

Questions—FAF User's Group--9 April 2005
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1. Many times in genealogy we are dealing with sources from outside the United States. How does copyright law vary across national boundaries? Are there problems specific to using materials from another country?

Generally, U.S. copyright law will apply in other countries and vice a versa.
See <http://www.copyright.gov/circs/circ38a.html> and
<http://www.copyright.gov/circs/circ1.html#icp>

SOME POINTS TO REMEMBER REGARDING THE INTERNATIONAL PROTECTION
There is no such thing as an "international copyright" that will automatically protect an author's writings throughout the world. Protection against unauthorized use in a particular country basically depends on the national laws of that country. However, most countries offer protection to foreign works under certain conditions that have been greatly simplified by international copyright treaties and conventions. There are two principal international copyright conventions, the Berne Union for the Protection of Literary and Artistic Property (Berne Convention) <http://www.wipo.int/treaties/en/ip/berne/> and the Universal Copyright Convention (UCC) http://www.unesco.org/culture/laws/copyright/html_eng/page1.shtml.
(Quoted from the above U.S. Copyright above web site)

2. I notice that quite a few college professors include cartoons in their syllabus materials. I've collected a few over the years that I would like to include in my life story. Is there a service that takes care of getting permissions for this sort of thing?

If the copyright owner uses a central service such as the Copyright Clearance Center (CCC) <http://www.copyright.com/>, or Creative Commons <http://creativecommons.org/> contacting them may be helpful or you can contact the publisher/copyright owner of the cartoon.

Doing a web search for "cartoon licensing" will identify several useful sites.

2a. What does it cost?

Each individual situation is different. There are no standard set royalty rates, each publisher/copyright owner charges different amounts.

3. When one of your professors writes a biography and wants to use an early photo of an individual he/she confronts the problem that many professional photos are copyrighted. This can also be a problem for family historians. What is the best way to get permissions for these, especially if you can't locate the photographer?

Communicate with the publisher, family members, or other groups or individuals associated with the photos. Remember, the only person/entity that can legally give permission is the

copyright owner.

Remember, copyright ownership/protection does not last forever, see http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

4. I put "Copyright by Donald R. Snow, 2005" on my online notes. Are they really copyrighted now?

Yes, your original works are owned by you (the author/creator) from the moment they are created and recorded. Copyright ownership is protection provided by law (Title 17, U.S. Code, Section 102) to the authors/creators of "original works of authorship," expressed in any tangible medium of expression. This protection applies whether they are published, unpublished, or registered with the U.S. Copyright Office.

Copyright protection is available for an author/creator if three requirements are met: (1) Fixation—the work exists in a medium from which the author's expression can be read, seen, or heard, either directly or by the aid of a machine; (2) Originality—the work owes its origin and independent creation to an author; (3) Minimal creativity—the work is the product of at least a minimal level of creativity.

4a. In what ways does that protect me?

Section 106 of the U.S. copyright law gives the owner of a copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work
- To prepare derivative works based upon the work
- To distribute copies of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- To perform the work publicly
- To display the copyrighted work publicly
- In the case of sound recordings, to perform the work publicly by means of digital audio transmission
- In the case of a "work of visual art" the author has certain rights of attribution and integrity

You can claim, assert and defend your ownership rights and prevent others from infringing your copyright.

4b. What procedures would I have to go through if someone were to extract parts and use them in something else, on or off line?

- Direct communication—verbal discussion
- Cease and desist letter—formal written notification
- Person to person negotiated settlement
- Attorney, legal representation, doing the above

- File a claim for copyright infringement in federal court

5. Can you copyright a PAF database? How?

Yes, it may be possible to claim and defend "thin" copyright ownership/protection for a genealogical database by claiming copyright ownership/protection in the "compilation" of facts and data.

The U.S. Copyright Law defines compilation as: "a work formed by the collection and assembling of preexisting materials or of data that are **selected, coordinated, or arranged** in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

6. When we post our large Early LDS Church membership database online, will it be copyrighted if we put "Copyright ..." on it?

Yes, it is possible to have some copyright ownership/protection for what you are doing—see answers to questions 4 and 5 above.

Even though a copyright notice is not required, there are definite advantages and benefits in placing a notice on all copyrighted works. If a copyright notice is included, it should contain the following elements:

- ©, the word copyright, or the abbreviation copr.
- Year of first publication
- Name of the copyright owner, an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner. The copyright owner has to be a person or legal entity (legally recognized business, organization, foundation, etc.).

6a. We will want people to be able to use it, but not put the data into something that they will copyright, so what wording should we put on it?

Place a link on your web site homepage to a document/file such as:

The information available on this site, including any text, computer codes, data, artwork, video, audio, images or graphics (collectively, the "Material") may be protected by copyright and other intellectual property laws. Also, other parties may own copyright in portions of the Material and the reproduction of some Materials may be restricted by privacy and/or publicity rights.

We encourage use of this Material only for non-profit and educational purposes, such as personal research, teaching and private study. For these limited purposes, Material from this web site may be displayed and printed, and all copies must include any copyright notice originally included with the Material.

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You should describe in this statement what elements you are claiming ownership of, what you will allow others to do without permission and what you would require for them to seek permission.

7. How much can we quote from an on or off line source before we violate someone's copyright?

The answer depends on doing a "Fair Use" analysis,
See <http://www.lib.byu.edu/departs/copyright/intro.html#exemptions>

8. What about pictures from things like the Ancestry LDS Family History Suites? Can we use those in our PAF databases without asking permission?

What is meant by "use"?

What is the copyright status of the image?

What has the publisher said about your "use" rights?

9. How is the structure of the presentation of genealogical data treated differently from the data itself for copyright purposes?

See answers to questions 4, 5 and 6.