GUIDANCE ON
COPYRIGHT PERMISSIONS 2024

PLEASE NOTE

The SoA's staff are not lawyers and a short guide such as this cannot cover copyright in any detail. For more detail we recommend the Intellectual Property Office's information pages https://www.gov.uk/topic/intellectual-property/copyright.

CONTENTS

1. IS THE WORK IN COPYRIGHT

i) The general rules under UK law

Copyright exists automatically once you create a work. There are no registration provisions or requirements. A translation has its own copyright, belonging to the translator, which exists in addition to any copyright in the underlying work.

For further information on copyright, see https://www.gov.uk/topic/intellectual-property/copyright.

Copyright for most works lasts until 70 years after the end of the year of the author's death. For a work by two or more authors in which the contributions of the authors are not discrete, the period of protection runs from the death of the longest-living author.

However, if the author died before 1 January 1969, written works, photographs and engravings (but not other artistic works) not published or made available with the permission of the rights holder during the author's lifetime remain in copyright for 50 years from the end of the year in which they were first made available or until 31 December 2039, whichever is the shorter period. This provision affects, in particular, many old letters, diaries and photographs.

ii) Variations

- Anonymous and pseudonymous works, for example newspaper articles whose author is not identified: the period of protection is 70 years from the end of the year in which the work is first made available to the public unless, during that period, the identity of the author comes to light, in which case the period is life plus 70.

- Different provisions apply to works 'made by an officer or servant of the Crown in the course of his/her duties', or under the direction or control of either of the Houses of Parliament.

- You can make limited use of a very old work if it is kept in a library, museum or other institution where it is open to public inspection; the author died more than 50 years ago; the work was created more than 100 years ago; and the identity of the author is unknown.

- For further information on UK copyright, see https://www.gov.uk/topic/intellectual-property/copyright.

- The USA: as a general rule, for works created after 1 January 1978, US copyright protection lasts for life plus 70. For anonymous and pseudonymous works, and work 'made for hire', US copyright lasts until 95 years from the year of first publication or 120 years from the year of the work's creation, whichever is the shorter. For works created before 1978, the term depends on a range of factors and advice should be sought on a case by case basis.

- Other countries: most now protect works for life plus 70. But if the author's country provides for a shorter period of copyright protection, that shorter period will also apply if those works are exploited in the UK.

2. WHAT USES CAN BE MADE OF A COPYRIGHT WORK WITHOUT PERMISSION

A copyright owner has the exclusive right to copy the work, issue copies of the work to the public, rent or lend the work to the public, perform, show or play the work in public, communicate the work to the public, edit or adapt the work (including translation), sell or license the copyright for use by others. They also have moral rights to be named as author and to prevent derogatory treatment.

If you want to use a substantial part of any copyright work you need permission.

(i) What is a 'substantial part'?

You need permission to quote a 'substantial part' from works that are in copyright, unless the use is fair dealing - point 2(iii). 'Substantial' is not defined in the Copyright Designs and Patents Act, but is a matter of fact and degree. It has often been said that the test is much more about quality than quantity. A short extract may be a vital part of a work. A few sentences taken from a long novel or biography are unlikely to constitute a 'substantial part', but a few lines of poetry may be. It can be helpful to imagine you are the rights holder – how would you feel about the proposed use?

If you are quoting from films or song lyrics, some rights holders are notoriously rigorous about charging even for very short extracts, taking the view that any quotation, however short, is de facto 'substantial'. They often have deep pockets, can be litigious, and the fees they charge can be high. Even if they are over-reaching, they are often large companies and you may wish to avoid a legal battle.

(ii)(a) You can quote without needing copyright permission if all the following apply

- the use is fair dealing;
- the work you are quoting from has been previously published;
- you quote 'no more than is required by the specific purpose for which it is used';

- the use is genuinely for the purpose of quotation – for example in the context of criticism or review. Using a quotation as the header to a chapter, or in a collection of quotations, is not 'fair dealing'; and
- you include proper acknowledgement (generally the title and author).

(ii)(b) You can use extracts of a copyright work for purposes of parody, caricature or pastiche, provided that:

- the use is fair dealing;
- you rely on no more than a limited, moderate amount of the underlying work;
- you include proper acknowledgement (generally the title and the author's name).

'Parody, caricature and pastiche' are not defined, but be careful that:
- your work is not defamatory;
- it does not infringe a trademark and could not be deemed 'passing off';
- it does not breach any rights of confidentiality or privacy and that it does not infringe the rights holder's moral rights.

(ii)(c) You can copy extracts of works in any medium for the purposes of teaching as long as:

- the use is fair dealing;
- the work is used solely to illustrate a point;
- the use of the work is not for commercial purposes;
- it is accompanied by a sufficient acknowledgement (generally the title and author). Minor uses, such as displaying a few lines of poetry on an interactive whiteboard, are permitted, but uses which would undermine sales of teaching materials (e.g. photocopying material to distribute to students) would need a licence. Schools, colleges and universities still have to pay for third party teaching materials which are available under licence.

