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Introduction

As an author or volume editor you are responsible for complying with copyright law. Before your book can go into production all permissions for use of copyrighted material must be cleared and documented in an author log.

Clearing permissions is a crucial step that impacts how your book can be sold and licensed. By agreeing to permission restrictions you may limit which subsidiary rights we can license, where we can sell your book, and whether we can publish an ebook. For example, a single permission granting use for “English language” would make it hard to license your book for translations. Ideally, we ask that you seek permission for nonexclusive, world rights, in all languages, in all formats (print and digital), but you should discuss an overall permissions strategy with your acquisitions editor.

These guidelines are only intended to help you meet your legal and contractual obligations, and they should not be read as legal advice. If you are not sure whether a particular course of action could result in a lawsuit, please consult a qualified attorney.

Basics of copyright

Many types of intellectual work enjoy copyright protection; these include prose, poetry, music, song lyrics, photographs, visual art, plays, unpublished works, and films. U.S. copyright law is complex and nuanced. If you are using material that is under copyright—that is, not in the public domain—you will need permission unless your treatment of the material falls within the doctrine of “fair use.”

We have detailed some commonly encountered permissions situations below. If your work uses any of the following, you should read the pertinent section carefully: your own previously published work; contributors’ consent; photographs, art, and other images; cover image permission; epigraphs; film stills; interviews; song lyrics and poetry; unpublished material; U.S. government material; work made for hire; and material copyrighted in other countries.

For general information on U.S. copyright law visit www.copyright.gov.

Determining fair use

The use of short excerpts from copyrighted text and the selective use of copyrighted images for the purposes of scholarship, review, criticism, evidence, or evaluation are generally recognized as fair use and do not require permission. *A fair use analysis should always be considered before seeking permission.* If you invoke fair use, be sure to transcribe accurately, to credit sources, and not to quote out of context.

Copyright law does not clearly define parameters of fair use. What is clear is that in determining fair use, four factors should be simultaneously considered:

1. The purpose and character of the use, including whether the use is transformative, is of a commercial nature, or is for nonprofit educational purposes (small, black-and-white treatment of an image is more likely to be considered fair use than a full-page, color treatment);
2. The nature of the copyrighted work (nonfiction or fiction, highly creative, published or unpublished, etc.);
3. The amount and substantiality of the portion used in relation to the whole copyrighted work (the proportion is more important than the length of a quote); and
4. The effect of the use upon the potential market for, or value of, the copyrighted work.

A good understanding of fair use can save you a lot of time and money. Some nuances of fair use are discussed below, including links to resources specific to various types of material. To help us follow your decision-making process, we recommend that you develop a checklist for items whose fair-use status is hard to determine. Turn checklists in with your permissions paperwork.

General information on fair use from Stanford University <http://fairuse.stanford.edu/>

Stanford University fair use checklist http://fairuse.stanford.edu/charts_tools/

Determining public domain

All copyrighted work eventually enters the public domain, where it can be used without permission, though full credit should be given to the source. Works created and published in the U.S. before 1923 are in the public domain. Assessing works created after 1923 can be complicated. A conservative rough estimate is that copyright extends for the life of the author plus 70 years, but you will need to research post-1923 materials to be sure. Once you have determined the year the work was created, these tools should help you assess each item.

Interactive public domain tool <http://librarycopyright.net/digitalslider/>

Public domain chart from Cornell University

<http://copyright.cornell.edu/resources/publicdomain.cfm>

Works published between 1923 and 1963 were eligible to have copyright renewed for a window of time that is now closed. You can find copyright renewal records here:

<http://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>

How to seek permission

In cases where fair use does not apply, you are legally obligated to make every reasonable effort to get permission from the copyright holders. Failure to locate a copyright holder will leave you liable for copyright infringement, but a documented “good faith” effort can mitigate damages. In these instances, keep copies of correspondence for the contract file and note your efforts in the author log.

First you must determine who holds copyright. Keep in mind that it could be more than one entity. For example, a single work could be controlled in North America by one publisher and by another in the rest of the world. If you are dealing with an image, read more below [LINK to Photographs, art, and other images section] to determine if you need to seek copyright permission, permission to use a reproduction, or both types of permission. The second step is to ask for permission using attachments 2, 3, 4, and 5 as appropriate.

Search U.S. Copyright Office records <http://www.copyright.gov/records/>

WATCH a database to locate copyright contacts for writers, artists, and figures in other creative fields <http://norman.hrc.utexas.edu/watch/>

Tips from Columbia University Libraries on finding copyright holders

<http://copyright.columbia.edu/copyright/permissions/finding-the-owner/>

Author's Registry for locating hard-to-find authors <http://www.authorsregistry.org>

Artists Rights Society <http://www.arsny.com>

The American Society of Journalists and Authors for locating independent professional freelance writers <http://www.asja.org/index.php>

The Dramatists Guild for locating playwrights, composers, and lyricists
<http://www.dramatistsguild.com/>

Guidelines for common permission situations

Your own previously published work

Even if you are named in the copyright notice, the publisher may control publication rights. It is important to read the original contract carefully to see whether you or the publisher controls publishing rights. If you do not control rights, you must obtain either an assignment of copyright or nonexclusive permission from the publisher of any portion of your own work (in book or journal form) that you intend to include in your new book. If the publisher will not assign the copyright, request nonexclusive permission to reprint in all languages and in all editions of your book. Publishers are usually accommodating on these requests and will likely grant permission for republication without a fee.

