

The background features a dark blue gradient with a starry space pattern. On the left side, there are several circular gauges or dials with white markings and numbers. The numbers on these gauges include 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, and 260. Some gauges have arrows pointing in different directions, and some have dashed lines around them. The overall aesthetic is technical and futuristic.

# © MYTH DESTROYERS

ULA COPYRIGHT EDUCATION COMMITTEE

2017 ANNUAL CONFERENCE

MAY 11, 2017



### ULA Member Services

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### Meta

## 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

### Follow ULA on:

### Choose Your Own Adventure

Join us for the 2017 conference at the South Towne Expo Center in Sandy, Utah, on May 17th-19th.

### Archives

May 2017

## Copyright Information in Context of Libraries

Copyright, as a system of rights and exceptions, helps define authorship, ownership, and re-use of content. This system becomes very relevant to libraries in their mission of connecting people to information and

# 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**

document delivery, or offering a publishing or file management service in the library. If there weren't any exceptions to the right to copy and the right to distribute, a library would need permission to offer the service. But there are some exceptions to these two rights!

## 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 B. Copying Unpublished Works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. Out-of-Print Works
  6. F. Copiers & Scanners plus Fair Use
  7. G. Provisos
  8. H. Preservation & Term Extension
  9. I. Music, Pictures, Graphics, 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

## Possible Strategies

1. Consult local library copyright policy or relevant
2. Look for relevant exceptions
3. Find copyright owner
4. Get permission

## Information

## Policy or

## Built-In



# PUBLIC PERFORMANCE EXEMPTIONS

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

Erin Warnick  
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# 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



# 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](https://www.goodreads.com/list/show/9437.Free_Creative_Commons_Novels)
- <http://smallbeerpress.com/creative-commons/>
- Margie Palatini - <http://www.margiepalatini.com/whats-l3-2/readers-theater>
- Tim Rasinski - [http://www.timrasinski.com/presentations/readers\\_theater\\_sources.pdf](http://www.timrasinski.com/presentations/readers_theater_sources.pdf)

Check author's websites. Often authors will have a "Teacher Resource" page on their website.



QUESTIONS?

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American Fork Library  
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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.

The background features a dark blue gradient with a starry space pattern. Overlaid on this are several technical diagrams, including circular gauges with numerical scales (e.g., 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260) and various circular arrows indicating rotation or flow. The text is centered in a clean, white, sans-serif font.

# 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

# WHAT KINDS OF MATERIALS ARE WE TALKING ABOUT?

- “Special” collections
- One of a kind items



Coach Romney in 'Counselor at Law,' 1930s. Image credit: Harold B. Lee Library, Brigham Young University



Pamphlet advertising "Montana Free homestead land" published by the Great Northern Railway, 1912. Image credit: Montana Historical Society Research Center



The background features a dark blue gradient with a starry space pattern. On the right side, there are several technical diagrams, including a large circular gauge with numerical markings from 0 to 210 and a smaller circular diagram below it. On the left side, there are faint circular diagrams and a small yellow icon in the top-left corner.

## 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



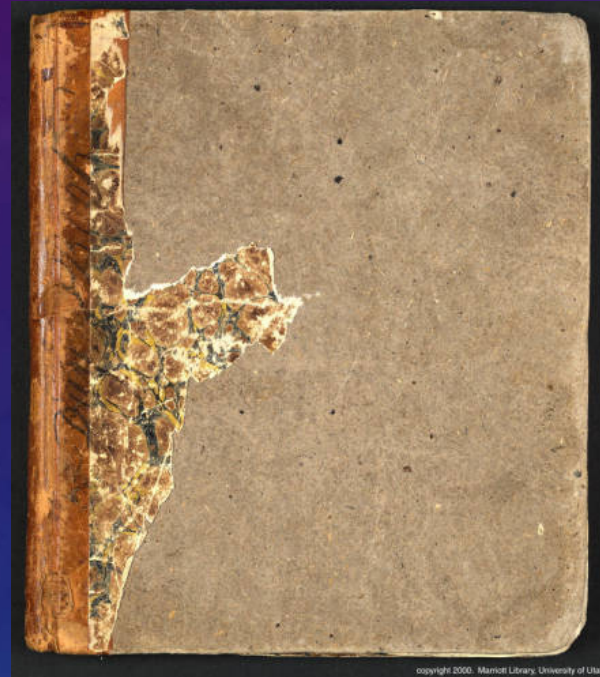
# PUBLIC DOMAIN

There are five common ways that works transfer into the public domain:

