Copyright in the Academic Environment

Part I: Understanding Copyright as Rights Holders

Welcome to Copyright in the Academic Environment, Part I: Understanding Copyright as Rights Holders.
To understand our rights and obligations under copyright law as instructors, I think it is helpful to first recognize ourselves as content creators and to understand our exclusive rights as copyright holders. This presentation uses copyright jurisprudence to define the requirements of copyright eligibility, called “copyrightable authorship;” identify copyright-eligible works, called the “subject matter of copyright;” outline the “exclusive rights” of copyright holders; and define the duration of copyright protection.
Copyrightable Authorship

- Criteria for copyright eligibility
- 4 considerations:
  1. Type of work ("Subject matter of copyright", 17 USC § 102)
  2. Fixation ("Definitions", see ‘fixed’, 17 USC § 101)
  3. Human authorship (Compendium, 313.2)
     • Independently created
     • Minimal degree of creativity

The US Copyright Office outlines its criteria for copyright eligibility, or “copyrightable authorship,” in its Compendium of US Copyright Practices. The 3rd edition of the Compendium was published in 2014, and its contents is derived from federal law found in US Code Title 17 - Copyrights. The USCO considers four interrelated characteristics of each work - the type of expression, whether or not the expression is fixed, whether the expression originates from human authorship, and the degree to which the expression is original – in making a copyrightable authorship determination.
The types of works eligible for copyright are specified in Section 102 of US Code Title 17 as “subject matter of copyright: in general.” Eligible works include texts, called literary works, music and sound recordings, scripts, and visual and performance arts. The Compendium of US Copyright Office Practices also identifies types of works which are not eligible for copyright protection. In general, these works are either not attributable to human authorship (facts and discoveries), do not meet a threshold of creative expression (typography, format, layout, blank forms), do not meet a threshold of originality (reproductions, replicas), are held in common or in the public domain (common symbols, standards of measurement, government documents), or are expressly excluded from copyright protection in 17 USC § 102(b), which states: “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”

<table>
<thead>
<tr>
<th>Subject matter of copyright: In general</th>
<th>Uncopyrightable material</th>
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<tbody>
<tr>
<td>• Literary works</td>
<td>• Facts, discoveries</td>
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<tr>
<td>• Musical works, including any accompanying words</td>
<td>• Ideas, concepts, principles</td>
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<tr>
<td>• Dramatic works, including any accompanying music</td>
<td>• Lists, procedures, processes, systems, methods of operation</td>
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<tr>
<td>• Pantomimes and choreographic works</td>
<td>• Typography, calligraphy</td>
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<tr>
<td>• Pictorial, graphic, and sculptural works</td>
<td>• Format, layout, blank forms</td>
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<tr>
<td>• Motion pictures and other audiovisual works</td>
<td>• Reproductions, digitizations, or replicas of preexisting works</td>
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<td>• Sound recordings</td>
<td>• Common symbols and designs</td>
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<tr>
<td>• Architectural works</td>
<td>• Government publications (public domain)</td>
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17 USC § 102

Compendium, 313

An eligible work must also be ‘fixed’ in order to be copyrightable. A work is considered ‘fixed’ when it is produced by or under the authority of the creator in a format that is stable and shareable. Fixation that occurs simultaneously with creation, such as the live recording of a class lecture (produced by or at the direction of the instructor), qualifies for copyright protection. Transitory or ephemeral content, such as lecture notes written on a white board and erased at the end of class, are not considered fixed for copyright purposes. Expressions which are purely extemporaneous or improvised, and which are never recorded in any format, are not eligible for copyright protection.
Copyrightable works must also owe their existence to human authorship and meet a minimal threshold of originality and creativity. A work is original when it is independently created by a person. The distinction between ideas (which are not in and of themselves copyrightable) and expressions, and the minimum threshold for creativity, was established by the Supreme Court in Feist Pubs., Inc. v. Rural Tel. Svc. Co., Inc. (499 US 340 (1991)): https://supreme.justia.com/cases/federal/us/499/340/#annotation
As content creators, we have the exclusive right to make copies, prepare derivatives, distribute, and perform or display the works we create. These exclusive rights are vested in the creator from the moment an eligible work is created, or fixed in a stable, shareable format. Keep in mind that these exclusive rights also imply ‘negative’ rights, such as the right to prohibit copying, distribution, performance or display, or production of derivatives of our content. Copyright law also recognizes these rights in all creators, regardless of age; US copyright law recognizes the copyrights of minors. Of course, these rights are limited by provisions of copyright law which allow reuse of protected expressions in the public interest, such as for teaching, scholarship, commentary, and journalism. We will explore the limitations on copyrights in the next module on Fair Use and the TEACH Act.

**Exclusive Rights**

1. **Reproduction**
2. **Preparation of derivative works**
   “a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a derivative work.”
3. **Distribution**
   “sale or other transfer of ownership, or by rental, lease, or lending.”
4. **Public performance**
   “recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.”

17 USC §106. Exclusive rights in copyrighted works

Note that these exclusive rights are limited by sections 107-122 of copyright law.

For works created on or after January 1<sup>st</sup>, 1978, the general term of copyright protection is the author’s life plus 70 years. In the case of multiple authors, the term of protection is counted from the last surviving author’s life. Works for hire and anonymous or pseudonymous works are protected for 95 years from first publication, or 120 years from first creation, whichever is shorter. When a work’s copyright term expires, it enters the public domain. In general, content created before January 1<sup>st</sup> 1923 is in the public domain.

The chart, Trend of Maximum US General Copyright Term by Tom W. Bell, demonstrates how the term of copyright protection has consistently increased with statutory changes to copyright law. The extension of copyright protection to seventy years after the original creator’s death offers questionable benefits to the creator, and reveals the corporatization of intellectual property regulation.
The purpose of this module is to familiarize you with fundamental copyright concepts. We examined what works are eligible for copyright, defined the idea of fixation, and addressed the originality and creativity thresholds for authorship. We also outlined the rights (and negative rights) afforded a content creator from the moment a work is created, including the ability to reproduce, prepare derivative works, distribute, and perform or display protected material, or prohibit others from doing so. We also discussed the general term of protection of those rights, which begins from the moment of creation and lasts for the author’s life plus 70 years, at which point the work enters the public domain.

In the next module, we will explore the limitations on those rights that enable us to use copyrighted works in specific, limited ways for purposes of teaching and scholarship. This module was created by Sarah Hartman-Caverly, faculty reference librarian at Delaware County Community College, and is licensed for reuse under Creative Commons Attribution-NonCommercial-ShareAlike 3.0.