

Author Guidance on Copyright Permission

Copyright law automatically protects owners of literary, artistic, musical and other creative works to control the use of their work. As an HKUP author, you are required to obtain formal permission to re-use any material in your manuscript that does not belong to you. Failure to do so may result in unwanted amendments to your manuscript and impact the publication date of your book. We strongly advise that you seek permission early on in the writing process and keep your editor informed of progress.

Copyright usually resides in the creator of the work, but in the case of published works or works created in the course of employment, it is often transferred to a publisher, or may reside with an employer. Always check that the creator of the original work still retains the rights you need.

What materials require copyright permission?

Similar to other places around the world, Hong Kong law automatically confers copyright protection to the owners of original literary, dramatic, musical or artistic works, sound recordings, films, broadcasts and cable programmes. If you are using copyright material in your manuscript, you will need to obtain permission from the copyright holder unless the material is in the public domain or subject to a 'fair dealing' exemption. Examples of copyright material include:

- Textual extracts from other books, journals, websites, newspapers, as well as unpublished works
- Illustrations such as photographs, pictures, maps, drawings, tables and graphics, epigraphs, screenshots from websites, movie stills
- Songs, films, audio or video clips, computer programmes
- Poetry, musical scores and lyrics
- Trademarks (brand images and logos).

It is worth noting that just because a work is made available to the public for free does not mean that it is in 'the public domain'. It only means that the public have free access to it. You will likely still need permission to use the work for other purposes, such as publishing or copying.

Duration of copyright and the Public Domain

Copyright duration varies from country to country and also differs depending on the material used. In Hong Kong, copyright endures for 50 years from the death of its creator for literary, dramatic, and artistic works. For broadcasts and sound recordings, it runs for 50 years from the

release of the programme; and for films, 50 years from the death of its director or other designated person. There are proposals in Hong Kong to extend the copyright period to 70 years (in line with practice in the United Kingdom, the United States, and many other countries), but this has yet to be enacted. Once a copyright period has elapsed, the material enters the public domain and may be used freely without permission.

For photographs, it is important to note that even though the *subject* of a photograph may be in the public domain, the photograph itself may not be. For example, a photograph of a 100-year-old painting may belong to a photographer, a museum, an art gallery, or an agency. You will still need to approach the copyright holder of the photograph for permission to reproduce it.

Fair Dealing

Hong Kong law permits copyright material to be used without formal permission in specific circumstances set out in the legislation under a 'fair dealing' exemption. The fair dealing of copyright material for 'criticism, review or comment' or the 'reporting of current events' will not infringe copyright, provided it is accompanied by a sufficient acknowledgement. The 'fair dealing' exemption is similar to the law in the United Kingdom but different from the 'fair use' exemption in the United States, which is more broadly defined and not limited to specific categories.

To take advantage of a fair dealing exemption, you must show that

- it falls under one of the permitted categories (for academic works this is usually for the purposes of 'criticism or review')
- that the dealing of the copyright material is 'fair'
- and that it is accompanied by a sufficient acknowledgement.

The relevant provisions under Hong Kong Law on 'Acts Permitted in Relation to Copyright Works' can be found under Part 2, Division III of the Copyright Ordinance (Cap 528)

<https://www.elegislation.gov.hk/hk/cap528>

To determine what is 'fair', a court would consider four factors:

- the purpose and nature of the dealing
- the nature of the work
- the amount and substantiality of the portion of the work in relation to the original work as a whole
- the effect of the dealing on the potential market for or value of the work

The court's primary consideration will be that the infringing act does not conflict with the normal exploitation of the work by the copyright owner, or unreasonably prejudice their interests.

Whether the dealing is of a commercial nature or for a non-profit purpose may be relevant, as would whether a new work is seen to be competing with the original. There are no set thresholds or word limits for what amounts to substantial use.

The question of fairness is one of degree and requires case-by-case analysis. In some situations, reproducing even a small portion of an original work may not be fair if, for example, it undermines the value of the original work. If, however, the dealing falls within one of the permitted categories, is not excessive, and does not interfere with the value of the original work, and comes with a sufficient acknowledgement, it is more likely to be accepted as fair.

It is important to remember that the copyright material may or may not fall within a permitted category depending on *how* it is used. A borrowed quote used on the cover of a book, even if it is the same as one found inside a chapter, will not amount to fair dealing because it is not being used for 'criticism or review'. Similarly, you cannot rely on 'criticism or review' when using material from work that is unpublished.

