

Library Publishing Curriculum

Policy: Unit 1: Copyright

INSTRUCTOR'S GUIDE

Unit Summary

This unit provides a primer on aspects of United States copyright law that relate to library publishing and provides guidance on creating two essential copyright policies: 1. An externally facing copyright policy for authors considering publishing with the library publishing unit; and 2. A copyright review policy for internal purposes (i.e. how to review submitted publications for copyright issues). Nothing in this unit substitutes for legal advice or constitutes legal advice. It is important to work closely with University Counsel when working to comply with University copyright policies, legal requirements, and the needs of the publishing group.

Learning Objectives

At the end of the session, participants will be able to...

- Understand basic copyright principles, including the length and scope of authors' rights
- Identify and create copyright policies that support publishing unit goals and authors' rights
- Apply the principle of fair use in publishing
- Make informed decisions about when and how to register a copyright with the US Copyright Office

Target Audience & Delivery Mode

- **Audience:** ischool students; new librarians
- **Ideal class size:** 18 or fewer
- **Ideal unit length:** 3 hours 10 minutes
- **Optimal for:** In person, instructor-led training to make the most of peer sharing

Set-up Needs (supplies, materials)

- Whiteboard and markers
- Projector and screen



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Trainer Preparation Resources

The following resources may help instructors prepare to teach this unit.

Curriculum Materials

- [Unit 1 Narrative](#)
- [Unit 1 Slides](#)
- [Unit 1 Bibliography](#)
- [US Copyright Then and Now Handout](#)
- [Author Agreement Activity Handout](#)
- [Copyright Registration Activity Handout](#)
- [Using Others' Work Activity Handout](#)
- [Creating Copyright Policies Activity Handout](#)

Readings

- US Copyright Office, Circular 1, Copyright Basics (Reviewed May, 2012), available at <https://www.copyright.gov/circs/circ01.pdf>.
- US Copyright Office, Circular 15A, Duration of Copyright (Reviewed August, 2011), available at <https://www.copyright.gov/circs/circ15a.pdf>.

Participant Pre-Work

- The instructor *may* choose to assign the **Unit 1 Narrative** as pre-reading. The narrative covers the same material as the in-class presentations and activities and will be redundant if used in conjunction with in-class lectures.
- Participants should read the following articles prior to the first session:
 - Schlosser, M. (2016). "Write up! A Study of Copyright Information on Library-Published Journals." *Journal of Librarianship and Scholarly Communication* 4. <http://dx.doi.org/10.7710/2162-3309.2110>.
 - Hawkins, KS. (2014). The Evolution of Publishing Agreements at the University of Michigan Library. *Journal of Librarianship and Scholarly Communication* 2(4). <http://dx.doi.org/10.7710/2162-3309.1175>

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Quick-View Agenda

The quick-view agenda will help you manage session time at a glance. Review the detailed facilitation guidance below for specific instructions.

Start Time	Topic	Duration
0:00	Introduction: Why Do Publishers Care About Copyright?	15 min
0:15	Presentation: Copyright Fundamentals for Publishers	20 min
0:35	Activity: Introduction to Creative Commons Licenses	40 min
1:15	Activity: Author Agreements	25 min
1:40	Activity: To Register or Not to Register?	20 min
2:00	Activity: Using Others' Work	30 min
2:30	Activity: Creating a Copyright Policy	30 min
3:00	Unit Wrap-Up	10 min
3:10	END	--

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Course Agenda and Facilitation Notes

Why Do Publishers Care About Copyright? (15 min)

Format: Presentation

Learning Outcomes:

- Participants will be able to identify the contexts within which publishers encounter copyright, licensing, and author rights.
- Participants will become familiar with the basis of external and internal copyright policies.

Materials:

- If possible, participants should pre-read Schlosser, M. (2016). "Write up! A Study of Copyright Information on Library-Published Journals." *Journal of Librarianship and Scholarly Communication* 4. <http://dx.doi.org/10.7710/2162-3309.2110>.

