

Securing and Protecting Copyright

Would you like to copy a part of someone else's writing to put in your own material or use a graphic, picture, or part of a song? Federal copyright law requires you to obtain permission from the copyright owner before using even a small portion of their work. The only exceptions to this are when your use of the work falls under "fair use" or when the work is part of the public domain. By learning when and how to secure permission to use a copyrighted work, and how to secure a copyright release for work that has been contracted, you can protect yourself from liability and ensure copyright protection for your own work.

TOPICS IN THIS GUIDE INCLUDE

- Getting permission to use copyrighted work
- Securing copyright from contractors
- Copyright exceptions: fair use and public domain



Getting Permission to Use Copyrighted Work

As a general rule, you need to get permission to use someone else's work. That applies to photos, illustrations, text and music whether they are published in print, on the Web, or unpublished.

- **Step 1:** Identify and contact the copyright owner to discuss your request. Emphasize that you are a nonprofit and that your material will be used for educational purposes.
- **Step 2:** Obtain signed, written permission from the owner that includes:
 - A description of the copyrighted work (writing, artwork, photo, music, etc.)
 - The portion of the work you want to use (if applicable)
 - The name and description of the material in which it will be used
 - The name of your organization to whom permission is being granted (your project and the California Department of Public Health, Tobacco Control Program (CTCP) if the material is being developed with CTCP funds)

Allow at least 4–6 weeks for this process. The copyright owner may grant or deny you the right to use his or her work, or may charge you a fee for using it. As always, when using photos you will need a signed **model release** from everyone recognizable in the photo(s).

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Note: To request permission to use content from or adapt material in the TECC sales catalog follow the procedures outlined in the *CTCP Administrative and Policy Manual*, Chapter 300, Section 17, pg. 49.

Securing Copyright from Contractors

Many projects contract with outside vendors to design their material and create appealing graphics. It is extremely important to tell the contractor(s) that CTCP and the State of California own all works that are purchased and created with Proposition 99 funds.

More specifically, if an artist or contractor creates a drawing, graphic, photograph, video, music, text, poster or other work for your project and it is paid for by Proposition 99 funds, it becomes property of CTCP and the State of California. (In the case of an LLA, the work is jointly owned by the county and state.)

CTCP requires that funded projects get a signed **copyright release** from all third parties/contractors. An artist may sometimes have an acknowledgement on the piece, but once they sign a copyright release they no longer own the work. In order to secure copyright from the contractor, you should do the following:



- Create your own written contract for the vendor that states the terms of payment and includes the CTCP contractual language. Specific language can be found in the *CTCP Administrative and Policy Manual*, Chapter 300, Section 03, p. 9.
- Have the contractor sign a **copyright release**.
- Additionally, projects and contractors that create photographs, posters, or works that use images of recognizable individuals, must also obtain a **model release** for each person in the photograph. A parent or guardian must sign the release for anyone under 18.

Besides obtaining copyright agreements from all contractors/vendors, CTCP requires funded projects to do the following to protect the copyright of the completed material:

- All published works should include the agency name, contact information (if space permits) and the date of publication.
- An acknowledgement statement should also be included to identify and acknowledge the source of the funding. Specific language can be found in the *CTCP Administrative and Policy Manual*, Chapter 300, Section 03, p. 7.

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Copyright Exceptions: Fair Use and Public Domain

Federal copyright law protects all created works and gives the owner exclusive rights to reproduce, adapt, distribute, perform or display the work. There are only a very few instances where you can use a portion of someone else's work without first getting permission: when the use falls under the guidelines for "fair use" or when the work has become part of the public domain.

Fair Use

Fair use defends the copying of limited portions of a work without permission for reasons that could be considered "fair," such as criticism, comment, parody, teaching, news reporting, research, and education. In general, if you are copying only a small portion of someone's work for educational purposes, such as quoting from a source, or citing research, your use will fall under the rights of fair use. You must still include the original source and author in your citation notes.

It is important to note however, that fair use is subject to interpretation. This means that if there is a dispute about copyright infringement, it will be up to the courts to determine whether the use is fair use. The four factors they consider are: 1) the purpose and character of the use, including whether it is for nonprofit educational purposes; 2) the nature of the copyrighted work; 3) the amount 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. (See Additional Resources below for more information.) Obviously, having a court decide your rights is a costly and unpleasant undertaking so we always recommend asking for permission if there is any doubt.



Public Domain

Any work that is part of the public domain can be freely copied, adapted, and distributed with no permission needed. Once a copyright expires the work becomes part of the public domain. There are a variety of ways for this to happen but it generally happens through age. All works created before 1923 are now part of the public domain. Work created after that may or may not be and will usually require research to determine its copyright status.

For more information, or to answer a specific question, CTCF-funded projects can contact TECC directly at (800) 258-9090 ext. 141.

Additional Resources

U.S. Copyright Office: <http://www.copyright.gov>

Stanford University Libraries, *Copyright and Fair Use*: <http://fairuse.stanford.edu/index.htm>

This is a general discussion of copyright and fair use issues involved in material development. It is provided for information only and should not be viewed or used as a substitute for legal advice.