

OBTAINING COPYRIGHT PERMISSIONS: ONLINE RESOURCES

BY ANN HEMMENS

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I. Web Page: Information on Obtaining Copyright Permissions

A. Purpose

A new school year is about to begin, and the faculty members at your law school are compiling course materials for the new classes they will teach in the fall quarter. Do the faculty members need to obtain the consent of the copyright owner to use a particular work in the student course pack? If so, who is responsible for obtaining the copyright permissions and how do they do it? Some of these questions (e.g., who is responsible for obtaining the permissions) are answered by individual law school policies. Others are answered, at least in part, by this article, which provides basic information on obtaining copyright permissions and describes the content of a Web page on the University of Washington Gallagher Law Library Web site: *Information on Obtaining Copyright Permissions* <lib.law.washington.edu/ref/copyright.html>.

My colleague Mary Whisner, aware of our faculty and staff's need for information to help them obtain copyright permissions, suggested that I create a Web page that organized online resources. The primary audience of this Web page is the faculty and staff of the University of Washington School of Law, but we hope this guide will be useful for others in the academic community seeking permission to use copyrighted materials for teaching, research, or scholarly activities.

B. Layout and Content

The Web page is in an outline format, arranged by type of organization and resource provided.

Section I has links specific to the University of Washington community, such as the *Copyright Connection* <depts.washington.edu/uwcopy/>, a Web site created by Catherine Innes, the copyright information officer at the University of Washington; this site serves as a reference guide on copyright issues related to the use and creation of copyrighted works at the University. Section II covers Web sites with links to publishers' permissions offices, such as the *Copyright Management Center* <www.iupui.edu/~copyinfo/permit.html>, and to copyright organizations, such as the *Copyright Clearance Center* <www.copyright.com/>. Section III provides links to publishers' Web sites, for both legal and nonlegal materials. The majority of the Web sites in this section are available freely on the Internet, such as *Legal Vendors and Publishers* <www.washlaw.edu/publishers/publishers.html>, from Washburn University School of Law Library, and the *On-Line Directory of Law Reviews and Scholarly Legal Periodicals* <www.andersonpublishing.com/lawschool/directory/>, from Anderson Publishing Company. Other links are limited to members of the University of Washington community because they connect to subscription-based online services (e.g., *Books in Print* and *Ulrich's International Periodicals Directory*). Section IV includes organizations providing direct links to author Web pages or searchable databases of author contact information (e.g., *WATCH* <www.hrc.utexas.edu/watch/watch.html>). Section V includes links to government agencies providing copyright information and forms. Section VI has links to intellectual property and copyright ownership policies from selected colleges and universities. The links in Section VII and VIII are to Web sites containing large amounts of information on copyright, including primary legal material, information on fair use, and forms for registering copyright material.

II. Why Permissions Are Important

By grant of the U.S. Constitution, Congress has the power "[t]o promote the progress of Science and useful Arts, by securing for limited

“The purpose of the fair use doctrine is to ensure that copyrighted materials are freely available to people engaged in criticism, scholarship, and research.”

Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”¹ The purpose of copyright law is to find a compromise that protects the rights of copyright owners (to control their works and to receive royalties from the sale of their works) and the rights of the general public (to use works in particular situations). Copyright applies to many types of materials, including the written word, sound recordings, and visual images such as photographs, motion pictures, and videotapes.

The process of obtaining copyright permission involves acquiring the consent or authorization from the copyright owner to use the copyrighted work. Obtaining such permission is a safeguard against legal claims of copyright infringement. For example, when a professor is interested in compiling a packet of materials for a class (a “course pack”) or when a company is interested in distributing multiple copies of a journal article to its clients, such users must obtain copyright permissions for all the relevant materials. The cost of obtaining permissions varies.

Obtaining copyright permissions is not necessary in special circumstances. For example, if the work has passed into the public domain and is not protected by copyright law, then permissions are not required. There are four reasons a work may be in the public domain, the most common of which is expiration of copyright (i.e., the work was published before 1923). Other reasons may be that the owner fails to renew the copyright, the creator dedicates the work to the public, or the work is simply not a type protected by the law. Professor Laura Gasaway, at the University of North Carolina School of Law, created a chart delineating when a work passes out of copyright protection and into the public domain <www.unc.edu/~unc1ng/public-d.htm>.

Another scenario in which copyright permission may not be required is when the use of the material is covered by the doctrine of fair use. The principle of fair use attempts to find a balance between the competing requirements of the guarantees of free speech found in the First Amendment of the U.S. Constitution and the provision of monetary compensation to the

authors of copyright-protected works. The purpose of the fair use doctrine is to ensure that copyrighted materials are freely available to people engaged in criticism, scholarship, and research, such as members of the academic community. Fair use is included in the copyright statute. The four factors considered when assessing what constitutes fair use as found in 17 U.S.C. § 107 are

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.²

These four factors must be balanced in each case to determine whether fair use applies. According to some scholars, the greatest weight can be placed on the fourth factor relating to potential monetary loss to the copyright holder.³

III. Process of Obtaining Permissions

A. Contact the Publisher

One option in your search for the company or person who owns the rights to a particular work and has authority to give permission for the use of the work is to contact the publisher. The most convenient situation involves a publisher that has either a permissions department or a particular employee dedicated to the work of handling reprints and permission requests. Under the heading “Publishers’ Permissions Offices and Copyright Organizations” on the Gallagher Law Library Web page, you will find links to several copyright Web sites that maintain a separate section for linking to the permissions department of various publishers. For example, the Association of Academic Publishers (AAP) maintains a Web page with links to the permissions departments of its members’ home pages and an AAP-approved permission request form.

