

Copyright Basics And Best Practices For University Faculty

Below you will find information on copyrights, as well as tips and tricks to help care for and protect your copyright.

Basics	Tips, Tricks And Self-Help
What Is A Copyright?	<p>As an incentive to promote the creation and use of inventive works and creative expression, the United States Constitution grants authors and other creators of work the right to control and protect work that they have created, and this right is called a “copyright.” Copyright is a bundle of rights that you <i>own</i>—it is not an <i>action</i> that you do. The moment you draw, write, or put something in a tangible medium, you have obtained automatic copyright in that work. No additional steps are required to obtain copyright. The United States is a member of the Berne Convention which recognizes copyright on creation throughout most countries in the world.</p>
What Can Be Copyrighted?	<p>In order for a work to be copyrightable, the work must be (1) <u>fixed in a tangible medium of expression</u>; and (2) <u>an original work of authorship</u>. A copyright protects:</p> <ul style="list-style-type: none"> • literary works (including computer software); • musical works (composition and lyrics); • dramatic works; • pantomimes and choreographic works; • pictorial, graphic, and sculptural works; • motion pictures and other audiovisual works; • sound recordings; and • architectural works.
What Can <u>Never</u> Be Copyrighted	<p>The following works can never be copyrighted:</p> <ul style="list-style-type: none"> • Ideas, procedures, methods, systems, and processes; • Titles, names, short phrases, and slogans; • Facts, news, and research; • Works in the public domain (See “How long does a copyright last” below); and • Works that are not fixed in a tangible medium of expression.
What Are A Copyright Holder’s Exclusive Rights?	<p>As an author of a work, you are given the following <u>five (5) exclusive rights</u>:</p> <ul style="list-style-type: none"> • (1) to make <u>copies</u> of your work; • (2) to <u>distribute</u> copies of your work; • (3) to <u>perform</u> your work publicly (such as for plays, film, dances or music); • (4) to <u>display</u> your work publicly (such as for artwork, or any material used on the Internet or T.V.); and • (5) to make “<u>derivative works</u>” (including making modifications, adaptations or other new uses of a work, or translating the work to another media).

<p>How Long Does A Copyright Last?</p>	<p>A copyright begins from the moment it is fixed in a tangible form and lasts for the life of the author + 70 years (a long time!). If the copyright author is an entity, the term is 95 years from first publication. Historically, copyright was shorter, required registration, and also use of a copyright notice on the work. So, if you are looking at older works (particularly before 1976), keep that in mind.</p>
<p>Who Owns The Copyright?</p>	<p>An author is someone who contributes copyrightable expression to a work, but it is important to note that “authorship” can take different forms. Below are the different ways authorship may arise:</p> <p>Employer/Employee relationship or “works made for hire”: Generally, copyrighted works created by an employee in the course of their employment will be owned by the employer who is also technically the “author” under copyright law. See ips.uoregon.edu or contact Innovation Partnership Services (IPS) at techtran@uoregon.edu if you have any questions about works created on your UO FTE or using UO resources that may fall under this definition under UO policy.</p> <p>Independent Contractor: Typically, where a person is an independent contractor, and there is no writing indicating who has ownership of the created work, the independent contractor will be the owner of the copyrighted work, subject to a few factors. Most purchase/personal service agreements though, have provisions that expressly assign copyright to the buyer (unless you negotiate otherwise).</p> <p>Joint Works: Where two or more authors combine efforts with the intent to create a joint work, both creators will have copyright ownership in and to the work, are free to use and license the entire work, but are accountable to each other for any profits from the work.</p> <p>Tip: Different factors may be considered in determining the author, therefore it is important to put who the author is and any other expectations with respect to the work <i>in writing</i>.</p>
<p>What Are The Benefits Of Federally Registering Your Copyright?</p>	<p>A copyright holder is not required to federally register their copyright, but it is strongly recommended for any major works you are publishing. Although a work gains copyright protection as soon as it is fixed in a tangible medium as an original work of authorship, owning an unregistered copyright is not helpful in the event someone copies/infringes your work. Federal registration will give additional benefits in the event someone copies/infringes your work, such as:</p> <ul style="list-style-type: none"> • Ability to bring your infringement suit in federal court; • Ability to recover statutory damages, compensatory damages, as well as attorney’s fees if you must bring a lawsuit; • Act as a deterrent in cease-and-desist letters; and • Ability to record registration with the U.S. Customs to protect against importation of infringing copies into the U.S. <p>Tip: Be sure to register your copyright within 90 days from publication so you can bring an action in federal court if necessary. You must federally register your work before the federal courts will hear your case, because you cannot pursue an infringer in local or state courts since copyright law is a federal matter.</p>
<p>Do I Need To Use The Symbol “©”?</p>	<p>A copyright holder is not required to use the © symbol, but it is encouraged because it acts as a form of notice to the public that the work is protected by copyright. Prior to 1976, copyright notice was required to not lose rights in the work. It is also helpful to provide your contact information directly after the notice.</p>

