

# Author's Permission Guidelines

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## Introduction

As Author, you have responsibility to secure permissions that may be needed to reproduce material created by other people, including images and text quotations. It may also be necessary for you to request permission to reprint your own previously published work, even if you are revising it for a University of Chicago Press publication.

No editing or production work will begin on your manuscript until you have supplied licenses for all works requiring them; therefore, we encourage you to begin obtaining permissions as soon as your project is under contract with us.

The following guidelines will help you identify when you need to request permission and understand the reasons why. These guidelines should not be construed as legal advice or as a substitute for consultation with a knowledgeable attorney in any particular circumstance. For additional discussion of copyright and permissions, please refer to chapter 4 of the *The Chicago Manual of Style, 16th Edition*, or to the [Chicago Manual of Style Online](#). For the advice and wisdom of a publishing insider, we encourage you to

pick up a copy of [\*Permissions: A Survival Guide\*](#), by our Executive Editor Susan Bielstein.

Much of what you quote in your manuscript, and perhaps even some of your illustrations, likely to not require permission, either because they fall under “fair use” or are in the public domain. We explain the concepts of fair use and public domain below, but first some basics of copyright.

### **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 This protection is available to both published and unpublished works.”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](http://www.copyright.gov)) Copyright affords the author of a work certain rights, including the right to reproduce it and to distribute copies of the work.

Unless you are able to claim “fair use” of a work, you must obtain permission from the copyright holder in order to reprint (or adapt) the following: 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.

US copyright law does allow for the *fair use* of copyrighted material for scholarly and critical purposes. 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. Please understand that fair use is not a *right* in the tradition

sense; it is actually a legal defense should the user of another party's work be sued for copyright infringement. Thus, fair use in one instance may be viewed as 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 a particular use of copyrighted materials qualifies as fair use, four factors should 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 several 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 claim fair use for copyrighted works of visual art reproduced in their entirety, and you are encouraged to err on the side of caution in such cases.

For more on fair use, visit <http://fairuse.stanford.edu/> and [http://fairuse.stanford.edu/charts\\_tools/](http://fairuse.stanford.edu/charts_tools/).

## **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, the Scrivener*, 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 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 to this helpful interactive website: [www.librarycopyright.net/digitalslider](http://www.librarycopyright.net/digitalslider)

## **When Permission is Needed**

Unless a work is in the public domain, or you have determined that your use of the work is very likely a case of 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: For texts published after 1923 and quoted beyond acceptable practices of fair use, you will need to seek permission. For texts never before published, you may be able to claim fair use ("The fact that a work is unpublished shall not itself bar a finding of fair use," says the Copyright Act of 1976), but the standard is likely to be higher. Extensively quoted archival material that has never been published may require permission regardless of the date of composition. Please consult with your editor.

### **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 Production or Publicity 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 obliged to make reasonable efforts to contact all persons or organizations with a legal 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 publication 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 spreadsheet with your final manuscript, final illustration program and permission letters.

### **More on Art Permissions for Your Book**

Obtaining all the permissions needed for your book is a crucial step toward publication. Even if you have permission to reprint 299 of 300 images, that final outstanding permission will delay the book. For this reason we ask that you complete all the permission work before you submit your final manuscript and illustration program. You are also encouraged to keep a Permission Summary, logging the terms and conditions of each license for easy reference in a single document.

The benefits of completing this step in advance of submitting your final manuscript are many. Completing your permission work will ensure that you can include any necessary permission language or copyright notices in your list of illustrations or captions.

It means that our Contracts and Permissions Department will not place a "Hold" on the book for pending outstanding permissions. A Hold on a book can disrupt the production schedule and may have financial implications for you. Most lenders require the prompt return of transparencies, and they will charge late fees if the deadline for returning materials is not met. Keeping to the production schedule also means you can plan your

time accordingly when it comes to reviewing the edited manuscript, galleys or page proofs.

With this in mind, we've prepared a brief primer on art permissions to help you tackle this project. In addition to these notes, the staff of the University of Chicago Press remains at your disposal should you have questions, concerns, or special circumstances to discuss. Authors expecting to acquire a good number of images and permissions are also encouraged to read [\*Permissions: A Survival Guide\*](#), by Susan Bielstein.

