

A NOTE FOR AUTHORS

ON THE USE OF COPYRIGHTED MATERIAL

I. General Information

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However, use of short quotations in scholarly books for accurate citation of authority or for criticism, review, or evaluation is regarded by law as “fair use,” and obtaining permission for such use is not necessary. Authors should therefore save themselves and publishers needless correspondence by trying to ascertain if their use of copyrighted material comes under the category of “fair use.” There are four factors that Section 107 of the Copyright Act specifies as determining whether any given use is “fair” or not: (1) “the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes” (that the Press is a nonprofit publisher helps here, but if you receive a royalty on sales, then that can weigh against a finding of “fair use”); (2) “the nature of the copyrighted work” (use of “expressive” material like fiction or poetry is less likely to be “fair” than use of material that is more “factual” in nature); (3) “the amount and substantiality of the portion used in relation to the copyrighted work as a whole” (important here is not only the “amount” used in relation to what is considered to be the “whole” work, but also the significance or “substantiality” of the material used, even if relatively short, if it contains the core or heart of the work’s substance); and (4) “the effect of the use upon the potential market for or value of the copyrighted work” (here it is not only direct competition with the original work as published that is of concern, but also the potential market for licensing use of parts of the original work). Another key point to bear in mind, also highlighted in Section 107, is whether or not the work used is “unpublished”; “fair use” applies to unpublished materials, but in a much more restricted way than for published works. If in doubt about how to conduct this four-factor analysis for materials you want to reproduce in your book from copyrighted sources, consult the editor of your book before writing the copyright owner. The one category of work that can be used freely in any amount by a U.S. author is any work of the U.S. Government (but not necessarily the work of foreign governments).

Whether a work is still protected by copyright or is “in the public domain” (and hence free to use without permission) is governed by a complex set of laws that have come into effect from the passage of the 1976 Copyright Act on to the recent past, when at the very end of 1998 a new law extended the duration of copyright protection for another twenty years. The attached chart conveniently summarizes the rules now determining what is, or is not, protected by copyright. If you have any trouble applying these rules to any given materials you want to reproduce in your book, please consult your editor.

Even when permission is not required, it is a matter of courtesy to the original source and a convenience to the reader of your book to give a full citation indicating the source of the quoted material.

II. When Permission is Required

(1) When you reproduce a complete unit, whether it be a poem, letter, short story, article, complete chapter or section of a book, map, chart, or other illustrative material. In the case of poetry, permission is required to reprint more than one line of a short poem which is still under copyright, or any words or music of a popular song.

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(3) When quoting from your own work previously published in copyrighted magazines or journals (or any other serial publication or collective work) but, for works published after January 1, 1978, only if you have signed a written agreement transferring copyright to the publisher (for otherwise the copyright remains in your possession and permission is not needed.)

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WHEN WORKS PASS INTO THE PUBLIC DOMAIN

Includes material from new Term Extension Act, PL 105-298

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years ¹ (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²)
Published before 1923	In public domain	None
Published between 1923 and the end of 1963	When published with notice ³	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published 1964-77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

¹ Term of joint works is measured by life of the longest-lived author.

² Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

³ Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if, e.g., registration was made within five years. 17 U.S.C. § 405.

Courtesy of Laura N. Gasaway, University of North Carolina, School of Law.
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