Set-Up:

- Publishers encounter copyright in their work as both the distributors and "remixers" of content. Publishers need to thoughtfully decide how they will copyright and license their works (e.g., developing author agreements, applying Creative Commons licenses) and how they will incorporate copyrighted materials into the works they publish (e.g., using copyrighted images or other media in a new book).
- Publishers must develop **external copyright policies** that
 - signal to authors the publisher's expectations about licensing, copyright, and access (OA, CC-licenses, etc.),
 - reflect the legal burden the publishing unit is willing to undertake (comfortable with assertions of fair use, disclaim liability for infringing works).
- Publishers must develop **internal copyright policies** that
 - establish a workflow and responsibilities for copyright review prior to publication,
 - provide guidelines for fair use determinations.

Discussion Guide:

- Schlosser (2016) found that (93%) of library-published journals are open access, that a "majority allow authors to retain copyright ownership," and that 38% use some form of open licensing. What do these statistics tell you about library publishers?
- If participants already work in libraries, ask them to share their experiences with copyright and licensing statements. Have they encountered licensing and copyright issues in other areas of library work (e.g., e-resource licensing, digital collections)? How does their library advise faculty and students about fair use?

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Copyright Fundamentals for Publishers (20 min)

Format: Presentation

Learning Outcomes:

- Participants will understand the general history and evolution of copyright law in the United States over the last century.

Materials:

- [Video on Copyright from 1923-1968](#)
- [Copyright Then and Now Handout](#)

Set-Up:

- Begin by asking participants to raise their hands if they own a copyright. Likely, no one will (unless they have thoroughly prepared with the readings!). Indeed, it is likely everyone in the room owns some sort of copyright because the requirements today are fairly minimal. You may own copyright on something if it is fixed (i.e., written down, recorded, or otherwise documented) and original (loosely defined). That's it! You retain your copyright for a long time (generally the rest of your life plus 70 years).
- Today, you neither have to put a copyright symbol © on the work nor file it with the copyright office to have a copyright—it attaches automatically upon creation. However, there are some reasons an author may wish to do so (we will cover that later).
- Some folks think that this is just a history lesson about how the law used to be. Actually, this era in US copyright still has implications today! That's because the copyright laws are generally forward-looking and not retroactive. So, for works published between 1923 and 1968, these rules still apply!
- Works published in the US in this era had to undergo formalities such as applying the copyright symbol © and/or registering and renewing with the copyright office to avoid becoming part of the public domain. The Copyright Review Program through HathiTrust, for instance, is reviewing works in this era to determine whether they met these copyright formalities. If not, they are allowing the public open access to the work because it is in the public domain.
- Show the [10-minute video](#) further explaining this era, as it is fairly complex.

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Introduction to Creative Commons Licenses (40 min)

Format: Presentation, small group activity

Learning Outcomes:

- Participants will understand the function and applications of Creative Commons (CC) licenses.
- Participants will be able to provide guidance on selecting the appropriate flavor of CC license.

Set-Up:

- CC licenses allow authors/creators to designate how others may use their work without first seeking permission. Licenses DO NOT waive of copyright, but rather grant a perpetual and irrevocable license to the public for certain uses of the work.
- There are many different flavors of CC licenses. Licenses can be modified by adding clauses. For instance, if someone decides to designate a specific paper CC-BY-NC, then the public could use that work without first asking for permission as long as they properly cite the author and the source of the work (the BY clause), and as long as they only use the work for non-commercial purposes (the NC clause). If someone wanted to sell the work in a compilation of works, for instance, they would have to ask the author for permission to do so.
- The “share alike” (SA) designation is perhaps the most confusing. In particular, individuals think that if they use a work designated “SA” in any other work (let’s call the original work the author wishes to incorporate work X), they will need to use the same exact license as the original work, or work X. So, if work X had a CC-BY-SA, some folks would think that the new work, work Y would have to be designated CC-BY-SA as well. That is not exactly a correct interpretation of the share alike license. Instead, the time when that would be necessary would be when the person borrowing the SA work creates a derivative or collective work using the SA work. So, if the new work (Y) just uses the other work, say a photograph (X), on the cover of the new work, but then does not adapt the work in any way, the new work (Y) need not use the same exact license as the old work X. For further discussion of this point, see this blog post: <https://carrollogos.blogspot.com/2016/04/us-court-correctly-interprets-creative.html>
- Invite participants to visit the www.CreativeCommons.org and poke around. Point them to the tools for authors select the appropriate license.
- **Break participants into groups of 2 to 3.**
- Ask participants to consider the following scenarios:
 - You are a senior faculty member who has authored a textbook based on a philosophy course you have taught for many years. You want the work to have broader distribution and have approached your library to see if they would publish it as an open educational resource (OER).
 - You are the author of a scholarly monograph on a hot-button issue in American politics. Your manuscript has been rejected by several university presses, but it has scholarly merit and you believe it can find an interested audience among policy-makers and concerned citizens. You have approached your library because you heard that they may be able to help.
- Instruct groups to use the Creative Commons license selector tool (<https://creativecommons.org/choose/>) to choose a license for each work. Ask the groups to share which license they chose.

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Discussion Guide:

- Did everyone select the same license? What reasons did each group cite for the license they selected?
- Why might a library publishing group wish to mandate a particular creative commons license? Are there drawbacks to this approach? Are there reasons to give authors and editors a choice about which license to select? Should CC0 be included in the list of choices? Why or why not?
- Might the appropriate license differ for different types of publications (e.g., monographs versus journals; works in different disciplines)? Why or why not?

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Author Agreements (25 min)

Format: Small group activity

Learning Outcomes:

- Participants will be able to identify and create policies that support authors' rights.

Materials:

- **Author Agreement Handout**
- If possible, participants should pre-read Hawkins, KS. (2014). The Evolution of Publishing Agreements at the University of Michigan Library. *Journal of Librarianship and Scholarly Communication* 2(4). <http://dx.doi.org/10.7710/2162-3309.1175>

Set-Up:

- Publishers use author agreements to clarify the rights and responsibilities of author and publisher, and particularly to spell out the transfer or retention of copyright to a work.
- Review a few models of author agreements (or copyright statements), calling out common features and differences. You may use the following examples or choose your own.
 - [ALA Choice](#)
 - [Duke University Press](#)
 - [Journal of Librarianship and Scholarly Communication](#)
- **Break participants into groups of 2 to 3.**
- Distribute the **Author Agreement Handout** and ask each group to consider the following questions:
 - Which words or phrases jump out at you in this agreement?
 - Which statements are more favorable to authors? Which are more favorable to publishers?

Discussion Guide:

- In what contexts might authors want to use or distribute their work (beyond the published version)? Answers might include sharing with colleagues or collaborators, sharing with students, presenting at a conference, or producing a translation.
 - Would an author be able to make that use of the work in these contexts if they transfer their copyright to a publisher?
- Which rights might an author wish to retain in the work?
 - Remind participants that if an author fully transfers copyright, other individuals could continue to make use of the work under fair use, but the author could not.

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To Register or Not to Register? (25 min)

Format: Small group activity

Learning Outcomes:

- Participants will be able to make informed decisions about whether to register a work with the Copyright Office.
- Participants will become familiar with the procedure for registering a work with the Copyright Office.

Materials:

- **To Register or Not To Register Handout**

Set-Up:

- Review the reasons an author or publisher might want to register a copyright.
- Outline the requirements for copyright registration and the general process.
- **Break participants into groups of 2 to 3.**
- Distribute the **To Register or Not To Register Handout**.
- Ask each group to review *each* scenario and answer the following questions:
 - Would you recommend registering copyright for this work? Why or why not?
- Go through each scenario as a group. Answers might include:
 - **Scenario 1:** Putting a copyright notice on the website is not a bad idea, but formally registering it is probably not useful because website content evolves so often.
 - **Scenario 2:** It is probably unnecessary to file for a copyright registration if all authors are using a creative commons license because the terms of the license will communicate fairly well to end-users what things they can and cannot do without first obtaining permission from the authors of the articles.
 - **Scenario 3:** You probably do need to submit a copy of the printed publication to the Library of Congress, but again, because he is making the book so “open” with a CC-BY license, it is unlikely to be particularly useful to file for a copyright with the copyright office.

