



PERMISSION FAQs

(Author Responsibilities and Copyright Guidelines)

These FAQs were developed by the members of the Copyright Committee for the AAUP (Association of American University Presses) for use by university presses and authors. They are provided as guidelines that will give you information that can help you fulfill your copyright and permissions obligations. You may copy, distribute, and display these FAQs as long as they are reproduced in their entirety, not for commercial purposes, and include attribution to the AAUP. We consider this a living document. If you would like to suggest improvements or revisions, please send information to: Brenna McLaughlin (bmclaughlin@aaupnet.org) at the AAUP Central Office, who will forward it to the current AAUP Copyright Committee Chair. This FAQ and other compiled copyright resources are available at the AAUP site: <http://www.aaupnet.org/aboutup/issues/copyright/>

By their nature, these FAQs simplify complex legal issues and therefore may not reflect a fully accurate summary of the law applicable to all instances. They are not a substitute for qualified legal advice. These FAQs should not be construed as representing the views of the individual members of AAUP. Individual presses may have different interpretations of copyright law, for example, about what fair use allows, so you should confirm your decisions with your editor.

—AAUP Copyright Committee, May 2006
Updated, July 2008

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1. Who is responsible for clearing permissions?

You as author (or editor of a multi-author volume) are in general legally responsible for complying with copyright law. Thus you bear responsibility for clearing all permissions to reprint or reproduce material protected by copyright, unless your use would fall within the guidelines of "fair use." Unless you are otherwise instructed by your publisher, the rights cleared in permission grants should match the set of publishing rights granted to your publisher in your contract. A standard request for permission includes nonexclusive English-language rights throughout the world, is valid for all printings of the hardcover and paperback editions, and includes the right to publish and/or license the material in the work as a whole for translation, book club, reprint, and electronic distribution. Please see the sample permission request attached to this document (Attachment A).

In general, you need permission to reproduce any work created by another person, unless it falls under the "fair use" provisions of copyright law or is in the public domain. You should provide your publisher with copies of all permission grants to use copyrighted material. For permission to reproduce all or part of a work, you should check the work to verify whether any other sources are cited. For example, in the case of a photograph in a book, you might begin by contacting the person or institution named in the credit line (in the photo caption or in a list at the front or the back of the book). If no other sources are listed, then you should begin your inquiries by contacting the publisher.

Reproduction of some works may require permission from two or more persons or organizations. Using a photograph of an artwork still covered by copyright will normally require permission from both the artist and the photographer if the artwork itself is still in copyright. If your forthcoming book is to be published throughout the world, and you quote extensively from a work published in separate editions in the United States and Britain, you will likely need permission from both publishers.

The increased use of on-line research calls for particular care in determining who controls the copyright and in accurately citing sources for academic works.

2. What if I cannot find the copyright owner, or get no response?

Make every reasonable effort to contact all persons or organizations with a copyright claim on the work you wish to reproduce. Document your efforts to contact these sources. A copyright owner's silence, even if you have given him or her a deadline, is not considered agreement. Failure to locate a copyright owner will leave you liable for copyright infringement, but a documented "good faith" effort can help to mitigate damages.

3. What types of works are protected by copyright?

U.S. copyright law applies to any original work created by a citizen or permanent resident of this country, whether published or unpublished, so long as it appears "fixed" in any medium (print, electronic, film, sound recording, etc.). Only the expression, not the ideas or facts as such conveyed by it, qualifies for copyright protection. There is a wide variety of forms copyrightable expression can take: poetry, fiction, scholarly writing, newspaper and magazine articles, letters, diaries, pamphlets, translations, advertisements, tables, graphs, maps, photographs, cartoons, paintings, sculptures, motion pictures, musical compositions, etc. Most works of foreign origin are also protected under U.S. law by virtue of the bilateral and international copyright treaties to which the United States has become a signatory; generally, then, you must also obtain permission to reproduce works created or published outside the United States.

4. Which works are in the public domain?

Works in the public domain may be used without permission. Whether a work is still protected by copyright or is "in the public domain" is governed by a complex set of laws. Anything first published in the United States prior to 1 January 1923 is in the public domain, and so is anything first published in the United States prior to 1 January 1964 for which copyright was not renewed. All works of the U.S. government of whatever type or medium are in the public domain. (State government documents or documents of foreign governments may be protected by copyright, however). These are distinct from publications and photographs in the possession of the U.S. government, such as items in the Library of Congress, and those held by the National Archives and Records Administration, which may or may not be in the public domain.

For information about "Copyright Term and the Public Domain in the United States" please see the attached chart (Attachment D), or locate it at this website: www.copyright.cornell.edu/public_domain/

Although you need not request permission to use material from public domain works, you should give full credit to the source.

