

Getting Permissions for Use of Copyrighted Material in MU Extension Publications and Curricula

As an author of a University of Missouri Extension publication or curriculum, you are responsible for obtaining permissions for existing material not developed by you that you want to use in your work. **Plan ahead!** Getting permissions can take up to three months.

Why should I bother getting permissions?

Generally, it is safe to assume that any material **is copyrighted if it was first published in the United States after 1922**. If you use or adapt such material without first obtaining permission, you put yourself and the university at risk of being sued for copyright infringement.

Aside from protecting you from legal action, asking for permission is the ethical way to respect the intellectual property rights of a creator.

The material I want to use was published by another state's extension service. Isn't that material in the public domain?

No. The feeling of collegiality among extension organizations does not extend to a blanket permission to copy or adapt material published by other state extension organizations. Just as with MU Extension, their published material is covered by copyright law. Always contact the publishing group of an extension organization to seek permission.

There have been cases where one state's extension service has been sued by another state's extension service over use of copyrighted material. MU Extension has been threatened with a lawsuit for unauthorized use of parts of another state's curriculum in an MU Extension curriculum.

How do I know if a work is copyrighted?

Best practice is to assume that any work is protected by copyright. Kevin Smith, MLS, JD, director of copyright and scholarly communication at Duke University Libraries said, "As soon as an idea is fixed in a medium that is perceptible to human senses, it is covered by copyright." It does not need to carry the copyright statement in order to be protected.

Be aware that the author of a published work is often not the copyright holder. For example, if John Jones wrote a chapter in a textbook that was published by the Acme Publishing Company, the publishing company is most likely the copyright holder, not the author. You would need to request copyright permission from Acme Publishing. Although Jones may have given you permission to use the material he wrote, he cannot legally do so.

For example, if Dana Smith was a family finances extension faculty member for Kansas State University when she wrote a guide on family farm finances that was published by KSU Extension, you would contact KSU Extension for permission. Even though Smith was the author, she wrote the guide as part of her job while employed by KSU Extension. This is almost always considered "work for hire," thus KSU Extension is the copyright holder.

In some cases, authors and faculty have negotiated with the publishing entity so that the author retains copyright. Always check — don't assume.

Material that was written and developed by U.S. government employees, as part of their official capacity as federal government employees, is not copyrighted. You can use this work, but it is **always** a good practice to attribute the source. Some federal government material can be copyrighted if it includes material that is copyrighted by another organization or individual.

How do I get permission?

Regard your permission request letter seriously. Once it is signed and returned by the copyright holder, or once they reply by email granting you permission, this letter or email becomes a binding contract.

Follow these steps in obtaining permission.

1. **Identify and find** contact information for the owner of the copyright. If this information is not readily available, a good place to start your search is with the MU Libraries.

<http://library.missouri.edu/>.

If you don't find information about the copyright holder there, ask a librarian for help:

<http://library.missouri.edu/contactus/>.

2. **Compose a letter or an email** message to the identified holder of the copyright. NEVER rely on an oral agreement.
 - a. State who you are and how you intend to use the material (the name of the publication, curriculum, etc., along with a brief description).
 - b. State the name of your publishing organization, i.e., University of Missouri Extension.
 - c. State how the material you are producing will be used (as a manual, guide, participant manual in a curriculum, etc.).
 - d. Clearly identify the exact material that you want to use or adapt.
 - e. Let the copyright holder know whether you want to use his or her exact wording or whether you intend to edit or rephrase the work.
 - f. State whether or not you will charge a fee for the work you are producing. If there is a fee, state how much.

- g. If your work will be available on the MU Extension website in full text, state this in your request and give the URL.
 - h. State your intended distribution, e.g., south-west Missouri, the state of Missouri, the Midwest, North America or the world.
 - i. State your estimated publishing date.
 - j. If you plan to use the copyrighted material in other media, be sure to ask for permission to do so in your letter (for example, PowerPoint slides, video, audio tapes, Moodle or other online course).
3. If you are sending a letter of request, be sure to **include a signature and date line** for the copyright holder to indicate his or her agreement. If you are sending an email, ask the copyright holder to reply by email, **including** your requested terms in the reply.
 4. Ask **how to credit** the copyright holder(s) in your work.

Here's an example of how you can request permission by email, incorporating these four steps.

Good morning Ms. Johnson,
I believe that your organization, University of Florida IFAS Extension, holds the copyright on the guide Green Roofs for Urban Areas: Growing Better Buildings found on your website: http://sfyl.ifas.ufl.edu/archive/hot_topics/sustainable_living/green_roofs.shtml.