The first step is to locate the images you need: who can provide a copy? A museum? An archive? An image bank like Art Resource? Once you've located the image, you'll need to formally request to use that image in your book. Please use the template permission letter found at the end of this document to request permission. In many cases, the Grantor will require that you complete their Application for Reproduction, but this letter is a fine way to initiate a request.

In accomplishing your permission work it is important to understand the crucial distinction between "Copyright Permissions" and "Use Permissions." The copyright for a work (a painting, a sculpture, a drawing) is not necessarily held by the owner of the physical work; in fact, in most cases the owner of the work does NOT own the copyright. For example, you wish to reproduce Picasso's *The Old Guitarist*, found in the collection of the Art Institute of Chicago. You request a reproduction from the Museum, and they provide a high-resolution digital file, along with non-exclusive world rights to reproduce this image in your publication. But all that the museum has granted is the USE of their reproduction; you must still obtain permission to publish the underlying work from the owner of the copyright, the Picasso Estate (administered in this case by Artist Rights Society-ARS). The Press must receive both the Use and Copyright permissions before we will publish this copyrighted image.

Some older works are in the Public Domain, which is to say that they are no longer in copyright. Laws vary from country to country, but the safest way to determine if a work is in the Public Domain is this: date of the Author/Artist's death plus 70 years. To use our previous example, Picasso's works will enter the Public Domain in 2043.

If a work is in the Public Domain, you may still need to obtain a "Use" permission. For example, say you'd like to reproduce Paul Cézanne's *The Basket of Apples* (1895). You

find that the painting is in the collection of the Art Institute of Chicago, and you write to ask if they will provide a high-resolution digital file. The Art Institute will ask you to complete a permission application for the use of their reproduction, and they will require that you adhere to certain terms of use, even though the image itself is in the Public Domain.

“Use” permissions are not always necessary, and you are encouraged to seek the Press’s advice regarding this gray area of copyright law. Despite the rulings in *Bridgeman v. Corel*, and more recently, in *Meshwerks v. Toyota*, stating that slavish reproductions of works do not rise to the level of copyrightable expression, some museums and other lenders continue to claim copyright for their photographic reproductions of works in the Public Domain. Sometimes these lenders may blacklist an author or a Press for using images in their collection without having obtained a Use Permission from them, or they may attempt to collect a fee and a penalty after publication. If you have an image, but do not have a Use Permission for that image, please consult the Press to determine whether or not one might be necessary.

When you are completing your Permissions Summary, we ask that you read each of your permission letters and record the following information on the Summary:

- Figure Number in your book, Artist, *Title*, medium
- The Credit, if any, required by the Grantor of both Copyright and Use permission.
- Grantor of Copyright Permission (if necessary)
- Grantor of Use Permission (if necessary)
- The Coverage of the permission (i.e., World rights, English Language, Color Proof required, not licensed for publicity, etc.)
- The cost of the permission (if any)
- Free copies required as a condition of the permission. (These copies are considered part of the permission fee, and are the responsibility of the Author.)

Please also be sure to note any deadlines for the return of artwork on loan.

When you submit the Permission Summary with your final manuscript, please also submit photocopies of ALL permission letters, including any attachments that outline the terms of the permission. Be sure, too, to copy BOTH sides of any double-sided letters or

terms of agreement. For each permission letter, write the corresponding figure number(s) on the letter and organize the permission letters sequentially.

Once we have all the permission letters and the Permission Summary in-hand, the Press will review your paperwork, and production of the book can proceed without incurring delays caused by outstanding permissions.

### **Art Sources**

Art Resource ([www.artres.com](http://www.artres.com)) is an excellent place to begin your search for reproductions. Their affiliate, Artists Rights Society ([www.arsny.com](http://www.arsny.com)), can also help with copyright permissions. Another helpful resource for reproductions is Bridgeman Art Library ([www.bridgeman.co.uk](http://www.bridgeman.co.uk)). VAGA (Visual Artists and Galleries Association) ([www.vaga.org](http://www.vaga.org)) is another good source for copyright permissions. Other worthy online research tools are [www.artcyclopedia.com](http://www.artcyclopedia.com) and [www.artnet.com](http://www.artnet.com)

### **Downloadable Permission Request Templates**

We recommend printing your permission requests on your institutional letterhead. (The files below are in RTF format.)

[Our Standard Template for Text Permission Request](#)  
[Template for Art Permission Request](#) (Copyright Permission)  
[Template for Art Permission Request](#) (Use Permission)