



## Copyright, Fair Use, and Permissions

### What is Copyright?

Copyright is a form of protection provided by the laws of the United States to the authors or creators of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. The current federal copyright law, the Copyright Act of 1976 (Title 17 in the U.S. Code), went into effect on January 1, 1978.

The Copyright Act of 1976 was amended in 1996 to extend the term of copyright protection to 50 years after the death of the author. Under the previous copyright law, the term of protection was 28 years from the date of publication, with a renewal term of another 28 years, so that most works were under copyright protection for a total of 56 years from publication. Under the 1996 revision, works published under the old law, and still in copyright at the time of enactment of the new law, had a total term of protection of 75 years from their publication.

The Copyright Term Extension Act of 1998 retroactively added 20 more years of protection to the term of all existing copyrights. Thus the term of copyright for all works created after January 1, 1978, whether published or unpublished, is now the life of the author plus 70 years, and pre-1978 publications are protected for a total of 95 years from their date of publication. (In most other countries, the term of protection is 50 years after the death of the author.)

Translations, new editions of the classics, and so forth, fall under the same copyright protection as original writings. Material in the public domain that has recently appeared in a new edition cannot be held under copyright, but any introduction, notes, editing of text, and such can be copyrighted.

It is illegal for anyone to violate any of the rights provided by the copyright code to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 120 of the Copyright Act of 1976 establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in Section 107 of the Copyright Act of 1976.

**An author is responsible for obtaining permission for the reproduction in his or her work of any material that is protected by copyright when the material being reproduced is used in an amount or manner that exceeds the standards of "fair use," and for the payment of any fees that may be required by the copyright holder for the use of this material.** A permission may be a formal document from a copyright holder (e.g., publisher, museum, art gallery, photographer. etc.) with many clauses outlining conditions and limitations of use, or it may be a brief note from an individual saying, "It's OK for you to quote from my letter of June 10, 1990, to John Doe." The important thing is

(1) to have something in writing that is (2) specific as to what is being granted. This holds both for copyright permissions and for releases (as for mentioning an individual by name in a case study).

### **What Is "Fair Use"?**

The language of the section of the Copyright Act of 1976 describing what constitutes "fair use" (17 U.S.C. 107) is intentionally vague and thus susceptible to a wide variety of interpretations: "The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means . . . , for purposes such as criticism, comment, news reporting, teaching . . . , scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (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."

There has never been any single definitive clarification of this language by either judicial decision or legislative stipulation. Thus the current situation is that *there are no clearly and legally specified limits* on the amount of copyrighted material that may be quoted or reproduced without requesting permission. Uses such as the following are usually deemed to fall within the provisions of "fair use":

- criticism and comment—for example, quoting or excerpting a work in a review or criticism for purposes of illustration and comment
- news reporting—for example, summarizing an address or article, with brief quotations, in a news report research and scholarship—for example, quoting a short passage in a scholarly, scientific, or technical work for illustration or clarification of the author's observations
- nonprofit educational uses—for example, photocopying of limited portions of written works by teachers for classroom use, at least under some conditions

In most other situations, copying or reproduction of any sort is not legally a "fair use" as contemplated by the copyright law. Without the explicit permission of the copyright holder, such use constitutes an infringement of copyright. The fundamental principle is that, without written consent, you can never use another person's protected expression in a way that impairs (or potentially impairs) the value of or market for his or her work. This was the basis what is widely known as the "Kinko's Case": a group of publishers were successful in obtaining a legal injunction against the photocopying of excerpts from their books for use in "coursepacks" without their permission.

Some scholars mistakenly believe that they can use any material (either published or

unpublished) that they wish to include in their own works, provided that they follow the canons of scholarship and properly give the author (or creator) of the material in question appropriate credit by citing the source from which the material has been taken. *This is not true.* Giving appropriate credit and "fair use" under the copyright law are entirely different matters. Either you have the right to use another person's work, or you don't; the fact that you attribute the material to its author (or creator) does nothing to change that.

