

# Juta's © Guidelines

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**Juta's Permission Advice in a nutshell:**

1. **Brand and Trademark usage must be cleared or written out of the Work.**
  2. **Avoid 3<sup>rd</sup> party permissions: rather write them out of your text.**
  3. **If unavoidable, then apply the test for Berne Convention #2: Does the usage conflict with the normal economic exploitation of the original © holder's work. If yes, then apply, using the guidelines offered here.**
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**Introduction**

As most Juta authors will have entered the textbook-writing game via the route of academia, and scholarly writing, the requirements of commercial copyright permission may be new. Moreover, recent changes in the law (notably, the Berne convention's Three-step test) have meant that international publishers are attempting to make more revenue from the third party use of excerpts (© permissions). Consequently, Juta has been advised to let the copyright holder determine 'fair usage' and Juta publishers and authors are advised to take careful note of these copyright guidelines at the planning stage of a manuscript.

When an author uses a "substantial" part of someone's copyrighted material in a book for which that author will receive royalties, it is necessary to give the original copyright holder the opportunity to charge for the re-use of the intellectual property. Such an extract could be an extract, diagram, screenshot or even a table of research results. This is different to the scenario where an academic makes reference to another scholar's work in their scholarly writing or research output. In such a case, proper acknowledgement is sufficient and there is no need to apply for permission. There is a specific copyright exception in the Copyright Act that allows for inclusion of copyrighted work for purposes of critique, and moreover, scholarly writing does not interfere with the economic exploitation of a work.

'Permissions' are both extremely costly and usually cause lengthy delays in the production process, which is why attention needs to be paid to this element while authors are *preparing their manuscript*. Depending on the market potential of the publication, the contract will stipulate whether Juta or the Authors are solely or jointly responsible for the permission fees, and will stipulate a cap on the permission fees. This is negotiated with the Juta publisher at commissioning stage, based on the financial prospects of the publication. Where the Author is responsible for the fees, these may be carried by Juta, but will be deducted from royalties.

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**Authors need to read these guidelines because:**

- they warrant that they have read the Juta Copyright Guidelines for Authors in the Author contract.
  - These guidelines will help you understand when an item is under copyright, when permission will need to be sought, and help you draw up your permissions brief.
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This document explains when something would be regarded as ‘substantial’, when something is in or out of copyright, how to prepare a manuscript that contains copyrighted materials for handover to Juta and how to prepare a permissions brief.

### Problems caused and costs

The sorts of problems that can be caused by copyright permissions are endless, but three of the most common follow by way of illustration:

**1. Permission to reproduce can be flatly refused:**

We have had a case where the permission to reproduce a set of diagrams was refused by the original publisher. Fortunately the author was notified at the editing stage and we were able to take them out – had we been at the typesetting stage (laying out the pages), we would have had to entirely reset that chapter at great cost, and causing a delay in the publication date.

**2. The average prices from some of the international publishers are extremely costly:**

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**Permission fees (usually in US Dollars or Pounds) can be very costly against a falling Rand:**

**Cengage USD 300 per diagram /table – print run**

**Rights Link USD 117 for electronic rights, USD 58 print only – print run**

**SAGE GBP 180 per diagram /table – print run**

**Kogan Page GBP 170 per diagram/table – print run**

**AVUSA R 2 000 for case study about Mango – print run**

**Electronic rights = World rights. These are the most expensive and complicated. Different laws in the different geographical areas could cause some text to be in violation.**

**Times UK GBP 300 a case study for an infinite amount of time.**

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**3. The original publisher can demand the manner of reproduction:**

For example: the use of the original colour may be required –which will be problematic if Juta is producing a one-colour publication.

## 1. What is “Copyright Permission”?

If you want to include material from other people’s work, ‘permission to reproduce’ is requested, usually but not exclusively, from the publisher of the original work.

