



## Copyright, “Fair Use,” and Permissions Guidelines

### *What is Copyright?*

Copyright is a form of protection provided by the laws of the United States to the authors or creators of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. The current federal copyright law, the Copyright Act of 1976 (Title 17 in the U.S. Code), went into effect on January 1, 1978; it generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the copyrighted work in copies or phonorecords;
- To prepare derivative works based upon the copyrighted work;
- To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

Under the Copyright Act of 1976, copyright is considered to begin with the setting down of a work in tangible or “fixed” form, rather than with its publication or registration, as was the case before the enactment of the Copyright Act of 1976. Unpublished works thus have since 1978 enjoyed exactly the same copyright protection as published works.

The Copyright Act of 1976 was amended in 1996 to extend the term of copyright protection to 50 years after the death of the author. Under the previous copyright law, the term of protection was 28 years from the date of publication, with a renewal term of another 28 years, so that most works were under copyright protection for a total of 56 years from publication. Under the 1996 revision, works published under the old law, *and still in copyright at the time of enactment of the new law*, had a total term of protection of 75 years from their publication.

The Copyright Term Extension Act of 1998 retroactively added 20 more years of protection to the term of all existing copyrights. Thus the term of copyright for all works created after January 1, 1978, whether published or unpublished, is now the life of the author plus 70 years, and pre-1978 publications are protected for a total of 95 years from their date of publication. (In most other countries, the term of protection is 50 years after the death of the author.)

Translations, new editions of the classics, and so forth, fall under the same copyright protection as original writings. Material in the public domain that has recently appeared in a new edition cannot be held under copyright, but any introduction, notes, editing of text, and such can be copyrighted.

It is illegal for anyone to violate any of the rights provided by the copyright code to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 120 of the Copyright Act of 1976 establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of “fair use,” which was given a statutory basis in Section 107 of the Copyright Act of 1976.

*An author is responsible for obtaining permission for the reproduction in his or her work of any material that is protected by copyright when the material that is being quoted is used in an amount or manner that exceeds the standards of “fair use,” and for the payment of any fees that may be required by the copyright holder for the use of such material.*

A permission may be a formal document from a publisher with many clauses outlining conditions and limitations of use, or it may be a brief scribbled note from an individual saying, “It’s OK for you to quote from my letter of June 10, 1990, to John Doe.” The important thing is (1) to have something in writing that is (2) specific as to what is being granted. This holds both for copyright permissions and for releases (for example, quoting or mentioning an individual by name in a case study).

### *What Is “Fair Use”?*

The language of the section of the Copyright Act of 1976 describing what constitutes “fair use” (17 U.S.C. 107) is intentionally vague and thus susceptible of a wide variety of interpretations:

The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means . . . , for purposes such as criticism, comment, news reporting, teaching . . . , scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (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.

There has been no single definitive clarification of this language by either judicial decision or legislative stipulation. Thus the current situation is that there are *no clear and legally specified limits* on the amount of material that may be quoted or reproduced without requesting permission. Uses such as the following are usually deemed to fall within the provisions of “fair use”:

- Criticism and comment—for example, quoting or excerpting a work in a review or criticism for purposes of illustration and comment.

- News reporting—for example, summarizing an address or article, with brief quotations, in a news report.
- Research and scholarship—for example, quoting a short passage in a scholarly, scientific, or technical work for illustration or clarification of the author’s observations.
- Nonprofit educational uses—for example, photocopying of limited portions of written works by teachers for classroom use, at least under some conditions.

In most other situations, copying or reproduction of any sort is not legally a “fair use” as contemplated by the copyright law. Without the explicit permission of the copyright holder, such use constitutes a infringement of copyright. The fundamental principle is that, without written consent, you can never use another person’s protected expression in a way that impairs (or potentially impairs) the market for his or her work. This was the basis what is widely known as the “Kinko’s Case”: a group of publishers were successful in obtaining an legal injunction against the photocopying of excerpts from their books for use in “coursepacks” without their permission.

