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Copyright 101

for educators
and students

Disclaimer

- ▣ I am not a lawyer. The information in this presentation is not intended to replace the advice of legal counsel. I strongly recommend that you consult your institution's legal office with any questions or doubts about your specific situation.*
- ▣ What I am is a librarian, an author, a teacher, and an editor. This presentation is based on my experience in these fields.*



U.S. Copyright Basics

History and
Philosophy

Law and
Guidelines

What is copyright?

- “Copyright” secures certain rights to someone who creates a work that is “fixed in a tangible form of expression,” as described in the Copyright Act of 1976.
- Copyright exists automatically from the moment the item is created; it is not necessary to formally publish or register a work for it to be copyrighted (though in some cases it is advisable to register it).

The Public Domain, and the Philosophy of Copyright

- Creative work as “property” is a recent concept
- The original concept in the Constitution balanced encouragement of creation with the need for a public domain
- Changing balance of power as current laws (especially copyright extension and DRM) favor rights of creators over the need for a public domain

What laws govern copyright?

- The *Copyright Act of 1976*. Section 107 (*Fair Use*) is of special interest to writers and teachers.
- *Amendments* to the Act (such as the 2002 *Technology, Education, and Copyright Harmonization (TEACH) Act*, the 1998 *Digital Millennium Copyright Act (DMCA)*, and the *Term Extension Act* (“*Sonny Bono Act*”) of 1998) cover software, audio-visual materials, length of copyright, and international copyright.
- There are also several sets of guidelines which do not have the force of law but are generally followed by libraries and educators.

What can be copyrighted?

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

Definitions of all these types of works are included in the law.

What can't be copyrighted?

- **Ideas cannot be copyrighted until fixed in a tangible form.**
- **A work that is not “fixed”** is not protected; this might include such works as improvised speeches or songs that have neither been written out in advance, nor recorded during performance. An unpublished diary or letter is “fixed” and therefore copyrighted.
- *“Works consisting entirely of **information that is common property and containing no original authorship**”* cannot be copyrighted—this includes items like calendars, tables of weights and measures, etc.

How long does copyright last?

It depends on several factors:

- When was the work first fixed in a tangible form or published?
- Is the author alive or dead?
- Is this a work for hire, a group work, or an anonymous work?

Length of Copyright in the United States:

- If the work was **created after January 1, 1978**: copyright is for the author's life plus 70 years. For group works, copyright expires 70 years after the last surviving author's death.
- If an item is a “work for hire” (some educational or corporate works) or anonymous, copyright lasts 95 years from publication or 120 years from creation, whichever comes first.

Length of Copyright in the United States:

- If a work was **created before January 1, 1978 and after January 1, 1927**: Copyright lasts a maximum of 95 years from date of publication, depending on circumstances (such as whether its copyright was renewed or not). A work created in 1977 will not enter the public domain until 2072. Works created in 1923 and later started entering the public domain in 2018.

Length of Copyright in the United States:

- If a work was **published in 1926 or earlier**: It is in the public domain; that is, it is not copyrighted and may be used freely.
- *Federal government publications* are not copyrighted and may be used freely (§ 105).
- Orphan Works
- The U.S. Copyright Office has a guide to researching the copyright status of a work on their website, but much information on registered works is still not online.

Resources for figuring out if a work is under copyright

- Copyright Advisory Network Digital Slider:
<http://www.librarycopyright.net/resources/digitalslider/>
- When Works Pass Into the Public Domain (Lolly Gasaway):
<https://www.boisestate.edu/generalcourse/copyright/copyrightbasics/law/>
- Is it in the Public Domain? (A good source for non-print materials, from Berkeley):
<https://www.law.berkeley.edu/article/the-samuels-son-clinic-releases-is-it-in-the-public-domain-handbook/>



Your Rights as a Creator

What you can do
with your work

Protecting your
work

What rights does the copyright holder have? (Section 106)

- To *reproduce* the work
- To *prepare derivative works* based upon the work
- To *distribute* the work
- To *perform* the work publicly
- To *display* the work publicly

What can the copyright holder do with these rights?

- These rights can be signed over in whole or in part to other parties; for example, the author of a book may sell film rights to one company and book-on-tape rights to another.
- These rights are limited by *first sale doctrine* (§ 109(a)), which allows someone who buys a book or other copyrighted item to sell, give away, rent, or lend it to someone else.
- The creator's rights are also limited by *Fair Use* exceptions.