(iii) What the UK's fair dealing means

- The leading reference book *Copinger & Skone James on Copyright* says that 'If a work is unpublished, no dealing is likely to be fair'. Other criteria:
- does using the new work affect the market for the original work? If use of the new work acts as a substitute for the original, causing the owner to lose revenue, it is unlikely to be fair;
- is the amount of the original which is being used reasonable and appropriate? Was it necessary to use the amount that was taken? Usually, only part of a work may be used;
- does the use come under one of the exceptions listed at point 2(i)?
- If the new use of the material meets all the above criteria, has the source been clearly credited?

(iv) What the USA's 'fair use' means

Fair *use* is a provision of US copyright law. The main ways in which it differs from 'fair dealing' are:
- Is the proposed use commercial and, especially if it is commercial, is it 'transformative'? A new work based on an old one work is transformative (and more likely to be 'fair use') if it uses the source work in completely new or unexpected ways;
- Fair dealing applies only for the limited uses listed at point 2(ii), there are no such restrictions for fair *use*;
- There is less likely to be an obligation to credit the source.

(v) Reusing facts

Reusing facts does not normally amount to copyright infringement. In the *Da Vinci Code* case Lord

Justice Mummery gave useful guidance in one particular paragraph:

> 'The literary copyright exists in *The Holy Blood and the Holy Grail* [written by Baigent and Lee] by reason of the skill and labour expended by [Baigent and Lee] in the original composition and production of it and the original manner or form of expression of the results of their research. Original expression includes not only the language in which the work is composed but also the original selection, arrangement and compilation of the raw research material. It does not, however, extend to clothing information, facts, ideas, theories and themes with exclusive property rights, so as to enable [Baigent and Lee] to monopolise historical research or knowledge and prevent the legitimate use of historical and biographical material, theories propounded, general arguments deployed, or general hypotheses suggested (whether sound or not) or general themes written about.'

And a useful checklist for dealing with allegations was drawn up:

> 1. What are the similarities between the original work and the alleged infringing work? Unless similarities exist and are carefully identified, there can be no arguable case of copying.
>
> 2. What access, direct or indirect, did the alleged infringer have to the original work? There must be some evidence from which access can be directly proved or properly inferred, especially where the original work is non-fiction.
>
> 3. Did the alleged infringer make use in his or her work of material derived, directly or indirectly, from the original work?
>
> 4. If the defendant contends that no such use was made, what is his/her explanation for the similarities?
>
> 5. If such use was made, was it of at least a substantial part of the original work? If so, the infringement claim will succeed. If not, it will fail.

(vi) Some FAQs

- **What does 'quotation' mean in terms of fair dealing?**

  Using a quotation for decorative purposes, e.g. as the header to a chapter, or including it in a collection of quotations, is not fair dealing.

  Permission should be obtained for any quotation of copyright material to be included in an anthology.

- **Is there a word-count for 'substantial part'?**

  The assertion we sometimes hear that 'if it's less than 400 words it is not a substantial part' is incorrect. The question is far more nuanced – see point 2(i).

- **Letters and photographs**

  While the letter itself in most cases belongs to the recipient, copyright in the contents of a letter belongs to the writer.

- Copyright in photographs taken after 1 August 1989 belongs to the photographer, not the person photographed, but the person photographed may well have privacy rights (see below).

- **Material from the internet**

  The same rules apply to publication on the internet as to physical copying. The internet is not a copyright free zone.

3. HOW TO SEEK OR GRANT COPYRIGHT PERMISSION

(i) Who is the rights holder?

If you are asked to grant permission for use of your work, check that it is indeed you rather than (more usually) your publisher who controls anthology and quotation rights.

If you are seeking permission for use of published material, it is best to write first to the publisher of the original edition of the book. Most publishers' websites say how to contact the Permissions Department. If the original publisher does not control the rights, it should let you know who does.

Some publishers can be very slow to respond and you may be put in a difficult position if your book is about to go to press and permission is refused or the requested fees are very high. www.plsclear.com offers a fast-track service linking to publishers' permission departments.

Other ways to track down rights holders:

- WATCH (Writers, Artists & Their Copyright Holders) www.watch-file.com
- ALCS (Authors' Licensing & Collecting Society) www.alcs.co.uk
- the US Library of Congress Copyright Office www.loc.gov/copyright
- unpublished works held in a library: the librarian may be able to help
- the author's will (if copyrights are not separately mentioned in a will, they simply form part of the author's residuary estate). For more information on tracing UK wills, see https://www.gov.uk/search-will-probate
- The IPO guidance on diligent search is given at: https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants.

