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11-Copyright Basics
What Is Copyright?

Copyright gives creators an incentive to produce and share new works by granting them exclusive rights to their work for a limited time.

Copyright is the law. While digital technology has made some aspects of copyright more complex, knowing the basics can help you to use material legally and to protect your own creative works.

You create copyrighted works regularly. When you write an original email or paper, record a song or video, or take a photograph you have created a work that is protected by copyright. It is important to know how to manage your rights as a creator.

Every day you work with copyrighted materials created by other people. Whenever you read a book, download a song, stream a video or play a video game, you are potentially dealing with copyrighted materials. It is important to understand what is and is not covered by copyright law and the ways you may use these works under the law.

Copyright Law

U.S. Copyright Law has its origin in the U.S. Constitution:
The Congress shall have the power ... to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

– U.S. Constitution Article 1, Section 8

The purpose of copyright is to encourage the creation and sharing of creative works. Copyright gives creators an incentive to produce and share new works by granting them exclusive rights to their work for a limited time. This provides an opportunity for a creator to benefit from his or her work.

Congress determines the limits of this monopoly, including the length of time that copyright coverage lasts. These limits can (and have) changed over time.
What Copyright Covers

The kinds of works covered by copyright are listed in Section 102 of the Copyright Act. In order for a work to be covered by copyright, it must be an original work of authorship fixed in a tangible medium of expression. (See the detailed explanations below.)

Copyright covers original work that is fixed in a tangible medium of expression.

There are several types of works that can be protected, including:

- 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

In addition to these, new formats such as email, software, video games, and digital works including web pages and online images have all been determined to have copyright protection.
DEFINITION: Original Work of Authorship

In copyright law, originality means that a work is independently created and possesses at least a minimum amount of creativity. For example, an alphabetized list of names and phone numbers would not receive copyright protection because it required no creativity to produce.

DEFINITION: Tangible Medium of Expression

For a work to be “fixed in a tangible medium,” it must exist in some perceptible format for more than a transitory duration. For example, a work that is fixed in a tangible medium could be written on paper, saved to a computer hard drive, or recorded on film. An improvised jazz performance that is not recorded would not have copyright protection, because the creative expression of the musician has not been saved in any tangible format.

What ISN’T Covered by Copyright?

Not all works are covered by copyright. Those not covered include:

Works already in the public domain (discussed in detail later in this book)
- *Moby Dick*
- Shakespeare’s plays
- Beethoven’s works

Works not fixed in a tangible medium
- A song in your head, but not recorded or written down

Ideas
- Boy meets girl, they fall in love and live happily ever after
- Hero protagonist saves the world with the help of wacky sidekick

Facts
- $1+1=2$
- George IV died in 1830
- Copenhagen is the capital of Denmark

Works of the U.S. government produced by government employees
- Federal government reports
- Acts/Bills of Congress
- [www.whitehouse.gov](http://www.whitehouse.gov)
Copyright in Cases of a Work Made for Hire

If you create something as part of your job duties, it is likely a work made for hire. In these cases, the employer is considered the author and rights holder of a work made for hire rather than the employee.

Read the United States Copyright Office’s Works Made for Hire circular for a more nuanced discussion.

**ACTIVITY: Copyrightable?**

Open activity in a web browser.
Rights Granted by Copyright

So, now that you know what kinds of works are covered by copyright, what exactly are the rights granted to a copyright holder?

Six exclusive rights are granted to the creator of a copyrighted work. We call these the Author’s Bundle of Rights. This means the copyright holder is the only person who has the right to do these things and has the authority to grant permission for others to do these things, with some important exceptions that we will discuss later in this chapter.

If you are not the copyright holder and want to do any of the examples, you may need to get permission to do so from the holder of the copyright.

**AUTHOR’S BUNDLE OF RIGHTS**

**To Reproduce**

- Example: Making physical and digital copies.

