Copyright and Fair Use

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What is Copyright

Copyright is the legal right or "protection" granted to the author or creator of an original work—books, articles, images, songs. The copyright owner has the exclusive right to copy, distribute, or adapt their work.

If you want to reproduce or adapt copyrighted work, you must get permission from the copyright holder, with two exceptions: public domain works and fair use.

Public Domain

Public domain works are not protected under copyright

- U.S. Government works

- Works published in the U.S. with copyright protection that has expired (generally, 70 years after the death of the author/creator)

Even with no copyright protection, you should still cite/attribute public domain works. Never try to pass off someone else's work as your own.

Fair Use

What is fair use?

An exception to copyright law that allows for reproduc2on of copyrighted works for certain purposes. If you determine that your use of a copyrighted work is "fair use," you do not need to get permission from the copyright holder—but you should s2ll cite the source.

How is fair use determined?

By judging each use on four factors: Purpose, Nature, Amount, and Market Effect. These are the same factors the courts use when deciding issues of copyright infringement.

Fair Use Factors

Purpose

Your purpose in using the work: instruction, research, personal, transformative, reproduction, for profit, non profit. Educational, non profit use favors fair use, but does not guarantee it.

Nature

The nature of the copyrighted work: published, unpublished, factual, creative, artistic, "consumable" (e.g., a test or form).

Amount

How much of the copyrighted work do you intend to reproduce/ use?

Market Effect

How will your use affect the market for the original work?

Fair Use Factors

	For	Against
Purpose	Instruction, research, personal, comment/criticism, transformative	Any commercial use, publication, public distribution
Nature	Published work, factual, nonfiction	Unpublished work, creative/artistic work, consumable
Amount	Excerpt, clip, portion	Entire work, or if portion used is the "heart of the work"
Material Effect	One or a few copies, no market, impact, stimulates market, no license	Hurts market, license is in place, multiple copies not for education, repeated use

Fair Use Example

Reproducing a photograph from a website in your conference poster: Fair use?

Purpose

Poster will be displayed and posted on conference website (public distribution) (-).

Purpose: NO

Nature

Published photo (+); creative work (-).

Nature: MAYBE

Amount

Entire photo will be reproduced (-).

Amount: NO

Market Effect

Depends on photo, but probably no market impact (+); potential repeated use if poster is used, displayed, or posted elsewhere (-).

Market Effect: YES/MAYBE

Fair Use

- Reproducing photos in your conference poster does NOT qualify as fair use.

- We must always seek permission to reproduce something, unless it is in the public domain. Other materials may be different, so always use the four factors to determine fair use. However, publication for public distribution will always weigh against fair use.

- Using materials in a presentation, workshop, or training session favors fair use (as long as the materials are not published or otherwise distributed), but still judge each use with the four factors.

- Document your attempts to find copyright holder and secure permission.

- ALWAYS cite/attribute sources of copyright-protected and public domain works.

- When in doubt, obtain permission!

What About Text?

Academic writers frequently quote text from other writers without securing permission. Why is this OK?

Such use is almost always considered fair use because it is for the purpose of research or comment/criticism, the work being reproduced is public and factual (e.g., journal articles), the portion of the copyrighted work that is reproduced is usually small, and the effect on the market for the original work is low to non- existent. Still, you should always provide a citation when reproducing any copyrighted work.

QUICK AND EASY WAYS TO DETERMINE COPYRIGHT STATUS

- If you use Google Image Search, you can search for images with specific licenses, including licenses that allow for reproduction. On the Google Image search page, click on "Advanced search." On the Advanced Image Search page, click the "Usage Rights" drop down menu.

- Some websites have a page that explains how images and other material on the site may be used. E.g., https://www.forestryimages.org/about/image-usage

- If you can't find any information on the copyright status, assume that the material is copyrighted. In this case, you need to seek permission from the copyright holder.

OBTAINING PERMISSION

Obtaining permission to reproduce a copyrighted source is as simple as sending an email.

