Can I use this? Copyright and Permissions in Scholarly Publishing

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Accessed August 1, 2024 4:58 AM EDT
Can I use this?
Copyright and Permissions in Scholarly Publishing: Part 1

Jody Bailey, Head of Scholarly Communications Office
Melanie Kowalski, Copyright and Scholarly Communications Librarian
Emory University Libraries
A DISCLAIMER

This presentation contains legal information. It in no way constitutes legal advice. Should you feel you need legal advice, please seek the counsel of an attorney experienced in Intellectual Property Law.
Roadmap: Day 1

- Publisher’s requirements for requesting permission
- Copyright 101
- Determining whether permission is required
  - Openly licensed materials and public domain
  - Finding these materials

roadmap by DailyPM from the Noun Project is licensed CC BY 3.0
Roadmap: Day 2

- Fair use
  - Definition
  - Is my use fair? The four factors

- Obtaining permission
  - Who owns copyright?
  - How do I contact them?
  - Who pays for permissions?
  - How do I document everything?
  - What if they say “NO”?
Brief Housekeeping

● We will distribute slides
● We will **not** record this presentation
● We will use Zoom’s Annotation feature
● We offer consultations:  
  https://emorylibraries.libcal.com/appointments/sco
Zoom annotation
Copyright & Academic Publications
Your publisher’s requirements

Your publishers likely have specific forms, letter templates, policies, and guidelines to use when requesting permissions. Examples:

- Oxford University Press form
- Harvard University Press Permissions and Credits Guidelines (no form or letter template)
- Elsevier form (download), example completed form (PDF), and guidelines
- Wiley form (download) and guidelines (PDF)
Is it copyrighted?

Yes

Is there a license?

No

Does an exemption apply? (Fair Use)

No

Can I get permission?

No

Proceed without permission

Yes

Find an alternative OR Reevaluate exemptions

Yes

Great! Get permission. Save your documents.

No
Copyright 101
Origins of Copyright Law

What are the “rights” in copyright?

“All Rights Reserved” by Paul Gallo is licensed under a CC-BY 2.0 license.
What are the “rights” in copyright?

• Reproduce
• Create a derivative
• Distribute
• Publicly perform
• Publicly display
Is it copyrighted?
What does Copyright Protect?

1. Originality
2. Fixity/Tangibility
3. Works of Authorship

Image source: https://www.pexels.com/photo/rainy-rain-umbrella-weather-17739/
Works of Authorship

- Literature
- Music
- Dramatic Works
- Pantomime & Choreography
- Pictures, graphics, sculptures
- Motion Pictures and AV
- Sound Recordings
- Architecture
Public Domain - What doesn’t Copyright Protect?

Public Domain - No Originality

- Titles, names, short phrases, slogans
- Facts, news and discoveries
- Works lacking a modicum of originality
- Useful articles/Items of Utility

Public Domain - Ideas, methods, processes, etc.
Most works created by U.S. federal employees are in the public domain.

"Migrant Mother" by Dorothea Lange is in the public domain.
Public Domain - Copyright Expired

https://copyright.cornell.edu/publicdomain

### Is it copyrightable?

<table>
<thead>
<tr>
<th>Phone book</th>
<th>Dataset</th>
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<td><img src="image1.png" alt="Phone book Image" /></td>
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<th>Photograph of public domain painting</th>
<th>Cell diagram</th>
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<td><img src="image3.png" alt="Photograph Image" /></td>
<td><img src="image4.png" alt="Cell Diagram" /></td>
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Image Source (top to bottom, left to right):
1. "Person's holding book" by Brittany Colette is licensed under an Unsplash License
2. "Technology share chart" by Markus Winkler is licensed under an Unsplash License
3. "Mada Primavera" by Gustav Klimt is in the public domain.
4. "Animal Cell and Components" by OpenStax is licensed under a CC BY 4.0 License
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4. "Animal Cell and Components" by OpenStax is licensed under a [CC BY 4.0 License](https://creativecommons.org/licenses/by/4.0/).
Is there a license that covers my use?
What are licenses?

A license is legalese for *permission*. Just as a driver’s license gives you permission to drive, a license on a copyrighted work gives you permission to reuse it.
Openly licensed content from Creative Commons (CC)

- Over 2 billion works online carry CC licenses.
- Licenses proactively provide permission for reuse, so you don’t have to ask.
- Licenses vary in degree of openness; attribution is always required.
- **Best practices for attribution are available.**
- Contact us for help in reusing CC-licensed content.

