

SUPPORT: Permissions FAQ for Editors and Authors

Why: *The process for obtaining permissions for text, ads, and photos has changed rapidly in a very short period of time and not only at Prentice Hall. This is an industry-wide phenomenon that is being driven, in part, by the following:*

- *The internet and software programs have made identifying the use of copyrighted material very easy and, as a result, many organizations, companies, and individuals are turning to permission fees as a growing source of revenue.*
- *The growth of digital publishing and global publishing has driven up the costs of permissions.*
- *The concept of “fair use,” which held that proof of a reasonable effort to acquire permission was sufficient, has been overturned by Prentice Hall and publishers in general.*

Who: *Author*

FAQs

Q: *I used all of these items in my last few editions, without any question, why am I being charged now?*

A: *Our legal department is no longer allowing us to claim “Fair Use” on any permissionable items. Previously, if a researcher contacted a company at least three times, and that contact was documented, if the company did not reply, the item in question could be printed and distributed under the “Fair Use” rule.*

Q: *Why do permissions cost so much?*

A:

- 1) *Copyright holders are realizing the business side of copyrights, so they have increased their fees accordingly. Permissions have become a profit/revenue center for some companies.*
- 2) *With the development of the Internet and the demand for electronic media in publishing the demand for electronic rights have increased, so copyright holders have increased their fees accordingly. In the past, copyright holders would charge one fee for electronic rights, so we were able to use the material in any electronic format. Now copyright holders are charging a fee for each usage of their material so the cost to permission has increased.*

Q: Why do permissions take so long?

A: *Most copyright holders do not have staff available to focus on permission requests. Usually, they will have one or two people, so it takes awhile for them to respond to your request. Keep in mind that you are not the only person requesting permission to use copyrighted material, so it may take awhile to get a response from the copyright holders.*

Q: If it's on the Web, then it must be free to use, right?

A: *Wrong. The Internet is just another vehicle for delivering information. This is no different than using material from a newspaper, textbook or journal. All copyright laws still apply, so you must obtain permission from the copyright holders.*

Q: I cited all the information in the text, why do you have to get permission for it?

A: *Full citation of sources is sufficient in academic writing (i.e., research papers, materials for classroom, etc.). However, when that same article, illustration, table or anything is being used in a saleable format, such as a textbook, e-book, workbook or laboratory manual, it must be permissioned.*

Q: Why does the Publisher believe the author can, at times, be more effective in obtaining permission?

A:

- 1) *Usually, authors belong to or are involved in groups within their particular discipline, so it is easier for them to make contact with the person responsible for granting permission. For example: An author of a marketing textbook most likely would belong to the American Marketing Association, so if they wanted to use material from their journal it would be easier for them to contact someone within the association and bypass the standard permission request procedures. The publisher on the other hand, would have to go through the same standard permissions procedures as everyone else requesting permission.*
- 2) *A copyright holder will be more responsive to requests coming from an author as opposed to a request coming from a corporation.*

Q: What do I pay? What does the publisher pay?

A: *See your contract and/or discuss with your editor.*

Q: How can I effectively and legally adapt source material and avoid paying a permission fee?

A: *Copyright Law grants copyright owners the exclusive right to control modifications of their works. If you add a new layer of copyrighted material to a previously existing work, you have created a derivative work. If done without permission of the copyright owner you may have violated the owner's copyright. To avoid this situation your adapted figure/exhibit must follow the these guidelines:*

- *You must use raw data to construct a figure, illustration, or table (although the source of the data must be credited). The adapted figure cannot resemble the original figure.*
- *You must have created or developed your own article by paraphrasing from other sources. The adapted work cannot contain numerous paragraphs or statements from numerous sources. Each paragraph and statement must be rewritten in your own words.*
- *“Adapted from” or “Based on” should be included with the source information. The only exceptions to this rule are Harvard and Michael Porter, unless the author is using multiple sources.*

Q: The work I want to use doesn't have a copyright notice so I don't need permission.

A: *Not true. Since March 1, 1989 copyright notice has been optional. Before that date, copyright notice was mandatory and a work published with no copyright notice risked loss of copyright protection if not corrected within a specified period of time.*

Q: If I give credit I don't need permission.

A: *Merely giving credit is not a defense to copyright infringement, which unlike plagiarism has legal, not ethical, consequences. Copyright infringement is the unauthorized use of someone else's copyrighted material.*

Q: Since I'm only using a small portion of the original work, I don't need permission.

A: *While "fair use" can't be defined with mathematical precision, courts have consistently held that "you cannot escape liability by showing how much of [a] work you did not take." Based on the particular facts of a given case, courts will weigh the following factors to determine whether a particular use is a fair use: (i) the purpose of the use, including whether the use is primarily for commercial or noncommercial purposes; (ii) the nature of the work; (iii) the amount and importance of the portions used in relation to the whole of the original work; and (iv) the effect of the use on the potential market, or value of the original. Accordingly, even if what you copy is quantitatively small, it may be qualitatively important, and therefore an infringing use.*

Q: Since the work is in the public domain, I don't have to clear permissions.

A: *Not necessarily. Public domain only refers to the lack of copyright protection. While copyright is very important, a work may be protected by other legal theories that survive after the copyright expires. For example, public domain artwork, particularly distinctive characters (e.g. Beatrix Potter's "Peter Rabbit" illustrations), can achieve protection under trademark law and function as a logo or source identifier. Likewise, mere ideas that are not protected under copyright law may be protected under trade secret or contract law. Similarly, identifiable people may have the right to control the manner in which their name or likeness is used.*

Q: The material I want to reproduce was posted anonymously to an online discussion or news group. That means the work is in the public domain.

A: *Not true. Neither the ease with which users can upload or download information on the Internet, nor the fact that it is anonymous, places a work in the public domain. In fact, the Copyright Act specifically protects anonymous and pseudonymous works from unauthorized copying. Postings and republications of protected material, if not done with the consent of the copyright owner, may constitute copyright infringement. Of course, due to the nature of such postings, there may be implied consent to copy material received from A, in any reply B makes to such communication.*

Q: I can always obtain permission later.

A: *Later may be too late. Copyright owners have the unfettered right not to grant you permission. If what you need is crucial to your work, better to find out now that it is unavailable, than later. The lack of permission can result in your work being blocked or the payment of thousands of dollars in copyright damages and attorney's fees if you decide to use the material without permission.*

Q: The material I want to quote is from an out-of-print book. That means the work is in the public domain.

A: *Not necessarily. Out-of-print does not mean out-of-copyright. When a book goes out-of-print it is a temporary state. The rights generally revert to the author, which means the underlying copyright remains unaffected.*

Q: Since I'm planning to use my work for nonprofit educational purposes, I don't need permission.

A: *Not necessarily. The key factor is not the user, but the nature of the material, how it is being used, and whether the new use adversely affects the value of the original work. Since even a nonprofit educational use can undermine the value of a copyrighted work, such organizations are not immune from copyright infringement suits.*

Q: I don't need permission because the work I want to use was published before 1923 and is over 75 years old.

A: *Not necessarily. Unpublished and unregistered works created before 1978 (including very old works) may still be protected under United States copyright law. Copyright in these works -- which includes unpublished letters and manuscripts -- cannot expire until, at least, December 31, 2002. If they are published before December 31, 2002, as a bonus, they are guaranteed at least 45 years of additional protection (until December 31, 2047). Also bear in mind, that although a work may be in the public domain in the United States, it may still be protected overseas, where the rules concerning copyright duration differ.*