



Digitizing Hidden Collections
Applicant Support Series–Session 2:
Rights, Ethics, & Re-use
March 12, 2025

Welcome! We're glad you're here.
There is no audio at the moment. Feel free to
introduce yourself in the chat box. 🙌

We'll begin at 2pm ET | 11am PT.



Council on Library and
Information Resources



Digitizing Hidden Collections

Amplifying Unheard Voices

A program of  Council on
Library and
Information
Resources

Introductions



Our Webinar Platform

- Click 'CC Show Captions ' to turn on captions
- All attendees are muted
- Set chat to "Everyone"
- Submit questions in Q&A box
- Recording in progress



zoom

Kaskaskia
Kickapoo
Mascogo
Miccossukee
Myaamia
ᏊᏚᏚᏚ ᏊᏚᏚ ᏋᏚᏚ ᏊᏚᏚ (Osage)
Peoria
Potawatomi
Seminole
Shawandasse-Tula
Timucula

Visit Native-Land.ca to learn about Indigenous Lands where you live.



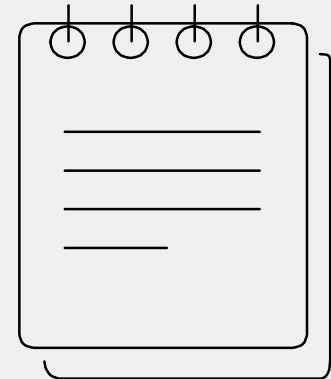


Session outline:

- ✓ Overview + introductions
 - Presentation
 - *Break* (5 minutes)
 - Presentation
 - Q/A
 - Wrap up

Final Application Task + Upload

- Task: Project Details– Rights, Ethics, & Re-use
 - Upload: Rights, Ethics, and Re-use appendices





Introduction

Sandra Enimil

Director of Scholarly Communication
and Collection Strategy
Yale University Library



Welcome!

[Sandra Aya Enimil]

[Director for Scholarly Communication and
Collection Strategy]

You can reach me at:

sandra.enimil@yale.edu



1

[Rights, Ethics, and Re-use]

[What you need to know and consider as
you complete your application]



kenzi
@kenzianidiot

i love how daylight savings boldly asks the question: "what if things were worse for no reason?"

[Disclaimer]



**3111f Women With Law Degrees Say -
The Remix**



Wed at 12:04 · 🌐

~

**The information in this
presentation is not legal
advice.**

(On Cross)

**Attorney: “You mentioned you
have a law degree; is that right?”**

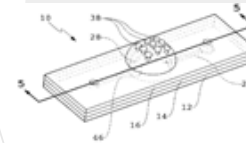
**Witness: “We have all done
things we are not proud of.”**

Intellectual Property Rights:



Trademark: words, names, symbols, or devices used in commerce to indicate the source of a good or service

- **Patent:** new and useful discoveries or improvements



Trade secret: business formulas, processes, and practices not readily known or ascertainable

- **Copyright:** protects original works of authorship fixed in a tangible medium of expression



[Copyright]

History of Copyright

1710. The Statute of Anne, England

- 14-year term, renewable for another
 - 14 years if author is still alive
- Created public domain
- Based on social quid pro quo

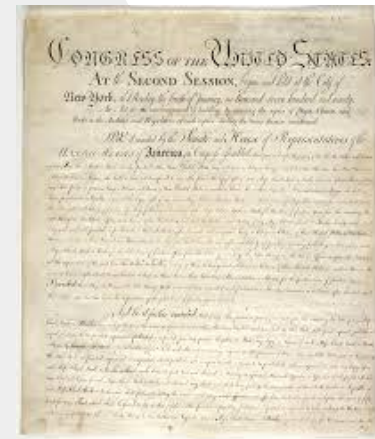
1886. Berne Convention, International Treaty

- Berlin Act (1908) defined copyright term: life of the author plus 50 years
- Rome Act (1928) concerned moral rights of authors and artists right to object to modifications or to the destruction of a work