The SA Copyright Act requires that you obtain copyright permission whenever you use a substantial part of a written work. ‘Substantial’ does not only refer to the length but to the importance. Some copyright holders allow you to use extracts of up to 400 words of prose (or a series of extracts, with comments interposed, up to a total of 800 words, of which no extract may exceed 300 words). This should be checked carefully with the copyright holder. Therefore avoid fair use (fair dealing) unless you’re sure of the copyright holder’s stance. This means that unless clearly stipulated otherwise, all third party content will require permission to be used. Merely acknowledging a source is not sufficient.

Copyright permission, when granted, is very specific: to the edition, impression, geographical area, etc. This means that, in practice, Juta will need to apply for permission to re-use an extract every time you use it: in a new impression (print run) or edition of your book.

Any changes or translations need to be indicated. It takes anything from 6 weeks to 6 months for permission to be granted and then third party copyright holders may still refuse the adaptation of their work. If this is so, other content will have to be sourced. This has to be taken into account when drawing up the timeline for the project.

## 2. Juta will apply for permission for any usage which might conflict with the normal economic exploitation of the Work

- **Prose extracts from books, newspapers, magazines, journals, periodicals, on-line publications and URLs, etc**
- **Extracts from poetry**
- **Charts and graphs:** When adapting a figure or table, ensure that the figure/table is changed substantially. If the original idea still forms the core/basis of an adaptation, the level of adaptation may be questioned if found to not be substantial enough thus still exposing it to copyright infringement. Third party copyright holders may refuse the adaptation of their work. If this is so, other content will have to be sourced.
- **Diagrams:** Same applies as above
- **Tables:** Same applies as above
- Please note that the content of a figure or table rewritten into paragraph form DOES NOT constitute a sufficient adaptation or exempt that information from requiring permission from the original source.
- **Artwork:** Of any nature including photographs
- **Statistics and research findings:** Some sources only require acknowledgement and others want their work to be widely distributed, so permissions are generally free and not too difficult to get.
- **Adapted from instances:** The original source is required. Juta will apply if in any doubt. This includes:

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- Where your diagrams and tables are going to be substantially changed with additional content (not just redrawn)
- Where you are changing a drawing by 25% (must provide original for comparison)
- **Computer representations, the on-screen output of software, reproduction of web pages, and the capture of internet or other online screen shots:**
  - Exercise caution when using material from the Internet.
  - While the perception may exist that the content is 'free' to use, there are always terms and conditions regarding the use of material
  - It is often extremely difficult to trace the original copyright holder
  - Often the source might not necessarily be reputable. When using information from the internet, rather consult online journals. They usually have a better process in place as well.
- **Screenshots:** Exercise caution when using screenshots. There are rights restrictions regarding these and permission must be sought for each screenshot used. It is not sufficient to just erase the company name from the screenshot, as the copyright is also on the design of the website/software.
- **Third party software:** Any third party software used as a component to be distributed with the book will need to be licensed, and needs to be discussed separately with the publisher.

### 3. Case studies

These need to be signed off by the company, ie JUTA will need a letter from the company giving permission to use the information. Such a letter is usually requested of a company's Marketing or Corporate Communication Office. Permissions are not built into the anticipated revenue stream of companies, thus this is not an area from which they anticipate receiving revenue and therefore they are likely to grant permission without a fee so long as it is up to date and accurately reflects the company. JUTA will also need hi-res images (if these are to be included) and these would be requested from the company concerned.

### 4. Logos and trademarks

Technically these fall under industrial property rights, but seeking permission should be approached in the same way as for a copyright work.

When applying for permission to use the logos or brands, some copyright holders will be prescriptive in terms of how their logos/brands may be reproduced. For example they may not allow their logos/brands to be changed from colour to black and white. Also make sure that if a logo is used, it is in high resolution.

Logos may contain certain taglines or slogans which may hold a separate copyright— always make sure that permission is obtained for both. As far as is possible avoid using international jingles, taglines and slogans, local brands are more likely to respond timeously and ultimately grant permission.

