

## Rights in images – an overview

When using photos, maps, figures, or other images in publications, it is important to ascertain:

- whether or not copyright subsists in them;
- whether your use of them falls under an exception to the copyright rules;
- who the copyright owner is;
- how to make your permission request.

### **Ownership:**

A cartoon, figure, map, drawing or other image is protected by copyright in the same way as a text. This means that the author (and after him his heirs) has the exclusive right to publish it until 70 years after his death. However, the author may have transferred his copyright to a publisher or an agency. This needs to be checked when requesting permission.

A photo may even be protected in two ways. If the object of the photo is copyright protected (for instance a painting), there are two copyright owners who must each give their permission: the author of the painting and the author of the photo. As photography has not been in existence for very long, the copyright in the photo usually still exists, even if the copyright in the painting has expired!

In the case of a photo of an old painting in a museum, you pay a fee for the museum's copyright in the photo only, as the copyright in the painting has expired. But even if you are given permission to make the photos yourself, you usually have to pay a fee. This fee has nothing to do with copyright. It is a contractual arrangement, whereby the museum uses its position as the owner of the physical object to charge you a fee. Should you happen to find a legally taken photo of the old painting elsewhere, the museum cannot stop you using that photo.

Portrait rights exist in most countries. Famous people's faces are worth money. Such people can stop anyone else publishing photos of them, even if the publisher made the photo himself. Ordinary people can stop others using photos if they are depicted in an unflattering way, or associated with something they do not want to be associated with. This can be tricky, so it is best to obtain permission in advance. This does not apply to photos of a large group of people in a public place, for instance in a street or in a football stadium.

The use of trademarks will be unusual in Brill publications, but it is as well to keep in mind that there is such a thing – for instance: a logo of a multinational in a publication about the impact of multinationals on developing countries.

### **Exceptions:**

In some cases copyrighted work can be used without the permission of the copyright owner. For our purposes, the most important exception to copyright is quotation. Images can be quoted, just like texts.

The quotation of the image must be functional and proportional, and must clarify something that is relevant to the context. For instance, our author tells the readers why he agrees or disagrees with the author of a particular figure or map. A photo used as a pretty picture to liven up the text, or for the cover, never comes under this exception!

### **Moral rights:**

The main moral right of the author is the right always to have his work attributed to him.

Another moral right is that it is not permissible to change or mutilate a work without the author's permission. This is something to remember if you plan on doing something to an image, for instance cutting and pasting for a cover design. Even if the author transferred his copyright to a publisher and the publisher agreed, you will still need the real author's permission to do it – moral rights cannot be sold!

### **Finding the owners:**

Once you ascertain where the copyright lies, the next task is to find the author. This can be even more difficult in the case of images than in the case of text. A graphic designer may be a member of a CISAC organization. If so, the organization will always have the right to license his work, rather than the author himself. Photo stock agencies are a good source of photos, but check if they indemnify against claims from third parties. Sometimes rights are transferred to the first publisher of a picture.

If you can prove, preferably in writing, that you have done all you could to find the owner but have not been successful, you can use the same disclaimer that is used for text. There is always a risk attached to this, so avoid it if you can, for instance by using an image from another source.

### **Scope of permission:**

When you request permission, from the copyright owner, make sure you get a wide enough scope of permission. Do not forget electronic rights. When the institution that holds the copyright does not prescribe its own form, use this sentence to request permission:

“I hereby request permission to use photo X in the work entitled Y by Z, in all editions, in all languages, in book form and in any other form including, without limitation, mechanical, digital, electronic and visual reproduction, electronic storage and retrieval systems, including internet and intranet delivery and all other forms of electronic publication now known or hereinafter invented.”

This is a wide permission request, and museums in particular will not like this. So you have to view on a case by case basis if it is worth your while to pay the astronomical fees. Please keep in mind that with the advent of printing on demand and collective e-book deals, it will become more and more necessary to have (or be able to obtain) electronic rights for all publications. Therefore always check with the publisher when you are having trouble obtaining electronic rights as well as print rights.