

How to  
use

KEEPING  
IT LEGAL  
SINGLES

Eye-  
Catching  
Images

without paying

a **FORTUNE**

or a **LAWYER**

---

HELEN SEDWICK  
and JESSICA BROWN



**HOW TO USE  
EYE-CATCHING IMAGES**

**WITHOUT PAYING A FORTUNE OR A LAWYER**

**HELEN SEDWICK**

**AND JESSICA BROWN**

**TEN GALLON PRESS**

Copyright © 2014 by Helen Sedwick and Jessica Brown

[www.helensedwick.com](http://www.helensedwick.com)

[www.tengallonpress.com](http://www.tengallonpress.com)

All rights reserved. No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without the written permission of the publisher, except where permitted by law.

This guide should not be used as a substitute for the advice of competent legal counsel from an attorney admitted or authorized to practice in your jurisdiction. You should never delay seeking legal advice, disregard legal advice, or commence or discontinue any legal action because of information in this guide.

Ten Gallon Press

Santa Rosa, CA



## Images Are Important

It's a visual world. Words alone, no matter how insightful, will not draw readers to your blog or books. You will need eye-catching images for your covers, website, social media banners, bookmarks, and book videos. Images communicate tone and pull in readers long before they discover your prose.

If you are a speaker or educator, the right image illustrates your points, evokes emotions, and perks up your audience.

Finding images is easy. Search the internet and voila, thousands of choices. Finding images has become so easy, many people forget those images result from someone's hard work and are protected by copyright. Some people still think anything posted on the internet is free to use.

Not true.

Images, like texts and music, are *intellectual property*. If you use

someone's property without permission, whether it's a car, a bicycle, or a photograph, it is stealing. You could get a lawyer letter demanding a hefty sum. And that letter could also demand that you cease and desist using the image. Yes, you could be forced to redesign your cover, website, and everything else if you incorporate and use images without permission.

Permission? Many people are stymied by the process. Who do you ask? How do you ask? What do you pay?

This e-book outlines the process, including providing links for tracking down a rights holder and a form letter for asking permission. Read on.



## Getting Permission To Use Images

Let's assume you have a particular image in mind and are trying to figure out how to get permission to use it. Basically, it is a four-step process:

**Determine if you need permission.**

**Identify the copyright owner.**

**Describe the permission you need.**

**Get permission in writing.**

First, a little vocabulary:

**Exclusive and Non-Exclusive:** If a person owns exclusive rights to a work, then no one else may use it. In contrast, a grant of non-exclusive rights means others may use the image as well. A grant may be exclusive as to some uses, such as e-books, but non-exclusive as to others, such as websites.

**License:** License means permission to use; it's like renting a house (or more accurately a portion of the house) instead of buying it. Most likely you will be getting a license to use an image for a

particular purpose, not buying the copyright in the image. A license may be exclusive or non-exclusive and is often limited to a particular use (editorial, noncommercial, educational), format (print, e-book, web), duration, geography, almost anything. When you are the licensee, you want the license to be as broad as possible. When you are the licensor, you want it as narrow and specific as possible.

**Image banks:** Image banks manage large collections of news, historical, cultural, celebrity, and promotional images and make them available for use, at a price. They handle the licensing so you do not have to deal directly with the artist or rights holder. Many image banks specialize in certain image types, and many have exclusive access to specific or well-known collections, such as Time Life photos or AP (Associated Press) images.

**Stock Image companies:** Stock image companies carry millions of images that are available for license at reasonable prices. The images are typically created by artists especially for sale for commercial purposes. The distinction between image banks and stock image companies has blurred as many are now owned by one company, Getty Images.

Before we start the hunt for a copyright holder, keep in mind that you could avoid the whole research process by going straight to image banks and stock image companies for the perfect image. They carry **tens of millions of images**, and their databases are easily searchable by key words. All the images in this PDF are licensed from Dreamstime.com. For more information, skip to More About Image Banks and Stock Image Sites.





## How To Determine If You Need Permission

In most cases you need permission (a *license*) to use an image. The exceptions are images in the *public domain* or if your use of the image constitutes *fair use*.

### ***Public Domain***

Images in the public domain are free to use. Images fall into the public domain if the copyright has expired or they are donated to the public domain by the rights holder.

