Copyright Basics for Digitization Projects
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Not legal advice!

I am not a lawyer – but you don’t always need a lawyer to act appropriately within the law, so let’s try!
Acknowledgements

Peter Hirtle, Cornell University
Jill Hurst-Wahl, Hurst Associates

Agenda

- What is copyright?
  - The works
  - The rights
  - Section 108
  - Fair Use
- Determining copyright status – a tool
- Guides for creating policy
  - Well-Intentioned Practice (OCLC)
  - Fair Use Guidelines (ACRL)
  - Section 108 Guide (University of Texas)
  - Video at Risk (NYU Tisch School)
- Information for patrons and users
  - RightsStatements.org
- Questions & Resources
What does copyright really mean?

Copyright: The Text

“Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”
Updates to the law

- 1998 – The Sonny Bono Copyright Term Extension Act: Increased the copyright term to life plus 70 years and 95 years for corporate authors — was not only granted to future works. It was retroactively applied to works that had already been created and enjoyed their full copyright term, and were set to enter the public domain.

- 1998 – The Digital Millennium Copyright Act (DMCA): Liability exemptions for Internet service providers in cases of user infringement.

- 2002 – The Technology, Education, and Copyright Harmonization (TEACH) Act: Provided use of copyrighted works by accredited nonprofit educational institutions in distance education

Remember:

- Creative! Requires intellectual work to produce – It should be a novel expression of an idea
- Fixed in tangible form – written or recorded in some way
Copyrighted Works

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

Does this have copyright?
Does this have copyright?

What about?
What about?

<table>
<thead>
<tr>
<th>Month</th>
<th>Temperature</th>
<th>Relative Humidity</th>
<th>Wind velocity</th>
<th>Sunshine hours</th>
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<td>min (°C)</td>
<td>max (°C)</td>
<td>min (%)</td>
<td>max (%)</td>
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<td>25.24</td>
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<td>37.66</td>
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<td>Jul</td>
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<td>Aug</td>
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<td>31.77</td>
<td>73.89</td>
<td>92.16</td>
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<tr>
<td>Sep</td>
<td>23.29</td>
<td>31.73</td>
<td>67.61</td>
<td>91.96</td>
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<tr>
<td>Oct</td>
<td>17.39</td>
<td>30.92</td>
<td>49.55</td>
<td>86.89</td>
</tr>
<tr>
<td>Nov</td>
<td>11.20</td>
<td>27.33</td>
<td>44.50</td>
<td>89.42</td>
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<tr>
<td>Dec</td>
<td>07.02</td>
<td>22.77</td>
<td>48.66</td>
<td>93.02</td>
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<td>Average</td>
<td>16.61</td>
<td>29.73</td>
<td>50.18</td>
<td>84.89</td>
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</table>

What about?

**Ingredients**

for 4 servings

- 3 chicken breasts
- salt, to taste
- pepper, to taste
- 4 tablespoons basil pesto
- 1 tomato, sliced
- 1 cup mozzarella cheese

**Preparation**

1. Preheat oven to 400°F (200°C).
2. Place chicken breast in a baking dish. Season chicken with salt and pepper, to taste.
3. Spread pesto on each chicken breast.
4. Layer tomatoes on top of the chicken.
5. Top with mozzarella cheese.
6. Bake for 40 minutes.
7. Enjoy!
What about?

A quiz: how many rights holders?
The protected rights:

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.
Fair Use Doctrine

- A doctrine applied to uses of copyrighted material – not a legal prescription of uses!
- Rooted in the first amendment
- Dynamic, evolving
- Copyright law specifically references: “criticism, comment..., teaching..., scholarship, [and] research.”
Section 108

- Archiving
- Patron requests
  - Print works – it’s theirs!
  - Audiovisual works – you can keep it (with limitations)!
- Unsupervised copying
- Contracts with rights holders
- Interlibrary loan

Determining copyright

<table>
<thead>
<tr>
<th>Copyright Term and the Public Domain in the United States</th>
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</thead>
<tbody>
<tr>
<td>Never Published, Never Registered Works^{2}</td>
</tr>
<tr>
<td>Type of Work</td>
</tr>
<tr>
<td>Unpublished works</td>
</tr>
<tr>
<td>Unpublished anonymous and pseudonymous works, and works</td>
</tr>
<tr>
<td>Available for free use</td>
</tr>
<tr>
<td>Unpublished works when the death date of the author</td>
</tr>
<tr>
<td>is not known^8</td>
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</tbody>
</table>

Works Registered or First Published in the U.S.
Guides for Policy Development

Well Intentioned Practice

Introduce Balance in Rights Management

Librarians and archivists often make extremely conservative assumptions about the risk involved in copying unpublished materials. Many institutions have time-consuming, overly cautious procedures to ensure rigorous compliance with copyright law—something without a full understanding of the law or of the negative impact their procedures have on achieving their mission. If access is the goal, then any unnecessary restrictions is counterproductive.

