

Guidelines for preparing material for publication or inclusion in a website.

While most people are familiar with preparing images and works from third parties for classrooms and presentations, there are significant differences in the rules and procedures for these materials in preparation for publication. It is a general rule that authors are responsible for procuring copyright permissions for any materials obtained from other sources. These materials include: photographs, drawings, musical scores, video clips, audio, or software. It might be necessary, in some cases, for the author to pay a fee for use. Most, but not necessarily all, materials will require some sort of written permission for use. While it is important that all 3rd party materials be credited and copyright acknowledged, credit is not a substitute for permission.

This guideline is not a substitute for legal advice nor is it a comprehensive explanation of all of the issues that an author or creator will face when producing a work, but it is a general overview of the topic meant to indicate best practices for fair use and copyright. Each journal and publisher provides its own requirements for copyright management that should be consulted prior to submission. This guide will, however, offer certain procedures and techniques that will make management of the process easier.

Why is it necessary to distinguish between published works and teaching? Because the requirements for a publication or website require different kinds of compliance. Publishers are more strict in their demands for permissions because of their status as a for-profit organization: they are often unable to claim fair use based on the requirements of the law. Publishing outward facing websites is a form of self-publishing and demands the same rigor as would publishing in a journal. In addition to the ethical responsibility you have to respect copyright, it is not unusual for creators and copyright holders to assert their intellectual property rights and demand payment for violations, and these payments can be substantial. Simply taking down a copyrighted image does not obviate the violation; the copyright holder is still entitled to payment for use.

Before you begin:

The time to begin thinking about copyright is during the research process. Just as you make note of sources and bibliography, you should also begin to gather notes for possible illustrations- even if you don't create reference images, you should make note of location, date, type of image (jpeg, printed illustration, photograph), quality of the image (can you harvest the image from the source you are using or will you have to contact someone for a reproducible copy), author or copyright holder, copyright status (if available). Why should you do this? Because you will need this information later when you compile a list of possible illustrations or figures. I would suggest that you enter the information into a spreadsheet or a database program so that you have the material when you begin to finalize the project.

According to your discipline or subject, this list of possible illustrations might be very short or rather elaborate. If, for instance, you are working in an archive you should make note

of the procedure they use for creating a reproduction, the costs associated with scanning or photography, procedure for permissions, restrictions on use, and so forth. If you hope to use an illustration scanned from a book, please note that the copyright does not reside with the repository but is retained by the creator or the publisher. You should also note that copyright is dependent on the country in which the work is produced not where it currently resides; for instance, a book printed in Cuba is subject to Cuban copyright rules and limitations which differ significantly than works produced in the US. There are also rules about books that are produced in a foreign country that have an American edition as well. It is, therefore, important to gather information including important contact information for archives, libraries, and copyright holders as you work.

As you consider submitting your manuscript:

1. How many illustrations will you need for your project?
2. Are the illustrations going to be large, high quality reproductions or small figures illustrating a specific point in the text.
3. Do you have a budget for licenses and permissions? How much are you willing to spend?
4. If the chosen illustrations are too expensive or you can't obtain permission, do you have adequate alternatives?
5. Are there open source, creative commons, or public domain alternatives that do not require permission?

Remember, your time is money, and working on copyright is a time consuming process requiring patience and research. You should start early on the permissions process so that you don't delay the publication. I would suggest that you not seek permissions until your manuscript has been accepted and you have been assigned an editor.

As you begin the permissions process

It is important to document the permissions process. If you receive a letter or an email agreeing to give permission, you should print it out and put it in a folder. Make sure that the permission letter asks for all the uses that you can anticipate: will the materials be used for the online or ebook version? Will the materials be used for advertising or promotion? Will the works be permanently archived in an online form? Going back to an owner and asking for more permissions is unprofessional and may generate ill-will, so make sure you ask for everything you need the first time. Most journals and publishers have a guideline for what rights they need to use copyrighted material.

I would suggest that you use project management software to organize and document workflow. There are many low-cost or free online suites that are easy to learn and efficient. Your publisher may have a preferred system or workflow that they use so check with your editor before

Materials requiring permission

Illustrations, photographs, tables, text, audio and video clips, and musical scores created by others which do not qualify as fair use are the most common items that demand permission. Remember, works do not have to be registered with the Copyright Office or display a copyright symbol (©) in order to be considered the intellectual property of the creator. The following general categories are materials which are subject to copyright laws. There are specific exceptions to this law which will be addressed later.

