Researching the public domain, open access, and copyright

What you need to know to get started

John Mark Ockerbloom
Robert Terrell
University of Pennsylvania Open Access Week
October 22, 2015
Why can’t we copy and distribute whatever we want?

Copyright
Contract

Misappropriation
Trademark
Defamation
Patent
Copyright Basics

Copyright protects the form of expression, not ideas or facts.

Subject matter:

- Literary works
- Musical works
- Dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works
What is copyrighted?

Requirements

Original authorship
  - not copied
  - capable of being expressed in a number of ways
  - minimal creativity

Fixed in a tangible medium of expression
Copyright owner’s exclusive rights

- Reproduce the copyrighted work
- Adapt (make derivative works)
- Distribute copies
- Publicly perform
- Publicly display
- Publicly perform sound recordings by digital audio transmission
Current Terms of Protection

Works of individuals
   Life of author(s) + 70 years (works created after 1977)

Corporate works
   Shorter of 120 years from creation or 95 years from publication

But there are lots of special rules and exceptions
   (and older works tend to have different terms)
When can you copy and reuse expressive work?

• **When it’s in the public domain**
  – Not just really old material, as we’ll see
  – But make sure you’re not under contract restriction

• **When you own the rights to the material**

• **When it’s available under an open license**
  – (but check details of what license allows)

• **When you’ve obtained permission for your use**

• **When the law specifically allows your use**

• **When your use is “fair use”**
  – A judgment call based on 4 specific factors
Find millions of public domain works

Your search: (no search performed)
Limited to: (No limits applied)

Limit your search...

- Access
  - At the library (3,917,674)
  - Online (3,802,673)

Format


Author/Creator: United States. Cong
Series: LexisNexis U.S. Se
When is a work now in public domain?

• When the copyright was secured before 1923
• When a work did not meet required formalities
  – Unrenewed copyrights prior to 1964
  – Publications without © notice prior to 1989
  – BUT: Many non-US works exempt from formalities
• When it was created by the federal government (& sometimes other governments)
• When it was not published by 2003, and would not be copyrighted under current terms
  (Any one of the above suffices)
Copyrights secured before 1923 have expired

- Generally speaking, this covers anything published before 1923
- Some post-1923 publications might only have pre-1923 copyrights
  - Check copyright notice
Works with unrenewed copyrights

• Copyrights prior to 1978 came up for renewal in their 28\textsuperscript{th} year
• If no one renewed pre-1964 copyrights, they expired (exception: exempt foreign works)
• If no one renewed 1964-1977 copyrights, they automatically renewed on behalf of the author(s), or their heirs
• Post-1977 copyrights: single term (no renewal)
• More details:
Unrenewed: Many books, nearly all published images, most articles...

The New England Journal of Medicine

Copyright, 1949, by the Massachusetts Medical Society

Volume 241           JULY 7, 1949            Number 1

ACUTE APPENDICITIS COMPlicATING THE ACUTE INFECTIOUS DISEASES OF CHILDHOOD

Knowles B. Lawrence, M.D.,† and George W. Waring, Jr., M.D.‡

BOSTON

A CUTE appendicitis in children displays certain features in its pathology, clinical course, diagnosis and treatment, which vary considerably from those of the disease in adults. The development of appendicitis during the course of one of the acute infectious diseases or in a child exposed to them further complicates the problem. In 61 of these the appendix was perforated, and some degree of peritonitis existed. Although sufficient evidence of localization to warrant the use of the term "abscess" was noted in 17 cases, we have found this an unsatisfactory classification because in children appendiceal peritonitis tends to localize
How to research copyright renewals

The Online Books Page

COPYRIGHT REGISTRATION AND RENEWAL RECORDS

Look up records by year

<table>
<thead>
<tr>
<th>Database</th>
<th>1978–present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catalogue of title entries</td>
<td>1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1891 1892 1893 1894 1895 1896 1897 1898 1899</td>
</tr>
</tbody>
</table>

http://onlinebooks.library.upenn.edu/cce/
Caveat: Works that include or derive from works still in copyright
Works without copyright notices