Some scholars mistakenly believe that they can use any material (either publisher or unpublished) that they wish to include in their own works, provided that they follow the canons of scholarship and properly give the author (or creator) of the material in question appropriate scholarly credit by citing the source from which the material has been taken. *This is not true.* Giving appropriate credit for the authorship (or creation) of material and “fair use” of that material under the copyright law are entirely different matters. Either you have the right to use another person’s work, or you don’t; the fact that you attribute the material in question to its author (or creator) does nothing to change that fact.

### *Recommended Guidelines for “Fair Use”*

*Methodist Review* recommends that authors adhere to the following guidelines for what constitutes “fair use” of copyrighted material in scholarly works. These guidelines are based in large part on the recommendations of the Consortium of College and University Media Centers (CCUMC). The CCUMC recommendations were entered into the U.S. Congressional Record as a report of the Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, U.S. House of Representatives, on September 27, 1996, and have been endorsed by a large number of publishing, media, and educational organizations and institutions, including:

- the U.S. Patent and Trademark Office
- the U.S. Copyright Office
- the National Endowment for the Arts (NEA)
- the American Library Association (ALA)
- the Association of College Research Libraries (ACRL)
- the Association of American Colleges and Universities (AAC&U)
- the Association of American Publishers (AAP)
- the Association of American University Presses, Inc. (AAUP)
- the National Education Association (NEA)
- the Information Industry Association (IIA)
- the Recording Industry Association of America (RIAA)
- the American Society of Composers, Authors, and Publishers (ASCAP)
- Broadcast Music, Inc. (BMI)

- the Music Publisher’s Association of America (MPA)
- the Motion Picture Association of America (MPAA)
- the Software Publisher’s Association (SPA)
- the Copyright Clearance Center (CCC)

*Methodist Review* believes that the following guidelines set out a reasonable and prudent standard of what constitutes the “fair use” of copyrighted material in academic publishing. Authors should bear in mind, however, that these are extralegal and somewhat arbitrary guidelines, and that any decisions made based on them are subject to challenge by any copyright holder who may interpret copyright law differently.

*Methodist Review explicitly disclaims any and all responsibility, legal or otherwise, for an author’s decision to rely upon or follow these guidelines. In doubtful or unclear cases it is always best to secure permission from the copyright holder for the use of copyrighted material, and it is the author’s responsibility to do so, as well as to pay any permission fees that may be required by the copyright holder for such use.*

- (1) *Prose selections from books.* Up to 10% or a total of 1,000 words *in the aggregate*, whichever is less, may be used from a single source without requesting permission. This means a total of 1,000 words *throughout the entire manuscript*, not just in one single quotation. If you use more than 1,000 words from any single book in your work, you should request permission. In *anthologies* it is usual to obtain permission for every quotation of any length if it is in copyright. The process of obtaining permissions must be begun as soon as the manuscript is accepted, in order to allow time for the possibility of necessary substitutions and/or deletions.
- (2) *Articles or other brief prose works.* Up to 10% or 250 words *in the aggregate*, whichever is less, may be used without asking permission. Again, this means a total of 250 words *throughout the entire manuscript*, not just in one single quotation. If you use more than 250 words from any single journal article in your work, you should request permission.
- (3) *Drama.* Up to 10% or 250 words *in the aggregate*, whichever is less, may be used without permission, depending on the context and on whether the quotation is one continuous passage or a few words picked up from throughout the play. But poetic drama—for example, *J.B.* or *Murder in the Cathedral*—is treated as poetry.
- (4) *Poetry.* Up to 10% or 10 lines, whichever is less, may be used without requesting permission. However, permission is required for the use of a complete literary unit (chapter, verse, or stanza) of a poem, regardless of length. *Song lyrics* are treated as poetry and are subject to the same limitations.
- (5) *Music.* Request permission for *all* copyrighted music used.
- (6) *Any material complete in itself* requires permission—a short story, essay, chapter from a book, prayer, article, table, chart, map, graph, etc.—regardless of length. See below concerning photographs, artwork, and illustrations.
- (7) *Unpublished material.* The current copyright law provides legal protection for a work that is set down in tangible form, and since the application of the concept of “fair use” to unpublished material is still not clear, it is best to request permission for the use of anything that is unpublished.

