

JOURNAL COPYRIGHT GUIDELINES

(Adapted from University of California Press's Book Copyright Guidelines)

The author is legally responsible for complying with the copyright laws and the laws of privacy and libel. What follows is an outline of the relevant tasks you need to complete before you submit your article manuscript for production. There may sometimes be other requirements besides those listed here.

The production of your journal issue may be delayed if you do not complete the necessary tasks before copyediting. Typesetting will not proceed until you have delivered your author agreement, permission licenses, and forms to your journal editor and/or production coordinator.

These guidelines are intended to help you meet your legal obligations. The Press has no power to release you from them. Nor can we offer legal advice; if you are not sure whether a particular course of action might result in a lawsuit, you should consult an attorney.

Credits

If you use any work by another person in any way, good scholarly and publishing practice requires that you give proper credit, citing the source of the work you are borrowing. Some works have more than one source, and each must be cited. For example, a photograph of a painting must be accompanied by a credit line naming both the artist and the photographer, and usually the owner of the painting as well; a text quoted in translation must credit the author, the translator, and usually the publisher of the translation.

Even your own work, if it has been previously published elsewhere, must be credited. For example, if your article includes a substantial excerpt previously published in another format (book or journal), you must mention this fact and cite the content in full—either in a footnote or endnote.

The source of an epigraph (a quotation set at the beginning of an article to suggest its theme) is usually cited beneath the epigraph; of a table, in a source note below the table; of an illustration, in the caption.

If the person granting permission to reproduce a text or illustration specifies a particular wording or placement of the credit, those instructions must be followed. The copy editor may, however, make minor changes to conform to the Press's house style.

Permissions (or "Licenses")

Giving credit for all borrowings does not relieve you of the need to obtain permissions. You are legally required to obtain permission to reproduce, photograph, translate, or paraphrase any work or part of a work that is protected by copyright (unless the "fair use" exception applies—see below). Copyright law protects not only printed materials of all kinds (e.g., prose, poetry, tables, graphs, maps) but also works in all other media, whether published or unpublished—including content on the web, cartoons and other drawings, photographs, movie production stills, musical compositions, and advertisements. Most countries have signed international agreements to enforce

the copyright laws. This means that you must obtain permission to reproduce works created or published outside as well as within the United States.

When Permission Is Needed

In general, you need permission to reproduce any work created by another person. Unless a work is clearly in the public domain (it was published before 1923, was created by an employee of the federal government, or if its copyright protection has lapsed) your use of it is clearly within the "fair use" exception (see below), it is **not safe to assume that you can borrow from it without permission. If in doubt, consult the Journal & Digital Publishing Division's Subsidiary Rights Manager or seek legal advice.**

You generally need permission to copy or adapt a work created by another person. If you photograph a work of art that is not in the public domain, you need the artist's permission to publish the photograph. If you redraw a figure, such as a graph or chart, you need permission from the copyright owner of the original figure. The same applies to a table. But you can usually redraw a map without permission, because a map is usually no more than a collection of facts.

You may also need permission to republish your own work that has been previously published (e.g., as part of a book chapter, etc.). You should review the publishing agreement to see whether you transferred exclusive publication rights to the publisher. If so, you must obtain written permission to republish the material. The publisher will normally grant such permission without fee or fuss. If the present version is derived from the previously published version (e.g., if it is a revision or adaptation), you probably 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 content as, but not derived from, the previously published work.

Whom to Ask for Permission

Some works require permission from two or more persons or organizations. For example, a photograph of a work of art often needs permission from both the artist and the photographer; a work published in Britain and the United States may need permission from both publishers (you should ask the U.S. publisher about this); a work created jointly by two or more persons may require permission from each of them (you should ask the joint authors about this).

Rights are transferable, and you may need to make several inquiries to locate the holders of all the relevant rights. You are legally obliged to make reasonable efforts to contact all persons or organizations with an interest in the work you wish to reproduce.

