



# Copyright Clearance Basics

Kathleen Karcher

Ph: 862-220-9557

Email: [licensingassociatesnj@gmail.com](mailto:licensingassociatesnj@gmail.com)

# Table of Contents

Overview .....	1
U.S. Copyrights .....	1
International Copyrights.....	2
The Digital Millennium Copyright Act (DMCA) .....	2
DMCA Take Down Notice .....	2
Obtaining Permission .....	3
Clearance Process Workflow .....	4
Data Collection .....	5
Table Tools – Design (MS Access).....	9
Commonly Used Terms .....	10
Public Domain .....	10
Fair Use.....	10
Best Efforts .....	12
Most Favored Nations Clause (MFN).....	12
Creative Commons .....	13
References.....	14

## Overview

Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship” that are fixed in a tangible form of expression.

Examples of copyrightable works include:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Images, cartoons, illustrations, logos, figures, tables and graphics
- Paintings and sculptures
- Motion pictures and other audiovisual works
- Sound recordings, which are works that result from the fixation of a series of musical, spoken, or other sounds
- Architectural works

## U.S. Copyrights

In general, for works created on or after January 1, 1978, the term of copyright is the life of the author plus seventy years after the author’s death. If the work is a joint work with multiple authors, the term lasts for seventy years after the last surviving author’s death.

For works made for hire and anonymous or pseudonymous works, the duration of copyright is 95 years from publication or 120 years from creation, whichever is shorter.

For works created before January 1, 1978, that were not published or registered as of that date, the term of copyright is generally the same as for works created on or after January 1, 1978.

The law, however, provides that in no case would the term have expired before December 31, 2002, and if the work was published on or before that date, the term will not expire before December 31, 2047. For works created before January 1, 1978, that were published or registered before that date, the initial term of copyright was twenty-eight years from the date of publication with notice or from the date of registration. At the end of the initial term, the copyright could be renewed for another sixty-seven years for a total term of protection of up to ninety-five years. To extend copyright into the renewal term, two registrations had to be made before the original term expired: one for the original term and the other for the renewal term. This requirement was eliminated on June 26, 1992, and renewal term registration is now optional.<sup>1</sup>

## International Copyrights

There is no such thing as an “international copyright” that will automatically protect a work throughout the world. Protection against unauthorized use in a country depends on the laws of that country. However, most countries offer protection to foreign works under certain conditions that have been greatly simplified by international copyright treaties and conventions. Even if a country is not bound to protect copyrights by international copyright treaties or conventions, protection under the specific provisions of the country’s national laws may still be possible. <sup>1</sup>

## The Digital Millennium Copyright Act (DMCA)

The U.S. Congress approved the DMCA in 1998, and President Bill Clinton signed it into law. The act came into being in response to the growing problem of peer-to-peer file sharing websites that made it easy for people to illegally access copyrighted movies, music, and more. Lawmakers and media companies worked together to create the DMCA.

In addition to protecting copyright owners, the DMCA also protects internet service providers (ISPs), sometimes called online service providers (OSPs). An ISP, or OSP, is any company that provides online services or network access. If these ISPs comply with DMCA notices and make reasonable efforts to stop copyright infringement, they are protected from infringement lawsuits. This protection is valid if ISPs didn't have knowing participation in the infringement and they didn't gain financial benefits from it.

The DMCA covers any copyrighted material that could be infringed on the internet, including:

- Written words, such as articles, books, poetry, etc.
- Videos
- Audio files, including music
- Still artwork, including photos and other images
- Pictures that you've posted on your business's social media sites
- Software

## DMCA Take Down Notice

A DMCA Take Down Notice informs a company, web host, search engine, or internet service provider that they are hosting or linking to material that infringes on a copyright. The party that receives the notice should take down the material in question as soon as possible. If the site owner doesn't comply, the ISP can forcibly remove the content.

Copyright owners can send out a DMCA Take Down Notice, not just for infringing material, but also for any indices, references, or pointers that lead to infringing material.