- (8) *Adaptations and paraphrases.* An **adaptation** is a modification or reworking, often of an entire work or of a large portion of that work. Within that reworking, substantial segments may remain word for word as in the original (as an adaptation of a book into a play or movie). The person doing the adapting must obtain permission from the copyright owner to alter the form of the work. A **paraphrase** is a restating of the *meaning* of the original in one's own words, it is *not* simply changing or deleting just a few words here and there in what is otherwise an exact quotation.
- (9) *Multimedia Material.* Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced without permission. Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or in audio or audiovisual works, may be reproduced without permission.
- (10) *Photographs, Artwork, and Illustrations.* The reproduction or incorporation of photographs and illustrations is difficult to define with regard to "fair use" because "fair use" usually precludes the use of an entire work. *Methodist Review* recommends that authors obtain permission for the use of any photograph, work of art, or illustration known to be under copyright. Original photographs taken by authors themselves of works of art (paintings, sculptures, etc.) exhibited in public spaces generally fall under "fair use" even if no explicit permission for such photography has been obtained from the art gallery or museum housing the original so long as there is no posted or published restriction on such photography. Permission should always be secured for the reproduction of photographs taken by someone else even if such photographs have not been published. Reproduction of photographs that have published in another book, magazine, or journal should always be regarded as prohibited by copyright law unless explicit permission is obtained.
- (11) *Numerical Data Sets.* Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced without permission. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet in a spreadsheet.
- (12) *Computer Programs.* Reproduction or decompilation of copyrighted computer programs and/or portions thereof, for example the transfer of underlying code or control mechanisms, even for educational use, may never be done without the explicit permission of the copyright owner.

### *How to Determine the Copyright Owner*

- (1) *Books.* The name of the copyright owner will be found on the copyright page. Even if the book is copyrighted in the name of the author (or heirs), the publisher can grant permission or supply the address of the present owner.
- (2) *Obscure poems.* Try to locate the source using Granger's *Index of Poetry*. If it directs you to an anthology, the copyright owner can be found in the list of credits. *The poem must be deleted if it cannot be located.*

- (3) *Anonymous*. You must find the material credited to Anonymous in two sources. It should go without saying that Anonymous is not to be resorted to simply because a source cannot be found.
- (4) *Newspaper and magazine articles*. Write directly to the paper or magazine; they will direct you to the author if his or her permission is required.
- (5) *Popular song lyrics*. The BMI, ASCAP, and SESAC offices in Nashville can be helpful in finding owners of contemporary song lyrics. You might also try stores that sell sheet music. Always write to music publishers, not to lyricists or composers, for permission. Be aware that fees for use of lyrics of currently popular songs are often extremely high.
- (6) *Letters*. Permission to use a letter must be granted by the letter writer. In addition, you should consider the recipient and other persons who may be mentioned in the letter, since you may well also need to get permission from them. (See “Permission for Use of Personal Material” below concerning defamation and invasion of privacy issues.)
- (7) *Quotations that include excerpts from another author* (a quotation within a quotation). The publisher granting permission for the primary quotation will usually disclaim any responsibility for granting permission for anyone else’s material. If there is enough of the secondary quotation to require further clearance, it should be treated as a separate permission.
- (8) *Multimedia Material*. In most cases, the copyright is clearly displayed on the media packaging and/or as a part of the credits within the multimedia work itself. The same is true of *copyrighted databases* and *computer programs*. If in doubt, contact the source from which you have obtained the material in question.
- (9) *Photographs, Artwork, and Illustrations*. If the photograph, artwork, or illustration itself does not bear the signature of its creator and/or a copyright notice, or if the publisher of the book, magazine or journal in which it was published cannot be contacted or is unresponsive, try to locate it in another published source and check the credits given in that source.

### *Requesting Permissions*

The MR editorial office can provide you with a standard form letter for your use in making permission requests. When making such requests, you should send a photocopy of the page or pages in the manuscript on which the quoted material appears so that the copyright owner can see how the material is being used. For this reason, the photocopied section should be long enough to indicate the context of the quoted material.

Please note that if you are quoting from a British edition of a published book, standard procedure involves checking to see whether the book has also been published in the U.S.; if so, you should write to both publishers at the same time. In cases where an untraceable individual is credited or where a publisher has long since gone out of existence, the MR editorial office will help you determine whether to delete the material in question or whether it would constitute “fair use.”

