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Copyright Issues

No Permission? *Don't Print It*

When do you need permission to reproduce copyrighted materials? Can you print without it? Here's a guide to point you in the right direction.

[Permission to copy this article](#)

[by April Sheninger](#)

How do you know when to request copyright permission and when it's okay to just use material? It isn't as cut and dried as it sounds.

The line between the two is often blurred by interpretations of the law, especially interpretations of the Fair Use statute in the university environment. Some organizations are perhaps too strict and others perhaps too lenient.

What follows is a layman's guide to copyright clearance and all its assorted parts. This article is intended to point you in the right direction to resources that can to help you and your organization decide what is best. (Note: It is always wise to consult a lawyer at your institution who understands both intellectual property laws and your organization's philosophy and vision before deciding on an interpretation.)

What is copyright clearance?

Copyright clearance is the act of requesting permission to use materials that do not belong to the requester. The Copyright Act grants copyright owners the sole right to reproduce or allow others to reproduce all or part of their work, distribute copies, prepare derivative works from the original, and perform or display the work publicly.

To see a more in-depth explanation of the rights afforded to rights holders, go to the following Web site:

www.bitlaw.com/copyright/scope.html.

Does everything need copyright clearance?

No. If the material has fallen into the public domain, if it falls under fair use guidelines or if the work cannot be copyrighted, permission does not need to be requested from the rights holder.

To read more on what can and cannot be copyrighted, go to this site: <http://lcweb.loc.gov/copyright/circs/circ1.html#wwp>.

What is public domain?

The Sonny Bono Copyright Extension Act increased the amount of time it takes for a work to fall into the public domain by 20 years. A general rule of thumb is 95 years after publication or 70 years after the creator's death.

For more in-depth information, visit:

www.unc.edu/~unclng/public-d.htm.

What is fair use?

The concept of fair use refers to a series of guidelines sanctioned by Congress in 1976 permitting reproduction of copyrighted material in limited situations without approval of the rights holder. There are four basic factors that need to be examined as well as two criteria. The factors are:

- The purpose and character of the work.
- The nature of the copyrighted work.
- The amount and substantiality of the portion used in relation to the whole.
- The effect of the use upon the potential market for or value of the work.

In addition, the use of the work must be both spontaneous and brief.

For a more in-depth analysis of each factor, see the following Web site: www.benedict.com.

Does the fair use statute only apply to printed media?

No, it applies to all media. Although it is more difficult to apply the guidelines to anything other than print, they do apply to music, video, art and even the Internet. From 1996 to 1998,

librarians, publishers, associations, authors, artists and other rights holders attempted to come to a consensus on multimedia uses of materials under the fair use guidelines at the Conference on Fair Use. Unfortunately, they never did agree. Since these guidelines were never fully adopted, do the best that you can and when in doubt ask for permission.

To learn more about multimedia uses, go to this site:

<http://fairuse.stanford.edu/multimed>.

To read the "Final Report to the Commissioner on the Conclusion of the Conference on Fair Use," go to this site:

www.uspto.gov/web/offices/dcom/olia/confu.

Why should you worry about it?

We live in a very litigious society. If a copyright owner wants to sue for copyright infringement because permission was not requested before copies were made or some other form of expression occurred, the owner is permitted to do so under the United States Copyright Law. The penalties can be very steep.

To read more about penalties for copyright infringement, go to this site: www.loc.gov/copyright/title17.

What about educational use?

Educational use is not a safe harbor. In all of the following cases, the end use for the material was educational in nature, but the decision returned was still copyright infringement.

- In 1991, Basic Books and other publishers sued Kinko's Graphic Corp. for copyright infringement. Kinko's believed it was copying materials under fair use because the material was, in the end, used for educational purposes. In this case fair use was not proven.
- In 1992, the American Geophysical Union sued Texaco for copying and internally distributing copyrighted materials. The decision held that "companies in the for-profit sector that make copies of copyrighted journal articles violate fair use."
- In 1996, Princeton University Press and other publishers sued Michigan Document Services. This case demonstrated that "commercial exploitation of copyrighted works does not meet fair use guidelines." In this case, Michigan Document Services believed it was copying materials under fair use. The courts, in the

end, disagreed. They should have all been requesting permission to copy the materials.

