

Session eleven: Copyright, licensing, and intellectual property

INFO 7401 Archival Appraisal, Arrangement, and Access



Physical custody

Possession, care, and control, especially for security and preservation.

Often paired with legal custody, where intellectual property rights are decided in addition to physical custody rights.

Intellectual property

A type of property representing works of the mind governed by copyright, patent, and trademark law.

Copyright

(original works, such as art, literature, or other created work)

A legal right protecting the interests of creators or their assignees by granting them control over the reproduction, publication, adaptation, exhibition, or performance of their works in fixed media.

“To promote the Progress of Science and useful Arts,
by securing for limited Times to Authors and
Inventors the exclusive Right to their respective
Writings and Discoveries.”

Article I, Section 8 of the U.S. Constitution

What kinds of stuff are covered by the Copyright Act?

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural work

What are the prerequisites for a work to be protected by copyright?

1. The work or subject matter must fall within a category of material protected by the Copyright Act
2. Copyright must subsist in that particular work or subject matter, having regard to its:
 - a. originality,
 - b. authorship, and
 - c. fixity
3. Copyright must not have expired

Originality, not aesthetic merit, is the basis for copyright protection. Even banal images and writings are eligible for copyright protection, so long as they meet the threshold requirements.

Authorship refers to the source of the original copyrightable work.

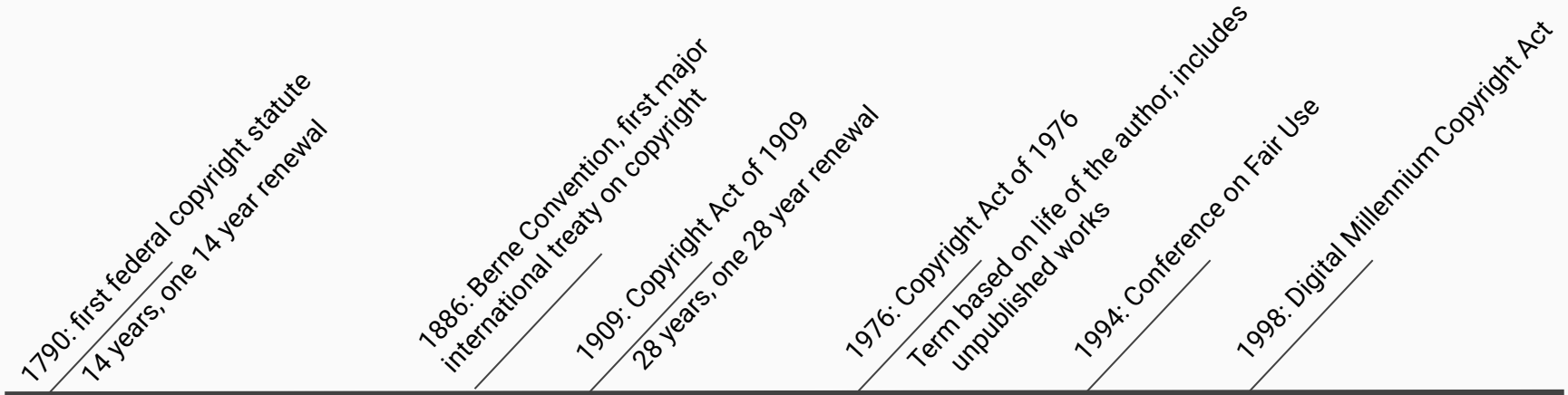
Fixity (or “Fixed in a tangible medium of expression”) means that that work was actually expressed (not just a thought/idea, but written down/produced in some manner).

How long does copyright last?

Copyright is a **limited right of fixed duration**.

Once copyright expires, works enter the public domain and may be dealt with without obtaining any copyright permissions.

US Copyright timeline



1790: Maps, charts,
books

1870: dramatic works, pantomimes, paintings, drawings,
and sculpture

1856: Dramatic
public performance

1891: US protection for foreign works

1912: Movies

1990: Architecture works

1865: Photographs
and negatives

1972: Sound recordings

Public domain

The realm of works that are unprotected by copyright or other intellectual property rights.

