Introduction

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The following guidelines will help you identify when you need to request permission and understand the reasons why. These guidelines should not be construed as legal advice or as a substitute for consultation with a knowledgeable attorney in any particular circumstance. For additional discussion of copyright and permissions, please refer to chapter 4 of the *The Chicago Manual of Style, 16th Edition*, or to the *Chicago Manual of Style Online*. For the advice and wisdom of a publishing insider, we encourage you to
pick up a copy of *Permissions: A Survival Guide*, by our Executive Editor Susan Bielstein.

Much of what you quote in your manuscript, and perhaps even some of your illustrations, likely to not require permission, either because they fall under “fair use” or are in the public domain. We explain the concepts of fair use and public domain below, but first some basics of copyright.

**What is Copyright?**

“Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of ‘original works of authorship,’ including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.” (www.copyright.gov) Copyright affords the author of a work certain rights, including the right to reproduce it and to distribute copies of the work.

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US copyright law does allow for the *fair use* of copyrighted material for scholarly and critical purposes. If your use of copyrighted material falls within the bounds of fair use, you do not need to seek permission to use that material.

**Fair Use**

The doctrine of fair use was originally developed by judges as an equitable limit on the absolutism of copyright. Please understand that fair use is not a *right* in the tradition
sense; it is actually a legal defense should the user of another party's work be sued for copyright infringement. Thus, fair use in one instance may be viewed as copyright infringement in another. No one can give an absolute prediction of how a court may rule in a particular case, so one should not make claims of fair use frivolously. Claims of fair use will be evaluated by the Contracts and Permissions office of the University of Chicago Press, though the legal and financial liability is ultimately the Author’s.

In determining whether a particular use of copyrighted materials qualifies as fair use, four factors should be considered:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose;
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.

Since copyright is essentially a means of protecting financial interests, it is easier to make a case for the fair use exception for scholarly books or books with relatively small print runs. As a rule of thumb for scholarly works, short prose extracts, and poetry extracts (no more than several lines, depending on the length of the poem) will fall under fair use, provided they are the subject of discussion in the book, and no permission need be sought. It is more difficult to claim fair use for copyrighted works of visual art reproduced in their entirety, and you are encouraged to err on the side of caution in such cases.

For more on fair use, visit http://fairuse.stanford.edu/ and http://fairuse.stanford.edu/charts_tools/.

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All works will eventually go out of copyright and enter the public domain. Once in the public domain, the exact work may never again be protected and is free for all to use. Herman Melville’s *Bartleby, the Scrivener*, for example, is in the public domain, even if Melville’s heirs would prefer that it not be. (One might, however, copyright an annotated edition of *Bartleby*. )
U.S. Copyright law is complicated and nuanced, but it is safe to assume that works created and published in the United States before 1923 are in the public domain. For works created after 1923, various terms of copyright apply, depending on the circumstance. The most conservative measure is to assume copyright extends for the life of the author plus 70 years, though for more on the nuances of post-1923 copyright, you may refer to Lolly Gasaway’s chart, below, or to this helpful interactive website: www.librarycopyright.net/digitalslider

When Permission is Needed

Unless a work is in the public domain, or you have determined that your use of the work is very likely a case of fair use, you will need to request permission.

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FOR TEXTS: For texts published after 1923 and quoted beyond acceptable practices of fair use, you will need to seek permission. For texts never before published, you may be able to claim fair use ("The fact that a work is unpublished shall not itself bar a finding of fair use," says the Copyright Act of 1976), but the standard is likely to be higher. Extensively quoted archival material that has never been published may require permission regardless of the date of composition. Please consult with your editor.