If permission cannot be obtained for a particular selection, what do you do? There are several possibilities: deletion of all of the material in question; deletion of enough material to bring the amount quoted into “fair use”; substitution of similar material that is in the public domain or for which permission can be obtained; and rewriting the section entirely in the your

own words. Please contact the *MR* editorial office for assistance with any questions that you may have about permissions.

### *Permission for the Use of Personal Material*

If your manuscript makes use of case study, interview, or similar material of a personal nature, you must take particular care to avoid any appearance of defamation or invasion of privacy by obtaining a written release or statement of permission for use of the material. *Defamation* is “any false statement . . . which tends to (1) bring a person into public hatred, contempt, or ridicule; (2) cause him to be shunned or avoided; or (3) injure him in his business or occupation.” Defamation by writing or in a picture is *libel*; by word of mouth it is *slander*. A statement must be false to be defamatory; the truth of a statement is a defense against a claim of defamation. However, truth is *not* a defense against a claim of invasion of privacy, nor is the absence of malice. While we do not wish to be overly alarmist about this, we live in an increasingly litigious age, and advise you not to rely solely on oral assurances from subjects that “sure, you can use that your book.” If someone should charge after the publication of your book that what you have written about them is defamatory or constitutes an invasion of their privacy, can you *prove* that this is not the case by supplying written evidence of their permission to use the material?

The subjects (as well as anyone else mentioned by name in your manuscript) should see copies of the material from the manuscript so that they can make an informed decision whether they object to having the information about them in print. This will also give them a chance to correct any inaccuracies and make other changes. If the subjects have vanished without a forwarding address, one possibility is to delete or change their names. However, that alone is not enough. If permission cannot be obtained, the subjects must be rendered *unidentifiable*. Changing the names alone is not sufficient if they can be identified from other information contained in the manuscript. If no written permission can be obtained from the subjects, you may be asked to supply written assurance to *MR* that you have sufficiently disguised their names and descriptions so that there is no danger of their identification.

### *Recent Developments in Copyright Law*

The Digital Millennium Copyright Act of 1998 (DMCA) is a long and complex piece of legislation that holds the prospect of fundamentally changing many of the ways that we work with copyrighted material. In particular, the DMCA allows copyright owners to impose “technological protection measures” to regulate access to and use of protected works, and creates a new federal offense for anyone who circumvents those technological measures. The DMCA also allows copyright owners to put “copyright management information” on their works to specify to the users the conditions under which uses may be allowed, and it creates a new federal offense against removing or altering that information.

The DMCA made many other changes in federal copyright law. Among the most important is that it allows libraries to make digital copies of deteriorating works in digital formats. The new law also establishes a possibility for limiting the liability of online service providers—including universities that run networks and web servers—from infringements committed by users. That benefit, however, is available only if the provider complies with a long series of rigorous conditions and establishes elaborate procedures. The best news for scholarship and higher

education is that the DMCA did not go further and enact more restrictions that it did. The final version of the legislation dropped provisions that would have given new statutory protection to databases and other collection of factual data. That new protection was strongly opposed by researchers who saw it as a direct constraint on their ability to obtain and share factual information.

### *For Further Information*

The website of the U.S. Copyright Office has a wealth of resources online, including a very useful pamphlet on “Copyright Basics”: <https://www.copyright.gov/index.html>. The full text of the Copyright Act of 1976 and the Digital Millennium Copyright Act of 1998 are available here.

The website of the Copyright Alliance, an organization which represents the interests of thousands of individuals and organizations across the spectrum of copyright disciplines, provides valuable resources related to copyright and fair use issues: <https://copyrightalliance.org>.

The website of the Office of the General Counsel of Harvard University offers a comprehensive discussion of copyright and fair use issues in an educational and scholarly context: <https://ogc.harvard.edu/pages/copyright-and-fair-use>

The Copyright and Fair Use Center of the Stanford University Libraries provides a wealth of information about copyright and fair use issues, including legal details of the Kinko’s and Michigan Document Services cases concerning the use of copyrighted material in “coursepacks”: <https://fairuse.stanford.edu/overview/>

Much of the information drawn together in these guidelines is derived from the sources noted here. In you have any questions or concerns about any of these guidelines, or if you need additional information or advice about *Methodist Review*, please contact the MR editorial office:

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