

Erin West, Adult Services Librarian, Lexington Public Library

FIRST, A DISCLAIMER

I'm not an attorney. I'm a librarian like you.

SOME HELPFUL DEFINITIONS

- Copyright: A form of protection provided by the laws of the United States for "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" literally means the right to copy but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work. Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery. Similarly, names, titles, short phrases, slogans, familiar symbols, mere variations of typographic ornamentation, lettering, coloring, and listings of contents or ingredients are not subject to copyright.
- Work The "thing" that is covered by copyright.
- Copy The format in which the work is originally fixed.
- Fixed The work has to be able to be perceived, reproduced or communicated.
- Author the creator of the copyrighted work is always called the author.
- Term the length of time copyright applies to the work

COPYRIGHT OVERVIEW

- Copyright is governed by Title 17 of United States Federal Law. See the full law here: https://www.copyright.gov/title17/title17.pdf
- Copyright grants authors exclusive rights to their work:
 - (1) to reproduce the copyrighted work in copies or phonorecords;
 - (2) to prepare derivative works based upon the copyrighted work;
 - (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
 - (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
 - (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
 - (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

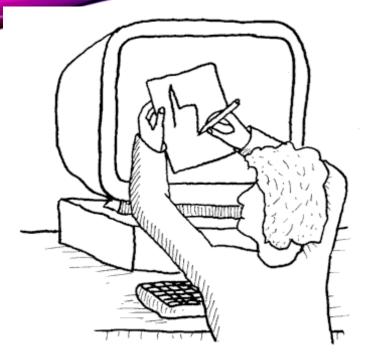
CURRENT COPYRIGHT TERMS

- Current copyright term is life of author plus 70 years.
 - This applies to works created after July 1, 1978.
 - Works from 1977-March 1989 still had a notice and registration requirement.
 - For works published with notice between 1977 and March 1989, the term is author's death+70 years or December 31, 2047, whichever is greater.
 - Works in their initial copyright term as of 1964 had their term automatically extended to match the current terms, for a total of 95 years.
- After March 1989, there is no copyright notice or registration requirement.
 - As soon as the work is fixed, the author has copyright.
 - Registration is optional, but most continue to do it to assist in cases of infringement.
 - If the work is registered, the author is required to deposit two copies with the copyright office (Mandatory Deposit)

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
1964 through 1977	Published with notice	95 years after publication date
1978 to 1 March 1989	Created after 1977 and published with notice	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
1978 to 1 March 1989	Created before 1978 and first published with notice in the specified period	The greater of the term specified in the previous entry or 31 December 2047
From 1 March 1989 through 2002	Created after 1977	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
From 1 March 1989 through 2002	Created before 1978 and first published in this period	The greater of the term specified in the previous entry or 31 December 2047
After 2002	None	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
Anytime	Works prepared by an officer or employee of the United States Government as part of that person's official duties. ¹⁹	None. In the public domain in the United States (17 U.S.C. § 105)

https://copyright.cornell.edu/publicdomain



BRAIN BREAK!

THE CARTOONS ARE COPYRIGHT
SO IF YOU ARE TRACING THEM
FROM YOUR COMPUTER YOU
SHOULD STOP IT

CartoonChurch.com

HISTORICAL COPYRIGHT TERMS – PUBLISHED WORKS

- Copyright law 1909
 - 28 years with proper notice and mandatory registration
 - Allowed one renewal of 28 years, for a total of 56 years
- Proper notice was important.
 - If the notice is improperly formatted, copyright does not apply.
- If the work does not appear in the Catalog of Copyright Entries, it was not registered, and copyright does not apply.
- Copyright was considered secured once the work was published, rather than when it was registered.

FORMAT FOR PROPER NOTICE

- 17 U.S.C. § 401(b). Each of these terms are discussed in Sections 2204.4 and 2205 below. The elements of the notice should appear as a single continuous statement containing the copyright symbol or the word "Copyright" or the abbreviation "Copr.," followed by the year of first publication, followed by the name of the copyright owner.
- Examples:
 - © 1978 John Doe
 - Copyright 1980 John Doe
 - Copr. 1982 John Doe
- In the case of a pictorial, graphic, or sculptural work, the year of publication may be omitted if the work is reproduced on <u>greeting cards</u>, <u>postcards</u>, <u>stationery</u>, <u>jewelry</u>, <u>dolls</u>, <u>toys</u>, <u>or any useful article</u>.