Images

Illustrations, including photographs, paintings, line drawings, cartoons, maps, and other artistic renditions require permission from the copyright holder. As a general rule, the creator of the work is the copyright holder unless he/she assigns that right to a third party like a publisher. There are also works that are created by an employee- in those cases, the business or corporation holds the copyright.

Tables and graphs

Reprinting a table or graph necessitates copyright permission. Rewording or creating a new table with the same information based on the same data does not lessen the need for copyright permission.

Text

Using substantial or significant portions of someone else's text in your work requires permission from the author. There is no set number of words or lines that trigger the demand for permission. If the quotation encapsulates the essence of the work, permission by the copyright holder should be sought. Remember that unpublished works or letters are subject to different rules, and for translated material, the copyright resides with the translator, not the person who produced the original work. Therefore, a translated public domain work may still be in copyright even though the work itself has long since passed into the public domain.

Audio, video clips, images, and texts found on the internet

Most material including videos, sound recording, images, texts, and other content found on the internet are subject to copyright unless specifically designated permitted to share and use by the creator. This designation is often (but not always) marked by a Creative Commons License. Even if there is no listed copyright holder or the work is from a foreign country, the work is still in copyright, and permission must be secured prior to publication. Remember, even if no copyright holder can be found, the work is still under copyright and the holder can exercise his/her intellectual property rights.

Musical Scores

Musical scores do not usually qualify for fair use since the reproduction of the music is generally the essence of the work. It is also important to remember that lyrics are generally copyrighted separately from the musical notation and it might be necessary to contact more than one copyright holder.

Your own previously published materials

Even though you are the creator of the works in question, you should check with the publisher for permission to reprint or extensively include work that has appeared in print. If you have not negotiated an exception or license to reuse your work, it is likely the publisher will need to give permission.

Material not needing permission or license

Public domain

Copyright is intentionally limited in duration. Every book written prior to 1787 is in the public domain worldwide- with the exception of the King James version of the Bible. In the United States all books, recorded performances, and films published prior to 1923 are in the public domain. Different rules apply for unpublished works- in the US the term is life of the author plus 70 years. Other nations have different public domain dates and copyright laws in those countries should be consulted.

Documents produced by the US government, statutes of law, and works produced for the government like photographs and architectural designs are in the public domain; however, state and local governments, as well as foreign governments, may be subject to intellectual property laws.

Reproductions of public domain works of art are generally considered to be in the public domain as long as the reproduction is “artless” and faithfully renders the work. However, works reproduced in print in a book or online might be subject to copyright. Museums have unsuccessfully argued that ownership of the object allows them to control and license reproductions, but they can control permissions to photograph on their premises and grant exclusive right to reproductions that they produce.

Remember, however, that photographs of works of art that are in copyright must request permission to use the image from the original owner of the copyright- not the photographer of the copyrighted work. If the photograph can be interpreted to have artistic elements of lighting, form or composition, then the photographer should also be included in the permission process. Useful articles, like furniture, clothing, machinery, automobiles, or lighting fixtures cannot be copyrighted. Ornamentation or design, however, can be copyrighted. A plate, for example, cannot be copyrighted, but the floral design on the plate can be. Moreover, a drawing or photograph of an object is intellectual property, but the object itself is not protected- these useful objects are covered under trademark law.

Copyrights that were not renewed

In the period from 1923-1964, copyright owners were required to renew registration to extend their protection. Works not renewed fell into the public domain. Stanford University maintains a database of book renewals for that period, but this does not cover works of art, articles or other copyrighted material. Determining copyright for materials of that period is difficult and may require research from different databases. Often information can be found in the US Copyright Office, Library of Congress, or the Hathitrust databases. For additional help in determining the status of a work, contact the university library or a library in your area.

Ideas and Data

Facts, data, methods, theories, formulae, and ideas are not protected by copyright, but expression of facts and theories in the form of notes are. Lists, recipes, and bibliographies cannot be copyrighted unless there is commentary or unique elements that would not be associated with the listing of facts.

Your previously unpublished materials

Texts, graphs, maps and drawings which you have produced but not published do not require permission to publish. Your own photographs can be published without permission unless the subject matter is subject to copyright. When you prepare to publish your own photos of people, you should get a release from the subjects to protect yourself from legal claims related to privacy or publicity.