In your email, provide the following information:
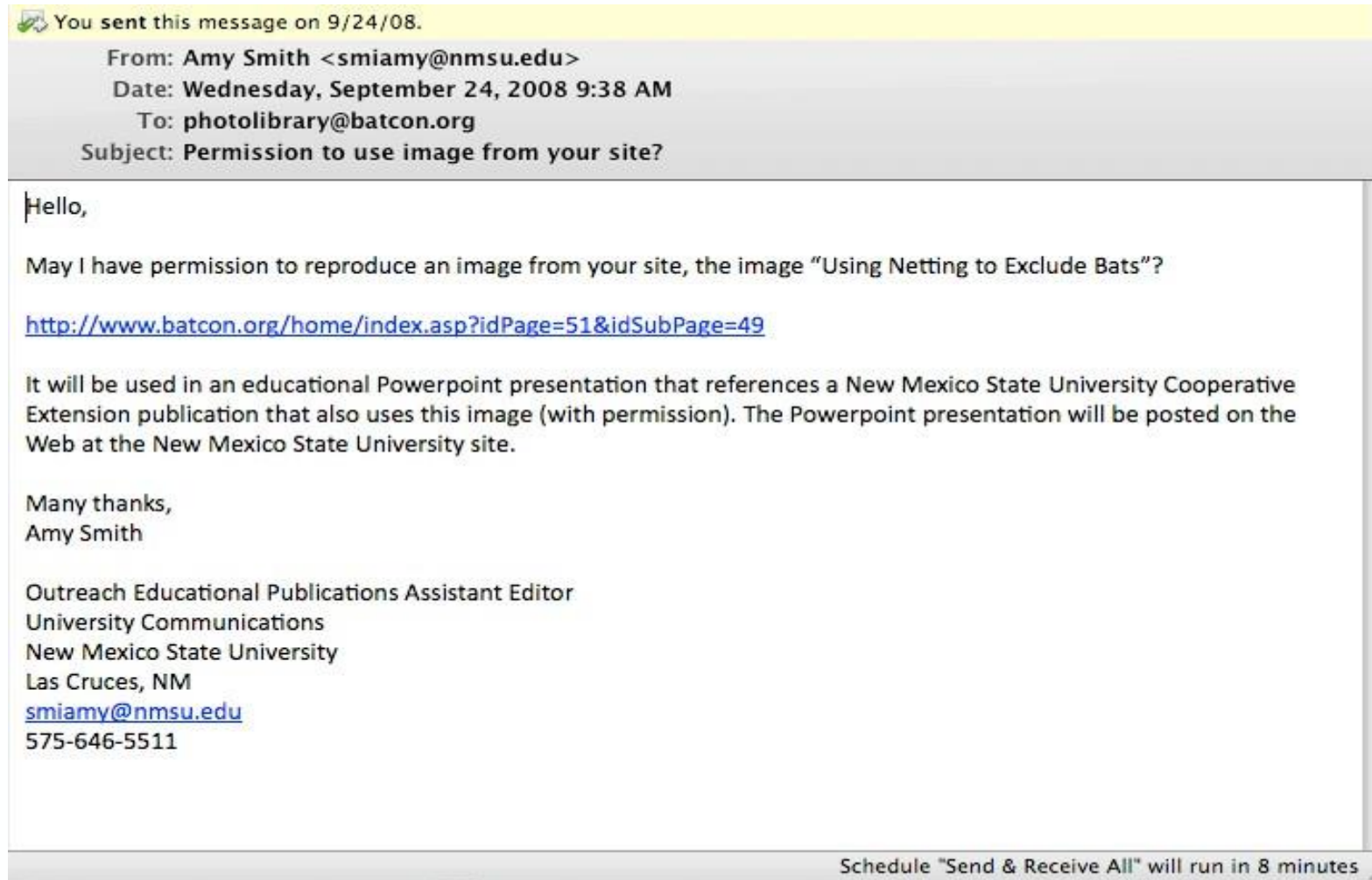
- Your contact information.

- Your purpose in reproducing the work.

- How the work will be reproduced (e.g., in a publication, in a poster, on a website).

- A link, copy, or description of the work you wish to reproduce.

Finally, be sure to expressly ask for permission to reproduce the work.

If the copyright holder specifies a way to cite their work, be sure to follow their request.

EXAMPLE REQUEST

You sent this message on 9/24/08.

From: Amy Smith <smiamy@nmsu.edu>
Date: Wednesday, September 24, 2008 9:38 AM
To: photolibrary@batcon.org
Subject: Permission to use image from your site?

Hello,

May I have permission to reproduce an image from your site, the image "Using Netting to Exclude Bats"?

http://www.batcon.org/home/index.asp?idPage=51&idSubPage=49

It will be used in an educational Powerpoint presentation that references a New Mexico State University Cooperative Extension publication that also uses this image (with permission). The Powerpoint presentation will be posted on the Web at the New Mexico State University site.

Many thanks,
Amy Smith

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Schedule "Send & Receive All" will run in 8 minutes

Sources of Public Domain or Copyright-Free Images

- **Wikipedia public domain image resources** https://en.wikipedia.org/wiki/Wikipedia:Public_domain_image_resources

- **Center for Invasive Species and Ecosystem Health** https://www.bugwood.org/index.cfm

- **U.S. Fish & Wildlife Service** https://digitalmedia.fws.gov/

- **NOAA Photo Library** https://www.noaa.gov/digital-collections

- **Creative Commons** https://creativecommons.org/

- **NMSU Photoshelter** https://nmsu.photoshelter.com/

- **NMSU ACES Photoshelter** https://nmsuaces.photoshelter.com/