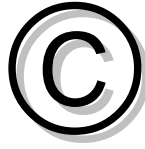


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**MOUNT HOLYOKE COLLEGE ARCHIVES
& SPECIAL COLLECTIONS
-February 2006-**



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MOUNT HOLYOKE COLLEGE ARCHIVES & SPECIAL COLLECTIONS

COPYRIGHT ISSUES REGARDING ARCHIVAL MATERIALS

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INTRODUCTION

Materials from Archives and Special Collections are only eligible for digitization if they are 1) in the public domain, or 2) the copyright is owned by the institution. (“Materials” refer to anything in the collection that is digitized for a patron including photographs, letters, articles, reports, notebooks, books, yearbooks, catalogs, portraits, paintings, sketches, etc.) Read on for more information about copyright, fair use, public domain, and other questions relating to copyright.

WHAT IS COPYRIGHT?

Copyright is, by definition, the exclusive right given by law for a certain term of years to an author, composer, designer, etc. (or his assignee), to print, publish, and sell copies of his original work.¹

Copyright (title 17, U.S. Code) gives the owner of copyright the exclusive right to do and to authorize the following six (6) items:²

1. Reproduce the work in copies of phonorecords;³
2. Prepare derivative works based upon the work (examples of this would be a motion pictures based on a book, a translation of a novel into another language, a drawing based on a photograph, or a sound recording that a portion of the songs were originally on another album);
3. Distribute Copies of the work to the public by sale or other transfer of ownership by rental, lease, or lending;
4. Perform the work publicly, this applies to literary, musical, dramatic, choreographic works, pantomimes, motion pictures, and other audiovisual works;
5. Display copyrighted work publicly, applies to literary, musical, dramatic, and choreographed works, pantomimes, and pictorial, graphic, or sculptural works including images of a picture or other audiovisual work;
6. Transmission of sound recordings by means of digital audio.

Important FAQ: Physical ownership *does not* denote copyright ownership. Just because you own an original painting, that does not automatically give you copyright of that object. The copyright remains with the creator unless there is a formal written agreement between the creator and owner stating that copyright has being transferred.

What Types of Material does Copyright Protect?

Not everything is protected under copyright law. Generally, copyright protects original works of authorship that are fixed in a tangible form of expression, even if machines or devices maybe necessary to perceive the fixed form. The following categories of expression are protected:⁴

- Literary works (computer programs an compilations register under literary works);

¹ "Copyright, (n.)" Oxford English Dictionary Online. www.oed.com

² The following six rights were taken from "Copyright Basics" United States Copyright Basics, www.copyright.gov/circs/circ1.html

³ A phonorecord is a copy or reproduction of an audio or video work. For example, copying a VHS tape to another VHS tape or to a DVD is making a phonorecord of the material.

⁴ List taken from "Copyright Basics" www.copyright.gov/circs/circ1.html.

- Musical works (including accompanying words);
- Dramatic Works (including accompanying music);
- Pantomimes and Choreographic works;
- Pictorial, graphic, and sculptural works (includes maps and architectural drawings);
- Motion pictures and other audiovisual works;
- Sound recordings;
- Architectural works

As mentioned above, not everything is covered under copyright law, these are the items not covered under copyright law:⁵

- Works not in a fixed tangible form (ex. Improvisational speeches or performances that have not been written or recorded);
- Titles, Names, Short Phrases, and Slogans; Familiar Symbols or Designs; Lettering; Coloring; listing of ingredients or contents;
- Ideas, Procedures, Methods, Systems, Processes, Concepts, Principles, Discoveries, or Devices;
- Works consisting entirely of information that is common property and containing no original authorship (ex. Calendars, height and weigh charts, rulers, tape measures)

What does Copyright Prohibit Users from Doing?

Copyright prohibits the violation of any of the six (6) rights established by the copyright law to the owner of the copyright: reproduction, derivation, distribution, performance, display and transmission. There are, with anything, exceptions. Sections 107 through 121 of the 1976 Copyright Acts give limitations of these rights.

The two most important for Libraries and Archives are:
 Section 107: Fair Use
 Section 108: Reproduction by Library and Archives

⁵ List taken from “Copyright Basics” www.copyright.gov/circs/circ1.html.

Why Have a Copyright Law?

Copyright Law stems from twenty-seven (27) words written in the U.S. Constitution (Article 1, Section 8, Clause 8):

[The Congress shall have Power...] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries .

