Restricted access
- News reporting
- Otherwise transformative use

- Commercial use
- Entertainment
- Parody that is offensive to the court
- Bad faith behavior
- “Only” profit
- Lack of attribution

Guide: Uses on the left tend to tip the balance in favor of fair use. Uses on the right tend to tip the balance in favor of seeking permission from the copyright holder. The uses in the middle, if they apply, are favorable to fair use: they add weight to the tipping force of uses on the left.

Total: Favors Fair Use: __________          Does Not Favor Fair Use: __________

2. WHAT IS THE NATURE OF THE COPYRIGHTED WORK TO BE USED?

- Factual
- Published

- A mixture of factual and imaginative

- Unpublished
- Creative
- Entertainment
- Consumable Materials (Workbooks, Answer Sheets)

Guide: Again, uses on the left tend to tip the balance in favor of fair use while uses on the right favor seeking permission. In this case, uses in the middle have little effect on the balance.

Total: Favors Fair Use: __________          Does Not Favor Fair Use: __________
3. HOW MUCH OF THE COPYRIGHTED WORK WILL BE USED?

- Small amount
- Amount is “just enough” to get the point across, but no more
- Large portion or whole work
- Portion used is qualitatively substantial

Guide: The amount of material should be measured both quantitatively and qualitatively. Quantity should be evaluated relative to the length of the entire work and the amount needed. The reproduction of an entire work weighs against fair use. A reproduction that is relatively small, but still uses the “heart” of the work will weigh against fair use.

Total: Favors Fair Use: __________  Does Not Favor Fair Use: __________

4. WHAT IS THE EFFECT ON THE MARKET OR POTENTIAL MARKET FOR THE COPYRIGHTED WORK?

- User owns lawfully acquired copy
- No significant effect on the Market/Potential market for the Work
- Copyright holder is (truly) unidentifiable
- Replaces sale of copyrighted work
- Significantly impairs market, or potential market, for the work
- Numerous copies made or digital potentially “infinite” delivery
- Use makes it publicly accessible on the web

Guide: Reproduction that substitutes for purchase of the original weighs heavily against fair use. This factor is closely linked to the other factors.

Total: Favors Fair Use: __________  Does Not Favor Fair Use: __________

5. INVISIBLE FACTOR: WILL A JUDGE OR JURY THINK YOU ARE A GOOD PERSON OR A BAD PERSON?

- Good
- Bad

Guide: Good people win fair use cases. Tabloids, lazy people, and those who seem to do things “just” for money lose. Gut check: Are you really just “ripping someone off”?

DETERMINATION: Based on my fair use analysis completed above, I have determined the following:

- Materials numbered ____________________ falls within the fair use exception.
- Materials numbered ____________________ does not fit within the fair use exception.
  I will obtain written permission before using the material.

Signature: ____________________

Date: ____________________