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# PERMISSION TO REPRODUCE IMAGES & GUIDE

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Permission to Reproduce Images Instructions

Permission to Reproduce Images

## 1. Overview

Research and writing, whether business or academic, legal or commercial, does not exist in a vacuum. Books and essays often incorporate photographs or other images, not all of which are generated by the author himself. Images, graphics, photographs, and other content are usually protected by copyright. With certain exceptions for academic or personal use, U.S. copyright law prohibits the use of copyrighted material without the owner's specific consent.

The enclosed document lets an owner permit the reproduction of its images. You can provide detailed information about how the images may be used and the extent of their incorporation into the secondary publication. The copyright holder can be assured of its continuing ownership rights, and the requestor will gain rights to material it needs to move forward with publication.

## 2. Dos & Don'ts Checklist

- A copyright is a form of protection provided by federal law to creators of "original works of authorship." This includes both published and unpublished literary, dramatic, musical, and artistic works. A copyright protects any form of an idea's expression, and therefore extends to items like maps, charts, artwork, cartoons, and screen displays. The author or creator of a copyrighted work can prevent others from copying, performing, or using the work without his or her consent. A third party intending to reproduce all or any part of a copyrighted work must first obtain the permission of the copyright holder. Failure to do so could result in a lawsuit and substantial fines.
- Not every use of another person's copyrighted material will be considered a copyright violation. American copyright law contains a concept called "fair use," which allows third parties to use copyrighted works without permission if such works are used for purposes of criticism, comment, news reporting, teaching, scholarship, or research. There are other factors involved in assessing whether an instance of unauthorized use is fair use (including its purpose, the nature of the copyrighted work, the amount used, and its effect on the market or value of the copyrighted work), and it's not always an easy or clear determination. The best practice is to obtain permission from a copyright holder in every context, rather than risk the damages and costs that could result from a finding of infringement.
- Permission is also not needed to republish work existing in the public domain. Works in the public domain are not simply those that are publicly available; rather they are those either not currently protected by copyright or never protected by it. Public domain works generally fall into one of the following categories:
  - General information (e.g., facts or numbers).
  - Materials created by the U.S. government.
  - Items that had copyrights that expired because of time or because the holder didn't renew the copyright. For example, vintage art produced before 1923 is usually in the public domain.
  - Materials created before 1989 that lacked proper copyright notices.

- Include as much information as possible in the document. The copyright owner has the right to limit the use of its property, and giving a clear picture of how the work may be used will make clear to all parties what permission is being given.
- Getting commercial rights in a photograph is usually a two step process. The requestor must first obtain rights from the copyright owner of the picture, which owner could be the photographer, a stock photo house, or some other company. The requestor must then obtain rights for anything in the picture that needs additional clearance (e.g., model release, celebrity permission, trademark rights, etc.). Completing and signing the enclosed document may only take care of the first step.
- Getting commercial rights for artwork is also a two-step process. In the first step, the requestor must locate the copyright holder of the art, which is usually the artist or his or her heirs. This is true regardless of who owns the work itself. In the second, if the requestor needs to use a photograph or other reproduction of the work in order to reproduce it, it will need to obtain the permission of the owner of the photograph or reproduction. This secondary work has its own copyright, and separate permission will therefore be needed.
- If the source material contains another company's trademark, that company's permission will also be required. Encourage the requestor to talk to the trademark holder to determine what information will be needed to obtain permission to use it.
- The enclosed document permits the image to be reproduced in one edition, volume, or issue of the final publication only. If there is a second or third publication of that work, the requestor will need to obtain additional permissions for each such edition, volume, or issue.

### 3. Permission to Reproduce Images Instructions

The following instructions will help you understand the terms of your permission to reproduce images. The numbers below correspond to paragraph numbers in the document. Please review the entire form before starting the step-by-step process.

1. Select the bracketed phrase that best describes what the Requestor may do with the Image(s) (i.e., reproduce, publish, or reproduce and publish). Include the name of the artist, the title of the piece, and the date on which it was created or published. If published, the date should be found in the first few pages of the work in which it first appeared. If applicable, try to provide additional information about the medium in which the work was created (e.g., oil painting, lithograph, etc.) and its approximate dimensions. If there is an ID number available (either through a museum or other organization), feel free to include that as well.
2. Select only one of the two sentences to indicate whether the Requestor already has a reproducible copy of the Image(s). If yes, select the first bracketed sentence. If the Requestor does not already have a copy, select the second bracketed sentence. Select the word that best describes the format in which the Owner shall provide the copy or, if none seem applicable, insert a separate description into the space.