5. When can I apply fair use?

U.S. copyright law allows authors to quote or paraphrase brief excerpts or use limited illustrations from a work protected by copyright without seeking permission, provided that they are making "fair use" of the excerpt or illustration. In scholarly works, the use of short excerpts or limited illustrations for the purposes of scholarship, research, review, criticism, evidence, or evaluation is generally recognized as "fair use." As with any academic use, a "fair use" analysis should first be considered before requesting permission. Academic works, such as those most commonly published by university presses, are likely candidates for a positive "fair use" assessment. If you invoke "fair use," you should transcribe accurately and give credit to your sources. You should not quote out of context; and keep in mind that proportion is more important than the absolute length of a quotation. You will also need to consider the relative importance or weight of an excerpt, which may contain the essence of a larger work. You should exercise the right of "fair use" when it applies. If you are confident that your proposed use of an excerpt is "fair use," it is often better not to ask for permission. Consult with your editor if you have specific questions or use the "fair use" checklist for an analysis. The checklist can provide an important means for recording your decision-making process and provide a record of your "fair use" analysis.

The present copyright law does not attempt to define the exact limits of the "fair use" of copyrighted works (for example, a fixed number of words). It does state, however, that in determining whether or not the use made of a work in any particular case is fair, the factors to be simultaneously considered include the following:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes and whether such use is "transformative";
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 existing or potential market for, or value of, the copyrighted work.

A quotation for purposes other than scholarship, comment, or criticism may not be

considered “fair use” no matter how short the quotation or how small a portion of the work from which it is taken. You may need permission for an epigraph or other quotation used without comment from a work in copyright. Please also see the discussion of fair use for particular types of works in question #6.

The general principles of fair use apply also to unpublished materials, but the “nature of the copyrighted work” (Factor 2) as unpublished weighs against the use being a fair use. This may be especially true in the case of unpublished letters, where the copyright is held by the writer of the letter (or the estate of the writer) rather than by the recipient of the letter. Sometimes the copyright has been transferred to a library or archive, but you cannot assume that access to an unpublished letter or other work allows you to include that work in your book if the amount of material would otherwise exceed fair use.

The following checklist may be of assistance in determining whether your intended use favors a fair use: <http://www.copyright.iupui.edu/checklist.htm>

6. Do different types of works have different permissions considerations?

These are general guidelines pertaining to materials still under copyright protection. If you have any questions, please consult your editor.

You will generally need permission (1) when you reproduce a complete unit (e.g., a letter, short story, article, essay, complete chapter or section of a book, map, chart, or other illustrative material) and (2) when you create a “derivative” work based on the work of another person (e.g., revising a translation or a figure, such as a graph, table, chart, or map). Some university presses also require permission (3) when you quote more than a small portion of a short poem or a stanza of a long poem and (4) when you reprint more than two lines of song lyrics or music.

- *Photographs*

You will generally need permission from the photographer and in some cases the subjects (because of privacy or publicity rights). As with any academic use, a fair use analysis should first be considered before requesting permission. For instance, can the author assert that the use of a photograph is essential to the scholarly argument? Or is its use primarily illustrative or decorative? Academic works, such as those most commonly published by university presses, are likely candidates for a positive fair use assessment. Obtaining a copy of an illustration is not the same as obtaining permission to use it; the latter usually must be sought in a second step apart from acquiring the photograph itself (reproduction rights and copyright rights). If a photograph shows one or more identifiable persons, you may need in limited circumstances to obtain a release from them, not because of copyright, but because of their rights of privacy and publicity, depending upon the nature of the photo and its intended use, and whether the individual is a public or private figure.

PHOTOGRAPHS OF ART (artwork, sculptures, murals, and various types of public art): The use of art may be controlled by both its copyright owner and the owner of the physical object. Publishing photographs of public art (such as paintings on buildings or sculptures in town squares) may require permission of the copyright holder, although access is unrestricted by its owner. If the photograph is of a work of art that is itself still protected by copyright, you will need permission from the artist or artist’s heir(s) or the rightsholder (which can be a person or archive/museum/library) as well as the photographer. The photograph may have a claim to copyright separate from the artwork itself. If the photograph is of a work of art that is in the public domain, you may still need

reproduction rights from the owner of the physical object as well as copyright permission for a photograph. In addition, whether the artwork is copyrighted or in the public domain, the ability to obtain and use any photograph of it may require getting permission from the individual or institutional owner of the physical piece of art that controls access to it. If you license or purchase an image, please read very carefully the paperwork that accompanies it. There may be contractual terms that will prohibit certain uses of the image, even if the image is in the public domain or the proposed use would usually fall within "fair use."

