

COPYRIGHT BASICS

Ardis Hanson

What is it?

Copyright, a form of intellectual property law, protects original works of authorship including literary, dramatic, musical, and artistic works such as poetry, novels, movies, songs, computer software, and architecture.

Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.

Copyright essentially is a "bundle" of rights. You, **as an author**, may or may not have the right to distribute copies of your work. It depends upon the contract you agree to when you publish in a journal or with a book publisher. Some publishers require you to distribute their authorised reprints of your article(s), others allow you to photocopy and provide a single copy to an individual upon request. Very few publishers allow the author to post their articles full-text, or even the abstract that accompanies your article that the journal has published. However, you can post bibliographic citations because the citation is considered "fact".

When is a work copyrighted?

A work is under copyright protection the moment it is created and fixed in a tangible form so that it is perceptible either directly or with the aid of a machine or device.

This means that many copyrighted materials may NOT have a copyright symbol © or statement on the work. However, these materials are still protected under copyright.

How long does copyright last?

The Sonny Bono Copyright Term Extension Act, signed into law on October 27, 1998, amends the provisions concerning duration of copyright protection. Effective immediately, the terms of copyright are generally extended for an additional 20 years. **See the end of this message for the extensions of copyright terms.

How much of someone else's work can I use without getting permission?

Under the fair use doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports.

What should I NOT do?

1. Don't include abstracts from any proprietary databases with bibliographies published in Institute training or workshop materials or other publications without the express written permission and acknowledgement from said proprietor of the database;
2. Don't include photocopies of articles or book chapters in Institute training or workshop materials without the express written permission and acknowledgement from said publisher or distributor.
3. Do not make "stockpiles" of other published works. Even though you or other members of your department may have written an article or book chapter, you do not have permission to "stockpile" copies.

4. There is no "educational use" permit that allows full-scale copying for non-credit generating courses or classes. I have a form letter that you can copy for use to obtain written permission.
5. If you want to include readings for your credit classes, see the library about using electronic or paper reserves.

Copyright protections are extended as follows:

- For works created **after January 1, 1978**, copyright protection will endure for the life of the author plus an additional 70 years. In the case of a joint work, the term lasts for 70 years after the last surviving author's death.
- For anonymous and pseudonymous works and works made for hire, the term will be 95 years from the year of first publication or 120 years from the year of creation, whichever expires first;
- **For works created but not published or registered before January 1, 1978**, the term endures for life of the author plus 70 years, but in no case will expire earlier than December 31, 2002. If the work is published before December 31, 2002, the term will not expire before December 31, 2047;
- **For pre-1978 works still in their original or renewal term of copyright**, the total term is extended to 95 years from the date that copyright was originally secured. More information is available in the Copyright Circular 15a. (<http://lcweb.loc.gov/copyright/circs/circ15a.pdf>)

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COPYRIGHT BASICS 2: EDUCATIONAL USE

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This message deals with the use of copyrighted materials in training or educational settings.

The law allows a teacher to make a single copy for *his or her own use* in preparing for a class or training.

So far, it's just like photocopying anything else for personal use. The problem arises when you need multiple copies for classroom or training use. The law (Section 107 of HR 2233) specifically states that

"multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by the teacher giving the course for classroom use or discussion provided that

- A. The copying meets the tests of brevity and spontaneity as defined below,
- B. Meets the cumulative effect test as defined below; and
- C. Each copy includes a notice of copyright."

Brevity is defined as a word count. Yes, dear reader, the law specifically states the maximum number of words you can legitimately copy depending upon type of work.

Spontaneity is defined as "the inspiration and decision to use the work and the amount of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to make a request for permission." In this day of faxes and email, that means you found the article less than three days before you were to teach that specific topic in that class. That does not mean the week before the class starts and you are creating the reading list.

It also does not mean that you can use the article again for next semester without first obtaining permission. The use of that article is a one shot deal because of "cumulative effect".

Cumulative effect limits the amount of copying of the material for that one course for that specific moment in time. It also limits the number of copies or excerpts from the same author or from a collective work (edited book) or periodical volume during the same class term.

That means you cannot

- use more than 10% of any book or periodical,
- make your own class compilations and distribute them to students,
- include abstracts from proprietary databases with your citations,
- copy workbooks, tests, test booklets or answer sheets, or other "consumable" materials.