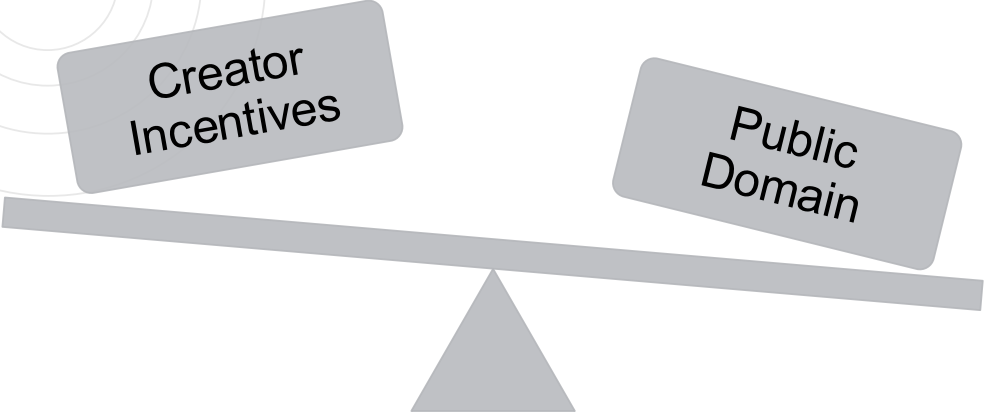


History of U.S. Copyright

// *An Act for the encouragement of learning, by securing the copies of maps, Charts, And books, to the authors and proprietors of such copies, during the times therein mentioned."*



Purpose of U.S. Copyright



Creator
Incentives

Public
Domain

What incentives? Authors and inventors have exclusive rights—for a limited time—that are not intrinsic or natural.

Milestones in U.S. Copyright Law

- 1790. First Copyright Act
 - Term- 14 years, Renewable for another 14.
- 1831. Copyright Act Revised
 - Term- 28 years, Renewable for another 14.
- 1870. Copyright Act Revised
 - Copyright matters move to Library of Congress
- 1909. Copyright Act Revised
 - Term- 28 years, Renewable for another 28.
- 1976. Copyright Act Revised
 - Term- Life of the Author PLUS 50 years
- 1998. Sonny Bono Copyright Extension Act
 - Term- Life of the Author PLUS 70 years
- 2018. Orrin G. Hatch-Bob Goodlatte Music Modernization Act
 - Downloads/Streaming, pre-1972 Recordings, Producer Royalties
- 2020. Copyright Alternative in Small-Claims Enforcement Act (CASE Act)
 - Copyright Claims Board—voluntary small (-\$30K) claims tribunal

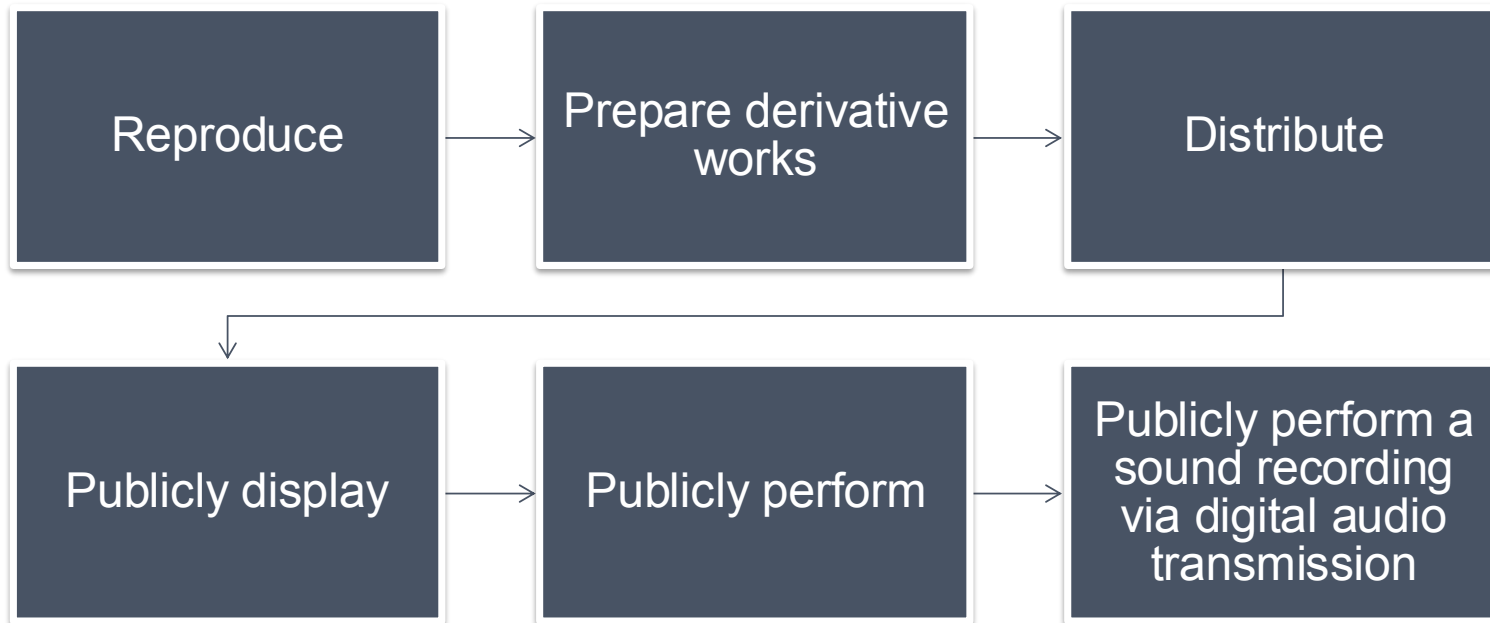


What can be copyrighted?