*Expired Copyrights.* As of today, the copyright on images **first published in the United States before January 1, 1923** has expired, and you are free to use them without permission. Thanks to Congress passing laws to favor Disney and other corporate copyright owners, the copyright on works published on and after January 1, 1923 **won't start expiring until 2019.**

For works published between 1923 and 1977, the expiration depends on whether a copyright notice was properly placed, whether the copyright was registered, and whether the registration was renewed. For works published after 1977, the copyright won't expire until 70 years

after the author's death. The [American Library Association](#) has a easy-to-use tool for understanding what expires when.

The prudent approach is to assume you need permission to use any image first published on or after January 1, 1923, unless the image comes from one of the other sources listed below.

### *Government Sites*

If an image was created by an employee of the U.S. government, then it is almost always in the public domain. Whether you are looking for images of military tanks, super-cell tornados or bald eagles, you're likely to find what you need.

Here is a sampling of sites:

The [Library of Congress](#). An expansive collection including personal journals from the Dust Bowl, early baseball cards, civil war maps, and historical images from the civil rights movement. Not everything is in the public domain. To determine the status of an image click on Rights and Restrictions.

[National Fish & Wildlife Service](#)

[National Oceanic and Atmospheric Administration](#)

[US Antarctic Program Photo Library](#)

For medical images such as MRI slices of the human body, try the [National Institute of Health](#).

The [Public Health Image Library](#) of the CDC includes electron microscope images of viruses including Ebola.

The [U.S. General Services Administration](#) has links to various sources of images.

States and local historical societies maintain sites full of images, many of which are in the public domain. For instance here is a site called [Kansas Memory](#) maintained by the Kansas Historical Society. The Kansas site, like many others, places restrictions the use of its images,



even those most likely in the public domain. They also charge “reproduction fees.”

Still haven't found what you want? Here are lists of other public domain sites.

[Columbia University Libraries](#) or [Wikipedia](#)

*Museum Collections.*

Many museums have put images of their collections online as public domain works. For instance:

[J. Paul Getty Museum and the Getty Research Institute](#). More than 87,000 images are available for any use (including commercial), including photographs of the art and architecture of Italy over 30 years by German photographer and scholar Max Hutzel (1913–1988), paintings, drawings, manuscripts, photographs, antiquities, sculpture, decorative arts, artists' sketchbooks, watercolors, rare prints from the 16th through the 18th century, and 19th-century architectural drawings of cultural landmarks.

New York' [Metropolitan Museum of Art](#) has released more than 400,000 images for **non-commercial** use.

Amsterdam's [Rijksmuseum](#) offers tens of thousands of images, again for **non-commercial** uses only. Register with the [Rijks Studio](#).

[Here a 2013 list of museums opening up collection](#). The list keep growing.

[The New York Public Library](#) hosts a huge collection of images and texts. At least as of this writing, they are charging a fee and limiting permitted uses.

*Creative Commons Licensed Images.*

[Creative Commons](#) has developed a selection of [licenses and icons](#) that creators apply to designate that their images may be used for free.

Some Creative Commons licenses are **restricted to non-commercial use**, so choose the license that covers all your intended uses. Always provide attribution to the creator of the content. The Creative Commons site provides guidelines.

You can search for images with Creative Commons licenses at numerous sites, including:

[Creative Commons](#) (covers Flickr and others)

[MorgueFile](#)

[Stockvault](#) (non-commercial uses only)

[Openphoto](#)

[Freeimages](#)

[Skitterphoto.com](#)

All of these sites put restrictions on permitted uses. As you might guess, no pornographic or defamatory uses. Some do not permit commercial uses.

Google [Images](#) has a tool for searching images by usage rights. [Google's Advanced Image Search](#) filters your results so your search returns only public domain images available for commercial reuse.

**A couple of warnings** about using Creative Commons licensed images.

If the image contains people or other copyrighted work, such as a painting, poster, or sculpture, or a trademark, you have no reliable way of determining whether the photographer obtained releases from the people in the image or permission to use the underlying art or trademark.

**Do not rely on a Creative Commons license if there are recognizable faces, artwork or trademarks in the image.**

Plus, there are more risks to using free image sites and Creative Commons images. **The sites do not guaranty that they have the right to give you permission to use the image at all.** You are using the images AT YOUR OWN RISK.

For instance, here's an excerpt from Freeimages' website.

*Freeimages cannot be held responsible for any copyright violations, and cannot guarantee the legality of the Images stored in its system. If you want to make sure, always contact the photographers. You use the site and the photos at your own risk!*

### **Indemnification**

*You agree to indemnify, defend, and hold harmless freeimages and its officers, employees, shareholders, directors and suppliers against all claims, liability, damages, costs and expenses, including reasonable legal fees and expenses, arising out of or related to ... the use of this site and the use or the inability of use of any Image, your failure to abide by any restriction regarding the use of an Image, or any claim by a third party related to the use of an Image.*

**Translation:** if they are sued because you used an image downloaded from freeimages, you pay their attorneys fees and legal damages as well as your own!

