

Fair Use Assessment - Librarians

Summary: This document will outline the Fair Use Assessment for a Librarian.

Introduction

This Fair Use Assessment is a tool to help Professors and Librarians 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 the pages which is optional.

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 is related to the Purpose of the intended work.

Future TEST Semester 2 2023
TEST:LAPR401: Property Law 01/07/2023 - 31/12/2023

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

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Example in Fair Use Resource (Example, 2022).
Example in Fair Use Resource (Example, 2022)

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 is related to the Nature of the intended work.

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Example in Fair Use Resource (Example, 2022).
Example in Fair Use Resource (Example, 2022)

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 is related to the Amount of the intended work.

The screenshot shows the 'Amount' step of a Fair Use Assessment tool. At the top, it displays 'Future TEST Semester 2 2023 TEST-LAPR401: Property Law' and the date range '01/07/2023 - 31/12/2023'. The navigation bar includes 'Fair use assessment review', 'purpose > nature > amount > effect > summary', and buttons for 'HELP', 'DISCLAIMER', 'BACK', 'NEXT', and 'CANCEL'. Below the navigation, there is a text input field with a placeholder 'Example in Fair Use Resource (Example, 2022)'. The main instruction reads: 'Describe the Amount of your intended use in relation to the copyrighted work as a whole and how that relates to Fair Use (disclaimer)'. There are two columns of radio button options: 'Opposing Fair Use' and 'Favoring Fair Use'. The 'Opposing Fair Use' options are: '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', and 'Excessive amount: An excessive, or unreasonable amount of the work is used'. The 'Favoring Fair Use' options are: '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.)', and 'Amount within recognized guidelines: The amount used falls within widely recognized fair use guidelines vetted by key stakeholder groups'. Below these options is a 'Fairness (optional)' section with a slider. The instruction says: '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'. The slider ranges from 'infringing' on the left to 'fair' on the right, with five tick marks. At the bottom right, it says 'eReserve Plus Fair Use Evaluator Based on Michael Brewer and ALA Evaluator tool' and includes Creative Commons BY-NC-SA icons.

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 is related to the Effect of the intended work.

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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)

<p>Opposing Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> 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 <input type="checkbox"/> Permission denied: The copyright holder denies a request for permission to use the work <input type="checkbox"/> Negative impact: The work is used in a way that would allow for unauthorized use that could negatively impact on its value <input type="checkbox"/> May be illegal use: The copy of the work to be used may not be a legal copy <input type="checkbox"/> 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.) <input type="checkbox"/> No attribution given: Proper attribution will NOT be given with the intended use <input type="checkbox"/> Established market: The work already has an established market, or the clear potential for a future market as it is being used <p>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</p> <p>infringing fair</p>	<p>Favoring Fair Use</p> <ul style="list-style-type: none"> <input type="checkbox"/> No commercial exploitation: The work is NOT currently under commercial exploitation (out of print, no licensing available, etc.) <input type="checkbox"/> 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 <input type="checkbox"/> 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 <input type="checkbox"/> 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) <input type="checkbox"/> Improved market: Use of the work has the potential to create or improve the market for the work <input type="checkbox"/> Legal copy: The copy of the work to be used is a legal copy <input type="checkbox"/> Attribution given: Proper attribution will be given with the intended use
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eReserve Plus Fair Use Evaluator
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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 called 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.

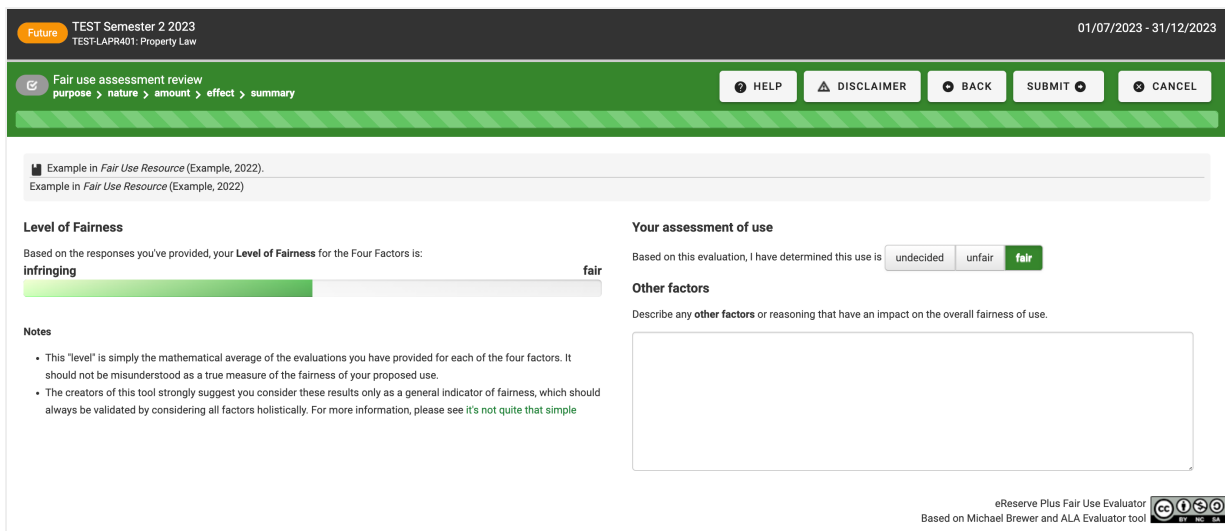


Figure 5: Summary of Fair Use Assessment with the Level of Fairness

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.

