



BYU Copyright

Decision Trail

User Manual

For BYU Content Creators and
Communicators

decisiontrail.byu.edu

Introduction

This Decision Trail User Manual will help you make informed copyright decisions whenever you need to use text, images, videos, music, or sound recordings in a project. It includes flowcharts for the following:

Decision Trail Overview	4
Text	6
Image	8
Video	10
Music	12
Sound Recording	14



Before diving into the Decision Trail questions, you should identify how your use will impact the rights of the copyright holder. Copyright law grants six exclusive rights to a copyright holder, meaning the copyright holder is the only one allowed to engage in certain activities as it relates to their work, or they can authorize others to engage on their behalf. The six exclusive rights of a copyright holder are:



*Performance of sound recording by means of digital audio transmission.

Once you have determined how your use impacts the copyright holder's rights, you can utilize the decision trail flowcharts to determine the best path to incorporate the copyrighted material. The flowcharts act as a supplement to the interactive BYU Copyright Decision Trail, available at decisiontrail.byu.edu. The flowcharts will guide you through a series of questions designed to help you decide when you can use someone else's work legally and when you need to obtain permission. If your project involves more than one work, you should use as many flowcharts as needed to help you analyze each work separately. If your project involves more than one of the copyright owner's exclusive rights, you should analyze each exercise of an exclusive right separately.

NOTE: If your project involves recorded music, you will need to use both the music flowchart (for the musical composition, i.e., the music and lyrics) and the sound recording flowchart (for the recording of the composition) to help you determine whether you can use the particular recording of the song.

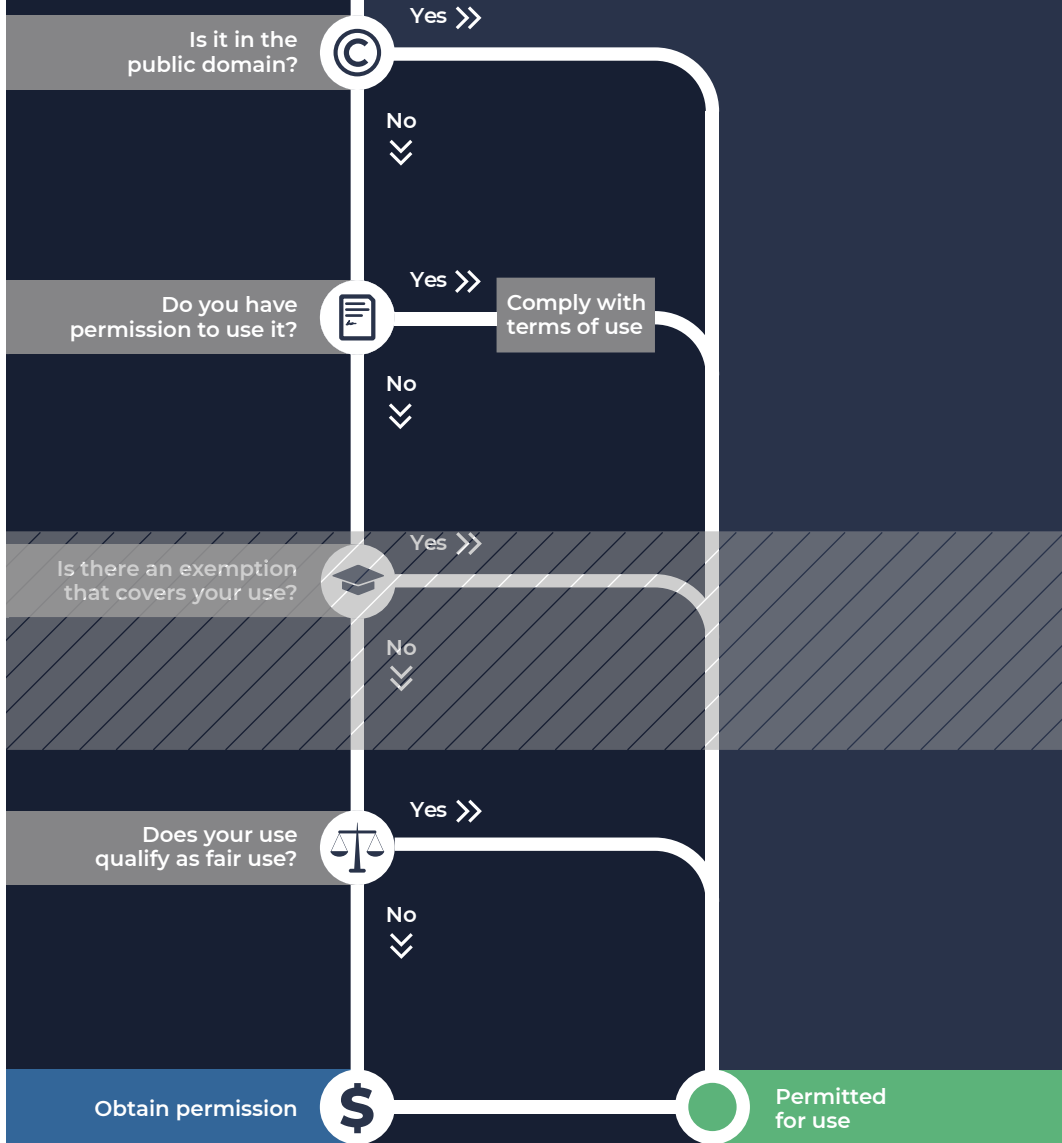
In addition to the flowcharts, you will find scenarios for each type of work to illustrate how to use the Decision Trail in relation to a project. You can also refer to the interactive BYU Copyright Decision Trail, which includes instructional videos and other resources. For additional help, feel free to contact the BYU Copyright Licensing Office, at 801-422-9339 or copyright@byu.edu.