If the new version of your work is derived from a previously published version (as a revision or adaptation), you may need permission from the previous publisher, even if the changes are substantial. However, you do not need permission if the present work is based on the same subject as, but not duplicating the same expression of, the previously published work, unless you have signed an agreement with a noncompete clause that requires consent of the originating publisher.

Contributors' consent

If your book contains contributions that are not work-made-for-hire, you must obtain consent from each contributor. This is most common in edited collections of essays. Consent can either be for exclusive or nonexclusive rights. Be sure to ask your editor which is the appropriate for your project. Use attachments 8 or 9.

Photographs, art, and other images

Permissions can get tricky when dealing with photographs, art, and other images. It is important to know that two types of permission can come into play. One is *copyright* permission, which must be sought from a copyright holder—often an artist or an estate. The other is permission to use a *reproduction* of an image, which often must be sought from a

gallery, museum, or other entity that supplies you with a print or scan. In other words, if the copyright holder and supplier of the image are not one and the same, you may have to seek permission from two sources for one image.

It's worth stressing that if the image is in the public domain or under fair use then you should only be seeking *permission for the use of a reproduction*, and not *copyright permission*. It's common for authors to seek permission where it is not needed and to agree to unnecessary restrictions in doing so.

If your book includes many fine art images, whether they are pre-1923 or post-1923, you need to be sure you understand some of the common problems that art historians and other authors using art face. The College Art Association [<http://www.collegeart.org/ip/>] is a good resource for the latest information on intellectual property and the arts. Use attachments 3, 4, and 5 as appropriate.

Cover image permission

If you have an image that you think should be used on the cover, discuss it with your editor. If it is agreed upon then you may be asked to get permission for cover use. If the decision about cover image is made by the Press then we will seek permission on your behalf.

Epigraphs

The following are the most important considerations for determining whether an epigraph that contains text under copyright can reasonably be defended under fair use; these considerations do not apply to material that is in the public domain:

1. Length: Keep it to one line (a line of poetry; a sentence of prose) wherever possible; two is acceptable if necessary to establish meaning (e.g. a couplet; an exchange of lines in dialogue).
2. Treatment: Is the quoted text being used decoratively, as a scene-setter? Permission is required. In order to pass our fair use "litmus test," the text of an epigraph should also be discussed in the chapter itself. Epigraphs located in the front matter of a book require permission.
3. Source: You will be better off avoiding altogether epigraphs taken from unpublished sources. Also, be aware of particularly restrictive or litigious estates; an epigraph is not worth the hassle, no matter how solid the fair-use claim.

Film stills

Basic fair use standards apply, but the film industry generally recognizes the use of film stills and publicity photos in scholarly works. For more on their use see the guidelines provided by the Society for Cinema and Media Studies [http://www.cmstudies.org/?page=fair_use].

Interviews

If you are quoting from interviews, it is preferable to have a written release. The wording should conform to ethical guidelines required by professional organizations in your field. If extensive material from the interview will be quoted, an assignment of copyright may be necessary. Depending on the subject matter, additional provisions for ensuring privacy or attribution may also be needed. Use the Sample Use attachment 6. If you have the consent on a recording you can document that in the appropriate author log fields. If the interviews have already taken place and you cannot get a signed consent form, it may be possible to submit a statement to us stating that the interviewee understood that the interview would be published, but please check with your editor.

Song lyrics and poetry

It's important to reiterate that there is no absolute word count that you can use to gauge fair use. Offering rules of thumb can be problematic, but in many cases using two to four lines (or ten seconds of playing time transcribed) and never more than 10 percent of the whole work may fall under fair use.

Unpublished material

Keep in mind that work doesn't have to be published or registered to fall under copyright. It is under copyright when it is in a fixed format. Permission is required for use of unpublished material, such as private letters, diaries, and manuscripts. In fact, the bar is somewhat higher for fair use determination with unpublished material. Unpublished work also eventually enters the public domain (use public domain resources to determine).

U.S. government material

Most U.S. government publications and photographs are in the public domain, but this does not necessarily include material owned by the U.S. government, such as material in the Library of Congress or the National Archives. You will need to research state or local government records more to determine if they fall into the public domain.

Work made for hire

Simply paying someone to produce material for your book does not give you copyright in it. You become the copyright owner and author if (1) both parties sign a contract stating this is a "work made for hire," (2) the material is produced at your request and expense, (3) the agreement is signed before work is commenced, and (4) the material falls into one of the categories of works made for hire (maps, graphs, illustrations, indexes, translations, etc.). A work can also be "made for hire" if it is made by an employee within the scope of employment. Though it is not

necessary, as a courtesy you can provide a credit line or other acknowledgment. Use attachment 7.

Material copyrighted in other countries

International copyright law varies greatly. You need to understand the basics of copyright in countries from which your work uses material. If your permission paperwork is in a foreign language, you must be extra diligent to clearly document all information in the author log in English.

U.S. Copyright Office Circular 38A on International Copyright Relations of the United States
<http://www.copyright.gov/circs/circ38a.pdf>

Wikipedia entry on copyright law by country
http://en.wikipedia.org/wiki/Category:Copyright_law_by_country

UTP forms and author log

- Attachment 1: Author Log
- Attachment 2: Text Permission
- Attachment 3: Image Copyright Permission
- Attachment 4: Image Reproduction Permission
- Attachment 5: Cover Image Permission
- Attachment 6: Interview Release
- Attachment 7: Work-Made-for-Hire Agreement
- Attachment 8: Contributor Consent Exclusive
- Attachment 9: Contributor Consent Non-exclusive