The principles of copyright law that apply to electronic course content are the same as those that apply to printed course material. If permission would be required for a print use, it will be required for an analogous electronic use.

Fair use requires a fact-specific analysis that should be considered carefully whenever deciding whether or not permission is required. If it is possible to link to material that is either publicly available on the Web or available to the NWC community through a database licensed by the NWC Library, further permission is not needed to use that material.

When it is necessary to make a copy of the material, rather than simply linking to it as described above, permission is not needed if the works are in the public domain (generally, material published before 1923) or are offered freely under a Creative Commons license. For other material, a fair use analysis should be considered; if fair use is determined not to apply to the specific use, permission must be obtained.

A fair use analysis is based on four factors found in section 107 of the Copyright Act: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used in relation to the entire work and the effect of the use on the potential market for or value of the copyrighted work. The attached checklist can help guide a reasonable decision about fair use.

For each use for which fair use is claimed, a copy of the completed checklist should be retained to show the good faith of that claim.

How to Use the Checklist

As you use the checklist and apply it to your situations, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will favor fair use and others may oppose fair use. A key issue is whether you are acting reasonably in checking any given box, with the ultimate question being whether the cumulative weight of the factors favors or turns you away from fair use.

This is not an exercise in simply checking and counting boxes. Instead, you need to evaluate the relative persuasive strength of the circumstances and whether the overall conditions lean convincingly towards fair use or against it.

CHECKLIST FOR FAIR USE ANALYSIS
This checklist is a tool to assist you as you apply the fair use balancing test to specific situations in which you want to use copyrighted materials. If a particular use is fair use, it may proceed without authorization from the copyright owner; if the use does not fall within fair use, permission is necessary.

<table>
<thead>
<tr>
<th>Item Name</th>
<th>Date</th>
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Prepared by

**FACTOR ONE – PURPOSE OF THE USE**

**Favoring Fair Use**

- Educational
- Commercial, entertainment or Teaching (including other use. multiple copies for classroom use)
- Verbatim or exact copy, not transformative.
- Scholarship

**Disfavoring Fair Use**

- Comment
- Profit generating use.

- Transformative or Productive use (Changes the work to serve a new purpose)

- Nonprofit use.
FACTOR TWO – NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use

☐ Factual, nonfiction, news

☐ Published work

Disfavoring Fair Use

☐ Creative or consumable work. (art, music, feature film, fiction; workbook, case study or test) ☐ Unpublished work

FACTOR THREE – AMOUNT COPIED

Favoring Fair Use

☐ Small quantity used (e.g. single chapter or journal article, other short excerpt (less than 10-15% of the whole work)).

☐ Portion used is not central to work as a whole.

☐ Amount is appropriate to the educational purpose.

Disfavoring Fair Use

☐ Large portion or entire work.

☐ Portion used is central or the “heart” of the work.

☐ Includes more that necessary for educational purpose.

FACTOR FOUR -- EFFECT ON THE MARKET FOR THE ORIGINAL

Favoring Fair Use

☐ No significant effect on the market or potential market for the copyrighted work.

☐ One or few copies made and/or distributed.

Disfavoring Fair Use

☐ No longer in print; absence of licensing mechanism.

☐ Restricted access (limited to students in a class or other appropriate group).
☐ One-time, spontaneous use (no time to obtain permission).

☐ Cumulative effect of copying would be to substitute for purchase of work.

☐ Numerous copies are made and/or distributed.

☐ Reasonably available licensing mechanism for obtaining permission exists (CCC license or off-prints for sale)

☐ Copy will be available on the Web or otherwise broadly distributed.

☐ Repeated or long-term use.