This law was written for the purpose of providing authors and creators with an incentive for creating new works. By providing a period of time for works to be protected from copying, it provides a means for authors to benefit for their work by creating a temporary monopoly. In the case of music artists, songs are protected and artists can control the distribution, thus creating financial incentive for creation. Without such an incentive, people might not be motivated to create new works.

Does an item need to be published before receiving copyright protection?

Prior to 1978, federal copyright was secured by the act of publishing with the notice of copyright. Since the 1976 Revision of the Copyright Act, publication is no longer necessary to receive copyright protection. The 1976 Revision defines publication as:

. . . the distribution of copies or photorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not itself constitute publication.

Although publication is no longer a prerequisite to attaining copyright, publication is still important for several reasons:

- Publication of a work can affect the limitations on the exclusive rights of the copyright owner that are set forth in sections 107 through 121 of the law,
- Year of Publication may determine the duration of copyright protection for anonymous works
- Published works bears the notice of copyright to inform the public that they are protected by copyright. Prior to 1989, material had to bear the copyright symbol © or else could risk losing the copyright protection.

WHAT IS “FAIR USE”?

The term “fair use” is codified in Section 107 of the Copyright Law. Although the owner of the copyright has control over the reproduction of their materials, there are some situations that

material can be reproduced without permission. These situations are referred to as “fair use.” There are four (4) factors that should be considered when considering if a particular use is fair:⁶

1. Purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
2. Nature of the copyrighted work;
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. Effect of the use upon the potential market for or value of the copyrighted work.

Although there are four (4) guidelines for determining “fair use” of material, there is still a lot of gray area. Before using copyrighted material, look at all four (4) guidelines to see if you are breaking any one of them by your intended use. [See Appendix B for a check list to help you aid in your decision.]

When in doubt, receive permission to use copyrighted materials.

WHAT IS “PUBLIC DOMAIN” AND WHEN DO MATERIALS QUALIFY?

Public domain consists of the body of knowledge that no person can claim nor has legal rights to control. The schedule for when an item falls into public domain is determined when it was published or created (there is a different schedule for unpublished works). Since copyright law has changed multiple times in the last century, the schedule for when items fall into public domain is complex. The most recent law (Copyright Revision of 1976) extended the copyright period to the life of the author, plus an addition fifty (50) years. After this time, materials will fall into public domain.

What Materials are Currently in the Public Domain as of 2006?⁷

Type of Work	Copyright Term	Is it in the public domain?
Unpublished works	Life of the author + 70 years	Yes, if author died before 1936
Published Prior to 1923	None	Yes
Published 1923-1977	Published without copyright notice	Yes
Published 1978 to March 1, 1989	Published without notice, and without subsequent registration	Yes
Published 1923-1963	Published with notice, but without renewal of copyright	Yes

⁶ The four factors are taken from the Fair Use document provided from the Copyright Office, <http://www.copyright.gov/fls/fl102.html>.

⁷ This is meant as a summary of when items fall into public domain. See Appendix C for a more complete schedule of Public Domain and Copyright Terms.

HOW DOES COPYRIGHT APPLY TO THE ARCHIVES?

Copyright is an important law to understand for libraries and archives because they provide access to copyrighted information for their patrons. Academic libraries provide students access to scanned articles or book chapters for course reserves and duplicate materials for classroom use. Based on copyright law, the library can perform these functions under section 108, because it allows duplication as a provision for libraries.

Section 108 of the U.S. Copyright Code is entitled Limitations on Exclusive Rights: Reproduction by Libraries and Archives. There are some limitations on reproductions within Section 108, a section summary is below:⁸

Subsection A:

Libraries and Archives can make copies of material if:

- 1) the reproduction gains no direct or indirect commercial advantage, or**
- 2) the library is open to the public or to an audience extending beyond researchers affiliated with that library, or**
- 3) the copy contains a copyright notice**

Subsection B:

Libraries and Archives can make three (3) copies of an unpublished work for the purpose of preservation and security, if

- 1) the copy is currently in the collections of the library or archives, and
- 2) any copy that is reproduced in digital format is not distributed in that format and is not made available to the public in that format outside the premises of the library or archives

Subsection C:

Libraries and Archives can reproduce three (3) copies of a published work to replace a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete,⁹ if:

- 1) the library or archives has determined that an unused replacement cannot be obtained at a fair price; and
- 2) any copy that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

⁸ Subsections of Section 108 have been abridged and taken from the copyright law found at www.copyright.gov.

