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What is Copyright?

“Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of ‘original works of authorship,’ including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.” (www.copyright.gov) Copyright affords the owner certain rights, including the right to reproduce a work, and the right to distribute copies of the work.

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Copyright of a work is owned by the creator of the work, known simply as the Author. As with any rule, there are exceptions: The copyright may have been assigned by the Author to another party; if the work is created as a ‘work for hire’, or if it is undertaken as a part of one’s job in the course of employment, the employer will own the copyright. In the case of published texts and music, the publisher likely administers the copyright; in the case of photographs or fine art, the artist is often represented by a gallery or agency who can grant reproduction rights.

Copyright law does allow for the fair use of copyrighted material for the purposes of criticism, comment and scholarship. If your use of copyrighted material falls within the bounds of fair use, you do not need to seek permission to use that material.
**Fair Use**

The doctrine of fair use was originally developed by judges as an equitable limit on the absolutism of copyright. Although fair use is incorporated into the most recent copyright law, there is no hard and fast definition of fair use; fair use in one instance may be copyright infringement in another. No one can give an absolute prediction of how a court may rule in a particular case, so one should not make claims of fair use frivolously. Claims of fair use will be evaluated by the Contracts and Permissions office of the University of Chicago Press, though the legal and financial liability is ultimately the Author’s.

In determining whether the use of copyrighted materials can be considered fair use, four factors must be considered:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose;
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; and
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.

Since copyright is essentially a means of protecting financial interests, it is easier to make a case for the fair use exception for scholarly books or books with relatively small print runs. As a rule of thumb for scholarly works, short prose extracts, and poetry extracts (no more than 3 or 4 lines, sometimes as few as 1 or 2 lines, depending on the length of the poem) will fall under fair use, provided they are the subject of discussion in the book, and no permission need be sought. It is more difficult to make a claim of fair use for copyrighted works of visual art reproduced in their entirety, and Authors are encouraged to err on the side of caution in such cases.

**Public Domain**

All works will eventually go out of copyright and enter the public domain. Once in the public domain, the exact work may never again be protected and is free for all to use. Herman Melville’s *Bartleby*, for example, is in the public domain, even if Melville’s heirs would prefer that it not be. (One might, however, copyright an annotated edition of *Bartleby*.)

U.S. Copyright law is complicated and nuanced, but as a rule of thumb it is safe to assume that works created and published in the United States before 1923 are in the public domain. For works created after 1923, various terms of copyright apply, depending on the circumstance. The most conservative measure is to assume copyright extends for the life of the author plus 70 years, though for more on the nuances of post-1923 copyright, you may refer to Lolly Gasaway’s chart, below, or this helpful interactive website: [www.librarycopyright.net/digitalslider](http://www.librarycopyright.net/digitalslider)
DATE OF WORK                        | PROTECTED FROM                                                                 | TERM                                                                                                  
---                                |--------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------- 
Created 1-1-78 or after           | When work is fixed in tangible medium of expression                             | Life + 70 years¹ (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation²) |
Published before 1923              | In public domain                                                               | None                                                                                                  |
Published from 1923 - 63           | When published with notice³                                                    | 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 - 77           | When published with notice                                                     | 28 years for first term; now automatic extension of 67 years for second term                           |
Created before 1-1-78 but not published | 1-1-78, the effective date of the 1976 Act which eliminated common law copyright | Life + 70 years or 12-31-2002, whichever is greater                                                  |
Created before 1-1-78 but published between then and 12-31-2002 | 1-1-78, the effective date of the 1976 Act which eliminated common law copyright | Life + 70 years or 12-31-2047, whichever is greater                                               |

¹ Term of joint works is measured by life of the longest-lived author.  
² Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).  
³ Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405.

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For Texts: For texts published after 1923 and quoted beyond the bounds of fair use, you will need to seek permission. For texts never before published, you will likely need to seek permission, regardless of when they were composed.

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Online Resources

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