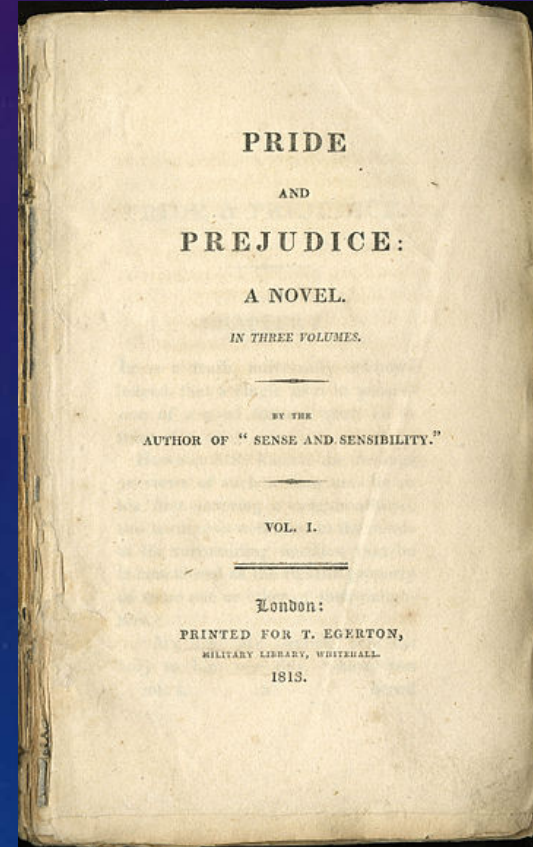
1. The copyright has expired.
2. The copyright owner published the work 1923-1977 without a copyright notice.
3. The copyright owner failed to renew copyright status.
4. The copyright owner deliberately places – or dedicates – his/her work to the public domain using a CC0 Creative Commons waiver.
5.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

# 1. THE COPYRIGHT HAS EXPIRED

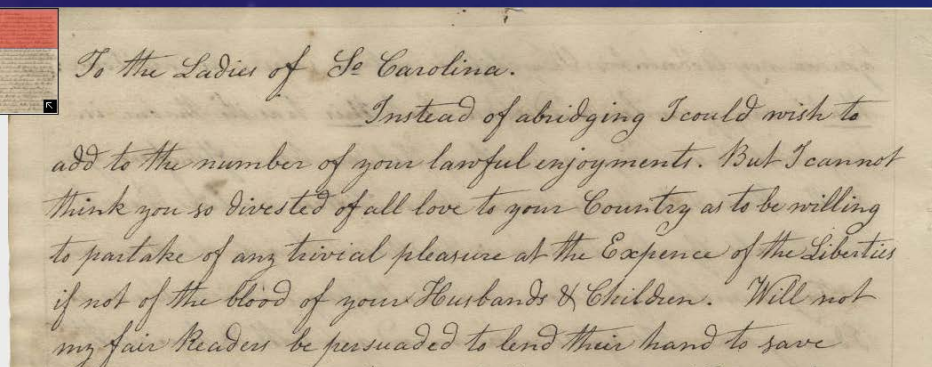
- Published works before 1923
- Unpublished works – Life of the author + 70 years.
- Unpublished work, no author/death date unknown, 120 years from date of creation.