PROPER FORMAT, CONTINUED

- "All Rights Reserved" on its own, is not a statement of copyright.
 - You might see it as an addition to a properly formatted copyright notice,
 - © Erin West 2017, All rights reserved.
 - All it means is that the copyright holder has reserved all exclusive rights granted by copyright law.
 - It no longer has any legal meaning.
- Under the 1909 Act, the copyright notice MUST be in a very specific place (Section 19, 1909 Copyright Act):

SEC. 19. That the notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or if a periodical either upon the title-page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title-page or the first page of music: Provided, That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice.

UNPUBLISHED WORKS

- Unpublished works are protected for the author's life plus 70 years.
- Unpublished works are covered by today's copyright terms, not governed by historical terms.

Never Published, Never Registered Works²

Type of Work	Copyright Term	What was in the public domain in the U.S. as of 1 January 2017 $^{\rm 3}$
Unpublished works	Life of the author + 70 years	Works from authors who died before 1947
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1897
Unpublished works when the death date of the author is not known ⁴	120 years from date of creation ⁵	Works created before 1897 ⁵

https://copyright.cornell.edu/publicdomain

ORPHAN WORKS

- These are works that have no identifiable copyright owner, but are likely to be under copyright.
- The Copyright Act of 1976 and the Copyright Extension Act in 1998 made orphan works more common.
- Have to make an institutional decision whether or not to display these.

SECTION 108 AND 108H OF COPYRIGHT LAW

- Section 108 gives libraries special rights to reproduce works.
- Section 108(h) particularly can be applied to digital archives.
- It allows libraries to display works that are in the last 20 years of their copyright term.

- (h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, §109 22 Copyright Law of the United States Subject Matter and Scope of Copyright for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.
- (2) No reproduction, distribution, display, or performance is authorized under this subsection if—
 - (A) the work is subject to normal commercial exploitation;
 - (B) a copy or phonorecord of the work can be obtained at a reasonable price;
 or
 - (C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.
- (3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

PUBLIC DOMAIN

- Public Domain = no copyright applies
- Anything published before January 1, 1923 is in the public domain.
- Public Domain is frozen in the United States until 2019, due to the 1998 Copyright Extension Act.
- United States Government documents and most state and local government documents do not have copyright.

Works Registered or First Published in the U.S.

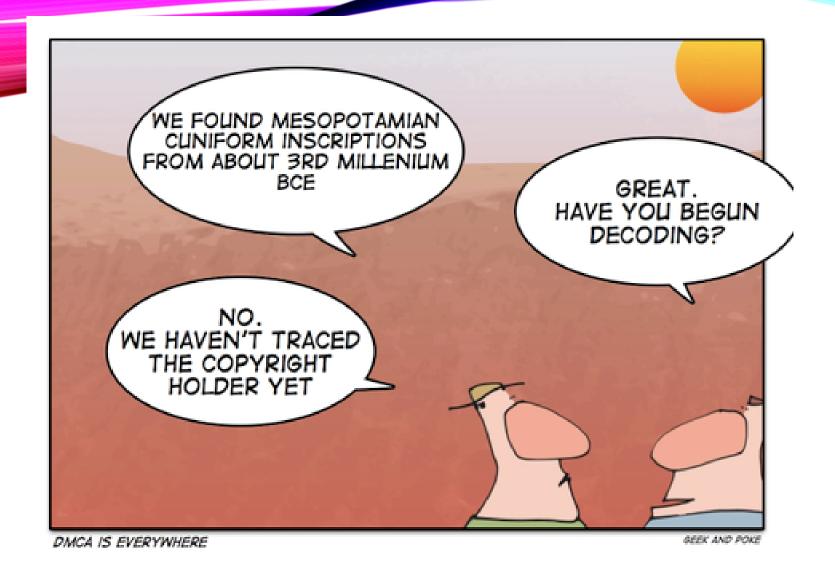
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1923 through 1963	Published with notice but copyright was not renewed ⁸	None. In the public domain due to copyright expiration
1923 through 1963	Published with notice and the copyright was renewed ⁸	95 years after publication date
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After 2002	None	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
Anytime	Works prepared by an officer or employee of the United States Government as part of that person's official duties. ¹⁹	None. In the public domain in the United States (17 U.S.C. § 105)

https://copyright.cornell.edu/publicdomain

PERFORMING A COPYRIGHT INVESTIGATION

Or, what you're actually here to learn!





