This guide is intended to enable you as a scholar, researcher, or creator to find your way through U.S. copyright law, to understand your rights, and to make decisions about publishing or otherwise releasing your work by walking you through a series of questions. Whereas the Office of Scholarly Communications (OSC), University of Arkansas Libraries, endeavors to ensure that the information provided herein is accurate, this guide should not be construed as legal advice. Where appropriate, the relevant sections of the copyright laws of the United States, 17 U.S.C. 101-1332, found at http://www.copyright.gov/title17/, are noted in square brackets so that you can easily refer to the law yourself. You may also wish to consult Kenneth D. Crews, Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions, 3rd ed. (Chicago: American Library Association, 2012), which was a key source for the preparation of this guide.
1A

Does this work (i.e., the scholarship, research, or creative work under consideration) fit into one of the following categories?

(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works. [§ 102 (a)]

If the answer is yes, copyright protections may apply to this work. Proceed to 2A.

If the answer is no, copyright protections may not apply to this work. You may want to consider another means of protecting your rights, such as a patent.

2A

Are you the sole author or creator of the work?

If the answer is yes, proceed to 3A.
If the answer is no, proceed to 2B.
Have you and your co-authors or co-creators discussed the allocation of credit and the division of benefits from the work? It is recommended that all co-authors or co-creators reach an agreement, in writing, regarding:

- order of your names as they will appear on the work (e.g., on the title page of a book)
- division of royalties or other payments
- negotiation formal contracts with third parties who may publish or otherwise release the work
- other means of distributing the work (e.g., institutional repositories, personal websites)
- whether or not you will register copyright for the work
- whether or not you will apply a Creative Commons license to the work
- any other matters which may be relevant to this specific work for your group of co-authors or co-creators

Proceed to 3A.

You own the copyright to your work and the protections of copyright law apply as soon as the work is “fixed in any tangible medium of expression” [§ 102 (a)].

Subject to certain exceptions, copyright is actually an exclusive package of rights granted to the copyright holder to do or to authorize others to do any of the following:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission. [§ 106]

Copyright law specifies additional rights for creators of visual art [§ 106A].

Have you signed an agreement with a third party regarding the creation of the work (e.g., a work-for-hire agreement) or the release of the work (e.g., a publication agreement)?

If the answer is yes, proceed to 3C.
If the answer is no, proceed to 3B.
Copyright applies to your work automatically; there is no need to register copyright in order to enjoy the protections offered by copyright law. Nonetheless, you may wish to take steps to remind users of your rights as an author or creator. Your options include, but are not limited to:

- Officially registering copyright with the US Copyright Office [http://www.copyright.gov/]
- Marking your work with the copyright symbol, the year, and your name, e.g. ©2016 Joan White. Official registration is not required in order to apply this mark. [§ 401]
- Applying a Creative Commons license which clearly indicate the ways in which you will permit the work to be used [for more information about Creative Commons licenses, please see the website: https://creativecommons.org/about/]
- Both marking your work with the copyright symbol and applying a Creative Commons license, e.g., ©2016 University of Arkansas

Proceed to 3D.

When you signed an agreement with a third party regarding the creation or release of the work, you may have transferred some or all of the rights included under copyright. Therefore, before you reproduce or distribute the work (for example, by posting it on your own website or by depositing it in a disciplinary or institutional repository), you should consult the agreement which you signed.

According to US copyright law, “In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author . . . and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.” [§ 201 (b)]

Publishing agreements differ, so you will need to read carefully the document which you signed. However, you will find the policies of many leading publishers regarding posting and depositing journal articles in the searchable database SHERPA-RoMEO http://sherpa.ac.uk/romeo/index.php

Proceed to 4A.

NOTE: University of Arkansas faculty should consult Board of Trustees Policy 210.1 Patent and Copyright Policy [http://www.uasys.edu/wp-content/uploads/2016/03/0210.1-Patent-Copyright-Policy-1.pdf] to ensure that they themselves, and not the University, owns the copyright to work completed as part of their job responsibilities.
If you have not yet published or otherwise released the work, you may want to consider which rights you want to transfer to a third party and which rights you wish to retain. For information about your rights as an author/creator and recommendations for negotiating with third parties, please visit the website sponsored by the Scholarly Publishing and Academic Resources Coalition [http://sparcopen.org/our-work/author-rights/].

Proceed to 4A.

NOTE: University of Arkansas faculty are encouraged to submit articles to ScholarWorks@UARK; please see Academic Policy 1220.00 [http://provost.uark.edu/policies/122000.php].

Does your work contain any elements (e.g., images, quotations) created by others?

If the answer is no, proceed to 5A.
If the answer is yes, proceed to 4B.
If your work contains elements created by others, and if these elements are under copyright, their use may be covered by the “Fair Use” provision of US copyright law. This provision applies to “purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.” [§ 107]

The law lists the four factors used to determine whether or not the use of copyrighted material may be considered fair use. These factors are:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
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 potential market for or value of the copyrighted work. [§ 107]

The “Fair Use Checklist” by Kenneth D. Crews and Dwayne K. Buttler, found at https://copyright.columbia.edu/basics/fair-use/fair-use-checklist.html, is a handy tool for determining whether or not the fair use provisions apply to your use of copyrighted material.

Have you decided that every instance of your use of copyrighted material in the work is covered by the FAIR USE provisions?

If the answer is yes, proceed to 5A.
If the answer is no, proceed to 4C.
Congratulations!

You have found your way through this guide. As your journey through US copyright law continues, you may wish to consult these additional resources.

United States Copyright Office
http://www.copyright.gov/


Copyright Advisory Office, Columbia University Libraries
https://copyright.columbia.edu/about.html


Copyright Overview, Stanford University Libraries
http://fairuse.stanford.edu/overview

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Melody Herr, PhD
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Graphic Design by
LeeAnna Thao
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