



Intellectual Property Awareness for Public Libraries and their Customers

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NKU Steely Library

<http://ipac.nku.edu/>

Today's mini-workshop is brought to you by NKU's IPAC—Intellectual Property Awareness Center



Transforming People Through Information

Presented by John Schlipp, Intellectual Property Librarian



Information presented here should not be considered legal advice. Proper legal consultation should be obtained when necessary for your specific and unique needs.



From inventors to **MUSICIANS**



Copyrights, trademarks, and other intellectual properties

- Public libraries have the most diverse types of IP customers of any kind of library, e.g.
- Copyright and/or Fair Use for students, authors, artists, musicians, (and fanfic writers)
- Copyrights, trademarks, patents, and licensing for inventors, entrepreneurs, and businesses
- Copyright, contracts, and licensing for genealogy patrons' research and publishing

What is Intellectual Property?

How does IP vary between creators and consumers?



Image source: Hasbro

I. Why do we need copyrights, trademarks, patents, etc?

- As the **creator** of intellectual works, one protects their intellectual property, e.g. copyrights, trademarks, patents, etc.
- As a **consumer** of intellectual works, we utilize these works to benefit our lives.
- Music, books, or websites are examples of **copyrights**.
- Business or product brand/logos or names are examples of **trademarks**.
- Inventions, business processes, and product designs are examples of **patents**.
- Intellectual properties ensures innovation and protection of intellectual works.



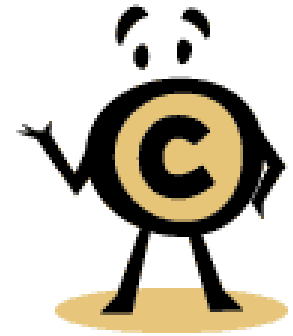
Intellectual Property protects works of inventors, authors, musicians, artists, scientists, teachers, business groups, etc.

I. Which IP do your patrons need?



- Musicians and authors (mostly copyrights and some trademarks) especially copyright registrations.
- Inventors (mostly patents) for their inventions.
- Entrepreneurs and business people (all types of intellectual property) for commerce.
- Historians, genealogists, students, educators, scientists, government workers, etc. rely on more Fair Use for their research needs.

I. Copyright Defined



- Copyright is a form of protection provided by the laws of the United States (Title 17, U.S. Code) for the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works.
- Copyright is a legal device that provides the creator of a work of art or literature, or a work that conveys information or ideas, the *right to control* how the work is used. –Stephen Fishman, Esq. *The Copyright Handbook*, 1996.

Work is copyright protected as soon as it is in a fixed medium, e.g. paper, electronic, etc.



I. Copyright registration



- At www.copyright.gov go to **Register a Copyright** section.
- Registration established public record of claim.
- Before an **infringement suit** may be filed in court, registration is necessary for works of U.S. origin.

HOW DO I...?



Register a Copyright



Record a Document



Search Records



Learn about Statutory Licensing

Registration is NOT required.
An author is the copyright holder immediately at time creating work in fixed medium.

Tutorials

[Electronic Copyright Office](#)

[Copyright Search](#)

[Catalog of Copyright Entries](#)

[Frequently Asked Questions](#)

Other Services

[Mandatory Deposit](#)

[Notice of Restored Copyrights](#)

[Request a Search Estimate](#)

[Online Service Providers](#)

THIRD EDITION
**Compendium of
U.S. Copyright Office Practices**
PUBLIC DRAFT RELEASED AUGUST 19, 2014

Code of Federal Regulations
TITLE 37, CHAPTER II

I. Copyright: *Ownership*



- Author/creator of the work
- Author may sign over part or all of the copyright to a publisher or someone else
- In works made-for-hire, the employer or the person for whom the work was prepared is considered the author.

17 USC § 106

Exclusive rights in copyrighted works

- **To reproduce** the work in copies
- **To prepare derivative works**
- **To distribute copies** of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
- **To perform the work publicly**
(what about children's library story time?)
- **To display** the copyrighted work publicly

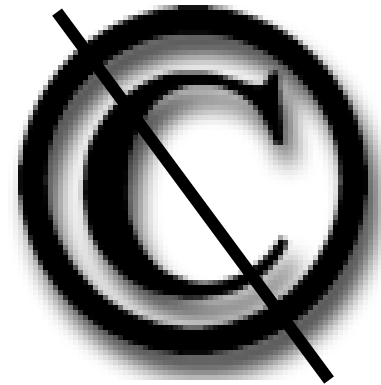
I. What may be copyrighted?



