

Copyright 101

For Archivists & Librarians

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Agenda

What is Copyright and What does it Protect?

Duration of Copyright

Public Domain

Copyright Limitations (107 & 108)

Deeds of Gifts / Donor Agreements

Use & Re-Use

Reproduction Fees & Permission Policies

WE ARE NOT LAWYERS
(WE ARE LIBRARIANS!)

What is Copyright and What does it Protect?

Origin of Copyright in the U.S.

1400s - Gutenberg's invention of the printing press / movable type:

- Explosion of growth in the number of new books
- Economic opportunities - need for protection of rights of authors and publishers

1710 - Statute of Anne (UK) - world's first copyright law

1790 - US Congress passes Copyright Act (based on Statute of Anne)

Copyright Act of 1790

“An Act for the encouragement of learning, by securing the copies of maps, Charts, And books, to the Authors proprietors of such copies, during the times therein mentioned.”

- The law granted “the author and authors . . . the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the term of 14 years.”
- Option to extend (renew) for additional 14 years
- Must comply with certain formalities

Copyright Law Today: Title 17 of US Code

- ▶ CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT
- ▶ CHAPTER 2—COPYRIGHT OWNERSHIP AND TRANSFER
- ▶ CHAPTER 3—DURATION OF COPYRIGHT
- ▶ CHAPTER 4—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION
- ▶ CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES
- ▶ CHAPTER 6—MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION
- ▶ CHAPTER 7—COPYRIGHT OFFICE
- ▶ CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES
- ▶ CHAPTER 9—PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS
- ▶ CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA
- ▶ CHAPTER 11—SOUND RECORDINGS AND MUSIC VIDEOS
- ▶ CHAPTER 12—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS
- ▶ CHAPTER 13—PROTECTION OF ORIGINAL DESIGNS

Subject Matter of Copyright

Section 102:

“Copyright protection subsists, in accordance with this title, in **original works of authorship** fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Subject Matter of Copyright

Original Works of Authorship include the following categories:

- literary works
- musical works, including any accompanying words
- dramatic works, including any accompanying music
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

Subject Matter of Copyright

Section 102:

“Copyright protection subsists, in accordance with this title, in original works of authorship **fixed in any tangible medium of expression**, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Subject Matter of Copyright

What is not covered by Copyright:

- Facts
- Ideas
- Systems, methods of operation, procedures
- Listings of contents or ingredients (e.g. recipes)
- Names
- Titles
- Slogans
- Short phrases

Exclusive Rights of the Copyright Owner

Section 106:

- To **reproduce** the work...
- To prepare **derivative** works...
- To **distribute** copies ...to the public by sale...
- To **perform the work publicly**...
- To **display the work publicly**...
- In the case of sound recordings, to **perform the work publicly** by means of a digital audio transmission.

Copyright Formalities

- Copyright notice
- Registration
- Deposit
- Renewal to extend (if applicable)

Copyright Formalities Today

- Copyright is now automatic upon fixation of an original work of authorship in a tangible medium of expression
- Notice, registration/renewals and deposit are no longer required
- Still advisable to include a copyright notice (or Creative Commons License) on published works
 - To inform the public work is protected
 - Identify copyright owner and year (so potential licensor knows who to contact if permission to re-use is needed)
- Copyright registration still required for a copyright holder to collect statutory damages for copyright infringement

Duration of Copyright and Public Domain

Length of Copyright in the U.S.

- Copyright is “limited”(ish) in duration
- Current term in US =
 - Life of the author + 70 years
 - For anonymous and corporate works:
 - 95 years after publication
 - 120 years after creation
- Term of Copyright has changed over time

Lengthening Copyright Term

- Original term = 14 years, with possible 14 year extension (renewal)
 - Copyright Act of 1790
- Extended to 28 years, with possible 14 year extension
 - 1831 revision of the Copyright Act
- Extended to 28 years with possible 28 year extension
 - Copyright Act of 1909
- Life of the author plus 50 years
 - 1976 Copyright Act
- Life of the author plus 70 years (past renewals extended)
 - 1998 Sony Bono Copyright Term Extension Act

Public Domain

Works are in the public domain if:

- copyright in the works has expired
- rightsholder failed to comply with copyright formalities
- not eligible for copyright protection
- rightsholder dedicated the work to the public domain

Public Domain - Caution

- Copyright is not only legal protection for creative works. Works in the PD could still be protected under
 - Trademark
 - Patent
 - Privacy
 - Publicity
 - Trade secret
 - Contract law
- New works based on the original - translations, adaptations, annotated or illustrated editions may be protected
- Works in PD in U.S. may still be protected in other countries

Copyright Term and the Public Domain in the US

- Peter Hirtle's Chart provides an excellent (and thorough!) overview:
<https://copyright.cornell.edu/publicdomain>
- Includes information on
 - Publication status
 - Restored foreign copyrights
 - Special Cases
- More details than you will ever need to know!