### **Recommended Guidelines for "Fair Use"**

Lockwood Press recommends that authors adhere to the following guidelines for what constitutes "fair use" of copyrighted material in scholarly works. These guidelines are based in large part on the recommendations of the Consortium of College and University Media Centers (CCUMC). The CCUMC recommendations were entered into the U.S. Congressional Record as a report of the Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, U.S. House of Representatives, on September 27, 1996, and have been endorsed by a large number of publishing, artistic, media, and educational organizations and institutions. The CCUMC recommendations in turn became a part of the proceedings of the much larger Conference on Fair Use (CONFU), which eventually included over 100 concerned groups and organizations. The final CONFU report was delivered to the U.S. Commissioner of Patents and Trademarks and published in November 1998, and is available on-line [here](#).

Lockwood Press believes that the following guidelines set out a reasonable and prudent standard of what constitutes "fair use" of copyrighted material in scholarly works. Authors must bear in mind, however, that these are extralegal and somewhat arbitrary guidelines, and that any decisions made following them are subject to challenge by any copyright owner who may interpret the copyright statute differently. Lockwood Press explicitly disclaims any and all responsibility, legal or otherwise, for an author's decision to follow these guidelines.

(1) Prose selections from books: Up to 10% or a total of 1,000 words in the aggregate, whichever is less, may be used from a single source without requesting permission. This means a total of 1,000 words throughout the entire manuscript, not just in one single quotation. In anthologies it is usual to obtain permission for every quotation of any length if it is in copyright. The process of obtaining permissions must be begun as soon as the manuscript is accepted; to allow time for the inevitable substitutions and deletions.

(2) Articles or other brief prose works: Up to 10% or 250 words in the aggregate, whichever is less, may be used without asking permission. Again, this means a total of 250 words throughout the entire manuscript, not just in one single quotation.

(3) Drama: Up to 10% or 250 words in the aggregate, whichever is less, may be used without permission, depending on the context and on whether the quotation is one continuous passage or a few words picked up from throughout the play. But poetic drama—for example, *J.B.* or *Murder in the Cathedral*—is treated as poetry.

(4) Poetry: Up to 10% or 10 lines, whichever is less, may be used without requesting permission. However, permission is required for the use of a complete literary unit (chapter, verse, or stanza) of a poem, regardless of length. Song lyrics are treated as poetry and are subject to the same limitations.

(5) Music: Ask permission for all copyrighted music used.

(6) Any material complete in itself—a short story, essay, chapter from a book, prayer, article, table, chart, map, graph, etc.—requires permission regardless of length. See below concerning photographs, artwork, and illustrations.

(7) Unpublished material: The current copyright law provides federal protection for a work that is set down in tangible form, and since the application of the concept of "fair use" to unpublished material is still not clear, it is best to ask permission for the use of anything that is unpublished.

(8) Adaptations and paraphrases: An adaptation is a modification or reworking, often of an entire work or of a large portion of that work. Within that reworking, substantial segments may remain word for word as in the original (as an adaptation of a book into a play or movie). The person doing the adapting must obtain permission from the copyright owner to alter the form of the work. A paraphrase is a restating of the meaning of the original in one's own words; it is not simply changing or deleting just a few words here and there in what is otherwise an exact quotation.

(9) Multimedia Material: Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced without permission. Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or in audio or audiovisual works, may be reproduced without permission.

(10) Photographs, Artwork, and Illustrations: The reproduction or incorporation of photographs and illustrations is difficult to define with regard to "fair use" because "fair use" usually precludes the use of an entire work. Lockwood Press recommends that authors obtain permission for the use of any photograph, work of art, or illustration known to be under copyright.

(11) Numerical Data Sets: Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced without permission. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet in a spreadsheet.

(12) Computer Programs: Reproduction or decompilation of copyrighted computer programs and/or portions thereof, for example the transfer of underlying code or control

mechanisms, even for educational use, may never be done without the explicit permission of the copyright owner.

### **How to Determine the Copyright Owner**

(1) Books. The name of the copyright owner will be found on the copyright page. Even if the book is copyrighted in the name of the author (or heirs), the publisher either can normally grant permission or supply you with the name and address of the present owner.

