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Author Rights

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Materials for DBER Group Discussion on 2016-01-28

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University of Nebraska-Lincoln

Title
Author Rights

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Copyright Basics and Author Rights: True or False
DBER Seminar, UNL, January 28, 2016
Sue Gardner, Scholarly Communications Librarian

True or False:

___ U.S. copyright allows the copyright holder to: 1. make copies of the work, 2. create derivative works, 3. distribute the work, and 4. perform or display the work.

___ An item must be published before it is copyrightable.

___ You have to register a textual work, such as an essay or a book, with the Library of Congress for the work to be copyrighted in the United States.

___ When you sign a contract with a publisher that gives the publisher the exclusive right to distribute your work, you have the right to put an electronic copy of the published version on your own Web site, but not a social media site like ResearchGate.

___ You have the rights over a photograph that someone takes of you.

___ Publishing contracts for articles contain standard legal language, so it is a waste of time to read through them before signing.

___ Joint authors have to get permission from all of the other authors before giving permission to someone else to post the work in a university's institutional repository.

___ The length of term of copyright in the U.S. for items published in 2016 in most cases is the life of the author plus 70 years.

___ Paying an Open Access fee allows an author to retain control of his or her own work.

___ Under Fair Use, you can legally create course packs with any materials that are relevant to the course.

___ U.S. government employee-authored works are not copyrighted.

___ “Orphan works” are those whose copyright holder cannot be determined.

___ "Public domain" means that there are no copyright or licensing restrictions on a work and it can be distributed, modified, copied, or displayed by anyone legally.

___ Orphan works are in the public domain.
Copyright Basics and Author Rights: True or False
DBER Seminar, UNL, January 28, 2016
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True or False:

___ U.S. copyright allows the copyright holder to: 1. make copies of the work, 2. create derivative works, 3. distribute the work, and 4. perform or display the work. (T)

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___ Publishing contracts for articles contain standard legal language, so it is a waste of time to read through them before signing. (F)

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___ "Public domain" means that there are no copyright or licensing restrictions on a work and it can be distributed, modified, copied, or displayed by anyone legally. (T)

___ Orphan works are in the public domain. (F)
Understanding the basics of copyright is integral to the safeguarding of intellectual freedom. Knowing your rights as an author will help you protect your intellectual property, as well as help guide you to share it in the way you wish.

Copyright particulars are truly complicated, but the basic underpinnings are straightforward. The United States Constitution refers to copyright (Article I, Section 8), "the Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors ... the exclusive right to their respective writings." The U.S. Congress implemented the first Copyright Act in 1790, basing it on a British statute, and there have been several revisions since.

Litigation happens around copyright all the time, so the interpretation of the law is constantly changing.

What Is Copyright?

Copyright applies to an original work (a text, sound recording, art work, or one of several other forms) once it has been fixed in a tangible form. Ideas and processes cannot be copyrighted. A work does not have to be formally published and no registration is required to copyright a work, though registration with the U.S. Library of Congress is required in order to sue for copyright infringement. A copyright symbol is not required for a work to be considered copyrighted in the United States.

Copyright is held, at least initially, by the creator of a work, unless the work was made for hire, meaning, in the course of one’s job. Some employers, like universities, often have policies that reconfer copyright to the creator of a work developed in the course of employment, usually with exceptions.

Copyright gives the holder the exclusive right to, 1. make copies of the work, 2. create derivative works, 3. distribute the work, and 4. perform or display the work. "Exclusive" means that no one else has the right to do these things legally, except under the terms of Fair Use (see below).

Transfer of Copyright

Though copyright is held initially by the creator of a work, it can be transferred. Publishers and producers often require that copyright be transferred to them before they will edit and distribute a work. You cannot reclaim copyright once you have given it away, so be careful
when you are asked to sign a contract. READ THE CONTRACT to know what you are giving up BEFORE YOU SIGN (always read the contract!).

Once you give away your copyright, you no longer retain any copyrights, meaning you cannot legally copy, derive from, distribute, perform, or display the work you created. If you do not want to sign the contract, you may need to take your work elsewhere, self-publish it, or let it remain solely in manuscript form. Recall that even manuscripts are copyrighted. However, once you sign a contract, publishers may claim rights over your manuscript as well as the final, published form. So be aware of this. You may even lose control over your manuscript once you sign a contract.