Doesn't sound free to me.

We know a company which downloaded one of these "free" images and used it as a website banner. A year later they got a letter from Getty Images demanding a \$2000 payment for the unauthorized use of one of Getty's licensed images. Ends up, that so-called free image was not in the public domain.

Our suggestion – before you use a free image that comes without a warranty, do a Reverse Image Search to see if the image appears on any stock image or image bank website. If it does, then that image is NOT in the public domain and do not use it without getting permission from the rights holder.

Frankly, for something as important as your book cover or website banner, you are better off paying for a license to use an image from an image bank, stock image company, or the rights holder directly. Then you will get a warranty that the licensor had the right and authority to grant you the license and permission. And image banks and stock image companies have deep pockets to back up their warranties.

### ***Fair Use***

Even if an image is protected by a valid copyright, you may still use the image without permission if your use fits within the definition of *fair use*.

Fair use is copying of copyrighted material for a limited purpose, such as education, commentary or criticism, or a “transformative” purpose such as parody.

Four factors are taken into account in determining whether the unauthorized use of copyrighted material is fair use.

1. The purpose and character of the use. Commercial? Educational? Is the new work transformative, meaning it has been altered significantly?

2. The nature of the copyrighted work. Using unpublished works is less likely to be fair use because of factor four—the potential effect on the value of the original work.

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. The more you use, the less likely your use will be considered fair use.

4. The effect of the use upon the potential market for, or value of, the copyrighted work. If you are reducing the value of the original work, your use is unlikely to be fair use.

For example, if you use an image for a blog post **that discusses or comments on that image**, then your post is likely to be considered fair use. But if you use the image as a component of your book cover or in

any advertisement that is not fair use and would be considered infringement.

The line between fair use and infringement is murky. Much depends on the facts of the case. Giving credit does not make a difference—you could be infringing even if you are not plagiarizing.

Unless you are reasonably confident your use is fair use, don't rely on it. Fair use is a defense. Legally, that means you have the burden of proving fair use. Even if you are well within safe lines, the copyright owner might sue. Think of the attorneys' fees and the time involved. While we admire those who take on David-and-Goliath battles, we'd rather spend our time and energy writing.



## How to Identify the Copyright Owner

Let's assume the image you want to use is not in the public domain and your use is not fair use. The next step is identifying the rights holder for the work.

First, consider how many layers of permission you need. If the image is a photograph of a painting, you may need permission from (i) the painter of the original painting, (ii) the photographer who took the shot of the painting, and (iii) the museum or owner of the painting. If the image shows an identifiable person, then you need to know whether that person gave the appropriate release.

### ***Photography***

If you find a photograph in a book, magazine or online site, start by looking for a photo-credit. Typically, this appears near the photo, somewhere else on the page, or at the end of the article or journal.

If the photo references a publication, such as *Sunset Magazine*, contact the publisher's rights and permissions department.

If it references an individual's name or a design company, contact the individual or design company directly.

If it references a stock image site, such as Getty Images, skip to More about Image Banks and Stock Image Sites below.

If there is no reference, contact the publication or blog which ran the photo.

If all else fails, do a Reverse Image Search.

***How to do a Reverse Image Search.*** Go to [Google Images](#). Click on the camera icon in the search box. Upload the image you want to search or enter its URL. You should see a list of websites where the image appears. Look for a link to an image bank or stock image company, a design company, or an individual. If you can't find any, look for a publication that is using the image; the larger the better. Contact that publication and ask them about permission to use the image.

### ***Fine Art, Graphic Art, Comics, Illustrations***

As with photographs, look for a credit near the image or within the publication or website on which the image appears. If there is no credit, contact the publisher or website. (Typically, there is a link titled Rights and Permissions or something similar.) Maybe the publisher owns the rights. If this is not the case, they may provide you the name and contact information for the rights holder.

If that does not work, try a **Reverse Image Search**.

Once you have a name, try to contact the original artist or rights holder via one of the following organizations:

Fine Art: [Visual Artists Gallery Association](#)

[Artists Rights Society](#)

Graphic Art: [Graphic Artists Guild](#)

Comics: [Comicon](#)

You might also find the rights holder by searching the internet for the artist's contact information or use the Graphic Artists Guild's artist locator service.



