

Copyright Issues for Historic Collections

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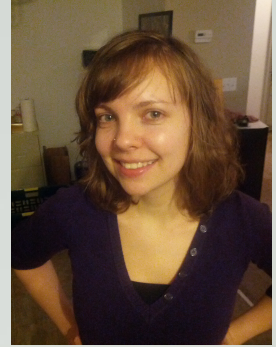
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Julia Frankosky is the U.S. and International Government Information Librarian at Michigan State University. Prior to this position, she was the Assistant Copyright Librarian at MSU. She holds a B.A. in History from MSU and a M.L.I.S. with a concentration in Records and Information Management from Wayne State University. Julia has certificate in Intellectual Property Management and Leadership from the Center for Intellectual Property at the University of Maryland.

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Megan is the Collections & Outreach Archivist at the Michigan State University Archives & Historical Collections. At the University Archives, she coordinates tours, teaches introduction to archives sessions, manages social media, and arranges and describes archival collections. Megan earned a M.L.I.S. and a graduate certificate in Archival Administration from Wayne State University.

Overview

- Introduction to U.S. copyright law
- Copyright exemptions for libraries and archives
- Drafting agreements
- Protecting repositories from lawsuits

Learning Outcomes

- At the end of this workshop, you should be able to:
 - Recognize the different copyright terms
 - Utilize appropriate copyright exemptions
 - Draft an appropriate agreement form
 - Recognize when your repository does/does not hold copyright
 - Understand how to protect online images

Disclaimer

The purpose of this workshop is to provide copyright information and education **only**. We are not attorneys; what we say should **not** be construed as legal advice. If you have a legal issue, please consult appropriate counsel.

The Basics of Copyright Law



What Can You Copyright?

17 U.S.C. §102(a)

- “Original works...fixed in any tangible medium of expression”¹
 - Literary works
 - Photographs
 - Works of art
 - Musical compositions
 - Dramatic works
 - Sound recordings
 - Architectural works
 - Audiovisual works
 - Pantomimes and choreographic works

1. *U.S. Copyright Act*, 17 U.S.C. §102(a).

What Can't You Copyright?

- Facts & ideas
- Works created by the U.S. (federal) government
- Databases
 - Can be protected by licenses and contracts
- Anything that isn't saved in a tangible medium
 - Improv comedy routine that is not recorded in anyway
 - Unrecorded choreography routine
- Titles, names, short phrases, slogans, symbols, signs
 - Might be protected by trademark
- Listing of ingredients
 - Recipes

General Rights of a Copyright Holder

- Reproduction
- Creation of derivative works
- Distribution
- Public performance
- Public display
- Moral rights

Public Domain

Works that are not protected by copyright are considered to be in the public domain. Since they are no longer protected, you're free to do whatever you'd like with them.

What's in the Public Domain?

- Items never subject to copyright protection
- Published before 1923
- Published between 1923-1963 & copyright not renewed
- Published between 1923-1977 & published without copyright notice
- Published between 1978-1989 published without notice & not registered within 5 years
- Unpublished created by individual who died before 1941
- Unpublished anonymous & corporate works created before 1981

However...

- Supreme Court ruling on January 18, 2012 in the case of *Golan v. Holder*
 - Congress was granted the power to reinstate copyright for works that have entered into the public domain

When Does Copyright Take Effect?

- For works created after 1978
 - As soon as it is recorded in a some sort of medium
- For works created before 1978
 - Published work had to have a copyright notice ©
 - Unpublished work had to be registered with the Copyright Office
 - Unregistered works were protected under common law as long as they remained unpublished and unregistered

How Long Does Protection Last?

For works created after 1978

- Life of the author(s) + 70 years
- Work made for hire: the shorter of either 120 years from the date of creation or 95 years from the date of publication
 - A work created within the scope of the employee's employment

How Long Does Protection Last?

For works created before 1978

- Copyright lasted for 28 years and was eligible for 1 renewal
 - If copyright was not renewed, the work became public domain
 - Congress removed the requirement to renew copyright for pre-1978 works in 1992
 - Copyright term automatically extended to 95 years after the date of publication
 - For works that needed to be renewed before 1992, however, if they weren't renewed, they slipped into the public domain
 - Term extension did not restore copyrights to items whose copyrights already expired

How Can I Tell If Something Is Protected?

