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Intellectual Freedom for Authors: A Very Brief Overview of United States Copyright

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VIII: Intellectual Freedom for Authors: A Very Brief Overview of United States Copyright⁴

A: What Can Be Copyrighted and What Rights Are Conferred?

In the United States, 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 (this would be a manuscript, in the case of textual works). Ideas and processes cannot be copyrighted.

Copyright entitles the holder exclusively to exercise the right to:

1. Make copies of the work
2. Create derivative works
3. Distribute the work
4. Perform or display the work.

Exclusive in this case means that no one else has the right to do these things legally, except when given permission by the rights holder or under the terms of Fair Use (see below).

B: Who Owns Copyright in a Work?

Copyright is held, at least initially, by the creator of a work, unless the work was made for hire, meaning, in the course of the creator's job. Some employers, like universities, often have policies that reconfer copyright back to the creator of a work developed in the course of employment, usually with some exceptions. Works created by United States government employees in the course of their jobs are in the public domain, meaning, not copyrighted.

A work created by joint authors is copyrighted by all authors equally, so each author can make unilateral decisions about what to do with the work. It is commonly asserted 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 copyrighted separately, unless there is a clearly distinguished portion, such as a graphic element that could stand on its own.

There is no age requirement for an author for a work to be copyrighted. Works by children are copyrighted by them, not their parents or caretakers.

C: Copyright Formalities

A work does not have to be formally published and no registration is required to copyright a work, though registration with the United States 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. As soon as a work is in a fixed, tangible form, it is copyrighted.

⁴ No legal advice is implied. Always consult with a qualified professional in cases of legal matters.

D: Transfer of Copyright

Though copyright is held initially by the creator of a work, the rights can be transferred. Publishers and producers often require that copyright be transferred to them before they will edit and/or distribute a work. A creator cannot reclaim copyright once he or she has given it away, and the creator of the work can no longer legally copy, derive from, distribute, perform, or display the work, either the published version or the manuscript, unless the new copyright holder gives the creator permission to do so.

Ownership of a copyrighted item does not bring with it ownership of the copyright itself. Just as if someone owns a book, that person does not own the copyrights in the book. Or someone may possess a letter, but only the author owns the copyright in it. Photographers possess the copyright of their photographs, the subjects in the photographs do not own the rights.

E: 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 seventy years. The copyright term can also be formally extended in most circumstances.

F: Permissions and Licensing

The person or entity who owns copyright in an original work can permit others to use the work, either case-by-case or through a license. A license communicates what permissions are allowed by whom and what restrictions there are over use, such as being required to attribute the copyright holder, for instance.

Copyright holders do not have to give permissions to anyone, though some use without explicit permission would be considered fair (see below). Or a license may be imposed that effectively places the work in the public domain, such as a Creative Commons Zero (CC0) license which gives anyone the right to copy, distribute, derive, display, or perform the work with no explicit permission and no attribution required. Licenses run the gamut between those extremes.

G: Fair Use

In the United States, use of a work without explicit permission from the copyright holder for criticism, comment, news reporting, teaching, scholarship, or research, is not considered to be an infringement. This sort of use is legally called Fair Use. Much litigation has occurred around this concept and whether any particular use would be considered legally fair is not clear cut.

The guidelines to help a user determine whether a use may be considered to be a legally fair use consist of the following factors:

1. Whether the use is commercial or is for nonprofit educational purposes
2. The nature of the work
3. The amount and substantiality of the portion used
4. The effect on the potential market of the work.

H: Consequences of Infringement

Copyright 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.