

# Fair Use Assessment - Professors

## Introduction

This Fair Use Assessment is a tool to help Professors determine whether a given use of work is within the limits of Fair Use. The four Factors (Purpose, Nature, Amount and Effect) form the structure of this Assessment. Every file-based Reading Request that gets added to eReserve Plus, will be presented with a Fair Use Assessment upon submission.

## Fair Use Assessment

Each factor of the Fair Use Assessment will contain a list of options for Opposing Fair Use and Favoring Fair Use along with a fairness rating continuum at the bottom of the pages which is optional. The options selected will be displayed to Librarians upon their review of the Fair Use Assessment.

## Purpose

This is the first factor of the Fair Use Assessment. It is where you describe the Purpose and character of your intended use and how that relates to Fair Use. There are specific options for Opposing Fair Use and Favoring Fair Use that can be selected which are related to the Purpose of the intended work.

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Fair use assessment [purpose](#) > [nature](#) > [amount](#) > [effect](#) > [summary](#) HELP DISCLAIMER BACK NEXT

Example in *Fair Use Resource* (Example, 2020).

Example in *Fair Use Resource* (Example, 2020)

Describe the **Purpose** and character of your intended use and how that relates to Fair Use (disclaimer)

**Opposing Fair Use**

- Not for teaching:** Use is NOT for "criticism, comment, news reporting, teaching, scholarship or research"
- Commercial use:** Use is for-profit, or by a commercial entity
- Not transformative:** Original work is simply duplicated, or reused toward its original intention, rather than being used to create a new work with a new purpose
- No scope:** Scope of the use is not well defined or is systematic, iterative, or ongoing
- Derivative work:** Use creates a derivative work of the original (full translation, adaptation, abridged version, etc.)

**Favoring Fair Use**

- For teaching:** Use is for "criticism, comment, news reporting, teaching, (including multiple print copies for classroom use), scholarship or research"
- Transformative:** Use is transformative, i.e. it uses the existing work in a new way (creates an index to the work) or for a new purpose (parody, pastiche, instructional materials, etc.)  
Transformative works are favored because the purpose of U.S. Copyright Law is to encourage the development and dissemination of new knowledge to benefit the public and thereby advance learning.
- Not for profit:** Use is not-for-profit
- Restricted scope:** Use is clearly defined and is restricted in scope (limited duration, not iterative, restricted access, etc.)
- One time:** Use is one-time, or is only occasional or spontaneous

**Fairness (optional)**

Indicate how "fair" you feel the **Purpose** of your intended use is (based on the information you've provided above) by clicking on the continuum below

infringing fair

eReserve Plus Fair Use Evaluator  
Based on Michael Brewer and ALA Evaluator tool

Figure 1: First factor of Fair Use Assessment - Purpose

## Nature

This is the second factor of the Fair Use Assessment. This is where the Nature is described of the copyrighted work and how that relates to Fair Use. There are specific options for Opposing Fair Use and Favoring Fair Use that can be selected which are related to the Nature of the intended work.

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Fair use assessment [purpose](#) > [nature](#) > [amount](#) > [effect](#) > [summary](#) HELP DISCLAIMER BACK NEXT

Example in *Fair Use Resource* (Example, 2020).

Example in *Fair Use Resource* (Example, 2020)

Describe the **Nature** of the copyrighted work and how that relates to Fair Use (disclaimer)

**Opposing Fair Use**

- Unpublished work:** Work to be used is UNPUBLISHED (not simply "out of print," but never actually published)
- New content:** Work contains a significant amount of new knowledge, information, or creative expression
- Creative work:** Work is of a category of works considered highly creative (fine art, musical works, drama, artistic photography or film, etc.)
- Intended purpose:** Work being used was created for and/or is being marketed for the stated purpose of the proposed use
- Consumable work:** Work is a "consumable" (workbooks or other such educational or other materials that are typically used only once)

**Favoring Fair Use**

- Published work:** Work to be used has been previously PUBLISHED
- Limited new content:** Work to be used contains limited new knowledge, content, or creative expression (in relation to previously copyrighted works)
- Factual work:** Work to be used is primarily of a factual nature (non-fiction, collection of facts, etc.)
- Not intended purpose:** Original work was not created and/or has not been marketed for the stated purpose of the proposed use

**Fairness (optional)**

Indicate how "fair" you feel the **Nature** of the copyrighted work is (based on the information you've provided above) by clicking on the continuum below

infringing fair

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Figure 2: Second factor of Fair Use Assessment - Nature

## Amount

This is the third factor of the Fair Use Assessment. This is where the Amount is described of the intended use in relation to the copyrighted work as a whole and how that relates to Fair Use. There are specific options for Opposing Fair Use and Favoring Fair Use that can be selected which are related to the Amount of the intended work.