We want your feedback on the BYU Copyright Decision Trail User Manual. Please complete the survey available at the link below to provide comments or suggestions.

bit.ly/copyrightfeedback

Start



Overview



Is it in the public domain?

The public domain includes older works published before copyright laws were enacted or whose copyright has expired, works published before 1978 without copyright registrations or certain other formalities, United States government works, etc. Also, copyright protection is not available for certain categories of works such as titles, short phrases, basic factual information, etc.



Do you have permission to use it?

Some creators freely share their works under Creative Commons licenses or on websites with broad terms of use. You are free to use such works as long as you comply with the terms set forth in the license agreement or on the website. For example, many Creative Commons licenses allow you to use an image without paying royalties, as long as you provide attribution to the original artist.



Is there an exemption that covers your use?

Generally, this question is not applicable to content creators and communicators. You will see this question in the online Decision Trail. However, this version of the Decision Trail User Manual is designed specifically for Content Creators and Communicators so you will not see this question reproduced on the Decision Trails on the following pages.



Does your use qualify as fair use?

To determine whether your use qualifies as fair use, carefully consider and balance the following factors: (1) [P] purpose and character of the use; (2) [A] amount and substantiality of the portion used; (3) [I] impact on the market for the original work; and (4) [N] nature of the copyrighted work. If the fair use factors weigh in your favor, you are free to use the work without seeking permission or paying usage fees. For assistance, visit fairusechecklist.byu.edu.



Obtain permission before use

If you answered "No" to all of the previous questions, we recommend obtaining permission to use the work. The BYU Copyright Licensing Office can generally secure permissions when needed for use of third-party content at BYU. For assistance visit clearance.byu.edu.

Can I use this text?

Is it in the public domain?



Examples << **No**

Yes >> Examples

Many works published within 96 years of December 31 of the current year such as books, articles, poems, speeches, blog posts, tweets, song lyrics, movie quotes, etc.

Text published at least 96 years before December 31 of the current year (e.g., scriptures, classical literature, etc.)

