

Copyright and Fair Use

What is copyright? The United States Copyright law exists to foster creativity and spur the distribution of new and original works. Copyright protects the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. It covers both published and unpublished works. The law grants copyright holders the exclusive right to reproduce, perform, distribute, translate and publicly display their original works. It is unlawful for anyone to violate any of the rights provided by the copyright law.

How long does copyright protection last? The basic term of protection for works created today is for the life of the author, plus seventy years. In the case of “works made for hire” or corporate works, the copyright lasts for the lesser of either 95 years from publication or 120 years from creation of the work. The rules for works created before 1978 are different, in addition foreign works also received different consideration. Not only is the duration of copyright long but the rules can be complicated.

What is the public domain? The public domain is comprised of works that are, either no longer protected by copyright or never were protected. Works in which the copyright has expired enter into the public domain. Works produced by the U.S. government are not copyrightable and thus are in the public domain. Copyright does not protect facts, ideas, discoveries, and methods.

What about Fair use? Fair use is a doctrine, (section 107 of the Copyright Act) which recognizes the importance of accessing, using, and building upon copyrighted works in the contexts of commentary, parody, news reporting, research and education. The law establishes a zone of “fair use” protection for copying and disseminating copyrighted works without obtaining permission from the copyright owner under certain circumstances. The copyright statute provides a framework in which to evaluate whether a specific use would be a fair use. The fair use analysis whether in the paper or electronic environment includes the following factors.

- The purpose and character of the use.
- The nature of the copyrighted work.
- The amount and substantiality of the portion used in relation to the whole.
- The effect of the use upon the potential market for or value of the copyrighted work.

None of these factors alone constitutes fair use. You need to weigh each factor with the scale tipping toward a fair use. If the scale tips away from the use being a fair use, permission should be obtained before using.

All use of copyrighted works, regardless of their format, should include proper attribution and copyright notices.

If you have questions about using copyrighted materials or are unsure if your use is a fair use, we are here to help. Contact the Copyright Clearance Office and we can review the material and help you decide if it is indeed a fair use or if permission is needed. If required, we can obtain the permission for you.