
Posting Copyrighted Works on EPA Website Procedure

Directive No: 2181-P-01.0

*Issued by the EPA Chief Information Officer,
Pursuant to Delegation 1-19*

Posting Copyrighted Works on EPA Website Procedure

1. PURPOSE

This procedure lists the resources and required steps for identifying the copyright status and the appropriate use of works (including but not limited to text, sound, graphics, photographs, video, and software) that may be posted on the [EPA website](#) and the EPA intranet, including websites EPA cosponsors or co-owns in partnerships.

2. SCOPE

This procedure is applicable to all works posted by EPA personnel or contractor staff on the EPA website and the EPA intranet, websites the EPA cosponsors or co-owns in partnerships, whether newly posted or re-posted.

For purposes of this procedure, “website” or “webpages” is used interchangeably and refers to the applicable websites above.

Works posted to webpages include but are not limited to text, sound, graphics, photographs, video, and software. In addition, categories of works potentially covered by this policy include, but are not limited to, works of the U.S. Government; works created under a U.S. Government grant or other form of assistance agreement; works created under a U.S. Government contract; and works from all other sources (see Definitions section).

3. AUDIENCE

All EPA personnel and contractor staff engaged in developing or approving webpages, including assistant administrators, regional administrators, web managers and web developers.

4. BACKGROUND

This procedure is intended to assist EPA personnel and contractor staff who develop or approve webpages with the identification of copyrighted works, and to provide guidance to those personnel and contractor staff on issues related to posting such material on EPA’s webpages and websites that EPA cosponsors or co-owns in partnerships.

Posting Copyrighted Works on EPA Website Procedure

Directive No: 2181-P-01.0

5. AUTHORITY

The [U.S. Copyright Act](#), Pub. L. No. 94-553, 90 Stat. 2541, codified, as amended, at Title 17 of the U.S. Code

Federal regulations on rights under assistance agreements (40 C.F.R. Subchapter B, Parts 30 and 31)

Federal regulations on rights under federal contracts (48 C.F.R. Part 52)

CIO Policy 2181.1, [Posting Copyrighted Works on EPA Website](#)

6. PROCEDURE

- A. Determine status of the material, whether EPA has permission to post the work, and whether posting the work may be considered to be a “fair use.”

Content owners must determine whether any material they seek to post on an EPA website is copyright protected or, if such a determination is not feasible, determine if the material is likely to be protected by copyright, based on the information available.

If the content owner determines that the material is, or is likely, a copyrighted “work,” the content owner should next determine whether EPA already has permission (i.e., a “license”) to publish the work itself online or otherwise use the work (for example, under the terms of a relevant contract).

Content owners may also be able to determine that a particular posting qualifies as an acceptable “fair use” of the work. Content owners should consult with the General Law Office in the Office of General Counsel for assistance in making a fair use determination. If the content owner determines such use of the work is a “fair use,” content owners must inform the content coordinator for that Office or Region that the copyright protected material is being used under the “fair use” exception.

Content owners should be aware that application of the “fair use” exception involves a fact-specific, case-by-case analysis. There is no standard amount of words, pages or video, for example, that may safely be used without permission as a “fair use.” In addition, where the “fair use” exception does not apply, providing an acknowledgement of the source of copyrighted material does not, in and of itself, act as a substitute for obtaining the necessary permission to use the work.

If content owners are unsure of the copyright status or the scope of any specific license for the work, they can seek assistance from the General Law Office in the Office of General Counsel, the contracting officer or project officer, or other

Posting Copyrighted Works on EPA Website Procedure

Directive No: 2181-P-01.0

appropriate EPA officials.

B. Obtain other permission as appropriate.

Content owners may always seek to obtain a written license or permission (see Definitions section) from the copyright owner to, at a minimum, copy and post the copyrighted work on the internet. The written license or permission must be kept for reference by the content owner or the EPA employee who posted the work. If possible (or if doing so is a condition of a license), the content owner should either (a) post notice that outlines the basic details and scope of the license or permission to the website on which the copyrighted work appears; or (b) provide a link to another page with this information on the page with the copyrighted work, so that the public can review any limitation of rights to use the work. Content owners may publish a single notice where a collection of copyrighted works on a single page share the same source and scope of permissions.

An example of a permission notice is provided in the "[Copyright Issues](#) of Special Interest to EPA Employees" document prepared by the Office of General Counsel.

C. Provide credit and attribution.

- i. When appropriate or required by a license, EPA should make best efforts to acknowledge known copyright-protected works on its websites through credit and attribution, and by providing the permission notice referenced above.
- ii. If EPA's license to the work is limited, EPA should make best efforts to acknowledge such limitations in association with the posted work so that the public will be aware of the limitations.
- iii. If EPA's license allows further public use or distribution, EPA should make best efforts to provide this information in association with the posted work.

D. Use citations when permission is not obtained and when the posting would not constitute a fair use.

Content owners must not post known or assumed copyright-protected works without permission or a license when the posting does not constitute a fair use.

When permission cannot be obtained and the posting would not constitute a fair use, content owners may instead substitute citations (i.e., that identify the work, its location and, when available, hyperlinks to that location) instead of presenting the copyright-protected work itself.