U.S. government works (e.g., presidential speeches, federal court opinions, etc.)

Do you have permission to use it?

Comply with terms of use



Examples << **No**

Yes >> Examples

Works sold commercially (e.g., books, magazines, newspapers, etc.)

Text published under a Creative Commons license (e.g., Wikipedia articles)

Unpublished works (e.g., journals, letters, etc.)

Text licensed for use at BYU (e.g., library databases, BYU speeches, etc.)

Many websites and other works not licensed for re-use

Does your use qualify as fair use?



Examples << **No**

Yes >> Examples

Uses in which the fair use factors weigh in favor of the copyright holder ([P] purpose; [A] amount; [I] impact; and [N] nature.)

Many uses for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.

For assistance visit fairusechecklist.byu.edu.

Obtain permission

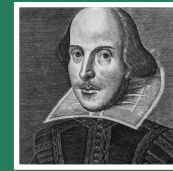


Your use of the text requires a license. For assistance visit clearance.byu.edu.

Permitted for use

Your use of the text is permitted under copyright law.

Scenario



A BYU library employee is creating a social media campaign to highlight the library's extensive Shakespeare collection. The plan

is to tweet a series of famous Shakespeare quotes from the library's main Twitter account on his birthday. Does the library need to obtain permission to quote Shakespeare?



Public Domain? Yes. Shakespeare's works are in the public domain because they were published more than 96 years ago. So, the library does not need to seek permission to quote Shakespeare on Twitter, or in any other medium.



While organizing some old files, a BYU employee discovers a box with transcripts of BYU devotional addresses delivered in the 1980s, together with copies of the

speaker release agreements. BYU Speeches wants to publish the full transcripts on its website. Does BYU Speeches need to obtain permission from the speakers to copy and publish the transcripts?



Public domain? No. Generally, BYU devotional speakers and others who speak on campus own the copyright in the text of their speeches.

Permission? Yes. Devotional speakers typically grant BYU permission to publish their speeches broadly. In this case, BYU Speeches can print the full transcripts on its website, as long as the speaker release agreements permit that use.



A screenwriter plans to include a brief quote from a William Faulkner book in the screenplay for a feature film. A character will quote two sentences from

Requiem for a Nun, a 286-page novel, which will take eight seconds of screen time. The movie will be produced and marketed commercially for mass distribution by a major Hollywood studio. Does the screenwriter need to get permission to include the quote?



Public domain? No. Requiem for a Nun is not in the public domain.

Permission? No. The screenwriter does not have permission to quote the book.

Fair Use? Yes. [P] The movie gives new meaning and purpose to the text, so it is a transformative use and weighs in favor of fair use.

[A] The quoted text is only a small portion of the original book which weighs in favor of fair use.

[I] The movie does not disrupt the market for the book so this factor weighs in favor of fair use.

[N] Although the novel is a creative work, which disfavors fair use, the other factors favor fair use.

Can I use this image?

Is it in the public domain?



Examples << **No** **Yes** >> Examples

Many images published within 96 years of December 31 of the current year (e.g., photos, comics, illustrations, clip art, etc.)

Many images published at least 96 years before December 31 of the current year (e.g., classical art, etc.)

Many images searchable on platforms such as Google Images, Instagram, Facebook, Twitter, Websites, Blogs, etc.

Images created by U.S. government agencies (e.g., NASA, military, etc.)

Do you have permission to use it?

Comply with terms of use



Examples << **No** **Yes** >> Examples

Professional photos, clip art, or other images
Amateur photos, illustrations and other images not licensed for re-use

Creative Commons images or websites with broad terms of use (e.g., Unsplash, Pexels, and Pixabay).

Image collections licensed for use at BYU (e.g., BYU Photos, library databases)

Licensed stock photos or other images (e.g., Shutterstock)

Does your use qualify as fair use?



Examples << **No** **Yes** >> Examples

Uses in which the fair use factors weigh in favor of the copyright holder ([P] purpose; [A] amount; [I] impact; and [N] nature.)

