

GUIDANCE ON COPYRIGHT AND PERMISSIONS



This guide offers basic advice on when permission is needed to use extracts from the works of others. It does not explore how far indirect copying, paraphrasing or the use of copyright works in other ways may amount to infringement. Members are welcome to contact the office for more detailed guidance.

Every reasonable effort has been made to ensure that the information provided in this Guide is reasonably comprehensive, accurate and clear and up to date as at the date stated in the Guide. However, the information provided is necessarily general and should not be relied on as specific legal or professional advice. If you have any specific queries, contact our advisers or a suitably qualified lawyer or professional. If you think you may have noticed any error or omission, please let us know.

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1. IS THE WORK IN COPYRIGHT?

a) General rule

Copyright in the UK for most works lasts until 70 years after the end of the year of the author's death ('life plus 70'). The same applies in most countries now.

For a work of joint authorship, 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 author who dies last.

b) Variations in how long copyright lasts

There are a number of exceptions to the 'general rule' above:

(i) Works not made available to the public during the author's lifetime

Works not made available to the public during the author's lifetime, where the author died after 1st January 1969, are protected for life plus 70 years – as with published material.

Where the author died before 1 January 1969, written works, photographs and engravings (note: this does not apply to other artistic works) which had not been made available to the public (e.g. published) at the time of the author's death and have still not been made available to the public remain in copyright until 31 December 2039. This exception particularly affects those wishing to quote from old letters and diaries.

Where the author died before 1 January 1969, written works, photographs and engravings (note: this does not apply to other artistic works) which had not been made available to the public (e.g. published) at the time of the author's death but have (with the authorisation of the rights holder) been posthumously made available to the public remain in copyright until 50 years from the end of the year in which they were first posthumously made available to the public, or until 31st December 2039, whichever is the shorter period.

(ii) Translations

Remember that the original work, and the translation are each entitled to copyright - copyright in the translation belongs to the translator and exists in addition to, rather than instead of, the copyright in the underlying work.

(iii) Letters

The copyright in letters is as at point 1.b)(i). Remember that while the letter itself in most cases belongs to the recipient, the copyright in its contents remains with the writer.

(iv) The publisher's copyright

The publisher automatically owns the copyright in the 'typographical arrangement of a published work', which is to say the layout and general appearance of the published version. This means that the work cannot, for example, 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.

(v) Works by non-European authors

If the author's country provides for a shorter period of copyright protection, that shorter period will also apply to works from that country when they are exploited in the UK (this equal-treatment exception does not apply to any foreign period of protection which is longer than life plus 70). For the duration of copyright in other countries, go to portal.unesco.org and enter 'collection of national copyright laws' in the search box.

(vi) US copyright

In the US the period of copyright, particularly for older works, is different from the UK, and complex. 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, it is unsafe to generalise as the term will vary depending on a range of factors and advice should be sought on a case by case basis.

(vii) Anonymous and pseudonymous works

This would include, for example, newspaper articles whose author is not identified. The period of protection is 70 years from the end of the calendar 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.

(viii) Crown and Parliamentary copyright

Different provisions apply to works 'made by an officer or servant of the Crown in the course of his/her duties'. For details go to www.nationalarchives.gov.uk and search for 'crown copyright FAQs'. For work made under the direction or control of either of the Houses of Parliament go to www.parliament.uk/site-information/copyright.

(ix) The 'publication right'

From 31 December 2039, the person who publishes for the first time a previously unpublished work for which copyright has expired is entitled to a 25-year 'publication right'. (Before that date, a previously unpublished work, however old, will still be in copyright so the situation cannot arise.) How restrictive the publication right will be is not yet clear but, in the meantime, we understand that the authorised public exhibition - before 31.12.39 - of an unpublished work (e.g. the public display of a letter) may disqualify that work from an entitlement to the publication right.

2. NEED FOR PERMISSIONS

a) How much may be quoted from a copyright work without permission?

