



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

SECNAVINST 5870.9  
CNR  
14 Jun 2019

SECNAV INSTRUCTION 5870.9

From: Secretary of the Navy

Subj: USE OF COPYRIGHTED WORKS IN THE DEPARTMENT OF THE NAVY

Ref: (a) DoD Directive 5535.4 of 31 August 1984  
(b) Federal Acquisition Regulation, Subpart 27.4  
(c) Defense Federal Acquisition Regulation Supplement,  
Subparts 227.71 and 227.72  
(d) 17 U.S.C.

Encl: (1) Copyright Overview  
(2) Procedures for Requesting Permission from the  
Copyright Owner

1. Purpose. To provide policy, procedures, and responsibilities for the use of copyrighted works in the Department of the Navy (DON) and for obtaining permission from copyright owners for the use of such works by the DON, per reference (a). The policies and procedures in this instruction do not apply to the acquisition of rights in data, per references (b) and (c).

a. This is a complete revision and this directive should be reviewed in its entirety.

b. Procedures for obtaining permissions from copyright owners for use of copyrighted works in the DON have been revised.

c. Policies and procedures relating to copyright in works of authorship prepared by government employees have been separated from the policies and procedures in this instruction.

2. Cancellation. SECNAVINST 5870.4A.

3. Applicability. This instruction applies to the Offices of the Secretary of the Navy, the Chief of Naval Operations (CNO), the Commandant of the Marine Corps (CMC), and all U.S. Navy and

U.S. Marine Corps installations, commands, activities, field offices, and all other organizational entities within the DON.

4. Policy. In general, copyrighted works shall not be copied without permission of the copyright owner. Copyrighted works shall not be publically performed or displayed without permission of the copyright owner. DON appropriated or nonappropriated funded audio and video duplicating and playback equipment and facilities shall not be used for the reproduction of copyrighted sound or video recordings without permission of the copyright owner or without a written legal determination by a DON Office of General Counsel (OGC) Intellectual Property (IP) attorney that the reproduction is authorized.

5. General Information on Copyright. Detailed information on copyright protection and infringement, and the use of works in certain online libraries in accordance with reference (d), is included in enclosure (1).

6. Copyright Advice. The rules and formalities discussed in enclosure (1) are provided to assist activities in issue spotting potential copyright concerns. These rules and formalities are constantly being reinterpreted by a multitude of federal and state courts with differing results and opinions. Legal advice from a DON OGC IP attorney should be obtained when considering questions as to whether a particular work is protected by copyright or whether a particular use would infringe a copyright, as well as all other questions related to copyright. If the employee's activity or parent activity does not have IP attorneys on staff, the employee should seek IP legal advice from the Office of Counsel, Office of Naval Research.

7. Responsibilities

a. Chief of Naval Research (CNR) is responsible for the supervision, administration, and control of activities within and for the DON relating to copyrights and matters connected therewith. The CNR shall issue guidance, as necessary, to implement this instruction.

b. The OGC shall provide legal advice and services, including rendering opinions on whether particular works of authorship are covered by valid copyright, whether a performance

of a work is a "public" performance, and assistance in avoiding copyright infringement.

c. DON personnel shall consult with OGC attorneys, as necessary, for determinations on whether works of authorship are covered by valid copyright, whether a performance of work is a "public" performance, and assistance in avoiding copyright infringement.

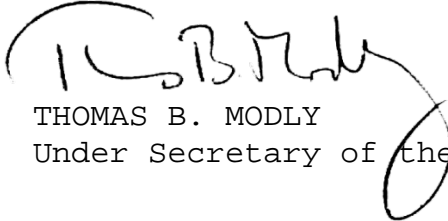
8. Procedures for Requesting Permission from the Copyright Owner. See enclosure (2).

9. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page:

<https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx>.

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.



THOMAS B. MODLY  
Under Secretary of the Navy

Distribution:

Electronic only, via Department of the Navy Issuances website  
<https://www.secnav.navy.mil/doni/>.