If that does not work, try searching the artist's name on the [U.S. Copyright Office](#) website. If you find the registration for your particular image, look for assignments and renewals. Try to trace the trail of ownership so you will know who to contact to ask permission.

The copyright office's online records go back as far as 1978. Searching pre-1978 records is awkward, and the information may be incomplete. Try the [Copyright Office's Catalog of Copyright Entries](#). If you find the date of the original copyright registration, then search the records for the 27<sup>th</sup> and 28<sup>th</sup> year later to see if the registration was renewed. The entries are in alphabetical order by creators' names.

For international searches, the [University of Cambridge](#) provides helpful resources.

You can have the [Copyright Office conduct a search for you](#). Their current rate is \$200 an hour with a two-hour minimum. You can also hire a professional researcher. [The American Society of Picture Professionals](#) site will help you find the right person.



## What Permission Do You Need?

A copyright holder owns a bundle of rights to the image, including the right to reproduce, display, distribute, modify and create derivative works. If you don't need all of these rights (and it's likely you don't), then determine which rights you need. Think about how you intend to use the work, and go from there. Don't pay for more rights than you will use. Consider the following:

*Will the agreement be exclusive or nonexclusive?*

An exclusive agreement grants you sole permission to use the image, meaning no one else may reproduce it. Acquiring exclusive rights costs more money. Most permissions agreements are nonexclusive.

*How long do you intend to use the image?*

Like drivers' licenses, permissions agreements have expiration dates. The terms of the license may range from one-time uses (e.g. for an issue of a magazine) to perpetual agreements for a book cover. (Perpetual means as long as the copyright owner's protection lasts.)

*In which geographic regions do you intend to reproduce the image?*

Most likely, you'll need world-wide rights for images incorporated into your book or website.

*In what formats will the image be used?* Print (including bookmarks and postcards), e-book, website, blog, social media banners, mugs, t-shirts?

*How many copies of the image will be reproduced?*

If your book will be in print, how many copies will you print? Ask for more than you think you'll need, because you would hate to go back and ask for more.

*Will you modify the image?*

You should not even crop an image without authorization from the rights holder. If you are going to manipulate and incorporate it into other images, get permission to do so.

*How much is the license fee?*

The price of the license depends on the size of the use and potential audience. Commercial uses generally cost more than educational and nonprofit uses.



## How to Obtain Actual Permission

Once you locate the original artist (or his or her estate) or the appropriate rights organization, send a permission request letter. We have attached a sample at the end of the e-book.

So long as you cover the details of your request, it's fine to do a bit of selling in your request. Just keep it professional and brief.

If you do not hear back from the rights holder within three weeks, follow up with another email or letter. Nudge, but nudge politely.

In most cases, you will eventually hear back from the rights holder. They will dictate their price and limitations. You may not have much negotiation room, so take what you can get.

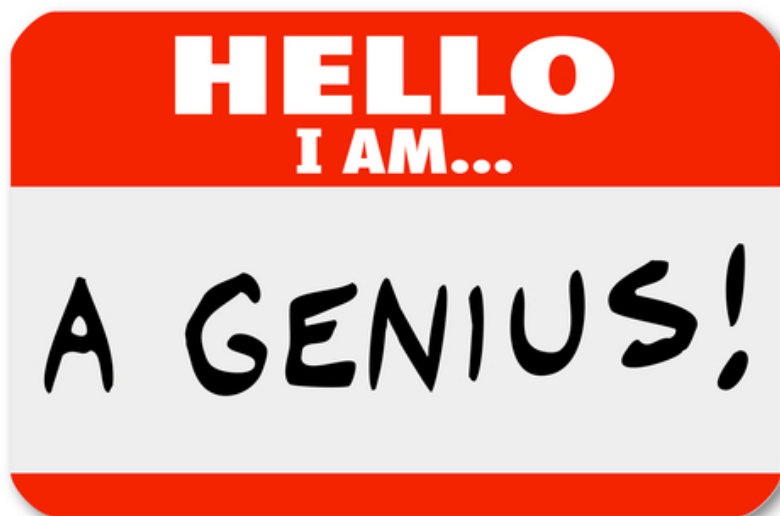
Once you come to an agreement on the scope of the license and the price, put the agreement in writing. Many rights organizations have their own forms.

The agreement should contain the following:

- A description of the image you are licensing
- A grant of rights (include the word “grant”)
- Limitations on use, if any.
- Territory
- Duration
- Fees

- How credit will be given
- Whether you must provide samples, such as copies of your book
- A warranty section, a promise by the licensor that he or she has the right to grant the license to you.

