



## Image Use Protocol -> Image Use and the Copyright Laws

First of all, when you wish to use images copyrighted overseas, which country's copyright law should you obey? As a rule, you are required to follow the copyright law of the country in which you plan to use (publish) the images. Therefore, in the context of this guide, if you wish to publish images which originated in Japan, in the United States, you must obey U.S. copyright law, or in Canada, Canadian copyright law, not Japanese copyright law.

In North America, whether for commercial or nonprofit use, it is common practice for a publisher to require an author to obtain image reproduction permissions from the copyright holders for publishing purposes.

In the example of image use, one must take into consideration the various kinds of "rights" that may pertain. They are: copyright held by the author of the image itself (two-dimensional art work or photograph); copyright held by the creator of the object in the image; copyright held by the publisher of an image published previously; the ownership rights held by the owner of the object in the photograph, which may be a museum, a temple or a individual person; and portrait rights held by the photographed person in the image. Depending on the kind of images you wish to use, you might be required to obtain permission from any of these, or from multiple right holders. For instance, in order to use "a photograph of a painting owned by a museum, which has been previously published," one must obtain permissions from: i) the artist who created the painting, ii) the publisher who created the photograph and iii) the museum who owns the painting. ["When Permission is Required-Sample Cases"](#) discusses the various kinds of permissions required for using different kinds of images. Sample request letters and consent agreement letters for different cases are offered in ["Permission Request Templates"](#).

In the United States limited use of copyrighted material, such as distributing photocopies in the classroom or for lectures, or using images in slides or Power Point presentations as well as using images as reference to discussion may be permitted under the U.S. copyright doctrine of fair use



<http://www.copyright.gov/fls/fl102.html>. The purpose of the fair use provision is to promote the study of science, the arts and literature by waiving the complex process of obtaining permissions for using copyrighted material. Among the determining factors of fair use are the purpose, character, size of the portion used and the effect upon the original work's market value, etc.

In Canada the equivalent to the U.S. fair use doctrine is called fair dealing. However, the Canadian fair dealing provision is known to be more restrictive than fair use in the U.S. For instance, except under special circumstances the Canadian fair dealing provision does not honor "educational use," therefore it does not allow for the showing of a video or film, or the distribution of copies of copyrighted material in the classroom without permission or special license [http://en.wikipedia.org/wiki/Fair\\_dealing#Fair\\_dealing\\_in\\_Canada](http://en.wikipedia.org/wiki/Fair_dealing#Fair_dealing_in_Canada).

Special attention should be given to image use. Even if the reason for use is merely as reference; often it is necessary to use the entire image, which is different from simply using portions of a written work. In such a case, a cautious approach should be taken in applying U.S. fair use or Canadian fair dealing provisions.

On the other hand, Japanese copyright law has different requirements about the need for permission depending on how the image is to be used. In some cases, Japanese law considers the use a citation and waives the requirement to obtain permission. If an image is being used as "supplemental, illustrative, or in reference to understanding the discussion and strictly subordinate to the main text" (Translated from the original: Yoshida, Taisuke. *Chosakuken ga meikai ni naru 10-shō* (Shuppan Nyūsusha, 2005: p. 218-219), the usage is viewed as reference, which exempts the image user from the requirement to obtain permission from its copyright holder. The law distinguishes this use from cases in which the text is mainly introductory to or commentary on the image, which means the image becomes the "main" part of the discussion, not "subordinate" to the discussion. Because of this different requirement of copyright law in Japan, Japanese publishers and authors do not always understand the need of North American scholars to seek permission to use Japanese images. Therefore, North American image users



need to clearly explain North American legal requirements for publication of Japanese images. This difference is referred to in a sample letter in [“Permission Request Templates”](#).