**To Prepare Derivative Works**

- Example: Creating foreign language translations, movie adaptation of a book, etc.

**To Distribute**

- Example: Sharing over Peer-to-Peer networks or posting online, as well as distributing physical copies.

**To Perform Publicly**

- Example: Performing a play, showing a movie, or reading aloud from a book to an audience outside of your normal circle of family or friends.

- Example: Playing recorded music in clubs, restaurants, stores, on the radio, etc.

**To Display Publicly**

- Example: Displaying in a gallery, putting posters on a noticeboard, etc.
To Perform Publicly a sound recording by means of a digital audio transmission
   — Example: Streaming recording music online.

ACTIVITY: Author Rights

Open activity in a web browser.

When Does Copyright Apply?

Under current U.S. law, copyright applies as soon as an original work is fixed in a tangible medium of expression. This means that when you save a file, take a photograph, record a song, or paint a picture your work has copyright protection.

As the creator, provided that the work is not a work made for hire, you are the owner of the copyright on your work. You do not have to register the work with the U.S. Copyright Office, publish it, or put a copyright notice on it.

If you wish to give away, sell or license any or all of the copyright on your work, you have the right to do so.

If you give away or sell your exclusive copyright to someone else, you no longer have the rights mentioned above and need to treat the work the same as any other copyrighted work created by someone else.

See Public Domain and Term of Copyright later in this section for details about the duration of copyright.
Respecting Copyright

While working with other people's copyrighted works, remember that their works are under copyright protection from the moment of creation.

Additionally, U.S. Copyright Law applies to works found on the Internet. Many of the works you find online are protected by copyright, even if there is no copyright notice. Your availability to access copyrighted materials on the Internet does not necessarily mean that you have the right to use, reuse and distribute the works in any manner you wish. It is important to respect copyright, whether the works are in a physical or digital format.

Risks of Infringing Copyright

If you violate one or more of the exclusive rights of a copyright owner, the copyright owner can bring a claim against you for copyright infringement. There are a few different penalties that are possible if you are accused of copyright infringement:

- Under specific circumstances, U.S. copyright law allows criminal prosecution in cases of willful infringement.
- If the infringing work is online, such as a video posted to YouTube, the copyright owner can request the material be taken down. This may be done through a Cease-and-Desist Letter or DMCA Takedown Notice. The material will be taken down and you will be notified of the accusation of infringement. If you believe that your use of the material is legal, you can respond with your explanation of why. Some Internet Service Providers will cut off your access if you receive too many takedown notices.
- The copyright owner can sue you. They could ask for an injunction to stop your use of their work. They can also ask for either actual damages or statutory damages. Actual damages are the actual amount of money the copyright owner lost due to your activity plus any profit you made from using the work. These can be hard to determine, so the law alternatively allows for statutory damages under certain conditions. These are a set range, from $750 to $30,000 per infringed work, that the judge or jury awards to the rights holder if you are found guilty. These damages can increase to $150,000 per infringed work if your use is determined to be a “willful” infringement.
- Some rights holders may offer the option of settling out of court. This agreed settlement may be cheaper than the cost of a trial for the rights holder and you.

The accusation of infringement is not the same as a conviction. You always have the right to defend your use.
Exceptions to Copyright

U.S. Copyright Law includes exceptions that limit the rights of the copyright holder. These exceptions allow for certain uses of copyrighted material without seeking permission. Congress created these exceptions in order to balance the rights of creators and users and to enable some socially beneficial uses of copyrighted works.

Some of these exceptions are explained below.

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**Fair Use**

Fair Use (Sec. 107) allows for various uses of copyrighted works. This is the most flexible of the exceptions in the copyright law and can apply in a wide variety of situations.

To learn more check out our section on [Fair Use](#).

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**Reproduction for Libraries**

Section 108 of the Copyright Act allows libraries and archives to make copies of copyrighted works under very specific conditions. For example, a patron can ask the library to make a copy of a journal article or portion of a book in the library’s collection as long as it is for the patron’s personal study.

