

PA Permissions Guidelines

These Guidelines are intended to assist UK publishers who:

- a) may be approached for permission to reproduce copyright material published by them, or
- b) may themselves need permission to reproduce material published by others (e.g. in an anthology).

The guidance offered below is based on current UK law, as at the date of this document. Regular revisions and updates will be provided if and when UK law changes, as it does from time to time, but the law is very rarely tested in court, so in cases of doubt seeing a lawyer with experience in this area may be a good idea.

- **Why and when is it necessary to seek permission?**

Under UK copyright law, as a general rule, permission should be sought from the rightsholder (usually via the publisher) to reproduce any ‘substantial parts’ of any copyright work (for what are or are not ‘substantial parts’, see below). This applies not only to literary works (e.g. text, tables and computer programs), but equally to artistic works (illustrations and photos), music, and all other kinds of copyright material, for as long as the period of statutory copyright protection lasts. In the UK, and across the EU, this term is now 70 years from the end of the year in which the author died. However, for earlier works and works of foreign authors not first published in the UK the period may be different, and it may be necessary to seek legal or specialist advice.

- **What is a ‘substantial’ part?**

Whether the part to be reproduced is ‘substantial’ or not is a subjective test, depending as much on the *quality* or significance of the extracts copied as the mere quantity of words or lines. It is a question of fact and degree in all the circumstances. In a 2001 case involving extracts from James Joyce’s *Ulysses*, an extract of 250 words, constituting less than one-thousandth of the entire text, was held to be ‘substantial’, largely on the basis of their unique and distinctive quality. Similarly, four lines of a poem (and, in one other case, four words) have been held to be substantial parts of the whole work. For photographs, of course, what is copied is often the whole work, or a large part of it, which is bound to be substantial.

Previous industry rules of thumb that extracts of up to 400 words are somehow ‘safe’ are now misleading and positively dangerous. The only safe general rule is that quoted by one judge many years ago: “If it’s worth copying, it’s *prima facie* worth protecting.”

- **Are there any copyright exceptions which may apply?**

Yes, there are. It is not necessary to seek permission from the rightsholder for any copying which is permitted under one of the specified copyright exceptions in UK copyright law. There are a number of these ‘permitted acts’, including copying done in certain circumstances by libraries, educational institutions, visually impaired people and some other specific exceptions beyond the scope of these Guidelines. For a full list see the UK Intellectual Property Office website [www.ipo.gov.uk/]. One of the most important – and most misunderstood – group of exceptions is known as ‘fair dealing’, e.g. for criticism and review. For more on this, see below. Copyright exceptions across the EU are going through a period of considerable change, most recently in implementation of

the 2001 Copyright Directive. Future interpretation of copyright exceptions by UK and other EU courts is likely now to be subject to the Berne Convention '3-step test', which limits exceptions to

- 1) certain special cases;
- 2) which do not conflict with normal exploitation of the work, and
- 3) which do not unreasonably prejudice the legitimate interests of the rightsholder.

The most important of these tests for publishers is number 2, ruling out use which conflicts with normal exploitation by the publisher. For most practical purposes, this means that copyright exceptions should not permit rival commercial use, and judges are likely to bear this in mind in interpreting everything that follows.

- **What is 'fair dealing'?**

Copyright in most or all works relevant to publishing (the criteria differ slightly for each category, and are set out below) will not in the UK be infringed by any 'fair dealing' with those works for the following purposes (bear in mind that some categories of works are by now quite broad, so that for example 'literary works' includes tables, compilations and computer programs):

- (non-commercial) research or private study
- criticism or review
- reporting current events.

'Fair dealing' is an essential pre-condition of all three activities – the copyright exceptions do not cover *any* kind of, for example, research or private study, but only *fair dealing* for those purposes. What is 'fair dealing' is a subjective test which may vary depending on the facts of each case, and quite possibly on the motives of the person doing the copying. Other factors may include whether the original work is already published, how extensive – and important – the extracts taken from the same work are in relation to the whole work, and in some cases how frequent. As we have seen above, any commercial motivation is directly relevant, particularly if it might conflict with normal exploitation of the work by the publisher.

- **Fair dealing for research or private study**

Fair dealing in a literary, dramatic or artistic work for these purposes does not need permission from the rightsholder, provided that:

- any research is non-commercial, and
- it is accompanied by a sufficient acknowledgment.

As a general rule, the exception is limited to *personal* copying and the person doing the copying must be the same as the person doing the research or private study. There is no reason why a friend, or teacher, or librarian may not do an individual act of copying on the individual's behalf, but multiple copying, for example for entire classes of students, will not count as 'fair dealing'.

- **Fair dealing for criticism or review**

Similarly, fair dealing with *any* work for these purposes does not need permission from the rightsholder, provided that:

- There must be a significant element of actual criticism and review of the work being copied (i.e. substantial comment, as opposed to mere reproduction), although this is sometimes interpreted liberally; and
- There must be a sufficient acknowledgment in each case, crediting at least the title and the author.

- **Fair dealing for reporting current events**

As with the two previous examples, the use must first and foremost be fair dealing, and there must be sufficient acknowledgment (unless this is impractical, e.g. with sound recordings or broadcasts). The exception applies to all works except photographs. The events being reported must be ‘current’ (but the work copied need not be) and the context must truly be one of ‘reporting’ those events, rather than some longer-term editorial commentary.

- **What if none of these exceptions apply?**

If none of the exceptions set out or referred to above apply to the copying you wish to do, then permission must be sought from the copyright owner. For most practical purposes, this will usually be the publisher, or via a licence from licensing bodies such as the Copyright Licensing Agency [www.cla.co.uk].

- **Are any other guidelines relevant?**

The International Association of Scientific, Technical and Medical Publishers have their own guidelines for quotation and academic use of excerpts from journal articles, see www.stm-assoc.org/ The PA will also be publishing guidelines on academic and scholarly permissions jointly with the British Academy in April 2008.

- **What permission fees are appropriate?**

This is entirely a commercial decision for the publisher involved – for competition reasons, apart from anything else, trade associations like the PA cannot have recommended rates. If particular factors or circumstances apply to the copying you wish to do, it is best to raise these with the publisher when seeking permission.

- **What if I can’t find the rightsholder, or they don’t reply?**

Sometimes rightsholders become difficult to trace, or may not respond to permissions requests. In these cases the works concerned are known as ‘orphan works’. This is as much a problem for publishers as it is for users, so publishers, librarians and others involved are actively seeking practical solutions, together with government bodies such as the UK Intellectual Property Office and the European Commission. It is hoped that an automated or collective solution may be found, to be activated once clear evidence exists of serious and good faith efforts to trace the rightsholder (as opposed to one letter or phone call), and with due acknowledgment of the source. The PA has recently adopted a position paper on Orphan Works, see www.publishers.org.uk/en/home/copyright/issues_and_papers/

March 2008