

## **GUIDELINES FOR USE OF VISUAL MATERIALS**

In response to requests from our editors, the MIT Press Journals Department has adopted the following guidelines for use of pictorial and graphic materials in Press journals. These guidelines are for all Press journals, and should be followed in all cases except where the Journals Department expressly agrees otherwise.

### **I. GENERAL OVERVIEW**

Scholarly publishing must balance the need to protect the free flow of information and critical comment with the need to compensate scholars for their labors.

Copying of copyrighted visual material is an infringement unless it is authorized or comes under the legal rubric of “fair use.” The general policy of MIT Press is to avoid conflicts with other publishers, and their authors, by requiring its authors and editors to obtain permission for use of artwork and graphic materials published by third parties.

The concept of fair use is, as the term suggests, always to some degree *ad hoc*. The Press cannot and will not, except in unusual circumstances, make that *ad hoc* judgment; it must be left to the author (contributor) or editor. A contributor or editor who is in doubt should err on the side of caution.

The following principles determine whether a proposed use in an MIT Press journal is a “fair use”:

(1) the nature of the work to be used. Graphic works that convey factual information are less likely to require permission than works that are pictorial or artistic in nature. Whether the material is published or unpublished is also relevant. The policy of the Press is that materials that have not been published should not be reproduced without the copyright owner's permission, even if the use might otherwise be a “fair use,” at least where the artist or draftsman of the original is still living.

(2) the amount of the original work that is being copied, and the amount it represents of the journal article in question. There are no fixed boundaries here. Authors and editors should bear in mind that even a small portion may go beyond fair use if that portion constitutes the heart of what is being copied.

(3) the effect of the copy on the potential market or value of the original. No use should be made that might supersede the market for the original by rendering purchase of the original unnecessary.

The following specific guidelines should be seen as elaborating on, but not obviating, the general principles stated above. These specific guidelines are intended not as a description of the copyright law but as editorial policy of MIT Press.

These guidelines are for use of previously published material. **Regardless of whether permission is needed, all third party material should be cited properly:**

**A. PAINTINGS, DRAWINGS, PRINTS, PHOTOGRAPHS, ARCHITECTURAL DRAWINGS, AND OTHER PICTORIAL OR DESIGN WORKS**

1. Images Created by the Person Whose Work is Being Discussed.

a. **Permission is not needed for:**

i. reproducing details (i.e. small portions) of a work, to the extent necessary to reinforce or illuminate a critical discussion of the work. For example, if a discussion focusing on landscape in an urban design would be assisted by reproduction of a portion of the design, that is acceptable even without permission of the copyright owner in the original drawing.

ii. reproducing the entirety of a work on a substantially reduced scale, to the extent necessary to reinforce or illuminate a critical discussion of the work.

1. For works of fine art, the reproduction should be in black and white except in very unusual cases.
2. Where architectural drawings and other utilitarian design works are concerned, entire images, even in reduced scale, should be used sparingly.
3. Where the images would be readily available to the average reader in other sources, the case for the necessity of reproducing them in a Press journal should be very clear unless permission is to be sought. For example, if the plans of an architect are readily available in other published sources likely to be found in any good research library, their reproduction in a journal article should be made only with permission.
4. Use without permission is more acceptable where the reproduction eliminates detail not germane to the author's critical analysis. In any case, **the images should be subordinate to the text**, rather than the text serving as an accompaniment to the images. An image is "subordinate to the text" if it both directly serves the scholarly purpose of critical analysis of the image itself—or, perhaps, of the artist's or architect's technique or style in general—and is directly related to a specific portion of the text.

b. **Permission is needed for:**

- i. reproducing an entire image in full color.
- ii. reproducing an entire image in full scale.

iii. reproducing a full or partial image for any purpose that is not subordinate to the text. The most obvious example of this would be use of an image on the cover of a journal.

## 2. Images Created by Third Persons.

**Permission is required:** for almost any use of a photograph, drawing, or other image created by someone whose work is not the subject of the article. This applies even to news photographs, maps, film stills, and redrawn/adapted figures if they look the same as the original.

Editors and contributors should bear in mind that more than one level of permission may be required. For example, use of a photograph of a piece of sculpture requires permission not only from the photographer but also from the sculptor—unless the article is a critical study of the sculpture or sculptor and the depiction of the sculpture is subordinate to the text, according to the principles stated above.

### **Permission is not required for:**

- i. Screenshots or screengrabs of video, film, television, video games (as opposed to film stills, which require permission)
- ii. Adapted or redrawn figures if substantially different from the original
- iii. Book or CD covers, unless they are serving a decorative purpose
- iv. Public domain images
  - i. Unless the image is in the public domain due to age, please send proof that the image is indeed in the public domain
  - ii. A good reference:  
<https://guides.library.cornell.edu/copyright/publicdomain>

## **B. CHARTS, GRAPHS, AND TABLES**

It is important to distinguish between charts and graphs that simply convey data in spatial format, and those that are embellished by artistic elements. Good examples of the latter are the graphs found in the popular press, but any average computer-literate person can, with computer graphics, create a chart or graph that not only conveys information but conveys it in a pictorially interesting way.

Before the issue of fair use is even reached, there is a threshold question whether the spatial arrangement of data is protectible by copyright. The U.S. Supreme Court has held that the “white pages” of a telephone book lack the necessary creativity, in terms of the selection and arrangement of data, to be eligible for copyright. Subsequent rulings by lower courts have held that the “yellow pages,” however, are copyrightable, indicating that no more than a very low level of creativity is required. While these rulings suggest that some charts, graphs, and tables may be too elemental in their organization to be eligible for copyright, the policy of the Press is to assume copyrightability in deciding whether to seek permission.

With respect to when permission will be required, the policy of Press is as follows:

**1. Permission is not required:**

a. Where a chart, graph, or table is being reproduced in a critical study of the work from which the item is taken. For example, an economist seeking to rebut the work of another economist may reproduce a graph from the other's work and then criticize it as misleading, inadequate, etc. It need hardly be added that the reproduction must be entirely accurate.

b. Where only one chart, graph, or table from a given work is reproduced, and is “quoted” in the same way that a short passage of text would be quoted, namely, to buttress an argument of the writer.

**2. Permission is required:**

For any chart, graph, or table embellished by any design feature not necessary to convey the information. Provided the guidelines in (1) are met, it would be permissible to recreate the chart, graph or table without these pictorial elements.