Cornell University Library COPYRIGHT INFORMATION CENTER

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[Copyright Basics](#)
[Copyright Clearance](#)
[Cornell Policies](#)
[For Authors and Faculty](#)
[Resources](#)

Copyright Term and the Public Domain in the United States

(See footnote 1)

[PDF Download](#)

Never Published, Never Registered Works²

Type of Work	Copyright Term	In the public domain in the U.S. as of 1 January 2018 ³
Unpublished works	Life of the author + 70 years	Works from authors who died before 1948
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1898
Unpublished works when the death date of the author is not known ⁴	120 years from date of creation ⁵	Works created before 1898 ⁵

Works Registered or First Published in the U.S.

Date of Publication ⁶	Conditions ⁷	Copyright Term ³
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 formalities
1978 to 1 March 1989	Published without notice, and without subsequent registration within 5 years	None. In the public domain due to failure to comply with required formalities
1978 to 1 March 1989	Published without notice, but with subsequent registration within 5 years	70 years after the death of author. If a work of corporate authorship, 95 years from publication or 120 years from creation, whichever expires first
1923 through 1963	Published with notice but copyright was not renewed ⁸	None. In the public domain due to copyright expiration
1923 through 1963	Published with notice and the copyright was renewed ⁸	95 years after publication date

Copyright Limitations on Exclusive Rights

Section 107 - Fair Use

Notwithstanding the provisions of sections [106](#) and [106A](#), the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

Section 107 - Fair Use

The determination of whether a use is fair is dependent on four factors:

- 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.

Home » Overview Sections » Fair Use » Measuring Fair Use: The Four Factors

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Measuring Fair Use: The Four Factors

Unfortunately, the only way to get a definitive answer on whether a particular use is a fair use is to have it resolved in federal court. Judges use four factors to resolve fair use disputes, as discussed in detail below. It's important to understand that these factors are only guidelines that courts are free to adapt to particular situations on a case-by-case basis. In other words, a judge has a great deal of freedom when making a fair use determination, so the outcome in any given case can be hard to predict.

The four factors judges consider are:

- the purpose and character of your use
- the nature of the copyrighted work
- the amount and substantiality of the portion taken, and
- the effect of the use upon the potential market.

Contents

0.0.1 Educational Fair Use Guidelines

1 The Transformative Factor: The Purpose and Character of Your Use

1.0.1 EXAMPLE

2 The Nature of the Copyrighted Work

3 The Amount and Substantiality of the Portion Taken

4 The Effect of the Use Upon the Potential Market



On January 28, 2014, Stanford's Program in Law, Science & Technology hosted the discussion, "Congratulations, you have an app – now what? App Development and Marketing from A-Z." The discussion featured a panel of high level, experienced practitioner who provide tips, checklists and a road map for addressing legal considerations relating to mobile apps, including best practices for mobile TOU and Privacy Policies, platform considerations and much more.

Tweets by @FairlyUsed

Stanford Fairly Used Retweeted

US 9th Cir
@US9thCircuitCt

Ventura Content, Ltd. v. Motherless, Inc.
#Copyright #iPLaw #InternetLaw j.st/4K71

JUSTIA
U.S. Law

Ventura Content, Ltd. v. Mo...
Ventura Content, Ltd. v. Mot...
law.justia.com



Fair Use Evaluator

What this tool can do for you:

- Help you better understand how to determine the "fairness" of a use under the U.S. Copyright Code.
- Collect, organize & archive the information you might need to support a fair use evaluation.
- Provide you with a time-stamped, PDF document for your records [\[example\]](#), which could prove valuable, should you ever be asked by a copyright holder to provide your fair use evaluation and the data you used to support it. [\[why is this important?\]](#)
- Provide access to educational materials, external copyright resources, and contact information for copyright help at local & national levels.

What this tool cannot do for you:

- This tool does not provide legal advice. It records the information you provide it as well as your own judgment on the fairness of the use. See the tool [\[disclaimer\]](#) for more information.
- Only a court of law can definitively rule on whether a use is fair or unfair. This tool does not assume or predict a court outcome.



