

WHITE PAPER

Copyright, Plagiarism and Permissions

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WHAT IS COPYRIGHT?

Creators of intellectual property (that is anyone who has an original idea for a story, a song, a painting, a photograph, etc.) own the right to copy the resulting work – the product, novel, song, painting, etc. The word ‘original’ is important here – see ‘Plagiarism’ below. Selling copies of work based on their intellectual creativity is how writers and artists make money. However, you can’t own copyright in the idea itself – only in the work resulting from that idea. Once an idea has been written down, a book has been written and a painting painted it is automatically protected by copyright in most countries of the world. Also, copyright in written work applies whether the work has been published or remains unpublished.

Copyright is protected by law, both national (The Copyright, Designs and Patents Act 1988 in the UK

<http://www.legislation.gov.uk/ukpga/1988/48/contents>)

and international (The Berne Convention

http://www.wipo.int/treaties/en/ip/berne/summary_berne.html)

Copyright owners have a range of rights associated with copyright. For example, in addition to the right to copy/make reproductions of a work, copyright owners have:

- The right to translate written work;
- The right to perform a song or recite a literary work;
- The right to adapt and change the work.

Also, copyright owners have two ‘moral rights’:

- The right to be identified as the author of their work;
- The right ‘to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation’ (The Berne Convention 1886, amended 1979).

Selling copyright

Copyright is not an inalienable right (i.e. unlike human rights, copyright can be transferred, with or without payment, to someone else). In some circumstances

an author will sell their copyright to a publisher in return for a fee. This happens most often in academic and educational publishing but it can be the case in any market segment if, for example, the author wants money upfront rather than waiting for royalty payments or if the author is writing material that they don't really want to be associated with for some reason. Some publishers ask authors to hand over their copyright so authors need to be aware of the implications of doing so before signing an author agreement.

Work for hire

In the USA and UK if you write content for an employer then copyright in what you write belongs to that employer and not to you as the author. Therefore, the copyright in the White Papers I write for Professional Publishing Services, like this one, belongs to my employer, RHE Media Limited.

If being an author is the way you make a living, if your reputation as an author is very important to you, or if your identity is tied closely to the content of what you write then you might consider negotiating with your employer regarding copyright in your work for hire. It may be that your employer will agree to allow you to exercise your moral rights – the right to be acknowledged as the author and the right to object to modification of your work – while still retaining the copyright in what you have written.

WHAT IS PLAGIARISM?

The word 'plagiarism' comes from the Latin *plagiarius* meaning 'kidnapper'. I think this is a good way to think about plagiarism – kidnapping and controlling an author's intellectual property for one's own benefit and profit.

Plagiarism is, in effect, the passing off of someone else's intellectual property as your own. It is like identity fraud. Plagiarism breaches an author's moral right to be identified as the author of their work (because the plagiarist is claiming to be the author of the content). If a plagiarist makes money from copies of someone else's work then they are in breach of the author's copyright and are, in effect, stealing from the true author.

However, you can be legitimately inspired by another's work. Being inspired by the idea behind another author's writing is fine as long as you don't copy the work that results from the idea. Goodness knows how many bodice rippers have been based on the idea of an apparently cold and arrogant aristocrat/surgeon/high-powered business man whose heart has been melted by the bright eyes and cheeky ways of a poor and virtuous maiden/nurse/secretary.

Jane Austen may be the inspiration for (to blame for?) many of these – it is a very sexy premise. However, the important thing is to come up with an original piece of work based on your inspiration. Note that, in order to claim copyright, your work must be original to you. This is, of course, why writing good fiction is such hard work – there is very little that is new under the sun (Ecclesiastes 1:9 – of course, the original quote is that there is ‘nothing new under the sun’ but the Bible has been out of copyright for quite some time!).

If you read widely then it is likely that you will be inspired by a range of different ideas and you can then combine and interweave these inspirations in order to create something new and original. It can help to keep a note of where your inspiration has come from and then, when you have written your work, you can check back to make sure that you are not reproducing someone else’s work word for word. Sometimes I have been struck by a particularly interesting idea or an original way of putting something and I can’t for the life of me remember where I first read it or heard it. Keeping a diary or a notebook of reading notes is a very useful way of ensuring you don’t plagiarise another’s original creation.

You can also quote from another’s work as long as you seek permission to do so, you accurately reproduce the quote and you acknowledge the author and source of the quotation. Misquoting an author’s work is a breach of the second moral right – the right to object to any modification of the work that may bring the author dishonour or disrepute. If you are not sure you are quoting an author correctly then you must contact the author to allow them to exercise their moral right.