Ownership of a copyrighted item does not bring with it ownership of the copyright itself. You may purchase a book and own the book, but you do not own the copyrights in the book. Similarly, you may possess a letter, but only the writer of the letter owns the copyright of it. Photographers possess the copyright of their photographs. The subjects in the photographs do not own the rights.

Permissions and Licensing

Sitting on top of copyright are permissions and licensing. The people or entities who own copyright in original works can allow others to use the works in certain ways. They can allow permissions on a case-by-case basis or through a license. When a copyright holder places a license on a work, it is a way of communicating what permissions are allowed by whom and what restrictions there are over use. When asked to sign a contract to invoke a license, again, READ THE CONTRACT. Know what licensing terms will be in force once a contract is signed and DO NOT SIGN if you do not agree to the terms.

Copyright holders do not necessarily have to give permissions to anyone (though some use would be allowed by Fair Use), or they can go to the other end of the spectrum and put a license on their work that effectively places the work in the public domain. One such form of license is called a Creative Commons Zero (CC0) license, and this gives anyone the right to copy, distribute, derive, display, or perform the work with no extra permission and no attribution needed. Licenses can run the gamut between those extremes. Unlike transfer of copyright, licenses in certain cases can be revoked or have limitations attached.

To determine whether you have permission to use copyrighted material, you may locate a license for the work that spells out the terms, or you may have to ask for permission to use it. Use may come with stipulations, such as being required to attribute the copyright holder, for instance.

Length of Term of Copyright

The length of term of copyright varies depending on several factors, but suffice it to say that it is very long—for example, the life of the author plus 70 years for works created by a single author.
and published in 2016. The copyright term can also be formally extended under most circumstances.

U.S. Government Works

Works created by U.S. government authors in the course of their work are not copyrightable. They exist in the public domain meaning that others can duplicate them, derive works from them, and publicly display or perform them to their heart's content, with no permission required.

Joint Authorship

Works created by joint authors are copyrighted by all authors equally. Each author has full copyright over the work and can make decisions about what to do with it unilaterally, so each does not have to ask permission of the other authors to do so. A commonly held assertion (though there is debate about this) is that if an article is written by several authors, the article exists as a unified entity and copyright covers it in its entirety. Parts of it are not usually copyrighted separately, unless there is a clearly distinguished portion, such as a graphic element that could stand on its own.

Orphan Works

When searching for the owner of a copyright, such an entity may not be found, in which case the item is an orphan work. Orphan works are not necessarily in the public domain. Read the latest Federal guidelines for advice about how to proceed when wishing to use an orphan work.

Fair Use

The Copyright Law states that, "fair use of a copyrighted work ... 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 ... is ... fair, ... the factors ... considered ... 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; and 4. the effect of the use upon the potential market for or value of the copyrighted work."

The language governing Fair Use seems straightforward, but its interpretation is often hotly litigated. The determination of whether a use would be considered a legally Fair Use is, therefore, a moving target.

Copyright Infringement

Infringement can be a civil or a criminal offense. Remedies vary, but can involve simple take down requests, or can include monetary damages and even jail time.
International Copyright

There is no international copyright law, but there are conventions to which the U.S. is a signatory, and there are other applicable acts and international agreements that provide guidance pertaining to cross-country copyright issues.

Patents and Trademarks

Patents and trademarks are distinguished from copyright. According to the U.S. Patent and Trademark Office, a trademark is a word, phrase, or symbol that identifies a brand, and a patent is a limited duration property right that covers an invention.

Sources of More Information


Legal Information Institute, Cornell University Law School. Copyright: An Overview [from Wex]. Available at https://www.law.cornell.edu/wex/copyright.


[Sites viewed January 6, 2016. No legal advice is implied in the information in this essay. Always consult with qualified professionals in cases of legal matters.]
Copyright lessons:

1) If you wrote it, you own it.
   1a) If a group wrote it, the group owns it collectively.
   1b) Any member can give permission, but any income must be shared.

2) If you sell it or give it away, you no longer own it.
   Most publishers want you to do this, so that they will own your content.
Copyright Transfer

Most publishers want the author to transfer the copyright to the publisher.

