Copyright Education

The ULA Copyright Education Committee is passionate about the copyright system. We help create a consistent understanding of the core rights that make up copyright along with the range of exceptions as they relate to libraries, readers, teachers, and learners.

Attend our session on Thursday, May 18, 11 am. Ten lucky attendees could win a copy of The Librarian’s Copyright Companion, 2nd ed. by James Heller, et al.

Members (scroll to the right for full list)

Allyson Mower, U of Utah (chair); Elizabeth Miles, LD

Copyright Information in Context of Libraries

Copyright, as a system of rights and exceptions, helps promote access to information. Libraries are the heart of a free society and are dedicated to making information accessible to everyone. Copyright law is the engine of growth for creators and innovators. It helps libraries and their users thrive and flourish!
Five Exclusive Rights for Authors/Creators of Original Works

- To reproduce the work
- To prepare derivative works
- To distribute copies of the work
- To perform the work publicly
- To display the work publicly
Possible Strategies and Links to More Information

1. Consult your library's copyright policy or relevant attorney
2. Look for content with Permission Built-In
3. Find copyright owners
4. Get permission

**Five Exceptions Relevant to Librarians and Libraries**

1. **Section 107 (Fair Use)**
2. **Section 108 (Libraries & Archives)**
   1. A. Qualifying for the Exemption
   2. B. Copying Unpublished Works
   3. C. Copying Published Works
   4. D. Articles or Excerpts for Users
   5. E. Cuh-or-Print Works
   6. F. Copiers & Scanners plus Fair Use
   8. H. Preservation & Term Extension
   9. I. Music, Pictures, Graphs, Sculptures
3. **Section 109 (First Sale)**
4. **Section 110 (Public Performance)**
5. **Section 117 (Computer Programs & Digital Information)**

Possible Strategies (scroll right for full list)

1. Consult Local Library Copyright Policy or relevant
PUBLIC PERFORMANCE EXEMPTIONS

SECTION 110: LIMITATIONS ON EXCLUSIVE RIGHTS: EXEMPTION OF CERTAIN PERFORMANCES AND DISPLAYS

Erin Warnick
erin@afcity.net
OWNERSHIP

• Copyright is initially owned by the works creator
• Exceptions
  • Works created by an independent contractor or employee
  • Copyright has been sold or transferred
• Joint copyright
  • Two or more authors contribute to the work
  • Owned by both unless there is a written agreement to the contrary
• Rights of owners
  • Reproduction rights
  • Distribution rights
  • Right to create adaptations
  • Performance and display rights
“A public performance occurs under either of three circumstances: (1) when the place where the work is performed is open to the public; (2) if the performance occurs at a place where a large number of people...may gather; (3) or, if there is a transmission that allows the public to see or hear the work” (Heller, et al. 157). Additionally, “Performances are public when a substantial number of people have the potential to see or hear a protected work over the course of time, regardless of how many people actually see or hear it at a particular time or place” (Heller, et al. 158).
PERFORMANCE EXEMPTIONS

(1) Classroom teaching
(2) Education broadcasting
(3) Religious services
(4) Charitable purposes
(5) Small business
(6) Agricultural or horticultural fairs
(7) Promote sale of non-dramatic musical works or equipment
(8) Blind or otherwise handicapped persons
(9) Handicapped persons
(10) Non-profit veterans or fraternal organizations
FACE-TO-FACE EXEMPTION

Section 110(1): “performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;”

- Sometimes called the “face-to-face teaching exemption”
  - educational purpose to the performance is required
  - not used for entertainment purposes
- Attendance is limited
  - Pupils
  - Guest lecturers
  - Instructors
  - Not open to general public
- Must take place in a setting devoted to instruction
  - Classroom
  - Library (viewing room)
GUIDELINES: USE OF AV MATERIALS IN LIBRARIES

- Viewing rooms should be small
- No charge
- “Play-only” equipment
- Library equipment may be used in library only
- If you think that somebody is doing something they shouldn’t be, stop them

Resource: *Librarian’s Copyright Companion* by James S. Heller, Paul Hellyer, & Benjamin J. Keele
DISTANCE ED.