For works created before 1978

- It requires a fair amount of research
 - Check the original published work for a copyright notice
 - If no notice when a notice was requirement to be protected by copyright, then it went into the public domain immediately
 - If it has a notice, but the original copyright term expired before 1992, then you have to check with the Copyright Office to see if copyright was renewed. If not, then it's in the public domain

Copyright Terms for Unpublished Works

- Known author
 - Life of the author + 70 years (died before 1945: Public Domain)
- Anonymous, Pseudonymous, and Works made for hire
 - 120 years from the date of creation (created pre-1895: Public Domain)
- Author's death date is unknown
 - 120 years from date of creation (created pre-1895: Public Domain)
- Created before 1978 and published after 1977 but before 2003
 - Life of the author + 70 years or until December 31, 2047
 - Whichever is greater
- Created before 1978 and published after December 31, 2002
 - Life of the author + 70 years (died before 1945: Public Domain)

Copyright Exceptions

Fair Use

17 U.S.C. §107

- Broad, flexible, non specific exception that allows information users to use copyrighted works without obtaining permission
- Four factors are used for determining if a use is a fair use
 - Purpose and character of use
 - Commercial, educational, nonprofit, transformative
 - Nature of work
 - Published, unpublished, fiction, nonfiction, out of print
 - Amount used (both qualitative and quantitative)
 - Just enough to prove your point, half the book, the heart of the work, one sentence
 - Effect on the market
 - Replaces the need to buy a copy, harms potential derivatives

It's All About Balance

- Determining if a use is a fair use is all about balancing the four factors
- Make a judgement call based on these factors, as well as understanding and accepting risk.
 - There's no bright line test for determining if a use is a fair use.



J.D. Salinger & L. Ron Hubbard

Reproduction By Libraries And Archives

17 U.S.C. §108

- Libraries and archives can make copies of many works for:
 - Preservation of library/archival collections
 - Private study for individuals
 - Interlibrary loan arrangements

What Is Required To Take Advantage of Section 108

- To use the exemptions in section 108, libraries and archives must comply with these conditions:
 - Be open to the public or outside researchers
 - Copies cannot be made for the purpose of commercial advantage
 - Copies of a work cannot be done on a large scale or on related occasions
 - Each copy needs to include a notice of copyright

What Works Are Included In Section 108

- For copies that are being made for preservation and replacement purposes, all works are included
 - Published, unpublished, fiction; you name, you can make a preservation/replacement copy of it, as long as
 - For unpublished works:
 - The work is currently in the collection
 - Copies are SOLELY for preservation or security OR for deposit at another library
 - For published works:
 - It's to replace a damaged, deteriorating, stolen, lost, or in an obsolete format AND you've conducted a diligent search for a reasonably priced unused replacement and could not find one

DMCA and Section 108

- The Digital Millennium Copyright Act of 1998 (DMCA) amended section 108 to include provisions for digital copies for preservation and replacement
- Digital copies can be made of both published and unpublished works following the same conditions and rules for print copies
- Any digital copy made **CANNOT** be made available to the public in the digital format outside of the physical premises of the library or archive

Getting Permission

- Identify rights holder(s)
- Locate and contact the rights holder(s) (author, publisher, organization, etc.)
- Permission might be possible from organizations like Copyright Clearance Center, ASCAP, Artists Rights Society

Mitigating Risks

- Select potential digitized collections carefully
- Document, document, document
- Post how a rights holder can contact you to get copyrighted material taken down
- Don't be shy about getting legal advice

Case Study #1

Section 108

Copyright and archives – protect your repository

True or False?

- An archivist receives a collection of World War II letters. The letters are between the family of the donor and other families whose sons were in the same regiment. The archivist had the donor sign a deed of gift giving copyright and property rights to the archives.
- A researcher wants to publish all the letters in a volume. Does he only need to obtain permission from the archives to publish these letters?

