

# Copyright 101: Everything You Wanted to Know About Copyright But Were Afraid To Ask

## International Copyright: How Does It Work?

Janice T. Pilch  
University of Illinois at Urbana-Champaign

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### Abstract

The rise in institutional participation in digital initiatives and the current emphasis on mass digitization as a means of ensuring global availability of information have placed librarians at the forefront of the debate on copyright, and created for them new responsibilities for managing digital projects effectively. These responsibilities include knowledge of copyright for works created and published in the U.S. as well as works originating in other countries. This presentation covers the structure of the international intellectual property regime, intellectual property treaties and conventions, the role of international treaties and the role of U.S. law, copyright duration, copyright restoration under the Berne Convention and the TRIPS Agreement, the role of international reproductive rights organizations, and the process for seeking permissions from foreign authors.

### International copyright law

- Not a defined body of law
- Operates on basis of relations between nations
  - Country of origin
  - Protecting country
- Operates on principles of:
  - Territoriality
  - National treatment
  - Minimum protection

### International treaties, conventions, and agreements

- Berne Convention for the Protection of Literary and Artistic Works
  - 160 nations
  - U.S. joined in 1989
- Other multilateral conventions and agreements
  - Universal Copyright Convention (Berne has priority if nations belong to both)
  - TRIPS Agreement
  - WIPO Copyright Treaty
  - WIPO Performances and Phonograms Treaty
- Bilateral treaties
- U.S. law governs use within U.S. of eligible foreign works
  - Whether a work is copyrighted in U.S.
  - Copyright term
  - How a work may be used
- Law of country of origin generally determines copyright ownership

### U.S. law

- Copyright Act of 1976 (17 United States Code)
  - Took effect on January 1, 1978
  - Has been amended numerous times
  - <http://www.copyright.gov/title17>
- Requirements for copyright protection in U.S.
  - Originality
  - Fixation in tangible medium of expression
  - Minimal creativity
- What is protected in U.S.
  - 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 works
- What is not protected in U.S.
  - Facts, ideas, procedures, processes, systems, methods of operation, concepts, principles, discoveries
  - U.S. government works
  - Works in public domain
- Who owns copyright
  - Authors (initial authorship)
  - Employers for works made for hire OR employees, as defined by law of country of origin
  - Assignees (not licensees)
- Exclusive rights of copyright holders
  - Right of reproduction [Section 106(1)]

- Preparing a derivative work [Section 106(2)]
- Right of public distribution [Section 106(3)]
- Public performance [Section 106(4)]
- Public display [Section 106(5)]
- Public performance by means of a digital audio transmission [Section 106(6)]
- Limitations and exceptions to exclusive rights
  - Section 107 (Fair use)
  - Section 108 (Limited rights for libraries and archives to reproduce and distribute works)
  - Section 109 (First sale doctrine)
  - Section 110 (Performance and display of works for classroom use)
  - Section 112

### **How foreign works can be copyrighted in U.S.**

- If eligible foreign work was published with notice/registered/renewed in U.S. Copyright Office to fulfill formalities required at the time of creation/publication
- If work was created/published after U.S. first established copyright relations with country of origin and is still copyrighted in U.S.
- If work was created/published at any time and copyright was restored under terms of TRIPS Agreement and Article 18 of Berne Convention

### **Copyright duration in foreign works of Berne member nations**

- If published before 1923, in public domain
- If published from 1923-1977, 95 years from date of publication
- If created, but not published, before 1978, life + 70 years or 12/31/2002, whichever is greater
- If created before 1978 and published between 1978 and 12/31/2002, life + 70 years or 12/31/2047, whichever is greater
- If created from 1978-, life + 70 years (for works of corporate authorship, works for hire, anonymous and pseudonymous works, the shorter of 95 years from publication or 120 years from creation)

- See charts by:

--Laura Gasaway

<http://www.unc.edu/~unc1ng/public-d.htm>

--Peter Hirtle

[http://www.copyright.cornell.edu/training/Hirtle\\_Public\\_Domain.htm](http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm)