Without written express permission from the publisher/copyright holder.

And the biggie:

"Copying shall not

- A. substitute for the direct purchase of books, publisher's reprints, or periodicals,
- B. be directed by a higher authority, or
- C. be repeated with respect to the same item by the same teacher from term to term."

This means **you** cannot copy for classroom or educational use in lieu of permission from the publishers and, most importantly, **you** cannot use the same materials for more than one session of one training event or from term to term. This also pertains to your own published articles. Remember from part 1: if you published via an academic and/or commercial publisher, you do not own mass distribution or reproduction rights.

About the Library and Copyright

We can help. The Copyright Act gives libraries specific rights to reproduce and distribute materials. For example, if you want to put materials together for your students in credit generating classes, please make use of the library and its ability to make these items available to your students. We can put most items on paper or electronic reserve without repercussions.

For training and workshop materials, please see us on a case-by-case basis. Some things we can help with, others may require discussion with the copyright holders. We have had good success in the past intervening with copyright holders.

Remember: the University and the Institute abides by the provisions of the Copyright Act of 1973 and as amended. Ask us how we can help get the materials you need or want to distribute so that you, your department, the Institute, and the University are protected.

As a final thought, each university and/or its academic unit that has been sued for copyright violation has lost. In three cases, the settlement was in favor of the publisher, at the high end of six figures to the left of the decimal point.

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COPYRIGHT 3: DISSEMINATION

Ardis Hanson

Redux

There are two major points to understand when talking copyright issues. The first is the difference between the author and the copyright holder. The author owns the intellectual copyright to the original concepts or content of the work, not necessarily the dissemination rights. Owing the copyright give exclusive rights to the copyright holder to reproduce, to publish, to authorise someone to publish or distribute, to prepare derivative works, to perform a work, or to display a work. Please note the term COPYRIGHT HOLDER. This does not necessarily mean the author of the work. Although the author owns the intellectual copyright to the original concepts or content of the work, the author may not have the reproduction or distribution rights to the work. This is an extremely important concept for anyone who writes and publishes as well as any group that disseminates information.

The second major point is that ALL WORKS are considered copyrighted once they are 'fixed' or 'perceptible' in a tangible medium, viewable via a machine or by sensory input. They do not have to have a copyright symbol or a copyright statement to be considered copyrighted. Also, contrary to popular belief, not all government documents or all parts of a government document are copyright-clear.

What this boils down to is that you, as an individual, may copy anything you like for your own individual research purposes, critical analysis, commentary, etc. However you cannot copy an entire journal, book, book chapter, or an article and put it anywhere for public use or send it out to an individual without express permission of the publisher.

WHAT ABOUT DISSEMINATION?

I have received a number of questions concerning dissemination of articles, book chapters, books, reports, manuals, etc., to requests by family members and other individuals outside the Institute. I also realize that many of the Institute grants have a dissemination component built into them.

However, no matter how hard one stretches the "dissemination" discussion in any grant, unless you are a **library**, you are not covered under copyright to distribute copies of articles, book chapters, or other materials covered under copyright without the express permission of the publisher for each item you wish to distribute - in either print or electronic format. This includes workshops, seminars, etc.

This is regardless of whether you are the author or if the original author of the article gives permission. The copyright holder decides if the author has permission to distribute and the scope of the distribution.

In addition, although USF faculty and staff have access to items in full-text online via the electronic journals and databases, it is against copyright to distribute these items to individuals inside or outside of USF unless you are a **library** engaging in inter-library loan.

If you want to disseminate pertinent articles, etc. to outside groups, please ask the library if we would be willing to work with you to fulfill these requests, track statistics for you on a regular basis, and establish a solution for you that is do-able within the bounds of the Copyright Act.

Finally, don't let the "commercial vs. non-commercial" purposes lull you into thinking you can copy and distribute since this is an academic institution. You cannot copy and distribute anything without written permission from the copyright holder (remember this does not necessarily mean the author). You need clearance from the copyright holder, who may be the first publisher of the work or, if that publisher is no longer in existence, the publisher or individual who holds the copyright for the entire work or a second or third copyright holder for that chart or graphic in the work that you want to use.

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