- Literary works
- Musical works and lyrics
- Dramatic works accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Motion pictures, audiovisual works
- Sound recordings
- Architectural works

I. Copyright: Ineligible Works

- Works **not** fixed in a medium
- Facts (e.g. scientific, engineering, public laws, contact information, etc.)
- Ideas
- Dates & names
- Short phrases
- U. S. government documents
- Previously copyrighted works now in public domain; usually U.S. published works before 1923.
- More to come on public domain in genealogy section.



What is Copyright Infringement?

Without permission the following could be infringements:

- Reproducing
- Preparing a derivative work
- Distributing copies
- Performing publicly
- Displaying publicly



II. Potential Library Patron Infringement Scenarios

- Excessive amounts photocopied or scanned from books and tangible electronic media.
- Redistributing music files, eBooks, or online magazine articles from database content.
- **BEST PRACTICE:** Keeping both the library legal and our patrons in the clear – post notices which promote Fair Use when making copies.

However, there is one exception for which to be familiar.

II. Fair Use

...to share, enjoy, criticize, parody, and build on other works



For Profit Exception:

Transformative use tied to research; single copy.

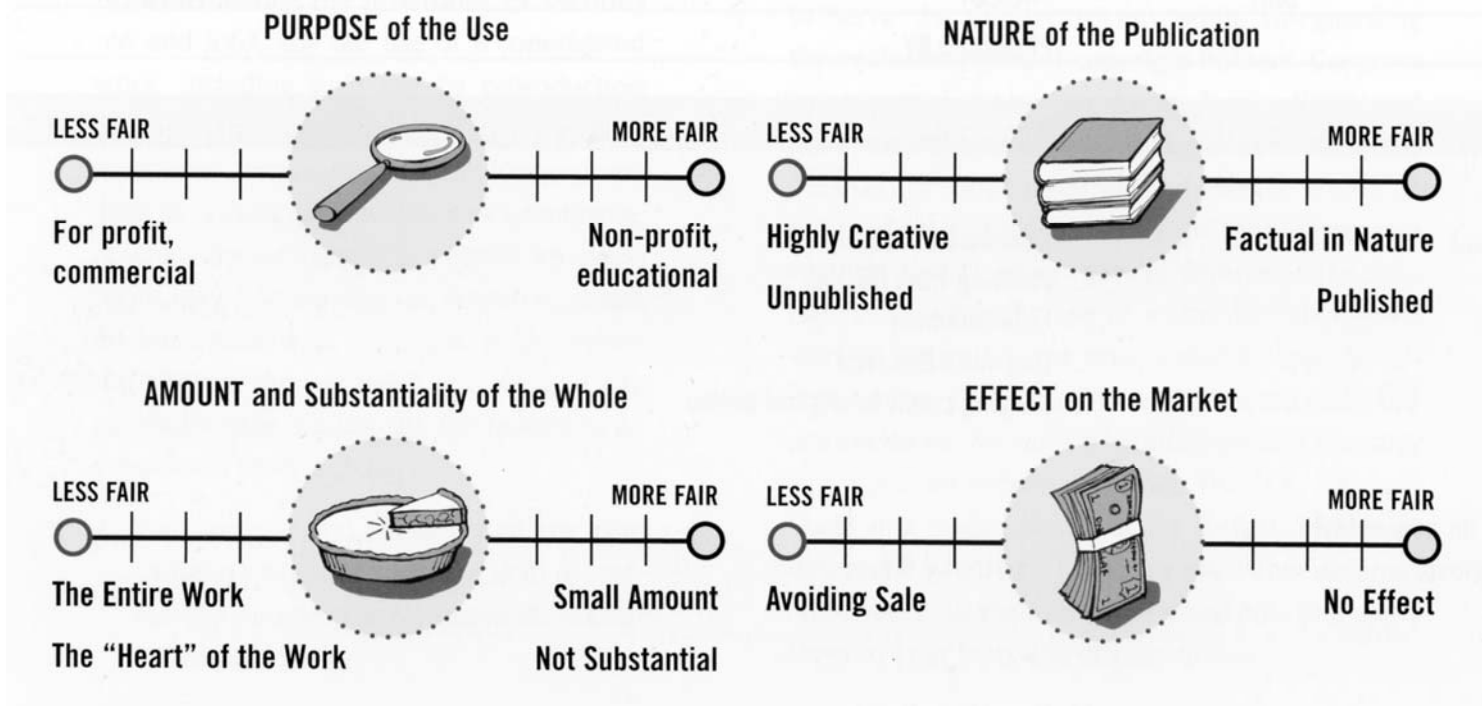
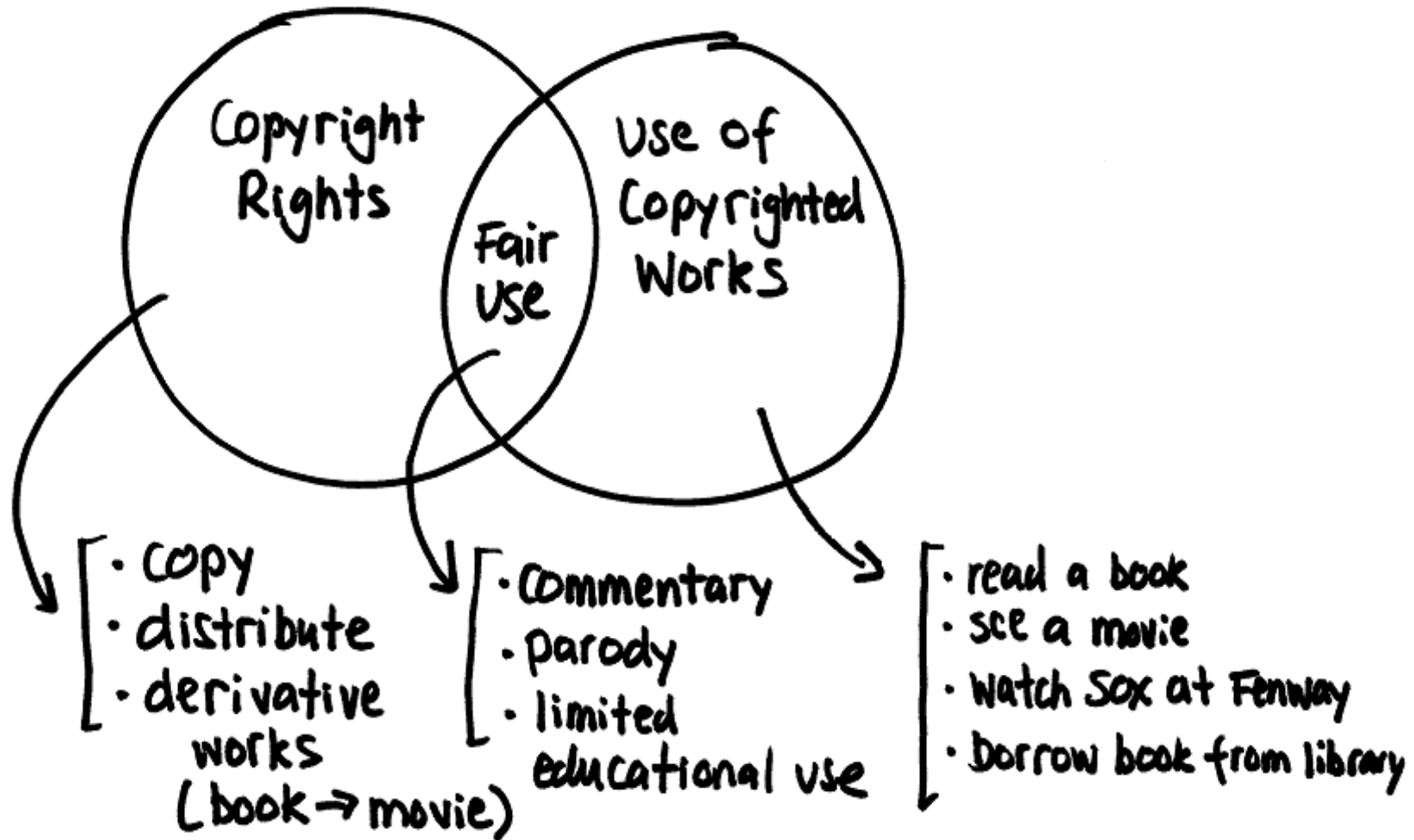


Image Source: *Complete Copyright: An Everyday Guide*, Carrie Russell, 2004

All four Fair Use factors must be weighed and balanced.