E. Identify copyrighted material in docket comments.

When content owners identify copyrighted material within or attached to an electronic comment on a docket, EPA will provide a reference to that material in the version of the comment that is placed online. The entire printed comment,

Posting Copyrighted Works on EPA Website Procedure

Directive No: 2181-P-01.0

including the copyrighted material, will be available in the physical docket.

7. ROLES AND RESPONSIBILITIES

Assistant and regional administrators and senior managers at the same level have responsibility for all content owned by their program or Region on the EPA websites, including appropriate identification and treatment of copyrighted material.

Office of the General Counsel is responsible for providing EPA webpage developers, individuals responsible for content (i.e., content owners), and other staff with guidance on “fair use” and copyright law issues.

The **Office of Public Affairs (OPA)** and the **Office of Mission Support (OMS)** lead the Web Council through a National Web Content Manager and National Web Infrastructure Manager, respectively. Collaborating with the Web Council and other appropriate entities, OMS and OPA develop procedures, standards, and guidance for the [EPA](#).

8. RELATED INFORMATION

CIO 2180.2, [Web Governance and Management Policy](#) and related [EPA policies, procedures, standards](#), guidance, and resources are included in the [EPA Web Guide](#).

Office of General Counsel information about copyright issues: “[Copyright Issues](#) of Special Interest to EPA Employees”

9. DEFINITIONS

Content owner is an EPA employee responsible for webpage content.

Fair use is legal doctrine that provides for use of a copyright-protected work in certain circumstances without obtaining the copyright owner’s permission. Fair use is the predominant and most generally applicable legal defense available to a defendant in a copyright infringement lawsuit. The availability of this defense typically turns on a court’s consideration of four factors, as codified at 17 U.S.C. § 107. Application of the four fair use factors is fact specific and evaluated on a case-by-case basis. For a more detailed discussion of “fair use,” see the Office of General Counsel’s guidance, “[Copyright Issues](#) of Special Interest to EPA Employees”).

A **permission** or **license** is a grant of one or more rights from the copyright owner to another person to use a copyrighted work in a specified way. For example, in a permission or license, a copyright owner may agree to grant another person the right only to distribute the work internally or may grant more extensive rights, like the right to post the copyrighted work on the internet.

The **Web Council** consists of a National Web Content Manager in OPA and a

Posting Copyrighted Works on EPA Website Procedure

Directive No: 2181-P-01.0

National Web Infrastructure Manager in OMS, with corresponding Content and Infrastructure Coordinators in each Region and program office. The Web Council works with OPA and OMS to develop procedures, standards, and guidance for epa.gov.

Web developer or **webpage developer** is an EPA employee or contractor who is responsible for placing content into the required EPA template, making it attractive, and posting it to the server.

Works is a term used to refer to material that is copyrightable subject matter, such as, text, sound, graphics, photographs, video, or software.

Works of the U.S. Government are works that are prepared by a federal government employee as part of the employee's official duties. Pursuant to 17 U.S.C. § 105, such works are not protected by copyright in the United States. Works from state, local or tribal governments are not included in this category and may be protected by U.S. copyright law.

Works created under a U.S. Government grant or other form of assistance agreement are works prepared by an assistance recipient and the recipient is entitled to assert copyright to these works; however, the U.S. Government retains a license to use the works for federal purposes.

Works created under a U.S. Government contract must be evaluated on a case-by-case basis to determine their copyright status, as rights to such works are typically governed by the data rights clause(s) included within the contract. Certain works created by contractors, such as published scientific or technical articles, are protected by the author's copyright upon creation. In most other cases (depending on the data rights clause applied), the Contracting Officer must grant permission before a contractor may assert copyright in a work produced under the contract. Except in the case of computer software, when a contractor is permitted to assert copyright, the U.S. Government receives a broad license to use that work; however, that license does not extend permission beyond the government to the public. For computer software, when a contractor is permitted to assert copyright, the license to the government does not include the right to distribute the work to the public. If public dissemination is desired, the Special Works - Rights in Data clause might be used. The inclusion of this clause permits the government to require the contractor to assign the work to the government. Once the work is assigned, the government may then distribute it to the public. (For additional information see Office of General Counsel information about copyright issues: "[Copyright Issues](#) of Special Interest to EPA Employees")

Works from all other sources because notice of copyright is no longer required for works created after March 1, 1989, and the current term of copyright protection is lengthy, employees should assume that works from sources other than the three listed above (i.e., Works of the U.S. Government, Works created under a U.S. Government grant or other form of assistance agreement, and Works created under a U.S. Government contract) are protected by copyright unless marked otherwise.

Posting Copyrighted Works on EPA Website Procedure

Directive No: 2181-P-01.0

10. WAIVERS

Not applicable.

11. MATERIAL SUPERSEDED

CIO 2181-G-01.0 "Posting Copyrighted Works on EPA Website," October 25, 2007.

12. CONTACTS

For further information about this procedure, please contact the Web Content Services Division, Office of Information Management.

Vaughn Noga
Deputy Assistant Administrator for Environmental Information
and Chief Information Officer
U.S. Environmental Protection Agency