Section 110(2): “except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

(i) students officially enrolled in the course for which the transmission is made; or

(ii) officers or employees of governmental bodies as a part of their official duties or employment; and

(D) the transmitting body or institution—

(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

(ii) in the case of digital transmissions—

(I) applies technological measures that reasonably prevent—

(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;
DISPLAYS

• First sale doctrine allows the owner of a lawfully acquired copy to publicly display that copy
• Does not include public performances
  • Can’t show performances without permission from copyright owner
  • Can get a performance license (Movie Licensing USA)
RESOURCES

- Project Gutenberg
- https://www.goodreads.com/shelf/show/creative-commons
- https://www.goodreads.com/list/show/9437.Free_Creative_Commons_Novels
- http://smallbeerpress.com/creative-commons/

Check author’s websites. Often authors will have a “Teacher Resource” page on their website.
QUESTIONS?

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3D PRINTING IN LIBRARIES

- Original creator of CAD file has ownership.
  - As long as not infringing in the first place.
  - Maybe multiple creators.
- Owner allowed to determine usage.
  - Covered by copyright but may choose to license.
- Library safeguards:
  - Section 108: provided warnings are posted, libraries are not liable for patron usage or infringement.
MYTH DESTROYERS: COPYRIGHT FOR DIGITAL COLLECTIONS

REBEKAH CUMMINGS, ULA COPYRIGHT EDUCATION COMMITTEE
J WILLARD MARRIOTT LIBRARY, UNIVERSITY OF UTAH
ELIZABETH MILES, ULA COPYRIGHT EDUCATION COMMITTEE
UTAH LIBRARY ASSOCIATION CONFERENCE
MAY 18, 2017

Adapted from the Public Library Partnership Project Curriculum and shared under Creative Commons Attribution-Non-Commercial 4.0
WHAT KINDS OF MATERIALS ARE WE TALKING ABOUT?

• “Special” collections
• One of a kind items
UNDERSTANDING COPYRIGHT STATUS HELPS:

• Libraries determine...
  • What content to digitize
  • What level of risk the digitized content might pose
  • How to license content appropriately

• Users determine what they can and cannot do with digitized content
There are five common ways that works transfer into the public domain:

1. The copyright has expired.
2. The copyright owner published the work 1923-1977 without a copyright notice.
3. The copyright owner failed to renew copyright status.
4. The copyright owner deliberately places – or dedicates – his/her work to the public domain using a CC0 Creative Commons waiver.
5. The work was born in the public domain.
1. THE COPYRIGHT HAS EXPIRED

- Published works before 1923
- Unpublished works – Life of the author + 70 years.
- Unpublished work, no author/death date unknown, 120 years from date of creation.

Pride and Prejudice – published 1813

Diary of Bathsheba W. Bigler Smith (1822-1910), 1849

Anonymous letter, 1770’s
2. THE COPYRIGHT OWNER PUBLISHED THE WORK 1923-1977 WITHOUT A COPYRIGHT NOTICE
3. THE COPYRIGHT OWNER FAILED TO RENEW COPYRIGHT STATUS

• Between 1923-1963, rights holders had to renew their copyright status after a certain amount of years.

• Check online with the Copyright office.
4. COPYRIGHT OWNER DEDICATES THEIR WORK TO THE PUBLIC DOMAIN
5. THE WORK WAS BORN IN THE PUBLIC DOMAIN

Documents created by the federal government and its employees as part of their jobs are not protected by copyright.
AGH! I CAN’T REMEMBER THAT!

- Cornell Copyright Chart: [http://copyright.cornell.edu/resources/publicdomain.cfm](http://copyright.cornell.edu/resources/publicdomain.cfm)
- ALA Copyright Digital Slider [http://librarycopyright.net/resources/digitalslider/](http://librarycopyright.net/resources/digitalslider/)
- Copyright Genie: [http://librarycopyright.net/resources/genie/](http://librarycopyright.net/resources/genie/)

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<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Copyright Term</th>
<th>Never Published, Never Registered Works¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpublished works</td>
<td>Life of the author + 70 years</td>
<td>Works from authors who died before 1947</td>
</tr>
<tr>
<td>Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)</td>
<td>120 years from date of creation</td>
<td>Works created before 1897</td>
</tr>
<tr>
<td>Unpublished works when the death date of the author is not known²</td>
<td>120 years from date of creation²</td>
<td>Works created before 1897</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Date of Publication²</th>
<th>Conditions²</th>
<th>Copyright Term²</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1923</td>
<td>None</td>
<td>None. In the public domain due to copyright expiration</td>
</tr>
<tr>
<td>1923 through 1977</td>
<td>Published without a copyright notice</td>
<td>None. In the public domain due to failure to comply with required</td>
</tr>
</tbody>
</table>

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Copyright Term and the Public Domain in the United States
1 January 2017³
OPTIONS FOR COPYRIGHTED WORKS

“Red cross volunteers with baskets of food for troops at the Logan O.S.L.R.R. Depot”
Utah State University (1919, unpublished, no creator)
1. WAIT!

