

## Q & A with Examples

*Q1: I have an article with six photos of American Indians dating from the 1870s, which were downloaded from various archives and historical society websites. My first instinct is to ask the author to query for permission, but since the photos were taken before 1923, shouldn't the copyrights have expired by now? So here's my question in a nutshell: If photos are part of museum collections/archives, do the copyrights for them get transferred to those collections?*



Fig. 1. Red Cloud, 1872. Photographed by Mathew Brady. National Anthropological Archives Smithsonian Institution, Washington DC (53551).

**A1:** It is helpful here to make the distinction between the copyright in the photos and the right to use the digital file that the collections/archives own and control. If the same image can be found in usable condition through another source (e.g. the LOC), then you could use that version without needing permission from the historical society. Generally, the fee charged by the collections/archives covers the fee to receive a high resolution image from their collection rather than an actual “permission” fee.

Q2: My manuscript includes many screenshots of the software elements to demonstrate using the software as described in the text. Below are a few examples (Figures 1 – 3) . Is permission necessary for each figure?

Figure 1. The Variables Window enables the user to create numeric, date, Boolean, short string, and document variables as well as dropdown lists of nominal or ordinal variable values from which the user can choose. In this example, the entry for Alexander Cordell is being assigned to the “Creative” category.... variable.

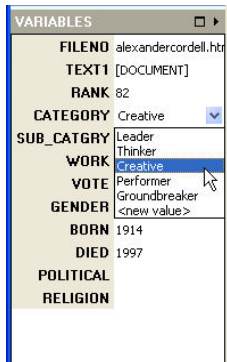


Figure 2. The Codes Window provides a tree list of the codebook defined for a given project....

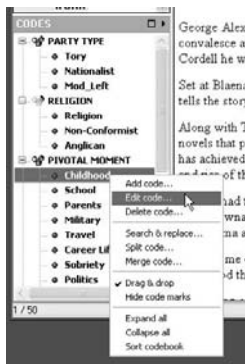


Figure 3. The Search Hits tab of the Text Retrieval command window displays the results of a query.



A2: Use of software screen shots within a manuscript discussing the use of the software has a strong case for “Fair Use.” However, in order to determine the requirements of the rightsholders, the software agreements (usually available on-line) for these types of screen shots should be reviewed. While is unlikely that you will need permission from the rightsholders in these cases,

you should always double check.

*Q3: Is permission required to print conversations taken from online chat rooms? If so, who is the copyright holder – the site that owns the online chat room or the person doing the chatting? Regarding the latter, many times such users are anonymous, so how can this be dealt with?*

A3: Online chat rooms (and bulletin boards such as EzBoards) usually contains "terms of service" where the content copyright information can be found. Generally, each person who posts the text retains copyright to it and grants the chat room operator certain non-exclusive rights. If re-use rights are not clear, get permission.”

*Q4: Blogs – Am I correct in assuming permission is required from a blog author in order to print anything original obtained from a blog?*

A4: Individual blogs usually contain a copyright notice and/or grant language for reproduction. If unsure, get permission.

*Q5: Do I need permission to use the below movie posters, or would these images be considered Fair use?*

A5: On their own (used as “window dressing”), the posters would not be considered fair use, but if they are used for the purposes of comparison, commentary or analysis, then they would be considered fair use. **Context** is key in determining Fair Use and we always need to see how the item in question will be used within the manuscript. For example, these particular images are being used in a chapter entitled “Media Violence” in a book about children and the media. The content and verbiage used support the defense of fair use with these particular images. The images are being analyzed and used to further the author’s point. Please read the verbiage that surrounds the images:

This chapter will begin by addressing the issue of how much violence exists in American media. Then we turn to the question of whether media violence appeals to young people....But such images are not limited to the movies (see **Figure 5.21**). Young children can readily witness laser guns and a variety of other types of firearms being used in cartoons and movies such as *The Bourne Supremacy* and even *Bugs Bunny*. Using data from the National Television Violence Study described above, Smith, Boyson, Pieper, and Wilson (2001) found that 26% of all violent incidents in a composite week of television involve the use of a gun. Three types of programming accounted for most of this gun violence: movies (54%), dramatic series (19%), and children’s shows (16%). Looking at rate, a child viewer on average will see nearly two gun-related violent incidents every hour that he or she watches TV. That rate goes up if the child selectively watches gun-filled genres such as movies or children’s shows.

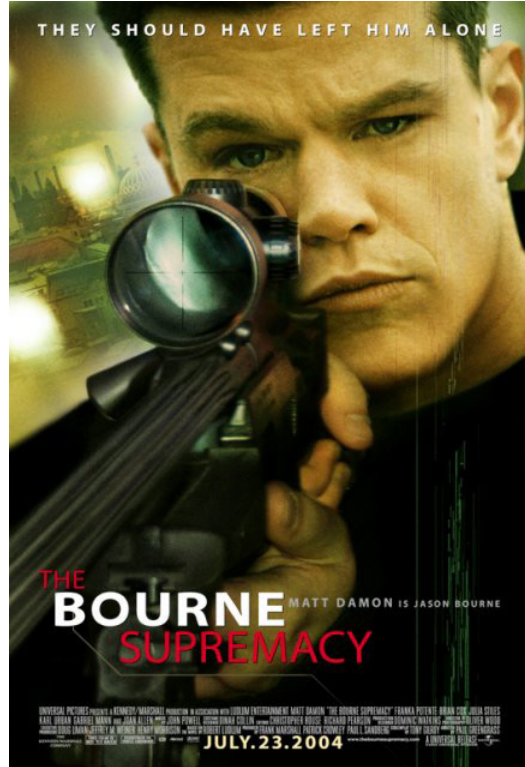
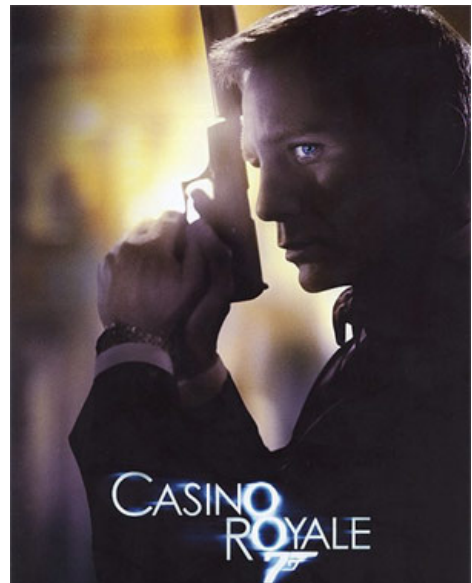
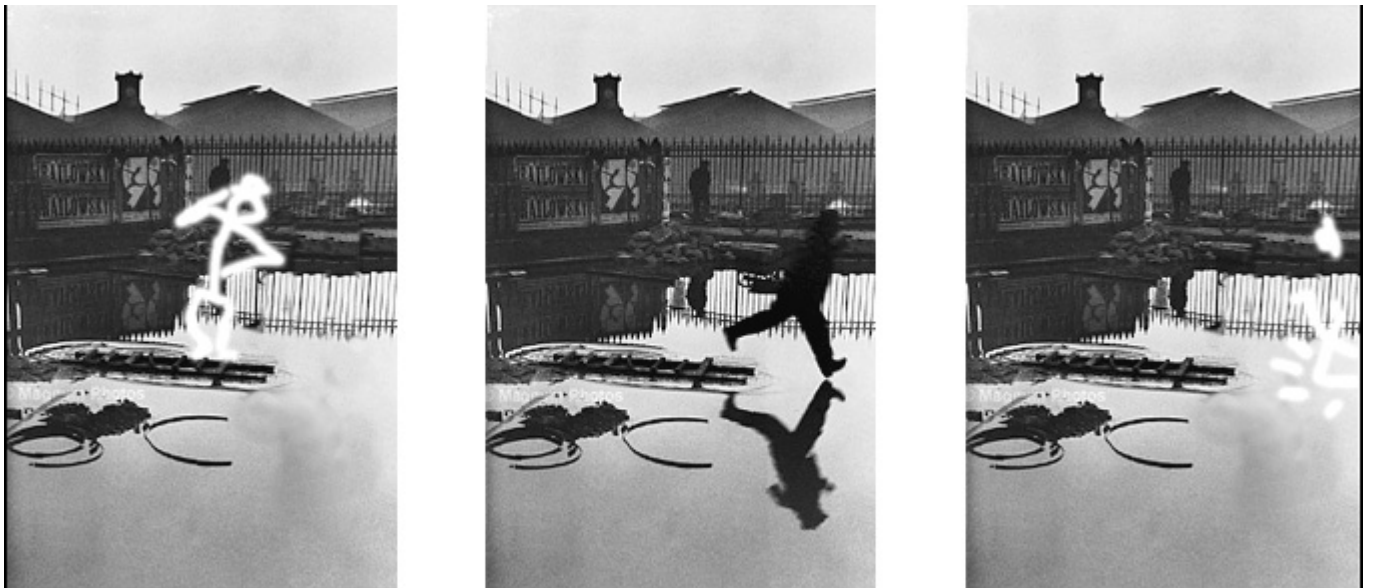


Figure 5.21. Images of Guns in Television and Film



*Q6: The center photo of the three-picture montage below was taken by a famous photographer (Henri Cartier-Bresson). Can the author's use be categorized as fair use since he has altered the photo to illustrate a concept in the left and right images, in effect creating and analyzing the topic of "the decided moment."*

The photograph that is often used to illustrate this idea (Place de l'Europe, Paris, 1932) shows a man jumping over a puddle, caught by the shutter in midair (center). Consider the moments before and after the image was taken (left and right). Did the man stand at the edge of the dry ground and ponder thoughtfully his next move, or did he take a running leap with abandon? Did he land gracefully or slip comically? Neither of these moments was of interest to Cartier-Bresson.



The "decided moment," before and after (with apologies to Cartier-Bresson). Center Image: Henri Cartier-Bresson *Place de l'Europe, Paris, 1932*. © Henri Cartier-Bresson/Magnum.

**A6: This photo would be considered fair use because the author is using it to analyze the topic of "the decisive moment." Note that the text within the manuscript that accompanies the photo provides analysis and the edits made to the photograph are necessary for the discussion:**



*Q7: What permission release forms do I need to use the following photo?*



**A7: A permission form is needed from the photographer/copyright owner to use this photo in our publication. Additionally, the second and fourth subjects from the right are potentially identifiable, and visual likeness release forms should be secured from them.**

*Q8: What permission release forms do I need to use the following photo?*



**A8: A permission form is needed from the photographer/copyright owner to allow us to use this photo in our publication. A visual likeness release is also required. Because the subjects are identifiable and minors, we would also need visual likeness release forms for them signed by their guardians.**

*Q9: I purchased this photo from Corbis. Is their agreement enough to use this photo or do I need to obtain additional releases from the photo subjects?*



**A9:** The Corbis agreement should cover the personal release of the photo subjects, but always confirm this by reviewing the agreement provided by Corbis. If the agreement is unclear, contact the Corbis representative for confirmation. Photos purchased from photo banks may be used as long as such use is not defamatory.

*Q10: I am unsure whether I need to get permission to use an unpublished dissertation. The student who wrote it owns the copyright, unfortunately, the university can't seem to come up with any contact info. I've searched the web multiple times and have come up with nothing. The best I can tell, the student hasn't published anything else and isn't on any university or school websites. I once heard that when an individual holds copyright, that chances are if we can't find them, they aren't likely to surface once the book has been published. Any thoughts?*

**A10:** This is incorrect. The use of unpublished material is particularly sensitive, especially a dissertation, since the author should retain control over the initial publication of their work. Additionally, when you cannot locate the copyright holder in order to secure permission, it is not sufficient to show "good faith diligence" in trying. And material, especially unpublished material, should not be used without the author's permission.

*Q11: An author took photos of a few students in her classroom. We normally have the author obtain a release from parents of recognizable underage students, and also from any adults in the photo. What if time has passed, students grew up, moved away, and cannot be located in order to get their permission to use the photo now?*

*A11: A photographer owns the copyright in a photo, and the subjects depicted in the photo have privacy rights, all of which require permission. As previously mentioned, difficulty in locating the subjects, even in the circumstance described, does not reduce liability. Also the subjects are recognizable, even if time has passed, and still need to be contacted for their visual likeness release.*

*Q12: This photo was on a city's Chamber of Commerce website. We have received permission from the website. They do not know who the photographer is or whether releases were obtained for the people in the image. How safe are we in using this photo?*



*A12: The photographer or other party may own the copyright to the photo, and the subjects have privacy rights that require their permission. The permission of the website, which is simply using the content itself, does not satisfy the need to get permission from the rightsholder or a release from the identifiable subjects.*



*Q13: Would permission be necessary for re-publication of the below table, which lists a factual methodology?*

Computer Assisted Qualitative Data Analysis

Computers have become standard equipment for field researchers. The list created by Miles and Huberman (1994) over a decade ago still presents a good summary of the ways that researchers use computers:

- + Making notes in the field
- + Writing up or transcribing field notes
- + Editing: correcting, extending or revising field notes
- + Coding: attaching key words or tags to segments of text to permit later retrieval
- + Storage: keeping text in an organized database
- + Search and retrieval: locating relevant segments of text and making them available for inspection
- + Data "linking": connecting relevant data segments with each other, forming categories, clusters or networks of information
- + Memoing: writing reflective commentaries on some aspect of data, as a basis for deeper understanding
- + Preparing interim and final reports (p. 44).

I include this list because it serves as a review as well it foreshadows some of the techniques discussed later in this chapter.

**A13: Although facts are non-copyrightable and factual works have a stronger fair use argument, the use of an entire list verbatim should be done with the permissions of the rightsholder, who does retain copyright in their arrangement and selection of the facts.**

*Q14: A society contacted us, unhappy to have attended a conference where someone was giving a presentation about the poor design of tables and charts seen in journals and used examples from the Society's journal as part of his workshop. Did the presenter have an obligation to get the permission of the society or the publisher to use the charts from its journals?*

**A14: The answer likely depends on additional circumstances, like the amount of material used and the factual versus creative nature of the material in the tables and charts. Since the use of the material was for the clear purpose of commentary and criticism, the presenter has a good fair use argument.**

*Q15: What if you are just citing facts or statements from an interview?*

A15: Facts are not copyrightable, however, the author's selection and arrangement of the facts required creativity, even if just a very small amount, and the final product is copyrightable. Even heavily factual works can be infringed if the re-use is very similar to the original work and if there is no fair use defense (such as additional commentary, criticism or the use of the factual compilation to make a different point or for a different purpose than was intended by the original). Interviews are trickier because it is less obvious who owns the copyright. To be safe, unless you have a fair use defense, you should generally get author and subject permission when quoting an interview statement.

*Q16: Song lyrics are always a tricky call for us. Would you consider this example fair use or should we get permission?*

**"Summertime" lyrics by George Gershwin**

- Summer time and the livin is easy
- Fish are jumpin and the cotton is high
- Oh, your daddy is rich and your ma is good lookin'  
so hush little baby, do...n't you cry.
- One of these mornings
- you gonna rise up singin'  
you gonna heist your wings—ohhh—and take to  
the sky
- And til that mornin'
- nothin will harm you
- with daddy and mammy, they'll be standin' by.

A16: Because songs are so short and of a creative nature, it is recommended that you always get permission unless the lyrics are being analyzed or critiqued, especially when reproducing a relatively long block passage from a song.

*Q17: Would you consider the below use of lyrics within a textbook fair use or should we get permission?*

To illustrate this concept, let's consider a line or two from a DiFranco song. In "True Story of What Was," DiFranco (2004) sings "**real is real regardless of what you try to say, or say away, real is real relentless.**" While I am not implying that DiFranco would identify herself as a positivist, the sentiment that the "real is real regardless" is consistent with the underlying ontological assumption of positivism that an objective reality exists. For positivists, social reality is stable and patterned so it can be known or fully realized through rigorous investigation.

**A17: The use of the lyrics in the text above has a strong fair use argument, since the author has used the lyrics for the purpose of analyzing the lyrics within the context of the book's subject.**

### **ADDITIONAL QUESTIONS REGARDING STUDENT WORKS**

*Q18: Often our authors are also professors/teachers. What are the guidelines we should be using for a teacher to reprint student writings (writings are at least 1 page in length)?*

**A18: Student writings are protected by copyright law, just like any other writing. Publication is not a prerequisite for copyright protection. Written permissions for the use of student works should always be obtained by the student and/or their legal guardian.**

*Q19: Does the permission need to state the specific project in which the writing will be reprinted?*

**A19: The broadest grant of rights would be an outright assignment of the copyright or a broad license. If the license is specific to a particular work/project, we will need to use the work only within the parameters mentioned in the permission agreement, as any unlicensed use amounts to infringement.**

*Q20: Is a verbal okay from students acceptable under any circumstances?*

**A20: Verbal agreements are risky because they are so easily disputed. In addition, a verbal copyright license can only be non-exclusive, meaning the students could allow other parties to use the same writing. Written permission must always be obtained.**