

## Obtaining Permissions and Releases

For more information, see the guidelines prepared by the Association of American University Presses: <https://aupresses.org/permissions-faq/> (last revised in 2018).

### Permissions

You have agreed in your contract to secure any necessary permissions for including in your book third-party copyrighted material, which can comprise illustrations (photographs, reproductions of artwork, cartoons, maps, charts, or graphs) or excerpts from published and unpublished works. The copyright law and its “fair use” provision are complex. What follows here are some general guidelines that should help you determine if you need permission, and where to seek it; we urge you to discuss questions with your editor and/or to seek advice from an expert.

- ♦ Permission letters should grant non-exclusive world rights in all languages and media, including electronic forms (see sample Request for Permission letter).
- ♦ Permissions can take months to clear, so request them as early as possible. The necessary letters of permission must be submitted along with your final manuscript. On each permission letter, indicate the figure number, table number, or manuscript page number to which the letter refers.
- ♦ What doesn’t need permission?
  - Works in the public domain. Works not protected by copyright laws are in the public domain. Works are in the public domain if: (1) the term of copyright has expired and/or was not renewed, if applicable; (2) the owner has given or dedicated the work to the public domain; or (3) the work is not protected, e.g. it is a U.S. government created work (although be careful to ensure that there is no copyrighted material used by permission in the parts of the government created work). For works created after 1970, copyright expires 70 years after the death of the author. For works created up to 1970, as of January 1, 2023, works created prior to 1928 are in the public domain, and with each succeeding year (e.g. in 2024), works created from the next year (e.g. 1929) fall into the public domain and so on. Regardless of copyright protection, you should always provide accurate attribution for anything you quote.
  - “Fair use” of works protected by copyright. Many scholarly publishers, including Yale University Press, generally consider a cumulative total of 300 words of prose from a previously published book-length work to be an appropriate amount\* for purposes of fair use, not requiring permission, as long as the prose excerpt doesn’t constitute an entire or heart of the unit—be it a chapter, an article, a letter, or a story—or represent a significant portion of a very short work, unless this is the minimum amount necessary on balance of the four factors. (\*The determination of what constitutes “fair use” is a matter of law, based on four factors: the nature of the copyrighted work, the amount of the work that is used, the purpose of the use, and the effect of the use on the market value of the copyrighted work. Whereas scholarly use generally favors a relatively broad interpretation of fair use, individual rights holders may hold a more narrow view. You should evaluate the factors based on your reasonable judgment and seek additional legal guidance where necessary.)
  - Work “made for hire.” If you commission someone to create material on your behalf (graphs, maps, translations, etc.), you can become the owner of copyright in that material, as long as you meet the requirements for a “work made for hire”—among them, a written contract signed by both parties stating that the material is work for hire. If you own the copyright as work for hire, then you do not need permission. Attribution may nevertheless be appropriate; please provide credit details.
- ♦ What does need permission?

- Quotations from or reprinting of published works that are protected by copyright generally requires permission if not covered by fair use. If you are not affirmatively asserting your proposed use is covered under fair use, you should apply to the publisher for permission. Additionally, if you are paraphrasing as opposed to quoting material, permission may not be required, but attribution would be appropriate.
- Quotations from unpublished letters, diaries, journals, manuscripts, or student writings. If the unpublished work is in the public domain, (generally written by someone who died more than 70 years ago) it can be quoted without permission. For other unpublished works, the determination of fair use may be a complicated analysis as the fact that a work is unpublished tends to weigh against fair use. Additionally, note that the copyright to unpublished letters and other writings resides with the writer of the letter, not the recipient or any subsequent owner of the physical document; accordingly, any permission to quote would be obtained from the writer, or the writer's heirs where necessary.
- Epigraphs. Epigraphs require permission unless the material is in the public domain or qualifies as fair use. If you are asserting fair use for an epigraph, the epigraph must be sufficiently tied to the text that follows the epigraph, and you would apply the same four factors comprising the fair use analysis as with other types of quoted material. If an epigraph is being used for purely decorative purposes such as for setting the tone or is not referenced within or clearly connected to the text, then you should rewrite the text to make the connection clear, move the quoted material to the main text, remove it altogether or clear the appropriate permission. Keep in mind that the more creative the material is (e.g. poems or song lyrics), the less likely the material may qualify for fair use in this context.
- Poetry. Again, there are no bright line rules for fair use, but it is generally recommended that you secure permission for more than two lines of a short poem (unless the poem is only two lines long) or more than a stanza from a long one. Note however, that even the lesser use will require permission if you are using the poetry outside fair use.
- Song lyrics. We recommend that you not use song lyrics except those brief excerpts that are essential to your scholarly argument. Finding the rights holder and securing permission can be time-consuming and expensive. (ASCAP and BMI are clearinghouses that can help you locate rights holders.) Any quote of any length, if it is used without comment as an epigraph, requires permission.
- Modern translations of older works. Even if the original work is in the public domain, you will need permission from the rights holder of the translation to quote more than "fair use." Apply to the publisher of the translation for permission.
- If your work is an anthology, you need permission for every piece in the anthology, no matter the length.
- Your own previously published work. If you intend to quote material from a previously published work, you have probably granted the right to grant permission to your publisher, so you should secure permission.
- Photographs and art images require the permission of the copyright holder unless fair use applies. The rights holder may be the artist, or the artist's heirs or representative, unless the artist has transferred the rights to a third party. Fair use is fact-specific and will require an analysis of the four factors. Separate from permission, you might also require a license to use a digital file or high-resolution image. Additionally, if photographs include identifiable people, you may in some circumstances need to obtain a release from them as relates to their rights of privacy and publicity, depending on the facts and circumstances.
- Maps, charts, or tables, are generally protected by copyright although data incorporated into such charts or tables is not protected. If reproducing such protected content, you should obtain permission.

## **Releases**

- ♦ If you intend to publish material from interviews, you should have the interviewee's consent as well as a written release (see sample Interview Release). It is especially important to secure the written release if the quoted material is personal or potentially controversial, if the interview is lengthy, or if portions will be reprinted verbatim. Additionally, you should document any agreement with the interviewee, for example if portions were "off the record" or subject to any conditions, e.g. the interviewee's review.
- ♦ To use a photograph showing identifiable individual(s), you may need a model release from the person(s) depicted (depending on the nature of the photo and its intended use) in addition to permission from the rights holder.

## **Other Considerations**

- ♦ If your book contains any statement of fact about a living person or existing organization that might in their view damage their reputation or interfere with any other right (such as the right to privacy), you should be sure to retain any supporting documentation. In addition, you may wish to seek legal advice, as avoiding claims of libel are among the author's responsibilities and warranties under the author contract.