² 17 U.S.C. §107(1)–(4) (1994).

³ Laura N. Gasaway & Sarah K. Wiant, *Libraries and Copyright: A Guide to Copyright Law in the 1990s* 27 (1994).

¹ U.S. Const. art. I, § 8, cl. 8.

Another path to the publisher is to explore several of the Web sites listed in the “Publishers’ Websites” section of the Gallagher Web page. Here you will find online directories and lists of publishers’ Web sites for both legal and nonlegal materials such as *AcqWeb’s Directory of Publishers and Vendors* <acqweb.library.vanderbilt.edu/acqweb/pubr.html>, and *A Legal Publishers’ List: Corporate Affiliations of Legal Publishers* <www.colorado.edu/Law/lawlib/ts/legpub.htm#list>. These sites will generally take you to the home page for a publisher, and from there you must search for the permissions department.

B. Contact the Author

Another option in the quest for copyright permissions includes searching directly for the author of the work in question. Many authors or their publishers now maintain Web sites with author contact information. For example, the American Society of Journalists maintains a Web page with links to the Web sites of nearly 1,000 nonfiction writers who are members of the organization <www.asja.org/new/memsites/weblist.php>. Additionally, the University of Texas maintains a searchable database of contact information for authors, titled *WATCH: Writers, Artists, and Their Copyright Holders* <www.hrc.utexas.edu/watch/watch.html>. If the work does not display copyright information, you could search the Library of Congress Information System (LOCIS) database from the Copyright Office of the Library of Congress <www.loc.gov/copyright/rb.html> to determine if the copyright is registered and who the copyright owner is.

C. Copyright Clearance Services

If a law professor wants to create a course pack of various materials (e.g., a collection of photocopied articles and book chapters), the easiest solution for obtaining copyright permission may be to contact a private clearance organization such as the *Copyright Clearance Center (CCC)* <www.copyright.com/>. The CCC offers many services designed specifically for the academic community, such as the Academic Permissions Service and the Electronic Course Content Service. These services are useful for obtaining permission for paper or electronic course packs or reserves. The CCC also provides services targeted

toward the commercial world, such as the Transaction Reporting Service (which includes individual permission services).

In the academic setting, university policies may prescribe who is responsible for obtaining copyright permissions for course packs. For example, a university may require that the campus bookstore, copy shop, or another division handle the process of acquiring copyright permissions for faculty members attempting to compile a course pack. At the University of Washington, the Copy Services Division of the Publications Services Office operates a Copyrights Permission Center <www.pubserv.washington.edu/copy/CopyRightsPerm.html>. The services provided by this Center are available to members of the academic community preparing printed course packs to be sold at University of Washington copy centers. The Center obtains permissions from publishers to use selected materials, prints and sells the course packs, and incorporates the cost of the service in the price of the course pack. Other schools may have similar services.

IV. Other Sources of Information

This article provides a brief overview of obtaining permission to use copyrighted material for scholarly purposes and discusses the content of the *Information on Obtaining Copyright Permissions* Web page. The field of copyright law is vast and complicated. For more detailed guidance on determining whether or not a particular work is protected under copyright law, consult resources such as the *Copyright Crash Course* <www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm> from the Copyright Management Center of the University of Texas System Administration Office of General Counsel, or the *UW Copyright Connection* <depts.washington.edu/uwcopy/>, created by the copyright information officer at the University of Washington.

Several Web sites that provide a broader overview of copyright law and specific doctrines such as fair use are found under the headings “General Copyright Websites” and “Mega-Sites” on the Gallagher Web page. For example, *Copyright and Fair Use* <fairuse.stanford.edu/> is provided by the Stanford University Libraries and

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contains links to primary legal materials, current legislation, and cases dealing with copyright and fair use. *Copyright and Intellectual Property* <arl.cni.org/info/frn/copy/copytoc.html> is a Web site provided by the Association of Research Libraries that provides links to copyright legislation and cases as well as international copyright organizations and documents. And finally, for an overview of the copyright policies of various universities and colleges, explore the links under the heading "Selected Academic Copyright Ownership Policies."

There are many other sources of information available for questions related to the use and creation of copyrighted materials in an academic setting. Many, if not all, universities have an official staff person devoted to the topic, often called a copyright information officer. Additionally, many universities publish copyright policies in faculty or research handbooks. University officials responsible for answering copyright questions may include the general counsel, the director of technology development, or the director of the office dealing with research grants and contract administration.

The *Information on Obtaining Copyright Permissions* Web page is one more tool available to you in your search for copyright permissions in an academic setting. If you have any suggestions or comments on the Web page, please send them to Ann Hemmens at hemmens@u.washington.edu.

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