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

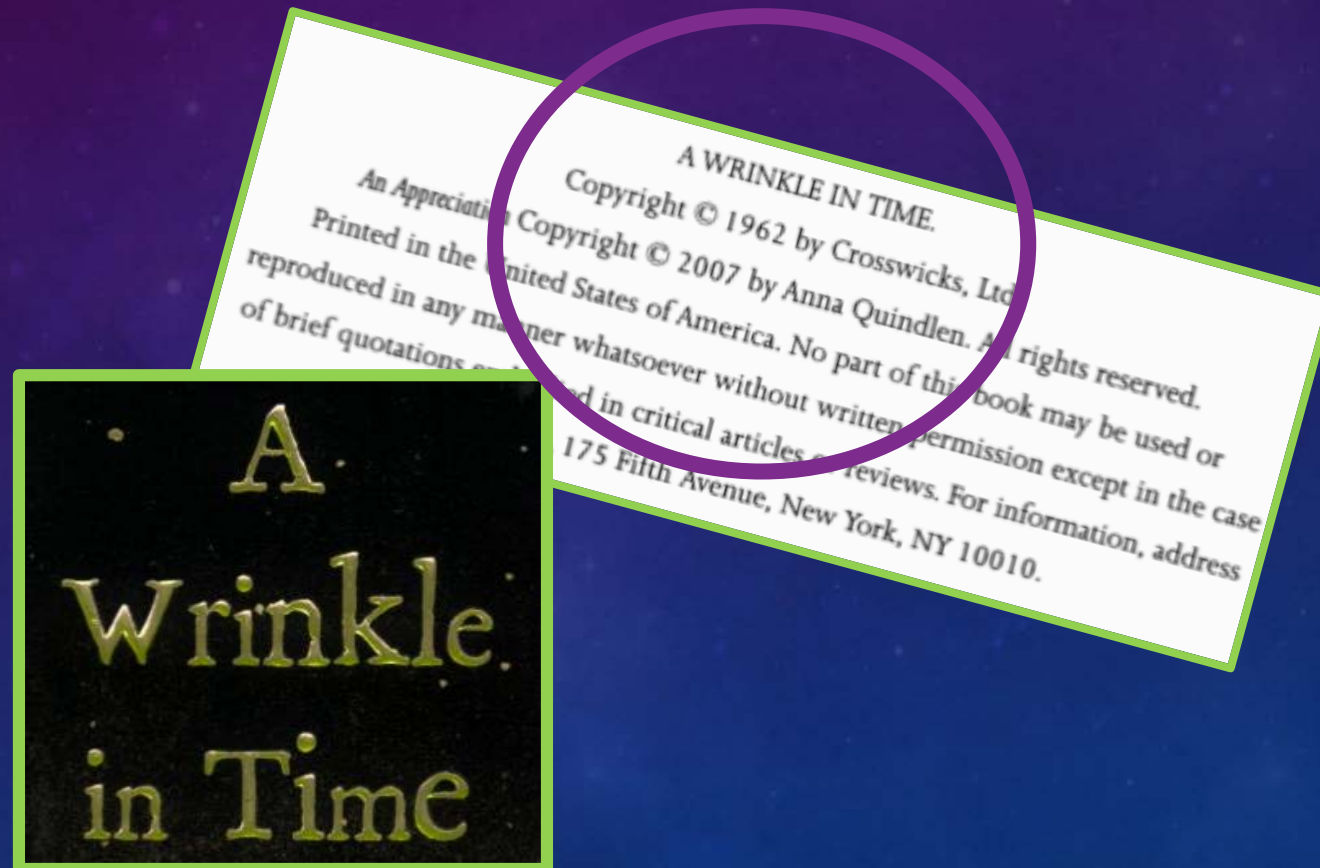


Pride and Prejudice – published 1813



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

A screenshot of a Facebook post. The main image is a close-up of a white kitten with black spots, curled up in a pink, fuzzy blanket. The post title is 'Kitten Cat Fluffy Cat Cute Animals Cats Fur'. The post has 46 likes and 4 comments. The comments are from users JesusLOVESyou, Love\_and\_Hope, Miglena, cds7931, MijungKim, and marliese. The right sidebar shows the user profile 'AllAnd', a grid of related images, and a 'shutterstock' sponsored image section. At the bottom right, there is a metadata section for the image, including upload date, statistics, size, camera, license, release information, and creation details. A red arrow points to the metadata section.

Kitten Cat Fluffy Cat Cute Animals Cats Fur

Like Pixabay on Facebook  
24,878 people like this. Be the first of your friends.

AllAnd  
Member for 6 months, 211 images

Message Follow Coffee

shutterstock Sponsored images

Tags  
kitten, cat, fluffy cat, cute, animals, cats, fur, closeup, siberian, portrait, pet, cat eyes, cat person, cat's eye, white, quilt, pink, little, free photos

Uploaded 12/12/2013  
Statistics 5147 1895 46  
Size 2048 x 1536 (855.4 KB)  
Camera Fujifilm FinePix Hs10 Hs11  
License Public Domain CC0  
Release Unknown  
Information  
Created 08/09/2013  
Focal Length 13.8 mm  
Aperture f4.0

JesusLOVESyou 03/06/2014  
Ohhhh <3

Love\_and\_Hope 03/03/2014  
so cute

Miglena 02/24/2014  
что сладкий котенок.

cds7931 02/21/2014  
thx you

MijungKim 02/12/2014  
lovely♡

marliese 01/02/2014  
Ist das ein niedliches Kätzchen danke



## 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>
- ALA Copyright Digital Slider <http://librarycopyright.net/resources/digitalslider/>
- Copyright Genie: <http://librarycopyright.net/resources/genie/>



The screenshot shows a web browser displaying the Cornell Copyright Chart. The page title is "Copyright Term and the Public Domain in the United States" as of 1 January 2017. It is divided into two main sections: "Never Published, Never Registered Works" and "Works Registered or First Published in the U.S.".