14 Jun 2019

**COPYRIGHT OVERVIEW**

1. Subject Matter of Copyright. Under United States law (reference (d)), copyright protection exists in original works of authorship (published or unpublished) when fixed in any tangible medium of expression. "Original" means that the author made more than a trivial creative contribution to the work. Originality requires independent creation plus a modicum of creativity. The author's expression does not need to be novel, and it does not need to be presented in an innovative way. Copyright protection is not available for works prepared by officers or employees of the U.S. Government as part of their official duties.

a. Works of authorship that are subject to copyright include literary works (works expressed in words or numbers including computer programs, computer program documentation, e-mail messages, social media postings, and websites and web pages); musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works (including clip art); motion pictures and other audiovisual works (multimedia presentations, and many websites and web pages); and sound recordings.

b. A copyright protects only the form in which an idea is expressed and does not extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery. For example, copyright protection prohibits copying a work that describes a process, but does not prohibit further communication or use of the process described in that work.

c. Copyright protection can extend to nonfunctional features of a useful object, as well as to portions of 3D files representing nonfunctional features of that object, regardless of whether those files are printable using additive manufacturing techniques (it is also possible that a 3D file defining an object not protectable by copyright can include expressive, nonfunctional content protectable by copyright).

d. The requirement that a work be "fixed in any tangible medium of expression" means that the work must be stored in a reasonably permanent medium. Typical media include paper, canvas, film, audio tape, video tape, hard disk, CDROM, DVD, web servers, internet cloud servers, etc. The requirement for a work to be fixed in tangible form makes copyright protection unavailable for works of a transitory duration, such as unrecorded speeches and unrecorded dances.

2. Duration of Copyright. It can be difficult to determine whether a copyright has expired. A good rule of thumb is to assume that a copyright has expired on any work published in English before 1923. In all other cases, employees should seek legal advice from a DON OGC IP attorney to determine whether copyright protection has expired.

3. Rights of Copyright Owner. The owner of a copyright has the exclusive right to control certain uses of the copyrighted work. Common types of uses covered by copyright protection are reproduction of the copyrighted work in copies or phono records, preparation of derivative works based on the copyrighted work, public distribution of copies or phono records of the copyrighted work by sale, gift, rental or loan, and public performance or display of the copyrighted work. Copyright law considers those uses to constitute forms of copying.

4. Guidelines for Determining Whether a Performance is "Public." Section 101 of reference (d) provides the following definition for determining whether a performance is "public" for which permission from copyright owners is required:

"To perform or display a work 'publicly' means to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered ...."

a. Within the DON, displays or performances on-board ship, in bachelor officer or bachelor enlisted quarters, day room, barracks, general mess, in an isolated area, or deployed area are not considered "public" provided the performances or displays are made without any purpose of direct or indirect commercial advantage and without charge to the recipients.

b. Within the DON, displays or performances in open messes and clubs are considered "public" and will not be performed or displayed without the permission of the copyright owner, except for isolated areas or deployed units, as provided in enclosure (2), paragraph 3.

c. Normally, any performance at which admission is charged or where a "contribution" of funds is being sought, e.g., fundraising events, would be considered a public performance.

5. Isolated Areas or Deployed Units. Within the DON, the CNO and CMC determine which areas are isolated and which units are

14 Jun 2019

deployed based on the availability of adequate commercial video programming, whether by off-air or via a cable system. Where adequate commercial programming is available, the CNO and the CMC will not approve isolated area or deployed unit determination requests.

6. Public Domain. For the purposes of this enclosure, a work is in the public domain if it is not protectable by copyright, copyright protection has expired or been otherwise relinquished, or all copyright rights have been irrevocably and unconditionally licensed to all on a royalty-free basis. Also, for purposes of this instruction, a work in the public domain may be protected by another form of intellectual property, e.g., a trademark.