⁹ For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace. [Section 108, Copyright Code]

Archives and Digitization

Beyond duplication, digitization is becoming a growing trend in archives and libraries. Digitization is a form of publication and therefore, libraries and archives need to ensure that the items they are digitizing are either 1) in public domain or 2) the copyright is owned by the institution.

For example, if the archives has a copy of a Newsweek with an Alumnae on it. The archives does not own the copyright to the issue or image and must secure permission before publishing the image.

The same rules apply for digitizing images and documents as using paper copies of the documents. You must adhere to the six rights guaranteed by copyright law, unless exempted by the “fair use” clause.

If the institution owns the copyright, they control the material and can do whatever they want with it. Remember, ownership of the material does not mean you own the copyright.



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Appendix A: Copyright Timeline¹⁰

1787

United State Constitution

According to Article I, Section 8, Clause 8 of the U.S. Constitution, "the Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

1790

Copyright Act of 1790

An Act for the Encouragement of Learning, by Securing the Copies of Maps, Charts, and Books to the Authors and Proprietors of Such Copies, granted American authors the right to print, re-print, or publish their work for a period of fourteen (14) years and to renew for another fourteen (14). The law was meant to provide an incentive to authors, artists, and scientists to create original works by providing creators with a monopoly.

1831

Revision of Copyright Act

The act was amended to extend the copyright period to twenty-eight (28) years with the opportunity to renew for another fourteen (14). This was done to give American authors the same protection as those in Europe.

1870

Revision of Copyright Act

The administration of copyright registrations moved from the individual district courts to the Library of Congress Copyright Office.

¹⁰ Timeline is adapted from *TIMELINE: A History of Copyright in the United States*:
<http://www.arl.org/info/frn/copy/timeline.html>

1909

Revision of the U.S. Copyright Act

The bill broadened the scope of categories protected to include all works of authorship, and extended the term of protection to twenty-eight years (28) with a possible renewal of twenty-eight (28). The Congress addressed the difficulty of balancing the public interest with proprietor's rights:

"The main object to be desired in expanding copyright protection accorded to music has been to give the composer an adequate return for the value of his composition, and it has been a serious and difficult task to combine the protection of the composer with the protection of the public, and to so frame an act that it would accomplish the double purpose of securing to the composer an adequate return for all use made of his composition and at the same time prevent the formation of oppressive monopolies, which might be founded upon the very rights granted to the composer for the purpose of protecting his interests" (H.R. Rep. No. 2222, 60th Cong., 2nd Sess., p. 7 [1909]).

1976

Revision of the U.S. Copyright Act

The 1976 revision was undertaken for two reasons: 1) technological developments (such as audio tapes, televisions, etc. . .) and 2) it was felt that the statute needed to be amended to bring the U.S. into accord with international copyright law, practices, and policies. The 1976 act:

- Extended the term of protection to life of the author plus 50 years (works for hire were protected for 75 years).
- The act covered the following areas: scope and subject matter of works covered, exclusive rights, copyright term, copyright notice and copyright registration, copyright infringement, fair use and defenses and remedies to infringement.
- Fair use and first sale doctrines were included
- Copyright was extended to unpublished works.
- Section 108, that allowed library photocopying without permission for purposes of scholarship, preservation, and interlibrary loan under certain circumstances.
- Section 107 contains an exception to the exclusive rights of owners to make and distribute copies of their works:

"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."

1992

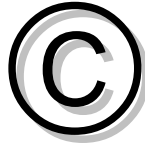
Amendment to Section 304 of Title 17

Congress amended Section 304 of Title 17 making copyright renewal automatic. The amendment dramatically curtailed the entry into the public domain of works protected by copyright before 1978.

1998

Digital Millennium Copyright Act

The law's five titles implemented the WIPO (World Intellectual Property Organization) Internet Treaties; established safe harbors for online service providers; permitted temporary copies of programs during computer maintenance; made miscellaneous amendments to the Copyright Act, including amendments which facilitated Internet broadcasting; and created *sui generis* protection for boat hull designs.



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Appendix B: Checklist for Fair Use¹¹

Fair Use the weighing and balance on Four Factors: Purpose, Nature, Amount, and Effect. The following worksheet is intended to provide a way to look at the material you are using and determine if its use is fair. It is not the absolute answer, but rather is just an aid.

