

TO PROSPECTIVE LLEWELLYN AUTHORS

A Brief Overview of Fair Use, Citation, Privacy, and Public Domain

In light of the many questions and issues that come up in regard to copyright law and permissions requests, Llewellyn has put together these guidelines. Copyright law is complicated and we empathize with any author who feels confusion over these legal issues. There are a few key points we believe our authors can use as simple, reliable guidelines while researching and writing.

1. **Fair Use.** This term comes up quite a bit and seems to require clarification. The most important point that we can make is that *fair use is not a right* in commercial, for-profit publishing.

The U.S. Copyright Law of 1976 explains that the concept of fair use is meant to be a balance between the rights of a copyright owner and the public's right to information, but that concept does not guarantee any author the privilege of using someone else's copyrighted material, especially where it may be seen to profit the borrower and/or negatively affect the borrowee.

Further, the fact that an author and publisher believe what they're doing is "fair" will not keep them out of court. As attorney Jonathan Kirsch explains in his *Handbook of Publishing Law*, "Technically, fair use is a *defense* to an action for copyright infringement, and thus the author and publisher will not find out with any certainty whether a particular use *is* fair use until they have been sued..." (Los Angeles: Acrobat Books, 1995. Page 146.) But there are guidelines to follow to substantially reduce an author's chances of being accused of copyright infringement:

- **Apply for permission** to use the material.
- **Rewrite the material** so that the ideas behind it are presented in your own words. You can also incorporate similar material from other sources, so that your work is a synthesis of your ideas and a variety of supporting material. If you do assimilate several works, or rewrite passages from other works, keep in mind that *close paraphrasing* may also be considered a copyright infringement. "Close paraphrasing" indicates that you can't

simply rewrite an author's direct quote while retaining the original structure, style, or flavor.

- **Limit the amount and substantiality** of the portion of the source work you are using. In choosing your quotes, data, or background material from other works, your first consideration should be “amount and substantiality.” What proportion of the source work are you using? Are you taking ten words from a 300-page book or 700 words from a two-page magazine article? What proportion of your work does the source material represent? Is your entire chapter on particular topic based on one or two sources, whether quoted, paraphrased, or used as background? Even if your quote or paraphrasing is brief, does it represent the heart of the source material—the author's conclusion, breakthrough research, unique perspective, etc.?

The above guidelines apply to prose sources. *Please note that fair use rarely covers poetry, song lyrics, or music, and it never applies to copyright-protected art or illustrations.* Also, note that paraphrasing does not cure copyright infringement, nor does re-drawing or re-working art. Particular arrangement of information, such as a chart, table, directions, or a recipe, may also be protected by copyright law, even though the information contained therein may not be.

There are many library sources from *The Chicago Manual of Style* to books on copyright law specifically intended to aid writers and researchers. There are also Internet and government resources and copyright newsletters.

2. **Citation.** Hand in hand with fair use is complete and accurate citation of your sources. *Please record your sources accurately and completely* while you're doing research, and include that citation information in your notes and bibliography. Also, in your note-taking, record direct quotes exactly so that you can reproduce them accurately or paraphrase properly. Another author might strenuously object to being included in your work, even under fair use, if you quote out of context or incorrectly.

3. **Privacy.** An individual's right to privacy is another area of the law you need to know. The circumstance we see most often is the “real-life” anecdote or case study. You cannot use someone else's name or words without a formal, written release. You may change the person's name and paraphrase, but if your interviewee is still easily identifiable from the anecdote or

case study, even to a small group, you could still have a problem. It is best to get a release or rewrite the details.

You also can't predict people's reactions or guess if they will change their mind at a later date. You may see the anecdote or case history as harmless or even very positive, but it's not your perception that matters. Don't rely on friendships, family relations, or the thought that the person will be flattered by being included in your work. When you are interviewing a person, always make clear to them exactly what you are doing and how you will use the material. Have them read the release, and read them back your notes at the end of the interview. If you are tape-recording, record an introduction as the interview begins: "I am talking to John Smith about _____ for possible inclusion in my book titled _____."

The interviewee may agree to sign a release during the interview, without reviewing the manuscript. If they do, please make sure that you have quoted them accurately and in context, and keep a copy of your notes and/or tape. Finally, if you are a doctor, counselor, or are in some other certified position, the rules of privileged conversation may be even more stringent than the right to privacy. You should consult your own attorney before using any case histories from your practice.

4. **Public Domain.** Public domain refers to publications, illustrations, or other forms of expression not protected by copyright law. For our purposes, it usually refers to items for which the term of copyright protection has expired (e.g., the poetry of Robert Burns), but it also refers to things that have never been protected (e.g., a government publication). The terms for copyright protection under the 1976 Copyright Act are divided between what was published after the Act went into effect, and what was already existing prior to the Act.

For *works created after January 1, 1978*, the general terms for copyright protection are as follows:

- Works by a single author, publishing under his or her own name and not writing as a work for hire, are protected for a term equaling the life of the author plus 70 years.
- Joint works by two or more authors and not done as work for hire, are protected for the life of the last surviving author plus 70 years.

- Anonymous and pseudonymous works, including works for hire, are protected for 95 years from the date of publication or 120 years from the date of creation, whichever expires first. These longer terms are intended to cover a presumed life, since we can't know when an author is dead if we don't even know who the author is. (Note, though, that pseudonymous works don't simply refer to pen names, if the author is identified in the copyright records, as would be the case with most authors.)

For *copyrighted works already existing on January 1, 1978*, protection lasts for a first term of 28 years from the date of publication, with a possible renewal period of 67 years, for a total of 95 years. If you are not sure if a copyright has been renewed, you can do a copyright search. Do not guess at whether a book or illustration belongs in the public domain. The fact that an author is dead, or either very famous or very obscure, has nothing to do with public domain.

Llewellyn's Policy Regarding These Issues

Llewellyn will apply the above guidelines without exception to any project we receive, whether from a new, first-time writer or from an established Llewellyn author. It is in your best interest to carefully consider these guidelines as you are creating your manuscript. Severe permission or privacy problems could result in our being unable to accept the manuscript without substantial author revisions, but even relatively simple permissions problems could result in delays in production and extra work on your part. Thank you.