The screenshot shows the 'Amount' step of a Fair Use Assessment tool. The header includes the eReserve Plus logo and the course title 'TEST-LAPR401: Property Law'. A breadcrumb trail shows 'Fair use assessment > purpose > nature > amount > effect > summary'. Navigation buttons for 'HELP', 'DISCLAIMER', 'BACK', and 'NEXT' are visible. The main content area is titled 'Example in Fair Use Resource (Example, 2020)' and asks the user to describe the 'Amount' of their intended use. It provides two columns of options: 'Opposing Fair Use' and 'Favoring Fair Use'. The 'Opposing Fair Use' options include: 'Excerpt is heart of the work', 'More than needed', 'Amount exceeds guidelines', and 'Excessive amount'. The 'Favoring Fair Use' options include: 'Limited portion', 'Not heart of the work', 'Limited for purpose', 'Entire work for purpose', and 'Amount within recognized guidelines'. Below these options is a 'Fairness (optional)' section with a horizontal continuum from 'infringing' to 'fair'.

**Opposing Fair Use**

- Excerpt is heart of the work:** The entire work, or the "heart" of the work, is used (the "heart" is the portion considered most central to the work as a whole)
- More than needed:** portion of the work greater than what is needed to achieve the stated purpose or objective is used
- Amount exceeds guidelines:** The amount used clearly exceeds established fair use guidelines
- Excessive amount:** An excessive, or unreasonable amount of the work is used

**Favoring Fair Use**

- Limited portion:** Only limited and reasonable portions will be used
- Not heart of the work:** The portion used is not the "heart" of the work (the portion considered most central to the work as a whole)
- Limited for purpose:** Only the amount required to achieve the stated, socially-beneficial purpose or objective will be used (be that educational, artistic, scholarly, journalistic, etc.)
- Entire work for purpose:** If the entire work is to be used (which would NOT favor the use being fair), it is clear that no less than the entire work will achieve the stated purpose of the use (e.g. use of a photograph, a short poem, an article, etc.)
- Amount within recognized guidelines:** The amount used falls within widely recognized fair use guidelines vetted by key stakeholder groups

**Fairness (optional)**  
Indicate how "fair" you feel the Amount of your intended use is (based on the information you've provided above) by clicking on the continuum below

infringing fair

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Figure 3: Third factor of Fair Use Assessment - Amount

## Effect

This is the final factor of the Fair Use Assessment. This is where the Effect is described of the intended use on the market or potential value of the copyrighted work and how that relates to Fair Use. There are specific options for Opposing Fair Use and Favoring Fair Use that can be selected which are related to the Effect of the intended work.

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Fair use assessment purpose > nature > amount > effect > summary

HELP DISCLAIMER BACK NEXT

**Example in Fair Use Resource (Example, 2020).**

Example in *Fair Use Resource* (Example, 2020)

Describe the **Effect** of your intended use on the market or potential value of the copyrighted work and how that relates to Fair Use (disclaimer)

**Opposing Fair Use**

- Has commercial exploitation:** The work is currently under commercial exploitation (in-print, clear licensing available, etc.) and the use substitutes for purchasing or licensing a copy
- Permission denied:** The copyright holder denies a request for permission to use the work
- Negative impact:** The work is used in a way that would allow for unauthorized use that could negatively impact on its value
- May be illegal use:** The copy of the work to be used may not be a legal copy
- Potential market damage:** Use of the work has the potential to damage the market for the work or its potential value (reduce profits, damage or put market at jeopardy, etc.)
- No attribution given:** Proper attribution will NOT be given with the intended use
- Established market:** The work already has an established market, or the clear potential for a future market as it is being used

**Favoring Fair Use**

- No commercial exploitation:** The work is NOT currently under commercial exploitation (out of print, no licensing available, etc.)
- No market:** A market for the work as it will be used is absent or is negligible & use of the work will have little or no negative impact on its value or potential value
- Unknown copyright:** The copyright holder cannot be identified or cannot be found after a reasonable search, or, once found does not respond (one way or another) to requests for permission to use the work
- Minimal impact:** Use of the work minimizes the potential for unauthorized use that could impact its value (i.e. steps are taken to ensure the content is not used outside of the stated purpose or audience)
- Improved market:** Use of the work has the potential to create or improve the market for the work
- Legal copy:** The copy of the work to be used is a legal copy
- Attribution given:** Proper attribution will be given with the intended use

**Fairness (optional)**

Indicate how "fair" you feel the **Effect** of your intended use is (based on the information you've provided above) by clicking on the continuum below

infringing fair

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Figure 4: First factor of Fair Use Assessment - Effect

## Summary

The Summary will include the Level of Fairness which is determined and calculated by the responses provided in each of the Four Factors. There is a section which is Your assessment of use which is your own assessment based on the evaluation. Lastly, there is a text box to add Other Factors or reasoning that would have an impact on the overall fairness of use.