Type of Work	Copyright Term	What was in the public domain in the U.S. as of 1 January 2017
<b>Never Published, Never Registered Works</b>		
Unpublished works	Life of the author + 70 years	Works from authors who died before 1947
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1897
Unpublished works when the death date of the author is not known	120 years from date of creation	Works created before 1897
<b>Works Registered or First Published in the U.S.</b>		
Date of Publication	Conditions	Copyright Term
Before 1923	None	None. In the public domain due to copyright expiration
1923 through 1977	Published without a copyright notice	None. In the public domain due to failure to comply with required

# 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?

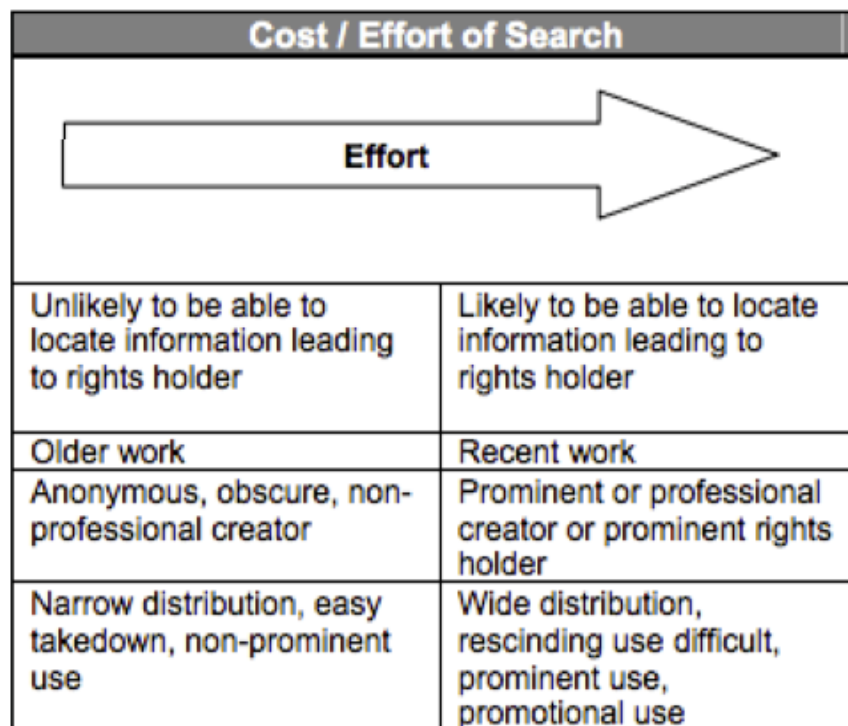


Figure 1

SAA - Orphan Works: Statement of Best Practices

<http://www.archivists.org/standards/OWBP-V4.pdf>

- You've tried, you've documented, but you can't find or identify the author or publisher of a work.
- Take heart.



Photo credit: University of Southern California

# 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.



Brigham Young University Harold B. Lee Library L. Tom Perry Special Collections; MSS P 663



Brigham Young University Harold B. Lee Library L. Tom Perry Special Collections; MSS P 661

“War Orphans” – Brigham Young University

# 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.



# ITUNES "EDUCATION APP OF THE YEAR" 2011

App Store > Education > The New York Public Library



Get

## NYPL Biblion: World's Fair 9+

The New York Public Library >

[Details](#) [Ratings and Reviews](#) [Related](#)

### iPad Screenshots

★★★★★ (78)

Rating: 9+

#### LINKS

[Privacy Policy](#)

[Developer Website](#)

© 2011, The New York Public Library,  
Astor, Lenox and Tilden Foundations




### 3. SECTION 107 (FAIR USE)

	Fair use = YES	Fair use = NO
Purpose	Nonprofit or transformative	Commercial or duplication
Nature	Factual	Creative
Amount	Small amount (relative to original)	Complete work or heart of the work
Market	Doesn't hurt market for original	Hurts market or there is a potential market