*Image in the public domain*
Four CC license elements

“BY” icon = Attribution; must give credit to creator

“NC” icon = NonCommercial; content cannot be used commercially

“SA” icon = ShareAlike; must use same license

“ND” icon = NoDerivatives; cannot make any changes
What can I use?
Here are the 6 possible combinations of CC licenses. Put a stamp next to the one(s) you could use.

- Creative Commons Attribution 4.0
- Creative Commons Attribution ShareAlike 4.0
- Creative Commons Attribution-NonCommercial 4.0
- Creative Commons Attribution-NonCommercial-ShareAlike 4.0
- Creative Commons Attribution-NoDerivatives 4.0
- Creative Commons Attribution-NonCommercial-NoDerivatives 4.0
Finding general CC-licensed images

- **Openverse**: Find >700 million image and audio files across dozens of open repositories; provides proper rich-text attributions
- **Google Image Search**: from results, click on “Tools” then “Usage Rights” & select “Creative Commons licenses”
- **Wikimedia Commons**: Find >75 million images plus sound & video clips
- **Flickr Search**: Choose desired CC license under “Any License”
- **MORE!** [Guide from Harvard Law Library](https://guides.law.harvard.edu/finding_images)

“Cutest Koala” by Erik Veland is licensed [CC BY-SA 3.0](https://creativecommons.org/licenses/by-sa/3.0/)
Finding openly licensed images

All of the following offer millions of free images under terms very much like CC0 (public domain); they just forbid starting a similar service that competes with theirs.

- Pixabay
- Pexels
- Unsplash

This image by Ron Berg is shared under a Pixabay license.
Finding subject-specific CC-licensed or public domain images

Art & Architecture: The Met Collection, National Gallery of Art (U.S.), Smithsonian Institution, Paris Musées, and more

History: Library of Congress, Wellcome Collection, NYPL Digital Collections

Science: NASA Image Portal, USGS Photos, NOAA Photo Library

Medicine: NIH Images from the History of Medicine, CDC Public Health Image Library

SARS-CoV-2 is in the public domain.
Finding other types of open content

- **Text-based content:** Use [Google Advanced Search](https://www.google.com/webhp) -- look for “usage rights” at bottom of form & select best option for you; [Project Gutenberg](https://www.gutenberg.org); [Catalog of U.S. Government Publications](https://catalog.gpo.gov/mainmenu.aspx)

- **Music:** [SoundCloud](https://soundcloud.com), [AudionautiX](https://audionautix.com), [Jamendo](https://www.jamendo.com), [ccMixter](https://cmixter.org), & **more**

- **Stock video:** [Videvo](https://www.videvo.net), [Beachfront B-Roll](https://www.beachfront.com)

- **MORE!**

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`bass guitar` by `jadepalmer` is licensed [CC BY 2.0](https://creativecommons.org/licenses/by/2.0).
List of sources for DEI images from SPARC OE Forum email list

Sent in by Theodore Szpakowski on 10/23/2023 at 8:46pm

- **Nappy**: Free high-resolution photos of black and brown people, licensed [Creative Commons Zero (CC0)](https://creativecommons.org/publicdomain/zero/1.0/)
- **PICNOI**: Free photos of people of color; no attribution required, but can give credit by linking to site
- **#WOCinTech Chat**: Free photos of women and non-binary people of color working in the Tech field; licensed [CC BY](https://creativecommons.org/licenses/by/4.0/)
- **Redefining Women Icon Collection**: Icons of women; License: Creative Commons Public Domain CC0 1.0
- **The Gender Spectrum Collection**: Free stock photos of trans and non-binary people, licensed [CC BY-NC-ND 4.0](https://creativecommons.org/licenses/by-nc-nd/4.0/)
- **Disabled And Here**: This collection is a disability-led effort to provide free and inclusive stock photos shot from our own perspective, featuring disabled Black, Indigenous, people of color (BIPOC) across the Pacific Northwest. CC-BY 4.0
- **Images of Empowerment**: A free library of images celebrating women's lives and their work in 11 countries around the world. CC-BY-NC 4.0
- **The Noun Project - Photos**: "Professionally curated, art-quality photos that celebrate diversity." CC BY-NC-ND
- **American Education: Images of Teachers and Students in Action**: "A free library of images celebrating student learning and teacher collaboration in seven schools across the United States." (CC BY-NC 4.0)
- **Open Peeps**: "A hand-drawn illustration library." Mix and match elements to create different "peeps." Please note that you might need a design program to create your own "peeps." There are pre-made "peeps" you can download without a program. CC0
- **Images of Empowerment by William and Flora Hewlett Foundation, David, and Lucile Packard Foundation & Getty Images**: A library of powerful, positive and high-quality images showing women’s work and family life around the world. All photographs are available—free of charge—to non-commercial users thanks to Creative Commons licensing (CC-BY-NC 4.0)
- **Iwaria**: Stock photos from Africa, images available under a CC0 1.0 license.
- **Wikimedia Commons LGBT Category**: Collection of open images organized under various LGBT categories, with the images available under different CC licenses.
QUESTIONS?