Sometimes they settle for “all publishing rights”, which amounts to the same thing in effect.
When you sign over your copyright, the assignee can keep your work totally locked up for:

- the rest of your life
- plus 70 years after you die
Author Rights You Want

- Re-publish
- Distribute to classes and colleagues
- Post on website or repository
- Control creation of derivative works
- Prevent unwanted uses
Copyright on this year’s articles will expire ...

today                2016
plus life of author, say + 40 years
plus additional      + 70 years

In the year         2126

I’m sure Fry, Bender, & Leela will enjoy them.
Currently, what is in copyright?

1. Everything* created since 1963

2. Stuff first published 1923-1963 that was ...
   ... *properly marked and renewed*.

* Must be eligible for copyright.
What is not eligible for copyright?

1. Facts or Data
2. Things not the result of a “creative act”
3. U.S. government works
Using other people’s stuff

Reproducing portions of a copyrighted work for purposes of commentary, criticism, scholarship, teaching, or news reporting is not “infringement”—this is called “fair use.”
4 factors determine “fair use”

1. Nature of the original material
2. Nature of the use
3. Amount used
4. Effect on the value of original
The DMCA

• Digital Millennium Copyright Act was passed by Congress in 1998, and signed by President Clinton.

• Criminalizes circumvention of encryption and access protection.

• Protects hosting sites (“safe harbor”) that comply with takedown notices from copyright holders.

Not to be confused with the YMCA.
“Dancing baby case”

(Lenz v. Universal)

- Takedown notices
- DMCA (Digital Millennium Copyright Act)
- Copyright abuse
- Fair Use
Lenz v. Universal

- **February 2007**: Stephanie Lenz uploads video to YouTube; **May 2007**, Universal requires removal, citing copyright infringement.

- Lenz (& EFF) sued, seeking 1) declaratory judgment that video does not infringe Universal’s copyright, plus 2) damages, plus 3) injunction stopping Universal from bringing further copyright claims.

- **Sept. 2015**: US Court of Appeals for the 9th Circuit (San Francisco) rules that copyright holders must consider fair use before asking services like YouTube to remove videos that include material they control. Allows suit to go forward.
What’s happening in publishing …

... since the arrival of digital?
Technologically, work has become

• easier to produce
• easier to share
• easier to disseminate worldwide
Practically, however, work has become:

• concentrated in hands of fewer publishers
• harder to get (legally)
• more expensive
• less circulated
Academic publishers reap huge profits as libraries go broke

5 companies publish more than 50 per cent of research papers, study finds

CBC News  Posted: Jun 15, 2015 5:00 AM ET  |  Last Updated: Jun 15, 2015 8:23 AM ET


Therefore:

The Open Access Movement

• Budapest (2002) and Berlin (2003) declarations
• Creative Commons licenses
• SPARC & JISC
• DOAJ, OASPA, COAR, etc.
Open Access / Creative Commons license

This gives everyone permission to re-distribute, revise, re-format, re-organize, make derivative works, etc.

So you can distribute, but so could anyone else.
Drawbacks

1. Sometimes costs money (up to $4500)

2. Surrenders control over further uses and derivatives
Disclaimer:

• I am not an apostle for Open Access

• I believe in **public access**, not necessarily **Open** Access
What’s the difference?

**Open access*** = license to re-use, re-post, re-distribute, re-combine, re-work, revise, etc.

*Budapest definition

**Public access** = right to read, download, and store for free (but not to re-distribute)

[FREE DOWNLOAD >>]
Open Access: How it happens

1. **Author pays**
   “Article Processing Charges” (APCs) of $600 to $4,000 per article, depending on publisher, e.g.
   
