Copyright and OER

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Librarians must not provide legal advice. Establish a relationship with your Office of General Counsel if you need help navigating situations beyond your capacity.
Basics of Copyright Law

- What is copyright?
- When is a work considered public domain?
- What constitutes Fair Use?
- What does ‘open’ mean when using open educational resources?
- What is a CC license?
What is copyright?

“Copyright is a form of protection provided by U.S. law to authors of ‘original works of authorship’ from the time the works are created in a fixed form.”

Copyright.gov, United States Copyright Office
What works are protected?

- Examples of copyrightable works:
  - Literary works
  - Musical works
  - Dramatic works, pantomimes, choreographic works
  - Pictorial, graphic, and sculptural works
  - Motion pictures and audiovisual works
  - Sound recordings
  - Architectural works
What are the rights of a copyright owner?

- Reproduce the work
- Prepare derivative works
- Distribute copies of the work to the public by sale or lending
- Display the work publicly
- Authorize others to exercise these exclusive rights subject to certain statutory limitations
What is not protected by copyright?

- Ideas, procedures, methods, systems, processes, principles, or discoveries
- Works that are not fixed in a tangible form
- Titles, names, short phrases, slogans
- Familiar symbols or designs
Who can claim copyright?

- The copyright in a work initially belongs to the author(s) who created that work.

- Joint authors have an indivisible interest in the work as a whole if their work with created with the intent of merging their contributions into interdependent, inseparable parts of a whole. If multiple authors contribute to a collective work, each author’s individual contribution is separate and distinct from the copyright ownership in the collective work as a whole.

- Exception: “Works made for hire”
  - When the work is created by an employee as part of the employee’s regular duties.
  - When an individual and the hiring party enter into an agreement where the work is considered to be “work made for hire” e.g. a translation, an instructional text.
How can I protect my work?

- Register the work - not mandatory, but necessary to enforce the exclusive rights of copyright through litigation.
  - Registration establishes a claim to copyright with the Copyright Office.
- Applying the copyright notice to a work has not been required since March 1, 1989, but may still provide practical and legal benefits.
  - Copyright symbol or “Copyright,” the name of the copyright owner, year of 1st publication
  - Placing a copyright notice on a work is NOT a substitute for registration
Is it in the Public Domain?

- The term “public domain” refers to creative materials that are not protected by intellectual property laws such as copyright, trademark, or patent laws. Anyone can use a public domain work without obtaining permission, but no one can ever own it.

- Four common ways that works arrive in the public domain:
  - the copyright has expired
  - the copyright owner failed to follow copyright renewal rules
  - the copyright owner deliberately places it in the public domain, known as “dedication,” or
  - copyright law does not protect this type of work.
How long does copyright last?

Copyright Term & the Public Domain in the United States

https://copyright.cornell.edu/publicdomain
Never published, never registered works

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Copyright Term</th>
<th>In the public domain in the U.S. as of 1 January 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpublished works</td>
<td>Life of the author + 70 years</td>
<td>Works from authors who died before 1950</td>
</tr>
<tr>
<td>Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)</td>
<td>120 years from date of creation</td>
<td>Works created before 1900</td>
</tr>
<tr>
<td>Unpublished works when the death date of the author is not known</td>
<td>120 years from date of creation</td>
<td>Works created before 1900</td>
</tr>
<tr>
<td>Date of Publication</td>
<td>Conditions</td>
<td>Copyright Term</td>
</tr>
<tr>
<td>---------------------</td>
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<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>Before 1925</td>
<td>None</td>
<td>None. In the public domain due to copyright expiration</td>
</tr>
<tr>
<td>1925 through 1977</td>
<td>Published without a copyright notice</td>
<td>None. In the public domain due to failure to comply with required formalities</td>
</tr>
<tr>
<td>1978 to 1 March 1989</td>
<td>Published without notice, and without subsequent registration within 5 years</td>
<td>None. In the public domain due to failure to comply with required formalities</td>
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### Works registered or first published in the U.S.

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<td>1978 to 1 March 1989</td>
<td>Published without notice, but with subsequent registration within 5 years</td>
<td>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</td>
</tr>
<tr>
<td>1925 through 1963</td>
<td>Published with notice but copyright was not renewed</td>
<td>None. In the public domain due to copyright expiration</td>
</tr>
<tr>
<td>1925 through 1963</td>
<td>Published with notice and the copyright was renewed</td>
<td>95 years after publication date</td>
</tr>
<tr>
<td>1964 through 1977</td>
<td>Published with notice</td>
<td>95 years after publication date</td>
</tr>
<tr>
<td>Period</td>
<td>Creation Status</td>
<td>Protection Period</td>
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</tr>
<tr>
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<td>Created before 1978 and first published with notice in the specified period</td>
<td>The greater of the term specified in the previous entry or 31 December 2047</td>
</tr>
<tr>
<td>From 1 March 1989 through 2002</td>
<td>Created after 1977</td>
<td>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</td>
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<tr>
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<td>Created before 1978 and first published in this period</td>
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</tr>
<tr>
<td>After 2002</td>
<td>None</td>
<td>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</td>
</tr>
<tr>
<td>Anytime</td>
<td>Works prepared by an officer or employee of the United States Government as part of that person’s official duties.</td>
<td>None. In the public domain in the United States (17 U.S.C. § 105)</td>
</tr>
</tbody>
</table>
How can I use a copyrighted work?

- Seek permission from the copyright owner
- Statutory provision of “Fair Use”
What constitutes ‘Fair Use’?

4 Factors to consider:

1) **Purpose and character of the use** - including whether such use is of a commercial nature or is for nonprofit educational purposes.

2) **Nature of the work** - factual works are favored in fair use decisions over use of highly creative works. In general, published works are favored over unpublished works.

3) **Amount and substantiality of the portion used in relation to the work as a whole** - Use is more likely to be considered fair for small quantities, where the portion used is not significant to the entire work, and where the amount is appropriate for the intended educational purpose.

4) **Effect of the use upon the potential market for or value of the work**. Factors favoring fair use are use of lawfully acquired or purchased copies of the original works, a small number of copies made, no similar product is marketed by copyright holder, and there is a lack of a licensing mechanism. Factors arguing against fair use are repeated long-term use and making materials widely available as on the Web.
How to investigate the copyright status of a work

- https://libguides.tourolib.org/copyright/evaluatingcopyright
  - Copyright Genie
  - Fair Use Evaluator
  - Exemptions for Instructors
Is it Covered by Copyright?

Consult the Copyright Genie

What's your wish?
Is it Covered by Copyright?

Ok, so the Copyright Genie can’t grant copyright wishes, but it can take the magic out of copyright by:

1. Helping you find out if a work is covered by U.S. copyright, [disclaimer]

2. Calculating its terms of protection, and

3. Collecting and publishing the results (as a PDF) to save for your records [examples] or further vet with a copyright specialist

4. To learn about Fair Use, about Educational Exceptions to copyright, or about Exceptions for Libraries and Archives, see: http://librarycopyright.net/resources/

CONSULT THE GENIE!
Is the work in question copyrightable? [what does this mean?]

- Yes, it's copyrightable
- No, it isn't copyrightable
Has the work been published? [note]

- Yes, it is published
- No, it is unpublished
CC Works Cited

- Slide 4. Copyright.gov, United States Copyright Office
- Slide 5. Copyright.gov, Copyright Basics
- Slide 9. copyright.cornell.edu/publicdomain, Copyright Term & the Public Domain in the United States
- Slide 18. https://libguides.tourolib.org/copyright/evaluatingcopyright