Many uses for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.

For assistance visit fairusechecklist.byu.edu.

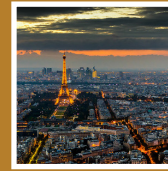
Obtain permission

Your use of the image requires a license. For assistance visit clearance.byu.edu.

Permitted for use

Your use of the image is permitted under copyright law.

Scenario



France program homepage?

International Study Programs is creating a new website for its study abroad in France. Is International Study Programs allowed to use this image on the



Decision Trail Analysis

Public domain? No. This image was taken in 2013, so it is protected by copyright.

Permission? Yes. This image comes from Flickr. It is licensed under CC BY-ND 2.0, meaning it can be used, even commercially, so long as the user provides appropriate credit to the photographer and does not modify the work in any way. An ideal attribution would be: [TITLE] by [AUTHOR]. Licensed under [LICENSE TYPE] (i.e., Paris from above by Daxis. Licensed under CC BY-ND 2.0.)

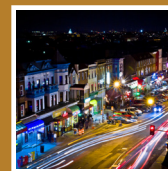


on the department Instagram account. Does the history department need to obtain permission in order to post the image?

The social media manager for the history department is creating an "on this day in history" series. In honor of V-J Day, the manager wants to post this iconic image

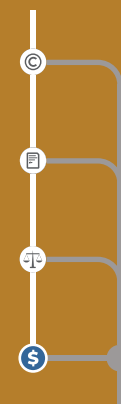


Public domain? Yes. This image is in the public domain because it was created by a federal government employee within the scope of their employment. As a public domain image, the department is free to use it in any manner, without obtaining permission or paying a license fee.



The company decides to crop and use this photo on the local attractions page. Does the company need permission to use the photo?

A production company is creating a website to promote its film festival. The website will contain information on local attractions for festival attendees.



Public domain? No. The photo was taken in 2011, so it is protected by copyright.

Permission? No. The image indicates "All rights reserved."

Fair use? No. [P] Use of the photo is not transformative, and is being used on a website promoting a for-profit festival, which weighs against fair use.

[A] Although the company is not using the entire image, it's using the most expressive parts, or the "heart of the work," which weighs against fair use.

[I] There is a licensing market for this type of use, so this factor weighs against fair use.

[N] The image is very creative and entitled to "thick copyright protection," which weighs against fair use.

Licensing recommended.

Can I use this video?

Is it in the public domain?



Examples << **No** **Yes** >> Examples

Many movies, TV shows and other videos published within 96 years of December 31 of the current year, including videos shared on services such as YouTube, Vimeo, Facebook, etc.

Video published at least 96 years before December 31 of the current calendar year (e.g., some silent films, etc.)

Video created by U.S. government agencies (e.g., NASA, military, etc.)

Do you have permission to use it?

Comply with terms of use



Examples << **No** **Yes** >> Examples

Movies, TV shows, and other videos sold commercially

Creative Commons video (e.g., Khan Academy, Flickr)

Many videos shared on YouTube, etc. and not licensed for re-use

Video collections licensed for use at BYU (e.g., library databases, BYU speeches)

Licensed stock video (e.g., Videoblocks, iStock)

Does your use qualify as fair use?



Examples << **No** **Yes** >> Examples

Uses in which the fair use factors weigh in favor of the copyright holder ([P] purpose; [A] amount; [I] impact; and [N] nature.)

Many uses for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.

For assistance visit fairusechecklist.byu.edu.

Obtain permission

Your use of the video requires a license. For assistance visit clearance.byu.edu.

Permitted for use

Your use of the video is permitted under copyright law.

Scenario



The social media manager for BYU Sports Nation wants to create a twenty-minute highlight reel for the show's YouTube channel. They want to use footage from last

week's football game, which was broadcast on ESPN. Does Sports Nation need permission to use the footage?



