

Copyright Guidelines

Guidelines “General copyright information”
for authors using Edition Topoi
(valid from June 2016)

These guidelines are intended as recommendations for routine copyright-related questions. The answers to these questions are not to be understood as legally binding. We recommend that you seek legal advice in the event of doubt.

What is protected by copyright?

Under German copyright law, the work is the protected object. The law defines a work as any “own intellectual creation” in the literary, artistic or scientific fields.

[https://de.wikipedia.org/wiki/Urheberrecht_\(Deutschland\)](https://de.wikipedia.org/wiki/Urheberrecht_(Deutschland))

Works include:

- Literary works (written works, speeches, computer programs)
- Musical works
- Cinematographic works
- Photographic works/photographs
- Representations of a scientific or technical nature (drawings, plans, maps, sketches, tables and three-dimensional representations).

Copyright protects the author. The author is accorded moral rights and exploitation rights in order to give substance to this protection.

What is not protected by copyright?

Contents that are in the public domain are not protected by copyright. This category includes things for which there is no legal protection in the first place such as concepts, ideas or theories. In addition, works for which copyright protection has lapsed are also in the public domain.

<https://de.wikipedia.org/wiki/Gemeinfreiheit>

How long is a work protected by copyright?

Copyright protection for a work is in place for a limited period. In Germany and most European Union countries, this protection lapses 70 years after the author's death or the death of the last surviving co-author. In the case of anonymous works, protection lapses 70 years after first publication.

Licensing

The author's exploitation rights may also be granted to third parties in the form of "simple" (known as non-exclusive) or "exclusive" rights of use. Simple rights of use may be transferred any number of times. Exclusive rights of use – usually obtained from their authors by commercial publishing houses – exclude all other persons, including the author, from the relevant use.

Exceptions to copyright protection

Exceptions to copyright protection limit exploitation rights for the benefit of specific users. These include, for example, rights of own use, the right of quotation and permission for public use in the sciences and for research purposes.

Scientific exception

German copyright law currently provides no uniform exception for scientific use. Accordingly, permission for reproduction must be obtained for all third-party content you would like to include in your publication. This is unless one of the exceptions applies.

Right of quotation

The right of quotation is an "exception" to copyright protection. In the interests of free intellectual discussion of a work, the right of quotation permits the use of specific unedited works or parts thereof without a fee. The right of quotation subjects the quotation to certain requirements that must be satisfied (purpose of the quotation). The right of quotation does not apply if these requirements are not satisfied.

The right of quotation applies to texts and to images. The source must be indicated in all cases.

https://de.wikipedia.org/wiki/Zitat#Zitate_und_Urheberrecht

Image quotation

The right of quotation also applies to images. In the case of an image, the purpose of the quotation is not satisfied if the image used is solely for purposes of illustration or information or is used in order to avoid the need for one's own discussion.

The right of quotation is applied in a more restrictive fashion for images than is the case for texts. This is in light of the circumstance that multiple rights (rights of the author, the photographer or ancillary rights) may be affected. In addition, German copyright law draws a distinction between "photographic works" and "photographs". "Photographic works" are photographs which include an expression of the author's personality ("works of art"). Photographs are "products created in a manner similar to photographic works" which, however, lack artistic individuality (everyday photography). They are protected for 50 years – and thus for a shorter period than photographic works.

Purpose of the quotation

In all cases the quotation must support the purpose of the quotation, i.e. it must perform a citation or argumentative function. The purpose of the quotation is satisfied if the quoted work or the object of a photograph is used in the context of a critical intellectual discussion. In this respect, neither the contents nor the meaning may be distorted. Permission must be obtained for use from the author/copyright holder, or the publishing house, in the event the use of third-party content exceeds the purpose of the quotation. The purpose of the quotation is not satisfied if the work has been edited.

May photographs be taken of objects in the public domain in museums?

In itself, ownership of items included in a collection does not confer an exclusive right of exploitation to images and digital reproductions regardless of whether the object is in the public domain or subject to copyright protection. Nevertheless, taking photographs or publishing images of a work in the public domain may have legal consequences because other rights may be infringed such as the property rights of the institution holding the ownership rights. Consequently, it is important to obtain information about rules for use and to obtain permission to photograph from the respective institution in the case of doubt.

May images from digital museum collections be included in a publication?

Many museums or archives provide access to their collections in online databases (e.g. National Museums in Berlin in smb-digital, British Museum collections online). The use and licensing terms for the specific digital reproductions can be obtained from the data sheets for the relevant exhibits. The institutions holding the ownership rights have extensive ancillary copyrights in these photographs. The rights in these digital reproductions or photographs, as applicable, are frequently used commercially by the photo agencies of the respective museums (e.g. bpk, British Museum Images).