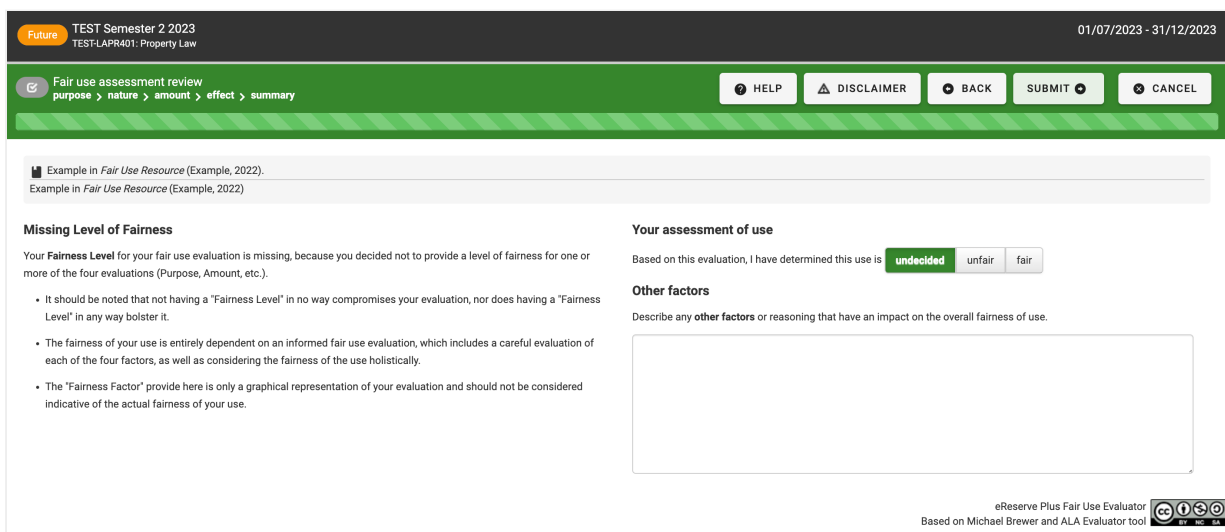


Figure 6: Summary of Fair Use Assessment without the Level of Fairness

Reviewing a Fair Use Assessment

Review Required

If a Professor submits a Fair Use Assessment, it will be required to be reviewed by a Librarian. This can be identified by an icon which will be displayed on the Request before reviewing.

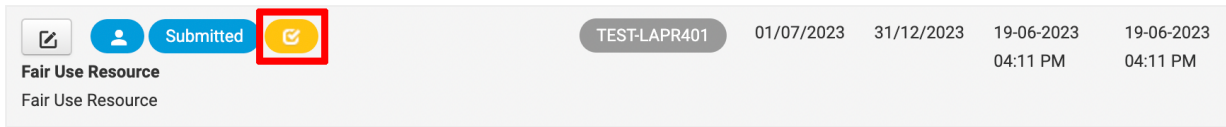


Figure 7: Fair Use Assessment - Reviewed required

Reviewing a Assessment will display what the Professor selected for each of the Factors, the selection made for Your assessment of use and any Other factors that they may have added.

Reviewed

Once a Fair Use Assessment has been reviewed and approved by a Librarian, the icon will be changed to green and the Reading Request will become Active or Pending.

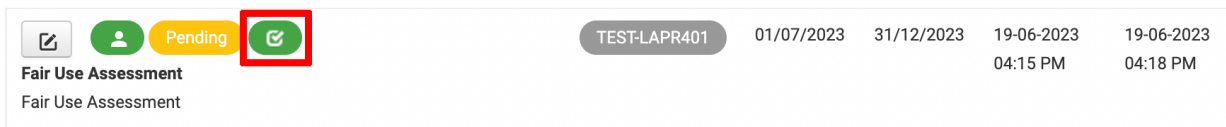


Figure 8: Fair Use Assessment - Review completed

Re-review

If a Professor re-reviews a Fair Use Assessment and makes changes, it will be required to be re-reviewed by a Librarian and the Fair Use Assessment icon will be changed. Once the Fair use Assessment has been approved by a Librarian, the Assessment will be marked as approved and the icon will be changed to green.

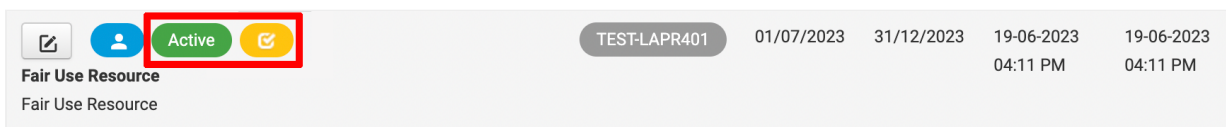


Figure 9: Fair Use Assessment - Re-review required