Creative Commons Licensing

- What is it: this is a way you can take control over what other people can do with your work and communicate what they are allowed to do proactively
- <https://creativecommons.org/> details the different types of licenses
- For example, CC-BY-NC-ND means other people are free to use and distribute your work, but they can't edit or change it, have to give credit to you as creator, and can't make money from it

Copyright and Your Work in ScholarWorks at UNI

- **You retain your copyright to your own work. This means you can re-use it elsewhere without asking our permission.**
- You grant a non-exclusive right to the library to archive, reproduce, and distribute your work in UNI ScholarWorks.
- If you have co-authors, sponsors, or publishers outside of UNI connected with the work, we can help you figure out what you can do.

Check your contract for copyright issues!

- Carefully review rights you are signing over to the publisher and what rights you will retain.
- Ideally, the publisher will only want the right to use your work in that specific publication and you will keep the rights to republish your work elsewhere, perform it publicly, display a picture of it on your website, post it in an institutional or personal repository, etc.
- Ask questions before signing!
- Keep a copy of all contracts and agreements

SPARC Addendum

- Have a contract that does not allow you to retain copyright and reuse your own work elsewhere or post it in an institutional repository? It's negotiable!
- The SPARC Addendum is something you can submit to your publisher in addition to their contract. It protects your rights and future re-use of your own work.
- Find out more about how to use it at www.sparc.arl.org.



Fair Use: Using other people's copyrighted work

History and
Philosophy

The Four Factors

Use of third party copyrighted works

- Plagiarism is using someone else's work in such a way that it looks like you are claiming it's YOUR work.
- This doesn't mean you can't use anyone else's work. You can if you:
 - Use it fairly
 - Cite it properly
- Copyright is a LEGAL issue. Plagiarism is an ETHICAL issue.

Fair Use: How to use an item that is under copyright

- To determine if an intended use is fair, the user must take four factors into consideration.
- The complex interplay of these factors must be judged on a case-by-case basis; there are no hard and fast rules for the user, only guidelines. A fair use checklist is a good tool to use in decision-making.
- Technically, Fair Use is a *defense against charges of infringement*, not a right

The Four Factors of Fair Use

1. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes.

- A non-profit institution is granted greater leeway in using copyrighted material than a for-profit company. However, just because it's educational doesn't mean it's automatically fair!
- “Transformative” use – using the original in some other work or format – is also more fair than just copying it.

The Four Factors of Fair Use

2. *The nature of the copyrighted work.*

- Is the original work creative or factual?
Using a factual work is more likely to be allowable than using a creative work.
- Is it a “consumable” item, like a workbook?
Copying a consumable item is rarely fair use.
- Audio-visual works are also less likely to be considered fair game for fair use.

The Four Factors of Fair Use

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

- Using the whole work or a major portion of it is not fair use and neither is using only the “heart of the work.”
- There are guidelines for classroom copying that can be helpful for educators trying to judge the safest amount of a work they can use.

The Four Factors of Fair Use

4. *The effect of the use upon the potential market for or value of the copyrighted work.*

- Will it affect sales adversely?
- Some courts think this is the most important factor, but the trend is moving away from this interpretation.

Fair Use Checklists

- <https://guides.library.cornell.edu/copyright/fair-use/>: Based on the well-known Kenneth Crews Checklist for Fair Use
- <https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html> Another version of the Kenneth Crews checklist, this one is licensed under Creative Commons, making it easy to share with your colleagues
- <http://librarycopyright.net/resources/fairuse/> : This Fair Use Evaluator can give you a time-stamped printout of your evaluation for your files.



Review and Resources

Useful Links



Review

- Copyright Act of 1976 codifies the law.
- Anything fixed in a tangible form may be copyrighted.
- The copyright holder has a bundle of rights.
- Works before 1926 are in the public domain; generally after that, they are under copyright till 70 years after death of author.
- Fair Use allows limited use of copyrighted works. Consider all four factors.
- Special allowances for teaching, libraries, and other non-profit display and performance.

General Copyright Resources

- Columbia's Copyright Advisory Office:
<http://copyright.columbia.edu/copyright/copyright-in-general/>
- Georgia Harper's Copyright Crash Course:
<http://copyright.lib.utexas.edu/index.html>
- American Library Association's Office for Information Technology Policy, Copyright Advisory Network: <http://www.librarycopyright.net/>
- US Copyright Office: <http://copyright.gov>

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