II. Copyright strives to balance between public interest and individual rights



Source: <http://www.cwu.edu/~pittism/piratecopyright.html>



Fair Use?

- Traditional face-to-face story telling:
 - Fair Use Factor One (Purpose) favors Fair Use as this helps children develop literacy skills and advances learning.
 - Factor Four (Market Effect) is not hindered as most libraries are nonprofit and educational and do not charge for story time programs.
 - These two factors overwhelmingly sway the public performance as Fair Use.
- But what about digital distribution, e.g. YouTube video, where a librarian reading the same story has been filmed?
- A Fair Use analysis must be performed as most likely public performance clearance may be needed unless the use has been transformed with less reliance on any visual artwork of the book.
- Also, special needs such as disabled patrons might sway the digital distribution as Fair Use.
- Source: Carrie Russell, *Copyright Tips for Programming Librarians: Storytimes* @ <http://www.programminglibrarian.org/>

II. Transformative Use

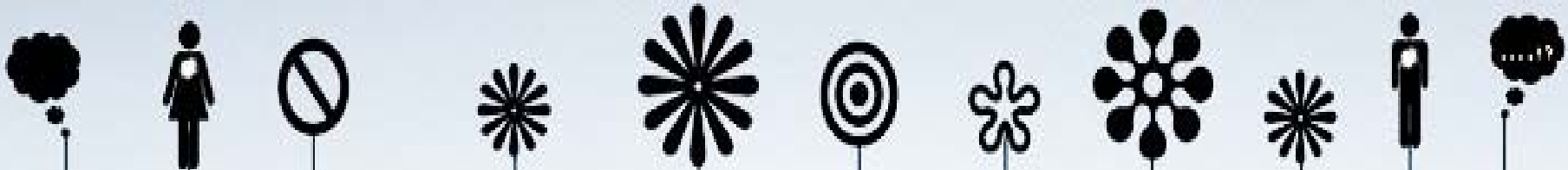


- Is the Fair Use PURPOSE factor of the use *transformative* as opposed to derivative?
- When we utilize brief bits of information from books, limited music or movie clips, and add something original such as our own ideas, music beats, or art images, this is **transformative use**; also known as a mash-up.
- “When a user of copyrighted materials *adds value* to, or *repurposes* materials for a use different from that for which it was originally intended, it will likely be considered *transformative use*; it will also likely be considered fair use. Fair use embraces the modifying or existing media content, placing it in a new context.” —Joyce Valenza
<http://blogs.slj.com/neverendingsearch/2008/04/01/fair-use-and-transformativeness-it-may-shake-your-world/>
- The courts favor most transformative uses, especially for educational, personal, or non-commercial use.

FANFICTION

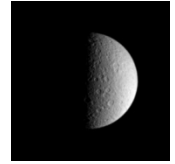
Image source: <https://lilyvelden.wordpress.com/fanfiction-jargon-abbreviations-and-acronyms/>

- User generated content often created by fans for free, who respect the author and revere the characters of the original work.



- Fan fiction is defined as, “any kind of written creativity that is based on an identifiable segment of popular culture...and is not produced as ‘professional’ writing.” –**Rebecca Tushnet**, “Legal Fictions: Copyright, Fan Fiction, and A New Common Law,” *Loyola Los Angeles Entertainment Law Journal*, 17(3): 651, (1997).
- Fair Use critique, commentary or parody might apply especially if implemented as a transformative Fair Use; it must add value to, or repurpose the copyrighted material in order to create a new context.
- However, under current copyright law, infringement is more likely. Fair Use four-factors PANE analysis helps determine if defensible.

II. Went with the Wind Parody



- *Carol Burnett Show* parody figuratively and literally clothed its message in humorous form, parodying *Gone With The Wind*.
- Burnett fondly pokes fun at the characters. There is no malicious intent, and it does not detract from the original or harm the commercial viability of Margret Mitchell's book or the classic motion picture.