7. Copyright Infringement. Copyright infringement does not require verbatim copying (e.g., in the case of an adaptation), but does require the existence of a substantial similarity between the allegedly infringing work and the copyrighted work (e.g., in the case of an adaptation). Such unauthorized copying is copyright infringement, unless the copying is outside the exclusive rights granted to the copyright owner by the law, or unless covered by one of the limitations on the exclusive rights provided by reference (d). Potential copyright infringement scenarios include, but are not limited to: unauthorized streaming of copyright-protected content, such as music or video; the unauthorized distribution of copyright-protected content via peer-to-peer file sharing applications; the unauthorized reproduction of a copyright-protected object by any means, including additive manufacturing (also known as 3D printing); and the unauthorized downloading (and/or subsequent copying) of a copyright-protected image from the internet. An infringer is liable for monetary damages and the U.S. Government has no general exemption from copyright infringement liability. Indeed, the U.S. Government is liable not only for the infringing activities of its own employees, but also for the infringing activities of others acting for, and with the authorization and consent of, the U.S. Government.

8. Copyright Notice. Since 1989, copyright holders are no longer required to include the copyright notice. Therefore, even in the absence of a copyright notice, always operate under the assumption that all works of others are protected by copyright. Many copyright owners and publishers, however, still include a copyright notice on their works. A copyright notice consists of three elements: the letter "C" in a circle ("P" in

14 Jun 2019

a circle if a phonorecord of a copyrighted sound recording), or the word "Copyright," or the abbreviation "Copr.;" the year of first publication in some instances; and an identification of the owner. It is a criminal offense to remove or alter with fraudulent intent any notice of copyright appearing on a work subject to copyright.

9. Online Libraries of Public Domain Works and Works Available For Royalty-Free Licenses. Some websites offer libraries of downloadable works identified as being in the public domain or available under an irrevocable royalty-free license. Some of those libraries may misidentify works as being in the public domain or available for royalty-free licensing. Nevertheless, an online library accessible via a link on the official website of a major university, or affiliated with a well-known publisher, will generally be reliable. Any license provided by an online library should be reviewed by a DON OGC IP attorney.

**PROCEDURES FOR REQUESTING PERMISSION FROM THE COPYRIGHT OWNER**

1. Request Must Be Made to Use the Copyrighted Work. When, after consultation with a DON OGC IP attorney, it has been determined that permission from the owner of the copyright in a work may be required prior to using a work or a portion of it in furtherance of official duties, the DON employee responsible for the proposed use shall request permission directly from the copyright owner or owner's agent. Copyright owners will often grant the DON permission to make limited use of material subject to copyright without charge. Unless the person making the request is aware that permission will not be granted without a charge, the initial request should ask for permission free of payment of a royalty.

2. Guidelines for Requests of Permission. Requests for permission should permit an easy affirmative response:

a. The following information in paragraphs 2a(1) through 2a(4) should be included in the request, if applicable and available:

(1) Complete identification of the material for which permission to use is requested, including title of the work, name of author, exact copyright notice(s) appearing on the work, the Internal Standard Book Number for a book or International Standard Serial Number for a magazine or uniform resource locator for a website and, when appropriate, editor and edition for literary works, and any other identifying information associated with an audiovisual or music-related work.

(2) Designation of exact portion of the work (e.g., amount, page numbers, chapters, etc.). Inclusion of a photocopy of the material and the copyright page might also be helpful. Blanket permission to use excerpts "as later determined" shall not be requested.

(3) Statement of intended use(s) of the copyrighted work, including, when appropriate, number of copies or phono records to be made; method of reproduction (photocopy, scan, analog to digital conversion of audio or audiovisual source material, download, rip, screen capture, etc.); intended form of distribution (e.g., hardcopy, online, streaming, etc.) and intended recipients; whether material is to be sold and



contemplated fees or charges in connection with use or distribution of the material; length of time material will be used; and dates, media, and intended audience of public performances or displays.