False

- The donor may own the copyright to the items created by him or his family members, but he does not own the copyright to letters created by other families.
- The researcher will need to track down the other authors/families to ask for copyright permission.

Deed of Gift/Donor Agreement

- A written agreement should be created and signed for the acceptance and transfer of ownership of records from unrelated third parties.
- Privately owned institutions hold the legal title to their own records.
- Oral agreements are legally binding, but difficult to prove.

Deed of Gift/Donor Agreement

- To be included in the donor agreement:
 - Donor's name and contact information and the name and contact information of any agent representing donor
 - Statement that donor is legal owner or authorized representative of records
 - Intent to donate records
 - Description that identifies records (title, date, quantity)

Deed of Gift/Donor Agreement

- To be included in the donor agreement:
 - Statement of rights transfers (e.g., all rights including copyright) and/or retains rights until such length of time
 - Restrictions desired by donor (and accepted by archives) with end date of restrictions
 - Archives ability to dispose of duplicates, unwanted items, or originals after reformatting
 - Archives ability to reproduce, reformat and display
 - Signatures

Deed of Gift/Donor Agreement

- Donor should receive copy and/or acknowledgement
- Archives should keep copy on file
- Any future changes must be noted in writing and signed by both parties

Questions?

Case Study #2

Donor Agreements

Oral History Releases

- Both interviewer and interviewee should sign release forms
- Easiest for repository if copyright is transferred with property rights
- Broad rights transfer should anticipate future uses and media
 - For example – digitize and put online with photograph. (Do not want to seek additional permissions.)

Oral History Case Study

- MSU's Sesquicentennial Oral History Project
 - Multiple permission forms
 - Too much editorial control to interviewees
 - No immediate follow up to releases

Making Reproductions for Researchers

- Section 108: Permitted Reproduction and Distribution of Copies by Libraries and Archives
- How to Protect Yourself
 - Must post copyright warning notice
 - Must mark notice on actual copies made
 - Request form should have copyright notice

How much of a collection can I copy for a researcher?

- From Section 108, Subsection d:

The rights of reproduction and distribution under this section apply to a copy, made from the collection of a

library or archives . . . a copy or phonorecord of **a small**

part of any other copyrighted work . . .

- The copyright notice must be prominently displayed and on the request form
- The copies become property of the user

Copyright Permissions for Publications

- Common questions to ask when starting:
 - Is the material protected by copyright or in the public domain?
 - Is use permissible under fair use?
 - Who owns copyright? Archives, donor or third party?
 - Should written permission be sought?

Locating Copyright Owners

- Copyright Clearance Center
 - <http://www.copyright.com/>
- U.S. Copyright Office
 - <http://www.copyright.gov/>
- How archivists can help – donor agreements
- Good faith effort
- Weighing the risks

Are we liable for researchers who violate copyright law?



It Depends

- Did you
 - Post a copyright notice prominently?
 - Put a copyright notice on a copy request form?
 - Stamp that copies were subject to copyright law?
- If you did those things, you should not be liable for researchers' actions.

Questions?

Use Policies

- Display/Publish Items
 - One time use
 - Author is responsible for seeking copyright permission or copyright given if owned by repository
 - Fees may be involved

- Broadcast
 - Non-exclusive rights
 - Can set length of time - renew or in perpetuity

Educational Use

- MSU through *On the Banks* website (onthebanks.msu.edu):
 - Educational use only, no other permissions given. Copyright to this resource is held by Michigan State University and is provided here for educational purposes only. It may not be reproduced or distributed in any format without written permission of the University Archives & Historical Collections, Michigan State University.

Permission to Use Photographs

- Obtaining copyright permission is first step
- Content of photo must be taken into account
 - Are there identifiable trademarks?
 - Are there identifiable individuals? Will privacy be violated?