- *Cover Photographs and Advertising*

Of special concern are illustrations that will appear on the cover or jacket of a book. Permission for interior use often does not extend to use on the cover, which is deemed more commercial or promotional, and can entail, for example, an additional usage fee. Depending on the subject matter, additional provisions for ensuring privacy or attribution may be needed. It is also important to have specific permission to use illustrations in promotion and advertising of the book, including electronic or online use. Please see the attached sample permission request (Attachment B).

- *Publications Written or Co-written by You*

You must obtain either an assignment of copyright or nonexclusive permission from the publisher of any portion of your own work (in book or journal form) that you intend to include in your current book. Even if you are named in the copyright notice, the publisher may control publication rights, depending on the wording of the agreement you signed with the original publisher. If the publisher will not assign the copyright, request nonexclusive permission to reprint in all languages and all editions of your book. Publishers are usually quite accommodating on these requests and will likely grant permission for republication without a fee.

If the present version of your work is derived from a previously published version (as a revision or adaptation), you may need permission from the previous publisher, even if the changes are substantial. However, you do not need permission if the present work is based on the same subject as, but not duplicating the same expression of, the previously published work, unless you have signed an agreement with a non-compete clause that requires consent of the originating publisher.

- *Unpublished Material*

Unpublished material is controlled by the writer or his or her heirs or assigns, that is, people to whom control has been assigned by the writer's will or by a contract. It is incumbent on you to make a reasonable search for the holder of copyright if that holder is not immediately known or available.

A work created before 1978 and published before 1 January 2003 is protected for 70 years after the death of the author or until 31 December 2047, whichever term is longer. A work created before 1978 and not published by 31 December 2002 is protected for 70 years after the author's death. Works created on or after 1 January 1978, whether published or not, are protected for the life of the author plus 70 years after the author's death.

Please see the attached chart "Copyright Term and the Public Domain in the United States" (Attachment D), or locate it at this website:

http://www.copyright.cornell.edu/public_domain/

- *Film: Publicity Stills, Frame Enlargements*

You may use frame enlargements and publicity stills (both from films and from television shows) when you can justify their inclusion in the work under “fair use” guidelines—for example, when it can be argued that the illustration serves as a quote from the filmic “text” to illustrate a point. If they are reproduced in a scholarly way—if, for example, in order to illustrate the discussion, details are reproduced from the photograph in black and white and reduced in size, when the original is in color—their use might be considered as fair. Be conservative in selecting material—if the still or frame illuminates a point you are making or is specifically discussed, then the use is probably a fair use. If it is just decorative, leave it out. Where possible, limit the number of frames reprinted from any one film and from different films that represent the work of one particular person (e.g., a director or actor). If you purchase material from a photo agency, read the conditions stated on the agreement (particularly the fine print) and on the back of the photo very carefully. In all cases, acknowledge the original copyright holder. For a more in-depth analysis of fair use as related to stills and frame enlargements, please see the Society for Film and Media Studies website (<http://www.cmstudies.org>), click left menu button for “Policies” and follow to “Fair Use Statement”.

- *Interviews*

If you are quoting interview material, it is preferable to have a written interview release. The release should clearly state it covers publication. The wording of such releases should conform to any ethical guidelines that may be required by professional organizations in your field of study. In addition, if extensive material from the interview will be quoted, an assignment of copyright may be necessary. Depending on the subject matter, additional provisions for ensuring privacy or attribution may be needed. Please see the attached interview release as an example (Attachment C).

- *Paraphrased or Summarized Material*

Permission need not be obtained for material that is not a direct quotation or a close paraphrase, but material summarized from another source should be clearly indicated as such, depending in part on the various conventions that differ somewhat between academic and more trade publications. In instances where you credit the original source, it is important to clearly demarcate the sourced material from your own statements. For an unusually extensive summary, paraphrase, or digest, especially if used for its own sake and not merely for criticism or illustration, the permission of the original author or publisher may be needed.

- *Works Made for Hire*

If you hire someone, such as a cartographer, photographer, or translator, to prepare materials for your book, you become the owner of the copyright in those materials, provided (1) both parties sign a written contract stating that the material is a “work made for hire,” (2) the material is produced at your request and at your expense, (3) the agreement is signed before work is commenced, and (4) the material falls into one of the statutory categories of works made for hire: maps, graphs, illustrations, indexes, translations, etc. A work is also “made for hire” if it is produced by an employee within the scope of his or her employment. If materials are made for you as work made for hire, you do not need permission, but as a courtesy you should usually provide the appropriate credit line or other acknowledgment. Sometimes a work made for hire is a derivative work, such as a photograph of a painting or a translation of a text. If the work from which it is derived (i.e., the painting or the original text) is in copyright, to publish the derivative work you need permission from the copyright owner of the original work.