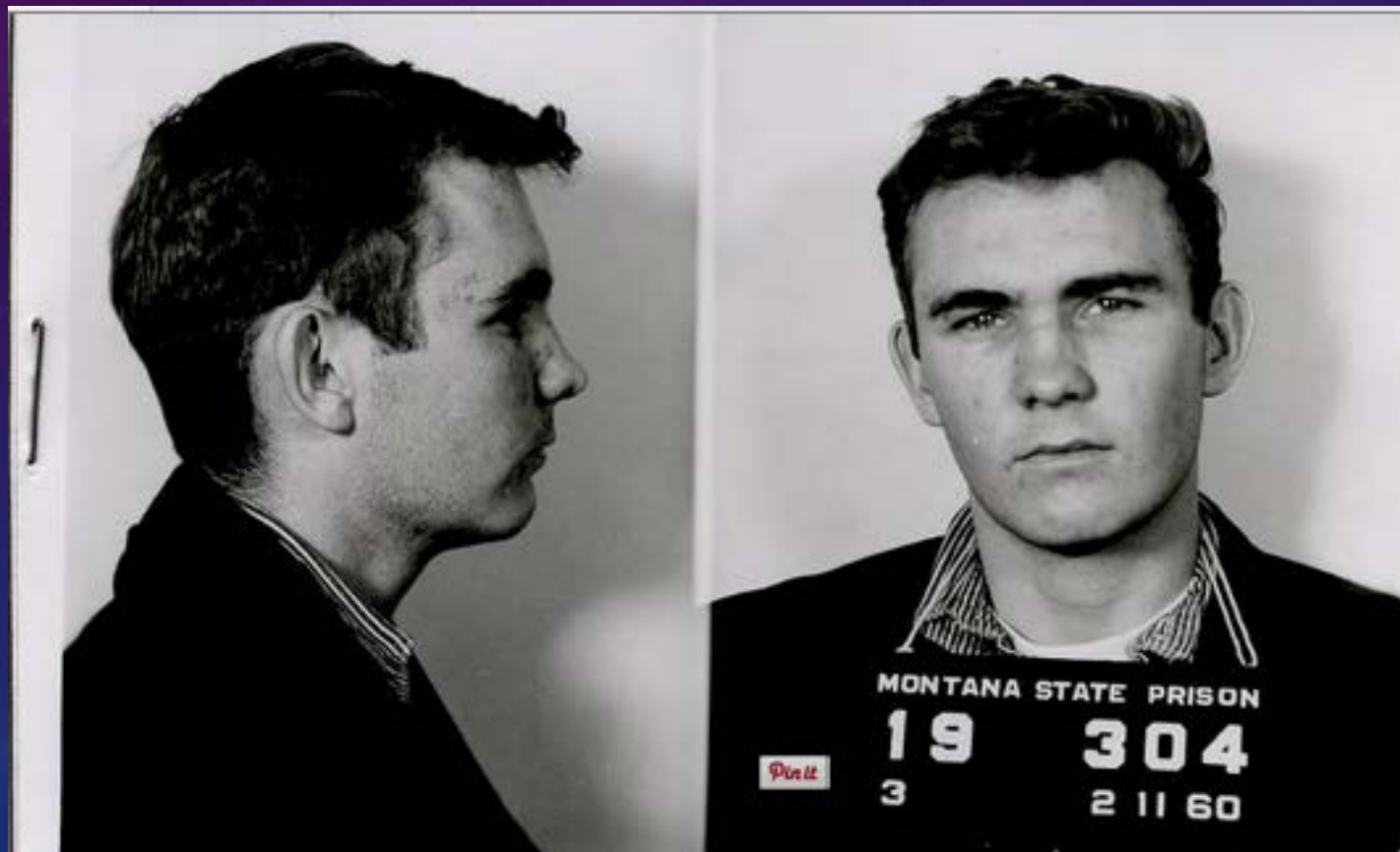
Courtesy Mary Minow via Peter Hirtle



# 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!



The background features a dark blue gradient with a pattern of small white stars. Overlaid on this are several technical diagrams, including circular gauges with numerical scales (e.g., 100, 120, 140, 160, 180, 200) and dashed lines, and curved arrows indicating motion or flow. In the top-left corner, there is a small yellow icon of a speech bubble with three horizontal lines inside.

## 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!

Adapted from the [Public Library Partnership Project Curriculum](#) and shared under [Creative Commons Attribution-Non-Commercial 4.0](#)

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?"