Make a Fair Use Evaluation



Learn More about Fair Use

Section 108 - Reproduction by Libraries and Archives

- Allows for reproductions of some copyrighted materials without permission of copyright holder for certain purposes and under specific conditions/criteria, upon request of a person or library/archives
- Provisions to make copies of works for users; preservation and replacement copies, and copies of published works in their last 20 years of copyright
- Applies to Text-based works ONLY (no pictorial, sound recordings, AV etc.)
- Library/archives open to the public or to unaffiliated specialized researchers

Section 108 - Reproduction by Libraries and Archives

Entire Copies

- Copies of entire works if new or used copy of the work not available for purchase at fair price

Portions of Works

- Copies of periodical, collection or other work in their collections, if only one article / contribution to a work is copied

Conditions:

- Copy becomes property of user or library/archives
- Will be used for research/scholarship/private study
- Warning of Copyright placed where orders are accepted
- Non-commercial purposes only
- Copy includes a notice of copyright or statement that work may be protected

Section 108 - Reproduction by Libraries and Archives

Replacement

- Up to 3 copies of damaged, deteriorating, lost or stolen works,, if
 - An unused replacement copy can't be obtained at a fair price

Preservation

- Up to 3 copies of unpublished works for preservation or security, if
 - Library/Archives already has a copy of the work to be preserved in their collections

Conditions:

- Digital copies can't be made available to the public except on library premises
- Noncommercial purposes only
- Copyright notice included on the copies

Section 108 - Reproduction by Libraries and Archives

Published works in last 20 years of copyright term

- Reproduced, distributed displayed or performed, if
 - Work is not currently subject to commercial exploitation
 - Copy cannot be obtained at a fair price

Conditions:

- Noncommercial purposes only
- Copyright notice included on the copies

Section 108

of the U.S. Copyright Code

Reproductions by Libraries or Archives for their Users, for Replacement, or for Preservation

Directions:

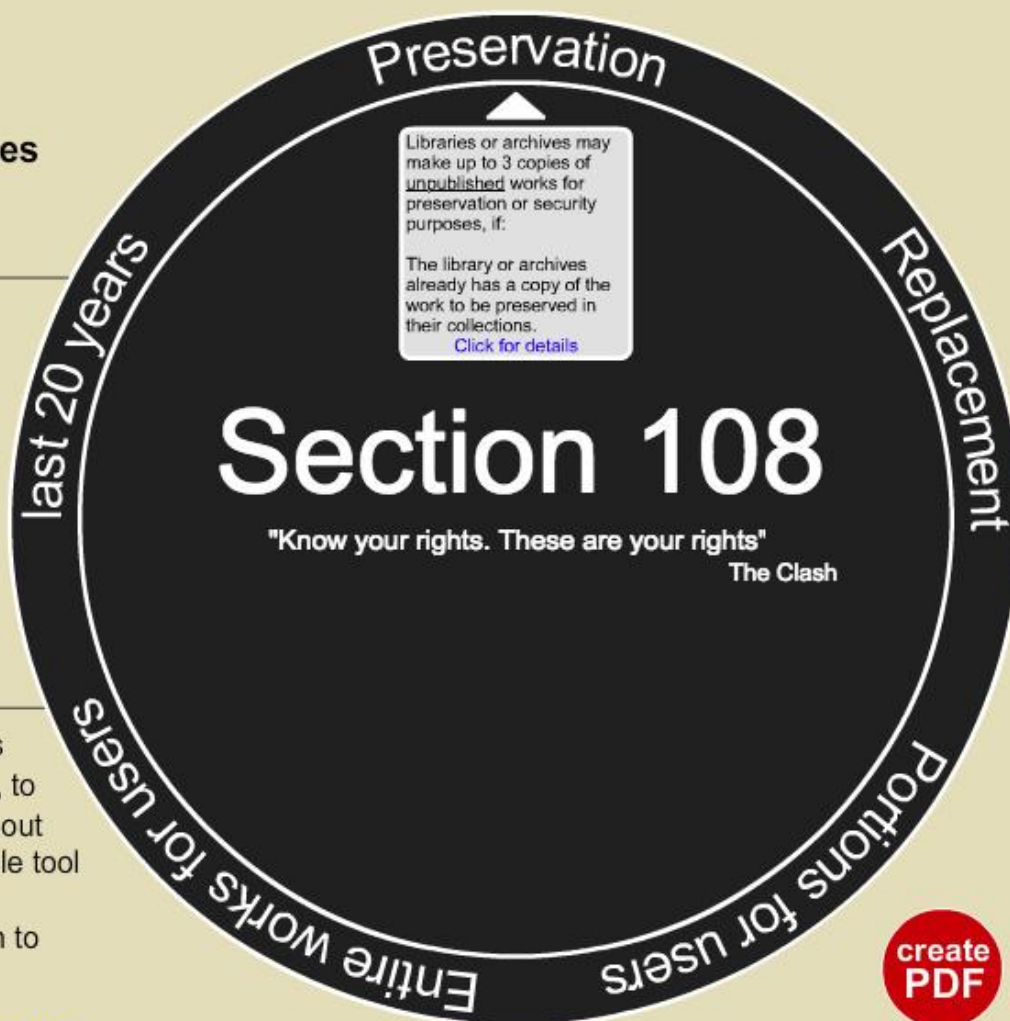
- Use your mouse to turn the wheel chart to the desired section [click & pull]
- Read the text in the box [mouse-over to magnify]
- Clicking for details will bring up any other important qualifying criteria or explanatory notes
- Click "Create PDF" to print or save your results, including all criteria/notes and any details you'd like to add.