- <https://www.youtube.com/watch?v=eTKhw-v5h2I>
- <https://www.youtube.com/watch?v=ksHEIDPHNLI>

II. Licensed Use of Others' Works

Virtually no Fair Use Exemptions with Licensing



- Popular eBooks are bound by licensing agreements.
- Click through agreements, shrink-wrapped computer software, and other licensing of digital media affects copyright exemptions such as Fair Use.
- Some library eJournal databases may have licenses that prevent copying for others.
- Use caution posting or sharing copies of electronic articles or music which are copyrighted.
- Before purchasing CD/DVD-ROMs or MP3s, read the fine print. Some software only allows one-user-at-a-time or only a single user period. Network one-user-at-a-time requirement? Otherwise, multiple use license or purchase required.

III. Copyrights in Business

- Product owner's manual/user guide
- Computer software and databases
- Product related website and other electronic resources
- Sales literature and promotional videos
- Product designs which are sculptural
- Architecture blueprints/building designs



III. Licensing *Your* Products



- Small businesses and entrepreneurs may need to draft licensing agreements, which are like a lease or renting. It is a formal agreement between inventor (licensor) and a company (licensee). It gives a company specific rights to produce, market, sell, and/or use products or services in exchange for either royalties from product sales or a fixed payment.

III. Other IPs: Trademarks



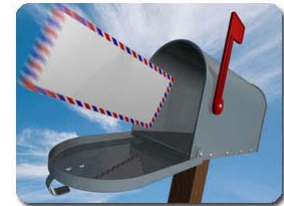
- Once a trademark is used in trade or commerce a **common law** trademark is created.
- The **TM** symbol is utilized for either common law or **State registrations.**
- The **federal registration** symbol ® may be only be used after the U.S. Patent & Trademark Office registers the mark.



III. Patents & Trade Secrets



- A patent is a property grant issued to an inventor by the U.S. Patent & Trademark Office which excludes others from making, using, offering for sale, selling or importing your **invention**.
- There are three types of Patents;
 - **Utility Patent**-granted for any new and useful processes, machines, etc.
 - **Plant Patent**-granted for certain types of living plants.
 - **Design Patent**-granted for any new, original or ornamental design for an article of manufacture.
- Trade Secrets are similar to patents but without registration. Trade Secrets last as long as the secret is kept. Usually non-disclosure agreements are used.



**Bogus:
Poor
Man's
Patent or
Copyright**

IV. Historical & Genealogical Research



- Copyright, Cousins, and Contracts...
- Family feuds could be looming if we are not careful and considerate of using distant cousins' genealogy published works without permission.
- Understanding of copyright, contracts, fair use, and public domain help determine when permission is needed or not.
- Patents provide hidden genealogy gems too.

IV. Copyright cousin author/creator

- **The Copyright Cousin owner** is usually the original author/creator of the copyrighted genealogical work. While any user of a copyrighted work is the consumer, e.g. citing or sharing Fair Use excerpts.
- One need not publish or register the work at Copyright Office.
- It is easy to let others know you are the copyright owner. Just place your name with the © symbol and year on the document or work, e.g. © 2015 Copyright Cousin Cathy.
- An author may relinquish part or all of their copyrighted genealogical work to a publisher or to someone else. Remember **17 USC § 106 exclusive rights** in copyrighted works?
 - **To reproduce** the work in copies
 - **To prepare derivative works**
 - **To distribute copies** of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
 - **To perform** the work publicly
 - **To display** the copyrighted work publicly
- In works made-for-hire, the employer is considered the author.

IV. What about hiring others?



- So if a professional genealogist is hired by your cousin to research and publish a family history, who owns the copyright?
- Who grants permission for when you publish or share your distant cousin's work in more than a Fair Use portion in some other published work?

IV. Works Made for Hire

- Genealogy researchers who are paid by a family should be aware how Works Made for Hire may influence their copyright of what they believe is their own work. While an author is normally considered the copyright owner of their creative works, Section 201(b) entitled “Ownership of Copyright” within the Copyright Act indicates that:
- In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright. 17 USC § 201 (b)

IV. Contracts: Your works published

- **Works Made for Hire** is defined as “a work prepared by an employee within the scope of his or her employment...” according to Section 101 of U.S. Copyright Law. However...
- ...if the Works Made for Hire are created within the labor of an independent contracted assignment, a written agreement should specify who owns copyright upfront. To learn more, see *Works Made for Hire...* @ <http://www.copyright.gov/circs/circ09.pdf>.

