

Copyright considerations

Copyright law is complex, but you need to be aware of how it affects what you can do. This guide will give you some pointers, but it does not constitute legal advice. You should seek your own specific advice in relation to your own circumstances. The compilers of this guide and the University of Leicester cannot accept any responsibility for actions taken as a result of reading this guide.

What is copyright?

UK copyright is an **automatic** right afforded to those who **create** literary, dramatic, musical and artistic works, sound recordings, films and broadcasts, **whether published or unpublished**. The key legal framework is the Copyright, Designs and Patents Act, 1988, with some subsequent amendments. Ideas are not copyright, but as soon as they are expressed in some tangible form they are covered by the Act, which protects their creator from the exploitation of their work. Because copyright is automatic in the UK, it does not need to be registered, nor to carry the © copyright symbol.

Facts are not copyright. If someone has written that your village is 10 miles from Leicester, and it is, then you are also free to say that your village is 10 miles from Leicester.

Copyright lasts for a fixed time period. How long that is depends on the nature of the work and whether or not it is published. The Collections Trust has produced a table which sets out the details, which can be found at <http://tinyurl.com/ngbgggc>. Most **published** works remain in copyright for 70 years from the end of the calendar year in which the last remaining author of the work dies. The date of publication is irrelevant. Most **unpublished** works, even those created several centuries ago, will remain in copyright **until 31 December 2039**.

Copyright law provides the creator with moral rights, for example, for the creator to be identified as the author, and for the work not to be subjected to derogatory treatment. Moral rights always remain with the creator.

The law also provides economic rights. Under UK law, the owner of these rights has the right to copy the work, to issue copies to the public, to rent or lend the work, or to adapt it in any way. Economic rights can be given away, licensed or sold, so **you may need to obtain permission from someone other than the creator** if you wish to copy or reuse an item.

There are some acceptable forms of copying, termed 'fair dealing'. Hence you may have seen notices by photocopying machines in public libraries, or may have had to sign a form before photographing a document in an archive, which sets out certain restrictions, for example on the number of pages that can be copied and on how your copy can be used. Under 'fair dealing', you can copy a limited part of a work if your copy will only be used for non-commercial research or private study. You may also quote very short passages from someone's work, provided you correctly attribute them to the author. If what you want to do is not covered by 'fair dealing' and the work is in copyright, **you need to seek permission** from the copyright holder(s).

The law also recognises employer rights (another category where the creator is not necessarily the copyright holder), performance rights (which attach to the performer) and audio rights. Employer rights mean that an employer holds copyright in an item created in the course of an employee's work, unless a contract is held to the contrary.

Creative Commons

Rights-holders can waive any of their economic rights by giving you specific permission to reproduce something. Creative Commons takes that one step further, and allows copyright holders to licence their work in a way that will allow anyone to reproduce it under certain specified conditions. Creative Commons licences are internationally recognised. A number of versions are available, which carry predefined restrictions and limitations. Each licence has three layers: a legal layer giving full details, a layer that can be read by humans (indicated by letters and symbols) and a machine-readable layer that can be embedded into a website and read by search engines, such as Google or Yahoo.

There are now large numbers of photographs available through the internet under a Creative Commons licence, and there are sites (such as Flickr) that let you licence and upload your own photographs. The advanced search function on sites such as Google, Yahoo and Flickr allow you to search just for items licensed under Creative Commons, which you can then use in your own work in the manner specified. These must always be attributed to the creator, and the date of access should be indicated (in case licence terms change).

Bear in the mind that some of these resources may have been uploaded by individuals other than the copyright holder. If the image looks too professional, or is completely different to other images uploaded on that account, exercise caution.

There are four component choices within a Creative Commons open licence: Attribution (BY), Share Alike (SA), Non-Commercial (NC) and No Derivative Works (ND). These can be combined in different ways to give six types of licence:

- Attribution (CC BY)
- Attribution Share Alike (CC BY-SA)
- Attribution No Derivatives (CC BY-ND)
- Attribution Non-Commercial (CC BY-NC)
- Attribution Non-Commercial Share Alike (CC BY-NC-SA)
- Attribution Non-Commercial No Derivatives (CC BY-NC-ND)

For more details, see <http://creativecommons.org/>

Attribution (BY)	Share Alike (SA)	Non-Commercial (NC)	No Derivative Works (ND)
You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request.	You allow others to distribute derivative works only under a license identical to the license that governs your work.	You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for non-commercial purposes only.	You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.
			

If you need to seek agreement from a rights holder to make their work available under a Creative Commons licence (and some project funders now insist on this as a condition of their grant), you are most likely to obtain agreement if you choose the non-commercial option.

Seeking permission

Seeking permission to reproduce an item is rarely straightforward. The first steps are to make a list of what you know about the item and the possible copyright holder(s).

- If the author or artist is named, you might be able to get in touch with them through their publishers, agent or a biographer.
- There are professional associations with databases of members who might be able to help.

- A database of the author's/artist's known works, with dates of publication (such as a library catalogue), can give an indication of whether they are likely still to be alive.
- If the work is unpublished or anonymous, where did you get the item from, where did they get it from, and was any deposit agreement or transfer of copyright signed?
- Have you signed any form to get the copy you hold? If so, what does it allow you to do?
- Does the item contain any trademarks or logos? These can help you trace a copyright holder, but you also need to make sure that the way you are using the item does not imply that the owner of the trademark is endorsing your work.

Orphan works are those where you cannot ascertain who holds the copyright, or those where you know who holds it, but you don't know where that person (or their executor) is. That does not make you free to reuse the material. However, there are a number of ways in which you can reduce the risk of a claim by the copyright holder if you do reproduce the item, the most important being due diligence.