## 5. Brands

Avoid big international brands such as Coca-Cola, MacDonalds, Kentucky Fried Chicken, Google, Apple and so on because:

- They usually refuse permission
- If they do grant permission, they take a long time to respond and they have certain restrictions/conditions
- They will always ask to see an extract and the manner in which they are reflected. This is not only applicable to big brands as most copyright holders will ask to see the context of the intended use of their content.
- Companies are likely to take legal action if the text reflects them negatively or may grant a cease and desist notice if we make use of the brand in any way that does not fit their with their brand management. This would be a particularly difficult situation if we have already printed the book, and will result in Juta taking the book off the market.

Some local brands have granted permission in the past, like ABSA, Pick n Pay, Mango, Bid or Buy and Morkels. However there is no guarantee that they will grant permission and one needs to give them enough time as often the request gets bounced from one marketing person to another. The information that is used also needs to be completely up to date and relevant. Companies are more difficult when they are in the process of changing their brand identity or if information is merely copied from their websites. Avoid PEP Stores.

## 6. This means that you do not have to apply for permission

All original sources need to be acknowledged. E.g. Brown (1999: 234), *regardless as to whether this item required copyright permission*. However, you do not need to apply for permission:

1. where the information that you are presenting is in the common domain or is part of the discourse of a particular discipline. Cite two sources that use similar information beneath your rendition of this information. For example: “see for instance [source] and [source] for more on this.”
2. where you are discussing a theory (although you will still need to acknowledge it)
3. for unaltered Google searches: Google allows the use of screenshots of an internet search as long as it is reproduced exactly as it appears on screen and is not altered in any way.
4. to use a company’s name: though be careful about the context in which you use it, else you open yourself up to another sort of prosecution entirely
5. to quote from legislation. See section (8)(a) of the SA Copyright Act. “No copyright shall subsist in official texts of a legislative, administrative or legal nature, or in official translations of such texts, or in speeches of a political nature or in speeches delivered in the course of legal proceedings, or in news of the day that are mere items of press information.”

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6. as there is no copyright on ideas, you will not have to apply for permission if the idea does not have fixation

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## 7. Documents and Information required from authors

### 7.1 Permission numbers in the manuscript

Every instance that the author identifies as requiring Copyright permission will need a Permission number **in the manuscript**, with corresponding numbering on the **Permissions brief**.

### 7.2 The Permissions Brief

Please supply copies of the following:

When using third party content, authors must provide the following for each instance in which they have used such content:

- The full title
- List of author names
- ISBN
- Imprint
- Publisher
- A photocopy/scan of the imprint page of the book
- A photocopy/scan of the acknowledgements page of the book
- A photocopy/scan of the extract that the author wants to use as it appears in the source material with the page number clearly visible
- A photocopy/scan of the page where the extract will appear in the manuscript so the copyright holder can see the context in which the material will be used
- For online material please provide relevant and current URL/website addresses, and the date that it was accessed.

If the item is from a journal or magazine, please ensure that the following is supplied:

- the title of the publication
- volume number, part number
- month and year
- publisher's address.

To obtain permissions for photographs, it is important to provide the name of the photographer if available, and all the other details as above.

Authors must also complete the EXCEL schedule / Permissions Brief for each instance in which they wish to request copyright permission. Along with the documentation listed above, the document will serve as the permissions brief.



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No copyright research will take place unless all the above are in place. The material and manuscript will be returned to the author to complete this section of work before production begins on the title. Many publishers/copyright holders require applications to be done online with standard forms. If any of the above information is missing, the online form will not be able to be submitted.

### **7.3 Acknowledgements**

All permissions received must be acknowledged on the acknowledgements page in the form requested by the copyright holder. Some copyright holders do not require an acknowledgement on the acknowledgement page and are happy to be credited in the text, but this depends on the individual copyright holder. If this is not done as requested, copyright has been infringed and you open yourself to prosecution.