PURPOSE¹²

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- News Reporting
- Restricted Access (to specific group)
- Parody
- Transformative or Productive Use (changes work for new utility)

Opposing Fair Use

- Commercial Activity
 - Profiting from Use
 - Entertainment
 - Bad-Faith Behavior
 - Denying Credit to the Original Author
-

NATURE¹³

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

¹¹ “Checklist for Fair Use” Copyright Management Center, Indiana University-Purdue University-Indianapolis: www.copyright.iupui.edu/checklist.htm

¹² Purpose: What is the purpose of your use? Fair use is favored for nonprofit educational uses over commercial uses, except when use leads to profit. (<http://www.copyright.iupui.edu/highered.htm#four>) 2/9/06

¹³ Nature: look at the characteristics of the material being used. Published works are more likely to be under “fair use” because they have been published before, whereas unpublished works have not and courts have sided with the creator of unpublished works in that they should be able to control the first publication.

AMOUNT¹⁴

Favoring Fair Use

- Small Quantity
- Portion used is not central or significant to the entire work
- Amount is appropriate for favored educational purpose

Opposing Fair Use

- Large portion or whole work is used
- Portion used is central to work or “heart of the work”

EFFECT¹⁵

Favoring Fair Use

- User owns, lawfully acquired, or purchased copy of original work
- One or few copies made

- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

Opposing Fair Use

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonable available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Web or in other public forum
- Repeated or long term use

¹⁴ Amount: there is no set amount of a work that is considered “fair use,” rather you must weigh qualitatively and quantitatively the amount of the work you are using. Using the entire work is not fair use, nor is using the “heart of the work.”

¹⁵ Effect: if your use of material has hindered the sale of that material, then your use is not “fair use”. Think about effect as effect on the market. If we are reading 100 pages out of a 300 page text book and it is cheaper for me to photocopy your book, that is not fair use because it has stopped me from purchasing my own book. Also, the amount is a third of the book and also does not fall under “fair use.”



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Appendix C: Public Domain Guidelines¹⁶

Copyright Term and the Public Domain in the United States 1 January 2006		
UNPUBLISHED WORKS		
Type of Work	Copyright Term	What was in the public domain in the U.S. as of 1 January 2006²
Unpublished works	Life of the author + 70 years	Works from authors who died before 1936.
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1886.
Unpublished works created before 1978 that were published after 1977 but before 2003	Life of the author + 70 years or 31 December 2047, whichever is greater	Nothing. The soonest the works can enter the public domain is 1 January 2048
Unpublished works created before 1978 that were published after 31 December 2002	Life of the author + 70 years	Works of authors who died before 1935.
Unpublished works when the death date of the author is not known ³	120 years from date of creation ⁴	Works created before 1886. ⁴
WORKS PUBLISHED IN THE US		
<i>Date of Publication⁵</i>	<i>Conditions⁶</i>	<i>Copyright Term²</i>
Before 1923	None	In the public domain
1923 through 1977	Published without a copyright notice	In the public domain
1978 to 1 March 1989	Published without notice, and without subsequent registration	In the public domain
1978 to 1 March 1989	Published without notice, but with subsequent registration	70 years after the death of author, or if work of corporate

¹⁶ The Public Domain Chart was taken from Cornell's Copyright Information Website: http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

		authorship, the shorter of 95 years from publication, or 120 years from creation ²
1923 through 1963	Published with notice but copyright was not renewed ⁷	In the public domain
1923 through 1963	Published with notice and the copyright was renewed ⁷	95 years after publication date ²
1964 through 1977	Published with notice	95 years after publication date ²
1978 to 1 March 1989	Published with notice	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²
After 1 March 1989	None	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²

WORKS PUBLISHED OUTSIDE THE US

<i>Date of Publication</i>	<i>Conditions</i>	<i>Copyright Term in the United States</i>
Before 1 July 1909	None	In the public domain
<i>Works Published Abroad Before 1978 in Compliance with US Formalities⁸</i>		
1 July 1909 through 1922	Published in compliance with US formalities	In the public domain
1923 through 1977	Published with notice, and still in copyright in its home country as of 1 January 1996	95 years after publication date ⁹
<i>Works Published Abroad Before 1978 Without Compliance with US Formalities¹⁰</i>		
1 July 1909 through 1922	Published in a language other than English and without subsequent republication with a copyright notice	In the 9 th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be in the public domain ¹¹
1923 through 1977	In the public domain in its home country as of 1 January 1996	In the public domain
1923 through 1977	Published in a language other than English, without subsequent republication with a copyright notice, and not in the public domain in its home country as of 1 January 1996	In the 9 th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be 95 years after publication date ¹¹
1923 through 1977	Published in English, without subsequent republication with a	95 years after publication date ⁹