IV. Publisher Contracts (Your Works)

- If your article, book chapter, or complete book has been accepted for publication you will get some type of contract from the publisher to sign. Read the contract details carefully.
- As the author you are automatically the copyright holder. However, once you sign a publisher contract the copyright status may change. Also known as copyright assignment.
- Contracts are negotiable. You need not agree to the initial demands to relinquish all of your Copyright Law 17 USC § 106 Exclusive Rights.
- Consider negotiating to maintain certain Exclusive Rights, e.g. electronic publishing, publisher non-exclusive rights so that you can republish later for other works or use in lecturing in public setting, etc.
- If publisher insists on exclusive rights, consider a time limit, e.g. five years, so that the ultimate rights revert back to you for future use.

IV. Facts versus formatting

- Facts of names, dates, birthplaces, cities are not protected by copyright. Anyone can use the facts without any permission.
- However, the formatted narrative and visual images could be protected by copyright.
- What about public domain? How long? Does it vary between formats and types of works?

IV. Photographs, postcards, and maps

- The photographer or artist is considered the author or creator of visual works. Photos or other visual images published after 1922 require permission by photographer, artist, or copyright holder.
- **Published versus unpublished** is critical (more details next slide):
 - Published works before 1923 are public domain.
 - Unpublished works created before 1923 are covered by the newer Copyright Act of 1976.
 - Images published after 1978 are covered by copyright for an additional 45 years or at least until the year 2047!
 - See Cornell Public Domain chart for details (next slide).
- Private collections for one-of-a-kind often include royalty fees for physical copy made and handling.
- Federal government docs such as maps and illustrations are in the public domain. Be careful with Library of Congress images, as some images are loaned or donated by other archives
- Family photos? Besides photographer permission, always consider privacy and publicity rights of subjects in photographs.

IV. Published works & public domain

Public Domain date ranges



Copyright Term and the Public Domain in the United States

WORKS PUBLISHED IN THE US		
<i>Date of Publication</i> ⁵	<i>Conditions</i> ⁶	<i>Copyright Term</i> ²
Before 1923	None	In the public domain
1923 through 1977	Published without a copyright notice	In the public domain
1978 to 1 March 1989	Published without notice, and without subsequent registration	In the public domain
1978 to 1 March 1989	Published without notice, but with subsequent registration	70 years after the death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²
1923 through 1963	Published with notice but copyright was not renewed ⁷	In the public domain
1923 through 1963	Published with notice and the copyright was renewed ⁷	95 years after publication date ³
1964 through 1977	Published with notice	95 years after publication date ²
1978 to 1 March 1989	Published with notice	70 years after death of author, or if work of corporate authorship, the

Cornell University's Copyright Information Center guide:

<http://www.copyright.cornell.edu/training/copyrightterm.pdf>

IV. Unpublished works & public domain

Copyright Term and the Public Domain in the United States 1 January 2014 ¹		
Never Published, Never Registered Works ²		
Type of Work	Copyright Term	What was in the public domain in the U.S. as of 1 January 2014 ³
Unpublished works	Life of the author + 70 years	Works from authors who died before 1944
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1894
Unpublished works when the death date of the author is not known ⁴	120 years from date of creation ⁵	Works created before 1894 ⁵

**If the author is known and their death date was before 1944,
then that work is in the public domain.**

**However, if the work was anonymous, work made for hire, or death date is unknown,
the work must have been created before 1894 to be in the public domain.**


Cornell University's Copyright Information Center guide:

<http://www.copyright.cornell.edu/training/copyrightterm.pdf>

IV. Searching Copyright Office records

- When uncertain if an older work is in the public domain, go to **Search Records** section of the U.S. Copyright Office www.copyright.gov online to see whether it had been registered or renewed since 1978.

HOW DO I...?



