

Copyright Policy

July 2003

The Henry Madden Library is committed to compliance with U.S. copyright law and all regulations therein. This policy addresses key components of the copyright law pertinent to libraries and elucidates the Library's copyright policies.

Historical background

The first copyright statute enacted in the United States was in 1790. It protected maps, charts and books for a term of 14 years with a renewal option for an additional 14 years. Before that, copyright infringement was rampant but there was no automatic protection by law. Instead, common law practice (based on the traditional English system, as opposed to statutory law passed by Congress) regulated intellectual property rights through litigation against an alleged offender in a court of law with the burden of proof on the plaintiff. In theory, common law was based on past precedent. In practice, each court made its own rulings and judgments tended to be regional and capricious. Also, there was no legalized notion of "fair use." Essentially, both published and unpublished works were protected in perpetuity. Unauthorized users lived in an unregulated environment under the constant threat of being taken to court by someone, somewhere.

The two major copyright acts in the U.S. during the twentieth century were passed in 1909 and 1976. Much of the 1909 Copyright Act hinged on the issue of whether or not a work was "published." The Act also stipulated that in order for a published work to be protected, it had to be marked with a notice of copyright on the item (©). An author or creator who failed to do so lost his or her rights to the work. Copyright could also be lost if a creator did not officially renew the copyright after its first term expired.

The 1976 Copyright Act changed all that. First of all, it gave all works (both published and unpublished) created on January 1, 1978, or after, automatic protection from the moment of creation (whether or not they were registered with the Copyright Office) for a term that endured for the life of the author plus 50 years. It also gave works published (with the proper copyright notice) between 1964 and 1977 an automatic extension of 47 years (in addition to the initial 28 years), for a total of 75 years of protection.

In 1988, an amendment was passed to make the official copyright notice in a work optional. Thus, all works published after March 1, 1989, are assumed to be under copyright protection even in the absence of a copyright note on the item.

In 1998, the Sonny Bono Copyright Term Extension Act added another twenty years to most categories of copyright protection (see "When Works Pass Into the Public Domain" chart on the last page).

Fair Use

Copyright law is laid out in Title 17 of the United States Code. Section 106 outlines copyright owners' (or their authorized agents') exclusive rights. These are:

- *To reproduce* the work in copies or phonorecords;
- *To distribute copies or phonorecords* of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- *To perform the work publicly*, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- *To display the work publicly*, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of *sound recordings*, *to perform the work publicly* by means of a *digital audio transmission*.

However, section 107 addresses what is commonly known as the “fair use clause.” Fair use refers to exceptions to the copyright law “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research . . .” (Section 107, Title 17, U.S. Code).

The code outlines the four factors used in determining whether a use of a work falls under “fair use” or not:

- 1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit 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;
- 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.

Many faculty members and students assume that any use of copyrighted material in education or research is automatically a “fair use” and exempts them from following standard copyright rules. This is not the case and the truth is far more complex. Each person must weigh all the factors for him/herself and make informed decisions, realizing that he/she may be violating copyright law and be willing to assume all liability. The Copyright Management Center at Indiana University has a “Checklist for Fair Use” © (www.copyright.iupui.edu/checklist.htm) that may be useful in deciding whether or not to proceed with an action.

Library photocopying

Section 108, Title 17, of the U.S. Code exempts libraries and archives from copyright infringement (under specific conditions) even while allowing photocopies to be made by patrons on the premises. This is called “unsupervised photocopying,” the most common form of photocopying undertaken in the Library.

Clause (1) of subsection (f) specifically exempts a library or archives or its employees from liability for the **unsupervised** [emphasis added] use of reproducing equipment located on its premises, provided that the reproducing equipment displays a notice that the making of a copy may be subject to copyright law. Clause (2) of subsection (f) makes clear that this exemption of

the library or archives does not extend to the person using such equipment or requesting such copy if the use exceeds fair use.

(H.R. Rep. No. 94-1476, pp. 74-79)

It is understood that any patron who photocopies library materials, in or out of the Library, assumes all liability for any possible copyright infringement.

In areas of the Library where photocopying is done for patrons by library staff, the law requires that a notice concerning copyright restrictions be prominently displayed where requests are accepted and on the order form. The notice is prescribed as follows:

Notice

Warning Concerning Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproductions. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copy order, if, in its judgment, fulfillment of the order would involve violation of copyright law.