For permission to reproduce all or part of a published work, you should normally begin your inquiries by contacting the publisher. (Even if the author's name appears as the copyright holder at the beginning of a book, the publisher usually holds the reproduction rights.) However, a photograph published in a book does not usually become the property of the publisher. For a photograph, therefore, you should begin by contacting the person or institution named in the credit line (in the photo caption or in a list at the front or back of the book).

To reproduce all or part of an unpublished work, you should first contact the creator of the work for permission. If the creator is deceased, you should contact his or her heirs. In some cases,

however, the owner rather than the creator of the work (such as a painting) may own the reproduction rights, and permission must be obtained from that person or organization.

Please ask your journal editor for a boilerplate "Photo/Article Reprint Agreement" should you need it.

What to Ask For

To enable the Press to distribute your journal article as widely as possible in both print and electronic formats, you need to obtain one-time, nonexclusive world rights in all media now known or later developed.

[To journal editors: If you would like to use an illustration or image on the cover of your journal issue for promotion and advertising, you need specific permission for these uses as well.]

Works in the Public Domain

Works whose copyright has expired and publications by the U.S. government are in the public domain. They may be reproduced freely, without permission, though they should of course be properly credited.

In most countries, a work remains in copyright until 70 years after the death of its creator. After that, the work is in the public domain. Note, however, that a derivative work, such as a translation of a text or a photograph of a painting, may be in copyright even though the original work is in the public domain.

In the United States, the life-plus-70-years rule applies to works created or published after January 1, 1978. Works published before 1978 are generally in copyright for 90 years from the date of initial publication. Works created but not published before 1978 are in copyright until December 31, 2002, or until 70 years after the death of the creator, whichever term is longer.

A work created by an organization (e.g., an encyclopedia) is generally in copyright for 90 years from the date of publication or 120 years from the date of creation, whichever term is shorter.

To determine whether a work is in the public domain, you should examine the copyright notice attached to it. In many cases you can find out from reference books such as the *Dictionary of National Biography* whether the creator of the work died more than fifty years ago. You can also ask the Copyright Office to do an online search for the registered copyright holders:

U.S. Copyright Office
Library of Congress
Washington, DC 20559
Phone (202) 287-8700
Website: <http://www.copyright.gov/>

Fair Use

An exception to the copyright law allows you to quote or paraphrase brief excerpts from a work in copyright, provided you are making "fair use" of the excerpt. There is no fixed rule about what constitutes fair use. Some of the factors to be considered are the proportion of the work that is used, the purpose of the use, the nature of the work used, and the economic impact of the use.

Examples of Fair Use

In scholarly writing, the use of short excerpts for purposes of evidence, criticism, review, or evaluation is generally recognized as fair use. The excerpt must, however, relate to the commentary; it is not enough if the excerpt merely illustrates your point. You do not need permission to make fair use of an excerpt, but it should of course be properly credited.

What Is *Not* Fair Use?

The reproduction of all or almost all of a complete unit is generally not considered fair use, no matter how short the piece is. In particular, permission is needed to reproduce an illustration that is in copyright, even if it is used for purposes of scholarly discussion. Permission is needed to quote (in a single quotation or a series of quotations) all or almost all of a poem, letter, case history, or other work in copyright. If the nature of your journal article (e.g., a work of literary criticism) makes it necessary to quote extensively from works in copyright, you should consult your editor or seek legal advice as to the limits of the fair use exception.

A quotation for purposes other than scholarly discussion may not be considered fair use, no matter how short the quotation is or how small a portion of the work from which it is taken. You will normally need permission for an epigraph or other un-discussed quotation from a work in copyright.

Special Cases

Song Lyrics

Some material that is considered to have high commercial value is treated by its owners as if it had a special status, to which the fair use exception does not apply. The most common example is a song lyric. The music publishing industry insists that lyrics cannot be quoted, even briefly, even in scholarly works, without permission—and the industry has the will and the means to enforce its position. The Press recommends that you always obtain permission to use song lyrics that are in copyright.

Unpublished Works

The fair use exception applies only narrowly to an unpublished work, because the creator has the right to keep his or her work unpublished. You should therefore obtain permission from the creator before using any unpublished materials, regardless of the length or purpose of the intended use. Unpublished letters present particular problems; the writer of the letter (or the writer's heirs) normally controls the publication rights even if the letter is in the possession of another person or in a library.