3. Write in the title of the publication that will reproduce the Image(s). Include also the author, editor, or compiler of the new work, the publisher and its address, and the use to which the Image(s) will be put. This can include a designation of the publication type (e.g., trade edition, paperback, hardback, CD-Rom, DVD, Intranet, magnetic media, etc.) and as many other details as possible about the new publication. For example, consider providing relevant information about:
  - Publication date(s)
  - Expected retail price
  - Total expected sales (or distribution) for the (edition of) publication
  - No. of pages (entire publication)
  - No. of pages (requested Image(s))
  - No. of printed copies
  - Circulation (e.g., countries, special markets, etc.)
4. There are two options provided and you should choose the one that best characterizes how the Image(s) are to be used. If the use will not be for educational purposes, select the first option. If it will be for educational purposes, use the space provided to explain specifically the purpose intended.
5. In most agreements, each party is expected to do something. This obligation may be to perform a service, transfer ownership of property, or pay money. In this case, the Requestor is giving money (sometimes called "consideration") to be able to use the Owner's property. Under the terms of the Agreement, this is a one-time fee that must be paid before any permission given under the Agreement will be effective. Enter the amount of the fees to be paid by the Requestor. This may be higher or lower depending, among other things, on the use of the Image(s) (e.g., commercial, educational, etc.), and the character of the Requestor (e.g., non-profit organization, government body, etc.).
6. There are some options in the tagged sentence, and you should select those that best suit your arrangement. If the reproduction rights are worldwide, include that word. Select the word that best describes the type of publication (i.e., if the Image(s) are being published in a book, the word 'edition' may be appropriate; if in a journal, the word 'volume' might apply). If none of the suggestions seem to fit, provide other language to limit the type of publication in which the Image(s) will be used.
7. In every copy of a publication in which the Image(s) appear, there must be credit given to the copyright owner. The space provided allows you to specify how you want this copyright credit to look (e.g., "Reproduced with permission from [Copyright Owner] [Book/Title/etc] ([Year]). Copyright [Year], [Copyright Owner].")
8. Although the Owner is giving permission to use the Image(s), there are may be other permissions required before reproduction can occur. If this is the case, the Requestor may need to seek out third parties and obtain their permissions as well. If it does not do so, any resulting expenses or penalties will be the Requestor's responsibility only.

9. The first part of this provision places a limit on the permission granted under the Agreement, requiring that any republication be completed within a certain amount of time. Enter the amount of time the Requestor has to make its publication. Try to make this reasonable – think years, not months.

The second part allows the Owner to terminate the Agreement with a certain amount of notice, whether or not the publication has been completed. Enter the amount of notice that must be given. Note that if the Requestor violates any term of this Agreement, the Agreement will terminate automatically (i.e., immediately and without notice).

10. If the Agreement is terminated (in any of the ways listed in Paragraph 9), this section explains what the Requestor must do in response. Essentially, the Requestor must stop printing any volumes or editions in which the Image(s) are included. If the termination is not by any fault of its own (e.g., because the Owner provided notice), the Requestor has the right to sell any remaining copies for a certain period of time. Enter the period of time the Requestor has to make these final sales. If the termination is because of a wrongful action on the Requestor's part, the Requestor is not permitted to sell off any remaining copies.
11. This lets the parties choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the applicable state (or commonwealth) in the blank provided.
12. The Requestor must give the Owner a free copy of the work after it has been published. If the Image(s) are being incorporated into an electronic document, the Requestor must provide a link to that document.
13. This reiterates that the permission being granted is not an ownership transfer. The Owner remains the owner, and has the right to transfer the Image(s) to any third party it chooses. The Requestor does not have the right to make any transfers.
14. Both the Owner and the Requestor must sign the Agreement. If either party is a company, note who is signing the document on its behalf and what his or her title is.

#### DISCLAIMER

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## Form Sample

### PERMISSION TO REPRODUCE IMAGE(S)

Date: \_\_\_\_\_

\_\_\_\_\_ (the "Owner") has received the request of \_\_\_\_\_ (the "Requestor"), in a letter dated \_\_\_\_\_, to reproduce the Image(s) (as defined below). The Owner hereby grants the request on the following terms and conditions, which terms and conditions Requestor hereby accepts:

- (1) The images described below (the "Image(s)") are the subject of this agreement (the "Agreement"):

Artist:

Title:

Date:

Medium:

Dimensions:

The Owner is the copyright holder of the Image(s).

- (2) [The Requestor has already obtained a reproduction of the Image(s). The Owner shall provide a color photograph of the Image(s) on a 35 mm slide.]