The Digital Millennium Copyright Act (October 1998) changed the copyright notice requirements on photocopies made by libraries and archives. The law now stipulates that the copy should include the formal copyright statement found on the original work. The Madden Library has decided that to comply with this new stipulation, it will require that the formal copyright notice on a work be photocopied and attached to the requested copy in all areas where photocopying is done for patrons (Interlibrary Loan Lending, Photocopy Service, Special Collections, and the Arne Nixon Center).

If there is no visible copyright notice on the original work (or it is an unpublished source), the following statement will be attached to the copy:

"The work from which this copy was made does not include a formal copyright notice although it may be protected by copyright law. This copy has been provided for private study, scholarship, or research. Other uses may require permission from the copyright holder. The user of this work is responsible for determining lawful uses."

Digitized materials

The Library abides by all copyright laws and licensing agreements when making digitized materials (e.g., electronic books or full-text digital articles from journals) available to users. In most cases, this means paying subscription fees to the copyright owners or those who have licensed the rights and ensuring through technological safeguards that no one but enrolled students, faculty, and staff of the university are allowed access to these materials.

When the Library makes its own materials available in digital format, such as on its Web site, it will do so only after it secures permission from the copyright owners or ascertains that the material is in the public domain. It will also ensure that all users of these materials are made aware that the Library will not assist in or condone any unlawful use of the materials beyond fair use as outlined in U.S. Copyright law or the corresponding laws of a foreign country (for materials created in another country and therefore covered by its own intellectual property laws and multinational treaties). It will also be made clear that any use of digitized materials on the Library's Web site must be for educational, not-for-profit purposes, such as criticism, comment, news reporting, teaching, scholarship, or research and that any violation of this is the sole responsibility of the user. The Library will further protect the integrity of digital materials by providing images only at a screen-appropriate resolution, not at a resolution whereby it is possible to make photographic-quality reproductions from downloads.

Departmental policies

Each area in the Library faces different copyright problems. Below is a brief discussion of the copyright issues and policies enforced by pertinent areas in the Library. It is meant to provide general guidelines and outline consistent copyright practices throughout the Library.

Photocopy Service

As a service to our patrons, the Library offers photocopying for patrons. However, no Photocopy staff member or student assistant will accept a photocopy order that is deemed to be in violation of U.S. Copyright Law. In cases where there is disagreement as to what constitutes copyright infringement, the Photocopy Service Supervisor will make a determination. Student assistants do not make such decisions. If there is a question or concern, the photocopy request shall be deferred until the Photocopy Service Supervisor is consulted. If an appeal to the Supervisor's decision is made, the Dean of Library Services shall make the final determination of what is permissible and what is not.

No more than 15% of a book or journal issue will be photocopied for patrons. Commercially available "consumable" products such as workbooks will also not be copied in their entirety, as such an action would have a negative financial impact on the copyright holder. Multiple copies of an article from a periodical, newspaper, or a chapter from a book will not be allowed. Only a single copy is permissible under the law. It should be noted that it is the practice of California State University, Fresno, to allow the authors of master's theses to choose whether or not any photocopying of his/her thesis is to be allowed (as specified by a signed sheet bound in the thesis). In cases where the author has specifically chosen not to allow any photocopying, the Library will honor the author's wishes and will not photocopy anything from such a thesis, regardless of "fair use" exemptions. The wishes of the author, as the copyright holder, take precedence over any fair use consideration.

Interlibrary Loan—Borrowing

As a requesting library borrowing materials that we do not own or obtaining photocopies of articles for our patrons, the Library is responsible for compliance with copyright law. The guidelines suggest that the Library may request a total of five articles per year from any one periodical title published within the last five years. After that limit has been reached, the Library will fill patrons' requests by ordering articles from a document delivery service. The Library may request up to three articles from one periodical issue at one time. These limits are based on the National Commission on New Technological Uses (CONTU) of Copyright Works'

Guidelines on Photocopying under Interlibrary Loan Arrangements (see www.cni.org/docs/infopols/CONTU.html for the full text of the guidelines).

For articles to which the Library has full-text electronic access (through paid subscriptions or licensing agreements), Interlibrary Loan staff will inform patrons of this access method. It is understood that any photocopy or book obtained for a patron is to be used for private study, research, or scholarship and that any photocopy becomes the property of the patron and is not given to other institutions or individuals or sold. Interlibrary Loan staff notifies patrons when photocopying of a thesis is not permitted, although any use that constitutes copyright infringement is the sole responsibility of the patron. Only staff, students, and faculty members of California State University, Fresno, are allowed to use our Interlibrary Loan service. Records of filled patron requests are maintained in the Interlibrary Loan office for two years.

