



## PERMISSIONS: WHAT YOU NEED TO KNOW

By Mark Haverstock

When creating books, articles, and Web content, you may need to quote sources or include photos. Of course you will want to do the right thing by crediting the sources. Since many are copyrighted, you may need to obtain permission as well. Basically, this process involves four-steps:

1. Determine if permission is needed for the work you want to use.
2. Identify the copyright holder or agent, usually the author or publisher.
3. Send a written request for permission to use.
4. If the copyright holder cannot be located or is unresponsive, be prepared to use a limited amount of material that qualifies as *fair use*, or rely on alternative material.

### Do I Really Need Permission?

Copyright protects the *expression* of facts, information, and ideas—but not the facts, information, or ideas themselves. It also protects the format, organization, and style of the presentation. Facts and ideas are not copyrightable, but the exact wording of their expression is. Quoting or copying parts of works verbatim without proper acknowledgment or permission is plagiarism, which is unethical, unprofessional, and would likely cause legal problems for both the offending author and publisher.

An accepted practice for quoting small portions of published text,

however, is called *fair use*. According to *The Copyright Permission and Libel Handbook*, by attorney Lloyd J. Jassin (Wiley & Sons), fair use “permits authors, scholars, researchers, and educators to borrow small portions of a copyrighted work for socially productive purposes without asking permission or paying a fee.”

There are no firm guidelines for “small portions,” which depends on the size and kind of work. “Unfortunately, there is no automatic fair use safe-harbor for quoting fewer than 50 words from a periodical or quoting fewer than 200 words from a book,” says attorney Joy Butler, author of *The Permission Seeker’s Guide Through the Legal Jungle* (Sashay Communications). “Each fair use determination looks at all the circumstances of the specific situation. How much you quote is only one part of the fair use analysis. Other important fair use questions include how you intend to use the quote; whether your use is nonprofit or commercial; and whether your use will have any negative economic impact on the copyrighted work.”

Fair use is actually a defense, not a right granted to those who wish to quote short passages. “Be able to explain why *what* you borrowed, and *the amount* borrowed, are congruent with the purpose behind fair use—[that the borrowing] *responds* to the copyright work, and doesn’t compete with it,” says Jassin. “*The Chicago Manual of Style* advises authors to use fair use boldly. I’m not certain what they mean by *boldly*, but I

agree that fair use is critical to the progress of art and science. After all, we stand on the shoulders of giants.”

“If there is real concern about fair use, then one should seek written permission from the copyright owner (or his or her duly authorized agent),” says attorney Lee Kim.

### Blogs, Tweets, and Message Boards

You find something interesting on someone else’s blog or a newsgroup comment. Do you need permission to quote it? According to the Electronic Frontier Foundation ([www.eff.org](http://www.eff.org)), this practice would fall under the doctrine of fair use. If you are commenting on the post or criticizing it, so much the better, as copyright law tends to favor transformative uses.

Butler agrees. “Material posted on the Web enjoys the same copyright protections as material printed in a book, magazine, or anywhere else in the off-line, hard-copy world,” she says. “That means the verbatim copying or extensive paraphrasing of a Web posting can result in copyright infringement. Fair use certainly applies to Web postings. While the Internet has introduced new areas in which to utilize fair use, the principles for applying fair use to Web postings are identical to the principles for applying fair use to any other material.”

Attorney Dyan House suggests that it could be easy for writers to get into trouble when quoting from these sources. “As a rule, do so sparingly and always properly credit the



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Author Mark Haverstock's Writer's Page may be found at [www.markhaverstock.com](http://www.markhaverstock.com).

source,” she says. When in doubt, request permission via email and keep a copy of the response.

### Public Domain & Government Sources

Text that is in the public domain may be freely quoted or copied, but it is still considered appropriate to give credit to the source. Generally speaking, anything published in the United States before 1923 is in the public domain. “And, with regard to the rest

Internet and use it for your book or article. You need to acquire permission to use it. To do so, contact the book publisher, publisher of the Web page, museum, etc.