In the event you are uncertain as to whether the licensing terms apply or if the image in question is not available in the digital catalogue, do not contact the photo agency; instead, contact the museum (e.g. collection director) and request reproduction approval for scientific purposes. As a rule, approval is granted without issue and without charge for scientific purposes or for small fee.

Recommended databases for conducting searches for digital holdings include Deutsche Digitale Bibliothek and Europeana.

www.deutsche-digitale-bibliothek.de
www.europeana.eu

How are rights of use obtained?

If you would like to use an image or texts that are not within the scope of the purpose of the quotation or if you have edited an image or a text, you must request permission for reproduction from the author or proprietor of the rights (see proposed wording, page 9).

Another option is to use images that were published subject to an Open Content Licence (e.g. Creative Commons Licence, page 7). In this case, you must pay attention to the selected licence type. Usage rights need not be obtained only if the proposed use corresponds to the licence type. Approval for reproduction must be obtained for all intended uses that go beyond the licence type.

Open Content:
www.unesco.de/kommunikation/opencontent.html

Can I use my own photographs of museum holdings?

If you take your own photographs of museum holdings as part of your research activities, please enquire in advance in writing whether and under what conditions you may publish the photographs or make them available online (= publicly accessible).

May photographs be edited without the permission of the author?

All modifications to an image, e.g. use of a partial image, extraction of objects, including highlights, adding arrows (photo composition) must be approved by the copyright holder. Attention must be paid to the licence type in the case of a Creative Commons Licence.

May digitalized images of books in the public domain be used without permission?

Memory institutions (libraries, archives, etc.) are increasingly digitalizing their rare books. This digitalization process may create new rights. In many cases, the digital reproductions are made available by the memory institutions under a Creative Commons Licence, in some cases subject to a reproduction fee. Include the correct acknowledgement of the source and make note of the conditions under which the digital reproduction was published. Some libraries leave their public domain works in the public domain (cf. public domain mark). Ask the library or archive in the event you are uncertain.

May images from the Google Art Project be used in publications?

Images from this website may not be used without approval. This is made very clear in the terms of use. The terms of use provide "the high resolution imagery of artworks featured on the art project site are owned by the museums, and these images are protected by copyright." This likewise applies to paintings or objects for which copyright has long since expired.

May I subject a photograph I have taken myself or an image I have created that has already been published in another publication from the publishing house to a CC Licence after-the-fact?

Every licensor (author, copyright holder) must ensure that its Open Content Licences do not infringe any third-party rights. This may particularly be the case if works have already been published by a commercial publishing house.

In other words: if you have already published a photograph or image that you created yourself in a commercial journal or in a book, it may be the case that you transferred comprehensive rights of use in said photograph or image to the publishing house concerned. In such cases, secondary publication under an Open Content Licence is not possible unless you have the (written) permission of the publishing house.

How can map materials be used?

If you wish to add map material to your article, you must use maps with free Open Data or Open Content Licences (e.g. Open Street Map, NASA, Natural Earth Data). We fundamentally advise against the use of map material from Google Maps or Google Earth because the terms of use are not clearly formulated. Permissions must be obtained in the event you wish to use map material from other providers. The source must be acknowledged in all cases.

https://www.google.com/intl/de_de/help/terms_maps.html

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<https://www.lizenzhinweisgenerator.de/>

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What copyright rules are applicable to secondary publications?

Authors of scientific publications included in collected works (periodicals and compilations) have had an online right of secondary publication with regard to their work since January 2014. This applies after a twelve-month embargo period and applies to all scientific publications that receive at least one-half of their financing from public sources (DFG, BMBF, EU or other sources of external funding as well as non-university research institutions). The right of secondary publication allows access to an electronic copy of the manuscript version to be provided, e.g. on the publications server of a library (repository) or the home page of an institution.

<http://www.allianzinitiative.de/de/handlungsfelder/rechtliche-rahmenbedingungen/faq-zvr.html>

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www.creativecommons.org

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It is imperative that you observe the licence terms. Failure to comply with any component of the licence (e.g. incorrect indication of the author) results in the lapse of the entire licence.

What is the benefit of Creative Commons Licences?

The benefit of Creative Commons Licences is that direct communication with the holder of the rights is not necessary in order to clarify the issue of whether and to what extent digital contents found online may be used. You can determine the most important terms for using content based on the name of the licence.

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Suggested wording for reproduction requests is set out below. Please note that many institutions or publishing houses only use their own pre-printed forms or templates.

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Thomas Hartmann, Urheberschutz als Vademecum in Forschung und Lehre. In: CMS-Journal, Nr. 35, Digitale Dienste für die Wissenschaft, S. 63-68, <http://edoc.hu-berlin.de/cmsj/35/hartmann-thomas-63/PDF/hartmann.pdf>

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