(2) Obscure poems. Try to locate the source using Granger's Index to Poetry. If it directs you to an anthology, the copyright owner can be found in the list of credits. The poem must be deleted if its source cannot be located.

(3) Anonymous. You must find the material credited to "Anonymous" in two sources. It should go without saying that "Anonymous" is not to be resorted to simply because a source cannot be found.

(4) Newspaper and magazine articles. Write directly to the paper or magazine; they will direct you to the author if his or her permission is required.

(5) Popular song lyrics. The BMI, ASCAP, and SESAC offices in Nashville can be helpful in finding owners of contemporary song lyrics. You also might try stores that sell sheet music. Always write to music publishers, not to lyricists or composers, for permission. Be aware that fees for use of lyrics of currently popular songs are often extremely high.

(6) Letters. Permission to use a letter must be granted by the letter writer. In addition, you should consider the recipient and other persons who may be mentioned in the letter, since you also may well need to get permission from them. (See "Permission for Use of Personal Material" below concerning defamation and invasion of privacy issues.)

(7) Quotations that include excerpts from another author (a quotation within a quotation). The publisher granting permission for the primary quotation will usually disclaim any responsibility for granting permission for anyone else's material. If there is enough of the secondary quotation to require further clearance, it should be treated as a separate permission.

(8) Multimedia Material. In most cases, the copyright is clearly displayed on the media packaging and/or as a part of the credits within the multimedia work itself. The same is true of copyrighted databases and computer programs. If in doubt, contact the source from which you have obtained the material in question.

(9) Photographs, Artwork, and Illustrations. If the photograph, artwork, or illustration itself does not bear the signature of its creator and/or a copyright notice, try to locate it in another published source and check the credits given in that source.

## **Requesting Permissions**

A standard form letter is available for use in making permission requests. When making such requests, you may wish to send a photocopy of the page or pages in the manuscript on which the quoted material appears so that the copyright owner can see how the material is being used. For this reason, the photocopied section should be long enough to indicate context. Often a copyright owner will ask for such information as price, length, and number of copies in first printing, since such factors are weighed in setting fees. Your editor will assist by providing this information, and will help you with any other questions you may have about the process of requesting permissions.

Please note that if you are quoting from a British edition of a published book, standard procedure involves checking to see whether the book has also been published in the U.S.; if so, you should write to both publishers at the same time. In cases where an untraceable individual is credited or where a publisher has long since gone out of existence, the Lockwood Press staff will help you determine whether to delete the material in question or whether it would constitute "fair use."

If permission cannot be obtained for a particular selection, what do you do? There are several possibilities: deletion of all of the material in question; deletion of enough material to bring the amount quoted into "fair use"; substitution of similar material that is in the public domain or for which permission can be obtained; rewriting the section entirely in the your own words. Please contact the Lockwood Press staff for assistance with any questions that you may have about permissions.

## **Permission for the Use of Personal Material**

If your manuscript makes use of case study, interview, or similar material of a personal nature, you must take particular care to avoid any appearance of defamation or invasion of privacy by obtaining a written release or statement of permission for use of the material. Defamation is "any false statement . . . which tends to (1) bring a person into public hatred, contempt, or ridicule; (2) cause him to be shunned or avoided; or (3) injure him in his business or occupation." Defamation by writing or in a picture is libel; by word of mouth it is slander. A statement must be false to be defamatory; the truth of a statement is a defense against a claim of defamation. However, truth is not a defense against a claim of invasion of privacy, nor is the absence of malice. If someone should charge after the publication of your book that what you have written about him is defamatory or constitutes an invasion of his privacy, can you prove that this is not the case by supplying written evidence of his permission to use the material?

The subjects (as well as anyone else mentioned by name in your manuscript) should see copies of the material from the manuscript so that they can make informed decisions about whether they object to having the information about them in print. This will also give them a chance to correct any inaccuracies and make other changes. If the subjects have vanished without a forwarding address, one possibility is to delete or change their names. However, that alone is not enough. If permission cannot be obtained, the subjects must be rendered unidentifiable. Changing the names alone is not sufficient if they can be identified from

other information contained in the manuscript. If no written permission can be obtained from the subjects, you may be asked to supply written assurance to Lockwood Press that you have sufficiently disguised their names and descriptions so that there is no danger of their identification.