As a general rule, you should seek permission for:

- Any copyright material that is not specifically being used for criticism or review or reporting current events
- Large or multiple extracts of another work, even they are used for criticism or review, or reporting current events
- A 'valuable' part of another work, even if the extract itself may not be large
- Using songs, lyrics, poetry, epigraphs, pictures, drawings, photographs, maps, charts
- Any unpublished work
- Using trademarks such as company logos and other branded images

If in doubt, you are advised to err on the side of caution, and seek permission or discuss the matter with your editor.

Official materials

Hong Kong government publications are owned by the government and require permission. Government copyright can last up to 125 years. Hong Kong legislation is also subject to copyright, even it can be copied and used for non-commercial purposes without permission.

In the United Kingdom, permission may be needed to use Crown copyright materials. However, much of this information can be used freely under the Open Government Licence as long as the

appropriate attribution is used to acknowledge the source of the material. You can check which materials are covered and their restrictions and conditions on the [National Archives website](#).

In the United States, materials that the government owns are in the public domain and may be freely used without permission, provided they are fully cited and acknowledged.

Archive materials may or may not require formal permission. It is important to check. Even if formal permission is not required, there may be conditions on how the material is to be cited or acknowledged.

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Please exercise judgment when relying on Creative Commons-licensed materials however. It is possible that the person who designates a Creative Commons licence to a work (for example, a person uploading a photograph to a website) may not, in fact, own all the rights to it. If in doubt, you are advised to contact the licensor directly to enquire further and confirm.

Finding the copyright holder

Copyright usually belongs to the creator of a work but in the case of published works this is often transferred to a publisher. For books, the details of the copyright holder can be found in the copyright notice and it is not always the author of the work. If a work is created in the course of employment, it is usually the employer who holds the copyright rather than its author. There can also be a number of copyright holders, especially in the case of songs and lyrics. If you are using a photograph of a work of art, you may need permission from the artist, as well as the owner of the photograph. Remember that the copyright holder of an illustration may be completely unrelated to the source from which it is taken.

Authors themselves may need permission to re-use material that they have licensed to a publisher.

If you are unsure how to identify the copyright holder, you can try contacting collecting societies (or performance rights organizations). There are numerous collecting societies in different

countries representing authors, artists, actors, musicians and other performers. The US-based [Copyright Clearance Centre](#) (CCC) procures agreements with rights holders around the world and is often a useful way to identify copyright holders.

In Hong Kong, the major collection societies are:

- Hong Kong Reprographic Rights Licensing Society (HKRRLS), representing authors and publishers of printed works
- Hong Kong Copyright Licensing Association (HKCLA), representing authors and publishers of local newspapers and magazines.
- Composers and Authors Society of Hong Kong Limited (CASH), representing composers and lyricists of musical works.

Requesting permission

Write to the copyright holder to request permission, indicating precisely the material you wish to use (e.g. presenting the extract or providing the word count and page reference, or in the case of an image, supplying a photocopy) and provide full details of the work in which you plan to use their material.

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You should let the copyright holder know if you plan to make any changes to the original material such as redrawing a map or adapting a chart.

Possible outcomes

The copyright holder may refuse permission or they may grant you permission without conditions. In other cases though, the copyright holder may ask for a fee, request a complimentary copy of the published book, ask for an acknowledgement (to be worded in a particular way or placed in certain part of the book), or a combination of the above. They may also restrict the use of the material to a certain format, sales region, language, or print run. Usually HKUP will only accept full rights to use the material but you are advised to speak to your editor about this or any other conditions the copyright holder has indicated so that we can consider, and if acceptable, comply with any instructions.

If you cannot locate the copyright holder, do not assume you can use the material. Instead you should contact your editor for advice. If you do not receive a reply to your written request, you

should try again and keep a record of all your attempts. You should try to contact the copyright holder at least three times and keep a record of your correspondence. If you still do not receive a response, please contact your editor to discuss the matter further.

Regardless of the need to obtain permission, any copyright material reused in your work should come with an acknowledgment and provide sufficient information to allow the reader to trace and verify the source. Copyright acknowledgements should appear next to the item reproduced.

Act early and keep a record

Remember to start the permissions process as early as possible as it can be very time-consuming. Failing to obtain permission at a late stage can impact your final draft and the publication date of your book. You should send permission requests as soon as you decide to include copyright material in your work. Please keep a record of your approaches and the written permissions obtained, noting any conditions or restrictions, and send them to your editor upon submission of your manuscript. Your editor will be happy to discuss any questions or issues with you throughout the process.

Further resources

HKU Community Legal Information Centre

www.clic.org.hk/en/topics/intellectualProperty/copyright

Hong Kong Copyright Ordinance (legislation)

www.elegislation.gov.hk/hk/cap528

Hong Kong Government Intellectual Property Department

www.ipd.gov.hk/eng/pub_press/publications/hk.htm