Plagiarism, particularly in academic publishing, is a contentious issue. Attempting to reword text from another source to try to disguise plagiarism can still be an abuse of copyright. There are some particularly fine articles on the subject available for free on the internet. If you are concerned about inadvertent and unintentional plagiarism then take advice on your work from an independent source. If in doubt, the best option is, of course, to use a direct quote, seek permission and/or acknowledge the source.

SEEKING PERMISSION TO USE COPYRIGHT MATERIAL

It is usually the author’s responsibility to seek permission to use any third-party copyright material he or she might wish to include in the book they are writing. The author is also responsible for paying permission fees. This is because it is usually the case that the author (rather than the publisher) is a) more likely to receive permission to use a copyright item in their book and b) the author is less likely to be charged for using a copyright item than the big corporate publisher they are publishing with. Also, of course, the author is less likely to use a lot of expensive copyright material in their book if they are responsible for paying

copyright fees. Finally, most publishing contracts include a clause that states the following:

The Author hereby warrants to the Publishers that the Work is an original work, it has not been published in any form within the territories covered by this Agreement and is in no way whatever a violation of any existing copyright, (or alternatively that all necessary consents have been obtained) that it contains nothing objectionable, obscene, indecent, or libellous, that all statements contained therein purporting to be facts are true, that she has full power to make this Agreement and will indemnify the Publishers against any loss, injury or damage (including any legal costs or expenses and any compensation costs and disbursements paid by the Publishers on the advice of Counsel to compromise or settle any claim) occasioned to the Publishers in consequence of any breach of this warranty.

Therefore, the author is ultimately legally responsible for the content of her work (as the copyright owner) because the author is the only person who knows where she acquired any third-party material that she has used in her book. Although the publisher may agree to act on behalf of the author in a case of breach of copyright, it is the author who is ultimately liable for the illegitimate use of copyright material. If an author has self-published their work then it is even more important to be diligent about seeking permission because there is no publisher to provide support and advice should a claim of breach of copyright be made.

In some cases, when using a large amount of copyright material in a book is crucial to its success, and when this is known at the time the book is commissioned, the publisher may agree to pay some or all of the costs associated with gaining permission to use copyright material. If an author knows that they will be using a large amount of third-party copyright material in their book then they should make this part of the contract negotiation with the publisher. A publisher may also take on responsibility for seeking permission to use copyright material if they have an in-house permissions department with staff who have experience of permissions-seeking (i.e. only the large publishing companies can afford a permissions department, although smaller companies may have staff that have expertise in copyright and permissions). Alternatively, they may employ a freelance permissions-seeker – there are a small number of freelance professionals who specialise in seeking permission to use copyright material but, of course, they do charge for the work they do.

Authors are strongly advised to seek permission to use third-party copyright material before or as they write their book, rather than waiting until the book is complete. This is because it can take some time for permission to be received from the copyright holder. Also, if the permission fee for a particular item is high or permission is refused, then seeking permission early allows time to identify an alternative item or to rewrite the text to avoid the use of the copyright item.

Please note that copyright resides in any written or drawn work, whether it has been published or not. Copyright lasts for 70 years from the end of the calendar

year in which the author died. In the case of co-authored works, copyright lasts for 70 years from the death of the last surviving author.

Copyright material includes (but is not limited to):

- Illustrations including diagrams, drawings, paintings, charts/graphs, photographs (copyright usually belongs to the person who took the photograph and not to the person who is shown in the picture or who has the print or digital file) and realia (i.e. scans of original material like medical charts, documents, posters, etc. – copyright resides in the scan that has been made as well as in the original document).
- Tables and graphs – copyright resides in the data gathered to create tables and graphs, and also in the design/layout of tables and graphs. Therefore, if an author creates a new table using data from another author's table, permission is required to use the data and the new table should be described as 'adapted from...'
- Text quotations longer than 400 words, or a total of 800 words if spread throughout the book in smaller quotes, and more than 40 lines of a poem if this amounts to no more than a quarter of the whole poem. Quotations of less than 400 words must be acknowledged (i.e. you must identify the author/source of the quotation) but in some circumstances they may be used without seeking permission. For example, if you are using the quotation for the purposes of criticism, review or scholarship then this is described as 'fair use'. However, 'fair use' does not have the force of law and really only applies in academic publications.
- Quotations from prose, poetry, song lyrics (if more than one line) and play scripts all require permission. If you want to open each chapter of your novel with a few lines of poetry from your favourite poems then you must be careful to seek permission for each use. In some cases it is extremely difficult to gain permission – the poetry of T.S. Eliot is one example. His estate defends copyright in his poetry vigorously and, in most cases, will refuse permission to use even a small amount of a poem without payment.
- The design and layout of printed pages, including the fonts used (which may have been purchased by the publisher from the copyright owner of the font). Copyright in book design belongs to the publisher not the author of the work.