An advertising firm is creating a commercial for a new, convertible Honda. The commercial is a chase scene in which a villain in a helicopter chases a suave hero and attractive heroine who are driving in the convertible Honda. The firm believes the scene is a parody of James Bond. Does the firm need permission to create the commercial?



The Copyright Licensing Office is creating a YouTube song comparison video illustrating a recent music infringement lawsuit. The CLO wants to include brief clips from the two music videos to compare the alleged infringement. Does the CLO need permission to reproduce clips from the music videos in its song comparison video?

Decision Trail Analysis



Can I use this music?

Is it in the public domain?

Examples << **No** **Yes** >> Examples

Many musical works published within 96 years of December 31 of the current year (e.g., pop, country, jazz, Broadway, film scores, etc.)

Music shared on services such as YouTube, Facebook, etc.

Music published at least 96 years before December 31 of the current calendar year (e.g., classical music, etc.)

NOTE: Even for public domain music, the accompanying recording may be protected by copyright (e.g., 1991 recording of Whitney Houston singing the national anthem.)

Do you have permission to use it?

Comply with terms of use

Examples << **No** **Yes** >> Examples

Professional music sold commercially
Amateur music shared on YouTube, Facebook, etc. and not licensed for re-use

Music collections licensed for use at BYU (e.g., Omnimusic)
Licensed stock music tracks (e.g., Killer Tracks)

Does your use qualify as fair use?

Examples << **No** **Yes** >> Examples

Uses in which the fair use factors weigh in favor of the copyright holder ([P] purpose; [A] amount; [I] impact; and [N] nature.)

Many uses for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.

For assistance visit fairusechecklist.byu.edu.

Obtain permission

Your use of the music requires a license. For assistance visit clearance.byu.edu.

Permitted for use

Your use of the music is permitted under copyright law.

Scenario



The BYU Symphony Orchestra plans to perform Beethoven's Fifth Symphony at its next concert. The Music Performance Library contains a copy of the sheet music. The School of Music wants to make 85 copies of the sheet music, one for each member of the Orchestra. Does the School of Music need permission to copy the sheet music?



A television network is using a brief snippet of the song "Rocky Top" in its true crime program. While the network claims its use of the song is for purposes of commentary, criticism, or news reporting, there is no commentary, criticism, or discussion of the song in the program. Does the network need permission to use the song in its program?



A politician changes the lyrics of the song "All She Wants to Do is Dance" to create a song that pokes fun at an opponent. He titles his song "All She Wants to Do is Tax." The politician produces a campaign ad featuring "All She Wants to Do is Tax." Does the politician need permission to change the lyrics of "All She Wants to Do is Dance" for his campaign ad?

Decision Trail Analysis



Public Domain? Yes.
Beethoven's works are in the public domain because they were published more than 96 years ago. So, the School of Music does not need to seek permission to copy the sheet music.



Public domain? No.
The song is not in the public domain.
Permission? No.
The network does not have permission to reproduce the song in the program.
Fair Use? No.
[P] The use of the song in the television program is commercial, which weighs against fair use.
[A] The use of a relatively brief snippet slightly favors the network.
[I] The fair use of the song would harm the publisher's ability to license the song, weighing against fair use.
[N] The song is a highly creative work, which weighs against fair use.
Licensing recommended.



Public domain? No.
"All She Wants to Do is Dance" is not in the public domain.
Permission? No.
The politician does not have permission to change the lyrics of "All She Wants to Do is Dance" for use in his campaign ad.
Fair Use? No.
[P] "All She Wants to Do is Tax" does not constitute a parody because it does not comment on "All She Wants to Do is Dance." Rather, it uses the themes of the song to comment on entirely different subjects.
[A] The politician uses a significant portion of the song, which weighs against fair use.
[I] The politician's use of the song can potentially diminish the market for the songwriter to license the song, which weighs against fair use.
[N] "All She Wants to Do is Dance" is a highly creative work, which weighs against fair use.
Licensing recommended.

