

# **Making and Sharing Scholarship:**

## **Copyright Issues in Scholarly Communication**

---

Carla Myers

Delaware Valley Chapter of ACRL

April 26, 2019

# Agenda

- Review copyright basics\*
- Learn about incorporating existing works into new work
- Options for sharing scholarship

# Basics

# Copyright and Academic Values

*“To promote the progress of science and useful arts”  
-Article I Section 8. Clause 8, U.S. Constitution*



"Science food" by Anders Sandberg, [CC BY-NC 2.0](https://creativecommons.org/licenses/by-nc/2.0/)



"Giza pyramids" by Héctor de Pereda, [CC BY-NC 2.0](https://creativecommons.org/licenses/by-nc/2.0/)



"Stacks" by WashULibraries, [CC BY-NC-SA 2.0](https://creativecommons.org/licenses/by-nc-sa/2.0/)



Copyright attaches **automatically** to original works of authorship that are “fixed” in a way that allows us to perceive them.

# What is Copyrightable?

1. Literary works;
2. Musical works, including any accompanying words;
3. Dramatic works, including any accompanying music;
4. Pantomimes and choreographic works;
5. Pictorial, graphic, and sculptural works;
6. Motion pictures and other audiovisual works;
7. Sound recordings; and
8. Architectural works.

17 U.S.C. 102

# What is Not Copyrightable?

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.

17 U.S.C. 102

# **Rights Granted Under the Law**

1. To make copies of the original work
2. To prepare derivative works based upon the original work;
3. To distribute copies of the work;
4. To perform works publically
5. To display works publicly
6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C. 106



# Who Owns Copyright?

- Generally, the author
- The authors of a joint work are co-owners of copyright in the work so long as they:
  - Intended to work together to create the copyrightable work
  - Each contributed significant copyrightable content to the work
- In the case of a work made for hire, the employer or other person for whom the work was prepared **UNLESS** the parties have agreed otherwise in a written instrument signed by them.

17 U.S.C. 201

# How Long Does Copyright Last?

- Works created by a single author...70 years after the author's death.
- Joint works...70 years after such last surviving author's death.
- In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first.

17 U.S.C. 302

# Exceptions

# Copyright's Protection has Limits

["construction zone"](#) by Dave McLean is licensed under [CC BY-NC-SA 2.0](#)

Exceptions



Public Domain  
&  
Expiration of the  
Term of  
Copyright

# Fair Use (17 U.S.C. 107)

Notwithstanding the provisions of sections 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. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

# Other Exceptions and Limitations to Know

- 17 USC 108
- 17 USC 109
- 17 USC 110(1)
- 17 USC 110(2)

# **Reusing the Works of Others in a New Work**

# Think about the work you want to use:

Is it  
protected by  
copyright?

Is there a  
license?

Is your use  
fair use ?



Is it  
protected by  
copyright?



# Works in the Public Domain

- Works PUBLISHED in the US prior to January 1, 1924
- Works published/created between 1923-1978 MAY or MAY not be in the public domain...it depends (See Peter Hirtle's Public Domain Chart: <https://copyright.cornell.edu/publicdomain>)
- Works created by the US Federal Government
- Works placed in the public domain by the rightsholder

# Is There a License?

- CC license?
- Open Access license?
- “Terms of Use” license



"Microscope" by CrizzIDizzl is licensed under [CCO](#)

Is the use a  
fair use?

1. Purpose of the use
2. Nature of the Work

3. Amount and Substantiality of the Portion Being Used
4. Effect on the Market

# Copyright and Scholarly Publishing



**Different  
publishers,  
different  
rules!**





# Transfers vs. Licenses

# Publication Agreements

- Defines the terms of publication, including transfer of copyright and payment of royalties.
- Falls under contract law which allows it to trump other laws, including copyright law
- Good agreements vs. bad
- How to tell the difference?



# Things to Consider

How many  
you wish to  
reuse the  
works?

What terms  
are the  
publisher  
offering?

Is there  
balance  
between the  
two?

**ACTIVITY!**

# **When the Publication Agreement is Questionable (or just Bad)**

- Negotiate
- Use and authors addendum
- Publish OA
- Self publish

**Putting it All Together**

# Working through it all...

- Understand your rights as a creator
- Learn about options for reusing the works of others
- Think about how you want to manage your rights
- Review the publications agreements carefully
- Negotiate, go for OA publishing, self publishing