Original works of authorship fixed in a tangible medium of expression.



Exclusive rights of creators



What is not protected by copyright:

- Works **not original or fixed** in a tangible medium
- Ideas, facts, principles, discoveries, systems
- Works of the U.S. Government produced by government employees in the **scope of employment**
- Works already in the **Public Domain**

Who/what is left out of the whole process because their work is not protected by copyright?



Do we want these things to be protected by ©?



What would be the advantages and disadvantages?



Are other protection systems preferable?

- Traditional knowledge
- Traditional cultural expressions, such as textile designs, folk music, folk dance
- Family oral histories

- Fashion designers—Is there sexism underlying this because women were seamstresses?
- Chefs/cooks and their recipes—Is there sexism underlying this because women were cooks?

This slide was created by [Dr. Kimber Thomas](#) and is licensed under a [CC BY 4.0](#) license.

The Public Domain

Information, knowledge, discoveries, and artistic creations never or no longer protected by copyright

Publicly available
(e.g. online) does not
mean public domain



"Night of the Living Dead" movie poster, retrieved from [Plagiarism Today](#)

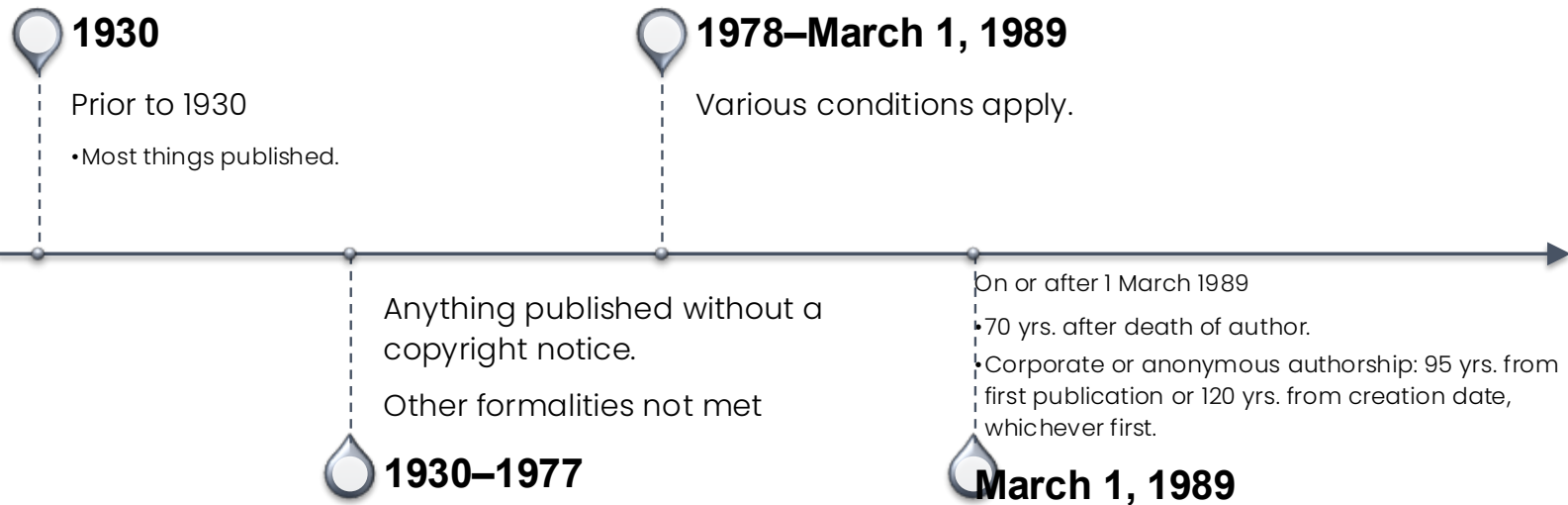


Published before ~~1923~~ 1930

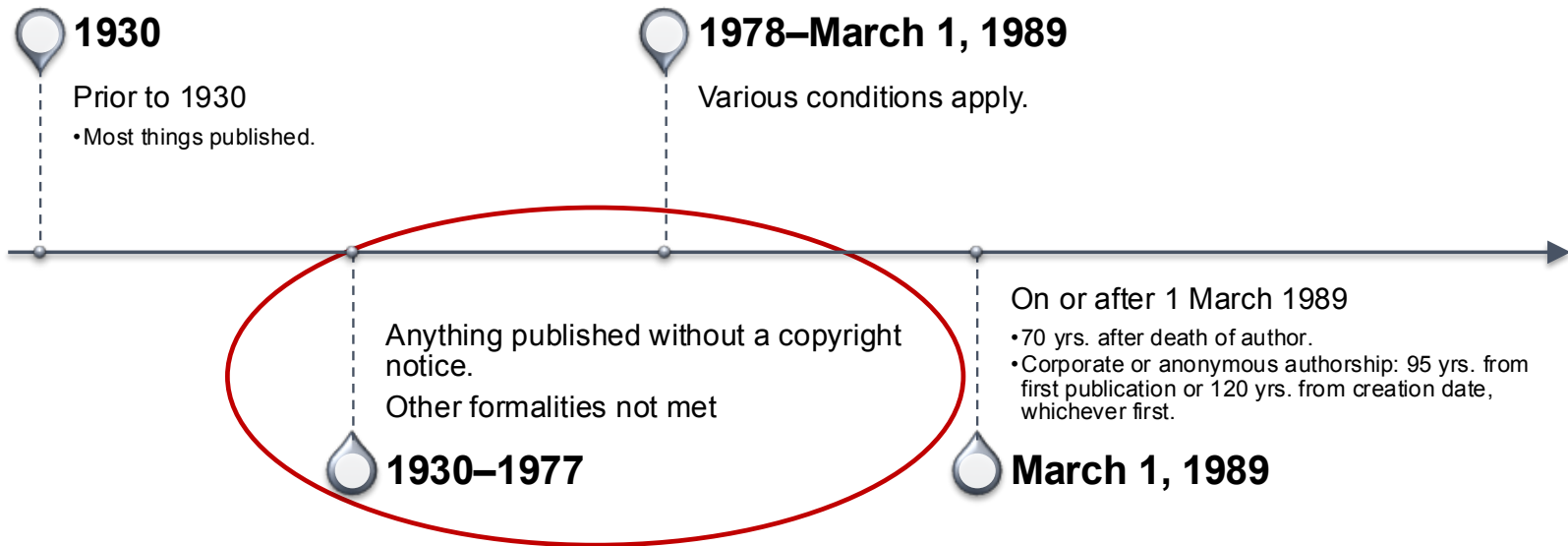
- Published works will enter every year (works published in 1929 entered this year -2025, 1930 will enter in 2026 on and on and on)

Published before 1925 SOUND RECORDINGS!

When does something fall into the public domain?



When does something fall into the public domain?



Who is a copyright owner?

- Generally, the **author** of the work is the copyright owner.
 - **Important exception: Works made for hire**
 - **Exception to the exception in academia: faculty/student scholarship (most institutions do not claim © in academic scholarship)**
- Copyright can be held **jointly**.
- Copyright can be **transferred** or **assigned**.
- Ownership can be impacted by **institutional policy**.