How much are permission fees likely to be?

The answer to this is 'how long is a piece of string?' The charge for permission to use their work is for the copyright owner to decide. In academic and scientific publishing fees tend to be low or permission is granted for free because it is in the publisher's and author's interests for their work to be widely cited and

quoted. Academic and scientific work is published in order to be actively used in research and in education. An academic author's reputation is based on how widely used their writing is among peers and students. Also, most academic authors are paid by the institution they work in so they don't make their living from their writing. However, in the world of fiction, poetry, writing plays, etc. many authors (and their agents if they have them) make their living through the exploitation of their copyright so they may wish to charge a lot for permission to use extracts from their work.

As there is no generally agreed rate for permission fees, the key is to negotiate with the copyright holder. Pleading poverty can work for authors but it rarely works for publishers. Flattery can also work. If what you are planning to publish doesn't compete with the author's own work then you have more chance of getting a reduced rate. There are several techniques I have employed over the years. However, for some of the textbooks I have published, the permissions bill has run into £1000s and all of this money has to be paid on publication. Therefore, it is vital to think carefully about the copyright material you want to use and why you must include it in your book.

Can I download text and images from the internet without seeking permission?

The answer to this is no. There is a pervading myth that content published on a website on the internet is in 'the public domain' or somehow 'copyright free'. This is not true. Website content, be that text, images or photographs, is very likely to be protected by copyright (unless it explicitly states otherwise somewhere on the website). If you wish to use an image, text, music, etc. from a website you must contact the website owner in the first instance to seek permission. However, the website owner may have obtained the image or text from elsewhere so they are not necessarily the copyright holder.

There are websites that offer text and images that are licensed under the Creative Commons license or that include material that is out of copyright. However, it is vital to check the terms of the license for each item carefully as the conditions of use may vary – for example, you may not be able to use the content for commercial purposes.

Who do I contact to seek permission to use copyright material?

The first thing to do is to identify the copyright owner of the text, illustration, table, photograph, etc. that you want to use. This isn't always easy and can take considerable research, particularly if the text or image was published some time ago, the work is not referenced or if the work is unpublished. Once you have a

pretty good idea of who the copyright owner is then you can try to seek permission to use the text, image, table, etc. that you require.

When seeking permission, in the first instance you should contact the publisher of the most recent edition in which the author's work appears, the author's agent, the website owner, or the owner of the location in which you have seen the work displayed (i.e. the gallery in which a photograph has been exhibited). If they are not able to grant permission on behalf of the author or artist then they should be able to pass on your request to someone who can – the author, the artist or to another publisher, agent or manager. If the work is no longer in print and the publishing company is no longer trading then you will need to track down the author or, if the author has died, their estate if the work is still in copyright. These days the internet makes it much easier to track down copyright holders but it is still possible to reach a dead end.

What if I can't find contact details for the copyright owner?

If you have made every effort to seek permission, and you have evidence to show that you have made every effort, but you have been unable to identify the copyright owner, then you may decide to take a risk and use the copyright material anyway. Of course, being able to demonstrate that you made every effort to identify and contact the copyright holder does not make you immune to legal action, but it may reduce the likelihood of legal action and it may mean that the copyright holder, when he or she makes themselves known, will settle for a reasonable fee and suitable acknowledgement instead of taking you to court. Or, it may not – you have to decide if the risk is worth the potential consequences.

What risk do I run if I don't seek permission?

If you use copyright material without seeking permission then you run the risk of being sued by the copyright owner or, for example, by their publisher who will represent their authors in breach of copyright cases because it is also in their interests to do so. Breach of copyright is a civil matter so the level of proof required is much lower than it is in criminal cases. Fines can run into £1000s and you may be required to remove the quoted material from the book, which may also result in the recall of all copies on the market. My rule, therefore, is 'if in doubt, seek permission or take it out'.

How do I ask for permission?

When seeking permission you may wish to use the following template for your permissions letter or email:

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[Date]

Dear

I am writing to request permission to use [*details of the material for which permission is required*] in a book to be published by [*name of publisher*]. The book we are publishing is [*description of the work to be published*]. It is entitled [*book title*] and it will be published in [*month and year of publication*]. We expect the first printing to be [*number of*] copies and/or we will be publishing the work as an ebook with estimated sales of [*number of*] copies.