To read the Kinko's case, go to this site:

<http://fairuse.stanford.edu/primary/cases/c758FSupp1522.html>

To read the Texaco case, go here:

www.lawlib.uh.edu/faculty/Cjoyce/texaco.html.

To read the MDS case, go here:

www.lawlib.uh.edu/faculty/Cjoyce/michdc.html.

To read other infringement decisions, go here:

<http://supct.law.cornell.edu/supct/cases/copyrt.htm>.

How do you request permission?

There are two ways to request permission. Using the Copyright Clearance Center and going directly to the rights holder.

What is the Copyright Clearance Center?

The Copyright Clearance Center is a non-profit agency established by Congress in 1978 to help consumers comply with the U.S. Copyright Law. The idea behind the creation of the CCC was that if permissions are easy to obtain, there would be less infringement. The CCC represents 1.75 million different publications and works.

With the implementation of CCC On-line, a Web-based database, requesting permission has become even easier, especially for reused materials. CCC maintains an archive of the requests, which can be sent repeatedly without reentering the information. Blanket agreements with several very large publishing houses provide instantaneous approvals, which cut down on time spent waiting for replies.

To read more about the CCC, go to its site at:

www.copyright.com.

What information does the CCC need to secure copyright clearance?

The CCC needs the bibliographic information including:

- Title of the publication
- Edition or volume
- Title of the article/chapter

- Author/editor of both publication and article/chapter
- Copyright year
- Publisher/rights holder name
- Page range
- ISBN number (the unique number given to a publication once published)
- Number of copies requested.

What if the CCC cannot secure permission?

If permission cannot be secured through the CCC, the publisher or rights holder must be contacted directly. You will need the same bibliographic information that the CCC requires. First, find the publisher or rights holder, then fax, e-mail or mail a letter requesting copyright clearance and wait for the publisher to get back to you with a response before copying.

How do I find a rights holder?

Rights holders can generally be found using research resources like the Internet, Ulrich's International Periodicals Directory, Books In Print, Books Out of Print, Publishers' International ISBN Directory, and databases like Contemporary Authors and Associations Unlimited. These resources are available in hard copy, CD-ROM and via the Internet. Check with your local or university library for availability before making a purchase. They can be very expensive.

Check out this site to find out about pricing for some of them: www.bowker.com.

What does a copyright clearance letter have to say?

The permission request must be very specific. The following information must be included for the rights holder to be able to identify the material and grant permission:

- Title of the publication
- Edition or volume
- Title of the article/chapter
- Author/editor of both publication and article/chapter
- Copyright year
- Publisher/rights holder name
- Page range

- ISBN number (the unique number given to a publication once published)
- Number of copies requested.
- Specific type of use or uses (copying, Web, CD-ROM, etc.)
- Who is requesting the permission (Professor Smith, XYZ Co., etc.)
- Who will be copying the material (non-profit copy center, for-profit bookstore, etc.)?
- Who will be using the material (students in a class, researchers in a company, etc.)?
- How will the material be distributed (handed out in class, sold via the bookstore, via the Web, etc.)?
- Who you are (Coordinator of Copyright Clearance, Secretary for XYZ Company, etc.)

To see a sample letter, go to this site:

www.umuc.edu/library/sample.html

How long does it take for a publisher or rights holder to grant permission?

Some rights holders respond in a few days, others may take up to 12 weeks or even longer. Publishers especially are inundated with requests around the start of the academic year. After about a month, contact them for an update on the status of your request. It may provide a tickler for them or they may tell you what date they expect to provide permission. You can update your customer about the status so they can decide if it is too long to wait. Most publishers respond within 8 weeks, but asking for more lead time is never a bad idea.

This information should help you and your organization abide by the U.S. Copyright Law, understand your organizational copyright privileges and help you stay safe from copyright infringement suits.

Remember that ignorance is not a defense in an infringement suit. Educate yourself. The Internet is full of easily accessible sites on this topic, and books are available at university libraries and bookstores.

April Sheninger has been with the Copyright Clearance Office at Penn State University since 1993. Her career began as a temp in a campus copy center. She was asked to help out in the copyright clearance office, where she quickly took on the leadership role. Promoted to senior coordinator in 1998, she continues to manage that area within Document Services. She has a Bachelor of Science in Counseling from Penn State and will be completing her Master of Education in Instructional Systems in August 2000. You can contact her at:

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