

Copyright: The Current State & Your Digital Collections

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Disclaimer: The information in this presentation is not legal advice, nor is Copyright Services legal counsel to the university or any members of the university community.

Agenda

Copyright: The Current State & Your Digital Collections

1. Copyright basics
2. Liability considerations
3. New developments

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Copyright Basics

What can be protected?

Original works of authorship **fixed in a tangible medium** of expression.

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Subject matter:



"Raindrops on roses, whiskers on kittens" by markred (CC BY-NC-SA 2.0)

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

Layers of rights

- A single work can contain separate copyright protected components.
- A single work can present rights/permissions issues beyond copyright.



Photograph "American Gothic Mural, Columbus, Ohio" by Carol M. Highsmith (2009); Mural by Steve Galgas and Mike Altman (2002); Painting "American Gothic" by Grant Wood (1930); Nan Wood right of publicity

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The Author's Bundle of Rights

The exclusive rights listed in §106:

- Right to **reproduce**
- Right to prepare **derivative works**
- Right to **distribute**
- Right to **display publicly**
- Right to **perform publicly**
- Right to perform publicly by means of **digital audio transmission** (for sound recordings)

Who is the copyright owner?

- Generally the creator(s) or author(s)
 - Important exception: Works made for hire
- Rights can be transferred in whole or in part over time
- Institution's IP policy may define ownership differently



Intellectual Property by USPTO (Noun Project), [CC0](#)

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Limitations on Liability

Consider:

- What are you digitizing?
- Is this work protected by copyright?
- Who is the copyright owner?
- Do you already have the permissions required?
- Why are you digitizing?



"think" by Brandon Lim from the Noun Project (CC BY 3.0)

Section 108: Reproduction by libraries and archives

- In general, covers reproduction and distribution of a single copy by libraries and archives.
- Ground rules:
 - Must be made without purpose of direct or indirect commercial advantage;
 - Collections of library/archive open to public or persons doing research in specialized field; and
 - Includes copyright notice or legend stating work may be protected.

Preservation	Replacement	Patron request
<ul style="list-style-type: none"> • 3 copies, unpublished work • From work within library/archive collection • Digital reproductions not made available outside premises of library/archive 	<ul style="list-style-type: none"> • 3 copies, published work • Replacement of a copy that is damaged, deteriorating, lost, stolen, or existing format has become obsolete • After reasonable effort, determined unused replacement cannot be obtained at fair price • Digital reproductions not made available outside premises of library/archive 	<ul style="list-style-type: none"> • Copy becomes property of the user • For entire works, first determine on basis of reasonable investigation, a copy can't be obtained at a fair price. • No notice of use for purpose beyond private study, scholarship, or research • Appropriate copyright warning included

Section 107: Fair use



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- Purpose & character
- Nature of the copyrighted work
- Substantiality & portion used
- Market effect

Section 512 (DMCA safe harbors)?

§ 512(c): limits liability of service provider for infringing content uploaded at the direction of users.

- If the service provider has knowledge (actual or constructive) of infringing activity, they must act expeditiously to remove or disable access to the material.

Section 504(c)(2): Limit on statutory damages

Statutory damages can be limited in cases where

- employee of a nonprofit educational institution, library, or archive,
- acting within scope of employment,
- had reasonable grounds for believing use was fair use.

What's New in Copyright?

New Public Domain Works in 2019!



What's changing? What's not?

- Works first **published or registered** in the U.S. in 1923 will enter the U.S. public domain 1/1/2019. Eligibility date moves forward each year.
- Duration for unpublished works unaffected (life + 70 or 120 years from creation for anonymous/corporate authorship/death date unknown).
- Formalities (© notice, registration, renewal) still considered—a work published in the U.S. in 1923 that didn't meet formalities is already in the public domain in the U.S.

Pending Legislation: CLASSICS Act

- Incorporated into larger Music Modernization Act
- Current law: Sound recordings fixed before 2/15/1972 are protected by a patchwork of state laws. Public performance rights under state law?
- CLASSICS Act prohibits unauthorized digital transmissions (public performance) of sound recordings fixed between 1/1/1923 and 2/15/1972.

What does this mean for digitization work?

- Doesn't eliminate state law considerations: uses arbitrary date of 1923 and only covers public performances made through digital audio transmissions.
- This could change how we think about access for 1923-1972 sound recordings.
- Provides more certainty around fair use, but only for digital transmissions of post-1923 sound recordings.

What's next?

- ACCESS to Recordings Act (S.2933)
- MMA unanimously passed the House in April. There has since been industry disagreement prompting further negotiations (SiriusXM objects to exemption for terrestrial radio under CLASSICS Act)



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Questions?

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