
3. Using pre-existing material

Writers of all kinds are likely to want to use pre-existing material in their work from time to time. For example, you may want to quote a few lines from a poem in your novel, reproduce a diagram in your textbook, illustrate your report with photographs, or have a character in your screenplay sing a popular song. In nearly all cases permission will be needed.

It's not always the writer who is responsible for getting copyright clearances. In the film and television industry, for example, it's normally the producer who is responsible for copyright clearances. Book publishing contracts, by contrast, normally require the writer to get all necessary permissions, although this is not always the case. If there is an agreement relevant to what you are writing, you should check what it says about responsibility for clearing rights.

In this Chapter we set out the questions you will need to ask yourself when you want to use third party material in your work, and provide some guidance in working out the answer. Note that when using pre-existing material, you will need to consider the moral rights of the creator (discussed below under the heading *Moral rights consents*) as well as copyright.

Working out if you need permission

If the material you want to use comes into one of the categories protected by copyright, you are likely to need permission to use it in your work, unless copyright has expired. You will not need permission, however, if what you want to use is less than a "substantial part" of the material, or if you can rely on one of the exceptions to infringement set out in the Copyright Act.

Is the material protected by copyright?

Copyright only protects certain types of material. The categories of material protected by copyright are set out in the following table. Material that does not come into one of these categories is not protected, and using it does not require copyright permission.

form of expression	examples
works made up of words	novels, textbooks, newspaper articles, lyrics, poems, plays
computer code	computer programs
compilations expressed in words, figures or symbols	anthologies, tables of statistics, telephone directories
music	
movement	dance, mime
two-dimensional images and representations	paintings, craft, photography, graphic design, buildings, logos, architectural plans, engineering drawings, maps, charts
three-dimensional objects	sculptures, handmade craftworks (such as glass works, jewellery), buildings
moving images	feature films, TV programs, TV advertisements, animated films, moving images in computer games, vodcasts
recordings of sounds	recorded musical performances, recorded interviews, mp3 files, podcasts
TV and radio broadcasts	
typographical arrangement and layout of a published document	books, newspapers, magazines

Names, titles and slogans

Not everything that is made up of words is regarded for copyright purposes as a "literary work". In a number of cases courts have held that particular names, titles or slogans were not protected by copyright because they were not "original literary works" as understood in copyright law. Examples include:

- *Exxon*, a word invented as the name of a corporation;
- *Opportunity Knocks*, the title of a TV program;
- *The Man who Broke the Bank at Monte Carlo*, the title of a song; and
- "The resort that offers precious little", an advertising slogan.