When Privacy Does Not Apply

- Persons and places at public events
- Individuals and crowds in public settings
 - If photographer readily visible
 - If no reasonable expectation of privacy
- Photos used for news reporting, journalism or other factual use

Case Study #3

Photography – Copyright and Privacy

Protecting Online Images

- Use a low resolution for images
 - Monitors are 72 dpi
 - Publication quality is 300 dpi
 - Preservation quality is 600 dpi
- Watermark images
- Place your contact information where it is easy to find
- Put a copyright notice near/under your image
 - Some photo sharing websites like Flickr, allow you to set copyright status

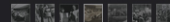
Flickr

flickr

You

Explore

Create


[Back to photostream](#)

Michigan State University ...
Crisis in America protests the Board of Trustees Meeting, 1972

The group, "Crisis in America" protests the Michigan State University Board of Trustees as a response to the killing of two black students at Southern University in Baton Rouge.

November 17, 1972

Repository Information:

Michigan State University Archives & Historical Collections, Conrad Hall, 888 Wilson Rd., Room 101, East Lansing, MI 48824, archives.msu.edu

Resource Identifier:

A004312

820 views

0 faves

0 comments

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Sizes

Square 75 (75 x 75)	Small 240 (240 x 171)	Medium 500 (500 x 356)	Large 1024 (672 x 478)
Square 150 (150 x 150)	Small 320 (320 x 228)	Medium 640 (640 x 455)	
Thumbnail (100 x 71)			



[?](#) Looking for the HTML code and photo file link? Check out [this FAQ](#).

Flickr

flickr

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Print & Create

Groups

Map

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**Choose a License** (Acting on 5 items) ✕

- None (All rights reserved)
- Public Domain Work
- Public Domain Dedication (CC0)
- Attribution-NonCommercial-ShareAlike Creative Commons
- Attribution-NonCommercial Creative Commons
- Attribution-NonCommercial-NoDerivs Creative Commons
- Attribution Creative Commons
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Don't use Flickr well. If we find you engaging in commercial activity, we will warn you or delete your account. Some examples include selling products, services, or yourself through your photostream or in a group, using your account solely as a product catalog, or linking to commercial sites in your photostream. If you engage in commercial activity elsewhere on the internet or in the real world, you're still welcome on Flickr—in fact, we've even set up some [best practices](#) especially for you.

Here are some other things to keep in mind:

Other People (their content, their behavior)

You will see all sorts of things on Flickr, some of which may offend you. If you are offended by a photo or video you can either click away or you can mark it as poorly moderated by clicking on the "Flag this photo" link on a photo page. If you think there's immediate cause for concern, you can report content and/or someone's behavior to Flickr staff via the "Report Abuse" link that's available in the footer of every page. Note: Please report from the specific page that the offensive content appears—this gives us all the information we need to take action.

Copyright Infringement

If you see photos or videos that you've created in another member's photostream, don't panic. This is probably just a misunderstanding and not malicious. A good first step is to contact them via FlickrMail and politely ask them to remove it. If that doesn't work, please file a Notice of Infringement with the [Yahoo Copyright Team](#) who will take it from there.

You may be tempted to post an entry on your photostream or in our public forum about what's happening, but that's not the best way to resolve a possible copyright problem. We don't encourage singling out individuals like this on Flickr as it could be seen as harassment which is against our guidelines.

In Conclusion

If you don't feel that you can abide by our Community Guidelines as outlined above, maybe Flickr isn't for you. We've crafted these guidelines to ensure that everyone within the Flickr community has the experience they want.

You may also want to check out our [FAQs](#) and [Privacy Policy](#). If you ever have any questions or comments, we'd love to hear from you. Please feel free to drop us a line through [Help by Email](#).

The Flickreros

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Protecting Online Images

- Put a blank image over your image
- Use a flash file

Note: These won't stop everyone, but someone who does steal/use your images will need to be very determined!

Useful Resources

- Copyright Clearance Center: <http://www.copyright.com/>
- Public Domain Slider:
<http://librarycopyright.net/resources/digitalslider/>
- Section 108 Spinner: <http://librarycopyright.net/resources/spinner/>
- The Copyright Genie: <http://librarycopyright.net/resources/genie/>
- U.S. Copyright Office: <http://www.copyright.gov/>

- Copyright Term and the Public Domain in the United States by Peter Hirtle of Cornell University:
<http://copyright.cornell.edu/resources/publicdomain.cfm>

Thank you!!

Questions/comments:

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- Megan Malone – badgle10@msu.edu