### **Recent Developments in Copyright Law**

The Digital Millennium Copyright Act of 1998 (DMCA) is a long and complex piece of legislation that holds the prospect of fundamentally changing many of the ways that we work with copyrighted material. In particular, the DMCA allows copyright owners to impose "technological protection measures" to regulate access to and use of protected works, and creates a new federal offense for anyone who circumvents those technological measures. The DMCA also allows copyright owners to put "copyright management information" on their works to specify to the users the conditions under which uses may be allowed, and it creates a new federal offense against removing or altering that information. The DMCA makes many other changes in federal copyright law. Among the most important is that it allows libraries to make digital copies of deteriorating works in digital formats. The new law also charges the U.S. Copyright Office with the duty of reporting back to Congress with a proposal for the revision of the statute governing the uses of copyrighted works in distance education. And it establishes a possibility for limiting the liability of online service providers including universities and other scholarly organizations that run networks and web servers from infringements committed by users. That benefit, however, is available only if the provider complies with a long series of rigorous conditions and establishes elaborate procedures. The final version of the legislation dropped provisions that would have given new statutory protection to databases and other collections of factual data. That new protection was strongly opposed by researchers who saw it as a direct constraint on their ability to obtain and share factual information.

### **For Further Information**

The U.S. Copyright Office has a wealth of resources available online, including a very useful pamphlet on "Copyright Basics." The full text of the Copyright Act of 1976 and of the Digital Millennium Copyright Act of 1998 are available here: (<http://lcweb.loc.gov/copyright>). The Copyright Clearance Center (CCC) is a not-for-profit organization that was established by authors, publishers and users as the not-for-profit Reproduction Rights Organization (RRO) for the United States. CCC operates licensing systems that facilitate compliance with the copyright law and promote the constitutional purposes of copyright, namely progress and creativity in the arts and sciences. The CCC web site offers a wide variety of copyright-related resources, including links to many other relevant web sites: (<http://www.copyright.com>). A key role in moderating some of the extreme measures originally proposed in the draft forms of the Digital Millennium Copyright Act of 1998 was played by the Digital Future Coalition (DFC), whose members include groups and organizations such as The American Council of Learned Societies (ACLS), and the National Initiative for a Networked Cultural Heritage (NINCH). The web site of the DFC provides excellent resources for exploring and explaining the implications of the DMCA: (<http://www.ari.net/dfc>). The Copyright Management Center of Indiana University offers an extensive

range of resources about copyright in general and its importance to higher education in particular, including links to a variety of other pages dealing with the subject of copyright and "fair use": (<http://www.iupui.edu/~copyinfo/home.html>). The director of this center, Dr. Kenneth D. Crews, is the author of several important works in the area, including *Copyright, Fair Use, and the Challenges for Universities: Promoting the Progress of Higher Education* (Chicago: University of Chicago Press, 1993) and *Copyright Law and Graduate Research: New Media, New Rights, and Your New Dissertation* (Ann Arbor, MI: University Microfilms International, 1996). The Intellectual Property Center of the University of Texas offers a "Crash Course in Copyright," a brief but helpful tutorial on copyright and "fair use" issues in an academic setting, and also provides the "Fair Use Guidelines For Educational Multimedia" developed by the Consortium of College and University Media Centers (CCUMC): (<http://www.utsystem.edu/ogc/intellectualproperty>). The Copyright and Fair Use Center of the Stanford University Libraries provides a wealth of information and links to other sites, including the full legal details of the landmark Kinko's and Michigan Document Services cases concerning "coursepacks": (<http://fairuse.stanford.edu>). Much of the information drawn together in this statement is derived from these sources.

If you have further questions about copyright issues or the process of securing permission for the use of copyrighted material, please contact the Press.