

Author's Permission Guidelines

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What is Copyright?

“Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of ‘original works of authorship,’ including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.” (www.copyright.gov) Copyright affords the owner certain rights, including the right to reproduce a work, and the right to distribute copies of the work.

Unless you are able to claim “fair use” of a work (more on which later), you must obtain permission from the copyright holder in order to reprint (or adapt): prose, poetry, tables, copyrighted music, song lyrics, line drawings, photographs, fine art, and any other form of copyrightable expression.

Copyright of a work is owned by the creator of the work, known simply as the Author. As with any rule, there are exceptions: The copyright may have been assigned by the Author to another party; if the work is created as a ‘work for hire’, or if it is undertaken as a part of one’s job in the course of employment, the employer will own the copyright. In the case of published texts and music, the publisher likely administers the copyright; in the case of photographs or fine art, the artist is often represented by a gallery or agency who can grant reproduction rights.

Copyright law does allow for the *fair use* of copyrighted material for the purposes of criticism, comment and scholarship. If your use of copyrighted material falls within the bounds of fair use, you do not need to seek permission to use that material.

Fair Use

The doctrine of fair use was originally developed by judges as an equitable limit on the absolutism of copyright. Although fair use is incorporated into the most recent copyright law, there is no hard and fast definition of fair use; fair use in one instance may be copyright infringement in another. No one can give an absolute prediction of how a court may rule in a particular case, so one should not make claims of fair use frivolously. Claims of fair use will be evaluated by the Contracts and Permissions office of the University of Chicago Press, though the legal and financial liability is ultimately the Author's.

In determining whether the use of copyrighted materials can be considered fair use, four factors must be considered:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Since copyright is essentially a means of protecting financial interests, it is easier to make a case for the fair use exception for scholarly books or books with relatively small print runs. As a rule of thumb for scholarly works, short prose extracts, and poetry extracts (no more than 3 or 4 lines, sometimes as few as 1 or 2 lines, depending on the length of the poem) will fall under fair use, provided they are the subject of discussion in the book, and no permission need be sought. It is more difficult to make a claim of fair use for copyrighted works of visual art reproduced in their entirety, and Authors are encouraged to err on the side of caution in such cases.

Public Domain

All works will eventually go out of copyright and enter the public domain. Once in the public domain, the exact work may never again be protected and is free for all to use. Herman Melville's *Bartleby*, for example, is in the public domain, even if Melville's heirs would prefer that it not be. (One might, however, copyright an annotated edition of *Bartleby*.)

U.S. Copyright law is complicated and nuanced, but as a rule of thumb it is safe to assume that works created and published in the United States before 1923 are in the public domain. For works created after 1923, various terms of copyright apply, depending on the circumstance. The most conservative measure is to assume copyright extends for the life of the author plus 70 years, though for more on the nuances of post-1923 copyright, you may refer to Lolly Gasaway's chart, below, or this helpful interactive website: www.librarycopyright.net/digitalslider

Gasaway Chart: <http://www.unc.edu/~uncclng/public-d.htm>

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years ¹ (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²)
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice ³	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

¹ Term of joint works is measured by life of the longest-lived author.

² Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

³ Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405.

When Permission is Needed:

Unless a work is in the public domain, or you have determined that your use of the work is clearly fair use, you will need to request permission.

For your own previously published work: You may need to seek permission to use or adapt your own previously published work. Many publication agreements issued by scholarly journals state that the author is free to republish the material in a book of his or her own. Before reprinting your own previously published material, review your publication agreement to see what rights you may have transferred to the original publisher.

For Texts: For texts published after 1923 and quoted beyond the bounds of fair use, you will need to seek permission. For texts never before published, you will likely need to seek permission, regardless of when they were composed.

For Works of Art: Unless the work was published in the U.S. prior to 1923, you will need to seek copyright permission to reproduce works of art whose creator died less than 70 years ago.

Reproducing works of art often means obtaining two permissions, one from the copyright owner, and one from the provider of the actual photograph / transparency / negative / digital file that will be used to make the reproduction in the book. At Chicago, we make a distinction between “Copyright” permissions and “Use” permissions, and it is important not to confuse the two. If you plan to reproduce any works of art in your book, please carefully read *Art Permissions Work for Your Book* below.

For Film Stills

Authors wishing to reproduce frame captures from films are in luck. Frame captures, also called film stills, are generally considered to fall in the realm of fair use for scholarly publishing. Essentially, a frame capture represents 1/24th of one second of a film, which hardly represents the whole heart of the work, and cannot be said to infringe upon the market for the film. Film stills should not be confused with Productions Stills, which are photographs taken on a film’s set, and which may be subject to copyright protection. For a complete discussion of the use of film stills in scholarly publishing, see the [*Report of the Ad Hoc Committee of the Society For Cinema Studies, "Fair Usage Publication of Film Stills"*](#) by Kristin Thompson.

Whom to Ask for Permission

You are legally obliged to make reasonable efforts to contact all persons or organizations with an interest in the work you wish to reproduce. In the case of texts, the publisher will likely have the authority to grant permission. In the case of works of art, the artist, the artist’s gallery or estate, or an organization such as the Artist Rights Society or the Visual Artists and Galleries Association (VAGA) will be able to grant permission.

Accounting for Your Permissions

Your manuscript can be more quickly prepared for editing and production if your permissions are well organized. It is helpful to create a spreadsheet to track your permissions, and to be sure each permission letter is labeled with the corresponding figure number (for illustrations), or chapter (for texts). We ask that you submit this log with your final manuscript, final illustration program and permission letters.

Online Resources

<http://copyright.gov/>
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http://fairuse.stanford.edu/charts_tools/