7. Do I need to be concerned about libel or privacy issues in my manuscript?

Avoiding libel or invasion of privacy is part of the author's responsibilities, covered by the author warranty and indemnification, and best addressed at the same stage that an author is assessing permission and copyright for his or her work. If your book contains any statement that might be grounds for a claim of invasion of privacy or a claim of libel, you may wish to seek legal advice and share that advice with your publisher, or provide supporting documentation to your publisher, such as newspaper articles or archival materials.

8. Where can I find more information and copyright resources?

For additional information on copyright and permissions, there are many resources for information:

WEBSITES:

- *Online Copyright Resources*

A complete version of this list is available at the AAUP website:
<http://aaupnet.org/aboutup/copyresources.html>

- *Basic Copyright Information*

"Copyright Guidelines" for the university press community prepared by William Strong for the University of Chicago Press and AAUP:
http://www.press.uchicago.edu/Misc/Chicago/copy_and_perms.pdf

- *Public Domain*

Tools for calculating when U.S. works pass into the public domain:
CHART: http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm
ALA PUBLIC DOMAIN SLIDERULE: <http://librarycopyright.net/digitalslider/>

- *U.S. Copyright Office*

U.S. government site providing information on U.S. copyright law, copyright registration, searching registration and renewal records, law and policy, FAQ, and links to other sites.
<http://www.copyright.gov>

- *Copyright Renewal Records*

To search for copyright renewal records prior to 1978:
<http://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>

Another copyright renewal search tool is available through the Rutgers University School of Communication, Information, and Library Studies:
<http://www.scils.rutgers.edu/~lesk/copyrenew.html>

- *Locating Authors and/or their Estates*

WATCH File (Writers, Artists, and Their Copyright Holders)—Database of copyright holders whose archives are located in libraries and archives in North America and the United Kingdom:
<http://tyler.hrc.utexas.edu/>

Author's Registry—Resource for locating hard-to-find authors for permissions requests. Searchable by email inquiry:
<http://www.authorsregistry.org>

- *Locating Publishers that are Out of Business*

FOB: FIRMS OUT OF BUSINESS—To search for publishing firms, magazines, literary agencies and similar organizations which are no longer in existence:

<http://tyler.hrc.utexas.edu/fob.cfm>

BOOKS:

- THE CHICAGO MANUAL OF STYLE, 15th edition (2003)
- THE COPYRIGHT PERMISSION AND LIBEL HANDBOOK by Lloyd J. Jassin and Steven C. Schechter, John Wiley & Son (1998)
- THE COPYRIGHT BOOK by William S. Strong, MIT Press, 5th edition (1999)
- MLA STYLE HANDBOOK AND GUIDE TO SCHOLARLY PUBLISHING by Joseph Gibaldi, 2nd edition (1998)
- THE COPYRIGHT HANDBOOK: HOW TO PROTECT & USE WRITTEN WORKS by Stephen Fishman, NOLO, 8th Bk&Cdr edition (2005)

ATTACHMENT A

Sample Permission Request for Textual Material

Dear _____,

I am writing to request permission to reproduce, in a forthcoming scholarly publication, the following material that you have published:

[Author(s)/Editor(s)]:

[Book/Journal]: Title and edition no. if applicable:

Article Title:

Volume and issue no. if applicable:

Date of publication:

Price:

Pages as they appear in your publication:

Other identifying information, and/or remarks:

If you do not control the rights in this material, please let me know who does.

This material will be reproduced without alteration, unless otherwise indicated below, in the following work I am [writing/editing], to be published by X University Press, described as the Press below:

Working title of book:

Anticipated date of publication:

Approximate number of words:

Remarks:

Please note that this is a work of scholarship with a limited audience. To achieve broad dissemination of this work to scholars, we intend to use digital media in addition to print and languages beyond English. With that in mind, I request a non-exclusive license for the Press as follows:

1. **Territory:** Worldwide.
2. **Language(s):** English, plus the right to license translations of the book with your material included.
3. **Media:** Print; media for people with reading-disabilities; and any other print or digital medium in which the Press may decide to issue or license others to issue the book with your material.
4. **Revisions:** The forthcoming editions and all revised editions of the book.
5. **Assignees:** Assignable, but only as part of assignment of the book as a whole.

I will acknowledge the source of your material in accordance with scholarly norms. If you require any particular form of acknowledgment, please let me know.

In setting a fee for the permission I request, please bear in mind the scholarly nature of this project and the fact that the Press is a not-for-profit publisher. I would be truly grateful if you would waive the fee altogether.

Thank you for your consideration of this request. A duplicate copy of this letter is enclosed for your convenience.

Sincerely,

PERMISSION GRANTED as stated above:

Signature

Date

Printed Name

Fee: Waived [or] \$ _____

CREDIT LINE: _____

ATTACHMENT B

Sample Permission Request for Illustrations and Cover Art

Try to include a photocopy of the image you wish to reprint with your written request.

