Creators’ Rights

Copyright for Creators

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Disclaimer: I’m Not a Lawyer

VCU Libraries provides the VCU community with information and resources that can help guide them in the responsible and confident use of copyrighted works. However, we do not provide legal advice.

For legal advice, please consult the Office of University Counsel.
Other Legal Resources

Virginia Lawyers for the Arts

Washington Area Lawyers for the Arts
What are you hoping to learn?
What this workshop will cover

- What is copyright?
- What can be copyrighted?
- What rights do creators receive?
- How does copyright work for employees and co-creators?
- How and why should you register your works?
- What do you need to consider when sharing your works?
What is Copyright?

Copyright is a form of legal protection granted to authors that gives them exclusive rights to their original works of authorship.
What is Copyright?

“[P]romote 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.”
Activity

What are some examples of copyrighted works from your daily life?
Copyright protects...

Literary works
Choreography
Musical works, including score and lyrics
Sound recordings
Pictorial, graphic, and sculptural works
Films and other audiovisual works
Architectural works
But doesn’t protect...

Ideas, procedures, methods, systems, and processes
Facts and data
Titles, names, short phrases, and slogans
“Useful articles” (that’s patent)

However, it can sometimes protect the particular way that these things are expressed.
Original and Fixed Expressions

**Original**: The work must have originated from the creator’s mind. Only a minimal amount of creativity is required.

**Fixed**: The work must be fixed in some tangible medium so that it can be perceived, copied, or communicated.

**Expression**: Copyright does not protect underlying ideas or facts, but the particular way they are expressed.
Copyright gives authors exclusive rights

- To reproduce the work
- To distribute the work
- To create derivative works
- To perform or display the work in public
- To authorize others to exercise any of these rights
Visual Artists Rights Act (VARA)

- Only instance of “moral rights” in US copyright law, VARA applies to:
  - Paintings
  - Drawings
  - Prints
  - Sculptures
  - Photographic images produced for exhibition only
  - Works must exist in single copies or limited editions of 200 or fewer copies that are signed and numbered by the artist
Visual Artists Rights Act (VARA)

VARA grants artists the right to:

- Claim authorship
- Prevent use of name on works not created by the author
- Prevent use of name on works that have been distorted, mutilated, or modified in a way that is prejudicial to author’s honor or reputation
- Prevent distortion, mutilation, or modification that would prejudice honor or reputation
- Prevent destruction of works of “recognized stature”
Copyright is more like copyrights

Copyright is a bundle of rights. You can give away (or get) any of the exclusive rights:

- Individually
- On an exclusive or nonexclusive basis (transfers of rights on an exclusive basis must be done in writing)
- For a certain amount of time
- With other kinds of restrictions (noncommercial, educational use only, etc.)
Activity

What are example situations where you as a creator may want or need to give away some of your exclusive rights?
How long does copyright last?

For works published today....

- Standard term is the life of the author plus 70 years.
- For works of “corporate authorship,” meaning copyright is owned by an organization, 95 years after publication or 120 years after creation, whichever expires first.

For works published in the past....

- It’s much more complicated.
- See Cornell’s copyright term chart.
Copyright Myths
Copyright Myth #1

Myth: A work is not copyrighted unless it’s officially registered.
Copyright Myth #1

Fact: Registration is not required.

However, there are good reasons to register anyway.
Copyright Myth #2

Myth: A work is not copyrighted unless it has a copyright symbol.
Copyright Myth #2

Fact: Works are not required to be marked with a copyright symbol.

However, there are good reasons to both use the symbol and provide creator information whenever you share the work.
Copyright Myth #3

Myth: The work is already online, so the creator is okay with it being used and shared.
Copyright Myth #3

Fact: It may be online without their consent. Even with their consent, copyright still limits how you can use a work.

Think about this from your perspective as a creator.
Copyright Myth #4

Myth: If I’m not making money off of using someone else’s work, my use is okay.
Copyright Myth #4

Fact: Whether your use is for profit or not for profit does not determine if it’s okay (but it can be one factor).
Copyright Myth #5

Myth: I’m not “publishing” something when I put it up online.
Copyright Myth #5

Fact: Under copyright law, putting a work online does count as “distribution.”