"REASONABLE INVESTIGATION"

- The standard for a copyright investigation is to perform a "reasonable" investigation.
- This means:
 - Check the work for a copyright notice, and check inside for notices on photos or articles in the work.
 - Check the Catalog of Copyright Entries (CCE) for initial registrations and renewals for 5 years before and after any dates on the work.
 - Renewals can be registered up to a year before the copyright expires.
 - Document EVERYTHING.
 - The better your documentation, the easier it is to prove you performed a reasonable investigation.

STEP 1: CHECKING FOR A COPYRIGHT NOTICE

- Most works we investigate are governed by the regulations of the 1909 Copyright Act
- Inspect the work for a copyright notice.
 - For Books: Check the title page and the page immediately following.
 - For Periodicals: Find the title page and check for the notice. It might only be on the first issue of the volume, or it could be on each individual issue of a volume.
- Inspect any reprinted articles or chapters, and check images or graphics for copyright notices OR attributions.
 - E.G.: "Photo by Caufield & Shook" or "Reprinted with Permission from..."
- Again, document everything you do with this part.

ATTRIBUTIONS ARE NOT COPYRIGHT NOTICES.

BUT!

YOU STILL NEED TO CHECK THE CCE FOR REGISTRATIONS OF THE WORK BASED ON THE ATTRIBUTION.

STEP 2: CHECK ONLINE CATALOG OF COPYRIGHT ENTRIES

- University of Pennsylvania has links to all of the online Catalog of Copyright Entries books.
- http://onlinebooks.library.upenn.edu/cce/
- You can do a keyword search, but you should also scroll to that page and look through it yourself.
 - The books are archived by a couple of different services, and some have better OCR than others.

STEP 3: CHECK FOR A RENEWAL

- The renewal books are also available online, through the same site.
- The separate renewal books start in 1947, and each year following has its own page with initial registration books and renewal books.
- Renewal books are much shorter, easiest just to find the appropriate page and look, rather than keyword searching.
- Renewals of copyright are available for a full year prior to the expiration of the copyright.

MORE ABOUT RENEWALS

- Heirs can renew copyright.
- Works copyrighted after 1922 and not renewed by 1978: no copyright protection
- Works copyrighted after 1922 and renewed by 1978: renewal term automatically extended to 67 years, for a maximum of 95 years.
- Works copyrighted between 1950 and 1963: renewal registration was required or copyright was lost, even though the new law extended the duration of the renewal.
- Works copyrighted between 1964 and 1977: automatic renewal under a 1992 extension law, and renewal registration was not required. If the renewal was not registered, it automatically took effect on 12/31 of the 28th year.
- Copyright terms run through 12/31 of the expiration year.

USING OUR PREVIOUS EXAMPLE OF A WORK PUBLISHED IN 1925...

If there is no renewal registered in 1952 or 1953, then the work is in public domain.

If there is a renewal, under current copyright terms, the work will be in the public domain in 2020.

The item could still possibly be displayed online under Section 108(h), because the work is in the last 20 years of copyright.



DOCUMENT EVERYTHING!

Things to include in your documentation:

- Is there proper notice on the work (works published prior to 1978)?
- Dates when you checked the CCE.
- What years of the CCE you checked, and always check at least a 10 year range for initial registrations.
- Was there a renewal? Which volumes did you check?
- Is the work in the last 20 years of its copyright term? Make sure to specify that the use is covered by Section 108(h).
- Did you find any supporting documents or contact any potential copyright holders?

Copyright Investigations

Following the guidelines for state publications, as well as the federal copyright law, the work, in its entirety, is in the public domain.

December 1928, Volume 1, Issue 4:

Several photos labelled with copyright for Caufield & Shook.

- Copyrights were not renewed in the 1947-1958 volumes of the Catalog of Copyright Entries by the studio.
- These photos are in the public domain.

No notice was placed on the work itself, following the guidelines of the federal law for periodicals, nor was there any notice on individual articles in this issue.

Following the guidelines for state publications, as well as the federal copyright law, the work, in its entirety, is in the public domain.

January 1929, volume 1, issue 5:

One photo copyrighted to Caufield & Shook.

Photo studio did not renew their copyrights, 1947-1958.

One article has a copyright notice for John Wilson Townsend.

- o "Irvin S. Cobb" by John Wilson Townsend.
- Copyright notice properly formatted "Copyright 1929 by John Wilson Townsend."
- Registration was found in the 1929 Catalog of Copyright Entries.
- The work would have been eligible for renewal beginning in 1956. No renewals were found in the 1956-1958 volumes of the Catalog of Copyright Entries. The article entered the public domain after 1957.

