

Copyright Essentials for Educators

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What does copyright protect?

Copyright protection exists for original works of authorship fixed in a tangible medium of expression. Works/items not protected by copyright include facts, ideas, materials lacking the requisite modicum of originality, materials created by federal government employees within the scope of their employment, and useful articles.

What types of works can be copyrighted?

All types of “original” works can be copyrighted including literary works, musical works, dramatic works, pictorial, graphic, and sculptural works, motion pictures and other audiovisual works, sound recordings, pantomimes and other choreographic works, and architectural works.

What are the rights of the copyright holder?

To **reproduce** the work

To **prepare** derivative works

To **distribute** copies of the work

To publicly **perform** the work

To publicly **display** the work directly or by telecommunication and

The right to publicly **perform a sound recording by digital means**

When does copyright begin?

Copyright protection begins as soon as an original work is fixed in a tangible medium of expression. Fixation must be done under the authority of or by permission of the author. Publication and/or registration is not required (unpublished works fully protected). Registration is recommended however (i.e. evidence of ownership, prerequisite to suit, damage award choice, prima facie evidence of fact).

What about the copyright notice?

Before 1978, no notice meant no copyright protection. Currently, notice is necessary for works created after 3/1/89. The absence of either actual registration of the work or the © symbol does not affect copyright protection, though it does impact the fines and damages a holder can collect from infringers.

When does copyright end?

The term of copyright is currently life of the author plus 70 years. For works for hire or anonymous works, it is 95 years from publication or 120 years from creation, whichever shorter.

Whether to Register my Work? There are very tangible advantages to registration; primarily in the form of deterrence and enforcement benefits. Registration information and forms are located at: www.copyright.gov

When do works pass into the public domain?

Lolly Gasaway, UNC School of Law

<http://www.unc.edu/~uncldng/public-d.htm>

Peter Hirtle, Copyright Information Center, Cornell University

http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

Effect of ‘work for hire’ on the ownership of my Work?

If commissioned, the artist retains ownership of the Work unless there is an agreement to the contrary.

What is fair use?

Embodies some First Amendment concerns: criticism, comment, news reporting, teaching, research, and scholarship
Addresses market failures: permits important uses that do not make economic sense or have economic impact.

Fair Use Factors

The **purpose** and character of the use.

The **nature** of the copyrighted work.

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

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

Samples:

Fair Use Considerations Worksheet: <http://www.provost.ncsu.edu/copyright/use/>

Sample Fair Use Guidelines

- UT Rules of Thumb: <http://www3.utsystem.edu/ogc/intellectualproperty/copypol2.htm>
- Fair Use Guidelines for Educational Multimedia: <http://www.libraries.psu.edu/mtss/fairuse/guidelines.html>

Getting Permission

- Identify, locate, and confirm the copyright holder(s)
- Allow plenty of time before anticipated use
- Request and receive permission in writing; save all correspondence
- Have an alternate plan in the event there is no response, a negative response, an excessive royalty fee, or unacceptable conditions of use
- Refer to Copyright Circular 22 from the U.S. Copyright Office, accessible from their website www.copyright.gov/

Permissions Guide

NCSU Permissions Guide with sample permissions letters:

<http://www.provost.ncsu.edu/copyright/resources/tutorials/PermissionsGuide.php>

UT Getting Permission page: <http://www3.utsystem.edu/ogc/IntellectualProperty/permisn.htm>

Copyright Myths

- If I don't register my work, it's not protected by copyright and anyone can steal it.
- If there's no copyright notice on a work or a web page, it's in the public domain and I can freely use it.
- If I'm not making any money from using someone else's work, then it's okay.
- If I'm using it for my school work, it's okay.
- If I alter an image so much that you can't discern the original, then it's okay.
- If I can get around protective technology, I can use the work.
- I can burn all my favorite songs onto a CD and give it to my friends.
- You can put anything up on a web site, as long as its password protected.
- Unpublished works are protected by copyright.
- If I didn't know I was infringing, I'm okay.
- You need permission before you can use any copyrighted works.
- Copyright infringement and plagiarism are the same thing.

Retaining Rights — Licensing use of Work versus 'Grant' of Copyright or ownership

SPARC Authors' Addendum: <http://www.arl.org/sparc/author/addendum.html>