

# FAIR USE FLOWCHART

Describe the copyrighted work you are seeking to use and how you are planning to use it.

Are you using the work for criticism, comment, news reporting, teaching, scholarship, or research?

Yes: may be fair use. Apply the balancing factors



No: probably is not fair use

If the total number of factors on the left that are applicable to you outweigh the total number of factors on the right that are applicable to you, you may have a defense of Fair Use.

## Factor 1: Purpose

(1) Non-profit educational institutional or non-profit objective; (2) teaching; (3) research or scholarship; (4) transformative or productive use; (5) news reporting; (6) use will be directly related to an educational objective, and the amount used will be tailored to that objective; (7) distribution or access will be restricted to current students; (8) use will be occasioned; (9) proper attribution will be given to the author/copyright holder

(1) commercial activity or profiting from the use; (2) use is primarily in furtherance of a private interest; (3) use will be a translation, revision, or adaptation of the work or is a derivative worked based on the original; (4) entertainment; (5) broad distribution or access to the copyrighted materials; (6) use will be repeated, systematic, ongoing; (7) use only loosely related to an educational objective or is broader than necessary; (8) no copyright notice or acknowledgement

## Factor 2: Nature

(1) published work; (2) facts or non-fiction; (3) work not specifically sold or marketed for use in the educational market; (4) important to educational objectives

(1) unpublished work; (2) highly creative work [art, music, novels, films, plays, photography, choreography]; (3) consumable work [once used, unusable by others, like student workbooks]

## Factor 4: Market Effect

(1) user owns a lawfully acquired or purchased copy of work; (2) no significant effects on the market or potential market for copyrighted work; (3) use stimulates market for original work; (4) no similar product marketed by the copyright holder; (5) work is out of print or the copyright holder is unidentifiable; (6) nature of the use appeals to a different audience than the copyrighted work being used; (7) lack of licensing mechanism; (8) one or few copies made

(1) Could replace sale of copyrighted work; (2) significantly impairs market or potential market for copyrighted work or derivative; (3) made accessible on the web or in another public forum; (4) reasonably available licensing mechanism for use of the copyrighted work; (5) affordable permission available for using work; (6) numerous copies made for non-educational purpose; (7) repeated or long-term use

## Factor 3: Amount/ Sustainability

(1) small quantity; (2) portion used is not central or significant to entire work; (3) amount is appropriate for educational objectives

(1) extensive excerpts or entire work used; (2) portion used is heart of the work or the most unique part of the work; (3) intended use will take more of the copyrighted work than is reasonably necessary to achieve educational objectives

**Warning:** Asserting Fair Use can be risky. These factors are only general indicators of fairness and do not guarantee that a use would be considered fair in a court of law. It is best to exhaust all licensing and permissions options before resorting to Fair Use. The Office of Administration and University Counsel is available for guidance on the use of copyrighted materials.