DMCA notices are not helpful when the company that is hosting the infringing material is not based in a country that respects these notices. <sup>2</sup>

## Obtaining Permission

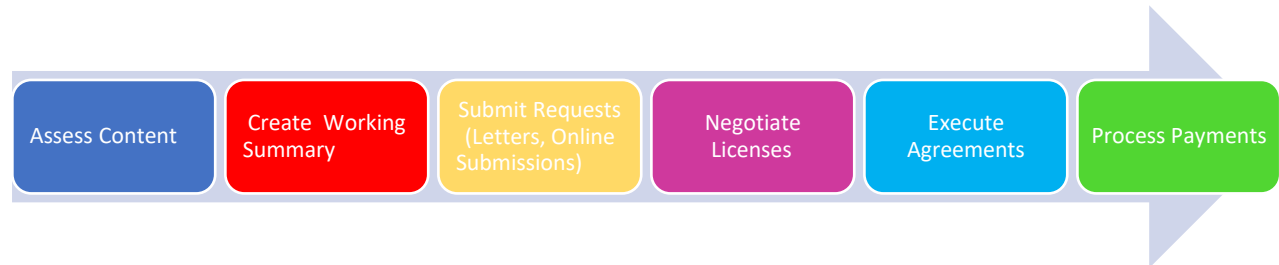
Obtaining copyright permission is the process of getting consent from a copyright owner to use the owner's creative material. Obtaining permission is often called "licensing." When you have permission, you have a license to use the work. Permission is often (but not always) required because of intellectual property laws that protect creative works such as text, artwork, or music.

If you use a copyrighted work without the appropriate permission, you may be violating—or "infringing"—on the owner's rights to that work. Infringing someone else's copyright may subject you to legal action. As if going to court weren't bad enough, you could be forced to stop using the work or pay money damages to the copyright owner.

As noted above, permission is not always required. In some situations, you can reproduce a photograph, a song, or text without a license. Generally, this will be true if the work has fallen into the public domain, or if your use qualifies as what's called "fair use." Both legal concepts, Public Domain and "Fair Use," involve quite specific rules. In most cases, however, permission is required, so it's important to never assume that it's okay to use a work without permission.<sup>3</sup>

## Clearance Process Workflow

There typically 6 steps in the process of obtaining permission to use copyrighted content. The following describes these at a high-level.



**Assess Content** – Review project content to determine if the use of any third-party copyrighted material requires permission. Validate author, content source, publication date, rightsholder contact info. Identify any third-party copyright administrators/agencies. Validate any public domain, fair use, Creative Commons content.

**Create Working Summary** – Create a record for each asset in rights management database or Excel worksheet. A scalable database is most practical for managing copyright information across multiple projects. Asset information, publisher contact info, permissions details, credit lines, fees paid, and other information can be captured in a single repository for tracking and reporting. Microsoft Access are good starting points for data collection. A proprietary database or off-the-shelf rights management software (buy or build) can be implemented as the need for more robust database software arises.

**Submit Requests** – Merge content records with publisher contact info, project details and proposed advances and/or royalties offered, credit line info and placement into request letter template. Include PDF or link to requested content. Submit requests for any rightsholders represented by third-party administrator or agencies. Track any system-retained request IDs.

**Negotiate fees and terms** – Negotiate any out of budget fee quotes and or outlying terms and conditions with the rightsholder. Finalize proposed licenses.

**Execute Agreements** – Sign and return licenses. Publishers will frequently require payment before issuing fully executed licenses. Set expectations for payment processing time when executing licenses to avoid late payment reminders and dunning notices.

**Process Payments** – Process payments in accordance with payment methods specified in license agreements. Most publisher will expect payment in local currency. Domestic publishers frequently use bank lock boxes (PO addresses) that are different from office mailing addresses.

Payment methods vary among publishers. ACH and wire transfer are commonly used, as are PayPal accounts for smaller publishers and many international publishers for ease of payment and currency conversion.

Payment information including any check or wire transfer number, PayPal confirmation numbers, payment date, and payee info should be captured in the rights management system for tracking and reporting.

## **Data Collection**

Accurate data collection is critical to tracking and managing content, rightsholder, credit line and payment information as it relates to licensing agreements. Data can be captured in a MS Access database, proprietary database or off-the-shelf rights management application (on-premise or cloud) depending on the volume of projects and complexity of licensing agreements.

For more information about rights management software see [Book Publishing Software](#).

