



American Association of School Librarians
12th National Conference and Exhibition
October 6-9, 2005
Pittsburgh, Pennsylvania

AASL PRECONFERENCE: Copyright in the Digital Age

Carrie Russell

Thursday, October 6, 2005
9:00 A.M.-12:00 P.M.
David L. Lawrence Convention Center
Room 319/320

CHECKLIST FOR FAIR USE

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project

Name: _____ Date: _____ Project: _____

Institution: _____ Prepared by: _____

PURPOSE

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- News reporting
- Transformative or Productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

Opposing Fair Use

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

NATURE

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

AMOUNT

Favoring Fair Use

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to work or "heart of the work"

EFFECT

Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

Opposing Fair Use

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on Web or in other public forum
- Repeated or long-term use

Copyright Term and the Public Domain in the United States

1 January 2005

UNPUBLISHED WORKS

<i>Type of Work</i>	<i>Copyright Term</i>	<i>What was in the public domain in the U.S. as of 1 January 2005²</i>
Unpublished works	Life of the author + 70 years	Works from authors who died before 1935.
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1885.
Unpublished works created before 1978 that were published after 1977 but before 2003	Life of the author + 70 years or 31 December 2047, whichever is greater	Nothing. The soonest the works can enter the public domain is 1 January 2048
Unpublished works created before 1978 that were published after 31 December 2002	Life of the author + 70 years	Works of authors who died before 1935.
Unpublished works when the death date of the author is not known ³	120 years from date of creation ⁴	Works created before 1885. ⁴

WORKS PUBLISHED IN THE US

<i>Date of Publication⁵</i>	<i>Conditions⁶</i>	<i>Copyright Term²</i>
Before 1923	None	In the public domain
1923 through 1977	Published without a copyright notice	In the public domain
1978 to 1 March 1989	Published without notice, and without subsequent registration	In the public domain
1978 to 1 March 1989	Published without notice, but with subsequent registration	70 years after the death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²
1923 through 1963	Published with notice but copyright was not renewed ⁷	In the public domain
1923 through 1963	Published with notice and the copyright was renewed ⁷	95 years after publication date ²
1964 through 1977	Published with notice	95 years after publication date ²
1978 to 1 March 1989	Published with notice	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²
After 1 March 1989	None	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²

WORKS PUBLISHED OUTSIDE THE US⁹

<i>Date of Publication</i>	<i>Conditions</i>	<i>Copyright Term in the United States</i>
Before 1 July 1909	None	In the public domain
<i>Works Published Abroad Before 1978 in Compliance with US Formalities⁸</i>		
1 July 1909 through 1922	Published in compliance with US formalities	In the public domain
1923 through 1977	Published with notice, and still in copyright in its home country as of 1 January 1996	95 years after publication date ⁹
<i>Works Published Abroad Before 1978 Without Compliance with US Formalities¹⁰</i>		
1 July 1909 through 1922	Published in a language other than English and without subsequent republication with a copyright notice	In the 9 th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be in the public domain ¹¹
1923 through 1977	In the public domain in its home country as of 1 January 1996	In the public domain
1923 through 1977	Published in a language other than English, without subsequent republication with a copyright notice, and not in the public domain in its home country as of 1 January 1996	In the 9 th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be 95 years after publication date ¹¹
1923 through 1977	Published in English, without subsequent republication with a copyright notice, and not in the public domain in its home country as of 1 January 1996	95 years after publication date ⁹
<i>Works Published Abroad After 1 January 1978</i>		
After 1 January 1978	Copyright in the work in its home country has not expired by 1 January 1996	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation
<i>Special Cases</i>		
After 1 July 1909	Created by a resident of Afghanistan, Bhutan, Ethiopia, Iran, Iraq, Nepal, San Marino, and possibly Yemen, and published in one of these countries ¹²	Not protected by US copyright law because they are not party to international copyright agreements
After 1 July 1909	Works whose copyright was once owned or administered by the Alien Property Custodian, and whose copyright, if restored, would as of January 1, 1996, be owned by a government ¹³	Not protected by US copyright law

¹ This chart was first published in published in Peter B. Hirtle, "Recent Changes To The Copyright Law: Copyright Term Extension," *Archival Outlook*, January/February 1999. This version is current as of 1 January 2005. The most recent version is found at http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm.

The chart is based in part on Laura N. Gasaway's chart, "When Works Pass Into the Public Domain," at <http://www.unc.edu/~unclng/public-d.htm>, and similar charts found in Marie C. Malaro, *A Legal Primer On Managing Museum Collections* (Washington, D.C.: Smithsonian Institution Press, 1998): 155-156. A useful copyright duration chart by Mary Minow, organized by year, is found at <http://www.librarylaw.com/DigitizationTable.htm>. A "flow chart" for copyright duration is found at http://www.bromsun.com/practice/copyrights/copyright_durations.html. See also Library of Congress Copyright Office. Circular 15a, *Duration of Copyright: Provisions of the Law Dealing with the Length of Copyright Protection* (Washington, D.C.: Library of Congress, 2004) <http://www.copyright.gov/circs/circ15a.pdf>.

