

Responsible Authorship: Copyright Basics for Authors

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What is Copyright?

- Copyright is about who owns a work, who may use that work, and under what circumstances.
- There are three main roles we all share:
 - Copyright creator/author
 - Copyright Producer/Publisher
 - Consumer user/re-user/Remixer
- We all fill these roles at times (sometimes at the same time).

Copyright and Intellectual Property

- Human creations that fix an idea in a form (e.g., text, images, sound, software, etc.)
 - Copyright protects original works of authorship.
 - Not the ideas, but the form of the ideas.
- *Patent*: inventions/discoveries
- *Trademark*: words, designs uniquely identifying source of goods/services.

Copyright Roles

- Authors want their works used, but they also want to retain control. At the same time, authors are reusers of previous works.
- Publishers/Producers want to control how work is used.
- Consumers want to reuse and remix work, creating something new.

Responsible authorship is a way of trying to balance these sometimes-competing roles.

How is Copyright Created?

- Copyright is granted automatically upon creation.
 - As long as they are written or recorded by a method which can be retrieved.
- Copyrighted works do not have to be registered (but you have to register to sue for infringement).
- Copyrights are registered with the U.S. Copyright Office by sending a copy of the work.
 - \$50 if filed in print, \$35 if filed online.

Materials subject to Copyright

- Literary works;
- Musical works, including accompanying words;
- Dramatic works, including accompanying music;
- Pantomimes and choreographic works;
- Pictorial, graphic, and sculptural works;
- Motion pictures and other audiovisual works;
- Sound recordings; and
- Architectural works (plans, drawings, photos, and completed buildings).

What is a Literary Work?

- “Literary works” are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols. . . regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.
--17 U.S. Code Section 101.
- This includes computer programs.


Copyright Grants Exclusive Rights to Perform or Authorize the Following:

- To reproduce the work.
- To make copies of the work.
- To distribute the work.
- To display the work.
- To perform or authorize a public performance (in person or through a digital transmission).

The copyright owner also has a right of attribution and integrity.

--Title 17 U.S. Code Section 106 and 106A

How long does copyright last?

	Published Before December 31, 1922	Published Between 1923 & 1977	Published After January 1, 1978
Personal Author	Public Domain	95 Years	70 Years After the Death of the Author
Corporate Author	Public Domain	120 Years	95 Years

Authors are also Users and Producers

- They build on previous work to create new and transformative works.
- They want others to see their creation.
- They need to control their works.
- They need to reuse works ethically and legally.
 - Using a proper citation with attribution and integrity of the original work.
 - Fair Use provides the means for criticism, comment, news reporting, teaching, scholarship, and research.

Copyright and Plagiarism

- Copyright infringement and plagiarism are not the same.
 - A plagiarist violates both copyright and academic integrity.
- Citation of a source protects against plagiarism but not copyright infringement.
- Alteration of the creation may protect from plagiarism, but not infringement.

Fair Use

- “Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”
--Title 17 U.S. Code Section 107

Factors for fair use

1. What is the character of the use?
2. What is the nature of the work to be used?
3. How much of the work will you use?
4. What effect would this use have on the market for the original or for permissions if the use were widespread?

FACTOR 1: What is the character of the use?

- Nonprofit
- Educational
- Personal
- Criticism
- Commentary
- Newsreporting
- Parody
- Otherwise "transformative" use
- Commercial

Items on the left favor fair use;
items on the right favor permission

FACTOR 2: What is the nature of the work to be used?

- Fact
- Published
- A mixture of fact and imaginative
- Imaginative
- Unpublished

Items on the left favor fair use;
items on the right favor permission

FACTOR 3: How much of the work will you use?

- Small amount
- More than a small amount

Items on the left favor fair use;
items on the right favor permission

FACTOR 4: If this kind of use were widespread, what effect would it have on the market for the original or for permissions?

- After evaluation of the first three factors, the proposed use is tipping towards fair use
- Original is out of print or otherwise unavailable
- No ready market for permission
- Copyright owner is unidentifiable
- Competes with (takes away sales from) the original
- Avoids payment for permission (royalties) in an established permissions market

Items on the left favor fair use;
items on the right favor permission

Practical Matters

- Use the least amount possible to qualify for fair use.
- Look for the publisher or the author to request permission.
- If you try and can't find “owner” then use and just stop if you get a cease and desist letter. (Be able to document your effort to find owner).
- If you get a Cease and Desist letter– cease and then negotiate.
- Publishers monitor closely, especially for films and music.

References

- Carson, B. M. (2013). Basic Copyright Exceptions for Educators. Bowling Green, KY: Western Kentucky University Faculty Center for Excellence in Teaching. <http://www.wku.edu/teaching/booklets/copyright.pdf>.
- Center for Social Media, <http://www.centerforsocialmedia.org/fair-use>.
- Copyright Act, Title 17, U.S. Code, <http://law.justia.com/codes/us/2010/title17/>
 - Subject Matter of Copyright, Sections 102 – 105.
 - Exclusive Rights of Copyright Owners, Sections 106 – 106A.
 - Fair Use, Section 107.
 - First Sale Doctrine, Section 109.
- Copyright Clearance Center: <http://www.copyright.com/>
- Creative Commons License, <http://creativecommons.org/>

References

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- Harper, Georgia. (2013). Copyright Crash Course. University of Texas System. <http://www.lib.utsystem.edu/copyright>.
- Levine, Mark L. (2009). Negotiating a book contract : a guide for authors, agents and lawyers. Kingston, R.I. : Asphodel Press.
- Sample Release Form for recording (See WKU Libraries Intellectual Property Site).
- U.S. Copyright Office <http://www.copyright.gov/>
- When Works Enter the Public Domain, <http://www.unc.edu/~unclng/public-d.htm>.
- WKU Intellectual Property Policy, <http://www.wku.edu/ip/>

Best Practice Codes from the Center for Media Studies

- Documentary Filmmakers' Statement of Best Practices in Fair Use (2005), <http://centerforsocialmedia.org/fair-use/best-practices/documentary/documentary-filmmakers-statement-best-practices-fair-use>.
- Code of Best Practices in Fair Use for Online Video (2008), <http://centerforsocialmedia.org/fair-use/related-materials/codes/code-best-practices-fair-use-poetry>.
- The Code of Best Practices in Fair Use for Media Literacy Education (2010), <http://centerforsocialmedia.org/fair-use/related-materials/codes/code-best-practices-fair-use-media-literacy-education>.
- Best Practices in Fair Use of Dance-related Materials (2010), <http://centerforsocialmedia.org/fair-use/related-materials/codes/best-practices-fair-use-dance-related-materials>

Other Best Practice Codes

- Society for Cinema and Media Studies' Statement of Fair Use Best Practices for Media Studies Publishing,
<http://centerforsocialmedia.org/fair-use/related-materials/codes/society-cinema-and-media-studies-statement-fair-use-best-practices->



Thank you!

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