

Copyright for Archivists: An Introduction

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Ten Things Every Archivist Needs to Know About Copyright

1. The **purpose** of copyright.
2. **Ownership** of copyright. Initial ownership is in the author or joint authors. (§ 201 a) Works Made for hire are owned by the employer if the work is within scope of the employee's responsibilities. (§ 201 b)
3. **Transfer** of ownership. Copyright may be transferred, but transfers should be recorded in writing. (§ 201 d and § 204). Transfers of ownership can be terminated according to specific conditions generally starting 35 years after the transfer (§ 203 and § 304 c).
4. What is **“copyrightable”**: “original works of authorship fixed in any tangible medium of expression,” including: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. (§ 102 a) Sound recordings made before 1972, not covered until 2067. (§301 c)
5. What is **not “copyrightable”**: ideas, procedures, processes, systems, method of operations, concepts, principles, or discoveries.” Patents, trademarks, and trade secrets are something different. (§ 102 b)
6. **Exclusive rights** conferred by copyright:
 - 1) to reproduce or make copies;
 - 2) to prepare derivative works based upon the copyrighted work;
 - 3) to distribute copies by sale, rental, lease, or lending;
 - 4) to perform the copyrighted work publicly (for literary, musical, dramatic, choreographic, pantomimes, and motion pictures and other audiovisual works);
 - 5) to display the copyrighted work publicly (for literary, musical, dramatic, choreographic works, pantomimes, pictorial, graphic, or sculptural works); and
 - 6) to perform the copyrighted work publicly by means of a digital audio transmission (for sound recordings). (§106)
7. **Limits on the exclusive rights** of copyright (§ 107 Fair Use). It is not an infringement on the rights of the copyright holder to use the work for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. To determine whether a use is “fair,” the courts consider:
 - 1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - 2) the nature of the copyrighted work [unpublished nature is not a *per se* reason to find against fair use];
 - 3) the amount and substantiality of the portion used; and
 - 4) the effect of the use upon the potential market for or value of the copyrighted work.

Fair use is an "equitable rule of reason," for which "no generally applicable definition is possible." The four factors should not "be treated in isolation, one from the other. All are to be explored, and the results weighed together, in light of the purposes of copyright." (*Campbell v. Acuff-Rose Music*, 510 U.S. at 578.)
8. **Limits on the exclusive rights** of copyright: (§ 108 Library and Archives Copying). Libraries and archives whose collections are open to the public may make copies of copyrighted works provided that it is not for commercial advantage and that the copy carries a notice.
§ 108 rights apply to specific kinds of copying:
 - 3 copies for preservation purposes (but digital copies not allowed outside the library or archives);
 - reference/interlibrary loan copies if the copies become the property of the user;
 - for published works in last 20 years of their term, preservation copying and distribution, including digitally, provided the works are not subject to “commercial exploitation.”

Important limits on § 108 exemptions:

- ❑ not allowed if reason to believe that copying is a concerted attempt to make multiples of the same work.
 - ❑ do not apply to musical, pictorial, graphic or sculptural works, or motion pictures or other audiovisual works (except for preservation copying and for user copies of audiovisual works dealing with news; pictorial works published as illustrations in works being distributed according to reference users).
9. **Term** of copyright: generally life of the author plus 70 years, or in case of works-for-hire, 95 years from publication or 120 years from creation. Any work published before 1978 is subject to different terms, see Peter Hirtle's chart: http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm
10. **All copyright questions** can be reduced to two answers.

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- WATCH, Writers, Artists, and Their Copyright Holders*. <http://tyler.hrc.utexas.edu/> [A searchable database for the holders and addresses for permission requests for prominent authors.]

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