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In publications, which country's copyright law should be observed?

A basic principle is that you observe the copyright law of the country in which you plan to publish; American copyright law should be observed for publications in the US, Canadian law for Canadian publications. This adheres to the concept of “national treatment” ([*naikokumin taigu*](#)) as outlined by the Berne Convention for the Protection of Literary and Artistic Works (1886), Japan, U.S., Canada most other countries have ratified the Berne Convention Treaty.

Is “fair use” of images for scholarly and educational purposes allowed?

Some people think the “Fair Use” standard in American copyright law may be applied to image use in publications for scholarly and educational purposes. However, whether for commercial or nonprofit use, it is common practice for a publisher in North America to require an author to obtain image reproduction permission from the copyright holders for publishing purposes.

Does Japanese copyright law have “fair use” or equivalent rules?

Japanese copyright law approves “quotation” of both text and images in its Article 32. As long as an image is used to support, and in subordination to, the principal discussion, it is regarded as “quotation” and no permission is needed. However, there have been some cases, which were brought to litigation, and the degree of subordination can be controversial.

How does one know if an image is in the “public domain”?

“Public domain” is a complex and abstract concept. As a general rule, most works enter the public domain because of old age. This includes any work published in the United States before 1923. Another large block of works are in the public domain because they were published before 1964 and copyright was not renewed. (Renewal was a requirement for works published before 1978.) A smaller group of works fell into the public domain because they were published without copyright notice (copyright notice was necessary for works published in the United States before March 1, 1989). Some works may be treated as if they are in the public domain because the owner has expressed a desire for the public to use the works without restriction, limitation or the need for permission from anyone. The rules establishing the public domain status for each of these types of works differ. For more information on issues related to works in the public domain please visit Stanford University



Libraries Copyright and Fair Use page at [http://fairuse.stanford.edu/Copyright and Fair Use Overview/chapter8/](http://fairuse.stanford.edu/Copyright%20and%20Fair%20Use%20Overview/chapter8/)

Are there any other rights involved regarding the use of image?

Other rights regarding ownership or privacy, for example, may also be relevant depending on the type of image used. This point is explained on the “Rights Holders” page under [“When Permission Is Required.”](#)

What is a “Creative Commons License”?

The Creative Commons (CC) is a non-profit organization devoted to expanding the range of creative works available for others to build upon legally and to share. The organization has released several copyright licenses known as Creative Commons licenses. These licenses allow creators to communicate which rights they reserve, and which rights they waive for the benefit of recipients or other creators. The IUP website is protected by a Creative Commons License that allows free use under the “attribution-non-commercial-share alike” provision. Please see more on Creative Commons Licenses by visiting <http://creativecommons.org/licenses/> Japanese language versions of Creative Commons Licenses are also available at that URL.

To whom I should write first when there is more than one rights holder?

If permission involves copyright, you should write to the copyright holder first, then to other right holders. If the object or image is no longer protected by copyright, the owner of the object should be contacted first, followed by an image archive/holder. Most frequently relevant right holders are explained at <http://www.fas.harvard.edu/~ncc/imageuse/rightsholder.html>

How do I write permission requests?

Permission requests should include 1) who will use, 2) purpose of use, 3) what to use, 4) where to use, 5) when to use, and 6) request of information regarding how to obtain the image. A combination of these factors will determine the proper request and procedure. Sometimes you may need permission from more than one [rights holder](#). A variety of sample cases is provided on the [“Cases When Permission Is Required”](#) page and case descriptions include links to letter templates appropriate to the specific case.

Besides the kinds of rights involved, there are also different ways in which permission should be asked. Permission may be needed from individuals, museums, publishers, etc. Subtle distinctions in expression are required to fit a letter to each type of addressee because



the information you may need is different from type to type. A collection of permission letter templates is available on the “[Permission Request Templates](#)” page.

Do I have to write my requests in Japanese?

While American (and Canadian) publishers need permissions in English, Japanese rights holders may not necessarily read or write English. Communication in English is not widely accepted, and it causes delayed response, particularly when addressed to temples, individuals, local governments, small museums, etc. Bilingual documents are, therefore, the best solution. Bilingual letter templates are available for download from our [Website](#).

Is an “academic/educational rate” for image use common in Japan?

In Japan, if publications are sold they are regarded as commercial even if published by a university press. On the other hand, if a publication is "hibaihin" (unpriced), it is regarded as a non-commercial publication. [Sample cover letters](#) explain that a university press is non-profit institution and publishes small numbers of copies.

Fees often include image production/reproduction cost and use fee. Use fee may be waived while actual cost for image reproduction may be not. Stated fees may be negotiable depending on the rights owner.

Does a work of art in a public space belong to public domain?

A work of art in a public space may be protected by copyright just like any other artistic work. Just because the work is easily accessible and visible to the public, does not mean that it is in the “public domain.”

Does privacy matter regarding view of public gathering?

The privacy laws vary from state to state but as a general matter, a photograph taken in a public gathering outside or, if indoors, with the subject’s knowledge or apparent consent (as evidenced by any posted signs or disclosures on any admittance ticket), does not violate the subject’s right of privacy. However, regardless of where a photo may be taken, the right of privacy nonetheless may bar publication of particularly embarrassing, “non-newsworthy,” private, but truthful, information that most people would find highly private.

Are works on the Internet in the public domain?

No, ease of access does not mean a work is not protected by copyright.



How does the IUP relate to Japanese images from institutions in European countries?

The IUP principally focuses on US publishing. The IUP's Tokyo conference had participants from Europe and Canada, and the conference stimulated participants to be more aware of the needs for developing similar strategies for their country to aid users. Canadian colleagues have already taken part and contributed materials on "fair-dealing" in Canada to this website. IUP Workshops will be held in July 2009 in Sydney, Australia in conjunction with the Japanese Studies Association of Canada and in September 2009 in conjunction with the European Association of Japanese Resource Specialists (EAJRS) at the Sainsbury Institute in Norwich, England and we hope more countries will collaborate.

If you do not know who holds copyright, how do you look for it? And how do we deal with so-called "orphan works" for which the holder cannot be found?

One has to do everything possible to track down the identity of a copyright holder. Check the office of copyright. It is a matter of due diligence and how to demonstrate and document that one has fully searched for the owner. From the publisher's point of view, if the risk is high, it is better not to use the image.

What laws apply to images in the public view?

Personal photographs taken by an individual may not require copyright permission. Similarly, public gatherings do not require permission from each individual in a photograph. There may be exceptions in the case of minor children and famous individuals whose image is in some way protected.



How does this apply to public architecture, and the use of images of individual buildings?

The IUP guidelines cannot cover all possible cases and architecture remains beyond the current scope of the IUP Website. Specific locations, especially famous ones, often have their own policies and potential users should investigate those when planning to use an image.

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