(ii) What to ask for if you are seeking permission

- Your name and address (and your publisher's name and address if they are paying the permission fee – be clear about who should be invoiced).
- The title of your publication.
- The name of your publisher and the date of publication, if known.
- Details of the extract you want to quote, the author, the title, the number of words if prose, the number of lines if poetry, and language (if not English).
- What editions you need to clear rights for (e.g. hardback, paperback, ebook).
- What territories you need to clear rights for (e.g. the World, the UK and Commonwealth).
- If you know: the size of the print-run(s) and the retail price(s).
- A lower fee may be charged if your work is scholarly or an anthology, so include relevant extra details.
- When sending a permission fee to a rights holder, state what it is for, giving the permission reference number (if relevant) or the source (title and author) of the extract and not just the name of the book in which the quotation is to be used.
- Rights holders will usually charge a fee, and might also ask for a copy of your work on publication. Check whether such costs will be met by you or your publisher.

(iii) Forms of use which may not be acceptable to rights holders

Particularly in the scholarly and educational sectors, many rights holders, notably of images, may not be willing to give permission where their material will be included in a work which, in turn, will be accessible in any of the following ways:

- from content-hosting sites (such as ProQuest, Ebsco, JSTOR and publisher sites like SpringerLink),
- via Open Access or a Creative Commons Licence,
- from the Oak National Academy,
- or where the publisher might allow the work to be accessed and exploited by generative AI systems.

Be aware that, because rights holders may refuse to give permission for such uses, many academic and educational contracts say that including any third-party content needs your publisher's consent as well as that of the rights holder.

Unless your publisher gives assurances that it will not allow your work to be accessed and possibly exploited by generative AI systems, seek confirmation that

- the permissions you secure (which should generally extend to the same rights and forms as are granted to the publisher) will not extend to the material being accessed by generative AI systems. It is inappropriate, it greatly reduces the chances of securing permission, and it could have a significant impact on the fees charged;
- and any indemnity given by you (especially if it extends to the publisher's licensees) does not include actions arising as a consequence of people accessing generative AI materials derived from your work.

This is a complex topic and members can consult the SoA for further advice.

(iv) What to bear in mind if you are granting permission

Remember that you may well on occasion be on the other side of the fence, wishing to quote from others' works. 'Do as you would be done by' is a useful maxim when dealing with permissions.

Because there are so many variables, and to comply with competition legislation, the SoA cannot recommend rates. However, the rates which the SoA applies when licensing rights for the literary estates which it represents can be found on our website. They do not constitute recommended or guideline rates; and it should also be noted that they apply to the licensing of, in many cases, classic works by major authors. The SoA will be happy to advise members on specific instances.

Think twice before granting permission where your material will be included in a work which, in turn, will be accessible in any of the following ways:

- from content-hosting sites (such as ProQuest, Ebsco, JSTOR and publisher sites like SpringerLink),
- via Open Access or a Creative Commons Licence,
- from the Oak National Academy,
- or where the publisher might allow the work to be accessed and exploited by generative AI systems.

(v) Permissions for images

See the Guide to Rights in Images.

(vi) What to do if the rights holder is unidentifiable or unresponsive

If diligent search has drawn a blank, or you know who the rights holder is but they will not respond to your requests, members can consult the SoA. See also the IPO's procedure for licensing orphan works: https://www.gov.uk/guidance/copyright-orphan-works.

4. OTHER PERMISSIONS WHICH MIGHT BE NEEDED

(i) Owners

When it comes to clearing rights in illustrations, photos, maps or diagrams, bear in mind that the owners of the image (e.g. a museum or picture library) may well charge fees for loan and reproduction (separately from and in addition to any copyright permission fee which may be required).

(ii) Privacy and confidentiality

Everyone has a legal right to respect for their private life. There are various legal protections whidh we cannot cover in detail here but, in brief, consent may be needed from people identifiable in a photo or screenshot, even if taken in public. You need to be even more careful with privacy if the person you are writing about or whose image you are showing is a minor . In addition, medical records and some legal proceedings are confidential, and contracts of employment or for the supply of services may include confidentiality or non-disclosure clauses. Some people (notably in the armed forces or civil service) may be bound by the Official Secrets Act.

(iii) Data protection

Data protection law limits what you can – and cannot - do with people's data without their explicit consent, including (intentionally or accidentally) allowing others to discover someone's personal details, such as an email address.

(iv) Trademarks

Distinctive characters and names (of characters, works, series) may be protected not only by copyright but also trademarking. To check if something is trademarked, and if so for what categories of use, see https://www.gov.uk/search-for-trademark.

(v) The publisher's copyright

The publisher owns the copyright in the 'typographical arrangement of a published work' – that edition of the work cannot be photocopied or reproduced in facsimile form without the publisher's consent. This copyright lasts until 25 years from the end of the year in which the edition containing that arrangement was first published.

(vi) 'Publication right'

From 31 December 2039, the person who publishes a work which has not previously been made available to the public and in which copyright has expired is entitled to a 25-year exclusive right to publish that material. (Before that date, a previously unpublished work, however old, will still be in copyright so the situation cannot arise.)