If your publisher has given you a photo budget, licensing stock images can be an easy solution to obtaining pictures and permissions since more stock photography agencies now computerize the process, offer online catalogues, and issue licenses at their

## Creative Commons

The Internet has created an environment where it is easy to copy and paste someone else’s work, whether or not it is copyrighted. To create a balance between the Internet reality and the reality of copyright laws, Creative Commons (CC) was established. It is a non-profit organization that, according to its website, “develops, supports, and stewards legal and technical infrastructure that maximizes digital creativity, sharing, and innovation.”

Like many other Internet *sharing* experiments—and unlike many that are for-profit—CC tries to encourage creativity and willing artistic and other creative sharing. It aims for an impact that redirects valid intellectual property rights and a public commonality of creativity. Think Will Shakespeare wanting to be paid well for his work by the queen, but simultaneously wanting the groundlings to be elevated by his art.

CC licenses are based on copyright. That is, they apply to works that are protected by copyright law, such as books, blogs, articles, websites, photographs, films, and audio and visual recordings.

The license lets authors or other copyright holders dictate how others may use their work: copy the work, create derivative works or adaptations, distribute it, or otherwise make money from it. Under a CC license, you grant as few, or as many, rights as you want. It does not, however, give you the ability to restrict anything that is otherwise permitted by exceptions or limitations to copyright law—including fair use or fair dealing. Nor does a CC license give you the ability to control anything that is *not* protected by copyright law, such as facts and ideas.

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of the world, as a general rule, if it is 70 years after the author has died, you are safe,” says Jassin. (For a detailed explanation of U.S. copyright terms as they apply to public domain, see <http://copyright.cornell.edu/resources/publicdomain.cfm>.)

Most U.S. government publications are considered in the public domain, which means they can be copied, transmitted, and otherwise used without restrictions. Some restrictions may apply if the government publication contains copyrighted information in it, or the work was created by an outside government contractor. If a publisher reprints government information, any enhancements or additions to the original work fall under copyright.

State government publications may or may not be copyrighted. It is necessary to determine their status before using these materials.

### Photographs

Authors of books and magazine articles are often encouraged to do photo research along with their writing research. During the process, you may find sources of suitable high-resolution photos to suggest to your editor.

Images are subject to the same copyright laws as written materials. You cannot just grab a photo off the

websites. “A downside to using stock images is that they may have been in many other projects and may have been seen many times before,” says Butler. “Also, writers need to know that using stock images does not always negate the need to obtain additional permissions for people or objects depicted in the photo.” It is a good idea to confirm that the stock houses certify they have secured all permissions in writing.

Photos do not always have usage fees. Photos from government agencies, historical societies, nonprofits, and corporations are often free for the asking. All you need to do is request the pictures and permission from sources such as these. Keep copies of permissions in your records.

If you take the photos yourself—assuming you have some talent—it is still necessary to secure signed permission forms for people depicted in photos. “*Model releases* should be secured from subjects because of the right of publicity,” says Kim. “The right of publicity exists in most states. If you use someone’s photo or likeness without their permission, you may be liable for violating their right of publicity.”

Butler notes that a picture can spawn numerous permission issues. “The use of a photo may trigger privacy, publicity, (To page 8)

**P**ermissions defamation, trademark, and other issues, depending on who appears in the photo and how you intend to use the photo,” she says. “You may need to obtain permission from more than one person or organization before you can use the photo. In addition to getting permission from the photographer who took the photo, you may also need permission from any people depicted in the photo; from the owner of any trademark appearing in the photo; and from the copyright owner of any painting, sculpture, or other artwork depicted in the photo.”

### Identifying Copyright Owners

For text, you can contact publishing houses and authors directly to obtain permissions. Look at the title page for the author’s name and publishing company. Publishers may list contact numbers on their websites for staff responsible for rights and permissions. If you want a permission involving a Web page, contact the webmaster or the owner of the site.