   - *PLOS One* = $1600
   - *BMC Parasites and Vectors* = $1995
   - *Parasitology International* = $2200

2. **Author finds a friendly “no-APC” OA journal, like**

   - *Insecta Mundi* = $0
   (Center for Systematic Entomology, Gainesville, FL)
Public Access: How it happens

1. Author posts published PDF on personal or university web page or repository, with journal’s permission.

2. Author posts revised MS on personal or university web page or repository, with journal’s permission.
Subscription publishers who allow public posting of their pdf’s:

- American Astronomical Society
- American Fisheries Society
- American Institute of Physics
- American Mathematical Society
- American Meteorological Society
- American Physical Society
- American Society for Cell Biology
- American Society for Microbiology
- Company of Biologists
- DeGruyter
- Helminthological Society of Washington
- Materials Research Society
- Missouri Botanical Garden Press
- Mycological Society of America
- University of Chicago Press
- University of California Press
- MIT Press
- Leiden University Press
- Rockefeller University Press
- Amsterdam University Press
- Journal of Insect Science
- Optical Society of America
- Center for Systematic Entomology
- Society for Industrial and Applied Mathematics
Subscription publishers who allow public posting of authors’ revised MS:

- Elsevier
- John Wiley & Sons
- Taylor & Francis
- Springer Verlag
- Nature Publishing
- Royal Society
- American Chemical Society
- Sage Publications
- National Academy of Sciences USA
- Am Assn for the Advancement of Science
- American Psychological Association
- American Society of Plant Biologists
- Brill Academic Publishers
- Oxford University Press
- Cambridge University Press
- Institute of Electrical and Electronics Engineers
- Johns Hopkins University Press
- Penn State University Press
- Karger
- Kluwer
- Mary Ann Liebert
- and hundreds more

*In fact, at least 80% of published articles are eligible for public posting, in some version.*
Free public posting permitted for:

| 1. Publisher version, within 12 months | 25% |
| 2. Author MS version, within 12 months | 50% |
| 3. Author MS version, more than 12 months | 10% |
| 4. No free public access* | 15% |

If your article derives from NIH-funded research

It must be deposited in PubMed Central for public access within 12 months ...

... whether your publisher allows it or not.
If an author is a US federal government employee ...

- U.S. government works are not subject to copyright
- They are immediately “public domain” and can be re-used and reposted without limitations
What’s an author to do?

1. Kiss your content good-bye
2. Pay for “hybrid” open access
3. Pay for “gold” open access (PLOS, etc.)
4. Find a free open access journal
5. Negotiate an author’s addendum
6. Put in repository for “green” public access
7. Ignore and infringe
Green OA – Use the Repository

• Publish where you normally would.

• Take advantage of most publishers’ policies to deposit a version in your institutional repository—like the UNL Digital Commons.

• This creates free public access, not open access.

Based on “author self-archiving” rights
Advantages

• Free to author
• Free to user
• Google-indexed, no barriers
• Widest possible dissemination
Publishing opportunities

• Repositories can increase research impact exponentially

• Institutions (or societies) can sponsor low investment journals: no paper, no postage, no inventory, no paywalls, free hosting

• Journals can publish with fast turn-around; no waiting for enough articles to make a full issue
For example:
What happens to public access articles?

They get downloaded and distributed worldwide.
#1 UNL Digital Commons

#2 Wikipedia

#3 Edwards Yale edition

#4 enotes.com

#5 YouTube

#6 study.com

#7 Texas Monthly

#8 Mtn View, CA schools

#9 Amazon.com

#10 Blue Letter Bible

https://www.google.com/search?q=sinners+in+the+hands&ie=utf-8&oe=utf-8
UNL Digital Commons distribution
To 94,499 Educational institutions, including 500 or more downloads to:
Time = Now

- To build communications infrastructure **within** the academy
- To give authors ways to retain rights and control re-use
- To disseminate scholarship to the widest possible audience
- To stop supporting the exploiters

"All I'm saying is now is the time to develop the technology to deflect an asteroid."
Publishers say:

• We are in this together.
• We are doing it for scholarship/science.
• We have similar interests.
• We want to work with you.
But publishers actually:

• Restrict distribution.
• Earn extravagant profits (some of them).
• Hoard copyrights.
• Exploit authors.
• Sue libraries over fair use of educational materials.
• Circulate misleading advice on copyright issues.
• Misrepresent their own motives.
What could the future hold?

- Lower costs
- Bigger audiences • Faster publication
- Wider distribution • More available material
- More options to publish • More control for authors
Author and publisher will sit down together at the table of brotherhood.
Asymmetric contest
You defeat them not by force but by out-adapting and out-surviving them.
If there are 95,000 educational institutions and 5 large publishers . . .

Who is most likely to prevail?
Contact: Copyright or publishing help, advice, consulting, etc.

Paul Royster
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