

Clinical Lactation

Do I Need Permission to Cite That? The Fair-Use Rule in U.S. Copyright Law

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Whether you are writing an article or a book, at some point, you will need to cite someone else's work. When do you need to get permission from the original author or copyright holder? U.S. copyright law ensures that authors' expressions are protected. That means if you are using an author's exact phrasing or sequence of words to express an idea, then you need permission to cite more than what can be considered "fair use." According to the fair-use rule, authors may make limited use of others' material without permission. But the guidelines for what constitutes fair use are much vaguer than you might suspect. Indeed, fair use is considered an "affirmative defense," meaning that the burden of proof is on *you* to demonstrate that your use of the author's materials falls within in these guidelines.

There are four guidelines to help you determine whether something falls under fair use.

Is your work transformative?

Transformative means that it adds to or extends the existing knowledge base (e.g., a comment, criticism or parody of the original). This can often be a key factor that overrides other considerations. If your use merely substitutes for the original, then it is less likely to be considered fair use.

What is the nature of the prior work?

Unpublished work has more protection than published work. This means that you cannot use someone's unpublished work without their express permission. This includes unpublished articles, PowerPoint slides, and presentation materials. Using someone's unpublished materials without permission, and simply citing them, is not fair use. Authors

should always have the opportunity to publish their work first. If your publication of their materials would deny them that opportunity, then you are infringing on their copyright.

What is the amount and substantiality of the material used?

The American Psychological Association allows authors to cite 400 words in single-text extracts, or 800 words in a series of text extracts, without permission (American Psychological Association, 2010). However, that guideline would not apply to every situation, and requirements for obtaining permission vary between publishers and other copyright holders. The nature of the work also influences what you are allowed to use without permission. If what you've cited is a large proportion of a short work (e.g., song lyric, poetry), then even if the total number of words is small, it is not fair use. The same may be true for a photograph, figure, or table. Even in longer works, if the part you've chosen to quote is the critical heart of the work, then that may not be fair use.

Will your quotation from the work impact its market value?

If the work you are citing has commercial value, will your use of that impact potential sales for the copyright holder? For example, if you use someone's training materials, would that impact on the willingness of conference organizers to hire the copyright holder? This guideline includes not only the economic impact of your use of the material, but the impact if others were to do the same. Copyright may also apply to any derivative work that is so similar to the original that it could impact the sale of the original (e.g., writing a play with a plot highly similar to a recently published novel).

In summary, "fair use" allows you some latitude in citing other people's work. But it is a fuzzy boundary. If in doubt, you are generally better off if either you ask permission from the copyright holder or seek legal advice. Even with permission, you must acknowledge the copyright holder with the name of the copyright holder, the name of the publication, year of publication, and the wording "Used with permission." It is your responsibility to find out if permission is required and to obtain necessary permissions. Permissions will need to be secured before articles can be accepted for publication in *Clinical Lactation*.

For Further Information

American Psychological Association. (2010). *Publication manual of the American Psychological Association, 6th edition*. Washington, DC: Author.

Kendall-Tackett, K.A. (2007). *How to write for a general audience*. Washington, DC: American Psychological Association.