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Fundamentals and Definitions

U.S. copyright laws protect "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device."

There are three main elements of this definition:

(1) the work must be "original", (2) the work must be "fixed", and (3) the work must be an "expression", rather than an idea.

(1) "Original works of authorship"

- Include: books, photographs, music, drama, video, sculpture, software, multimedia, and databases.
- Mere alphabetical arrangement of facts alone do not warrant copyright protection.

(2) "Fixed medium"

- A work is fixed when "its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is 'fixed' for purposes of this title if a fixation of the work is being made simultaneously with its transmission".
- Works that have not been fixed in a tangible form of expression, (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded) are not eligible for Federal copyright protection.

(3) "Expression"

- Section 102(b) of the Copyright Act provides: "[i]n 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."
- In the landmark case of *Baker v. Selden*, the Court reasoned that protection

extended to the expression of the idea, not to the idea itself.

Internet and Copyright

E-mail, Web sites, listserv and usenet postings are copyrighted unless explicitly in the public domain

- Copyrighted works are protected regardless of the medium in which they are created or reproduced; thus, copyright extends to digital works and works transformed into a digital format.
- Works are not in the public domain unless the author explicitly puts them there.
- Works published on the Internet must be cited and treated as other copyrighted works are.

Copyright Statements

A copyright statement is not required for information to be copyrighted

- Copyrighted works are not limited to those that bear a copyright notice.
- The use of a copyright notice is no longer required under U.S. law, although it is often beneficial. Because prior law did contain such a requirement, however, the use of notice is still relevant to the copyright status of older works.
- A copyright exists from the moment an author fixes an original idea in a tangible medium. An author does not need to take any action to secure a copyright; however, there are benefits to registering a copyright at the U.S. [Copyright Office](#)
- Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if a proper notice of copyright appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's claim of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in section 504 (c)(2) of the copyright code. Innocent infringement occurs when the infringer did not realize that the work was protected.

Copyright Notice

- The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office.
- The copyright notice should contain the following three elements:
 1. The symbol © (the letter in a circle), or the word "Copyright" or the abbreviation "Copr."; and
 2. The year of first publication of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; and
 3. The name of the owner of copyright. The name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.
- Example: © 1998 John Doe
- The copyright notice should be affixed to copies in such a way as to "give reasonable notice of the claim of copyright." The three elements of the notice should ordinarily appear together.

Employment Issues: Copyright at Work

Copyright for work performed in the course of your employment may belong to your employer

- In the case of works made "for hire", the employer and not the employee is considered to be the author. Section 101 of the copyright statute defines a "work made for hire" as:
 1. a work prepared by an employee within the scope of his or her employment; or
 2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.... For the purpose of the foregoing sentence, ... an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.
- Many universities allow professors to maintain copyright ownership of scholarly publications, such as books and journal articles.

Fair Use

- There are four fair use factors:
 1. Purpose and character of the use;
 2. Nature of the copyrighted work;
 3. Amount and substantiality of the portion used; and
 4. Effect of the use upon the potential market for or value of the work.
- All 4 factors are considered, but the last factor is the most important in determining whether a particular use is "fair."
- Include copyright statements and appropriate citations in your photocopy.
- Limit access to students in your class only.
- Terminate access at semester's end.
- Obtain permission for materials used repeatedly semester to semester.
- [Fair Use Checklist](#)
- [Copyright, Fair Use, & Educational Multimedia FAQ: A Blackboard Tip Sheet](#)

Public Domain

To determine if a work is in public domain the following charts are extremely useful.

- [When Works Pass into the Public Domain](#) by Laura Gassaway
- [When Works Pass Into the Public Domain in the United States](#) by Peter Hirtle

For an explanation of the complex issues surrounding Public Domain go to [The University of California Copyright](#) site.

Copyright Law and Legislation

- [U.S. Copyright Law](#)

- **DMCA: The Digital Millennium Copyright Act**
 - The American Library Association provides a discussion of the [DMCA](#) and its impact on research.
 - [EDUCAUSE](#) provides an extensive discussion of the impact of the DMCA on higher education.
- **TEACH Act**
 - [The Technology, Education and Copyright Harmonization Act](#)
Guides to understanding the Technology, Education and Copyright Harmonization Act and its implications to Distance Education can be found on the following sites:
 - The Copyright Management Center's [Overview of Copyright and Distance Education](#)
 - [University of Texas's Copyright Crash Course](#)
 - The [TEACH Toolkit](#) provides an overview and checklists for implementation.
 - An understandable [analysis](#) of the act and its implication for instructors, librarians and institutions (including FAQ's) was prepared by Kenneth C. Crews, Professor of Law, Director , Copyright Management Center Indiana University School of Law-Indianapolis for the American Library Association.
 - [Best practices when using Blackboard™](#)
- More information on the complex issues involved with copyright and distance education can be found on the following sites:
 - [Balancing Copyright Concerns: the Teach Act of 2001](#) by Laura Gassaway
 - [A Primer on Distance Learning and Intellectual Property Issues](#)
 - [Technological Protection Systems for Digitized Copyrighted Works: A Report to Congress \(PDF Format\)](#)
- The [American Library Association](#) provides up-to-date information on Copyright issues.

SHSU Copyright Policy

The [Copyright Policy](#) for The Texas State University System (Chapter III, section 10.1)

Copyright Web Sites

Copyright Overview	Fair Use	Getting Permission
Internet Material	Library Guidelines	Distance Education
Electronic Media		

Copyright Overviews

- **Copyright Crash Course**
An excellent site from the University of Texas Office of General Counsel
- **The Copyright Website**
Provides a variety of copyright information, including:
 - [Copyright Basics](#)
 - [Visual Arts](#)
 - [Digital Issues](#)
 - [Audio Arts](#)
- **U.S. Copyright Office, Library of Congress**
Includes text of new copyright law, [copyright basics](#), and [FAQ](#)

Fair Use

- **Fair Use of Copyrighted Materials**
From the University of Texas Office of General Counsel
- **Copyright and Fair Use**
A guide developed by Stanford University Libraries
- **Fair Use for Teaching and Research**
- **Fair Use of Copyrighted Works: A Crucial Element in Educating America**

Internet Material

- **Copyright Infringement in Cyberspace: Untangling the Web with Existing Law**
A 1998 law review comment on copyright and the Internet

Library Guidelines

- **Library Issues**
Created by the Indiana University, Copyright Management Center.