

COPYRIGHT CONSIDERATIONS



1. Is the item actually protected by copyright?

Published before 1923: entirely free

Published 1923-1977: had to be registered and renewed in year 28.

Renewals made through 1977 are in the Register of Copyright Entries and renewals after 1977 are in an online database in the copyright office at loc.gov.

Studies show that only 7% of publications dated 1923-1977 were renewed. That is, 93% of publications from 1923-1977 are no longer copyright protected.

Published after 1977: everything's protected

Unpublished works: protected for 70 years after creator's death.

The handy summary I use for determining copyright status of publications is here:

<http://www.unc.edu/~uncclng/public-d.htm>

For the full gory details, see this much more elaborate chart from Cornell

<http://copyright.cornell.edu/resources/publicdomain.cfm>

Its footnote no. 1 leads to other presentations of the same data

Conclusion: chances are good that anything published before Jan. 1, 1978, in the U.S. is no longer protected by copyright.

2. If it *is* protected, does the Fair Use provision let me copy it?

Fair Use is vague and murky in the copyright law. Fair uses that have held up in the courts include quotes in reviews or articles and one copy of a portion of a work for personal study or research.

The law specifies four factors that courts consider when asked to decide if a use was fair:

- the purpose of the use, especially whether commercial or nonprofit (educational nonprofit use is rarely considered infringement);

- the nature of the copyrighted work, esp. its market value (most of our stuff has zero market value);
- the amount of the portion used, in relation to the whole work (you're not supposed to copy an entire copyright-protected work);
- the effect of the use on the market for or value of the work (one copy for one researcher has no effect).

To be an infringement, the copyright holder must have suffered (or likely will suffer) some sort of loss. If the publication has no market value to begin with, that obviously can't happen.

Conclusion: most of our uses would probably be considered Fair Use if challenged in court.

3. If it **is protected, how likely is the copyright holder to care?**

Obviously, this requires a subjective assessment of risk. Major media companies like Disney guard their intellectual property aggressively; the local church group that met from 1974-1979 to write its history and no longer exists obviously doesn't. I would never put an issue of Life magazine on the Web, but I wouldn't hesitate to do a newsletter from a defunct organization.

4. Other considerations:

Ask for permission from the copyright holder. If they can be found, they almost always say yes. Sometimes they want to be paid; in my experience, permission fees for historical documents have run \$100 - \$500.

Over a decade of publishing 500,000 works from our collections on the Web, we've had only three complaints. Two genealogists objected to their work being included in Google Books, and the estate of one author demanded his essay be removed from the online Wisconsin Magazine of History. Conversely, almost everyone from whom we asked permission was delighted to have their work shared more widely on our site.

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