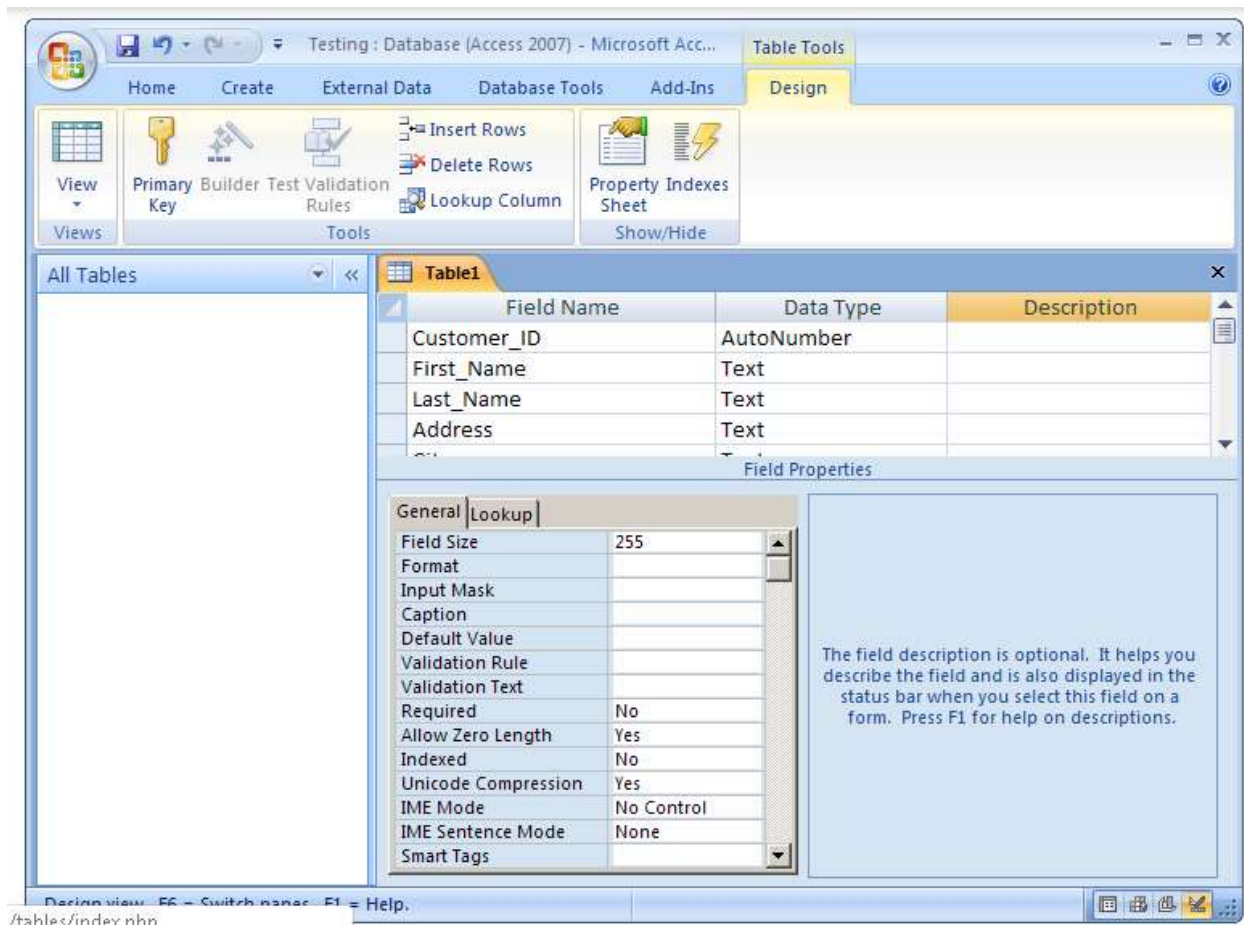
Database Definition		
<u>Publisher Info</u>	<u>Data Type</u>	<u>Example</u>
Publisher ID	Incremental	(System Generated)
Rightsholder Company Name	Text	Shutterstock
Address	Text	Empire State Building 350 Fifth Avenue, 21st Floor
City	Text	New York
State/Province	Text	NY
Zip/Postal Code	Text	10018
Country	Text	USA
Phone	Number	1-866-663-3954
Fax	Number	1-347-402-0710
Email	Text	licensing@shutterstock.com
Contact name (can be multiples)	Text	
Contact phone	Number	
Contact email	Text	
Website	Text	www.shutterstock.com
<u>Content</u>	<u>Data Type</u>	<u>Example</u>
Program	Text	e-learning for kids
Title	Number	Math-Measurements
ID	Text	M0100
Grade level	Text	K-8
URL:	Text	https://www.e-learningforkids.org/
<u>Project Info</u>	<u>Data Type</u>	<u>Example</u>
Format	Text	Print, eBook, eLearning, Streaming Audio/Video
Page count	Number	1200
Territories Requested	Text	Worldwide, North America
Term Requested	Text	10 years, In Perpetuity
Suggested Retail Price - print	Text	\$195 US
Suggested Retail Price - e-book	Text	\$95 US
Posting date (eBook)	Date	If using MS Access, dates must be delimited according to the ODBC canonical date format or by the date/time delimiter '#' ex. 2019-04-29 or #04-29-2019# (or format field as 'text')
Binding type (print)	Text	Hardbound, Softcover
ISBN (print – International Standard Book Number)	Number	10 or 13 digits
In stock date (print)	Date	If using MS Access, dates must be delimited according to the ODBC canonical date format or by the date/time delimiter '#' ex. 2019-04-29 or #04-29-2019# (or format field as 'text')