If, in light of these guidelines, you are confident that your proposed use of an excerpt is fair use, it is best not to ask for permission. Scholars should exercise the right of fair use when it applies; otherwise it could be eroded. Also, by asking for permission you would be tacitly admitting that permission is needed, thus undermining your claim that the fair use exception applies. However, if you are not sure whether your proposed use of an excerpt is fair use, you may want to inform the copyright owner that you intend to use the excerpt under the fair use rule and that you intend to provide proper credit. If the copyright owner does not object, you can go ahead. If the copyright owner does object, you can then decide whether to ask for permission or to rely on the applicability of the fair use exception.

Works Made for Hire

If you hire someone, such as a cartographer, photographer, or translator, to prepare materials for your article, you become the owner of the copyright in those materials, provided that

1. both parties sign a written contract stating that the material is made for hire
2. the material is produced at your instance and your expense
3. the material falls into one of the statutory categories of works made for hire.

The categories that commonly apply to scholarly publishing are supplementary works (such as maps, graphs, and illustrations) and translations. A work is also "made for hire" if it is produced by an employee within the scope of his or her employment. If materials are made for you for hire, you do not need permission to use them, but as a courtesy you should provide appropriate credit lines.

Sometimes a work made for hire is a derivative work, such as a photograph of a painting or a translation of a text. If the work from which it is derived (i.e., the painting or the original text) is in copyright, to publish the derivative work you need permission from the copyright owner of the original work.

Releases

Besides providing credits for all borrowings and obtaining permissions from copyright holders, you must obtain a written release of liability from any living person who might be harmed or embarrassed, or whose privacy might be invaded, by publication of the contents of your article—both photographs and written materials.

Photographs

You must obtain a release for any photograph of an identifiable individual that was taken in a private place, such as the person's home. Even if the person agreed to have the photo taken, that does not necessarily imply that he or she agrees to its publication.

You must obtain a release for any photo that could harm or embarrass the person in the photo, regardless of whether it was taken in a private or a public place. For example, a photo that reveals the identity of an interviewee who specifically asked to remain anonymous should not be published without a release. Nor should a photo of, for example, a woman with her skirt blowing above her waist.

If the photograph for which you are seeking a release shows more than one identifiable person, you will usually need to obtain a release from each of them.

Written Materials

If you have interviewed someone for your article, good scholarly and publishing practice requires that you make sure the transcription you publish is accurate. You may want to send the interviewee a transcript of the interview to check for factual accuracy, but you are not legally required to do so; nor are you obliged to accept any editorial changes or deletions (unless the interviewee granted the interview only on condition that you do so). The interviewee does not hold copyright in the interview, because copyright law does not protect spoken words and because you own the copyright in any tape recording or transcript made by you. So you do not need the interviewee's permission to publish the interview.

However, if the interviewee will be named in your article, you need a release specifying that he or she has no objection to being named.

If the material you wish to publish is of a private and personal nature (e.g., a psychological case history), or if the subject specifically asked to remain anonymous, you must make sure that the subject is not identifiable. You should change not only the person's name but also such characteristics as age, appearance, and occupation. And the article must not contain a photograph of the subject.

If your article contains any statement—from an interview or from any other source—that might be grounds for a claim of invasion of privacy (i.e., a true statement that harms or embarrasses its subject) or a claim of libel (i.e., a false statement that harms the subject's reputation), you should seek legal advice.

Consents

Besides providing credits and obtaining the necessary permissions and releases, if your article contains contributions by other persons, you must obtain each contributor's consent to publish. If a contribution was written by two or more coauthors, you must obtain consent from each of them. In signing the agreement, the contributor consents to publication of the contribution and authorizes the Press to copyedit it.

If a contribution has not been published before, UC Press requires that the contributor sign a publication agreement assigning the copyright to the Press in exchange for free and discounted copies of the book and in some cases a fee payable upon publication.

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