• Before March 1989, publications had to have a notice to be copyrighted (exception: exempt foreign works)

• Notice: “Copyright” (or “Copr.” or “©”), year, claimant (e.g. “© 2015 John Mark Ockerbloom”)

• (Note: From 1978 to 1989, inadvertent omissions could be corrected in a certain time interval)

• More info:
  – http://www.copyright.gov/circs/circ03.pdf
Without notice: Many pamphlets, “gray literature”, ephemera...

Ideas for Individuals

Issue #10. The zine of Illuminated Anarchism, incorporating Tlaloc Grinned, H.M., S.H., The Universal Instructor in All Arts and Sciences and Pennsylvania Gazette, The Scene, and all other perished predecessor periodicals published by this person. A Green & Pleasant publication by Robert Shea, P.O. Box 319, Glencoe, Illinois 60022.

Send letter of comment, get the next issue free. Will trade for your publication. Also available at $2 per issue, $10.
Caveat: Many works created abroad exempt from formalities

• 1990s trade agreement returned them to ©!

• Exemption conditions (all must be true):
  – Author citizen or resident of other country
  – Work was still in copyright in “home” country at time agreement went into force (usually 1996)
  – Work first published there, & not in US for at least 30 days afterwards (but distribution counts)

• Exempt works get full term as if published with normal notice, registration, renewal....
Some foreign works were published here in time to avoid exemption.
How to research whether a work was subject to formalities

• Library has lots of biographical material on authors (and sometimes detailed bibliographic information as well)

• WorldCat (available through library) has information on US and foreign editions of works

• Copyright terms can be found online
  – [http://onlinebooks.library.upenn.edu/okbooks.html](http://onlinebooks.library.upenn.edu/okbooks.html)
  – (If unsure about a country’s terms, assume life+70 years)
Government works

• Works created by US federal government not subject to (US) copyright
  – Created by govt employees as part of their job
  – Sometimes agencies will claim copyright abroad
  – Govts sometimes publish things they didn’t create

• Works by other govts might or might not be
  – Courts have said state laws not copyrightable
  – Foreign government works: depends on country
Govt public domain: Laws, official reports, hearings, studies, websites...
Unpublished works

• Until recently, unpublished works had “common law copyright” that never expired
• More recently, they have been current copyright terms (e.g. life+70 years)
  – Applies to works never published or formally copyrighted before 2003
    • (so as of 2015, authors who died before 1945)
  – Works first published 1978-2003 remain in copyright until at least 2048
We have lots of unpublished works
Caveat: Access to some public domain sources may be subject to contract

Terms and Conditions of Use

1. Welcome to JSTOR.

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Caveat: Some HathiTrust material is open access but not public domain
More info: See Fishman’s “The Public Domain”, and other library resources

public domain: how to find & use copyright-free writings, music, art & more / by Stephen Fishman.

Author/Creator: Fishman, Stephen.
Edition: 3rd ed.
Format/Description: Book
538, l/17 p. : ill., maps, music ; 23 cm.
Subjects: Public domain (Copyright law) -- United States.
Contents: Introduction to the public domain
The use and abuse of copyright
Writings
Fair Use – Section 107

“Notwithstanding the provisions of section 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”
What’s fair? – the 4 factors

“In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include-”

- the purpose and character of the use
- the nature of the work
- the amount used
- the effect upon the market for the work
Takeaways

• You can freely reuse a lot of material without having to get permission
  – If you can determine it’s in the public domain
  – Or if it’s copyrighted, but fair use or other exemption applies to your intended use

• Penn Libraries have lots of public domain material

• Penn librarians can help you research public domain status, answer copyright & reuse q’s

• More info:
  – http://guides.library.upenn.edu/copyright