² All terms of copyright run through the end of the calendar year in which they would otherwise expire, so a work enters the public domain on the first of the year following the expiration of its copyright term. For example, a book published on 15 March 1923 will enter the public domain on 1 January 2019, not 16 March 2018 (1923+95=2018).

³ Unpublished works when the death date of the author is not known may still be copyrighted, but certification from the Copyright Office that it has no record to indicate whether the person is living or died less than 70 years before is a complete defense to any action for infringement. See [17 U.S.C. § 302\(e\)](#).

⁴ Presumption as to the author's death requires a certified report from the Copyright Office that its records disclose nothing to indicate that the author of the work is living or died less than seventy years before.

⁵ "Publication" was not explicitly defined in the Copyright Law before 1976, but the 1909 Act indirectly indicated that publication was when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority."

⁶ Not all published works are copyrighted. Works prepared by an officer or employee of the United States Government as part of that person's official duties receive no copyright protection in the US. For much of the twentieth century, certain formalities had to followed to secure copyright protection. For example, some books had to be printed in the United States to receive copyright protection, and failure to deposit copies of works with the Register of Copyright could result in the loss of copyright. The requirements that copies include a formal notice of copyright and that the copyright be renewed after twenty eight years were the most common conditions, and are specified in the chart.

⁷ A 1961 Copyright Office study found that fewer than 15% of all registered copyrights were renewed. For books, the figure was even lower: 7%. See Barbara Ringer, "Study No. 31: Renewal of Copyright" (1960), reprinted in Library of Congress Copyright Office. *Copyright law revision: Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, United States Senate, Eighty-sixth Congress, first [-second] session*. (Washington: U. S. Govt. Print. Off, 1961), p. 220. A good guide to investigating the copyright and renewal status of published work is Samuel Demas and Jennie L. Brogdon, "Determining Copyright Status for Preservation and Access: Defining Reasonable Effort," *Library Resources and Technical Services* 41:4 (October, 1997): 323-334. See also Library of Congress Copyright Office, [How to investigate the copyright status of a work. Circular 22](#). [Washington, D.C.: Library of Congress, Copyright Office, 2004]. The Online Books Page FAQ, especially "[How Can I Tell Whether a Book Can Go Online?](#)" and "[How Can I Tell Whether a Copyright Was Renewed?](#)", is also very helpful.

⁸ The following section on foreign publications draws extensively on Stephen Fishman, *The Public Domain: How to Find Copyright-free Writings, Music, Art & More*. (Berkeley: Nolo.com, 2004). It applies to works first published abroad and not subsequently published in the US within 30 days of the original foreign publication. Works that were simultaneously published abroad and in the US are treated as if they are American publications.

⁹ Foreign works published after 1923 are likely to be still under copyright in the US because of the Uruguay Round Agreements Act (URAA) modifying the General Agreement on Tariffs and Trade (GATT). The URAA restored copyright in foreign works that as of 1 January 1996 had fallen into the public domain in the US because of a failure to comply with US formalities. One of the authors of the work had to be a non-US citizen or resident, the work could not have been published in the US within 30 days after its publication abroad, and the work needed to still be in copyright in the country of publication. Such works have a copyright term equivalent to that of an American work that had followed all of the formalities. For more information, see Library of Congress Copyright Office, [Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act \(URAA\). Circular 38b](#). [Washington, D.C.: Library of Congress, Copyright Office, 2004].

¹⁰ US formalities include the requirement that a formal notice of copyright be included in the work; registration, renewal, and deposit of copies in the Copyright Office; and the manufacture of the work in the US.

¹¹ The differing dates is a product of the question of controversial [Twin Books v. Walt Disney Co.](#) decision by the 9th Circuit Court of Appeals in 1996. The question at issue is the copyright status of a work only published in a foreign language outside of the United States and without a copyright notice. It had long been assumed that failure to comply with US formalities placed these works in the public domain in the US and, as such, were subject to copyright restoration under URAA (see note 9). The court in *Twin Books*, however, concluded "publication without a copyright notice in a foreign country did not put the work in the public domain in the United States." According to the court, these foreign publications were in effect "unpublished" in the US, and hence have the same copyright term as unpublished works. The decision has been harshly criticized in *Nimmer on Copyright*, the leading treatise on copyright, as being incompatible with previous decisions and the intent of Congress when it restored foreign copyrights. The Copyright Office as well ignores the *Twin Books* decision in its circular on restored copyrights. Nevertheless, the decision is currently applicable in all of the 9th Judicial Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and Guam and the Northern Mariana Islands), and it may apply in the rest of the country.

¹² See Library of Congress Copyright Office, [International Copyright Relations of the United States. Circular 38a](#). [Washington, D.C.: Library of Congress, Copyright Office, 2004].

¹³ See 63 Fed. Reg.19,287 (1998), Library of Congress Copyright Office, [Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office](#).



© 2004 Peter B. Hirtle. Use of this chart is governed by the Creative Commons [Attribution-NonCommercial License](#). In addition, permission is granted for non-profit educational use, including but not limited to reserves and coursepacks made by for-profit copyshops.

[Cornell Copyright Information Center](http://www.copyright.cornell.edu/) <<http://www.copyright.cornell.edu/>>

FLOWCHART FOR DETERMINING WHEN U.S. COPYRIGHTS IN FIXED¹ WORKS EXPIRE