Dear _____,

I am writing to request permission to reproduce the following image from your [museum/ collection/publication], and to request a photographic print/color transparency of it from which I can produce the image for my forthcoming book, _____, to be published by X University Press, a non-profit scholarly publisher.

Title of image:

Artist:

Year:

My book, which is tentatively scheduled for publication in _____ [approximate season and year], will be approximately _____ pages, and has a print run of _____ and price of \$ _____. The image that I wish to reprint will ["appear within the book as a full page/half-page/quarter-page image" OR "be used for the cover and/or jacket design" OR "be used as both an internal illustration and for the cover and/or jacket design"]. It may also be required for advertising purposes.

Please note that this is a work of scholarship with a limited audience. To achieve broad dissemination of this work to scholars, we intend to use digital media in addition to print and languages beyond English. With that in mind, I request a non-exclusive license for the Press as follows:

1. **Territory:** Worldwide.
2. **Language(s):** English, plus the right to license translations of the book with your material included.
3. **Media:** Print; media for people with reading-disabilities; and any other print or digital medium in which the Press may decide to issue or license others to issue the book with your material.
4. **Revisions:** The forthcoming editions and all revised editions of the book.
5. **Assignees:** Assignable, but only as part of assignment of the book as a whole.

I will acknowledge the source of your material in accordance with scholarly norms. If you require any particular form of acknowledgment, please let me know.

In setting a fee for the permission I request, please bear in mind the scholarly nature of this project and the fact that the Press is a not-for-profit publisher. I would be truly grateful if you would waive the fee altogether.

Thank you for your consideration of this request. A duplicate copy of this letter is enclosed for your convenience.

Sincerely,

PERMISSION GRANTED as stated above:

Signature

Date

Printed Name

Fee: Waived [or] \$ _____

CREDIT LINE: _____

This permission request is based on the template created by William Strong as a supplement to the Copyright Guidelines, © 2005 by The University of Chicago.

ATTACHMENT C

Sample Interview Release

I understand that _____ (the Author) is preparing, writing, and will publish a work on the subject of _____, which is currently titled _____ (the Work).

In order to assist the Author in the preparation of the Work, I have agreed to be interviewed and to provide information and other materials to be used in connection with the Work, including my personal experiences, remarks, and recollections as well as any photographs and documents that I may choose to give to the Author (the Interview Materials).

I hereby grant and assign to the Author and his/her licensees, successors, and assigns the following rights in connection with the Interview Materials for use as part of the Work or any advertising, packaging, or promotional materials for the Work, in any and all editions, versions, and media, in perpetuity and throughout the world.

1. The right to quote or paraphrase all or any portion of the Interview Materials, and to generally use and publish the Interview Materials, including my experiences, recollections, incidents, remarks, dialogue, actions, and information, as well as any photographs and documents that I may give to the Author.
2. The right to use my name, image, and biographical data.
3. The right to develop, produce, distribute, advertise, promote, or otherwise exploit the Work as a book or any other Work in any manner that the Author or his/her assigns deems appropriate. I understand and acknowledge that the Author or his/her assigns will be the sole owner of all copyright and other rights in and to the Work.

In order to enable the Author to develop the Work in any manner that the Author may deem best, I hereby release and discharge the Author and his/her licensees, successors, and assigns, from any and all claims, demands, or causes of action that I may have against them by reason of anything contained in the Work, or any of the above uses, including any claims based on the right of privacy, the right of publicity, copyright, libel, defamation, or any other right.

In consideration of the foregoing, the Author has agreed to provide me with one free copy of the Work in its first edition upon publication. I acknowledge and agree that I am not entitled to receive any other form of payment from the Author and/or his/her licensees, successors, and assigns.

Agreed and confirmed:

signature

date: _____

name (print)

ATTACHMENT D

Public Domain Chart

(http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm)

Copyright Term and the Public Domain in the United States

1 January 2008¹ (updated annually)

NEVER PUBLISHED, NEVER REGISTERED WORKS²

<i>Type of Work</i>	<i>Copyright Term</i>	<i>What was in the public domain in the US as of 1 January 2008³</i>
Unpublished works	Life of the author + 70 years	Works from authors who died before 1938
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1888
Unpublished works created before 1978 that were published after 1977 but before 2003	Life of the author + 70 years or 31 December 2047, whichever is greater	Nothing. The soonest the works can enter the public domain is 1 January 2048
Unpublished works created before 1978 that were published after 2002	Life of the author + 70 years	Works of authors who died before 1938
Unpublished works when the death date of the author is not known ⁴	120 years from date of creation ⁵	Works created before 1888 ⁵