Section 108 of the U.S. Copyright Code allows libraries & archives, under certain circumstances, to make reproductions of copyrighted materials without the permission of the copyright holder. This simple tool can 1) help you determine if your reproduction is covered by Section 108 and 2) collect information to support your use of the exception.



Disclaimer

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Deeds of Gift / Donor Agreements

Deeds of Gift

Copyright/IP Declaration

- Yes, I own the copyright to some or all of the materials
- No, I don't own the copyright to the materials
 - But this person/entity does
- I don't know

Deeds of Gift

Copyright/IP Transfer

- Relinquish rights and release works to the Public Domain
- Transfer rights to the repository
- Retain some or all rights
 - Until when?
 - Allow repository to exhibit, digitize, publish?
 - License to cover third party use?

Deeds of Gift

Language from Section 108

Allowances for digital preservation activities if materials are born digital

Use & Re-use

Repository Use

Determine Copyright Status

- Public Domain: Free to use
- In Copyright - You own the copyright: Free to use
- In Copyright - You don't own the copyright: **Seek permission** from copyright owner if intended use goes beyond Fair Use & Section 108
- Don't know: Assess risk

Seeking Permission

- Seek permission in writing
- Clearly identify yourself, your organization
- Clearly identify materials
- Clearly state intended use(s)
- Ask how they want to be credited
- Provide a permission form
- Provide second copy if sent via regular mail
- Provide self addressed stamped envelope if sending via regular mail

Digitizing?

Creative Commons Licenses

- Assigned by rights holders
- Allow rights holders to communicate how their works can be used



Rights Statements

- Assigned by repository
- Allow organizations to communicate what they know about copyright



Patron Use

In Copyright

- Seek permission if intended use goes beyond Fair Use and/or the applicable parts of Section 108

Public Domain

- Free to use and re-use

Fees & Permission Policies

Exclusive Rights of the Copyright Owner

Section 106:

- To **reproduce** the work...
- To prepare **derivative** works...
- To **distribute** copies ...to the public by sale...
- To **perform the work publicly**...
- To **display the work publicly**...
- In the case of sound recordings, to **perform the work publicly** by means of a digital audio transmission.

Permission Scenarios

In Copyright Work - Your organization owns the copyright

- Your organization has the right to grant or deny permission to users

In Copyright Work - Your organization does not own the copyright

- Your organization may or may not have the right to grant or deny permission
- Check deed of gift/donor agreement

Public Domain Work

- Permission not required

Fees

Reproduction Fees

- Different fees for different formats
 - Photocopies
 - Photo prints
 - Low res digital images
 - High res digital images
- Different fees for different users
 - Immediate community vs. outside researchers

Resources

Copyright Law of the United States -

<https://www.copyright.gov/title17/>

Copyright Term and the Public Domain in the US (“Hirtle Chart”)

<https://copyright.cornell.edu/publicdomain>

Stanford University Libraries - Fair Use

<https://fairuse.stanford.edu/overview/fair-use/>

ALA Fair Use Evaluator

<http://librarycopyright.net/resources/fairuse/index.php>

ALA Section 108 Copyright Spinner

<http://librarycopyright.net/resources/spinner/index.html>

Section 108 Copyright Office Inquiry

<https://www.copyright.gov/policy/section108/>

SAA Guide to Deeds of Gift

<https://www2.archivists.org/publications/brochures/deeds-of-gift>

Creative Commons

<https://creativecommons.org/>

Rights Statements

<http://rightsstatements.org/en/>

WE ARE NOT LAWYERS

WE ARE LIBRARIANS
...who strangely like copyright...

But we'll try to answer your questions :-)