

# Whose line is it anyway?

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## Quotations: where are we now?

Before making use of a work protected by copyright, consent from the rights holder(s) is usually needed. Where a copyright exception applies, an organisation may use that work without having to obtain consent.

One exception relates to the use of quotations. The Court of Justice of the European Union has provided guidance on this exception in a number of recent cases (which remain relevant to UK organisations following the end of the transition period).\*

### What is a quotation?

A quotation is characterised by the use of a work by a user other than the rights holder(s) of that work to:

- illustrate an assertion; or
- defend an opinion; or
- enable an intellectual comparison with another work or the assertions of the user.

For the quotation exception to apply, there needs to be “interaction” between the quoting work and the work being quoted. The user of the quoted work must intend to enter into some kind of “dialogue” with the quoted work and must establish a “direct and close link” between the quoted work and their own reflections.

### What is the quotation exception?

In the UK, there is no need to obtain consent from the rights holder(s) of a work in order to use a quotation from that work, whether for criticism, review or otherwise, provided that all of the following conditions are satisfied:

- the work must have already been made available to the public;
- use of the quotation must constitute “fair dealing” with the work;
- use of the quotation must not go beyond what is required to achieve the specific purpose; and
- the quotation must be accompanied by a “sufficient acknowledgement”, unless this is not possible.

### Is it possible to agree in a contract that consent is required for all quotations?

No. Any term in a contract trying to override this quotation exception is unenforceable.

### Is the quotation exception only relevant to quoting someone else’s words?

No. Although the quotation exception is often used in relation to books and articles, it can apply to other types of works such as music.

### Is the quotation exception only relevant to quotations used for criticism or review?

No. Although the exception could apply where a quotation is used for criticism or review, this is not an exhaustive list.

### Does it matter if the work using the quotation is not protected by copyright?

No. When deciding if the quotation exception applies, it is irrelevant whether or not the work using the quotation is itself protected by copyright.

### Can the quotation exception apply if it’s not possible to identify the quotation?

No. It’s not possible to have a “dialogue” between the quoting work and the quoted work if it’s not possible to identify that another person’s work is being used (for example, where the quoted work cannot be distinguished as a “foreign element” or where a sample from a sound recording is used in a new sound recording “in a modified form unrecognisable to the ear”).

## When is a work made available to the public?

A work could be made available through any means, including issuing copies or posting on a website.

The quotation exception will not apply unless the work has been made available to the public in its specific form with the consent of the rights holder(s) or on the basis of a non-contractual licence or statutory authorisation. For example, it would not apply where chapters of an unpublished book have been leaked online.

## Can a quotation be made using a hyperlink?

Yes. To amount to a quotation, there is no need for the quoted work to be “inextricably integrated” in the work quoting it (for example, by inserting text from the quoted work into the body or the footnotes of the new work). A quotation could be made by including a hyperlink to a file containing the quoted work (which could then be downloaded independently of the new work).

## Are there any limits on how much of a work can be quoted?

Yes. Use of the work being quoted:

- must be fair;
- must not exceed what is needed to achieve the specific purpose;
- must be secondary in relation to the user’s assertions, opinions or comparisons; and
- must not conflict with a “normal exploitation” of the quoted work or “unreasonably prejudice” the legitimate interests of the rights holder(s).

What this means in practice will vary depending on the circumstances.

## When is a sufficient acknowledgement required?

In general, an acknowledgement identifying both the quoted work (by its title or other description) and the author of that work should be included. There’s no need for an acknowledgement if:

- this would be impossible; or
- the quoted work was published anonymously; or
- it’s not possible to identify the author of an unpublished work through reasonable inquiry.

## Does my right to freedom of expression allow me to use someone else’s work without needing consent?

Not exactly. The Charter of Fundamental Rights of the European Union recognises our right to freedom of expression and information, including our freedom to hold opinions and to receive and impart information and ideas. When interpreting the quotation exception, the rights of a user of the quoted work to freedom of expression and information need to be taken into account. However, it is not possible to extend the scope of the quotation exception or to create a new exception based on those rights.

## What should organisations do?

Before using someone else’s work for a quotation, an organisation should:

- check if copyright in the work has expired;
- if not, check if any exceptions apply;
- if not, obtain consent from the relevant rights holder(s).

To decide if it can rely on the quotation exception, an organisation will need to check if all of the conditions for that exception are met. This will depend on the circumstances, and an organisation will need to consider relevant guidance from the courts, including the points set out in this note.

*\*Funke Medien NRW GmbH v Germany (Case C-469/17); Pelham GmbH v Hütter (Case C-476/17); Spiegel Online GmbH v Beck (Case C-516/17)*

## Authors

