The Fair Use Factors: Hypotheticals

With a partner or small group, review the hypotheticals below. Be prepared to share your answers and discuss them with the group.

1. A library is digitizing rare non-fiction works about local fauna from its collection, then making the full text of the works available to the public via its website. The library has been unable to identify the copyright holders for three of the works, all of which are out of print and are not available for purchase as ebooks or from any print-on-demand service. Assuming the three books are protected by copyright, would the library’s digitization of them qualify as fair use?

2. A researcher prepares the obituary of another scholar in her field, to be published in a scholarly journal. Along with the obituary, she publishes a photograph of the scholar, which she has cropped from a group photograph taken by a professional photographer. Does the researcher’s use of the photograph qualify as fair use?

3. A college has digitized a personal archive from its collections. Each item from the archive has been scanned and cataloged. Textual items have been OCRed. The college archivist has also prepared a finding aid for the archive. The finding aid, the metadata, and the text are all searchable on the college website, where copies of all the items in the archive are available to the public. The deed of gift transferred all of the donor’s copyrights to the college, but the archive contains letters and photographs the donor received from others. Is the college’s digitization of those items fair use?