You need permission to quote from works that are in copyright. For quotations other than those in the limited circumstances described below, you should ask permission to use any 'substantial' extract from a copyright work.

The difficulty is that the meaning of 'substantial' is not defined in the Copyright Act, but is a matter of fact and degree. A short extract may be a vital part of a work and it has often been said that the test is much more about quality than quantity. 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? The only safe course, if in doubt, is to ask permission if the quotation is not covered by the exceptions described at points 2(b) and (c).

Bear in mind also: song lyrics are protected by copyright. Some record companies are notoriously rigorous about charging even for very short extracts, and the charges can be substantial. Permission should be obtained for any quotation of copyright material to be included in an anthology. The fact that a work has been reproduced on the internet (whether that use was authorised or not) does not alter its copyright status.

b) Exceptions

(i) Quotations

You can quote without needing copyright permission if **all** of the following apply

- the work you are quoting from has been previously published;
- the use is fair dealing;
- 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; and
- you include proper acknowledgement.

(ii) Caricature, parody and pastiche

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, leaving their interpretation to the Courts. In addition, you still need to be careful that:

- your work is not defamatory;
- it does not infringe any trademark rights (particularly beware if you are making use of existing characters);
- it could not be deemed 'passing off' (which would arise if the public is confused into thinking it had been created or licensed by the copyright owner of the underlying work and that copyright owner has suffered financial loss as a consequence);
- it does not breach any rights of confidentiality or privacy and that it does not give the impression that it has been created by or has the approval of the original copyright owner, which could be an infringement of that author's moral rights not to have their work subject to 'derogatory treatment' and not to have work falsely attributed to them.

(iii) Educational purposes

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

- the work is used solely to illustrate a point;
- the use of the work is not for commercial purposes;
- the use is [fair dealing](#); and
- it is accompanied by a sufficient acknowledgement.

This means 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 (for instance, 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.

c) What is 'fair dealing'?

Fair dealing only applies to work which has, with the authorisation of the copyright holder, been made available to the public. The leading reference book *Copinger & Skone James on Copyright* says that 'If a work is unpublished, no dealing is likely to be fair'. The law does not give specific guidelines on what constitutes fair dealing; but it may be relevant to take into account:

- 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.

3. OBTAINING PERMISSIONS

a) Who is entitled to grant, and whose job is it to obtain, copyright permissions?

If you have been asked to grant permission for use of your work, the first step is to check that it is indeed you rather than your publisher who controls anthology and quotation rights.

If you are quoting from other works, it is likely that under your publishing contract it will be your responsibility to obtain permission for the use in your book of any copyright material not original to you.

Who pays any fee charged by the rights holder is a subject for negotiation. It is often the author's responsibility, but sometimes the publishers may be persuaded to pay at least some part of such fees, or to pay in the first instance then deduct a corresponding amount from your royalties. Where quotations are an essential element of the work (e.g. an anthology or textbook) it may be more appropriate for the publisher to pay all the fees.

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). If you are responsible for such costs, you should ideally get quotes from the owners at the outset, so you have a realistic idea of what the outlay will be before you finalise the contract with your publisher.

b) Who and what to ask

With published material, it is best to write first to the publishers of the original edition of the book, who are most likely to hold the rights for anthology use or quotations. Address your letter to the Permissions Department. If the original publishers do not control the rights, they should forward your letter to whoever does. This could be the author, his/her agent or heir or, possibly, a subsequent publisher of the book

It is very much in your interest to clear permissions as early as possible. 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. As a first step, go to www.plsclear.com which offers a fast-track service linking to publishers' permission departments.

When contacting the rights holder for permission, you should be sure to include the following information:

- Your name and address (and your publisher's name and address if they are paying the 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. Give the name of the author, the title, the number of words if prose, number of lines if poetry and language (if not English).
- What editions you need to clear rights for (e.g. hardback, paperback, electronic).
- What territories you need to clear rights for (e.g. the World, the UK and Commonwealth).
- 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.

c) How much will the fee be?

