

## **MIT Press Permissions Guidelines**

In your publishing agreement with The MIT Press (MITP), you have agreed to secure all necessary permissions to use copyrighted material that is owned or controlled by third parties. The following general guidelines should help you get started with the permission process.

It is important to start this process early: once you have determined that permission is necessary, securing permissions can take weeks or even months.

You should initiate this process using the permission form(s) that we provide. Your permission requests should clearly identify the material you wish to reproduce in your book, either by citation or by providing a copy of the image or text in question.

Should the copyright holder(s) propose restrictions on the full range of rights identified in our form, or respond to you with a permissions form of their own, please note this in the permissions logs you submit with your manuscript. Some restrictions may be permissible, but others can impact our ability to publish your work effectively.

### **When is Permission Needed?**

Below you will find general information regarding the scope of copyright and guidelines regarding fair use. Please familiarize yourself with this information before seeking permissions:

**What materials are protected by copyright?** Copyright applies to every work in every field of the performing, visual, or plastic arts—for example: paintings, sculpture, photographs, and audiovisual works—and to all works of literature, so long as the content is fixed in some tangible medium of expression. It applies to any work that conveys information in written or other format, and to computer programs. It protects architectural plans, and it protects works of built architecture if constructed after November 1990. However, no permission is needed to depict a work of built architecture if the building is ordinarily visible from a public place.

***Photographic images:*** Photographic images (still or moving) can contain two layers of copyright if they depict works of art: the copyright in the photographic image is separate from the copyright in the underlying work. Thus, for example, if you want to reproduce a photograph of a work of sculpture or architecture, you may need two sets of permissions, one from the sculptor or architect, and one from the photographer (or whoever now owns their respective copyrights). However, photographs of two-dimensional artworks that contain no separate expressive content by the photographer are not protected by copyright, so for such a photograph only permission from the artist of the underlying work is needed. Even if copyright does not apply to such a photograph, however, the owner of the photograph may sometimes charge for its use, essentially as a toll for access to the image file.

***Translations:*** Translations can also contain two layers of copyright. If the underlying work is still under copyright, you will need permission from the copyright owners of both the translation and the underlying work.

***Factual information:*** Facts are not protected by copyright, but the author’s particular manner of expressing those facts is protected unless there are only a handful of ways to express them. Note that “expression” may include the author’s unique selection and arrangement of facts. Similarly, in a graph or chart, the data are free for anyone to use but the graphic representation of the data may have expressive content.

***Material subject to a Creative Commons or Open Access license:*** Material subject to a Creative Commons or Open Access license can in most cases be used without further inquiry. However, there are some limitations on this. (See “What if the material I wish to use is subject to a Creative Commons License?” below.)

**If something does not have a copyright notice on it, is it free to use?** Works first published in the United States before 1978 without a copyright notice (e.g., “© John Smith 1958”) are presumptively in the public domain and free to use. (See “What is in the public domain?” immediately below.) With that exception, you cannot rely on the absence of a copyright notice because no such notice is necessary to protect a copyright. Also, the fact that material may appear on the Internet with no apparent restrictions on access or use has no bearing on whether it is protected by copyright. Unless a work is in the public domain, you should assume it is protected by copyright.

**What is in the public domain?** Works published prior to 1923 are no longer covered by copyright, regardless of where they were originally published. Also, works created by the United States Government are in the public domain. Therefore, you may use either without seeking permission.

In general, the following rules apply for other works:

- US works published between 1924 and 1978 have a 95-year term of copyright, starting with the year of publication, unless they fell into the public domain before 1978 for failure to observe certain formalities (for example, not including a copyright notice).
- Non-US works published between 1924 and 1978 have a 95-year term of copyright, starting with the year of publication.
- Works created but not published before 1978 have the same term as above, except that if they were published after 1977 and before 2003 their copyright will last at least through 2047.
- Works published anywhere in 1978 or later will be under copyright for 95 years from publication, or for 70 years beyond the author’s death, depending on the identity of the author.

For a thorough chart on copyright duration, please review page 6 of MITP’s [Copyright Guidelines](#). For further information on all these topics, read MITP’s [Copyright Guidelines](#) and refer to *The Copyright Book* by William Strong (MIT Press, 2014).

**What is fair use?** Under a policy adopted in 2017, MITP does not require authors to obtain permission where they reasonably determine in good faith that fair use applies. (*Please read your contract thoroughly to understand your responsibility if you choose to apply fair use.*) If you wish to take advantage of this policy, please read the following information closely and apply it with care and thought.

