

Image Permissions (version March 2023)

Basic Principles

Contractually, the legal responsibility for ensuring that material delivered to the publisher is legitimate is the author's. So, should a rights-holder claim that material has been published without their permission, the author is the person liable. This applies not only to plagiarism of scholars' material (even one's own if it includes substantial passages copied verbatim), but equally importantly to visual material that an author may wish to include in the publication.

Copyright exists to protect the intellectual property of creators of work (texts, images, art) as well as those who own that material or are licensed to commercialize that intellectual property (a publisher). All countries, with a few minor exceptions, are signatories to the Berne Convention (for the Protection of Literary and Artistic Works). The Berne copyright principles are more or less global, but the implementation may differ across jurisdictions (e.g., the length of time after the creator's death). Since Arc publishes globally, we have to ensure that our usage conforms to global practice and not to any single country (e.g., the USA).

With the advent of open access publishing and public domain access to images, practice is rapidly changing. Nonetheless, let us try and indicate some guidance as to what we consider to be best practice. However, we do advise our authors to be prudent and cautious, to protect themselves against legal liability and potentially damaging claims upon themselves.

Reasonable Efforts

Where you may have a reasonable presumption that you have the right to use material from a third party, the onus is still on you to contact the owner or rights-holder. However, as we indicate below, you should make several attempts to notify them of your planned course of action but, if you fail to receive a reply, you may consider that you can proceed. This is considered "taking reasonable efforts". Notwithstanding, we advise that you add a statement at the front of the book stating that you have attempted to contact all owners or right-holders but, if you have unknowingly failed to do so, they can contact you via the publisher. Where the object of the image is private property we advise that you should never use such an image without having been granted permission in writing.

Permissions to Use Passages of Text

For a publication of passages of text, another publisher will normally want to know the print-run, the readership (in Arc's case: academic, for scholarly purposes), the geographical extent (i.e., global), possibly the sales price of the publication you are working on. There will almost certainly be a fee to pay. Short quotations, for scholarly use, are usually exempt, provided you cite the source of the quotation or paraphrase. Plagiarism occurs when you try and pass off the work of someone else as your own by not acknowledging their material.

If you wish to reuse your own material that had previously been published elsewhere, remember that you are the intellectual property owner of all your intellectual outputs. This is inalienable; you simply license a publisher to make public a specific iteration of your intellectual output. They gain rights on that string of words, under the terms of the contract you signed with them. In other words, if your new work is differently worded it is a new iteration of your intellect. The question becomes what degree of verbatim overlap there may be. Your licence to another publisher to make public a particular string of words allows the publisher to commercialize this publication. They do also have a reasonable right to be granted the ability to recoup all investments they incur in the publication and make a profit. There may be a presumption, even expressed in the contract, that they will not be unreasonable restrictive on new applications or uses of the material by yourself or others. By reusing your own previously published work verbatim, without acknowledgement, is known as self-plagiarism.

Photographs

In and of Public Areas

You or a third party may have a photograph of an event, e.g., an Easter procession, an archaeological dig in a town, a statue in a town square. When this is in a public area, such as a street or a square, this is normally acceptable use. The only copyright question then concerns the ownership of the photograph itself (the intellectual creation of the photographer as “artist”). We would add two areas of caution:

1. Areas that you may consider to be public, such as a castle or a church, may in fact be private property. Even if it is the property of a public body or agency (e.g., a ministry of tourism or a heritage body) the presumption would be that you should treat this as private property. The same applies to all religious buildings.
2. Any identifiable individuals, particularly if they are named in a caption, should be notified and asked if they are happy to have their image published. This is absolutely the case for anyone aged under eighteen years.

Of Private Property

You may yourself have taken a photograph of a work of art or a building and that photograph is your own creation, to which you own its property and rights. However, the object that you have photographed will not be your property and its owner (e.g., a gallery or museum, a church or monastery) may have restrictions, particularly if used for “commercial” purposes, such as a book publication that might also be available online. Many such places, for instance cathedrals, may specifically forbid photographs with notices at their entrance.

Good Practice in Approaching Owners of Objects for Permission

Public Owners

Many art galleries and museums, particularly those in public ownership, may now have an explicit or implicit mission to make their objects available to the greatest possible audience. This often means that they will readily accede to a request from a researcher to reproduce an image for a scholarly publication. Some institutions may have even made this policy and state this on their websites. Nonetheless, consistent with their public mission they are likely to be concerned that (i) the caption and object citation is published correctly, and (ii) the quality of the image is the best possible. So, we recommend the following good practice course of action:

1. You should always notify each gallery or museum (e.g., the rights department) that you are planning on using an image of a particular object, explaining the scholarly purpose, but providing them information on the likely print-run (hardbacks always under 200 copies), sales-price, geographical reach (worldwide), and likely audience (university libraries and scholars).