<u>License Info</u>	<u>Data Type</u>	<u>Example</u>
Status	Text	Requested Response Pending Quote Received Cleared Public Domain Fair Use Rightsholder Could Not Be Located Rightsholder Does Not Respond
Term	Text	In Perpetuity 10 years from initial posting date
Territory	Text	Worldwide
Gratis copies (print)	Number	1
Credit	Text	Images: © Navin74 // Flickr © Julian Colton // Wikimedia Commons Photo by Sebastian Widmann/Bongarts/Getty Images Image(s) and/or Footage used under license from Shutterstock.com.  Illustration (from textbook): Reproduced by permission from Mark Girouard, Life in the English Country House: A Social and Architectural History (New Haven, CT: Yale University Press, 1978), 162.
Credit placement	Text	On image, on mouse-over, in endnotes
Restrictions (if any)	Text	US only, Print only, None
Expiration date	Date	If using MS Access, dates must be delimited according to the ODBC canonical date format or by the date/time delimiter "# ex. 2019-04-29 or #04-29-2019# (or format field as 'text')
<u>Fee info</u>	<u>Data Type</u>	<u>Example</u>
Fee Type	Text	Gratis, Royalty-Based, Royalty-Free
Fee (Royalty-Free)	Currency	\$2,000
Royalty (if any)	Text	.10 per unit with advance on 10,000 units
Advance (if any)	Currency	\$1,000
Currency	Text	USD, GBP
Royalty Reporting Requirements	Text	Quarterly, Semi-Annual, Annual

<b>Payment Info</b>	<b>Data Type</b>	<b>Example</b>
Payment date	Date	If using MS Access, dates must be delimited according to the ODBC canonical date format or by the date/time delimiter '#' ex. 2019-04-29 or #04-29-2019# (or format field as 'text')
Payment amount	Currency	\$2,000
Payment method	Text	Check, Wire, ACH, PayPal
Check/ACH/Wire/Confirmation no.	Text	(text value)
Remit to Company Name	Text	Copyright Clearance Center
Remit to Address	Text	222 Rosewood Drive
Remit to City	Text	Danvers
Remit to State/Province	Text	MA
Remit to Zip/Postal Code	Text	01923
Remit to Country	Text	USA
Remit to Phone	Text	1-800-422-4633
Remit to Fax	Text	1-800-422-4644
Remit to Email	Text	customerservice@copyright.com

## Table Tools – Design Sample Set Up in MS Access



## Commonly Used Terms

### *Public Domain*

The term “public domain” refers to creative materials that are not protected by intellectual property laws such as copyright, trademark, or patent laws. The public owns these works, not an individual author or artist. Anyone can use a public domain work without obtaining permission.

There are four common ways that works arrive in the public domain:

- The copyright expires.
- The copyright owner fails to follow copyright renewal rules.
- The copyright owner deliberately places it in the public domain, known as “dedication.”
- Copyright law does not protect this type of work, e.g. government publications.<sup>4</sup>

### *Fair Use*

Section 107 of the U.S. Copyright Act lists four factors to help determine the type of content that might be considered “fair use.” No one factor dictates whether a use is indeed “fair use.” Consideration of all four factors is needed to help determine whether permission is required.

Before applying these factors, identify if the use is for criticism, comments, news reporting, education, scholarship or research. If the answer is “no,” permission is required. If the answer is “yes,” licensees should consider these four factors:

1. The purpose and character of the use, including whether it is for commercial use or for non-profit educational purposes.
2. The nature of the copyright work. Some works, such as standardized tests and workbooks, will never qualify for “fair use” because by their nature they are meant to be consumed. Other works, such as scientific articles, are more likely to fall within “fair use”.
3. The amount and substantiality of the portion used in relation to the copyright-protected work as a whole (percentage overall.) This factor considers how much of a work is used in comparison to the original work as a whole. Amount and substantiality are also a qualitative test; that is, even if one uses only a small portion of a work, it may still be considered too much if what is taken is at the “heart of the work.”
4. The effect of the use on the potential market for the value of the copyright-protected work. This factor is used to determine if the use of the work is likely to result in economic loss to the copyright holder. It looks at whether the nature of the use diminishes the potential market for the use that the owner can reasonably expect.