- Ownership of copyright is distinct from ownership of the material object in which the work is embodied.

Works Made for Hire

A copyrightable work is "made for hire" in two situations:

- When it is created by an employee as part of the employer's regular duties
- When a certain type of work is created as a result of an express written agreement between the creator and a party specially ordering or commissioning it

When a work is made for hire, the hiring or commissioning party is considered the author and the copyright owner.

To register a work with the U.S. Copyright Office, you generally must identify the author or authors of that work. In addition, you must identify the party that owns the copyright in the work. Ordinarily, the author is the person or persons who actually created the work you intend to register. "Works made for hire" are an exception to this rule. For legal purposes, when a work is a "work made for hire," the author is not the individual who actually created the work. Instead, the party that hired the individual is considered both the author and the copyright owner of the work.

Whether a work is a work made for hire is determined by facts in existence at the time the work is created. There are two situations in which a work made for hire is produced:

- (1) when the work is created by an employee as part of the employer's regular duties and (2) when a certain type of work is created as a result of an express written agreement between the creator and a party specially ordering or commissioning the work. When a work is produced under those conditions, the employer or the party ordering or commissioning the work is considered the author and copyright owner.
- The work made for hire concept can be complicated and has serious consequences for both the individual who creates a work and the hiring party who is considered to be the author and copyright owner of that work. This circular draws on the Copyright Act and judicial interpretations to provide a general introduction to this topic and answer common questions. For more information, see chapter 100, section 100 or chapter 100, section 114 of the Compendium of U.S. Copyright Office Practice.

