

Focus on Fair Use Worksheet

Let's Think Through Some Questions for Fair Use

CONCEPT | Using inserts as objects of criticism and commentary.

Principle: "Including inserts for critique and commentary represent non-controversial instances of fair use; if an OER is addressing a text, image, or other object directly—or inviting readers to do so—there is no equivalent pedagogical alternative to including that item."

[-From Code of Best Practices in Fair Use for Open Educational Resources](#)

When you have an item you want to include as an object of criticism and commentary...

- A. **Think...**is the quantity that I've selected to include appropriate?
(For example, are you including a whole article when an excerpt might be sufficient?)

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- B. **Think...**is it apparent in how I want to include it that either the instructor or the student will be asked to provide critique and/or commentary about the selected insert?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		



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- C. **Think...**if possible, and where appropriate, has a range of works been selected?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- D. **Think...**have I prepared an attribution to be included in my materials?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

*If you circled mostly **Yes***

The inclusion of your insert most likely constitutes fair use. Remember, you are ultimately the subject matter expert and need to feel confident in your pedagogical choice and fair use rationale.

*If you circled mostly **No***

The inclusion of your insert most likely does not constitute a fair use case. We encourage you to review the [Code of Best Practices in Fair Use for Open Educational Resources](#), but you may need to select a different insert such as something in the public domain or content that is openly licensed.

*If you circled mostly **Unsure***

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CONCEPT | Including inserts for the purpose of illustration.

Principle: "For the purpose of illustration, fair use supports the incorporation of thoughtfully selected inserts in all subject matter areas, derived from a full range of sources and media."

[-From Code of Best Practices in Fair Use for Open Educational Resources](#)

When you have an item you want to include for the purposes of illustration...

- A. **Think...** is the original purpose of the insert I am including being transformed?
(For example, was the work originally created for a non-educational purpose?)

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- B. **Think...** does the purpose of including this serve more than a decorative purpose?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- C. **Think...** could this work be recreated or is there value in the authenticity it provides?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		



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- D. **Think...**is the quantity that I've selected to include appropriate?
(For example, are you including a 30 minute clip when a 5 minute excerpt might be sufficient?)

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- E. **Think...**if possible, and where appropriate has a range of works been selected?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- F. **Think...**have I prepared an attribution to be included in my materials?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		



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CONCEPT | Repurposing pedagogical content from existing educational materials

Principle: “Fair use supports the selective incorporation of elements from sources which are not currently in wide use as course materials”

-[From Code of Best Practices in Fair Use for Open Educational Resources](#)

When you have an item you want to include that repurposes pedagogical content from existing educational materials...

- A. **Think...**is this a photo of art in the public domain? OR Is this from a text that is no longer being updated or is out of print?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- B. **Think...**if you were to look at five textbooks for your discipline, do they all have the same or very similar explanation or list?



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Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- C. **Think...**if you were to generate a list or table from the top of your head, would the content be the same or very similar?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- D. **Think...**have you made an effort to diversify the range of sources you've included?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- E. **Think...**can you explain the specific teaching or learning value and why it represents the best choice for the intended purpose?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		



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- F. **Think...** am I able to justify the extent of the material incorporated in pedagogical terms and specify in what ways, if any, the material was updated?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

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CONCEPT | Incorporating content as learning resource materials

Principle: “Resource materials suited to the learning objectives of an OER may be incorporated in reliance on fair use.”

-[From Code of Best Practices in Fair Use for Open Educational Resources](#)

When you have an item you want to include that incorporates content as learning resource materials...



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- A. **Think...**is the original purpose of the insert I am including being transformed?
(For example, was the work originally created for a non-educational purpose?)

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- B. **Think...**is the quantity that I've selected to include appropriate?
(For example, are you including a whole article when an excerpt might be sufficient?)

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

- C. **Think...**am I including annotations, study questions, glossaries, etc. to help make the item accessible and available to students?

Circle/bold one of the following.		
Yes	No	Unsure
Make note of <u>why</u> you answered yes, no, or unsure.		

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Attribution Matters

While some instances of fair use do not require the use of an attribution (think of instances when it is very obvious that a corporation is the owner of the insert), we lean toward providing attribution. We like to think of attribution in fair use cases as two-fold:

- it both models this practice for students, and
- it aids other instructors in understanding where you included inserts under fair use that may not apply in their pedagogical instance were they to remix your content.

In the instance of considering future remixing/reuse, this could be achieved in your introduction content to your open educational resource in the form of pedagogical choice notes or a general attribution statement. Consider this acknowledgements and attribution example from [FI: A Student Workbook for French 101](#) which includes both standard attribution, pedagogical, and fair use notes.



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