(4) Contemplated modifications of the work, if any.

b. The request shall be for rights no greater than actually needed.

c. If submitted as a hardcopy, the request shall be submitted in duplicate so the recipient may retain one copy and return the other granting permission.

d. The request shall indicate that the copyright owner may designate the copyright notice and credit line to be used.

e. It is advisable to ask the copyright owner to verify in writing that it has the authority to grant the requested permission.

f. The request may be sent by facsimile, telephone, mail, email, via a web-based transmission (typically an electronic form posted on the website of the copyright owner or copyright owner's agent), or any other method recommended by the copyright owner or agent.

g. Appropriate judgment must be used when requesting permission via a form provided by the copyright owner or agent. Forms provided by the copyright owner or agent are often tailored for non-governmental uses of copyrighted works, and may include language that the government cannot or should not agree to or comply with. Fortunately, those forms often include a "Notes" or "Comments" section in which the details of intended government use and distribution can be more fully explained. If the owner or agent-provided request form cannot be modified to include all critical details of intended government use and distribution, the request should be submitted by a more appropriate method. If the request is sent by mail, a self-addressed return envelope shall be enclosed. The request may be patterned after page 4 of this enclosure.

h. Information about the status and ownership of a copyrighted work, as well as information on how to license a

copyrighted work, may be found, for example, at [www.loc.gov](http://www.loc.gov), [www.copyright.com](http://www.copyright.com), [www.bmi.com](http://www.bmi.com), and [www.ascap.com](http://www.ascap.com). Additionally, several music publishers and copyright agents have their own websites.

i. If the person requesting permission is aware, from prior experience or otherwise, that a request for permission without charge would be futile, the initial request letter may ask for information concerning the fee required for permission. Such a request should follow the guidelines in paragraph 2 of this enclosure.

3. Final Action by Person Who Requested Permission

a. Purchase of Permission. Upon receipt of the response from the copyright owner or owner's agent, the person who requested permission shall review the response and determine whether the permission offered, if any, is of sufficient scope to cover the intended copying and whether the copying warrants the fee asked, if any. If the permission covers the intended copying and the fee is fair and reasonable, then the person who requested permission may decide to purchase, or have purchased, the permission offered.

b. Copying Without Permission. In the event that a copyright owner cannot be located, or refuses to reply or to grant permission, or an offered permission is insufficient to cover the intended copying, or the fee asked is considered unfair or unreasonable, the person who requested permission should seek DON OGC IP legal advice to confirm whether the material is covered by valid copyright and for advice as to the risk of infringement. After such consultation, the activity having control over the person who requested permission will make its final decision on whether to copy the material, as contemplated, without permission. That activity will be responsible for providing funds to settle any administrative claim for copyright infringement.

14 Jun 2019

SAMPLE FORMAT FOR REQUESTING PERMISSION  
(LETTERHEAD)

SSIC  
Originator Code or

Serial

(Date)

(Name of copyright owner or agent)  
(Address)

(Salutation)

(Name of activity) requests your permission as copyright owner or agent for the copyright owner to copy the following identified material for the use(s) shown for the Department of the Navy.

(Identification of material -- guideline 2a(1))

(Portion of material to be copied -- guideline 2a(2))

(Intended use(s) -- guideline 2a(3))

(Contemplated modifications -- guideline 2a(4))

If the requested permission is granted, please sign below and return this original letter in the enclosed self-addressed envelope. A copy of this letter is included for your records.

(Complimentary close)

\_\_\_\_\_  
(Signature of requester)

\_\_\_\_\_  
(Title)

PERMISSION:

The above requested permission is granted, royalty-free. A notice of copyright and credit line is desired as follows:  
(Leave at least 8 lines for credit line)

I hereby certify that I have the authority to grant this permission.

\_\_\_\_\_  
(Name of copyright owner or authorized agent)

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

\_\_\_\_\_  
(Title)