APPENDIX A: FAIR USE CHECKLIST

This checklist is a tool to assist University of Delaware faculty, staff and students to determine if the intended use may be considered fair use. Check only those factors that apply to the specific intended use. For each of the four sections below, determine whether a factor favors or disfavors fair use. No single item or factor is determinative of fair use, as some factors may weigh more heavily than others, but a tally of factors favoring and weighing against fair use will help the decision-making process.

Keep the completed checklist in your files in case you need to show evidence of a decision made in “reasonable and good-faith.” If you have any questions, please contact a reference librarian at the University of Delaware Library, 302-831-2965. Legal questions will be referred to campus counsel.

Name: __________________________________________ Date: ______________________
Class or project: __________________________ Title of copyrighted work: ______________________
Author and publisher: __________________________ Portion to be used (i.e. pages): ____________
____________________________________________________________________________________

FACTOR 1: PURPOSE OF THE USE

Favoring Fair Use

Educational
• Teaching (including multiple copies for classroom use)
• Research
• Scholarship
• Criticism
• Comment
• Parody

Weighing against Fair Use

Commercial, entertainment or for profit
Public distribution
Verbatim or exact copy, not transformative

Transformative or changes the work to a new purpose

Nonprofit use

FACTOR 2: NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use

Factual, nonfiction, news
Published Work

Weighing against Fair Use

Creative (art, music, fiction) or consumable work (workbook, test)
Unpublished work
### FACTOR 3: AMOUNT COPIED

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Weighing against Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small quantity (e.g. single chapter or journal article, other short excerpt consisting of less than 10% of the work)</td>
<td>Large portion or entire work)</td>
</tr>
<tr>
<td>Portion used is not central to work as a whole</td>
<td>Portion used is central or the “heart” of the work</td>
</tr>
<tr>
<td>Amount is appropriate to the educational purpose</td>
<td>Includes more than necessary for the educational purpose</td>
</tr>
</tbody>
</table>

### FACTOR 4: EFFECT ON THE MARKET FOR THE ORIGINAL

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Weighing against Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>No significant effect on the market or potential market for the copyrighted work</td>
<td>Cumulative effect of copying would be to substitute for purchase of work</td>
</tr>
<tr>
<td>One or few copies made and/or distributed</td>
<td>Numerous copies are made and/or distributed</td>
</tr>
<tr>
<td>No longer in print; absence of a licensing mechanism</td>
<td>Reasonably available licensing mechanism for obtaining permission exists (CCC license or off-print for sale)</td>
</tr>
<tr>
<td>Restrict access (limited to students in a class or other appropriate group)</td>
<td>Repeated or long-term use</td>
</tr>
<tr>
<td>One-time, spontaneous use (no time to obtain permission)</td>
<td></td>
</tr>
</tbody>
</table>

Revised for use by the University of Delaware from the “Checklist for Fair Use,” a project directed by Kenneth D. Crews, formerly at the IUPUI Copyright Management Center and the Copyright Advisory Office at Columbia University (www.copyright.columbia.edu/fair-use-checklist)