WORKS PUBLISHED IN THE US

<i>Date of Publication⁶</i>	<i>Conditions⁷</i>	<i>Copyright Term³</i>
Before 1923	None	In the public domain
1923 through 1977	Published without a copyright notice	In the public domain
1978 to 1 March 1989	Published without notice, and without subsequent registration within 5 years	In the public domain
1978 to 1 March 1989	Published without notice, but with subsequent registration within 5 years	70 years after the death of author, or if work of corporate authorship, 95 years from publication ³
1923 through 1963	Published with notice but copyright was not renewed ⁸	In the public domain
1923 through 1963	Published with notice and the copyright was renewed ⁸	95 years after publication date
1964 through 1977	Published with notice	95 years after publication date

1978 to 1 March 1989	Created after 1977 and published with notice	70 years after death of author, or if work of corporate authorship, 95 years from publication
1978 to 1 March 1989	Created before 1978 and first published with notice in this period	The greater of the term specified in the previous entry or 31 December 2047
From 1 March 1989 through 2002	Created after 1977	70 years after death of author, or if work of corporate authorship, 95 years from publication
From 1 March 1989 through 2002	Created before 1978 and first published in this period	The greater of the term specified in the previous entry or 31 December 2047
After 2002	None	70 years after death of author, or if work of corporate authorship, 95 years from publication

WORKS PUBLISHED OUTSIDE THE U.S. by Foreign Nationals or U.S. Citizens Living Abroad⁹

(Includes works published both in the U.S. and abroad by foreign authors)

<i>Date of Publication</i>	<i>Conditions</i>	<i>Copyright Term in the United States</i>
Before 1923	None	In the public domain
<i>Works Published Abroad Before 1978</i> ¹⁰		
1923 through 1977	Published in compliance with all US formalities (i.e., notice, renewal) ¹¹	95 years after publication date
1923 through 1977	Published without compliance with US formalities, and in the public domain in its home country as of 1 January 1996	In the public domain
1923 through 1977	Solely published abroad, without compliance with US formalities or republication in the US, and not in the public domain in its home country as of 1 January 1996	95 years after publication date
1923 through 1977	Published in the US less than 30 days after publication abroad	Use the US publication chart to determine duration

1923 through 1977	Published in the US more than 30 days after publication abroad, without compliance with US formalities and not in the public domain in its home country as of 1 January 1996	95 years after publication date
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Works Published Abroad After 1 January 1978

After 1 January 1978	Published without copyright notice, and in the public domain in its home country as of 1 January 1996	In the public domain
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After 1 January 1978	Published either with or without copyright notice, and not in the public domain in its home country as of 1 January 1996	70 years after death of author, or if work of corporate authorship, 95 years from publicatio
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Special Cases

1 July 1909 through 1978	In Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands ONLY. Published in a language other than English, and without subsequent republication with copyright notice ¹²	The same as for an unpublished work
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Anytime	Created by a resident of Afghanistan, Eritrea, Ethiopia, Iran, Iraq, San Marino, and published in one of these countries ¹³	Not protected by US copyright law because they are not party to international copyright agreements
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Anytime	Works whose copyright was once owned or administered by the Alien Property Custodian, and whose copyright, if restored, would as of January 1, 1996, be owned by a government ¹⁴	Not protected by US copyright law
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SOUND RECORDINGS


(Note: The following information applies only to the sound recording itself, and not to any copyrights in underlying compositions or texts.)

<i>Date of Fixation/ Publication</i>	<i>Conditions</i>	<i>What was in the Public Domain in the US as of 1 January 2008³</i>
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Unpublished Sound Recordings, Domestic and Foreign

Prior to 15 Feb. 1972	Indeterminate	Subject to state common law protection, enters the public domain on 15 Feb. 2067
After 15 Feb. 1972	Life of the author + 70 years. For unpublished anonymous and pseudonymous works and works made for hire (corporate authorship), 120 years from the date of fixation	Nothing, the soonest anything enters the public domain is 15 Feb. 2067

Sound Recordings Published in the US

Fixed Prior to 15 Feb. 1972	None	Subject to state statutory and/or common law protection, fully enters public domain on 15 Feb. 2067
15 Feb. 1972 to 1978	Published without notice (i.e.,  , year of publication, and name of copyright owner) ¹⁵	In the public domain
15 Feb. 1972 to 1978	Published with notice	95 years from publication, 2068 at the earliest
1978 to 1 March 1989	Published without notice, and without subsequent registration	In the public domain
1978 to 1 March 1989	Published with notice	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation. 2049 at the earliest
After 1 March 1989	None	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation. 2049 at the earliest