## Appendix: Background and more information about Copyright in South African Law

### When is something under copyright?

Copyright is governed by the Copyright Act 98 of 1978, as amended, and by the regulations framed in terms of the Act. Copyright exists automatically and does not need to be registered to exist, however, there needs to be both:

1. fixation: it must be in material form (written, drawn, photographed, on-line, etc.) and
2. originality: some imaginative labour or skill must have been used in producing it, not just a mechanical skill.

### Who owns the copyright?

The general rule is that the author (or authors in the case of a co-authored work) owns the copyright. The exceptions are:

The author was employed under a contract of service to produce the work, the employer owns the copyright. An author cannot publish content in a Juta publication that they have previously published with another publisher, without getting permission from that original publisher as they are the copyright holders (e.g. *The Star* owns copyright in the article written by one of its staff reporters, for the purpose of publishing that article in a newspaper or magazine; but the journalist owns the copyright should she want to publish it in a book form.)

Someone commissions and pays for the taking of a photograph or the drawing of a portrait and work is specially made for the commission: the person who commissions and pays owns the copyright although the photographer/artist still has the right to be acknowledged as the creator of the photograph/drawing.

The work was made under the control and direction of the State: the State owns copyright.

### For how long does copyright exist before the work is considered 'public domain'?

- in SA and the UK: copyright exists for the lifetime of the author + 50 years
- in USA:
  - Works published before 1 January 1978 enter public domain 75 years from the date that copyright was secured

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- Works published on/after 1 January 1978 enter public domain 50 years after death of the author
- Copyright in a photograph rests for 50 years from the end of the year in which it was first lawfully made available to the public or, if that event has not occurred within 50 years from making the photograph, 50 years from the end of the year in which it is made.

### **In South Africa:**

No copyright exists in official texts of a legislative, administrative or legal nature (e.g. Acts of Parliament, government notices in the *Government Gazette* and municipal by-laws) or in speeches delivered in Parliament or delivered during legal proceedings.

Copyright does not get registered with anyone in South Africa, which means that unpublished works are always under copyright. One does not have to apply for copyright or even indicate copyright with the © symbol as copyright is granted automatically.

### **Whose law applies?**

The country in which you are distributing the material. So, a work may be in the public domain in the USA, and can be distributed there without paying the original copyright holder, or seeking permission to do so. However, in the UK and in SA, it may be out of copyright, and yet permission would have to be obtained to do so.

### **‘Substantial part’**

Copyright covers reproduction of the work, or a substantial part of it, in any manner or form, including publishing it, performing it in public, and making an adaptation of it (including translation and serialisation). Therefore, the reproduction of a less than substantial part of the work is not an infringement of copyright. **The test of ‘substantive’ is qualitative not quantitative**, therefore, for example, a critical table of research results or statistics could be regarded to be a substantial part of the work. If whatever is reproduced contains the core of an argument or research, it does not matter that only a small section is reproduced. This can mean that just one line might need permission because it is the crux of somebody’s theory. The terms ‘substantial use’ and ‘fair use’ refer to areas that are very grey and Juta has been advised to apply in order to let the copyright holder determine ‘fair usage’. While there are guidelines constituting ‘fair dealing’, these are conventions in the UK that are currently under review in light of the Berne convention 3-step-test (See “Recent changes in the law” on page 10) and that South Africa does not have clear conventions. In short: when in doubt, apply for permission.

### **Recent changes in the Law**

More recently, the British Publishers’ Association has indicated on its permissions guidelines that copyright exceptions in the UK and EU courts is likely to use the Berne Convention 3-step-test whereby exceptions are limited to:

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1. Certain special cases
2. Usage that does not conflict with the normal exploitation of the work.
3. Usage which does not unreasonably prejudice the legitimate interests of the rightsholder.

Exception 2 means that “Copyright exceptions should not permit rival commercial use, and judges are likely to bear this in mind in interpreting [fair dealing]” (BPA, 2008, 2).

## References

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