Jody Bailey
jody.bailey@emory.edu

Melanie Kowalski
melanie.t.kowalski@emory.edu

Schedule a consultation:
https://emorylibraries.libcal.com/appointments/sco

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Can I use this?
Copyright and Permissions in Scholarly Publishing: Part 2

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Melanie Kowalski, Copyright and Scholarly Communications Librarian
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- We offer consultations: https://emorylibraries.libcal.com/appointments/sco
Zoom annotation
Is it copyrighted?

Yes

Is there a license?

No

Find an alternative OR Reevaluate exemptions

Yes

Does an exemption apply? (Fair Use)

No

Great! Get permission. Save your documents.

Yes

Can I get permission?
Is it copyrighted?
- Yes
- No

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- Yes
- No

Proceed without permission

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Great! Get permission. Save your documents.
Is there any exemption that applies?
Copyright Exemption - Fair Use

©2015 by Mimi and Eunice. Copying Art is an act of love. Please copy and share. For lack of a better option, all Mimi & Eunice cartoons are released under Creative Commons Attribution-Share Alike 3.0 Licenses.
"It's educational, so it's a fair use."
17 U.S. Code § 107 - Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.
Fair Use Scenario

We are writing a systematic review article on lateral bias and temperament in domestic cats. We include a section discussing the use of the Catit Senses Food Maze in testing paw preference. We wish to include this image of a modified maze to discuss the ways in which researchers adapt the maze to pinpoint specific outcomes, like paw preference when animals are seated vs. standing on hind legs. We found an article containing this image via Emory Libraries databases and took a screenshot of it.

Is our use a fair use?

Factor #1: Purpose and Character

"Autonomy, Mastery, Purpose" by Paul Downey is licensed under CC BY 2.0. It has been modified for the purposes of this presentation.
What do we mean when we talk about transformative fair use?

Transformative Fair Use Variance:  
Fair Use Scenario - Factor One

Overall thoughts on your *purpose*:

- [ ] strongly favors fair use
- [ ] somewhat favors fair use
- [ ] neutral
- [ ] somewhat weighs against fair use
- [ ] strongly weighs against fair use

*Figure 1.* Subject using the Catit Senses Food Maze.

Factor #2:
Nature of the copyrighted work

“Rossville Boardwalk Wolf River” by Gary Bridgman is licensed under CC-BY 2.5.
Fair Use Scenario - Factor Two

Overall thoughts on the nature of the original:

- [ ] strongly favors fair use
- [ ] somewhat favors fair use
- [ ] neutral
- [ ] somewhat weighs against fair use
- [ ] strongly weighs against fair use

Figure 1. Subject using the Catit Senses Food Maze.

Factor #3: Amount of use

"An American Gentleman", United States, New York, Long Island, East Hampton, Gardiners Bay" by Chris Ford is licensed under CC-BY-NC 2.0
Fair Use Scenario - Factor Three

Overall thoughts on the *amount and substantiality* of your use:

- [ ] strongly favors fair use
- [ ] somewhat favors fair use
- [ ] neutral
- [ ] somewhat weighs against fair use
- [ ] strongly weighs against fair use

**Figure 1.** Subject using the Catit Senses Food Maze.

Factor #4: Effect on the market or value of the copyrighted work
Fair Use Scenario - Factor Four

*Overall thoughts about the effect of your use on the market for the original:*

- strongly favors fair use
- somewhat favors fair use
- neutral
- somewhat weighs against fair use
- strongly weighs against fair use

Figure 1. Subject using the Catit Senses Food Maze.