Sound Recordings Published Outside the US

Prior to 1923	None	Subject to state statutory and/or common law protection, fully enters public domain on 15 Feb. 2067
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1923 to 1 March 1989	In the public domain in its home country as of 1 January 1996 or there was US publication within 30 days of foreign publication	Subject to state common law protection, enters public domain on 15 Feb. 2067
1923 to 15 Feb. 1972	Not in the public domain in its home country as of 1 January 1996. At least one author of the work was not a US citizen or was living abroad, and there was no US publication within 30 days of the foreign publication	Enters public domain on 15 Feb. 2067
15 Feb. 1972 to 1978	Not in the public domain in its home country as of 1 January 1996. At least one author of the work was not a US citizen or was living abroad, and there was no US publication within 30 days of the foreign publication	95 years from date of publication. 2068 at the earliest
1978 to 1 March 1989	Not in the public domain in its home country as of 1 January 1996. At least one author of the work was not a US citizen or was living abroad, and there was no US publication within 30 days of the foreign publication	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication or 120 years from creation
After 1 March 1989	None	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication or 120 years from creation

Special Cases

Fixed at any time	Created by a resident of Afghanistan, Eritrea, Ethiopia, Iran, Iraq, San Marino, and published in one of these countries ¹³	Not protected by US copyright law because they are not party to international copyright agreements
Fixed prior to 1996	Works whose copyright was once owned or administered by the Alien Property Custodian, and whose copyright, if restored, would as of January 1, 1996, be owned by a government ¹⁴	Not protected by US copyright law

ARCHITECTURAL WORKS¹⁶

(Note: Architectural plans and drawings may also be protected as textual/graphics works)

<i>Date of Design</i>	<i>Date of Construction</i>	<i>Copyright Status</i>
Prior to 1 Dec. 1990	Not constructed by 31 Dec. 2002	Protected only as plans or drawings
Prior to 1 Dec. 1990	Constructed by 1 Dec. 1990	Protected only as plans or drawings
Prior to 1 Dec. 1990	Constructed between 30 Nov. 1990 and 31 Dec. 2002	Building is protected for 70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ¹⁷
From 1 Dec. 1990	Immaterial	Building is protected for 70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ¹⁷

¹ This chart was first published in Peter B. Hirtle, "Recent Changes To The Copyright Law: Copyright Term Extension," *Archival Outlook*, January/February 1999. This version is current as of 1 January 2008. The most recent version is found at http://www.copyright.cornell.edu/public_domain/. The chart is based in part on Laura N. Gasaway's chart, "When Works Pass Into the Public Domain," at <http://www.unc.edu/~unclng/public-d.htm>, and similar charts found in Marie C. Malero, *A Legal Primer On Managing Museum Collections* (Washington, D.C.: Smithsonian Institution Press, 1998): 155-156. A useful copyright duration chart by Mary Minow, organized by year, is found at <http://www.librarylaw.com/DigitizationTable.htm>. A "flow chart" for copyright duration is found at <http://www.bromsun.com/practices/copyright-portfolio-development/flowchart.htm>. See also Library of Congress Copyright Office. Circular 15a, *Duration of Copyright: Provisions of the Law Dealing with the Length of Copyright Protection* (Washington, D.C.: Library of Congress, 2004) <http://www.copyright.gov/circs/circ15a.pdf>.

² Treat unpublished works registered for copyright prior to 1978 as if they had been published in the US (though note that the only formality that applied was the requirement to renew copyright after 28 years). Unpublished works registered for copyright since 1978 can be considered as if they were an "Unpublished, Unregistered Work."

³ All terms of copyright run through the end of the calendar year in which they would otherwise expire, so a work enters the public domain on the first of the year following the expiration of its copyright term. For example, a book published on 15 March 1923 will enter the public domain on 1 January 2019, not 16 March 2018 (1923+95=2018).

⁴ Unpublished works when the death date of the author is not known may still be copyrighted after 120 years, but certification from the Copyright Office that it has no record to indicate whether the person is living or died less than 70 years before is a complete defense to any action for infringement. See 17 U.S.C. § 302(e).

⁵ Presumption as to the author's death requires a certified report from the Copyright Office that its records disclose nothing to indicate that the author of the work is living or died less than seventy years before.

⁶ "Publication" was not explicitly defined in the Copyright Law before 1976, but the 1909 Act indirectly indicated that publication was when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority.

⁷ Not all published works are copyrighted. Works prepared by an officer or employee of the United States Government as part of that person's official duties receive no copyright protection in the US. For much of the twentieth century, certain formalities had to followed to secure copyright protection. For example, some books had to be printed in the United States to receive copyright protection, and failure to deposit copies of works with the Register of Copyright could result in the loss of copyright. The requirements that copies include a formal notice of copyright and that the copyright be renewed after twenty eight years were the most common conditions, and are specified in the chart.