### **What foreign works are in the public domain in the U.S.?**

- Expired
- No copyright protection available-- [foreign government documents and folk works are gray areas]
- Dedication (owner has offered the work to the public domain)

### **Essential facts for copyright assessment**

- Nature of work
- Is the work published or unpublished
- Who is/are the author/s
- Nationality of author, date of author's death, other relevant facts about author's life
- Is the work anonymous/pseudonymous
- Country of origin
  - For published works, country where the work was first published
  - For unpublished works, country of nationality or habitual residence of the author
- Date of creation or first publication
- Whether work is first or later edition
- Whether work was first published in journal, newspaper, etc.
- Whether work was published posthumously
- Whether work was simultaneously published in another country
- Whether work is a "work for hire"

### **Copyright restoration in a nutshell**

- Consider date on which TRIPS Agreement became effective for U.S. with respect to copyright for eligible foreign works. This is January 1, 1996 or the earlier of the dates after January 1, 1996 that the other nation joined Berne, entered WTO, signed the 1996 WIPO Copyright Treaty, signed the 1996 WIPO Performances and Phonograms Treaty (for sound recordings), or was granted restoration by presidential proclamation.
- Works that have not fallen into the public domain in the country of origin "through the expiry of the term of protection" on that date were restored in U.S. and are protected for the full U.S. term.
- Works not protected in the country of origin on that date were not restored in U.S.
- Works created or published after that date are protected in the U.S. for the full U.S. term.

### **Seeking copyright permissions**

1. Identify copyright holder
  - Use copyright notice as a starting point
  - Use any entity associated with author to track copyright holder
  - Copyright holder might be author/multiple authors, publisher, heir or assignee/multiple heirs or assignees
  - Ownership of physical work (book, painting) does not mean ownership of copyright (by library, museum)
2. Contact copyright holder
  - Contact a collective rights agency/collective licensing agency to negotiate

permissions on behalf of copyright holder, if one exists in country of origin that handles individual permissions  
(See website of International Federation of Reproduction Rights Organizations:  
<http://www.ifrro.org/show.aspx?pageid=home>)

--or-

- Contact copyright holder directly
- 3. Draft permissions letter
  - Include as much information as possible on planned use (what, where, when, why, how, how much)
  - Relate the use to exclusive rights of copyright holders in U.S. law
- 4. Negotiate permissions agreement, possibly involving fee
- 5. Obtain signed permissions agreement

### **Additional Resources**

#### **Books:**

- Kenneth D. Crews, *Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions*, 2d ed. (Chicago: American Library Association, 2006)
- Stephen Fishman, *The Copyright Handbook: How to Protect and Use Written Works*, 8th ed. (Berkeley, Calif.: Nolo, 2004)
- Paul Goldstein, *International Copyright* (Oxford: Oxford University Press, 2001)
- Delia Lipszyc, *Copyright and Neighboring Rights* (Paris: Unesco, 1999)
- Carrie Russell, *Complete Copyright: An Everyday Guide for Librarians* (Chicago: American Library Association, 2004)
- J.A.L. Sterling, *World Copyright Law: Protection of Authors' Works, Performances, Phonograms, Films, Video, Broadcasts and Published Editions in National, International and Regional Law* (London: Sweet & Maxwell, 1998)

#### **Websites:**

- U.S. Copyright Office: <http://www.copyright.gov/>
  - Circular 38a: International Copyright Relations of the United States
  - Circular 38b: Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA)
- Unesco website on copyright, including database of national copyright laws:  
[http://portal.unesco.org/culture/en/ev.php-URL\\_ID=12313&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=12313&URL_DO=DO_TOPIC&URL_SECTION=201.html)
- World Intellectual Property Organization (WIPO):  
<http://www.wipo.int/portal/index.html.en>
- WIPO Collection of Laws for Electronic Access:  
[http://www.wipo.int/clea/en/index\\_netscape.jsp](http://www.wipo.int/clea/en/index_netscape.jsp)
- World Trade Organization website, section on intellectual property:  
[http://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/trips_e.htm)