



Copyright Primer

All of us create and consume copyrighted material every day, whether it's the music we listen to, the blog posts we write, or the books we read.

Copyrights are a form of intellectual property. Like patents, trademarks, and know-how, copyrights can be licensed, sold, donated, and abandoned. Copyrights themselves are intangible; even though the works they protect are usually items you can see or touch with your hand. See the IP Policy and contact UNHInnovation for details on how UNH manages copyrights created at the university.

Constitutional Basis for Copyright

The Congress shall have Power...to promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

U.S. CONST. art. I, §8, cl. 8.

Subject Matter

Many things are protectable by copyright, including literary works, music (and its lyrics), movies and plays (and their music and even choreography and blocking), pictures, graphic designs, sculptures, architectural works, and software. The substantive requirements for copyright protection are minimal, so long as there is some level of creativity and originality. Thus, compilations and derivatives of a copyrighted work are also protectable by copyright.¹

Copyright protection is not extended to ideas, concepts, principles, and discoveries; neither does copyright protect procedures, processes, systems, or methods of operation.² Additionally, names, titles, and domain names are prohibited from copyright protection. For more information on other types of intellectual property protection that may apply to these non-copyrightable items, such as patents and trademarks, please contact UNHInnovation.

Ownership

Copyrights initially vest in the Author³ unless certain agreements exist, and copyrights are the Author's to utilize, enforce, or transfer.

¹ 17 U.S.C. §§ 102(a) and 103.

² 17 U.S.C. § 102(b).

³ 17 U.S.C. §§ 102(a) and 201(a).



Copyright protection exists as soon as the Author fixes her work in a tangible medium; this could be on canvas or paper, or electronically to a flash drive or hard drive. If the Author wishes to transfer her copyright, she must do so in writing.⁴ Note that conveying ownership of the work does not convey ownership of the copyright. This means that if a painter sells her original painting, she still owns the copyright and all the exclusive rights associated with copyright ownership. The purchaser, absent a license or written conveyance of the copyright, owns only the painting and cannot make reproductions of it or derivative works. For example, a photograph of a painting is a derivative work, and the painter could hold the photographer liable for infringement.

Registration of the work with the [U.S. Copyright Office](#) is not necessary for copyright protection, but it is required to file a lawsuit for copyright infringement.

Notice

Putting notice of copyright protection on your work is recommended, but not required under current copyright law. Three elements are necessary for proper notice:

- The term **Copyright**, the abbreviation **Copr.**, or the symbol ©;
- The year of publication; and
- The author's name(s).

Example:

© 2013 Jane Doe.

Aside from putting the public on notice that the work is copyrighted, using a copyright notice is also a good way for the Author to increase the opportunity and value of her name recognition. An easy way to do this is to place the copyright notice in the footer of your document or presentation.

Rights Conferred by Copyright

Upon creation, the copyright owner has a bundle of exclusive rights:

1. Reproduction right: the exclusive right to make copies;
2. Adaption right: otherwise known as the right to make or allow others to make derivative works of your copyright into other works or new works;
3. Public distribution right: the exclusive right to distribute copies of the work to the public;
4. Public performance right: the exclusive right to perform the work in public; and
5. Public display right: the exclusive right to display copies of the work to the public.⁵

⁴ 17 U.S.C. § 204(a).

⁵ 17 U.S.C. § 106.



Note that these different and exclusive rights are severable. The Author has the ability to grant one person permission to make copies; may grant another permission to make derivative works; and may grant permission to a third person to publicly perform the work. Contact UNHInnovation to find out more about granting and receiving copyright permissions.

Copyright Limits and Fair Use

Certain performances and displays are permitted under the Copyright Act. For instance, performance or display by instructors during face-to-face teaching in classrooms or distance education classes is allowed (unless the instructor is displaying an illegal copy).⁶ In 2002, Congress passed the TEACH Act, which allows for qualified educators teaching in qualified distance education programs to disseminate portions of copyrighted material in much the same way they are permitted to do in face-to-face teaching environments. This exception does not apply to printed material. Contact UNHInnovation when planning to use copyrighted material in your class to help ensure compliance with copyright law.

What is Fair Use?

FAIR USE IS A LEGAL DEFENSE, NOT A FREE PASS.

You may be able to use the copyrighted work of another if the use is considered Fair Use.⁷ Determining whether it is fair to use copyrighted content depends on four complex factors, reviewed in a judicial proceeding:

1. The infringer's purpose behind using the copyrighted work;
2. The nature of the copyrighted work;
3. The amount and substantiality of the work the infringer used; and
4. The effect the infringing use has on the market.

Fair Use is a legal determination made in a courtroom. Consult with UNHInnovation if you use any portion of any copyrighted material without permission.

Copyright Duration

Copyrights do not last forever. The length of a copyright's term varies depending on when the work was created and whether the Author is a person or a corporation. If the work was created after 1978, then the term lasts for the life of the author plus 70 years. If authorship is corporate, then the term is either (i) 120 years from creation, or (ii) 95 years from publication, whichever is earlier.⁸ All works published prior to 1923 are no

⁶ 17 U.S.C. §§ 110(1) and 110(2).

⁷ 17 U.S.C. § 107.

⁸ 17 U.S.C. § 301.

longer under copyright protection. Works published between 1923 and 1978 may have up to a 95-year term, provided that the copyright owner posted the proper notice and renewed the copyright 28 years after first publication. If you are unsure whether something is under copyright protection, contact UNHInnovation for assistance.

Once a protected work is sold, the copyright owner cannot prevent secondary sales of the work.⁹ This is known as the First Sale Doctrine, and it enables the used book and used record markets to exist.

Infringement and Liabilities of Infringement

Copyright infringement occurs when unpermitted use of copyright protected material occurs, regardless of whether the copyright was registered with the U.S. Copyright Office. An infringer is liable for any actual damages the copyright owner suffered and for any profits the infringer enjoyed. Additionally, if the copyright owner timely registered his work, the infringer could be liable for up to \$150,000 and all the copyright owner's attorneys' fees.¹⁰

Registration within three months of publication of the work is required in order for the copyright owner to seek statutory damages and attorneys' fees from the infringer. Otherwise, damages for infringement are limited to actual damages suffered and the infringer's profits.¹¹

An infringer is criminally liable for willful infringement done for commercial advantage or private financial gain. In a severe case, the infringer could be sent to prison for up to 5 years, and up to 10 years for subsequent offenses.¹²

The best way to avoid infringement is to obtain permission in advance, often in the form of a license. Plan ahead whenever possible, and contact UNHInnovation for assistance in seeking and obtaining permission. Often, royalty-free licenses can be obtained by academic institutions. Additionally, the UNH Library has many journal subscriptions that include limited use permissions. The UNH Library can provide guidance as to what permissions are granted under certain subscriptions.

UNHInnovation Services

UNHInnovation is here to help you navigate copyrights, whether it is copyrightable works that you create or would like to use.

⁹ 17 U.S.C. § 109.

¹⁰ 17 U.S.C. §§ 504(b), 504(c), and 505.

¹¹ 17 U.S.C. §§ 412, 504, and 505.

¹² 17 U.S.C. §§ 506 and 18 U.S.C. § 2319.

Please contact us at:

unh.innovation@unh.edu

For more information, explore these links:

[UNH IP Policy](#)

[UNHInnovation homepage](#)

[UNH Printing Services](#)

[U.S. Copyright Office](#)

[Circular on Copyright Basics](#)

[Stanford University Library: Copyright and Fair Use](#)

[When U.S. Works Pass Into Public Domain](#)

[Classroom Guidelines](#)