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For Film Stills

Authors wishing to reproduce frame captures from films are in luck. Frame captures, also called film stills, are generally considered to fall in the realm of fair use for scholarly
publishing. Essentially, a frame capture represents 1/24th of one second of a film, which hardly represents the whole heart of the work, and cannot be said to infringe upon the market for the film. Film stills should not be confused with Production or Publicity Stills, which are photographs taken on a film’s set, and which may be subject to copyright protection. For a complete discussion of the use of film stills in scholarly publishing, see the Report of the Ad Hoc Committee of the Society For Cinema Studies, "Fair Usage Publication of Film Stills" by Kristin Thompson.

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You are obliged to make reasonable efforts to contact all persons or organizations with a legal interest in the work you wish to reproduce. In the case of texts, the publisher will likely have the authority to grant permission. In the case of works of art, the artist, the artist’s gallery or estate, or an organization such as the Artist Rights Society or the Visual Artists and Galleries Association (VAGA) will be able to grant permission.

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**More on Art Permissions for Your Book**

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The benefits of completing this step in advance of submitting your final manuscript are many. Completing your permission work will ensure that you can include any necessary permission language or copyright notices in your list of illustrations or captions.

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time accordingly when it comes to reviewing the edited manuscript, galleys or page proofs.

With this in mind, we’ve prepared a brief primer on art permissions to help you tackle this project. In addition to these notes, the staff of the University of Chicago Press remains at your disposal should you have questions, concerns, or special circumstances to discuss. Authors expecting to acquire a good number of images and permissions are also encouraged to read *Permissions: A Survival Guide*, by Susan Bielstein.

The first step is to locate the images you need: who can provide a copy? A museum? An archive? An image bank like Art Resource? Once you’ve located the image, you’ll need to formally request to use that image in your book. Please use the template permission letter found at the end of this document to request permission. In many cases, the Grantor will require that you complete their Application for Reproduction, but this letter is a fine way to initiate a request.

In accomplishing your permission work it is important to understand the crucial distinction between “Copyright Permissions” and “Use Permissions.” The copyright for a work (a painting, a sculpture, a drawing) is not necessarily held by the owner of the physical work; in fact, in most cases the owner of the work does NOT own the copyright. For example, you wish to reproduce Picasso’s *The Old Guitarist*, found in the collection of the Art Institute of Chicago. You request a reproduction from the Museum, and they provide a high-resolution digital file, along with non-exclusive world rights to reproduce this image in your publication. But all that the museum has granted is the USE of their reproduction; you must still obtain permission to publish the underlying work from the owner of the copyright, the Picasso Estate (administered in this case by Artist Rights Society-ARS). The Press must receive both the Use and Copyright permissions before we will publish this copyrighted image.

Some older works are in the Public Domain, which is to say that they are no longer in copyright. Laws vary from country to country, but the safest way to determine if a work is in the Public Domain is this: date of the Author/Artist’s death plus 70 years. To use our previous example, Picasso’s works will enter the Public Domain in 2043.

If a work is in the Public Domain, you may still need to obtain a “Use” permission. For example, say you’d like to reproduce Paul Cézanne’s *The Basket of Apples* (1895). You
find that the painting is in the collection of the Art Institute of Chicago, and you write to ask if they will provide a high-resolution digital file. The Art Institute will ask you to complete a permission application for the use of their reproduction, and they will require that you adhere to certain terms of use, even though the image itself is in the Public Domain.

“Use” permissions are not always necessary, and you are encouraged to seek the Press’s advice regarding this gray area of copyright law. Despite the rulings in Bridgeman v. Corel, and more recently, in Meshwerks v. Toyota, stating that slavish reproductions of works do not rise to the level of copyrightable expression, some museums and other lenders continue to claim copyright for their photographic reproductions of works in the Public Domain. Sometimes these lenders may blacklist an author or a Press for using images in their collection without having obtained a Use Permission from them, or they may attempt to collect a fee and a penalty after publication. If you have an image, but do not have a Use Permission for that image, please consult the Press to determine whether or not one might be necessary.

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Downloadable Permission Request Templates

We recommend printing your permission requests on your institutional letterhead. (The files below are in RTF format.)

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