Map Library

Most maps are under copyright protection unless they are printed by the U.S. Government (see section on Government Documents). All term limits and fair use guidelines that apply to other materials also apply to maps. Maps that are copyrighted usually have a copyright notice: patrons should look for it. As photocopying in the Map Library is unsupervised, patrons who photocopy any materials in the Map Library assume all risks and liability for their actions.

Government Documents

In general, publications of the U.S. government are in the public domain. However, some works are copyrighted. In some cases, a government publication will include material from a copyrighted source. Patrons should examine each work carefully for the presence of copyrighted material and not assume that all publications printed by the government are automatically in the public domain in their entirety.

Publications of the State of California and other state and local agencies and national governments may or may not be copyrighted. If a copyright notice appears on a work, it should be treated as copyrighted material.

Reserved Book Room

All photocopied materials submitted to the Reserved Book Room must be in compliance with copyright law. Instructors are responsible for obtaining approval from the copyright owners. A copyright compliance form must be signed for each course with photocopied materials placed on reserve. No more than three copies of an individual reading may be placed on reserve unless the work was created by the instructor of the course. A photocopy of the title and copyright page of the source material must be included with each copy of the reading. Readings may be placed on reserve for one semester while awaiting copyright permission. If the material is to be used in subsequent semesters, proof of copyright permission must be submitted to the Reserved Book Room prior to the beginning of the semester.

Electronic Reserves

The Library generally follows Electronic Reserves Systems guidelines proposed during the Conference on Fair Use (for the full text of the guidelines see www.utssystem.edu/ogc/intellectualproperty/rsrvguid.htm on the University of Texas's copyright site). The Library will make a digital copy of journal articles it owns in print (or full-text electronically through a paid subscription service) to put on reserve for a specific academic course for one semester. This

digital copy is password-protected and only accessible to students registered for a particular course for the semester during which the course is taught. For items that are not owned by the Library, copyright permission must be secured by the instructor and any copyright clearance fees paid before making a digital copy of a journal article available on the E-Reserves Web site for more than one semester.

At this time, the Library does not allow any sound recordings or images (moving or still, in whole or in part) to be digitally copied and made available on its E-Reserves system.

All instructors using the E-Reserves system in their courses should be aware of the "Technology, Education and Copyright Harmonization Act" (TEACH Act) that became U.S. law in 2002. This act lays out the conditions regarding the use of copyrighted materials in distance education.¹

Music & Media Library

The Music & Media Library maintains a diverse collection containing, but not limited to: music scores, music reference books, databases, sound recordings, and video recordings in various formats. Most of these materials are protected by copyright. However, in 1976, representatives from the Music Publishers' Association of the United States, Inc.; the National Music Publishers' Association, Inc.; the Music Teachers National Association; the Music Educators National Conference; the National Association of Schools of Music; and the Ad Hoc Committee on Copyright Law Revision developed guidelines to assist people in interpreting minimum standards of fair use. These guidelines can be found in Circular 21, "Reproduction of Copyrighted Works by Educators and Librarians," U.S. Copyright Office, pp.11-12, 1995, or online at www.copyright.gov/circs/circ21.pdf.

There is a special provision just for sound recordings created in the U.S. before February 15, 1972, as outlined by Kenneth Crews of the Copyright Management Center, Indiana University.

Sound recordings made before 15 February 1972

"Despite the current breadth of copyright protection for a vast range of new works, earlier law was slow to bring new media under its purview. Sound recordings were not given protection under American law until Congress amended the Copyright Act, effective 15 February 1972. In the typical example of a musical composition that is subsequently performed and recorded, the composition long has been eligible for copyright protection as an "original" work that is "fixed" in a tangible medium, but the recording had no federal protection until Congress amended the statute.

The practical effect of this situation is that a sound recording made before 15 February 1972 does not enjoy any copyright protection in the U.S., and may be used without restriction from the federal copyright law. The underlying musical

¹ Instructors should also be conversant with how the TEACH Act fits in with the Fair Use clause of U.S. copyright law and existing agreements between copyright owners and educators such as those laid out in Circular 21, "Reproduction of Copyrighted Works by Educators and Librarians" (U.S. Copyright Office, available on their Web site at www.copyright.gov/circs/circ21.pdf).

composition, however, may still be protected, and any use of the recording must give due regard to the rights of the copyright owner of the composition. A recording made since the given date in 1972, however, may well encompass at least two separate copyrights: one in the composition and one in the recording. Any use of the more recent recording must consider the rights of two—or possibly more—copyright owners.