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**First Sale Doctrine**

The first sale doctrine (Sec. 109) allows you to distribute a legally acquired physical copy of a copyrighted work. This allows libraries to lend books and individuals to lend or sell used books, movies or CDs.

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**Classroom Display or Performance**

Under Section 110(1) it is okay to display or perform copyrighted works in a face-to-face classroom setting at a non-profit educational institution. This allows a teacher to show a video or students to create and display multimedia projects in class. Section 110(2) allows for the display or performance of copyrighted works for distance learning (e.g. on a course management system), but you must fulfill many specific requirements in order to qualify for this exception.
Creative Commons - An Alternative

The internet has made the creation and sharing of creative works much easier than it has ever been. Most of these new works are protected by copyright as soon as they are created. But not everyone wants to lock up their creativity behind the protection of copyright. Many people want their work to be freely shared and even built upon.

Creative Commons (CC) was developed out of the desire to make it easier to share and use copyrighted works. Creative Commons allows a creator to grant licenses to their work that could include the ability to share, adapt and/or use material for commercial purposes without having to ask for permission. The creators still own the copyright, but they proactively decide to let others use their works under certain conditions.
ACTIVITY: Finding Creative Commons Works

Many websites include CC licensed works. You can search them to find materials that you can freely use in creating your own work provided that you comply with the terms of the license. You can also upload your own CC licensed works to share with others.

Examples include:

- Flickr
- YouTube
- The Noun Project
- Wikipedia’s Wikimedia Commons
Public Domain and Term of Copyright

Copyright protection of a work doesn’t last forever. Once the copyright term ends for a work, it enters the public domain. This means that no one owns the rights to the work anymore, so the work may be used by anyone, for any purpose, without permission. The public domain includes works where copyright has expired and works that were never protected by copyright in the first place (such as works of the U.S. federal government created by federal employees).

The public domain includes works where copyright has expired and works that were never protected by copyright.

**ACTIVITY: Finding Works in the Public Domain**

The public domain provides a great source of materials that you can use for any purpose, without requesting permission or paying a fee. The internet is full of useful sites that can help you find Public Domain materials, including:

- Columbia University list of Public Domain Sources
- HathiTrust
- Internet Archive
- Project Gutenberg
When Does a Work Enter The Public Domain?

Due to U.S. participation in international treaties and changes to U.S. copyright law, Congress has placed a limitation on the length of copyright so that works can eventually become part of the public domain and be re-used and built upon by others. Over the years the term of copyright has changed significantly.

The current term is:

- 70 years after death of author. If there are multiple authors, then it is 70 years after the death of the last author.
- If corporate, or anonymous, authorship the term is either 95 years from date of first publication, or 120 years from the date of creation, whichever comes first.

Term of Copyright

Since the duration of copyright has changed throughout the years, it can be difficult to determine when copyright expires for a particular work. Below are links to a couple of online sources to help you determine when a particular work enters the public domain.

- Copyright Term and the Public Domain in the United States
- ALA Copyright Genie

EXAMPLES: Copyright Duration

The duration of copyright depends on when the work was created and whether it was the work of a single author, multiple authors, or an anonymous or corporate author.
Copyright terms are based on factors such as the date of death of the author and on what laws were in effect when a work was created.

- **A Brief History of Rabbits in Literature** by Aaron Figgleson (1918-2002):
  Copyright ends 2072 – 70 years after the author’s death
  Copyright ends 2082 – 70 years after the death of the last author to die
- **Whose Poo Is This? A Guide to Animal Droppings** by Acme Animal Industries (published 2002) – Created internally 1969:
  Copyright ends 2089 – 120 years from the date of creation
- **Advice for Parents: Good Tips from Parents** by Acme Animal Industries (published 2011) – Created in blogs 2008-2011:
  Copyright ends 2106 – 95 years from the date of first publication