Fair Use Analysis Checklist for Using Copyrighted Material at UACCM

Name: _______________________________ Date: __________________________
Course: ___________________________________ __________________________
Work Considered: _______________________________________________________

Instructions: Check all boxes that apply. For each of the four sections below, determine whether that factor favors or disfavors a finding of fair use. When the factors favoring fair use outnumber the factors weighing against a finding of fair use, reliance on the fair use exception is justified. When less than half of the four factors favor fair use, consider obtaining permission before using the copyrighted material.

The Four Factors:

1. Purpose - “The purpose and character of the use, whether the use is for nonprofit educational purposes or commercial” (The Copyright Act §107)

Favoring Fair Use

☐ Teaching (including multiple copies for classroom use)
☐ Research
☐ Scholarship
☐ Nonprofit educational institution
☐ Criticism
☐ Comment
☐ News reporting
☐ Transformative or productive use (changes the work for new utility)
☐ Restricted access (to students or other appropriate group)
☐ Parody

Opposing Fair Use

☐ Commercial activity
☐ Profiting from the use
☐ Entertainment
☐ Bad-faith behavior
☐ Denying credit to original author

Revised for use by the University of Arkansas Community College at Morrilton from the “Copyright Checklist: Fair Use” by Kenneth Crews.
2. **Nature** - “The nature of the copyrighted work, whether the work is nonfiction or fiction” (The Copyright Act §107)

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

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- Unpublished work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

3. **Amount** - “The amount and substantiality of the portion used in relation to the copyrighted work as a whole” (The Copyright Act §107)

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

**Opposing Fair Use**
- Large portion or whole work used
- Portion used is central to or “heart of the work”

4. **Effect** - “The effect of the use upon the potential market for or value of the copyright work” (The Copyright Act §107)

**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
- Reasonable available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Web or in other public forum
- Repeated or long-term use