[T]he restoration of foreign copyrights has made this situation even more complex. Entry into the WTO [World Trade Organization] has required the restoration of copyrights in the U.S. for foreign sound recordings made before 15 February 1972. Thus, the sound recording made in the U.S. before 1972 lacks a separate copyright protection, while the recording made in one of the countries listed above² might have been in the public domain, it now stands to have been brought back under copyright protection as of 1 January 1996.”

(Kenneth D. Crews, “The Expiration of Copyright Protection: Survey and Analysis of U.S. Copyright Law for Identifying the Public Domain,” white paper prepared for the Digital Music Library Project/National Science Foundation grant, pp. 10-11, 2001).

Special Collections Library

Photocopying:

Special Collections staff do all of the photocopying for patrons and follow all copyright laws using the Library’s understanding of the law and common sense “best practices.” The Library’s copyright policies are consistently applied to all patrons.

It is implicit that all photocopying done for patrons of the Special Collections Library is in lieu of note taking and is to be used for private study, scholarship, or research and not for publication or any commercial (for-profit) purpose.

Books and printed materials:

Entire books cannot be photocopied unless they are in the public domain (see “When Works Pass Into the Public Domain” chart on the last page) or are out-of-print and **not** available for purchase.³ Portions of books still protected by copyright may be photocopied provided that the amount and nature fall within the “fair use” guidelines (see Fair Use section on page 2). This is judged on a case-by-case basis.

In general, printed materials (e.g., pamphlets) are considered published and therefore enjoy copyright protection accordingly. Unless the item was produced by the U.S. Government or by California State University, Fresno, or was published before 1923, in most cases the item is

² Crews points out in his paper, “The Expiration of Copyright Protection...,” that this applies to most countries in the world because it encompasses all nations that are members of the World Trade Organization, adherents to the Berne Convention, WIPO Copyright Treaty, or WIPO Performances and Phonograms Treaty, or are countries subject to presidential proclamation that offer reciprocal protection for American works. A full list of the countries who have agreed to multilateral copyright agreements is available in Circular 38a, “International Copyright Relations of the United States” (www.loc.gov/copyright/circs/circ38a.pdf). For a list of the signatories to the Berne Convention see www.wipo.int/treaties/docs/english/e-berne.doc. For information about the World Trade Organization (WTO), see www.wto.org/english/thewto_e/thewto_e.htm. All of these URLs and the descriptions for them have been taken from footnote 67 in the above-referenced paper.

³ Photocopying of whole works is allowed at the discretion of the Head of Special Collections after it has been verified that the works are not available for purchase, even in the used book market.

still protected by copyright law. Thus, if a patron would like to have an entire item photocopied, he or she must first obtain permission from the copyright holder.

Manuscript materials:

Most manuscript materials can be photocopied as a convenience to researchers, in lieu of note taking, unless there is a specific restriction on photocopying as formally specified on the donor agreement by the creator or donor.

Reproductions of photographs:

Reproductions of loose photographs can be made if they are for personal use or a one-time educational purpose. Photographs by commercial photographers may have restrictions attached to them and copies should be requested through their agents. Personal photographs (loose or in albums) in manuscript collections fall under the same rules as manuscript materials.

Use in publications

Manuscript materials:

The vast majority of the Library's manuscript materials are unique items that have not been published but are protected by copyright law. The term for copyright protection of unpublished manuscript items is the lifetime of the creator plus 70 years. However, in some collections, copyright has been formally transferred to California State University, Fresno. In those cases, permission to publish is obtained from a representative of the University (in this instance, the Head of Special Collections). Otherwise, permission to quote from an item or to publish it must be sought from the copyright holder or his/her heirs. Special Collections staff will assist patrons in identifying copyright holders of manuscript materials whenever possible. It should be noted, however, that the physical ownership of an item does not signify that the Library owns the intellectual property rights as well. Unless copyright has been formally transferred to the University through a written document, copyright remains in the hands of the creator or his/her heirs. (In the case of letters, copyright does **not** belong to the recipient of the letter but rather to the creator/writer. Thus, even if a donor transfers copyright to the university, the copyright to letters written **to** the donor (but not **by** the donor) remains with the creator of the letters.)

