



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20350-1000

SECNAVINST 5870.5

OCNR:OCCIP

26 August 1988

SECNAV INSTRUCTION 5870.5

From: Secretary of the Navy  
To: All Ships and Stations

Subj: PERMISSION TO COPY MATERIALS SUBJECT TO COPYRIGHT

Ref: (a) Federal Acquisition Regulation (FAR) (Subpart 27.4)  
(b) DoD FAR Supplement (Subpart 27.4)

Encl: (1) Sample format for requesting permission

1. Purpose. To prescribe procedures for obtaining permissions from copyright owners for use of copyrighted materials in the Department of the Navy.

2. Cancellation. ONRINST 5870.5.

3. Scope. This instruction does not apply to acquisition of rights in data per references (a) and (b).

4. General Information on Copyright

a. Subject Matter and Duration of Copyright. Under United States law, copyright protection subsists in original works of authorship (published or unpublished) when fixed in any tangible medium of expression. Copyright normally endures for the life of the author plus 50 years, or 75 years from first publication if the author cannot be identified. Copyright protection is not available for works prepared by employees of the U.S. Government as part of their official duties. Works of authorship which are subject to copyright include literary works (works expressed in words, numbers, or other verbal or numerical symbols or indicia, including computer programs and documentation); musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; and sound recordings.

b. 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 are: (1) Reproduction of the copyrighted work in copies or phonorecords; (2) Preparation of derivative works based on the copyrighted work; (3) Public distribution of copies or phonorecords of the copyrighted work by sale, gift, rental or loan; and (4) Public performance or display of the copyrighted work. Copyright protects only the form of expressing ideas, and the rights of the copyright owner do not extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery embodied in the copyrighted work.

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c. Copyright Infringement. As a general proposition, works subject to copyright protection may not be copied without permission of the copyright owner. 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, e.g., fair use, 17 United States Code (USC) 107; reproduction by library and archives, 17 USC 108; transfer of particular copy or phonorecord, 17 USC 109; certain performances and displays, 17 USC 110; secondary transmissions, 17 USC 111 and ephemeral recordings, 17 USC 112. An infringer is liable for monetary damages and the U.S. Government has no general exemption from copyright infringement liability. Government employees are not, however, personally liable for copyright infringement occurring in the performance of their official duties.

d. Copyright Notice. Publicly distributed copies of published works subject to copyright should bear a copyright notice consisting of three elements: (1) the letter "C" in a circle ("P" in a circle if a phonorecord of a copyrighted sound recording), or the word "Copyright," or the abbreviation "Copr."; (2) the year of first publication in some instances; and (3) an identification of the owner. It is a criminal offense to remove or alter with fraudulent intent any notice of copyright appearing on a copy of a work subject to copyright. Although the presence or absence of a copyright notice does not conclusively establish whether or not a work is covered by a valid copyright, its presence does suggest that a prospective user should inquire further before using such work, without permission, in a way that might infringe the copyright owner's rights; and its absence may normally be relied upon as indicative that no copyright exists, unless there is actual knowledge that the work has not been published or that the copyright notice has been omitted without the authority of the copyright owner.

e. Copyright Advice. Questions as to whether a particular work is protected by copyright or whether a particular use would be infringement of copyright, as well as all other questions related to copyright, should be referred to Navy Intellectual Property Counsel or attorneys in Offices of Counsel.

## 5. Procedures

a. Initial Action by Requesting Activities. When a DON activity concludes that permission from the owner of the copyright in a work may be required prior to the copying of the work or a portion thereof, the activity will request the 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 requesting activity is aware that permission will not be granted without a charge, the initial request should ask for permission free of payment of a royalty.

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b. Guidelines for Requests of Permission. Requests for permission should permit an easy affirmative response using these guidelines:

(1) The following information should be included in the request, if applicable and available:

(a) Complete identification of the material for which permission to copy is requested, including title of the work, name of author, exact copyright notice(s) appearing on the work, and, when appropriate, editor and edition.

(b) Designation of exact portion of the work (e.g., amount, page numbers, chapters, etc.). The Association of American Publishers and the Authors League of America recommend inclusion of a photocopy of the material and the copyright page, if possible. Blanket permission to copy excerpts "as later determined" will not be requested.

(c) Statement of intended use(s) of the material including, when appropriate, number of copies or phonorecords to be made, type of reproduction (photocopy, offset, typeset, tape, disc, etc.), intended distribution (including form and 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.

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

(2) The request will be for rights no greater than actually needed.

(3) The request will be submitted in duplicate so the recipient may retain one copy and return the other granting permission.

(4) The request will indicate that the copyright owner may designate the copyright notice and credit line to be used.

(5) A self-addressed return envelope will be enclosed.

The request may be patterned after enclosure (1). If the requesting activity 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 5b(1) and (2).

c. Final Action by Requesting Activities

(1) Purchase of Permission. Upon receipt of the response from the copyright owner or owner's agent, the requesting

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activity will 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 warranted and reasonable, then the requesting activity is authorized to purchase the permission offered.

(2) 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 of doubtful scope to cover the intended copying, or the fee asked is considered unreasonable, the activity should consult with Intellectual Property Counsel or an Office of Counsel Attorney to confirm whether the material is covered by valid copyright and for advice as to the risk of infringement. After such consultation, the activity will make its final decision on whether to copy the material, as contemplated, without permission. The using activity will be responsible for providing funds to settle any administrative claim for copyright infringement.

6. Administrative Claims. Administrative claims for copyright infringement may be submitted by copyright owners per Subpart 27.70 of the DoD FAR supplement. Any communication on behalf of a copyright owner which directly or indirectly alleges a copyright infringement should be forwarded to the Counsel, Office of the Chief of Naval Research, 800 N. Quincy Street, Arlington, VA 22217-5000.



H. Lawrence Garrett, III  
Acting Secretary of the Navy

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SAMPLE FORMAT FOR REQUESTING PERMISSION

(LETTERHEAD)

SSIC  
Orig 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 identified material for the following use(s) for the Department of the Navy.

- (Identification of material -- guideline 5b(1)(a))
- (Portion of material to be copied -- guideline 5b(1)(b))
- (Intended use(s) -- guideline 5b(1)(c))
- (Contemplated modifications -- guideline 5b(1)(d))

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)

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

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

BY \_\_\_\_\_

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

Enclosure (1)