For more information, do a Web search for the author’s name or publisher; check market guides; or go to the Authors Registry at [www.authorsregistry.org](http://www.authorsregistry.org). The Copyright Clearance Center (CCC) ([www.copyright.com](http://www.copyright.com)) is a one-stop destination that represents the work of authors and publishers, and grants permissions to users around the world. Reuse fees are set by the authors and publishers, but a significant number of works are available at no cost.

For photos or graphics, your first stop is the publication in which the image appeared. In some cases, you may be referred to the photographer if he or she still holds the copyright.

An initial contact by phone is a good idea, followed by a letter or email with very specific information about the materials you want to use and how you plan to use them. Choose your language carefully: You want the permission to cover everything you plan to do with the materials. Give ample lead time; obtaining permissions can take months.

### Orphan Works

In your search for permissions, you may encounter an *orphan work*—one

with an author or copyright holder who cannot be found. Works can become orphaned for a number of reasons: The owner did not register the work; the owner sold rights in the work and did not register the transfer; or the owner died and his heirs cannot be found. “Orphaned works are

There is no free pass under copyright law for trying hard to find the copyright owner.

technically protected by copyright,” says Jassin, “and they are a thorn in the side of copyright law.”

There is currently no free pass under copyright law for trying hard to find the copyright owner. Butler says a writer who confronts an orphan works roadblock has a few options. “The least risky option is using other material for which the copyright owner can be located,” she says. “A riskier option is reformatting the use of the orphan work material so it qualifies as a fair use. Of course, the riskiest option is just using the orphan work material anyway with the realization that the copyright owner might subsequently emerge and demand a license fee.”

For works that are difficult to find, Kenneally recommends trying the

U.S. Copyright Office’s database ([www.copyright.gov](http://www.copyright.gov)). “But because registration is no longer a requirement for copyright, this is by no means an exhaustive catalog. Similarly, CCC has its own online catalogue.”

When it comes to photos, if you can’t track down the copyright owner of the picture, simply don’t use it. Chances are you can find a suitable substitute from another source and avoid copyright issues.

House notes there was legislation pending in Congress a couple of years ago to address the issue of orphan works, but the bill was never passed. Google also tried to appropriate the rights to scan and catalogue orphaned works, but lost in a recent high-profile court battle. “It remains a problem,” she says.

### Credit Where Credit is Due

Taking time to credit sources and obtain permissions reflects on your professionalism as an author and researcher. “Quote accurately, attribute correctly, and when in doubt, seek permission or consult a reference such as *The Copyright Permission and Libel Handbook*,” says Jassin.

If you are quoting without permission, you need to be reasonably comfortable that the material qualifies as a fair use. “Even if you conclude fair use, there is no guarantee that the copyright owner will agree with you,” says Butler. “Hence, you also need to be comfortable with your assessment of the risk of a legal challenge from the copyright owner.”

## Resources

~ Sample permissions requests:

- [www.wiley.com/WileyCDA/Section/id-302994.html](http://www.wiley.com/WileyCDA/Section/id-302994.html)

- <http://copyright.lib.utexas.edu/permmm.html>

~ Sample photo/model releases:

- [www.mycobi.org/pdfs/registration/sample\\_photo\\_release\\_form.pdf](http://www.mycobi.org/pdfs/registration/sample_photo_release_form.pdf)

- [www.nyip.com/ezine/techtips/model-release.html](http://www.nyip.com/ezine/techtips/model-release.html)

- [http://dpcorner.com/all\\_about/releases.shtml](http://dpcorner.com/all_about/releases.shtml)

~ Permission guidelines:

- John Wiley and Sons. “Permission Guidelines for Authors.”

<http://authorservices.wiley.com/Permissions%20Guidelines%20for%20Authors%20PDF.pdf>

- “Asking for Permission.” <http://copyright.vassar.edu/askingpermission.html>

- U.S. Copyright Office. “Can I Use Someone Else’s Work? Can Someone Else Use Mine?”

<http://copyright.gov/help/faq/faq-fairuse.html>