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Using Others' Work (30 min)

Format: Small group activity

Learning Outcomes:

- Participants will understand how and when to advise authors to ask for permission to use third party works in a publication.

Set-Up:

- Review the importance of understanding issues related to legally using third party works in your publications, including considerations of fair use, licensing, and asking for permission.
- The slides for this section introduce the role of the library publisher as it relates to third party content and explores whether fair use considerations differ for open access publications. Additional speaker notes are embedded in the slides.
- Ask participants to imagine that their library is publishing an open textbook that contains the items listed below. Discuss as a group what criteria apply when determining the need for the author to seek permission in each case. *Potential responses are included as sub-bullets.*
 - **a video clip from a Disney Movie**
 - Disney is notorious for enforcing copyright stringently. As a matter of risk assessment, it might be best to seek permission to include this clip—even if it is short, unless it is highly transformative.
 - **a 300 word excerpt from an unpublished personal essay (including a for sale print version of the book)**
 - This is a rather short excerpt, which makes it a plus on the “amount of the use” factor. However, it has never before been published, which is a negative on the “nature of the copyrighted work” factor. This probably will not negatively impact the market for the work, as it appears that there is none at present and it seems that this work is primarily for research purposes (a plus on the first factor). Overall, this is likely a fair use, but it could be good to seek permission if you can locate the copyright owner of the work. The print on demand option might change the nature of the use into “commercial work” if the physical books are being sold to make any kind of profit. If the print on demand books are only charging money for the price of the actual printing that would not really change this analysis.
 - **a photograph of a Renoir painting taken at the MOMA**
 - If the painting itself is in the public domain, then a “slavish copy” of the painting in the form of a photograph does not change the work into a copyrighted work. Thus, the photograph itself is likely in the public domain and no permission is likely necessary.

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Creating Copyright Policies (30 min)

Format: Small group activity

Learning Outcomes:

- Participants will understand how to create library publishing copyright policies and what to include in them.

Materials:

- **Creating Copyright Policies Handout**

Set-Up:

- Summarize the essential elements of library copyright policy documents (internal and external).
- **Break participants into groups of 2 to 3.**
- Ask each group to review the sample external policies and then draft their own *external* copyright and licensing statements. Each group should consider the following questions.
 - What is your mission as a library publisher? How does this mission influence your copyright and licensing policies?
 - Will you require Open Access publishing models? Why? Will you allow any exceptions?
 - Will you require Creative Commons licenses? Why? Will authors and editors have a choice about *which* license?
 - Will authors retain copyright to their work?
 - Make sure to indicate that the library will retain a non-exclusive license to publish, index, and preserve all works. Are there other stipulations you require from a non-exclusive license (aside from publishing, indexing, and preserving the works)? Consider activities such as marketing.
- Time permitting, ask each group to draft a brief *internal* copyright policy. The policy should address questions such as:
 - Who on your team will consult with authors and editors about your copyright and licensing requirements as necessary?
 - Who on your team will handle copyright reviews?
- Ask each group to share their external copyright statement.

Discussion Guide:

- How do the policies differ? Did each group take the same approach to author rights, licensing, and copyright transfer?
- What factors influenced each group's decision-making?

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Unit Wrap-Up (10 min)

Format: Lecture, full group discussion

Learning Outcomes:

- Participants will be able to restate key takeaways from the unit and will have the opportunity to deepen their understanding of the topic or clarify information presented.

Discussion Guide:

- What were the most salient concepts you learned today?
- Do you have any questions about the topics discussed today?
- Do you have questions about how to apply what we learned to your own publishing program?

Wrap-Up:

- Refer participants to the **Bibliography**.
- Close by asking participants to read materials in preparation for the next unit (if appropriate).