I would like to request [*non-exclusive, exclusive, territorial*] rights to reprint the [*illustration/table/quotation/photograph*] in our book.

If you are willing to grant permission please specify the wording you would like us to use in the acknowledgement. I would be very grateful for a quick response, by [*date*] if at all possible.

Please don't hesitate to contact me if you have any queries.

Yours sincerely/faithfully

[*Author*]

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Please note the following when seeking permission:

- The permission fee may be based on the predicted sales of the work in which the copyright material will be used. Also, you may only receive permission to copy the content a certain number of times – i.e. permission will only be given for the first print run of, say, 1000 copies. You will therefore need to seek permission again and pay another fee if you decide to reprint your book.
- Permission to use copyright material often only applies to one edition of the work. Therefore, if you produce a new edition of your work you should apply for permission to use all the third-party copyright material again. So, when calculating the costs of producing a new edition, you will need to include the cost of permission fees.
- Usually permission is only given for non-exclusive use of the copyright material. If you want to acquire the exclusive right to use someone's copyright material then it is likely that you will have to pay a very high fee for doing so, if the rights holder is actually willing to agree to exclusive use, which is very unlikely.
- In your request you will need to ask for the territorial rights you wish to acquire – i.e. are you going to publish your work in one country only or will your book be available to buy worldwide? Also, which language will the book be published in? The copyright owner will want to know if their copyright material will be translated into

another language as they may wish to check proofs of the translated extract to ensure their moral rights have not been breached in the process of translation.

- It is sensible to gain permission in writing from copyright holders rather than relying on a verbal agreement. If you have written permission then you have evidence if there is any dispute at a later stage.
- It is wise to retain the original letters/e-mails from copyright holders granting permission to use their copyright material in case there is any dispute when you publish your book. Copies of all permissions correspondence should also be sent to the publisher with the final typescript because the publisher may act on behalf of authors if action is taken for breach of copyright by copyright holders.
- Every copyright item used in a book must be clearly acknowledged, whether a fee has been paid or not. Acknowledgements are usually listed on a separate page in a book in the form:

The author and publisher would like to thank the following people/organisations for permission to use copyright material in this book: *[insert list of names of people and organisations, and a description of copyright item/reference to original source of copyright item – use the exact wording given by the copyright holder]*

- It is also wise to include the following disclaimer:

Every attempt has been made to seek permission for copyright material used in this book. However, if we have inadvertently used copyright material without permission/acknowledgement we apologise and we will make the necessary correction at the first opportunity.

It is very important to know that printing this disclaimer does not provide protection against legal action. However, it may mollify copyright owners sufficiently to reduce the likelihood that they will jump straight to legal action and increase the chances of a more moderate response to a perceived breach of their copyright. It rather depends on the severity of the breach and the temper of the copyright owner.

CONCLUSIONS

Copyright is a very valuable asset for authors and publishers, as well as for photographers, artists, etc. It is the mechanism by which original works are monetised and through which creators of original works can make a living. Therefore, it is vital that creators have a clear understanding of copyright and its related rights, both as copyright holders and as potential users of the copyright material of others. However, copyright will only survive as a legal right if it is understood and respected by everyone.

The misuse and abuse of copyright undermines the value of this right for all creators so authors and publishers are obliged to be scrupulous in their management of third-party copyright content if they are to be accorded the same respect by others for their own work and publications.

Laziness and carelessness can lead to inadvertent plagiarism so it is important to be disciplined as an author, recording the sources of your inspirations (which can also be useful in interviews when you are asked about what inspired your work!) as well as the sources of your quotations.

My golden rule is: 'if in doubt, seek permission or take it out'. Disclaimers and evidence of 'taking every effort' to find the copyright holder may not protect you if the owner is determined to have her day in court and/or wants substantial compensation.

Acknowledge every item of content you have taken from elsewhere and thank those who grant you permission because, after all, they are not obliged to do so.

Because acquiring permission can be both difficult and expensive it is very important to be clear about the purpose of and value added by each item of copyright material that you use in a work. If you are quoting some twentieth- or twenty-first century poetry just for some 'decoration' at the start of your chapters, is this really important enough to the integrity of the whole work to justify paying permission fees?

If the success of your book is dependent on the third-party copyright content that you are including then this should be part of the contract negotiation with your publisher or, if you are self-publishing, it is wise to seek estimates of the likely permission costs before you publish your book.

Judith Harvey, MD RHE Media Limited.

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