	copyright notice, and not in the public domain in its home country as of 1 January 1996	
<i>Works Published Abroad After 1 January 1978</i>		
After 1 January 1978	Copyright in the work in its home country has not expired by 1 January 1996	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation
<i>Special Cases</i>		
After 1 July 1909	Created by a resident of Afghanistan, Bhutan, Ethiopia, Iran, Iraq, Nepal, San Marino, and possibly Yemen, and published in one of these countries ¹²	Not protected by US copyright law because they are not party to international copyright agreements
After 1 July 1909	Works whose copyright was once owned or administered by the Alien Property Custodian, and whose copyright, if restored, would as of January 1, 1996, be owned by a government ¹³	Not protected by US copyright law

¹ This chart was first published in Peter B. Hirtle, "Recent Changes To The Copyright Law: Copyright Term Extension," *Archival Outlook*, January/February 1999. This version is current as of 1 January 2005. The most recent version is found at http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm.

The chart is based in part on Laura N. Gasaway's chart, "When Works Pass Into the Public Domain," at <http://www.unc.edu/~unc/ncg/public-d.htm>, and similar charts found in Marie C. Malero, *A Legal Primer On Managing Museum Collections* (Washington, D.C.: Smithsonian Institution Press, 1998): 155-156. A useful copyright duration chart by Mary Minow, organized by year, is found at <http://www.librarylaw.com/DigitizationTable.htm>. A "flow chart" for copyright duration is found at http://www.bromsun.com/practice/copyrights/copyright_durations.html. See also Library of Congress Copyright Office. Circular 15a, *Duration of Copyright: Provisions of the Law Dealing with the Length of Copyright Protection* (Washington, D.C.: Library of Congress, 2004) <http://www.copyright.gov/circs/circ15a.pdf>.

² All terms of copyright run through the end of the calendar year in which they would otherwise expire, so a work enters the public domain on the first of the year following the expiration of its copyright term. For example, a book published on 15 March 1923 will enter the public domain on 1 January 2019, not 16 March 2018 (1923+95=2018).

³ Unpublished works when the death date of the author is not known may still be copyrighted, but certification from the Copyright Office that it has no record to indicate whether the person is living or died less than 70 years before is a complete defense to any action for infringement. See [17 U.S.C. § 302\(e\)](#).

⁴ Presumption as to the author's death requires a certified report from the Copyright Office that its records disclose nothing to indicate that the author of the work is living or died less than seventy years before.

⁵ "Publication" was not explicitly defined in the Copyright Law before 1976, but the 1909 Act indirectly indicated that publication was when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority."

⁶ Not all published works are copyrighted. Works prepared by an officer or employee of the United States Government as part of that person's official duties receive no copyright protection in the US. For much of the twentieth century, certain formalities had to followed to secure copyright protection. For example, some books had to be printed in the United States to receive copyright protection, and failure to deposit copies of works with the

Register of Copyright could result in the loss of copyright. The requirements that copies include a formal notice of copyright and that the copyright be renewed after twenty eight years were the most common conditions, and are specified in the chart.

⁷ A 1961 Copyright Office study found that fewer than 15% of all registered copyrights were renewed. For books, the figure was even lower: 7%. See Barbara Ringer, "Study No. 31: Renewal of Copyright" (1960), reprinted in Library of Congress Copyright Office. *Copyright law revision: Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, United States Senate, Eighty-sixth Congress, first [-second] session.* (Washington: U. S. Govt. Print. Off, 1961), p. 220. A good guide to investigating the copyright and renewal status of published work is Samuel Demas and Jennie L. Brogdon, "Determining Copyright Status for Preservation and Access: Defining Reasonable Effort," *Library Resources and Technical Services* 41:4 (October, 1997): 323-334. See also Library of Congress Copyright Office, [How to investigate the copyright status of a work. Circular 22.](#) [Washington, D.C.: Library of Congress, Copyright Office, 2004]. The Online Books Page FAQ, especially "[How Can I Tell Whether a Book Can Go Online?](#)" and "[How Can I Tell Whether a Copyright Was Renewed?](#)", is also very helpful.