1. Unpublished (never published, never registered) works
2. Works first published in the United States
3. Works first published abroad
4. Sound recordings
5. Architectural works

Works Registered or First Published in the U.S.

Date of Publication ⁶	Conditions ⁷	Copyright Term ³
Before 1930	None	None. In the public domain due to copyright expiration
1930 through 1977	Published without a copyright notice	None. In the public domain due to failure to comply with required formalities
1978 to 1 March 1989	Published without notice, and without subsequent registration within 5 years	None. In the public domain due to failure to comply with required formalities
1978 to 1 March 1989	Published without notice, but with subsequent registration within 5 years	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
1930 through 1963	Published with notice but copyright was not renewed ⁸	None. In the public domain due to copyright expiration
1930 through 1963	Published with notice and the copyright was renewed ⁸	95 years after publication date
1964 through 1977	Published with notice	95 years after publication date

Never Published, Never Registered Works²

Type of Work	Copyright Term	In the public domain in the U.S. as of 1 January 2025 ³
Unpublished works	Life of the author + 70 years	Works from authors who died before 1955
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1905
Unpublished works when the death date of the author is not known ⁴	120 years from date of creation ⁵	Works created before 1905 ⁵

Who is the owner of copyright?

1. Who is the “author” or “maker” of a work?

2. What happens when there is more than one author?

3. Who owns copyright in material produced by employees, contractors, and volunteers?

4. How is copyright transferred to third parties?

What are the copyright owner's exclusive rights?

1. Reproduction

2. Preparation of derivative works (such as adaptations)

3. Distribution

4. Public performance (for literary, musical, dramatic, and choreographic works, pantomimes, motion pictures, and other audiovisuals)

5. Public display (for 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)

6. Public performance of sound recordings via digital audio transmission

Exemptions to exclusive rights:

Allows individuals to exercise one of the exclusive rights of copyright (reproduction, distribution, creation of derivative works)

- **without obtaining the permission** of the copyright owner, and
- **without the payment** of any license fee.

Fair Use

Section 107 of Copyright Act of 1976

A provision in copyright law that allows the limited use of copyrighted materials without permission of the rights holder for noncommercial teaching, research, scholarship, or news reporting purposes.

[Fair use checklist](#)

Reproduction by libraries and archives

Section 108 of Copyright Act of 1976

A provision in copyright law that allows for a library or archives to make a certain number of copies of a copyrighted work for preservation or access reasons.

1. the reproduction or distribution is made without any purpose of direct or indirect commercial advantage
2. the collections of the library or archives are open to the public or available not only to researchers affiliated with the library or archives, but also to other persons doing research in a specialized field
3. the reproduction or distribution of the work includes a notice of copyright.

Permissions

Licensor grants a third-party licensee a license to use a work.

Includes both physical and intellectual property rights.

Permissions are often tied to conditions of use, such as the requirement that any reproduction of material include the name of the repository.

License

Permission or right granted to an individual or organization to enter into a transaction, business, or occupation, or to take an action (allowing a non-copyright holder to use, publish, and/or make money from the copyrighted item).

Creative Commons

A type of license, built on copyright, that provides a standardized way for creators to give others the right to share and use their work.



Creative Common licenses

Copyright status: in copyright (CC) or public domain (0)

Attribution status: credit must be given to the creator (BY)



Adaptation status: no derivatives or adaptations of the work are permitted (ND) or adaptations must be shared under the same terms (SA)

Commercial status: only noncommercial uses of the work are permitted (NC)

What are the risks to digitized access efforts?

1. The copyright status of the work may be unclear
2. It may not be possible to identify all of the subsisting copyrights incorporated into one work
3. It may not be possible to locate copyright owners and secure permission
4. Works that are in the public domain in the United States may be protected by copyright in other countries
5. Individuals and groups may believe they have more rights in material than the law allows, and take umbrage when an institution digitizes the materia

What is the archivist's role in protecting copyright and intellectual property rights?

Open access

The principle that access to archival resources should not be restricted unnecessarily.