<p>How To Register My Copyright, And The Cost To Obtain A Copyright</p>	<p>Any of the authors of a work may register copyright on behalf of the authors as the copyright holder, or if the work was created as “work for hire” then the employer would register the work as the copyright holder. The UO, through IPS, registers the works created by UO employees that the university owns by UO policy. Before registering a work that was created on your UO FTE or using UO resources check with IPS to determine who owns that work under UO policy. <u>To register a copyright, a copyright holder goes to the United States Copyright Office website at Copyright.gov</u>, and continues to the link “Register a Copyright.” The copyright holder will be directed to register by creating an “Electronic Copyright Office” username and password. The following are <u>typical fees</u> that a copyright holder will pay in order to obtain federal registration in their copyright:</p> <ul style="list-style-type: none"> • <u>Standard Application</u>: \$55 • <u>Renewal Registrations</u>: \$100 • <u>Group Registrations</u>: \$25-\$85 (depending on the type of material being copyrighted).
<p>What Is Copyright Infringement</p>	<p>Copyright infringement occurs when anyone, without the permission of the copyright holder, <u>copies and/or violates the exclusive rights</u> given to a copyright holder. To <u>prove infringement</u>, a court must find that:</p> <ul style="list-style-type: none"> • (1) The work that allegedly was copied is “<u>substantially similar</u>” to the copyrighted work (no clear rules exist for what may constitute as “substantial similarity”); and • (2) The alleged infringer <u>had access to the copyrighted work</u>, (i.e. they actually saw or heard it). <p>Criminal and civil penalties can be imposed on copyright infringers.</p>
<p>Defenses To An Alleged Copyright Infringement (“Fair Use”)</p>	<p>The following are the most <u>common defenses to allegations of copyright infringement</u>:</p> <ul style="list-style-type: none"> • <u>Independent Creation</u>: The work at issue was created independently without any knowledge that another work existed. • <u>De Minimis Copying</u>: When an infringer admits to copying, but claims that the copying was small and insignificant, or “de minimis.” • <u>“Fair Use”</u>: Fair Use is one of the most common defenses to copyright infringement, and each of the following factors are considered when analyzing whether a use as been deemed fair, with no one factor being determinative: <ul style="list-style-type: none"> • (1) the purpose and character of your use; • (2) the nature of the copyrighted work; • (3) the amount and substantiality of the portion taken; and • (4) the effect of the use upon the potential market. <ul style="list-style-type: none"> ○ <u>Tip: Generally</u>, criticisms/commentaries, educational/classroom uses, and parodies are all categories that typically be deemed “Fair Use,” but note this is <i>generally</i>—there are other analyses that help determine whether it is deemed a “Fair Use” or not. See Columbia University’s “Fair Use Checklist” at https://copyright.columbia.edu/content/dam/copyright/Precedent%20Docs/fairusechecklist.pdf and Stanford University’s “Fair Use Evaluator” at http://librarycopyright.net/resources/fairuse/ ○ <u>Note</u>: Each court interprets the four factors of “Fair Use” differently, thus whether something is deemed “Fair Use” or not is <u>unpredictable</u>. • <u>Public Domain</u>: Public domain works are works that were once protected under copyright law, but due to the expiration of the copyright protection time period, have fallen into public domain and lost copyright protection. Public domain works can be freely used without payment to anyone (i.e. the song “Star Spangled Banner”).

Explicit Permission: Many works are now available for use through open licensing programs. Creative Commons is a very popular content licensing system, where authors of copyrighted work, by simply placing the applicable icon on their work, allow anyone to use their copyrighted work, so long as they agree to a few simple terms, typically disallowing the use of their work for commercial profit. The idea is to share and reuse creativity and knowledge through this “free” domain. Software is often made available under one of the licenses found at osi.org. These can be “donation” like in allowing for almost any use (e.g. BSD or MIT) or of “hereditary” form with an expectation of share-share alike if you use a work (e.g. GPL or Apache).

When Do I Need To Obtain Permission To Use Copyrighted Material?

There is no **bright-line rule for what constitutes a “Fair Use,”** therefore, when in doubt, if you wish to use a copyrighted work, it is best to simply obtain permission from the copyright holder.

TIPS

- The best form of protection for your work is a federal copyright.
- Federally register a work as soon as possible (contact IPS to register UO work).
- Assume everything you want to use is copyrighted, until you determine it is not.
- Determine who the copyright holder is.
- Obtain permission in writing to use any copyrighted material wherever a copyright is in place.
- If a copyright owner does not give *explicit* permission to use their work, then *do not use their work*, unless you have completed a fair use checklist or evaluator, determined in good faith that your proposed use meets the fair use test, and are willing to keep the completed checklist as a business record.

Resources For More Info:

U.S. Copyright Office website: <http://www.copyright.gov/>
Center For Copyright Information: <http://www.copyrightinformation.org/>
Copyright Basics: <http://www.copyrightkids.org/cbasicsframes.htm>