You should also notify them that the book will be available in PDF format for libraries and scholars. If you are publishing the PDF in Open Access, this means a far larger potential audience, so it is important to make the owner aware of this too.

If you have agreed with Arc that there is a possibility of a paperback version of the book, make this known too, but with the explanation that this is intended as an affordable version for students and scholars (and *not* a mass market where we will sell millions of copies).

2. You should request permission to publish an image and ask a curator to check the caption that you are proposing, also asking them whether they have an image available of good, publishable quality, so that you can do justice to the object that is in their possession.
3. If the gallery or museum waives any fees for permissions or the provision of a publishable image but requests one free copy of the published book, you can agree. You should ask for the precise address and contact details so that you can supply Arc a list for such free copies. If this list is going to exceed five copies, please check in advance with us, so that the number doesn't get out of hand.
4. If you receive no reply within a reasonable time, such as a few weeks, you should write a second time. This time you could state explicitly that, not having heard from them, you will now assume that if you have not heard within a further two weeks, that they have no objection to your stated course of action.

We would recommend that all religious institutions should be treated in the same way as public institutions. However, you should make allowance for the fact that some religious institutions (e.g., at the Vatican) are as professionally organized as the biggest public bodies, but parish churches or small monasteries will almost certainly have no staff capable of responding quickly to you, particularly if you are not writing to them in their native language. If you write to some generic email address when one might imagine the parish priest or abbot is so elderly that only a physical letter is reasonable, it may be thought that you have not made "reasonable efforts" to contact such an owner.

Private Owners

You should assume the opposite practice for private art galleries and museums to what we have described for public institutions. We recommend that you assume that you cannot use an image of an object from their collection unless you have explicit written permission.

Objects Considered to be in the Public Domain

Finding images stored in Wikimedia Commons is today commonplace. These images always have captions stating that this material is in the public domain, normally citing US copyright law and legal precedent to justify this statement. The assumption that this is satisfactory for our purposes is unsound for three reasons:

1. Arc is a global publisher and we need to ensure that our publications conform to global good practice. Very few of the objects used in our publications are owned by US institutions, so our authors should conform to European or other copyright laws that may differ to the statements in Wikimedia Commons.
2. The public domain statement very commonly refers to the creator of the image that has been uploaded to Wikimedia Commons. It is not always clear whether the owner of the object photographed has given permission for this. If the following does not apply you should be very hesitant about using such an image:
 - a. The permission clearly states that it has been approved by the owning institution, and that is a respectable one, such as the British Museum.
 - b. It states that it has a GNU licence - https://en.wikipedia.org/wiki/GNU_General_Public_License
 - c. It is an object uploaded by the Yorck Project by Directmedia Publishing in Germany.
 - d. Comparable cases to the above, but in such cases please consult the publisher first for advice.
3. A publication would be considered as a “commercial activity” and so the level of liability is higher than if an image were used solely for classroom use or in a conference paper.

As publisher we want to protect authors from any chance that they may be sued or charged with illegal use of material. We try to take steps to protect you, but the ultimate responsibility is on the author’s shoulders, so being cautious is prudent.

Captions and Permissions Statements

We have attempted to emphasize the distinction between the copyright held by the creator of an image (the artist), and the rights held by the owner of the object that is being reproduced. The caption should typically comprise the following elements:

1. A description acceptable to the owner of the object or from a reputable source (e.g., the owner's website).
2. If the owner has granted permission to reproduce the image and has approved the version of the image that you are using (e.g., because they supplied it themselves, to a downloadable website or direct to you), you should add a statement such as "reproduced with the permission of"
3. If you have gained the image via a third party and it can be reasonably assumed that this third party has gained permission from the owner (e.g., images supplied to Wikimedia with the GNU licence or Directmedia/Yorck Project) you should cite the Wikimedia GNU licence details or the Directmedia source, since these intermediaries would then be culpable if they had illegally made this material available. You may wish to state where the original object is held, but you must make clear that you have gained the image from the intermediary.
4. Acknowledgement of the provider of the image, such as yourself, a cartographer that you have employed, a third-party website, or whatever.

For more detailed advice on and style guidelines for writing captions, please see the separate Arc document titled "Caption Style and Formatting."

Summary

If you are in any doubt, err on the side of caution (to protect yourself from liability), and where necessary ask for advice from the publisher.

On the other hand, you may be guided by the principle of "reasonable efforts" such that reproduction may not be withheld, if you can reasonably assume that the image can be legally published, and you have made reasonable attempts to contact the person or institution that you believe to be the owner.