Can I Post/Digitize/Copy That?

Jenni Salamon, Manager, Digital Services

Agenda

• Copyright basics
• Understanding copyright terms
• Copyright in practice
• Resources
Disclaimer

I am not a lawyer.
This is not legal advice.

The information provided is based on our own local practices. Always consult your own legal counsel regarding issues of copyright, ownership, etc. prior to beginning a digitization or other public access project.

When does copyright matter?
Trick question!

• Copyright should always be considered when sharing collections outside the institution
  – Websites
  – Digital collections
  – Marketing materials
  – Publications
  – Social media
  – Photocopy requests

COPYRIGHT BASICS
Copyright

• “a form of protection provided by U.S. law to authors of ‘original works of authorship’ from the time the works are created in a fixed form”
  – Literary works; musical works (and words); dramatic works (and music); pantomimes/choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; architectural works

Source: United States Copyright Office Circular 1 on Copyright Basics

Copyright owner’s rights

• Reproduce work
• Prepare derivative works
• Distribute copies to the public
• Perform work publicly
• Display work publicly

Source: United States Copyright Office Circular 1 on Copyright Basics
Copyright owner

- Author(s) who created the work
- “Work for hire”: party hired by the individual(s) who created the work

Source: United States Copyright Office Circular 1 on Copyright Basics

Fair use

- Limitation on exclusive rights
- Reproduction for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research
- Four factors
  - Purpose and character (commercial <-> nonprofit; new meaning)
  - Nature of copyrighted work (creative <-> factual)
  - Amount and sustainability (less is more)
  - Effect of use upon potential market (effect on income)

Source: United States Copyright Office Title 17 Chapter 1 § 107
Library/archives exceptions

- Limitation on exclusive rights
- Reproduction and distribution okay, if:
  - No commercial advantage intended
  - Original (physical copy) owned by library/archives
  - No public access (beyond building) to digital copies
  - Preservation
  - Copy for user for private study, scholarship or research
  - Public notice provided of copyright law & reproduction conditions made under this section

Source: United States Copyright Office Title 17 Chapter 1 § 108

Common misconceptions

- I own it, so I also own the copyright
- If I found something online, it’s not protected by copyright
- The copyright owner died or the publication is now defunct, so there is no copyright
- Unpublished works don’t have copyright restrictions
Questions?

UNDERSTANDING COPYRIGHT TERMS
Evaluating copyright status

• **What type of work is it?**
  – Published vs. unpublished
    • Has material has been duplicated and distributed?
    • Answer may not always be clear

• **Who is the copyright owner?**
  – Creator vs. work for hire

• **When was it created?**

---

Works in public domain

• **Work is owned by public, not person/entity, and can be used without obtaining permission**
  – Copyright has expired (different terms for published vs. unpublished works)
  – Copyright owner failed to comply with copyright registration/renewal rules
  – Copyright owner dedicates work to public domain
  – Copyright law does not protect this type of work

Source: Stanford University Copyright & Fair Use Center
## Copyright term for published works (U.S.)

<table>
<thead>
<tr>
<th>Date published</th>
<th>Copyright status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1926</td>
<td>In public domain</td>
</tr>
<tr>
<td>1926-1977, without copyright notice</td>
<td>In public domain</td>
</tr>
<tr>
<td>1926-1963, with copyright notice but not renewed in 28(^{th}) year</td>
<td>In public domain</td>
</tr>
<tr>
<td>1926-1963, with copyright notice but renewed</td>
<td>Protected until 95 years after publication date</td>
</tr>
<tr>
<td>1964-1977, with copyright notice</td>
<td>Protected until 95 years after publication date</td>
</tr>
<tr>
<td>1978-current</td>
<td>Varies; Protected until at least 2047</td>
</tr>
</tbody>
</table>

## What constitutes “copyright notice”?

- **On visually perceptible copies:**
  - ©, Copyright, Copr.
  - Year of first publication
  - Name of copyright owner
  - E.g. © 2021 Jennifer Salamon
  - **Must have all three!**

- **Registered with copyright office**
- **Renewed in 28\(^{th}\) year (if first published 1926-1963)**

Source: United States Copyright Office Circular 3 on Copyright
What constitutes “copyright notice”?

- **Position**
  - Any location acceptable for books
  - Part of/adjacent to masthead/masthead page
  - Adjacent to prominent heading, at or near front of issue, with title and volume/issue/date
  - Contribution to collected work, under title or on same page

**Source:** United States Copyright Office Circular 3 on Copyright

---

### Copyright term for unpublished works (U.S.)

<table>
<thead>
<tr>
<th>Type of work</th>
<th>Copyright status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpublished works</td>
<td>Life of author + 70 years</td>
</tr>
<tr>
<td></td>
<td>As of 2021, works from authors who died before 1951</td>
</tr>
<tr>
<td>Unpublished anonymous and pseudonymous works, and works made for hire</td>
<td>120 years from date of creation</td>
</tr>
<tr>
<td></td>
<td>As of 2021, works created before 1901</td>
</tr>
<tr>
<td>Unpublished works when death date of author is unknown</td>
<td>120 years from date of creation</td>
</tr>
<tr>
<td></td>
<td>As of 2021, works created before 1901</td>
</tr>
</tbody>
</table>
Works protected by copyright

• Do you have permission from copyright owner? Did they transfer copyright to your institution?
  – Donor agreements, collection documentation, etc.
  – Physical custody/ownership does not mean you also own copyright
• Can you obtain permission and/or purchase a license?
• Do fair use or library/archives exceptions apply?
• If an item is protected by copyright (or its status is unclear), it’s not necessarily off-limits, but due diligence is critical:
  – Risk assessment
  – Check with legal counsel

Questions?
COPYRIGHT IN PRACTICE

Newspapers
Joe Munroe

Ohio Guide
White Castle

Next steps

• In consultation with legal counsel, establish local policies/procedures
• Keep records of your decisions, especially for materials that could be disputed
• Develop strategy for dealing with complaints from copyright owners
  — Redaction
  — Takedown
  — Posted copyright notice
• Keep informed about changes in the field’s best practices as well as copyright law itself
• Try not to make assumptions about a work’s copyright status—look to the law, field, legal counsel, copyright resources for guidance
Questions?

Resources: Understanding copyright

• U.S. Copyright Office [copyright.gov](https://copyright.gov) and [copyright.gov/circs](https://copyright.gov/circs)

• Stanford University Copyright & Fair Use [fairuse.stanford.edu](http://fairuse.stanford.edu)

• Copyright Term and the Public Domain in the U.S. (Peter Hirtle/Cornell University) [copyright.cornell.edu/publicdomain](http://copyright.cornell.edu/publicdomain)
Resources: Researching copyright status

• **U.S. Copyright Office**
  – Catalogs of Copyright Entries [archive.org/details/copyrightrecords](http://archive.org/details/copyrightrecords)
  – Copyright Office Online Records Catalog [cocatalog.loc.gov](http://cocatalog.loc.gov)
  – Copyright Office Virtual Card Catalog [vcc.copyright.gov](http://vcc.copyright.gov)

• **Internal collection files**
  – Collection documentation
  – Donor agreements
  – Finding aids

Thank you!

Jenni Salamon | jsalamon@ohiohistory.org