No notice was placed on the work itself, following the guidelines of the federal law for periodicals. There were no other articles with attributions to other publications or copyright notices.

Following the guidelines for state publications, as well as the federal copyright law, the work, in its entirety, is in the public domain.

February 1929, Volume 1, issue 6:

One photo copyrighted to Caufield & Shook.

Photo studio did not renew their copyrights, 1947-1958.

One article has a copyright notice for John Wilson Townsend.

- o "Irvin S. Cobb" by John Wilson Townsend.
- o Copyright notice properly formatted "Copyright 1929 by John Wilson Townsend."
- Registration was found in the 1929 Catalog of Copyright Entries.
- The work would have been eligible for renewal beginning in 1956. No renewals were found in the 1956-1958 volumes of the Catalog of Copyright Entries. The article entered the public domain after 1957.

One article was reprinted from February 1929 issue of "Harper's Bazaar" titled "At the feet of the enemy" by Irvin Cobb.

- Irvin Cobb did not register his contribution to the article in the 1929 Catalog of Copyright Entries.
- However, Harper's Bazaar did register a copyright for their magazine in 1929, and renewed that copyright in 1956.
- o This article IS NOT in the public domain. It will enter the public domain in 2024.

Copyright Investigations

 Under section 108(h) of Title 17, as a library we are able to display this content as it is in the last 20 years of copyright.

No notice was placed on the work itself, following the guidelines of the federal law for periodicals. There were no other articles with attributions to other publications or copyright notices.

With the exception of the article "At the feet of the enemy" by Irvin Cobb, this work is in the public domain. The article "At the feet of the enemy

March 1929, Volume 1, Issue 7:

Photos credited to <u>Caufield</u> & Shook, but does not specifically state copyright. However, <u>Caufield</u> & Shook did register the majority of their photographs, but they did not renew those registrations.

One article has a copyright notice for John Wilson Townsend "Irvin S. Cobb":

- o Copyright notice properly formatted
- o Registration was found in the 1929 Catalog of Copyright Entries
- The work would have eligible for renewal in 1956. No renewals were found in a search of renewal volumes from 1956-1958. This work entered public domain in 1957.

No notice was placed on the work itself, following the guidelines of the federal law for periodicals. There were no other articles with attributions to other publications or copyright notices.

Following the guidelines for state publications, as well as the federal copyright law, the work, in its entirety, is in the public domain.

April 1929, Volume 1, Issue 8:

Again, some photos are credited to <u>Caufield</u> & Shook, but there is not an explicit notice with each photo. <u>Caufield</u> & Shook did register their copyright on their photographs, but the studio did not renew those registrations.

No notice was placed on the work itself, following the guidelines of the federal law for periodicals. There were no articles with attributions to other publications or explicit copyright notices.

Following the guidelines for state publications, as well as the federal copyright law, the work, in its entirety, is in the public domain.

May 1929, Volume 1, Issue 9:

Notice placed on Editorial page (p.11) reads "All material published in Kentucky Progress Magazine, except copyrighted articles, may be republished."

One photo is marked with a copyright to Caufield & Shook:

o Caufield & Shook did not renew the copyrights on their photographs.

Some photos are attributed to Lafayette Studio, without an explicit notice of copyright:

- Lafayette Studio and its owners (Robert "Bob" Long, Ida Long, and Edward McClure) did not register copyrights on their photos.
- I checked the 1900-1931 volumes of the Catalog of Copyright Entries for registrations, and none were found under the studio name or the photographer name.

One article has a copyright notice for John Wilson Townsend "Irvin S. Cobb":

o Copyright notice properly formatted

NOTING THE COPYRIGHT STATUS OF ITEMS IN YOUR DIGITAL ARCHIVE

- https://digitalcollections.nypl.org/about
- https://www.lexpublib.org/digitalarchives/copyright

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HANDLING WORKS WITH MIXED COPYRIGHTS

- Some works can be a mix of public domain and copyrighted material.
- Check if the copyrighted material is in the last 20 years of its copyright protection.
- If it is not, we include the page and block it out digitally.

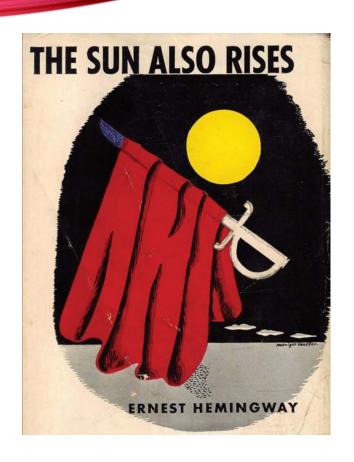
Derby Day

By ELEANOR MERCEIN

Excepts from a story in McCall's Magazine, reprinted by special permission.