If the Special Collections Library only owns photocopies of original materials housed elsewhere, the patron should contact that library/repository for permission to publish or for further information on the copyright holder.

All materials created by California State University, Fresno, as a public institution, are considered automatically in the public domain.

Photographs:

For a great number of the loose photographs housed in the Special Collections Library, there is no information as to the copyright holder or creator/photographer. In these cases, while the Library may allow the patron to have a photographic reproduction of the image, such an action does not in any way impart permission to publish. If the Library does not own the intellectual property rights to an item, it cannot grant or deny permission to use the item in a publication. The decision to publish or not is entirely up to the patron, who thereby assumes all liability and risks associated with possible copyright infringement. Moreover, the patron indemnifies the Library from sharing in that liability and risk.

As in the case with letters, photographs in a collection to which copyright has been transferred to the University are not automatically copyright free. If the donor was not the creator of the photographs, copyright remains with the original photographer or his/her heirs, regardless of who owns the actual photographs.

If a photograph was taken by a professional photographer, copyright is retained by that photographer, or his/her agents or heirs, unless the image was a work for hire, in which case copyright belongs to the photographer's client or heirs.

Central Valley Political Archive (CVPA):

There is a wide variety of materials housed in the political collections of the CVPA. Although many of these materials were created by or for elected officials, not everything is in the public domain. Given the diversity within the collections in the CVPA, it is difficult to determine the copyright status for each item. Before any action is taken, researchers should consult with the Archivist of the CVPA. All copyright laws are enforced and permission to use any item from our collection in a publication, exhibit, television/cable broadcast, multimedia production, or Web site should be obtained before taking any action. Permission can only be given for materials for which copyright has been formally transferred to the University. Such permission is granted or denied by the CVPA Archivist.

Arne Nixon Center for the Study of Children's Literature:

All of the issues that affect the Special Collections Library are mirrored in the Arne Nixon Center (ANC). There are books (both in print and out-of-print), manuscript materials, photographs, drawings, and artifacts in the ANC. Each format and item invoke different considerations when analyzing copyright status. For example, ceramic plates decorated with illustrations from a children's book involve copyright for both the plate (as an object) and the illustrations (as original artwork). Assuming that the illustrations are still under copyright protection, the producer of the plates would presumably have obtained permission to use the illustrations from the rightful copyright owner. Thus, to use an image of the plate in any way (other than what would be allowed under the fair use guidelines), one would have to secure permission from both the producer of the plates and the copyright holder for the illustrations. All the factors must be considered in each situation and judged on a case-by-case basis. Researchers should discuss the intended use of each item with the Curator of the ANC before making any final decisions. However, as with everything else in the Library, unless copyright has been formally transferred to the University, the Curator cannot grant or deny permission for an item's use. For the vast majority of items in the ANC, copyright has **not** been transferred and therefore remains in the hands of others. The Curator can assist researchers only in offering information he/she may know about the copyright owner and if possible, how to contact that person or entity. Sole responsibility, however, remains with the proposed user of the item. The user assumes all liability for his or her actions. To guard against the charge of collusion in copyright infringement, the ANC reserves the right to refuse a reproduction request (be it a photocopy, photographic reproduction, or digital scan) if the Curator deems that it would involve violation of copyright law.

WHEN WORKS PASS INTO THE PUBLIC DOMAIN

Includes material from Term Extension Act of 1998 (PL 105-298)

DATE OF WORK	PROTECTED FROM	TERM
Published before 1923	In public domain	None
Published from 1923 through 1963	When published with notice ¹	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 through 1977	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-1978, but not published	1-1-1978, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years
Created before 1-1-1978, but published between then and 12-31-2002	1-1-1978, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047, whichever is greater
Created 1-1-1978 or after	When work is fixed in tangible medium of expression	Life + 70 years ² (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ³)

¹ Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-1978 and 3-1-1989, effective date of the Berne Convention Implementation Act, retained copyright only if, for example, registration was made within five years. 17 U.S.C. § 405.

² Term of joint works is measured by life of the longest-lived author.

³ Works for hire, and anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

(Notes courtesy of Professor Tom Field, Franklin Pierce Law Center)

This chart is based on one by Lolly Gasaway of University of North Carolina at Chapel Hill, found on the Web at www.unc.edu/~uncclng/public-d.htm.