Register a Copyright Record a Document Search Records Learn about Statutory Licensing

Tutorials

- Electronic Copyright Office
- Copyright Search
- Catalog of Copyright Entries
- Frequently Asked Questions

Other Services

- Mandatory Deposit
- Notice of Restored Copyrights
- Request a Search Estimate
- Online Service Providers

THIRD EDITION
**Compendium of
U.S. Copyright Office Practices**
PUBLIC DRAFT RELEASED AUGUST 19, 2014

Code of Federal Regulations
TITLE 37, CHAPTER II

IV. Getting permission



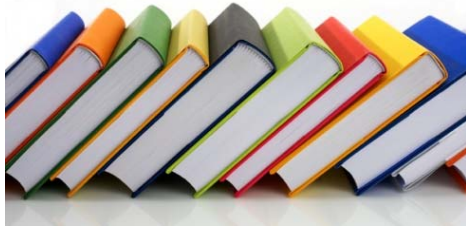
- Always get permission in print. Never rely on a handshake or verbal permission.
- Cover how you plan to use the work. Note citation of work and what portion of work you intent to use. List the number of copies you plan to distribute for print or the audience estimated for online publishing.
- Ask about any fee and attribution notice(s).

IV. Patent & copyright records

- Patents provide personal information about inventor at time of patent issuance, e.g. name, address & migration, signature, citizenship, business contact, etc.
- Patents are federal publication (not state or local); usually narrows to only one search
- Each patent has a unique number that is easy to locate
- U.S. Patent Database is available for FREE on the web with over 7 million U.S. patents back to 1790.
- *U.S. Catalogue of Copyright Entries* are useful indexes to verify copyright registrations and transfers.

IV. Researching patents

- www.uspto.gov > Patents > Patent Searching; only keyword searchable after 1975. Must have exact patent number for patents before 1976.
- Historic inventor databases by regions have been created and posted at various PTRCs. See <http://ptrca.org/history>.
- Google patents and the European Espacenet site <http://worldwide.espacenet.com/> offer OCR keyword searching for keyword searching before 1976. Type KW: US before search terms in Espacenet to limit to U.S. historic patents.



Helpful IP Resources

- *Patent, Copyright & Trademark: An Intellectual Property Desk Reference* by Richard Stim
- *Patent It Yourself* by David Pressman
- *Trademark: Legal Care for your Business & Product Name* by Stephen Elias & Richard Stim
- *This Business of Music* by M. William Krasilovsky
- <http://copyright.gov/>
- <http://www.uspto.gov/>
- <http://www.nolo.com/legal-encyclopedia/patent-copyright-trademark>
- <http://www.consumer.ftc.gov/scam-alerts>

For more, see Intellectual Property Awareness Center


Intellectual Property Awareness Center /
Intellectual Property Awareness Center (IPAC)


What is IPAC?
IPAC is an acronym which stands for Intellectual Property Awareness Center. It is a new onsite resource located at NKU's Steely Library to assist those in need of information about intellectual property to cultivate their research, creativity, and innovation. The IPAC helps you to obtain information and resources about [copyrights](#), [trademarks](#), [patents](#), and more.


For further information, view our site or contact Intellectual Property Librarian, [John Schlipp](#).

Is it yours, mine, or ours?

- [Can I use this intellectual work?](#)
- [Do I own this intellectual work?](#)
- [Learn more about intellectual properties](#)

 [IPAC news, workshops, and more...](#)

 [Students...](#)

 [Educators, nonprofit professionals...](#)

We have answers for your intellectual property questions

Steely Library's IPAC educates creators and consumers of intellectual property on the subjects of [copyright](#) and [Fair Use](#), [plagiarism](#), [trademarks](#), [patents](#), and other intellectual properties.

Watch this site for informative [workshops](#), [classes](#), and other related [educational events](#) to support libraries, educators, and the greater community.

Please note that the IPAC and its related subject specialists do not provide legal advice. For more information, contact Intellectual Property Librarian, [John Schlipp](#).

Thank you for visiting this site. We appreciate your support of Steely Library's newest knowledge resource center.

Important notice

Information and other content from the IPAC website, programs, or services is provided for informational purposes only. Any information provided should not be considered legal advice.

The IPAC seeks only to facilitate related information and community connections to further IP awareness.

Any information received from IPAC should not substitute for securing legal advice from a licensed attorney.
JCS20130621

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