When carrying out your due diligence checks, make a note of where and how you looked for the rights holder. You may need to refer back to these if the rights holder comes forward. Due diligence does not protect you from, but will help defend against, a claim of infringement.

Privately owned and unpublished records are unlikely to be copyright-free and you must seek permission from the owner, who may be able to tell you who holds the copyright. This also applies to privately owned records in public archives.

Due diligence

The following websites may help you to locate a copyright holder (this is not intended to be a comprehensive list):

- WATCH (Writers, Artists and Their Copyright Holders) <http://norman.hrc.utexas.edu/watch/>
- FOB (Firms Out of Business) <http://norman.hrc.utexas.edu/watch/fob.cfm>
- Companies House <http://www.companieshouse.gov.uk/>
- Intellectual Property Office <http://www.ipo.gov.uk/types/tm/t-os/t-find.htm>
- SUNCAT (Serials Union Catalogue – a database of regular publications, such as journals, periodicals and annual reports <http://www.suncat.ac.uk/>
- COPAC (National, specialist and academic libraries in UK and Ireland) <http://copac.ac.uk/>
- British Library <http://www.bl.uk/>
- ALCS (Authors' Licensing and Collecting Society) <http://www.alcs.co.uk/>
- WGGB (Writers' Guild of Great Britain) <http://www.writersguild.org.uk/>
- Society of Authors <http://www.societyofauthors.org/>
- RIBA (Royal Institute of British Architects)

When seeking permission, always follow the 4 Cs:

- Clarity
- Correspondence
- Chase
- Challenge

Clarity <ul style="list-style-type: none">• Whether you are writing to a known person at a known address, or sending a speculative letter to a possible rights holder, state exactly what permission you are seeking – what do you want to reproduce and how and where do you want to reproduce this?• Before applying, think about other possible uses you might want – you don't want to have to make a second approach.• Make it clear whether your publication will be non-commercial (not for profit) or a commercial venture.• If you want to publish online, remember that your web address might change.• Ask if you may use the item in perpetuity - although the person may only agree a shorter term.	Correspondence <ul style="list-style-type: none">• Keep copies of every letter and email, and the results of every web search, so you can demonstrate (if it should ever be necessary):<ul style="list-style-type: none">- the steps you have taken to try to identify the rights holder- what you have sought permission for- the terms of any copyright permission granted.• If people have lent items to you (as often happens with community projects, perhaps with the express or implicit understanding that these will be published) it is best practice to ask them to sign something at the time, putting their intentions and agreement beyond doubt.
Chase <ul style="list-style-type: none">• Wait for 6 weeks; if you have had no response, send a chaser.• If there is no response to your chaser, try addressing the letter to a different person at the same address• Try different forms of contact – such as email and letter	Challenge <ul style="list-style-type: none">• If you get an answer which isn't quite what you want, challenge it. Stress the non-commercial nature of your publication, if appropriate.• If the copyright holder wants a fee, negotiate the sum. Will they accept a copy of your publication instead? Try to negotiate rights in perpetuity in exchange for payment.• If you want or need to make the material available under a Creative Commons licence, and the person will only provide a more restrictive permission, go back, give your reasons and repeat your request.

If you are still unable to obtain permission, but are thinking of publishing anyway, there's a calculator available online which will help you to assess the risk.

See <http://www.web2rights.com/OERIPRSupport/risk-management-calculator/>

Although it provides no legal protection, if your publication includes a clear disclaimer, combined with a defined take-down policy, this may help to appease the wrath of any copyright holder who believes you have infringed their rights. Your disclaimer should include a statement along the lines of 'We have been unable to locate a copyright holder for ... but if you believe it to be your copyright please contact ...' If someone does contact you, be prepared to apologise immediately and offer to remove the item or acknowledge their copyright ownership. Hopefully no copyright owner would insist that you pulp a large stock of books that have not been produced for profit, or take you to court if you have taken every possible step to identify them and seek their permission, but the sooner you offer an apology, the more generous the copyright holder may be inclined to be. A takedown policy should state clearly how people can contact you, how soon you will respond, what immediate action you will take and the circumstances under which you will you remove items (for example immediately, or not until copyright is proved).

Further reading and advice

- [JISClegal](http://www.jisclegal.ac.uk/) - presentations and webcasts on legal matters, monthly newsletter, regular publications and an advice service. Their section on Copyright and Intellectual Property Law is particularly useful: <http://www.jisclegal.ac.uk/LegalAreas/CopyrightIPR.aspx>
- [Web2Rights](http://www.web2rights.com/) is a JISC-funded project which provides good diagnostic tools and flowcharts to help you make decisions about copyrighted content you may wish to use in your materials. (JISC originally stood for Joint Information Systems Committee, but JISC is now a company and registered charity which aims to 'champion the use of digital technologies in UK education and research'.)
- [JISCdigitalmedia](http://www.jiscdigitalmedia.ac.uk/) provide advice and training on the use of still and moving images, audio content and other area such as music, animation and video
- The Collections Trust <http://tinyurl.com/q6h2p57> for guidance and a list of further reading
- [GNU Operating System](http://www.gnu.org/) - generally concerned with free software
- [Eduserv's Copyright Toolkit](http://www.eduserv.com/copyright-toolkit/) (produced in conjunction with Copy-Right Consultants Limited) gives a good introduction to copyright for the inexperienced user via exercises and basic guidelines
- [CreativeCommons.org](http://creativecommons.org/) - allows you to create and use/embed the open licence of your choice and explains the origins and purpose of the creative commons licences

- [The Open University](#) provides guidance on creating open educational resources and contains a section on copyright and OERs

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