

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).

Negotiations on such permissions depend on the respective applicable legal framework and the commercial value of the work for which permission is sought.

Please be aware that the following guidelines are not binding; they constitute PA interpretation and do not constitute legal advice. If you are in doubt we strongly recommend consulting a lawyer with experience in this area to advise on the facts.

General advice on copyright via the website of the UK Intellectual Property Office;
<https://www.gov.uk/topic/intellectual-property/copyright>

- **When does copyright exist?**

Copyright exists if the work is original and recorded in some form.

- **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, lyrics, 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 70 years from the end of the year in which the author died. However, there are possibly different terms for works of foreign authors not first published in the UK, for works of joint authorship, for works of unknown authorship, for unpublished and posthumously published works. In the UK, there is also a specific right for typographical arrangements lasting 25 years from the year the edition was published.

It may be necessary to seek legal or specialist advice to consider the facts of each respective case.

- **What is a ‘substantial’ part**

Whether the part to be reproduced is ‘substantial’ or not is broadly 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. It is impossible to develop abstract industry rules of thumb of what constitutes a substantial part. The assessment of substantiality always depends on the actual facts and has been considered according to them.

- **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 specific 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. The UK legal framework on permitted acts has changed in 2014 with five new Statutory Instruments on exceptions (i.e. permitted uses of copyright works without specific permission), specifically the new exceptions were in relation to:

- Quotation and parody, caricature and pastiche
- Disability
- Research, Education, Libraries and Archives
- Public Administration
- Personal Copies for Private Use (this new exception has been quashed in July 2015 because the judge found that there was inadequate evidence to justify such an exception without fair compensation).

The scope of these new exceptions has not been tested in courts yet. Equally, many of such permissions have to be negotiated for international use and there are differences in the exceptions at international level which need to be considered.

Copyright at UK, European and international level is constantly changing, c.f. current discussions on the repeal of an exception which limits copyright protection for certain artistic works when they have been industrially manufactured. For a full list see the UK Intellectual Property Office website [<https://www.gov.uk/guidance/exceptions-to-copyright>].

In addition to applicable UK and European law the interpretation of copyright exceptions by UK and other EU courts is subject to the Berne Convention ‘three 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):

- Research for a non-commercial purpose
- Private study
- Criticism or review
- Reporting current events
- Caricature, parody or pastiche
- Illustration for instruction

Fair Dealing could be described under three tests (subject to the respective case of course): there must be (i) a Dealing; (ii) that dealing must be "fair"; and (iii) there must be sufficient acknowledgement:

- (i) **Dealing:** any use of the work counts as "dealing",
- (ii) **Fair:** Fairness is assessed in relation to the actual purpose; it is a question of degree and impression. It is judged by the objective standard of whether "a fair-minded and honest person would have dealt with the copyright work in the manner in question." The fairness is assessed on a case by case basis in relation to the arguably applicable exception; general criteria are:
 - Amount copied
 - Alternatives to the copying without authorisation
 - Effect of the dealing on the original work
 - Work Unpublished
 - Purpose of the use- specific purpose of the exception

- (iii) **Sufficient Acknowledgement:** is generally required; it means “an acknowledgement identifying the work in question and its author

Although the judgments and definitions set out have provided much clarification over the years as to what is or is not ‘Fair Dealing’ this remains a considerably grey area which depends on individual circumstances. 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.

There is considerable case law on the purposes of fair dealing exceptions such as *Hubbard v. Vosper*. (1972), *Sillitoe and Others v McGraw-Hill Book Company* (1983) and *Hyde Park v Yelland* (2000) but the details on specifically the new purposes such as parody and quotation are yet to be established. If uncertain about the scope of specific fair dealing exceptions we recommend consulting a lawyer or getting a licence from the rightsholder.

- **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 identify the rightsholder?**

Orphan works are creative works or performances that are subject to copyright - like a diary, photograph, film or piece of music - where one or more of the right holders are unknown or cannot be located. This is as much an issue for publishers as it is for users. In addition to an exception which allows certain beneficiaries such as publicly accessible archives to digitise orphan works, the IPO provides a licensing scheme for orphan works:

<https://www.gov.uk/government/collections/orphan-works-guidance>

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