Copyright
© 2018 U.S. Copyright Office

copyright.gov

<https://www.copyright.gov/circs/circ30.pdf>

CIRCULAR
30

20

“Automatic” Copyright

- Copyright is the *rule* rather than the exception
- Materials receive copyright protection *instantly*
- You must do something in order *not* to have copyright protection

Duration of Copyright

Rights holders can exercise the **six rights** for the duration of the copyright term. For works **created on or after January 1, 1978**, this term will vary depending on who is the rightful copyright owner:

- **Single** author: term = life of author + 70 years
- **Joint** authors: term = life of last surviving author + 70 years
- If **work made for hire**: term = 95 years after publication or 120 years after creation, whichever is sooner.
- If an **anonymous or pseudonymous** author: term = 95 years after publication or 120 years after creation, whichever is sooner.

Copyright Term for Sound Recordings

Music Modernization Act

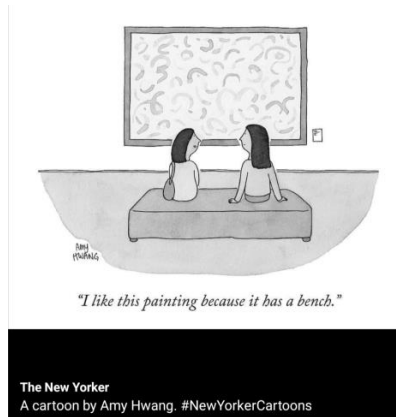
Title II: Classics Protections and Access Act

Federal protection for pre-1972 recordings

Publication Date	Term
Before 1923	Public Domain (term ended 12/31/2021)
Between 1923 and 1946	100 years from the publication date, ending on December 31.
Between 1947 and 1956	110 years from the publication date, ending on December 31.
Between 1957 and February 15, 1972	Term ends February 15, 2067

What does this all mean?

- Once fixed in a tangible means of expression, works are automatically covered by Copyright law
- You own that copyright unless the work is created as a “work for hire”
- Rights belong to the author(s) unless transferred
- Content available in digital form on the Internet (including e-mail) is considered “tangible” and covered by copyright
- Rights will (eventually) end....



[Use of Materials]

Select copyright sections that aid cultural heritage institutions:

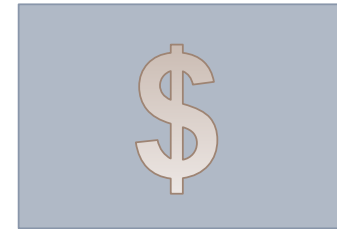
- “Fair Use”- Sec. 107
- “Reproduction for Libraries”- Sec. 108
- “First Sale Doctrine”- Sec. 109
- “Classroom Display or Performance” – Sec. 110



Why does it matter how we use content?

Criminal penalties for copyright infringement:

- Imprisonment for up to 5 years
- Up to \$250,000
- Both

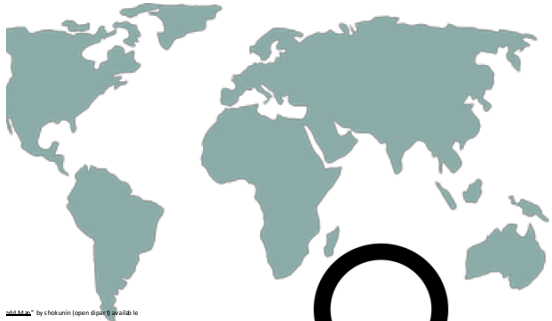


Civil penalties for copyright infringement:

- \$750 to \$30,000 per work
- “willful” infringement—up to \$150,000 per work

NEW: Copyright Small Claims Board

- Claims up to \$30,000



© 2012 by iStockphoto.com



work by dDara from the [Noun Project](#) CC BY 3.0

vs.



Request Permission

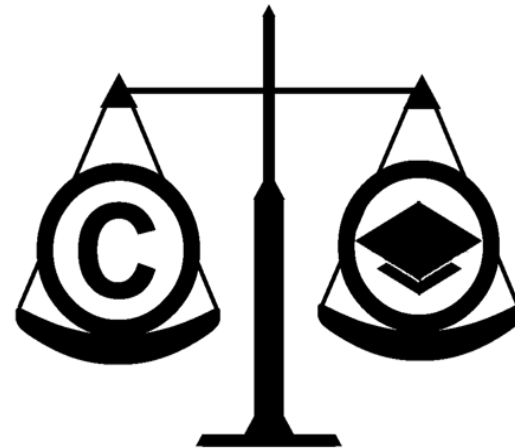
- Identify the copyright owner
- Request the broadest feasible permission
- Get it in writing – Email is OK
- Follow up on oral discussions with written clarification and confirmation