If your research leads you to an image bank or stock photo site, their license agreements and prices are available on-line. There is no negotiation. You fill out an online form and pull out your credit card.



## More About Image Banks and Stock Image Sites

Let's say you want an image of a turtle or a skyscraper or the Milky Way, but haven't found a specific work to use. In this case, you have simpler and less expensive options—image banks and stock image companies. They offer tens of millions of high quality images, most at reasonable prices.

Here are some of the larger providers.

[Time Life Photos](#) carries hundreds of thousands of images from Time and Life books and magazines, Sports Illustrated and People magazines. Many capture important moments in history. Prices range from a few dollars to thousands, depending on your intended use. Many are not available for commercial use at all.

[Associated Press Images](#) has more than 15 million images of news and entertainment events. Their catalogue includes thousands of graphics that describe earthquakes, population trends, and politics.

[Corbis Images](#) features celebrity photos, among others. If you search "Jennifer Lawrence," you get almost 12,000 hits. The prices depend upon how you intend to use the image, but expect a license to cost somewhere between a few hundred to a few thousand dollars.

[MPTV](#) specializes in entertainment photography, with photos ranging from Hollywood's Golden Age up to current stars. They are "committed to preserving the memory of some of the greatest celebrity legends."

Most of us find all the images we need at commercial sites:

[iStockphoto](#)

[Shutterstock](#)

[Dreamstime](#)

[GettyImages](#)

For a list of more specialized image banks, check out [Frank Niemeir's Photography list of Stock Photo Agencies](#).

For illustrations, our favorite is [IllustrationSource](#).

Images are available in different sizes and DPI (dots per inch, a measure of resolution quality). The higher the DPI, the better the clarity and resolution of the image. Prices and permitted uses vary, so read the fine print.

For your book cover, purchase a license to a large, high-resolution image, but for your website and blog a smaller image with a lower resolution may work fine.

Purchase a *royalty-free license* and *not an editorial license*. Editorial licenses are too restrictive for commercial uses. The term "royalty-free" is a misnomer; you are paying the royalty up-front. Some sites use the terms "Rights Managed" or "Rights Protected."

Your rights will be nonexclusive. This means others may have the right to use the image as well. For exclusive rights (if available), the sites will charge extra, but they cannot do anything about rights already granted. Many illustrators and photographers post their work on multiple sites, so buying exclusive rights from one site may not stop sales on other sites.



Some sites permit you to use the image an unlimited number of times. Others set a limit of 249,999 or 499,999 printed images and unlimited Internet images. Most do NOT permit you to use the image on merchandise such as posters, mugs and t-shirts unless you buy an expanded license. You need to read the fine print or contact the company and ask.

### *Clip Art*

For artwork, clip art is a good alternative. Search *clip art* and you'll find dozens of sites. Most are free, but some charge small amounts. [IncredibleArt](#) claims to have compiled a long list of sources for public domain clip art. We have not checked each site, but it looks like a valuable resource.

One of the problems of using stock images and clip art is your license will be nonexclusive. You could find your cover image on other books. Check out this article on Joel Friedlander's TheBookDesigner.com. [Do You Know Who Owns Your Book Cover?](#)

To minimize the risk of look-alike covers:

Before you settle on an image, do a *Reverse Image Search*. If you find the image on fifteen pages of links to websites, blogs, and even worse, book covers, consider using a less popular image.

Modify the image using editing software. For an idea of how images may be manipulated, take a look at this clip from [Huffington Post](#).

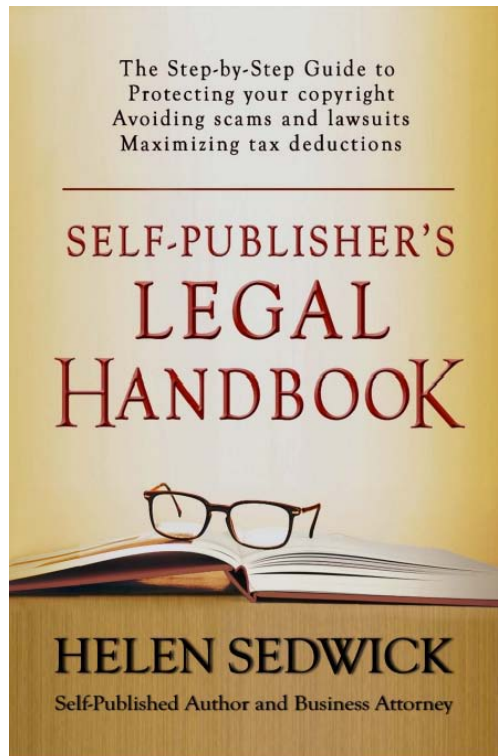
Avoid cliché images. Here's a piece that pokes fun at the overused [lone tree cliché on books about Africa](#).