If you want to more formally publish the work later, the publisher’s definition of “previously published” is important to consider.
Copyright Myth #6

Myth: If I made it for class, I can put it online.
Copyright Myth #6

Fact: In the classroom versus on the open web are two different environments. If you used other people’s works, you have to consider each situation differently.
Copyright Myth #7

Myth: If I attribute the work to the creator, I’m not infringing on their copyright.
Copyright Myth #7

Fact: Attribution and copyright infringement are two different things. You can properly attribute a work and still infringe on the author’s copyright.
Works for Hire

- A work prepared by an employee within the scope of his or her employment.
- Although the employee created the work, the employer is considered the author and copyright holder.
Commissioned Works

Can be works for hire if:

● They fall under one of nine categories: 1) contribution to a collective work, 2) part of a motion picture or audiovisual work, 3) translation, 4) supplementary work, 5) compilation, 6) instructional text, 7) test, 8) answer material for a test, 9) atlas

● Both parties have signed a written agreement stating it is a work for hire
If you have been asked to create something...

- Ask questions of the employer or commissioner of the work and come to an agreement about copyright
- Get it in writing!
VCU Intellectual Property Policy
Joint Authorship

- When a work is prepared by two or more individuals with the intention that their separate contributions be merged into a single work
- Unless there is an agreement stating otherwise, joint authors own the work *jointly* and *equally*
Joint Authorship

Each author can, without the consent of other authors:

- Exercise exclusive rights
- Grant third parties permission to use the work on a nonexclusive basis
- Transfer their entire ownership interest to another person
- Update the work for their own purposes (the creation of a derivative work)
Joint Authorship

- Joint authors cannot grant rights to a third party on an exclusive basis
- Each joint author has a duty to account to the other authors for any profits received from licensing or selling the joint work
- Get it in writing!
Copyright Registration - Why?

- Evidence of your copyright claim
- Registering creates a public record and gives you a copyright registration certificate
Copyright Registration - Why?

- You must register if you want to file a lawsuit for infringement.
- You can register after infringement occurs, but you will not be able to receive as much compensation in a lawsuit.
- You can receive **actual damages**, demonstrable losses the creator suffered as a result of infringement.
- You will not be eligible for **statutory damages**, attorney fees, or court costs.
Copyright Registration - Why?

Because actual damages can be difficult to prove, statutory damages attempt to compensate copyright holders based on a number of factors.

- Can range from $200 to $150,000 per work
- Willful or innocent infringement
- Financial worth of infringer
Copyright Registration - How?

The Copyright Office requires three components:

- Registration form
- Filing fee
- Deposit: a non-returnable copy of the work
Copyright Registration - How?

Copyright Office website

- Different forms for different types of works
- You can e-file or file on paper
- You can preview applications
- You can register individual works or works as a collection
- Registration tutorials
- Cost
Protecting Your Copyrights

- Get it in writing whenever you can. Other people’s understanding of copyright will vary. Do not make assumptions.
- Place a copyright statement on your work.
- Know what you’re agreeing to when you share your work, especially online.
Copyright Statement

Three elements:

● Copyright symbol ©
● Year of publication or creation
● Your name

What other things might be helpful?
Sharing Your Works

If there are certain uses you are okay with others making of your work, consider sharing in a way that will promote or permit those uses.

If there are certain uses you are not okay with others making of your work, think carefully about how you share.
Open Licenses

- Open licenses do not replace or take away your copyright in a work.
- Think of them as a layer on top of copyright.
- Making your work available under an open license is a way to proactively let others know what uses are permitted beyond those normally allowed under copyright law.
Creative Commons licenses exist on a spectrum, from most open to least open.
Website Terms and Conditions

When you share your work online, you are almost always agreeing to website terms and conditions that will impact how others can access and use your work.

Examples of terms and conditions
In Case of Infringement

You can:

● Send a cease and desist letter. If your work was registered prior to infringement, this will have more weight.
● Submit a takedown notice to the website or internet service provider.
● Ask for payment or a licensing agreement for them to continue using your work.
Fair Use

Fair use is a right granted to everyone under copyright law that allows certain uses of works to be made without permission or payment.

There are four factors that must be considered:

- The purpose and character of the intended use, including whether the use is for commercial or for non-profit educational purposes, and whether the use is transformative
- The nature of the copyrighted work being used
- The amount and substantiality of the work that is used in relation to the work as a whole
- The effect on the potential market for or value of the copyrighted work
Future Workshops

Make Use of Fair Use
Friday, March 2, 2018, 1-2 p.m., Cabell Library, Room 205

Rights and Relationships: Key Legal Issues for Artists, 10 a.m.-12 p.m.
Culture in the Face of Publics, 2-3:30 p.m.
Friday, March 16, 2018, , Cabell Library, Room 303

Navigate the Permissions Process
Friday, March 23, 2018, 1-2 p.m., Cabell Library, Room 205

bit.ly/CopyrightForCreators
Questions?

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guides.library.vcu.edu/copyright-for-creators