Copyright owners (and those controlling anthology and quotation rights) should bear in mind that they 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 at www.societyofauthors.org/estates/permissions. 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.

Rights holders often ask to be sent a free copy of the book containing their material on publication. Your publisher can generally be persuaded to foot the bill for such copies, on request.

4. WHAT IF THE RIGHTS HOLDER WILL NOT ANSWER MY REQUEST?

If you know who owns the copyright, but they do not answer your letters, a possible course is to send a recorded delivery letter explaining the situation and saying that if you hear nothing more within four weeks, you will assume that there is no objection to the extract being used. Note, however, that this course is not supported by law and should only be used as a last resort.

5. WHAT IF I CANNOT TRACE WHOEVER IS ENTITLED TO GIVE PERMISSION?

If you have done a diligent, thorough and search in good faith but the copyright owner of an old work is unidentifiable or untraceable, the work will be considered 'orphan'. You can make certain limited uses of orphan works.

a) What constitutes 'diligent search'?

Here are some suggestions of resources you may wish to use in tracing a rights holder:

- WATCH (Writers, Artists & Their Copyright Holders) www.watch-file.com
- ALCS (Authors' Licensing & Collecting Society) www.alcs.co.uk if the book you want to quote from was published by a firm no longer in existence (you can check with Companies House at www.companieshouse.gov.uk) write to the publishers of another book by the same author; they may be able to tell you who owns the author's copyrights
- the Association of Authors' Agents www.agentsassoc.co.uk
- the British Library www.bl.uk
- the National Library of Scotland www.nls.uk
- the National Library of Ireland www.nli.ie
- the Location Register of Literary Manuscripts <http://www.reading.ac.uk/library/about-us/projects/lib-location-register.aspx>
- the US Library of Congress Copyright Office www.loc.gov/copyright
- for TV, film and theatre writers: the Personal Managers Association www.pma.org.uk , the BBC TV and radio rights departments, and the Writers' Guild of Great Britain www.writersguild.org.uk
- unpublished works held in a library: the librarian may be able to put you in touch with the right person
- the Will of the author. Where copyrights are not separately mentioned in a Will, they simply form part of the testator's residuary Estate. For more information on tracing UK Wills, see the National Archives website nationalarchives.gov.uk/records/looking-for-person/willafter1858.htm
- publish a letter seeking information in an appropriate publication (e.g. the Times Literary Supplement for literary biographies, or a specialist journal in the copyright owner's field of expertise).

The Intellectual Property Office also has guidance on how to do a diligent search:

gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants

If a diligent search has drawn a blank, your next step would be to follow the Intellectual Property Office's procedure for obtaining a licence to exploit what will now be deemed an orphan work (be aware that such licences extend only to limited use and only within the UK). Information about the orphan works scheme can be found at gov.uk/guidance/copyright-orphan-works

6. PERMISSION LICENCE MODEL LETTER

From [name and address of the person granting the licence]

To [name and address of the person seeking the licence]

Licence No:.....

Date:.....

Title [of the work in which the quote will appear]

To be published by: [publisher and imprint] Territory: [e.g. UK & EEA or world]

Extent of use: [e.g. non-exclusively in the English language/all languages volume form publication as print/ebook/password-protected website, in one/all editions]

Name [of the work/description of the extract to be quoted]

I can give you permission to use the work mentioned above on the following terms:

- Fee: £:.....
- Payment is due on publication, or within 12 months of the date of this licence, whichever is earlier, failing which this permission automatically terminates.
- Permission is limited to the territories and rights specified above. It does not include the right to issue new or revised editions in a different format or under another publisher's imprint.
- When sending the fee, and in future correspondence, please quote the number and date of this licence and the author and title of the work(s) used.
- On publication a copy of your book/periodical should be sent to:
- Wording of the acknowledgement:.....

If we do not hear from you to the contrary within four weeks from the date of this licence we shall assume that the terms have been accepted. Inclusion of the work in your publication also indicates your acceptance of these terms.

Signed:.....

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