- Published after 1923: Wait!
- Unpublished, creator died after 1946: Wait!
- Unpublished, anonymous, and after 1896: Wait!
- Published 1923-1977 with a copyright notice: Wait!
- Published between 1923-1963 and they renewed their copyright: Wait!

Image credit: Los Angeles Public Library
2. GET PERMISSION

- Try to identify the copyright holder (creator or publisher) and perform “due diligence.”

Table 4.1. Copyright Clearance: Due Diligence Checklist

| CRITERIA                        | FULFILLED? | RESPONSE?
|---------------------------------|------------|-----------
| Copyright holder found          | Yes        | N/A       |
| First letter sent               | Yes        | No        |
| First e-mail sent               | Yes        | No        |
| Second letter sent (30 days after first) | Yes        | No        |
| Second e-mail sent (30 days after first) | Yes        | No        |
| Permission filed                | No         | N/A       |
| Due diligence                   | Yes        | N/A       |
WHAT CONSTITUTES DUE DILIGENCE?

SAA - Orphan Works: Statement of Best Practices
• You’ve tried, you’ve documented, but you can’t find or identify the author or publisher of a work.

• Take heart.
ORPHAN WORKS

• Many institutions have chosen to digitize or use “orphan works.”

• Determine your institution’s comfort with accepting some risk.

• Some institutions are riskier than others.
NEW YORK PUBLIC LIBRARY

• The New York World’s Fair of 1939 and 1940.

• Corporation in charge of the fair donated 2,500 boxes of documents and 12,000 promotional photographs.

• Heavily used collection.

• NYPL staff performed a good faith effort to locate a copyright holder but could not.

• So they digitized the collection and put it online.

• So far, no rights holder has come forward.
NYPL Biblion: World’s Fair

The New York Public Library

Get

Rated: 9+


ITUNES “EDUCATION APP OF THE YEAR” 2011
3. SECTION 107 (FAIR USE)

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Fair use = YES</th>
<th>Fair use = NO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Nonprofit or</td>
<td>Commercial or</td>
</tr>
<tr>
<td></td>
<td>transformative</td>
<td>duplication</td>
</tr>
<tr>
<td>Nature</td>
<td>Factual</td>
<td>Creative</td>
</tr>
<tr>
<td>Amount</td>
<td>Small amount (relative to</td>
<td>Complete work or</td>
</tr>
<tr>
<td></td>
<td>original)</td>
<td>heart of the work</td>
</tr>
<tr>
<td>Market</td>
<td>Doesn’t hurt market</td>
<td>Hurts market or there</td>
</tr>
<tr>
<td></td>
<td>for original</td>
<td>is a potential market</td>
</tr>
</tbody>
</table>

Courtesy Mary Minow via Peter Hirtle
RECAP – OPTIONS FOR COPYRIGHTED WORKS

1. Wait until the item is clearly in the public domain.
2. Get permission from the rights holder... but remember orphan works.
3. Consider fair use options.
WHAT’S THE WORST THAT CAN HAPPEN?

Surnames Danell-Darcy, Montana Memory Project
TAKE DOWN NOTICE

• Copyright owner should provide official notice to the person posting the infringing material.

• If the notice is legal and legitimate you must, act “expeditiously to remove, or disable access to” the allegedly infringing material.” (17 U.S.C. § 512 (c)(1)(A)(iii))
HathiTrust
10 or less take-down notices in their existence

New York Public Library
An average of 10 a year but they are often invalid and don’t take the materials down.

Note: These institutions have a high risk tolerance and are extremely high-profile. Chances are you will never get a take-down notice!
WHAT ABOUT THE DIGITAL COPY?

An institution should not claim copyright on digitized content when the original is in the public domain.

(Bridgeman Art Library v. Corel Corp.)
FINAL THOUGHT

Does your deed of gift form include a provision for digitization and online reuse of donated resources?

Should it? YES.
THANK YOU!

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Please share, reuse, and adapt!
QUESTIONS?
COMMON COPYRIGHT QUESTIONS FROM PATRONS

• Can I scan a book and put it online?
• Am I free to use this test/measure in a study? (How about just for an in-class project?)
• How do I know what use I can make of my own publications?
• Can I use this in my online class?
• Can I photocopy in-copyright documents at will if they’re only for use by my students?
• Do I need permission to quote a magazine article, and if so, do I get permission from the magazine or the author?
• Can a book title be copyrighted?
• ... and the meta-question: “Why is your answer different from the other answer I got?”