I am writing a University of Missouri Extension guide on better buildings in urban areas and have found your ideas on green roofs to be invaluable. I am seeking permission to use your descriptions of the types of green roofs to use in my publication. I would also like permission to slightly adapt your material to be suited to the Midwestern climate. I plan to publish this guide in December 2016. It will be online only, in HTML and as a free downloadable PDF.

If you grant University of Missouri Extension permission, your reply to this email can serve as your agreement. Please let me know how you would like to be credited.

Thanks for your time and consideration,
Judy Smith
Housing and Environmental Design Extension
Specialist
University of Missouri Extension

You can structure your email request similar to the this example, or you can simply state the details of your request in bullet points.

Once I receive a written permission, what do I do with it?

Save your electronic copy of the permission. It is a good practice to print out your permission and place it in your hard copy files for the publication or curriculum your are developing.

It is also a good practice to send an electronic copy of your permission to your editor. This helps ensure the chances of the permission being lost or accidentally deleted. Ultimately, the responsibility for securing the permission rests on you.

What if I am unable to locate the copyright holder?

Do not use the material. Look for another source. Due diligence in searching for the copyright holder is a good thing, but it does not protect you or the university from a potential lawsuit, should the copyright holder come across his or her material used in your work. In this case, even attributing the copyright holder (without first obtaining permission) will not protect you or MU Extension from a potential copyright infringement lawsuit.

What about Fair Use? Doesn't Fair Use cover all educational uses of copyrighted material?

No. Fair Use does not automatically apply to educational uses. The best policy is to seek permission for use. The alternative is for the courts to decide, on a case-by-case basis, whether or not Fair Use applies.

To determine whether or not your situation is covered by Fair Use, the law applies four factors:

1. Purpose and character of the work
2. Nature of the copyrighted work
3. Amount or substantiality of the portion used
4. Effect of the use on the potential market for or value of the work

All four factors will be applied and the weight of the factors varies.

Columbia University Libraries discusses these four factors and offers a checklist developed by Kenneth D. Crews (formerly of Columbia University) and Dwayne K. Buttler (University of Louisville). This checklist can help guide you as to whether or not you are within the boundaries of Fair Use. Note that this checklist will NOT make a determination! <https://copyright.columbia.edu> (See the "Copyright Basics" link in the right-hand navigation.)

I found clip art and a photo I want to use and the website says they are royalty-free. Can I use this without permission?

Royalty-free is NOT the same thing as copyright-free. Royalty-free artwork and photos can be in the public domain and free from copyright, OR they can be free or sold and protected under copyright law. Be sure to read the stipulations for EACH piece of clip art and for EACH photo. The restrictions will vary.

Royalty-free simply means that you have the right to use (or pay to use) clip art or a photo that is copyrighted without having to pay a royalty for **each use** or period of time you use it.

I found a photo I want to use, but it is covered under a Creative Commons license. What does this mean?

In their words, "Creative Commons is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools.

Our free, easy-to-use copyright licenses provide a

simple, standardized way to give the public permission to share and use your creative work — on conditions of your choice. CC licenses let you easily change your copyright terms from the default of “all rights reserved” to “some rights reserved.”

Creative Commons licenses are not an alternative to copyright. They work alongside copyright and enable you to modify your copyright terms to best suit your needs.”

Creative Commons offers a no-nonsense way for you to search for content:

<https://search.creativecommons.org>

For example, you may have found the perfect photo of the Pony Express statue in St. Joseph, Missouri. You have carefully read the restrictions and the photographer says her photo can be shared and adapted. The Creative Commons license states that, “You are free to:

Share — copy and redistribute the material in any medium or format

Adapt — remix, transform, and build upon the material for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the license terms.”

However, reading further, the Creative Commons license states that you can use this photo, provided

that you give attribution, and it goes on to spell out the terms of attribution.

So, providing that you give proper attribution, you are free to use her photo, as specified in the Share and Adapt restrictions.

Sometimes the photographer will list contact information. This can be helpful when you have questions about using a photo or image and would feel more comfortable in dealing directly with the copyright owner. Be sure to state the details of how you would like to use the photo (see above steps itaining permission).

If you have concerns as to whether or not a photo or image is covered under Creative Commons licenses, do not hesitate to contact the person who posted the material. Often they are flattered that you want to use their work and are happy to work with you to reach a mutually beneficial agreement.

For more information about the use of photos and copyright, refer to MU Extension guide *CM551, Using Photos and Images in MU Extension Programming: Copyright Licensing*.

For further reading

The University of Missouri Libraries has created an excellent resource for MU Extension.

<https://libraryguides.missouri.edu/ExtensionCopyright>