Copyright and Your Research and Publishing

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Copyright Librarian
Research Services

- Technical and scholarly expertise
- Projects related to: scholarly communication, digital humanities, copyright consulting, data management, data analysis, GIS, and government documents
- Academic and research needs of the Northwestern community
I Am Not A Lawyer
What is copyright?

Type “yes” in the chat if you’re a copyright holder!

“The Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

United States Constitution, Article I, Section 8
What does copyright protect? When?

“original works of authorship fixed in any tangible medium of expression” -- 17 USC § 102 (a).

Idea v. expression

Copyright starts when work is fixed!

Notice (Copyright © 2020 by Liz Hamilton) and registration not required, but it is a clearer statement of ownership.

Most foreign works (published outside the U.S.) receive the same protection in the U.S. as works published in the U.S.
Categories

(1) literary works;

(2) musical works, including any accompanying words;

(3) dramatic works, including any accompanying music;

(4) pantomimes and choreographic works;

(5) pictorial, graphic, and sculptural works;

(6) motion pictures and other audiovisual works;

(7) sound recordings; and

(8) architectural works. -- 17 USC § 102 (a).
Exclusive Rights

(1) to reproduce the copyrighted work in copies or phonorecords;
(2) to prepare derivative works based upon the copyrighted work;
(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

-- 17 USC § 106.
How long does copyright last?

28 years? 42 years? 56 years? Life of the author + 50 years?

Currently:

Life of the author + 70 years, or 120 years from creation for anonymous works

For corporate authorship, 95 years from publication or 120 years from creation, whichever expires first

Previously:

Copyright Term and the Public Domain in the United States
Who owns the copyright?

Default: Creator or creators (if intended joint works).

Exceptions: Work made for hire. Either:

- regular employees within scope of employment
- commissioned through specific agreement
Copyright Policy at Northwestern

“Creators must make a good faith effort to share with Northwestern without charge on a non-exclusive basis those works created during the time of their membership in the Northwestern community.”

Retains license for instructional materials

Rules for software, patent, investment of “extraordinary resources”

Administrative documents are work for hire

Copyright Policy

Northwestern University upholds the principle that our faculty retain copyright ownership for traditional works created by the faculty, such as books, films, musical scores, and other works of art. A group of faculty from throughout the University community created the copyright policy with that principle in mind. In addition to traditional works, the creators of the policy provided for the University to share in the benefits of copyrightable software when the University provides extraordinary resource support for the development of the software and when research sponsors assign the copyright to the University.
How can I retain control of my copyright?

- Your dissertation:
  - Section I. License for Inclusion of the Work in ProQuest Publishing Program Grant of Rights. Author hereby grants to ProQuest the **nonexclusive**, worldwide right to reproduce, distribute, display and transmit the Work (in whole or in part) in such tangible and electronic formats as may be in existence now or developed in the future. Author further grants to ProQuest the right to include the abstract, bibliography and other metadata in the ProQuest Dissertations & Theses (PQDT) database and in ProQuest Dissertation Abstracts International and any successor or related index and/or finding products or services.
  - [ARCH]: nonexclusive
How can I retain control of my copyright?

- Author agreements, may include language like
  - Transfer of all rights in perpetuity
  - Exclusive license of certain of your rights
  - License of certain rights on a non-exclusive basis
  - Self-archiving restrictions
    - only the pre-peer review copy
    - you have to wait X months before you can use the publisher PDF only if mandated by the institution (Harvard OA mandate) or a funder (NIH, for example)
  - You can participate in our open access program if you pay an additional author fee
How can I retain control of my copyright?

● Know your publisher
  ○ Research their publishing practices using a registry like SHERPA/RoMEO

● You do not have to include a notice or register your copyright to own copyright, but it is a clearer statement of ownership

● Keep copies of authors agreements/contracts

● Think about and understand what you want to do with your work and/or allow others to do with your work
  ○ Let prospective students and collaborators find and read your articles
  ○ Post your articles to your professional website?
  ○ Put them in a disciplinary repository (SSRN, PubMedCentral)?

● NOTE: If you transfer all rights to a publisher, you may have to ask permission to use your own work!
How can I retain control of my copyright?

You may retain your copyright, but license the use of your work to publishers

Author addenda

- You have options before you sign that agreement, not afterwards

**BTAA (CIC) Author Addendum**

- Author has non-exclusive rights to his/her work for academic purposes
- After 6 months, can make full use of publisher's copy
- Author has right to grant employing institution rights of reproduction, distribution, display, etc.

Optional: Assign a [Creative Commons](https://creativecommons.org) License
What if I want to use someone else’s work?

Balance between owners and users rights is a part of promoting progress, so there are limitations and exceptions in the law.

Key:

- Fair Use (Section 107)
- Library Exception (Section 108)
- First Sale (Section 109)
- Classroom teaching (Section 110)

If work is not in the public domain, and no exception applies, ask permission!
17 USC § 107 - Limitations on exclusive rights: 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. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
(2) the nature of the copyrighted work
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole
(4) the effect of the use upon the potential market for or value of the copyrighted work
Fair Use

Four Factors in assessing fair use, + transformative uses (usually assessed under purpose)

- **Purpose**: Nonprofit vs. Commercial work
  - Create work + with new purpose vs. has same purpose as original

- **Nature**: Reference, Nonfiction, Published vs. Fiction, Art, Music, Unpublished

- **Amount**: Small amt (relative to whole original) vs. Complete work
  - Heart of work

- **Market**: Doesn’t hurt market of Original vs. Hurts market or potential market of original
Fair Use Scenario - Breakout Rooms!

https://docs.google.com/document/d/1hnuw768jscZbr2pxa-2wO5ZJS4f5iVTvMXp eD95IdHc/edit?usp=sharing
Fair Use and Your Dissertation

Guidelines on when to seek permission (per ProQuest):

- Very long quotations
- Reproduced publications (survey instruments, journal articles, etc.)
- Unpublished works
- Substantial chunks of
  - Poetry & lyrics
  - Dialogue from dramatic work
  - Music
  - Graphical works
- Software developed by someone else
Permission

Columbia Copyright Advisory Office: Asking for Permission

Try Creative Commons, if you’re flexible!

Publishers may have different levels of flexibility on fair use, and may require you to ask permission.
What is open access?

“What open-access (OA) literature is digital, online, free of charge, and free of most copyright and licensing restrictions. What makes it possible is the internet and the consent of the author or copyright holder.”

– Peter Suber
What is open access?

How can you contribute?

- Publish in an OA journal
- Publish in a non-OA journal, pay to participate in publisher’s hybrid open program
- Publish in a non-OA journal, but retain/exercise right to post your work openly online:
  - On your web site
  - In a disciplinary repository
  - In an institutional repository
- Apply for funds to pay those pesky OA fees through Northwestern Libraries Open Access Fund: http://libguides.northwestern.edu/scholcomm/oafund
Most important takeaway: I am here to help.

Copyright Research Guide: https://libguides.northwestern.edu/copyrightbasics
emhamilton@northwestern.edu