Fair use

It is also possible to use the fair use exception in certain circumstances. Remember fair use is not a pre-emptory right, but a defense in a lawsuit. Most publishers (and website owners) are risk averse and would rather not have to spend money in order to make a plaintiff go away. Academic journals and presses are more likely to be receptive to a fair use argument, but commercial publishers rarely allow 3rd party material to be submitted under fair use. Fair use is judged on a case by case basis: the rules are nuanced and based on a number of criteria. There are no word count guidelines or copyright work-arounds. Here are the four factors which define an instance of fair use:

Four Factors

1. What is the work being used for? Is the work commercial or non-profit- commercial uses like advertising are less likely to be fair use than an open educational resource.

2. What is the nature of the work? Factual material, like biographies or statistical analysis are more likely to be fair use than a creative work. Works that have not yet been published are less likely to be considered fair use.
3. How much of the work is being used? If it is a short quote from a book it is more likely to be fair use than the same amount from a poem. This factor takes into account the relative amount of the material you use and whether the quote transmits the essence of the work as a whole. If, for instance, you quote a passage in a murder mystery that reveals the culprit, your use is less likely to be considered fair.
4. What does your use do to the commercial market? Could your work be used as a substitute for the original work? Will your work lessen the demand for the original or diminish the value of the original?

The “Fifth” Factor

Often taken in consideration is an additional factor that describes the use: does the use transform the original? If the work is analyzed, parodied, interpreted or otherwise changed in your work, the use is more likely to be considered fair.

When to apply fair use

1. Photographs and artwork generally require permission for use in a website or publication. However, if the work in question is discussed, criticized, or reviewed in the text a reproduction of the work (general small and low resolution) can often be used without permission. Again it will depend on your editor or publisher to make this decision.
2. Often publishers will have general guidelines for the need to gain permission for quotations that are longer than a sentence or two. In all cases, the quotes or use should be sourced and acknowledged in the text.
3. There are only rare instances in which an unpublished work can be used without permission. It is more common that the works in question are covered by a creative commons use license or a release from copyright by the owner.

Requesting permission

As you begin to request permissions, keep in mind that you are required to contact the copyright holder. While it is often the case that the author or creator of a work, in many cases it can be a publisher, a corporation, or an heir. There are also instances where it cannot be determined who holds the copyright; these works are often called “orphan works.” It is best to begin the process by searching the US Copyright Office at www.copyright.gov and expand your search through Stanford’s Copyright Renewal Database <https://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>

If the work is in a museum or archive, contact them for help with securing rights. For most permissions, contacting the creator will be the most reasonable course of action; however, the creator may direct you to a publisher or other commercial entity which holds the rights to the work.

Permissions forms

Permissions take time to secure so begin early in the process once your work is accepted. You will need to create a permission form (or adapt one from the models below). If you are requesting to use a book or article, make sure that you provide precise information about the work in order to identify it correctly. A book request should include the author's name, the title of the book, publisher, date of publication, ISBN or other identifier and the pages you want to use. A journal should include author, journal name, volume and issue number as well as the page numbers.

Along with the permission letter, a print out of the material to be used might make the process go faster.

Most publishers require the permission to include non-exclusive worldwide rights for all formats, including digital, for this and future editions, as well as translated versions, and publicity and marketing rights for the material.

If the work is in print or the publisher is still an ongoing concern, the press generally has a contact person who handles permissions and will be able to provide you with permission (and if necessary, a schedule of fees for use). It might be that the publisher of the work will have a special form that outlines their terms. Read this contract carefully and contact your publisher if you have questions about terms.

Finally, if you can't locate a copyright holder despite your best efforts and persistent enquiries, you cannot simply "use" the work. It is still protected by copyright and if the owner becomes aware of your use, you are considered in violation even though you conducted due diligence in your search. Most publishers will not consider using a work without permission. You should work with your editor to see what your options are and whether a suitable legal substitute can be found.

Finalizing permissions

As you begin to receive answers and permissions, be sure to log each permission and make note of any special demands that the copyright holder asks. Sometime a holder will request that an image not be reproduced in color or have a certain dimension. If there are requests about acknowledgements or attribution, make note of these as well.

Make sure that you keep all letters, email conversations, or other communications with the permission letter. Retain a copy of this information for your own files.