Fair use is an important limitation on a copyright holder's rights. It allows for certain uses of copyrighted works on a limited basis for specific purposes without the permission of the copyright holder. The Copyright Act lists four factors that should be considered when assessing if a use is a fair use:

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

The first of these factors favors scholarly commentary, criticism, and quotation, which typically fall within the category of what courts refer to as “transformative use”—use that adds new, productive expression, new meaning, or new insights, rather than merely paralleling the use of the original. (The more transformative the use, the more likely it is to be a fair use.) The second factor—the “nature” of the copyrighted work—is of limited independent relevance where the first factor strongly weighs in favor of fair use, but it may impact the analysis of other factors. For example, a highly informational work may have much thinner creative expression, possibly justifying the use of larger excerpts than would be fair from a more creative work. The third factor—amount and substantiality—is fairly self-explanatory: fair use encourages the use of only as much of the underlying work as may be necessary to make the point you are trying to make by using the work. In evaluating the fourth factor, defining what the phrase “potential market” means has occasioned a lot of dispute, but for purposes of these guidelines you can safely focus on the markets that the copyright owner actually exploits, or might reasonably expect to be able to exploit. For example, an artist would not be likely to criticize his or her own work, and would not expect to license others to do so, but might reasonably expect to control the right to make full-color reproductions, even if on a reduced scale. Bear in mind that the “effect” at issue here is the effect of the *use*, not the effect of what you may say—good or bad—about the copyrighted work.

As the above suggests, there are no magic numerical formulae (such as “it’s always acceptable to quote 200 words or less”). Rather, each use needs to be assessed on its own merits, and the considerations that weigh most heavily will vary depending on circumstances.

These permission guidelines focus on the kinds of use most common in MITP publications: quotation of other authors’ texts or primary source materials, and reproduction of images in the context of scholarly analysis. Although use of these types is favored in fair use doctrine, it is still subject to constraints.

In general, the more closely tied your use of someone else’s text or image is to the message you are trying to convey to your reader, and the more necessary your particular use of that text or image is to conveying your message, the more likely your use is to be a fair use. A helpful exposition of this principle is contained in the College Art Association’s [Code of Best Practices in Fair Use for the Visual Arts](#), published in 2015, and specifically, the section devoted to analytic writing. Although the focus of the CAA Code is art, the principles it lays out apply equally well to textual materials and to images that are beyond the traditional boundaries of art. Thus, for example, its analysis would be equally relevant to reproduction of a magazine

advertisement in a book about marketing technique, or reproduction of a web page in a book about social media.

The CAA Code states that in analytic writing, scholars may quote or excerpt other authors' works subject to certain limitations:

- The writer's use of the work, whether in part or in whole, should be justified by the analytic objective, and the user should be prepared to articulate that justification.
- The writer's analytic objective should predominate over that of merely [presenting] the work or works used.
- The amount and kind of material used...should not exceed that appropriate to the analytic objective.

Therefore, among the questions you should ask yourself in evaluating whether fair use applies are:

- What is the analytical point I am trying to make by using the work?
- Is the extent of the use I am making reasonably necessary to illustrate or provide support for that point? "Extent" where visual materials are concerned includes not just amount but the quality (color or black-and-white, high res. or low res.) and size (partial or full page) of the reproduction. For example, filling an entire page of a book with the full-color reproduction of an image normally would not be justified unless your analysis concerns aspects of the image that cannot easily be perceived otherwise.
- Am I using the work for a purpose that is different from its original purpose? For example: am I using a photo to illustrate a particular time in history, rather than for its aesthetic value?
- Would my use risk damaging the copyright owner's own sales? For example, reproducing an entire poem could damage the market for copies of that poem, but reproducing a large painting on a quarter of a page, in black-and-white, might have no impact on the artist's commercial market. (These examples are intended to be suggestive, not definitive.)

In assessing your use of another author's work, it may also be helpful (but not dispositive) to ask: if the roles were reversed, would I feel that the magnitude of the proposed copying amounts to unfair exploitation of my work?

Finally, note that although the copyright statute does not mention attribution, failure to attribute a work to its author can be a factor weighing heavily against a finding of fair use.

**What if the material I wish to use is subject to a Creative Commons license?** Works subject to Creative Commons (CC) licenses are protected by copyright, but their owners have granted the public much broader rights of use than fair use would allow. Depending on the specific CC license, you may be able to rely on the license instead of asking for permission or relying on fair use. Specifically:

- If the CC license is purely "CC-BY," then no fair use analysis is needed; you can reproduce the material without further inquiry, but you must provide proper attribution.

- If the CC license contains the letters “NC” (for “non-commercial”), we ask that you undertake a standard fair use analysis and seek permission where your fair use analysis suggests it is necessary.
- If the use you have in mind constitutes a “derivative work,” such as a translation or revision, and the Creative Commons license in question contains the letters “ND” in its title (as, for example, in the CC-BY-ND license), then you should still undertake a standard fair use analysis, and seek permission where that analysis suggests it is necessary.
- If the CC license contains “SA” (for “share alike”) in the title, you should undertake a standard fair use analysis, and not use the material if your use exceeds fair use. MITP, as a general rule, does not accept material that commits it to a share-alike policy.

For further information on how Creative Commons licenses operate, visit the [Creative Commons](#) website.

*Note:* Open Access (OA)-licensed material generally does not involve the same considerations as CC-licensed material. As a matter of general consensus, the only CC license that is also OA is the CC-BY license. In the unlikely event that an OA license seeks to impose a non-commercial or share-alike condition, the above considerations would apply.