Can I use this sound recording?

Is it in the public domain?



Examples << **No** **Yes** >> Examples

Many sound recordings published within 96 years of December 31 of the current year (e.g., hip hop, pop, film soundtracks, etc.)

Recordings shared on services such as YouTube, Facebook, etc.

Recordings published before 1972 (e.g., classic rock, disco, etc.)

NOTE: Even for public domain recordings, the underlying music may be protected by copyright (e.g., 1968 recording of The Beatles singing "Hey Jude")

Do you have permission to use it?

Comply with terms of use



Examples << **No** **Yes** >> Examples

Albums and other professional recordings sold commercially

Amateur recordings shared on YouTube, Facebook, etc. and not licensed for re-use

Music collections licensed for use at BYU (e.g., Omnimusic, BYU Music Group)

Licensed stock music tracks (e.g., Killer Tracks)
Original recordings (e.g., BYU Studio Orchestra Club)

Does your use qualify as fair use?



Examples << **No** **Yes** >> Examples

Uses in which the fair use factors weigh in favor of the copyright holder ([P] purpose; [A] amount; [I] impact; and [N] nature.)

Many uses for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.

For assistance visit fairusechecklist.byu.edu.

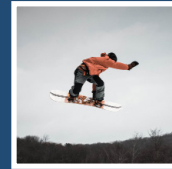
Obtain permission

Your use of the recording requires a license. For assistance visit clearance.byu.edu.

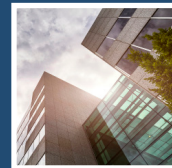
Permitted for use

Your use of the recording is permitted under copyright law.

Scenario



After sponsoring a snowboarding competition, Monster Energy is creating a recap video with highlights from the event. The video promotes Monster's brand and its energy drinks. For the video's soundtrack, Monster wants to use a mix of five songs originally composed and recorded by the Beastie Boys. The sound recordings make up 80% of the four-minute video. Monster wants to post the video on its website, YouTube channel, and Facebook page. Does Monster need permission to use the Beastie Boys' recordings in its promotional video?



The Marriott School is producing a recruiting video to post on its website. The School discovers Omnimusic, a stock music provider, among the university's paid subscriptions. The School wants to use a song from the Omnimusic website as background music in the video. Does the Marriott School need to obtain permission to use the song in the video?



A Republican political committee owns a song titled "Live Free or Die" and a recording of the song, which it uses for campaign purposes. Its opponent, a Democratic candidate, wants to use 15 seconds of the committee's campaign recording in a political ad for debate purposes. Does the Democratic candidate need permission to use the sound recording?

Decision Trail Analysis



Public domain? No. The Beastie Boys' sound recordings are not in the public domain.

Permission? No. Monster does not have permission to use the sound recordings.

Fair Use? No. [P] The use of the sound recordings in a promotional video is commercial, weighing against fair use;

[A] Taken together, the use of the sound recordings is over 3 1/2 minutes long;

[I] The use of the recordings harms the licensing market for the recordings, weighing against fair use

[N] The recordings are highly creative, weighing against fair use.

Licensing recommended.



Public domain? No. Omnimusic works are copyrighted works.

Permission? Yes. BYU has a license from Omnimusic. So, the Marriott School may reproduce the song in its recruiting video as long as the School complies with the terms of the license.



Public domain? No. "Live Free or Die" is not in the public domain.

Permission? No. The candidate does not have permission to reproduce the sound recording in his political ad.

Fair Use? Yes. [P] The use of the song in the political campaign message is noncommercial, which favors fair use

[A] The candidate wants to use 15 seconds of a 3-minute recording, which favors fair use

[I] The effect of the use upon the market for the recording is nil, as the recording is continuing to sell without substantial commercial loss to the owner, which favors fair use

[N] The recording is part of a political campaign message.

BYU

Copyright Licensing Office

copyright.byu.edu

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