⁸ The following section on foreign publications draws extensively on Stephen Fishman, *The Public Domain: How to Find Copyright-free Writings, Music, Art & More.* (Berkeley: Nolo.com, 2004). It applies to works first published abroad and not subsequently published in the US within 30 days of the original foreign publication. Works that were simultaneously published abroad and in the US are treated as if they are American publications.

⁹ Foreign works published after 1923 are likely to be still under copyright in the US because of the Uruguay Round Agreements Act (URAA) modifying the General Agreement on Tariffs and Trade (GATT). The URAA restored copyright in foreign works that as of 1 January 1996 had fallen into the public domain in the US because of a failure to comply with US formalities. One of the authors of the work had to be a non-US citizen or resident, the work could not have been published in the US within 30 days after its publication abroad, and the work needed to still be in copyright in the country of publication. Such works have a copyright term equivalent to that of an American work that had followed all of the formalities. For more information, see Library of Congress Copyright Office, [Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act \(URAA\). Circular 38b.](#) [Washington, D.C.: Library of Congress, Copyright Office, 2004].

¹⁰ US formalities include the requirement that a formal notice of copyright be included in the work; registration, renewal, and deposit of copies in the Copyright Office; and the manufacture of the work in the US.

¹¹ The differing dates is a product of the question of controversial [Twin Books v. Walt Disney Co.](#) decision by the 9th Circuit Court of Appeals in 1996. The question at issue is the copyright status of a work only published in a foreign language outside of the United States and without a copyright notice. It had long been assumed that failure to comply with US formalities placed these works in the public domain in the US and, as such, were subject to copyright restoration under URAA (see note 9). The court in *Twin Books*, however, concluded "publication without a copyright notice in a foreign country did not put the work in the public domain in the United States." According to the court, these foreign publications were in effect "unpublished" in the US, and hence have the same copyright term as unpublished works. The decision has been harshly criticized in *Nimmer on Copyright*, the leading treatise on copyright, as being incompatible with previous decisions and the intent of Congress when it restored foreign copyrights. The Copyright Office as well ignores the *Twin Books* decision in its circular on restored copyrights. Nevertheless, the decision is currently applicable in all of the 9th Judicial Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and Guam and the Northern Mariana Islands), and it may apply in the rest of the country.

¹² See Library of Congress Copyright Office, [International Copyright Relations of the United States. Circular 38a.](#) [Washington, D.C.: Library of Congress, Copyright Office, 2004].

¹³ See 63 Fed. Reg.19,287 (1998), Library of Congress Copyright Office, [Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office.](#)



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[Cornell Copyright Information Center](http://www.copyright.cornell.edu/) <<http://www.copyright.cornell.edu/>>



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Appendix D: Resources¹⁷

Primary Source:

United States Copyright Office

www.copyright.gov

Overseen by the Library of Congress, the United States Copyright Office Website provides the primary source material about the copyright law. The actual laws itself are on the website, as well as numerous resources to help you understand it. They currently have a section on copyright basics that is very useful for learning the basics of copyright law, they provide the capability to search copyright records, and online publications about copyright.

Copyright Clearance Center

<http://www.copyright.com/>

The copyright clearance center sells the ability to use copyrighted material. However, under the *Academic Section*, there is a great glossary of copyright terms.

Online Resources:

Wikipedia

<http://en.wikipedia.org/wiki/Copyright>

http://en.wikipedia.org/wiki/Public_domain

http://en.wikipedia.org/wiki/Fair_use

Wikipedia is an online collaborative encyclopedia. Users can update the entries to include more information or to change inaccurate information. The Wikipedia tends to be very accurate because it is undergoing constant peer review. The Wikipedia articles on copyright, public domain, and fair use are all good for an introduction to these terms.

Copyright Duration and Public Domain

http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

Cornell University has an extensive copyright clearing house of information [<http://www.copyright.cornell.edu/>]. Among this information is a chart of what material is currently in public domain (the information is updated at the beginning of each year). Among other information is an index of useful copyright articles and online tutorials about copyright.

¹⁷ Specific content on the resource web pages are based on the pages as published on February 14, 2006.

College and University Copyright Resources:

Cornell University

<http://www.copyright.cornell.edu/>

Indiana University-Perdue University

<http://www.copyright.iupui.edu/index.htm>

Standford University Libraries

<http://fairuse.stanford.edu/>