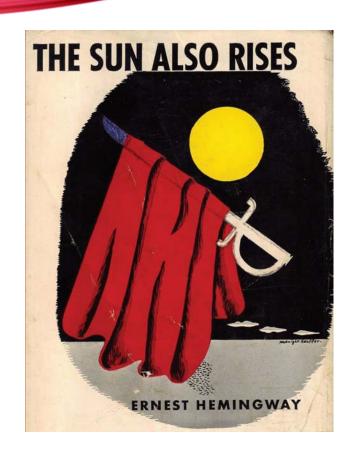
This material is under copyright and cannot be displayed online.

Please contact us at elibrarian@lexpublib.org, or visit the Kentucky Room at Central Library to view this content.



LET'S DO AN EXAMPLE!

- The Sun Also Rises by Ernest Hemingway.
- Published in 1926
- Let's go Live to the CCE for initial registration and renewal searches.

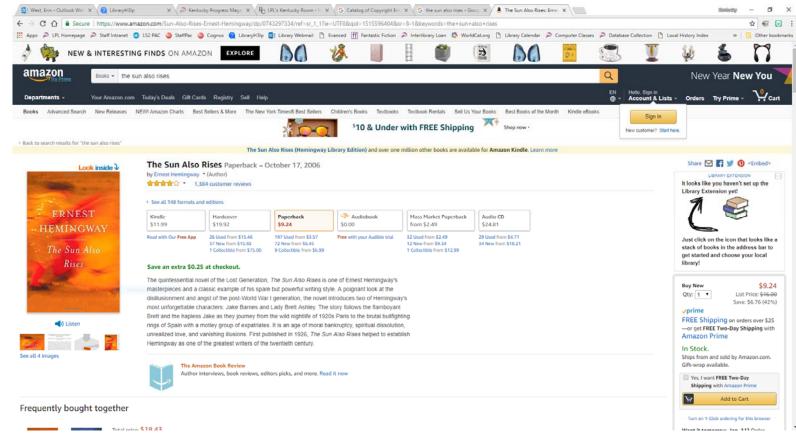


LET'S DO AN EXAMPLE!

- *The Sun Also Rises* by Ernest Hemingway.
- Published in 1926
- We found the initial registration in 1926, and a renewal in 1954.
- Math time!
 - 1954 + 28 = 1982
 - 1978 extension applies
 - 1954 + 67 = **2021**

Does Section 108(h) apply?

NO, IT'S AVAILABLE FOR UNDER \$10 ON AMAZON.



RESOURCES

- Full text US copyright law: https://www.copyright.gov/title17/title17.pdf
- Copyright.gov Circulars: https://www.copyright.gov/circs/
- Online Catalog of Copyright Entries: http://onlinebooks.library.upenn.edu/cce/
- Copyright Term and Public Domain for United States: https://copyright.cornell.edu/publicdomain
- Coursera Copyright for Educators and Librarians: https://www.coursera.org/learn/copyright-for-education
- Coursera Copyright for Multimedia: https://www.coursera.org/learn/copyright-for-multimedia

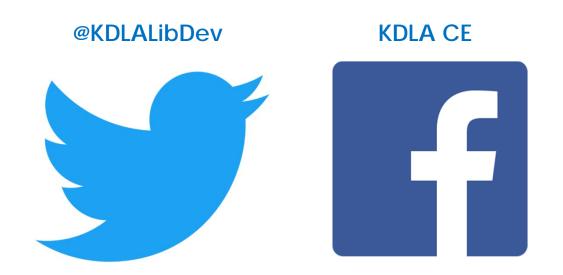
THANK YOU!

- Questions?
- My email: ewest@lexpublib.org

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A New Reality: The Opioid Epidemic & Kentucky Public Libraries

Friday, January 26 – 2:00-3:30 pm ET

Kentucky in 1792

Wednesday, January 31 – 10:00-11:00 am ET

Library Link Up: Library Community Campaigns

Thursday, February 1 - 1:00-2:00 pm ET

E-rate 2018 Form 471 for Category Two

Friday, February 2 – 10:00-11:30 pm ET

The Digital Toolbox: Lending Mobile Hotspots & Laptops

Tuesday, February 6 – 2:00-3:00 pm ET

THANK YOU!

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KDLA CE Events Calendar

KDLA Archived Webinars

Library Certification Program