Section 107: Fair Use

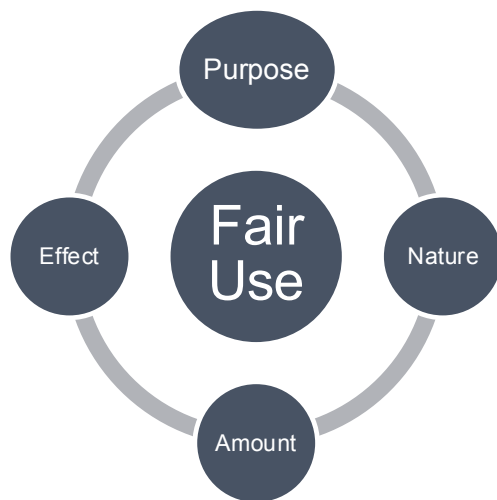
// *The fair use of a copyrighted work... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."*

Copyright Is About Balance

- Fair use and use in education
- Some copying is good for socially useful purposes and society
- We create and consume copyrighted works



© 2008 Michael Brewer & ALA Office of Information
Technology Policy, [CC BY-NC-SA 3.0](#)



All 4 factors are important

Purpose	<ul style="list-style-type: none">• Transformative• Commercial
Nature	<ul style="list-style-type: none">• Fact/Fiction• Published/Unpublished
Amount	<ul style="list-style-type: none">• Quantity• Quality
Effect	<ul style="list-style-type: none">• Current market• Potential market

Fair Use Checklist

<u>Purpose</u>		<u>Nature</u>	
Favoring Fair Use <ul style="list-style-type: none"> <input type="checkbox"/> Teaching (including multiple copies for classroom use) <input type="checkbox"/> Research <input type="checkbox"/> Scholarship <input type="checkbox"/> Nonprofit educational institution <input type="checkbox"/> Criticism <input type="checkbox"/> Comment <input type="checkbox"/> News reporting <input type="checkbox"/> Transformative or productive use (changes the work for new utility) <input type="checkbox"/> Restricted access (to students or other appropriate group) <input type="checkbox"/> Parody 	Opposing Fair Use <ul style="list-style-type: none"> <input type="checkbox"/> Commercial activity <input type="checkbox"/> Profiting from the use <input type="checkbox"/> Entertainment <input type="checkbox"/> Bad-faith behavior <input type="checkbox"/> Denying credit to original author 	Favoring Fair Use <ul style="list-style-type: none"> <input type="checkbox"/> Published work <input type="checkbox"/> Factual or nonfiction based <input type="checkbox"/> Important to favored educational objectives 	Opposing Fair Use <ul style="list-style-type: none"> <input type="checkbox"/> Unpublished work <input type="checkbox"/> Highly creative work (art, music, novels, films, plays) <input type="checkbox"/> Fiction
		<u>Effect</u>	
		Favoring Fair Use <ul style="list-style-type: none"> <input type="checkbox"/> User owns lawfully purchased or acquired copy of original work <input type="checkbox"/> One or few copies made <input type="checkbox"/> No significant effect on the market or potential market for copyrighted work <input type="checkbox"/> No similar product marketed by the copyright holder <input type="checkbox"/> Lack of licensing mechanism 	Opposing Fair Use <ul style="list-style-type: none"> <input type="checkbox"/> Could replace sale of copyrighted work <input type="checkbox"/> Significantly impairs market or potential market for copyrighted work or derivative <input type="checkbox"/> Reasonably available licensing mechanism for use of the copyrighted work <input type="checkbox"/> Affordable permission available for using work <input type="checkbox"/> Numerous copies made <input type="checkbox"/> You made it accessible on the Web or in other public forum <input type="checkbox"/> Repeated or long-term use
<u>Amount</u>			
Favoring Fair Use <ul style="list-style-type: none"> <input type="checkbox"/> Small quantity <input type="checkbox"/> Portion used is not central or significant to entire work <input type="checkbox"/> Amount is appropriate for favored educational purpose 	Opposing Fair Use <ul style="list-style-type: none"> <input type="checkbox"/> Large portion or whole work used <input type="checkbox"/> Portion used is central to or "heart of the work" 		

Based on the [Fair Use Checklist](#) by Kenny Crews

Fair Use Cases

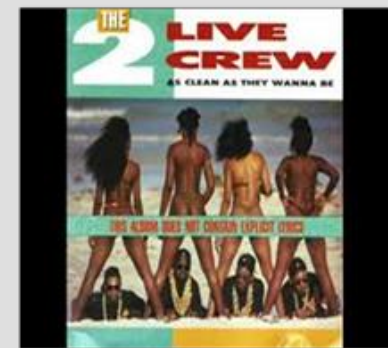


*“No, mine is an appropriation of the Disney-princess
imagery as a critique of the
hegemonic corporate paradigm of femininity.
Yours is just Elsa.”*