## Further Reading

For more information about copyrights, fair use, public domain and the other legal issues facing writers and bloggers, see [Self-Publisher's Legal Handbook](#) by Helen Sedwick.

*This vital resource for every self-publisher clearly outlines the legal issues authors need to know. Self-Publisher's Legal Handbook is likely to become one of the most valuable resources a self-publisher can own...well-written and authoritative yet unhampered by legalese...outstanding. This is a book that is likely to help any self-publisher avoid many headaches. –ForeWord 5-Star Review*

On getting permission for a variety of media, see Richard Stim's *Getting Permission: How to License and Clear Copyrighted Material Online and Off* (Berkeley: NOLO, 2013).



## SAMPLE PERMISSION REQUEST LETTER

*The following is a sample only. The tone should be business-like with a touch of personality and creativity. You want the rights holder to buy into your vision and enthusiasm. But make sure you cover the business basics as well as your dreams.*

Dear \_\_\_\_\_ [the photographer, artist, publication, museum, or other rights holder]:

I am writing to ask permission to use \_\_\_\_\_ [identify image] on a non-exclusive basis as a \_\_\_\_\_ [describe intended use, such as cover image, featured image, within a website and/or blog post, etc.] for \_\_\_\_\_ [describe type of publication, such as print book, e-book, blog post, newsletter, logo, posters, advertisements, mugs, t-shirts, etc.].

I believe that you are the holder of the copyright in this image. If you are not the current copyright holder, I would greatly appreciate any help you can provide to help me locate the current rights holder.

[Describe your project, such as a self-published book, a memoir, etc. Show your passion for your project and their image.]

My first run printing will be \_\_\_\_\_ copies. /OR/ I will be distributing the print book through a print-on-demand provider. I request permission to print up to \_\_\_\_\_ books [make sure this is a number beyond your wildest dreams]. I will also be distributing an e-book. The price of book will be \$\_\_\_\_\_, and the price of the e-book will be \_\_\_\_\_, although I may discount those prices.

I am distributing the book in English, [mention any other languages] in the world-wide market.

I will also use the image on my website and blog. [Describe current traffic levels.] I do/do not post third party advertising on my website.

I request the right to modify, reproduce, display and publish the image for the purposes described above.

I would use the image starting on \_\_\_\_\_ [date] with no known end date.

I would be happy to provide you copies for approval and upon distribution.

Please let me know if you may grant the permissions outlined above as well as the license fees involved.

Thank you for your attention to my request.

Sincerely,

[Your name, contact info, website, social media links, and anything else that demonstrates who you are and your vision.]

## About the Authors

**Helen Sedwick** is a California attorney with thirty years of experience representing businesses and entrepreneurs as diverse as wineries, graphic designers, green toy makers, software engineers, restaurateurs, and writers. Her recent release [\*Self-Publisher's Legal Handbook\*](#) received a **five-star review from Foreword Reviews**; *Self-Publisher's Legal Handbook is likely to become one of the most valuable resources a self-publisher can own...Well-written and authoritative yet unhampered by legalese...Outstanding.*

*From Self-Publishing Review: the Handbook should be on every author's shelf... Sedwick simplifies the scary and presents ways to avoid ending up in a costly legal battle. Her goal is to help you avoid wasting money and time on things that could have been avoided in the first place...Don't hesitate; get your copy now.*

Helen is also a self-published author. Her historical novel [\*Coyote Winds\*](#) has earned five-star reviews from ForeWord Reviews and Compulsion Reads, is an IndieBRAG Medallion Honoree, and won First Prize for historical fiction from the Purple Dragonfly Book Awards in 2013.

More about Helen at <http://helensedwick.com/> and her blog <http://helensedwick.com/blog/>.

**Jessica Brown** loves words and ideas. She has a BA in American Studies and a Master's in Urban and Architectural History, both from University of California Berkeley. Currently a consultant for universities, libraries, and other academic institutions, she focuses on the transformation of scholarship and teaching in the digital environment. In her free time, she likes to lift weights, read novels, and explore New York by bike and foot.