While these guidelines help define “fair use,” they do not clearly establish uses that are or are not “fair use”.

Examples of “fair use”:

- Quotation of a short passage in a scholarly or technical work to illustrate or clarify the author’s observation.
- A parody that includes a short excerpt of a work.
- A summary of an article that may include a quotation or short excerpt of a copyright-protected work. <sup>5</sup>

### ***Best Efforts***

Locating copyright holders in order to seek permission to reproduce and/or distribute copyrighted works can sometimes be problematic. There may be a difference in what constitutes good faith when the owner of the copyright is known as opposed to when the owner is not.

In the case of known owners, the problems usually arise when a licensee has contacted the owner to seek permission for a particular use, but the owner fails to respond. The lack of a response may not be treated as an affirmative response, so the licensee must try various ways to contact the owner, such as e-mail, snail mail, fax, and/or telephone calls.

The licensee should document all the steps they have taken to contact the owner. It is possible, however, that the use the licensee seeks to make of the copyrighted work is so important that the licensee is willing to assume the risk after it has tried to contact the author by various methods and still received no response.

In this instance, the licensee should recognize that there is still some risk, and if they proceed to use the work without permission, and the owner later sues for infringement, the repeated attempts made by the licensee to contact the copyright holder will not be a defense to infringement. Copyright infringement requires no element of intent; it is a strict liability cause of action. The documented efforts to obtain permission could help to mitigate the damages should a claim arise.

In cases where the copyright owner is either unknown or cannot be located, the element of good faith here is not in repeatedly contacting an owner, but in trying to identify the owner in order to seek permission. Once a licensee has used best efforts to identify and locate the copyright holder and failed, should they proceed with the use of the work without permission, they would not be liable for damages if the owner later comes forward and sues for infringement.

In both cases, "best efforts" likely would include a thorough search of the registration records at the Library of Congress Copyright Office, searching the web for information, and perhaps other steps to identify the rights owner. <sup>6</sup>

### ***Most Favored Nations Clause (MFN)***

Most Favored Nations, or "MFN" for short, is a provision frequently included in license agreements. If a contract has an MFN clause, it means that if a licensor agrees to pay on better terms with another party for something similar, the other party is entitled to the same terms. This often comes up when negotiating with a publisher for text, audio or video content.

Example: A licensor agrees to pay a licensee a \$1,000 fee on an MFN basis. The licensor then agrees to pay a second licensee \$2,000 for similar content. Due to the MFN clause, the first licensee is entitled to a \$2,000 fee.

### ***Creative Commons***

A Creative Commons (CC) license is one of several public copyright licenses that enable the free distribution of an otherwise copyrighted "work". A CC license is used when an author wants to give other people the right to share, use, and build upon a work that he or she (that author) has created. <sup>7</sup>

There are 6 main types of Creative Commons licenses, based on 4 conditions. These are discussed in detail at <https://creativecommons.org/share-your-work/licensing-types-examples/>.

## References

1. Copyright Basics, U.S. Copyright Office [www.copyright.gov](http://www.copyright.gov). Accessed April 28<sup>th</sup>, 2019.
2. DMCA Notice: Everything You Need to Know, Up Counsel  
<https://www.upcounsel.com/dmca-notice>. Accessed April 28<sup>th</sup>, 2019.
3. Campus Guide to Copyright Compliance, Copyright Clearance Center  
[www.copyright.com](http://www.copyright.com). Accessed April 28<sup>th</sup>, 2019.
4. Welcome to the Public Domain, Stanford University Press Libraries  
<https://fairuse.stanford.edu/overview/public-domain/welcome/> Accessed April 28<sup>th</sup>, 2019.
5. Fair Use, Stanford University Press Libraries <https://fairuse.stanford.edu>. Accessed April 28<sup>th</sup>, 2019.
6. Modified from Permissions and Licensing, Ebrary.net  
[https://ebrary.net/4230/law/permissions\\_licensing](https://ebrary.net/4230/law/permissions_licensing). Accessed April 28<sup>th</sup>, 2019.
7. Creative Commons License, Wikipedia  
[https://en.m.wikipedia.org/wiki/Creative\\_Commons\\_license](https://en.m.wikipedia.org/wiki/Creative_Commons_license). Accessed April 28<sup>th</sup>, 2019.