This short outline does not cover all possible issues that will come up with copyright. There are many sources online and in book form that give a more thorough discussion of the issue. If you are submitting a manuscript or an article, your publisher will be able to give more specific guidance and rules that are unique to their organization.

If you are creating a website or other online outward facing presence, your diligence in obtaining permission will protect you from financial and legal issues. Unfortunately, take down notices and demands for fees from website violators are very common, so extra care and attention to detail will save you time and money in the future.

Sample permissions:

SAMPLE LETTER FOR PERMISSION TO USE COPYRIGHTED WORKS IN A PUBLICATION

[Letterhead]

[Date]

[Name and address of copyright owner or agent - copyright notices will normally tell you who has the authority to provide permission]

Dear [title, name]:

I am a [your position: student, graduate student, post-doc, faculty, researcher, scientist] at [name of institution]. I am in the process of preparing a [manuscript, book, book chapter, dissertation, anthology, etc.] for publication and am seeking permission to include the following material in my publication. A copy of the work is enclosed. [Unless all of this is clear from the enclosure, identify: (1) the author's, editor's or translator's full name(s), (2) the title, edition and volume where applicable; (3) the copyright date, (4) the ISBN/ISSN number, if known, and (4) the exact page numbers or images or graphs or charts you wish to reproduce.]

The work will be used in the following manner: [Explain the intended use in detail - for example, to include an image/graph/table/illustration/quote from the requested work in my dissertation, book chapter, journal article, etc. to be published]. The publication information is as follows: [Title of publication, publication type (dissertation, journal article, etc.) publisher, date of publication]. I request nonexclusive worldwide rights for all publication formats, including electronic, for all printings and future editions and for all languages, and for publicity/marketing purposes

Please let me know if there is a fee for using this work in this manner.

If you do not control this material

If you do not control the copyright in all of the material, I would appreciate any contact information you can give me regarding the proper rights holder(s). Otherwise, your permission confirms that you hold the right to grant the permission requested here.

Please indicate your approval of this request by signing the letter where indicated below and returning it to me as soon as possible using the self-addressed envelope. Your signing of this letter will also confirm that you own the copyright to the above-described material.

Very truly yours,

Mark Konecny
Scholarly Communications Strategist
University of Cincinnati
konecnmc@ucmail.uc.edu

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[Your name, title, and signature]
[Contact information]

For copyright owner use:

PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:

By:

Title:

Date:

Sample Image Use Permission for a website

[Image copyright owner] is the owner of the copyright to the [image/photograph/artwork/graph] described below (a photocopy of the image is appended to this letter).

Description of the image with available metadata: xxxx

[Website Owner] would like to acquire the right to reproduce and publish the [image...] at the website (url <http://xxxxxx>) This is a [non-profit/commercial/news/informational] website that is devoted to [whatever].

The [copyright owner] grants to the website owner the nonexclusive right to publish and reproduce the [image...] at this website for [number] years. The use of this image is assigned to the owner and this right is tied to the [xxx] website.

The image owner warrants that he/she/it has the right to grant permission for the uses specified and the [image] does not infringe on the rights of any third parties.

The [website owner] will abide by the agreement and will not transmit, copy or otherwise give the image to a third party. Any use by a third party is not authorized by the website owner and use of the image by a third party is not authorize by the website owner.

Image owner

Name

Address

Date

Signature

Website owner

Name

Address

Date

Signature.

Talent release form

Video/Photo/Audio Consent Form

I, the undersigned, do hereby consent to the use by the [website owner] of my image, voice, or both described below, in (1) the video, photograph, or audio recording described below; and (2) any video, photograph, or audio recording reproduced either in whole or in part from the video, photograph or audio recording described below: regardless of whether these materials are used for advertising, publicity, or any other purpose in the manner specified in this agreement [Describe what uses the image will have on the website]

I warrant that I have the full right and authority to grant this consent.

In addition, I waive all claims to compensation or damages based on the use of my image or voice, or both, by website owner.

I understand that this consent is perpetual, that I may not revoke it, and that it is binding on me, my heirs and assigns.

I warrant that I am at least 18 years of age and that I am competent in my own name insofar as this consent is concerned. I further attest that I have read this consent form and fully understand its contents.

Description of video, photograph, or audio recording:

Printed name:

Age.

Address:

Signature:

Date:

Name and address of photographer/videographer:
