



## **"Practical Problem-Solving Advice for Publishers"**

### **Permissions Requirements for Derivative Works**

**By**

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I often receive questions about reprinting artwork and other images. Here's a recent client question: "We have a contracted author writing a book for us. He has included artwork that he attributes to a large New York- based publisher. Our author says this publisher has given him permission 'for your use' and he has used these images in his lectures. We will be redoing these images to match our style. Do we need to have our author request permission to reprint these images? The author thinks we can just refer to his lectures and we will BE OK without requesting."

Your instincts are correct: I recommend that your author seek permission to reprint the referenced artwork in his book. Generally, it is safe to be skeptical of the author relating to the "verbal permission" given by the copyright owner, in this case, the New York publisher. The fact that you will redo these images to match your style is irrelevant. What is relevant is that you are creating a *derivative work* from artwork belonging to another publisher and that work is protected by copyright held by that publisher as they either created the artwork using their artists or commissioned the artwork as a work-made- for- hire. My byword when it comes to permissions is "Better safe than sorry." Therefore, I recommend that you have your author get written permission(s) for the artwork in question.

#### ***Derivative Work***

A work that is "derived" from or based on a pre-existing copyrighted work is a *derivative work*. Examples of derivative works include a condensation of a book, a movie based on a novel, a foreign language translation of a book, a stage play based on a book, or any other adaptation or transformation of a pre-existing copyrighted work. The right to prepare a derivative work is one of the exclusive rights held by the owner of a copyright.

**Source:** McHugh & Koehser, *Rights/Permissions Glossary*  
<https://tinyurl.com/y79vqau7>

To take my response a step further, I shared this question with Attorney Dave Koehser, my legal advisor. Dave wrote:

I (and the publisher) would need to see the permission granted by the NY publisher, but based on the information above, additional permission would be needed to reproduce and publish the artwork as part of the proposed book. The rights under copyright include the right of reproduction, distribution and display, and it appears from the above that the NY publisher only granted the right to reproduce, distribute (perhaps; it is not clear from the above if distribution was contemplated or not), and display as part of the live lecture.

There is nothing in the above statement to indicate that the NY publisher also granted permission for reproduction and distribution of the artwork in any book, which will presumably be distributed in print and e book format, perhaps in multiple nations in addition to the US and in languages other than English. The publisher should request a written permission that specifically authorizes use of the artwork in the book, in all formats and languages worldwide. If the original permission is specific as to these terms, fine, but I am guessing that it is not; thus a new permission will be required for the book project.

### **David Koehser, Attorney-at-Law**

David Koehser is a Minneapolis-based lawyer who practices in the areas of copyright and trademark law. Dave's website contains articles on the topics of: Publishing Law, Merchandise Licensing, Copyrights and Trademarks, and Theater and Performing Arts. Request a copy of Dave's informative quarterly e newsletter, *Publishing and Merchandise Licensing Law Update*. Dave has a B.A. from the University of Iowa and a J.D. *cum laude* from the University of Minnesota Law School. You can find his website at [www.dklex.com](http://www.dklex.com)

### **John B. McHugh**

John B. "Jack" McHugh is a 40-year veteran of the publishing business. Jack has worked as an executive for Houghton Mifflin, Wadsworth, and Saint Mary's Press. Jack is also an experienced association publishing executive. He is a member of the ASAE Advisory Board for Publishing, Communications, and Media Issues and Practices.

Jack's specialties include association/nonprofit publishing, book publishing, career management, executive recruiting, journal publishing, rights and permissions, new ventures, organizational design, and social media strategy and policy. Mc Hugh is also the manager of the LinkedIn™ group, **Association** and **Nonprofit Publishing**.

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