NB: The Level of Fairness should not be misunderstood as the true measure of fairness of your proposed use as this is a mathematical average of the evaluations.

Figure 5: Summary of Fair Use Assessment with the Level of Fairness

If the continuum has not been moved in any of the four factors, it will deem the Level of Fairness to be Missing and will present no Level of Fairness.

Figure 6: Summary of Fair Use Assessment without the Level of Fairness

## Reviewing a Fair Use Assessment

### Review Required

If a file-based Reading Request does not have a Fair Use Assessment, the Professor has the option of completing it by clicking on the Fair Use icon which displays on the Reading Request. Once clicked, it will go through the Fair Use Assessment Factors and Summary.

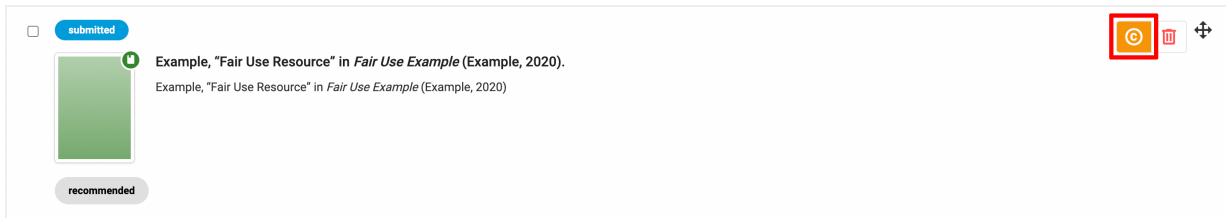


Figure 7: Fair Use Assessment - Reviewed required

## Reviewed

Once a Fair Use Assessment has been reviewed and approved by a Librarian, the icon on the Reading Request will change to green and the Reading Request will become available to Students with a status of either Active or Pending.

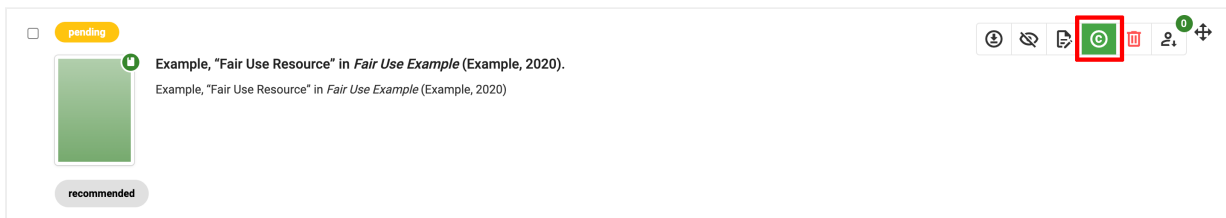


Figure 8: Fair Use Assessment - Review completed

## Revising a Fair Use Assessment

A Professor can revise a Fair Use Assessment once it has been approved by a Librarian to make changes if required. If a Fair use Assessment has been changed after approval, it will be required to be re-reviewed by a Librarian.

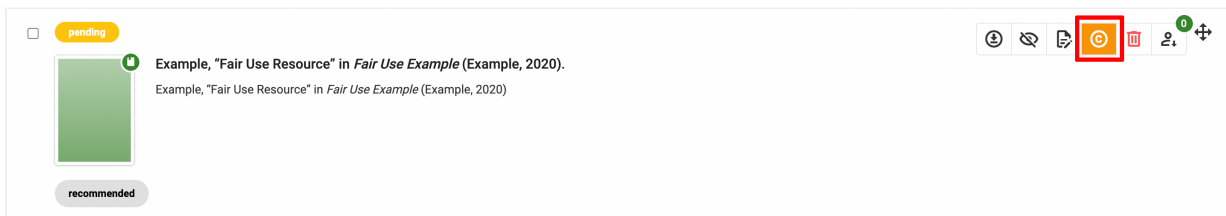


Figure 9: Fair Use Assessment - Re-review required

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