⁸ A 1961 Copyright Office study found that fewer than 15% of all registered copyrights were renewed. For books, the figure was even lower: 7%. See Barbara Ringer, "Study No. 31: Renewal of Copyright" (1960), reprinted in Library of Congress Copyright Office. *Copyright law revision: Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, United States Senate, Eighty-sixth Congress, first [-second] session*. (Washington: U. S. Govt. Print. Off, 1961), p. 220. A good guide to investigating the copyright and renewal status of published work is Samuel Demas and Jennie L. Brogdon, "Determining Copyright Status for Preservation and Access: Defining Reasonable Effort," *Library Resources and Technical Services* 41:4 (October, 1997): 323-334. See also Library of Congress Copyright Office, How to investigate the copyright status of a work. Circular 22. [Washington, D.C.: Library of Congress, Copyright Office, 2004]. The Online Books Page FAQ, especially "How Can I Tell Whether a Book Can Go Online?" and "How Can I Tell Whether a Copyright Was Renewed?", is also very helpful.

⁹ The following section on foreign publications draws extensively on Stephen Fishman, *The Public Domain: How to Find Copyright-free Writings, Music, Art & More*. (Berkeley: Nolo.com, 2004). It applies to works first published abroad and not subsequently published in the US within 30 days of the original foreign publication. Works that were simultaneously published abroad and in the US are treated as if they are American publications.

¹⁰ Foreign works published after 1923 are likely to be still under copyright in the US because of the Uruguay Round Agreements Act (URAA) modifying the General Agreement on Tariffs and Trade (GATT). The URAA restored copyright in foreign works that as of 1 January 1996 had fallen into the public domain in the US because of a failure to comply with US formalities. One of the authors of the work had to be a non-US citizen or resident, the work could not have been published in the US within 30 days after its publication abroad, and the work needed to still be in copyright in the country of publication. Such works have a copyright term equivalent to that of an American work that had followed all of the formalities. For more information, see Library of Congress Copyright Office, Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA). Circular 38b. [Washington, D.C.: Library of Congress, Copyright Office, 2004].

¹¹ US formalities include the requirement that a formal notice of copyright be included in the work; registration, renewal, and deposit of copies in the Copyright Office; and the manufacture of the work in the US.



¹² The differing dates is a product of the question of controversial *Twin Books v. Walt Disney Co.* decision by the 9th Circuit Court of Appeals in 1996. The question at issue is the copyright status of a work only published in a foreign language outside of the United States and without a copyright notice. It had long been assumed that failure to comply with US formalities placed these works in the public domain in the US and, as such, were subject to copyright restoration under URAA (see note 10). The court in *Twin Books*, however, concluded "publication without a copyright notice in a foreign country did not put the work in the public domain in the United States." According to the court, these foreign publications were in effect "unpublished" in the US, and hence have the same copyright term as unpublished works. The decision has been harshly criticized in *Nimmer on Copyright*, the leading treatise on copyright, as being incompatible with previous decisions and the intent of Congress when it restored foreign copyrights. The Copyright Office as well ignores the *Twin Books* decision in its circular on restored copyrights. Nevertheless, the decision is currently applicable in all of the 9th Judicial Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and Guam and the Northern Mariana Islands), and it may apply in the rest of the country.

¹³ See Library of Congress Copyright Office, International Copyright Relations of the United States. Circular 38a. [Washington, D.C.: Library of Congress, Copyright Office, 2004].

¹⁴ See 63 Fed. Reg.19,287 (1998), Library of Congress Copyright Office, Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office.

¹⁵ Copyright notice requirements for sound recordings are spelled out in the Copyright Office's Circular 3, "Copyright Notice," available at <http://www.copyright.gov/circs/circ03.html>. Here is the exact text:

The copyright notice for phonorecords embodying a sound recording is different from that for other works. Sound recordings are defined as "works that result from the fixation of a series of musical, spoken or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work." Copyright in a sound recording protects the particular series of sounds fixed in the recording against unauthorized reproduction, revision, and distribution. This copyright is distinct from copyright of the musical, literary, or dramatic work that may be recorded on the phonorecord. Phonorecords may be records (such as LPs and 45s), audio tapes, cassettes, or disks. The notice should contain the following three elements appearing together on the phonorecord:

1. The symbol ; and
 2. The year of first publication of the sound recording; and
 3. The name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner. If the producer of the sound recording is named on the phonorecord label or container and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.
4. Example:  2004 X.Y.Z. Records, Inc.

¹⁶ Architectural works are defined as “the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.” Architectural works were expressly included in copyright by Title VII of Pub. L. 101–650.

¹⁷ What constitutes “publication” of a building is a very interesting question. As the Copyright Office has noted, “A work is considered published when underlying copies of the building design are distributed or made available public by sale or other transfer of ownership, or by rental. Construction of a building does not itself constitute publication registration, unless multiple copies are constructed.” See its Circular 41, “Copyright Claims in Architectural Works,” available at <http://www.copyright.gov/circs/circ41.html>.

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