

BZ/Brief

USING PRINT CREATIVELY

Can businesses make use of copyrighted text materials -- books, poems, articles, speeches, famous titles (and their famous authors)? You bet! And they do.

For example, the Union Bank of Switzerland very effectively used famous copyrighted quotes -- and the names -- of Robert Frost and Edgar Guest for a worldwide TV ad campaign. Mont Blanc Pens used quotes from and the names of other authors (Thomas Mann and Gertrude Stein, to name two) in a worldwide print ad campaign. Sub Zero Refrigeration used a celebrity image of Andy Warhol plus a quote for some great ads. Our client, a motorcycle maker, wanted "open road" quotes for a TV commercial and found just what was needed in the works of Whitman and Thoreau. Discovering that these perfect quotes were public domain made the client even happier.

Corporate users have cleared everything from posting a challenging article on their company-only wide-area network, and passing out copies of significant articles at meetings, to burnishing brochures with stimulating quotes.

Obtaining Clearances

Clearances for using text begin with the publishers -- of the book, the magazine, the newspaper. Publishers' permissions departments, however, often don't have much experience with advertising and corporate uses. But they are usually willing to help. One of the nice things about book publishers is that they charge really reasonable clearance fees.

Book publishers may have the right to grant clearances to use a book title, a portion of the text or a poem from that same book, and the author's name *as a unit*. They probably *do not* have the right to grant permission to use the author's name alone. Because? Such a permission involves use of the author's publicity rights, and these belong to the author or his heirs rather than to publishers. It is possible that the book publisher might be confused about this issue. We advise any client planning to use an author's name only to make contact with the author's agent, the author himself or the author's estate. A careful user makes this distinction and discusses it right up front.

In the case of a quote from a speech, approaching the speechmaker (or his estate) directly is the best way to go. For example, the people who built the National Peace Garden in Washington, D.C. wanted to use quotes from Dr. Martin Luther King, Jr., which are controlled by his estate in Atlanta, as is the use of his name and/or image.

Clearances to use the lyrics only from a song are handled by publishers too, but they are music publishers with lots of experience. Music publishers charge what many people view as high fees for use of song lyrics. Be advised that you should find out what the cost will be before you proceed on a project involving the use of lots of song lyrics.

Consider Public Domain

Many world-famous authors' texts lie in the public domain and can be used by anybody for any purpose and in any way, **free**. Think Twain, Tennyson, Shakespeare, Shelley, Keats, Dickens, Dickinson and Austen, for example; even some very famous lines by Frost and Sandburg have recently become PD. Many children's stories and Christmas classics are also PD. An astonishing number of familiar songs and lyrics lie in the public domain; our *Mini-Encyclopedia of Public Domain Songs* now includes over 800 well-known musical selections that are in the Public Domain. Remember too, that the texts of speeches and official papers by federal officials *while in office* are always in the public domain. That includes quotes from such famous inaugural addresses as those of Franklin Roosevelt and John F. Kennedy. But their speeches or writings of any kind out of office are off-limits unless you get permission. For commercial use of authors' names/images (even a President's) and for any advertising campaign, publicity rights clearances are required. If you are planning this sort of use, you would do well to consult an experienced clearance service like ours early on to be sure you know what's involved. It can be quite expensive.

Which Translation?

Famous works written in foreign languages that are unquestionably in the public domain -- such as ancient Greek plays and poetry, the Roman poets, Tolstoy, Ibsen, Dante, Goethe -- may trap the unwary. Translations have separate copyrights of their own -- and often the translation that speaks best to today's audience is a copyrighted text. Ancient texts, in particular, are regularly re-translated. For example, Alexander Pope's version of *The Iliad* is PD, while Richard Lattimore's 20th century translation is copyrighted.

Users must be aware of this fact, first. And decide either to use an older PD translation (if available) or to pay a clearance fee for the more contemporary translation.

A Note on "Fair Use"

The concept of "fair use" applies to the written word more liberally than to other copyrighted materials. In general, the use of a small part of any

text by a critic or teacher or in a book will probably fall within a "fair use" definition, while any use (however small) in an advertising campaign will not. Between these two extremes, things can get fuzzy. However, "fair use" is well worth understanding. Because it's a complex area, good advice about what really is fair use, is essential. Words alone -- particularly in the expert hands of great writers and orators -- can evoke emotions, settings and ideas. Using them creatively can be done to great effect.

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