The digital age has increased still more caution, creating the ironic situation where, just when users ought to be getting improved access, they’re not even getting as good access as they could through intermediary scan, in-person visit, and analog copying. The result constrains research and limits what should be entering the scholarly record.

Background

This activity was initiated as a response to suggestions by staff at RLIN Partnership institutions. The idea was refined at the 2009 RLIN Partnership Issue/Issues and an advisory group provided guidance in developing an event to explore these issues.
Selection

- Keep your mission in mind and start with a collection of high research value or high user interest.
- Assess the advantages and risks of relying on fair use (in the US) to support public access.
- Some types of materials may warrant extra caution when considering rights issues, such as
  - Contemporary literary papers
  - Collections with sensitive information, such as social security numbers or medical data
  - Materials that are likely to have been created with commercial intent (because they are more likely to have economic value)
  - Very recent materials that were not intended to be made public
- If research value is high and risk is high, consider compromises, such as making a sensitive series accessible on-site only, until a suitable time has passed.

Use archival approaches

- Check donor files and accession records for permissions, rights, or restrictions.
- Assess rights and privacy issues at the appropriate level, most often at the collection- or series-level.
- Attempt to contact and get permission from the rights-holder, if there’s an identifiable rights-holder at that level.
- Document your processes, findings, and decisions and share them with your professional community.
Provide take down policies

- Adopt a liberal take-down policy, such as: "These digitized collections are accessible for purposes of education and research. We’ve indicated what we know about copyright and rights of privacy, publicity, or trademark. Due to the nature of archival collections, we are not always able to identify this information. We are eager to hear from any rights owners, so that we may obtain accurate information. Upon request, we’ll remove material from public view while we address a rights issue."
- Use an appropriate disclaimer at the institutional level

Work with donors

- Identify possible intellectual property issues and get relevant contact information.
- Ask donors to state any privacy concerns and identify sensitive materials that may be in the collection.
- Suggest that donors transfer copyright to the institution or license their works under a Creative Commons CC0 license.
- Include statements in your collecting policies and in your deeds of gift or transfer documents
"Supporting teaching and learning with access to library materials via digital technologies"
“Using selections from collection materials to publicise a library’s activities, or to create physical and virtual exhibitions”

“Digitizing to preserve at risk items”
“Creating digital collections of archival and special collections materials”

“Reproducing material for use by disabled students, faculty, staff, and other appropriate users”
“Maintaining the integrity of works deposited in institutional repositories”

“Creating databases to facilitate non consumptive research uses (including search)”
“Collecting material posted on the world wide web and making it available”

Special Case: published audiovisual works
Video at Risk Guidelines

1. When is a copy of a work "damaged, deteriorating, lost, or stolen"?
2. When is a format "obsolete"?
3. What constitutes a "replacement"?
4. Can replacement copies be digital?
5. Can replacement copies be circulated?
6. What qualifies as "reasonable effort"?
7. What qualifies as a "fair price"?
Remember:

Copyright affects creative works and also the actions that libraries can take.

Remember:

Use best practice guidelines to create policies – and follow them!
Resources:

Text of the law:
https://www.law.cornell.edu/uscode/text/17
Legal articles to share with your general counsel:
https://www.arl.org/resources/why-best-practices-in-fair-use-a-compendium-of-key-articles/
ACRL toolkit of copyright articles:
https://acrl.libguides.com/scholcomm/toolkit/copyright
General overview of digitization and copyright:
https://www.nedcc.org/preservation101/session-7/8fair-use-and-copyright
https://www.oclc.org/content/dam/research/activities/rights/practice.pdf
https://guides.lib.utexas.edu/copyrightlibrarians/welcome

Resources:

OCLC well intentioned practice guidelines:
https://www.oclc.org/content/dam/research/activities/rights/practice.pdf
ARL code of best practices for fair use:
University of Texas Copyright for Librarians:
https://guides.lib.utexas.edu/copyrightlibrarians/welcome
NYU Section 108 Guidelines
https://guides.nyu.edu/ld.php?content_id=24818036
Thank You!

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