Fair Use Scenario - All Factors in Balance


*Figure 1.* Subject using the Catit Senses Food Maze.
Codes of Best Practices in Fair Use

- Documentary Filmmakers’ Statement of Best Practices in Fair Use
- Code of Best Practices in Fair Use for Media Literacy Education
- Code of Best Practices in Fair Use for Scholarly Research in Communication
- Code of Best Practices in Fair Use for Online Video
- Orphan Works: Statement of Best Practices
- Code of Best Practices in Fair Use for Poetry
- Code of Best Practices in Fair Use for the Visual Arts
Is it copyrighted?

Is there a license?

Does an exemption apply? (Fair Use)

Can I get permission?

Proceed without permission

Find an alternative OR Reevaluate exemptions

Great! Get permission. Save your documents.
Can I use this?

Copyright and Permissions in Scholarly Publishing: Part 2

Jody Bailey, Head of Scholarly Communications Office
Melanie Kowalski, Copyright and Scholarly Communications Librarian
Emory University Libraries
How do I get permission?
Important!

- Make sure to start permissions request process EARLY!
- Keep records of where you got materials you want to reuse; use our tracking spreadsheet template found here.
Obtaining & paying for permissions: step 1

Who owns the copyright?

- **Books & journal articles** = publisher
- **Images** = publisher or creator
- **Archival works** = creator or (rarely) the archive itself; if published in 1925 or earlier, it’s public domain in U.S. Note: sometimes archives still require you to ask permission even if it’s PD.
- **Song lyrics** = publisher of the sheet music (not the record producer)
- **More help**
Challenges with orphan works

- Works under copyright but having an indeterminate owner
  - Original owner is deceased with no known heirs/estate.
  - Original owner is unknown.
  - If corporate owner, the organization no longer exists (out of business or changed hands).

- Must rely on fair use

- Follow your publisher’s requirements and policies
  - Publisher may be more receptive to fair use argument if you can demonstrate that you searched extensively and could not ID copyright holder.
# Obtaining & paying for permissions: step 2

<table>
<thead>
<tr>
<th>If source material is...</th>
<th>Then contact...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Book or article</td>
<td>Publisher &amp; use their form (example on next two slides)</td>
</tr>
<tr>
<td>Film</td>
<td>SWANK, Motion Picture Licensing Corp.</td>
</tr>
<tr>
<td>Music</td>
<td>ASCAP, BMI, SESAC, or Global Music Rights</td>
</tr>
<tr>
<td>Art</td>
<td>Artists Rights Society</td>
</tr>
</tbody>
</table>
Race, Flourishing, and All-Cause Mortality in the United States, 1995–2016

Patricia Louie, Laura Upenieks, Arjumand Siddiqi, David R Williams, David T Takeuchi


Published: 17 March 2021   Article history ▼

Abstract

We assessed whether race moderates the association between flourishing and all-cause mortality. We used panel data from the Midlife in the United States Study (MIDUS) (1995–2016; n = 2,851). Approximately 19% of White respondents and 23% of Black respondents in the baseline sample died over the course of the 21-year study period (n = 560). Cox proportional hazard models showed that...
Many publishers are using the Copyright Clearance Center (CCC) RightsLink service to simplify permissions requesting and provide immediate pricing.
Activity

- Go to the website for a journal you read or cite frequently, and start the process of requesting permission to reuse a figure. Do not submit the request!
- Question to answer in the chat: What was surprising, interesting, and/or difficult about this process?
Obtaining & paying for permissions: step 3

Pay what the copyright owner requires

● Unless otherwise stipulated in your publishing agreement (unlikely), paying this fee is your responsibility, though you can always ask your publisher to cover part of the fee.
● You can also negotiate with the copyright holder.
● You may be able to find funding through your department or school.

Money by Pictures of Money is licensed CC BY 2.0
Documentation: step 4

- Keep all permissions documentation with the files for the work you’re creating; use our tracking spreadsheet.
- Provide copies of permissions documents to your publisher.
- Make sure to use the exact attribution required by the copyright holder.
If you cannot obtain permission . . .

- Reconsider fair use -- can you revisit how you’re using the work to make it weigh more in favor of fair use?
- Consider linking out to the item rather than reusing it; use a placeholder where an image might go that states, “Image redacted due to copyright restrictions.”
- Find a substitute work.

Photo by Nadine Shaabana on Unsplash
QUESTIONS?

Jody Bailey
jody.bailey@emory.edu

Melanie Kowalski
melanie.t.kowalski@emory.edu

Schedule a consultation:
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