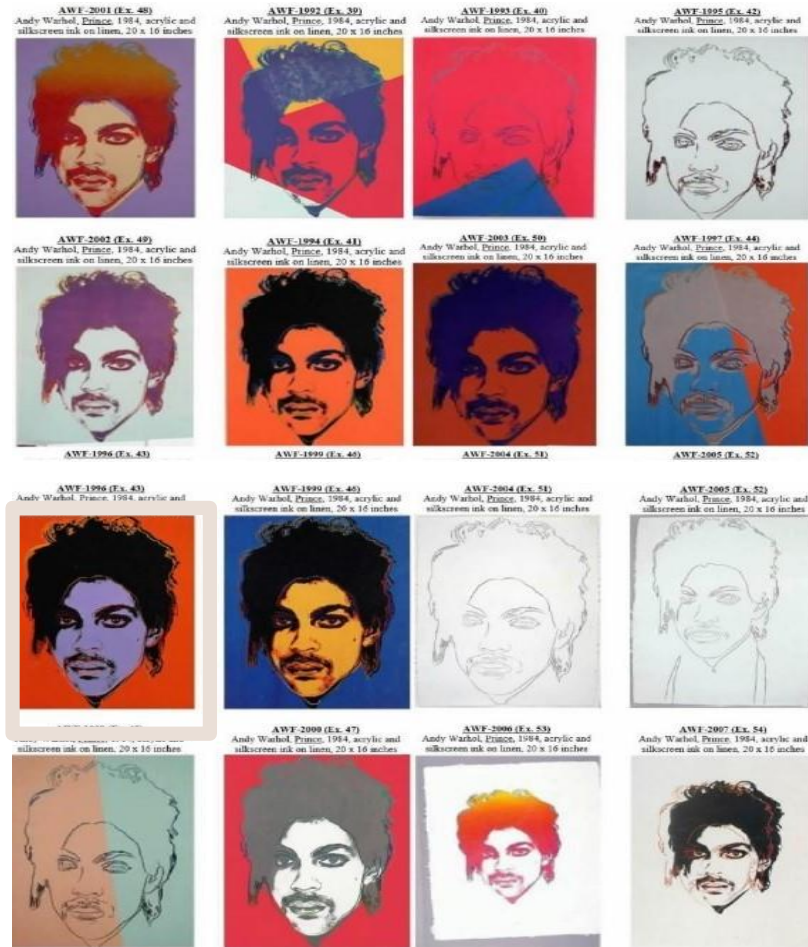
The New Yorker
A cartoon by Karl Stevens. #NewYorkerCartoons

Factor 1: Purpose (Transformative Use)

Campbell v.
Acuff-Rose Music
(US Supreme Ct
1994)



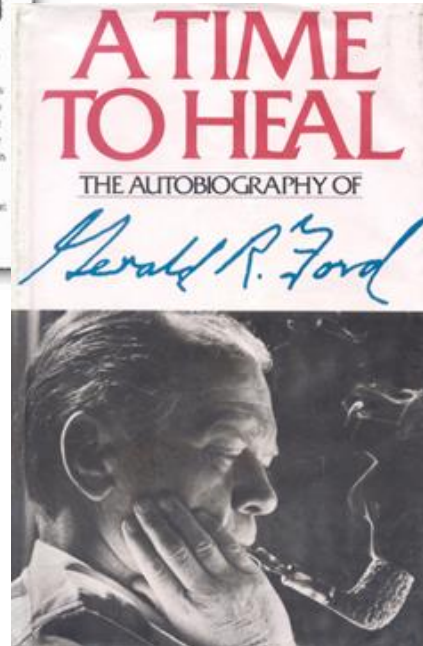
Warhol v. Goldsmith



Break

Factor 2: Nature

Harper & Row v.
Nation Enterprises
(US Supreme Ct
1985)



Factor 3: Amount

Bill Graham
Archives v.
Dorling
Kindersley
Limited
(2nd Circuit 2006)



Bill Graham Grateful Dead poster (left), inclusion of poster in *Grateful Dead: The Illustrated Trip* (bottom)



Factor 4: Market Effect

Cariou v. Prince
(2nd Circuit 2013)



**Cariou,
*Yes Rasta***



**Prince,
*Inquisition***

Fair Use Application: What do these cases mean for you?

- Myths
 - 10%, 6 seconds, etc.
 - All educational use is fair use
 - Commercial use precludes fair use
 - Any use is transformative
 - Socially-useful automatically means fair use
 - No fair use when a permissions scheme exists

Making the case for fair use

How do you determine fair use?

