

E-Reserves Checklist for Fair Use

University Libraries, Northern Illinois University

Fair Use is defined in §107 of the U.S. Copyright Law. The four factors are weighted together in deciding whether or not something constitutes a Fair Use.

1. The **Purpose** and **Character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.

It is expected that materials going on E-Reserves are to be used to further classroom instruction. As such, this factor is unlikely to cause a Fair Use concern.

Purpose

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- News reporting
- Transformative or Productive use (changes 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
- Not Crediting the Original Author

2. The **Nature** of the copyrighted work.

This factor pertains specifically to the type of material that is being requested for E-Reserves.

Nature

Favoring Fair Use

- Published Work
- Factual or Nonfiction Based

Opposing Fair Use

- Unpublished Work
- Highly Creative Work (art, music, novels, films, plays)

- Important to Favored Educational Objectives
- Fiction

3. The Amount and Substantiality of the portion used in relation to the copyrighted work as a whole.

Amount is measured both qualitatively and quantitatively. Copyright law does not define an exact allowable percentage of a work that can be used in E-Reserves. Quantity is evaluated in relation to the entire work. The smallest portion of the work that still supports the educational goal should be used.

Amount

Favoring Fair Use

- Small Quantity
- Portion Used Is Not Central to Work
- Amount is Appropriate for Favored Education Purpose

Opposing Fair Use

- Large Portion or Whole Work Used
- Portion Used Is Central to Work or Significant to Entire Work or Is the “Heart of the Work”

4. The Effect of the use upon the potential market for or value of the copyright work.

If the use of an item on E-Reserves precludes the theoretical purchase of that item in the market, then this factor may weigh against Fair Use.

Effect

Favoring Fair Use

- User Owns Lawfully Acquired or Purchased 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

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
- Lack of Licensing Mechanism

- You Made It Accessible on the Web or in Other Public Forum

- Repeated or Long-Term Use

Some of the language of this checklist and description were borrowed from the University of Wisconsin-Madison (<http://www.library.wisc.edu/reserves/fair-use-checklist.pdf>), which, in turn, used language from the Copyright Management Center, IUPUI.