- **Purpose**
 - Educational use? Commercial use?
- **Nature**
 - Fiction, Non-fictional/Factual work
- **Amount**
 - Portion of the work used- 10%, 50%, 100%. Heart of the work?
- **Market Effect**
 - Does the use harm a current or potential market for the creator?

Section 108: Reproduction for Archives/Libraries

Who is covered?

Libraries and archives and any of their employees acting within the scope of their employment.

What is permitted?

The isolated and unrelated copying and distribution of a single copy of a work.

What works are covered?

Literary works. Coverage for other types of works depends on activity.

Under what conditions?

1. The reproduction or distribution is made **without any purpose of direct or indirect commercial advantage**; and
2. Collections of the library/archive are (a) **open** to the public or (b) available to researchers affiliated with the institution and others doing research in a specialized field; and
3. Reproduction or distribution **includes copyright notice** that appears on work or legend stating work may be protected by copyright.

Copyrighted Materials in Collections



Transfer

License

Statutory
exception

Donor Agreements

eResource Licenses

Vendor Digitization Contracts

[Your Collections]


Ethical Considerations

Collections/collecting practices

- What is in your collection?
- Why do you collect this material?

Collections/collecting practices

- Why do you collect?
 - Research
 - Education
 - Access
 - Preservation



Issues to Consider:

- Intellectual Property Rights
- Privacy
- Moral Rights
- Cultural Heritage
- Ethics
- Research
- Repatriation

Collections/collecting practices



Records from controversial twin study sealed at Yale until 2065



Why These Early Images of American Slavery Have Led to a Lawsuit Against Harvard

Tamara Lanier claims the university has profited off the images of her ancestors

Collections/collecting practices

Outcry prompts withdrawal of Native American artifacts from Medford library auction



Medford
Public
Library



British Exhibitions of Ethiopian Manuscripts Prompt Questions About Repatriation



Stolen Artifacts Unwittingly Acquired By Boston Public Library Returned To Italy



'Consecration to Mary' by Mary Enoch Elizabeth Baxter



'I can say my goodbyes': After 37 years, Philadelphia returns remains of MOVE victims to family

The city of Philadelphia released the remains of two children killed in the 1985 MOVE bombing back to their family.



By [Kenny Cooper](#) · August 3, 2022



Collections, Ethics, and Re-use:

- Thoughtful Collecting and Labelling
- Digitization
- Preservation
- Conversations
- Community connections
- Context
- Repatriation
 - Digital/Physical
 - Limited/Restricted Access

[Re-use]

Rights Holder Solutions: Creative Commons



No rights reserved CC0



Attribution CC BY



Attribution-NoDerivs CC BY-ND



Attribution-NonCommercial CC BY-NC



Attribution-ShareAlike CC BY-SA



Attribution-NonCommercial-ShareAlike CC BY-NC-SA



Attribution-NonCommercial-NoDerivs CC BY-NC-ND

Non-Rights/Rights Holder Solutions



CC: Public Domain Mark

https://localcontexts.org

Indigenous communities

reinforce rights by applying TK and BC Labels



Traditional Knowledge (TK) and Biocultural (BC) Labels establish Indigenous cultural authority and governance over Indigenous data and collections by adding **provenance** information and contextual metadata (including community names), **protocols**, and **permissions** for access, use, and circulation.

[LEARN MORE >](#)

Institutions and researchers

disclose interests by placing Notices



Notices are tools for institutions, repositories, and researchers to **support ethical use** and **reinforce relationships** with Indigenous communities. They also work to **educate the public** around Indigenous rights and interests in historical and future collections and data.

[LEARN MORE >](#)

RIGHTS STATEMENTS

Three Categories of Rights Statements

IN COPYRIGHT



Statements for works that are in copyright

NO COPYRIGHT



Statements for works that are not in copyright

OTHER



Statements for works where the copyright status is unclear





Thank you.



This template is free to use under [Creative Commons Attribution license](#).

Question + Answer

Submit questions using Q&A box

Wrap up:

Session 3:

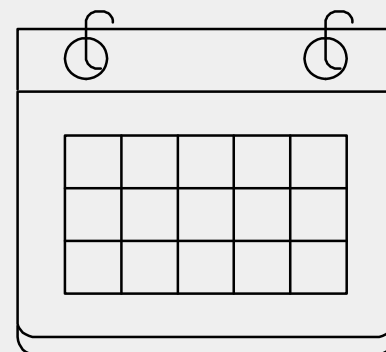
*Assessing Collections &
Designing a Digitization Plan*

March 19

2:00–3:30 PM ET

Register for all upcoming sessions:

clir.org/hiddencollections/apply-for-an-award/





Thank you!

Please take a moment to complete a survey about this session.

Questions? hidencollections@clir.org