

# Copyright Basics



Tuesday, September 22, 2009

Jesh Humphrey, Associate General Counsel

# The Fundamental Perspective

"To Promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

United States Constitution, Article I, Section 8, Clause 8



# Primary Purpose of Copyright

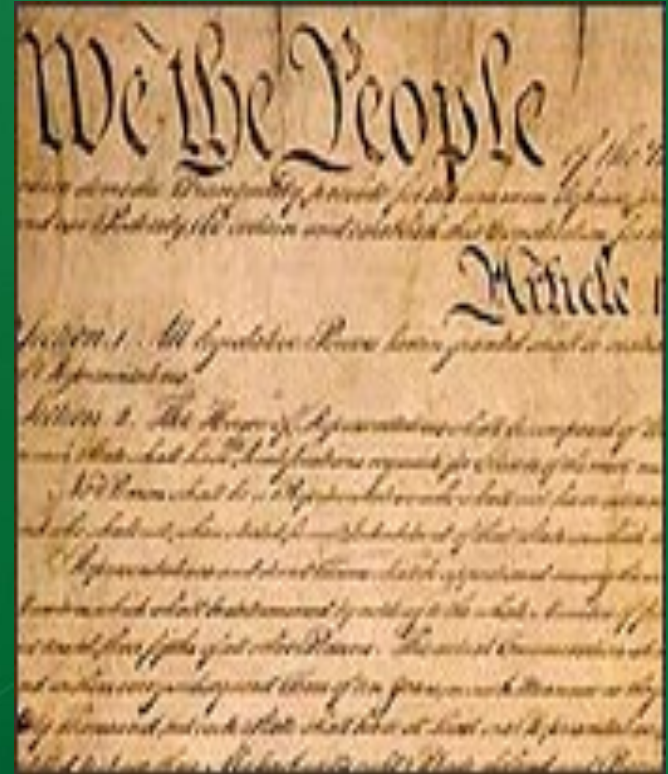
The primary objective of copyright is not to reward the labor of authors, but "[t]o promote the Progress of Science and useful Arts." To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art.

Feist Publications, Inc. v. Rural Telephone Service Co., 499 US 340, 349(1991), Justice O'Connor.



# Sources of Copyright Law

- United States Constitution, Article I, Section 8, Clause 8
- Federal Copyright Statutes, Title 17 of the United States Code
- Related Statutes
- Common Law
- Treaties



# The Exclusive Rights of Copyright Owners

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;



# The Exclusive Rights of Copyright Owners

- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including images of a motion picture or other audiovisual work; and.
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.
- In addition, certain rights of attribution and integrity for visual arts.





# What Works Qualify for Protection



- Copyright protects "original works of authorship" that are fixed in a tangible form of expression.
- The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device.



# What Works Qualify for Protection

The image shows two pages of a musical score for the piece "It's A Good World, After All." by Gus Edwards. The left page is for Piano and the right page is for Violin and Voice. The score includes various musical notations such as notes, rests, and dynamic markings. The title "It's A Good World, After All." is prominently displayed at the top of both pages. The composer's name, "GUS EDWARDS," is also visible. The score is published by M. Witmark & Sons, N.Y., as indicated by the copyright notice at the bottom of each page.

Literary works;

Musical works, including any accompanying words;

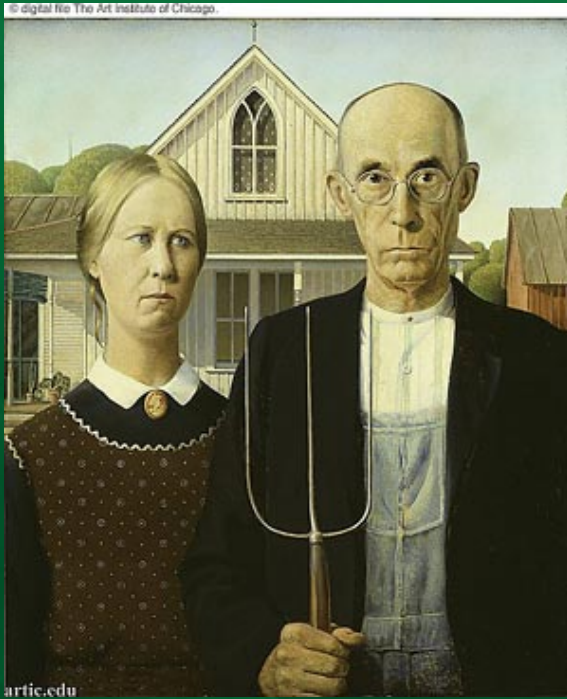
Dramatic works, including any accompanying music;

Pantomimes and choreographic works;





# What Works Qualify for Protection



Pictorial, graphic, and sculptural works;  
Motion pictures and other audiovisual works.;  
Sound recordings;  
Architectural works.

- These categories should be viewed broadly. For example, computer programs and most "compilations" may be registered as "literary works"; maps and architectural plans may be registered as "pictorial, graphic, and sculptural works."



# What Is Not Protected by Copyright

- Works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents

<b>Nutrition Facts</b>	
Serving Size: 0.5 oz. (14g)	
Servings Per Container: 4	
Amount Per Serving	
<b>Calories 70</b>	Calories from Fat 45
<b>% Daily Value*</b>	
<b>Total Fat 5g</b>	<b>8%</b>
Saturated Fat 1.5g	8%
<b>Cholesterol 20mg</b>	<b>6%</b>
<b>Sodium 450mg</b>	<b>19%</b>
<b>Total Carbohydrate 0g</b>	<b>0%</b>
Dietary Fiber 0g	0%
Sugars 0g	
<b>Protein 7g</b>	Not a significant source of Protein.
Vitamin A 0%	Vitamin C 0%
Calcium 0%	Iron 0%
Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.	
	Calories: 2,000 2,500
Total Fat	Less than 65g 80g
Sat Fat	Less than 20g 25g
Cholesterol	Less than 300mg 300mg
Sodium	Less than 2,400mg 2,400mg
Total Carbohydrate	300g 375g
Dietary Fiber	25g 30g
Calories per gram: Fat 9 • Carbohydrate 4 • Protein 4	



# What Is Not Protected by Copyright

- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)
- Idea vs. Expression



# Terms of Protection

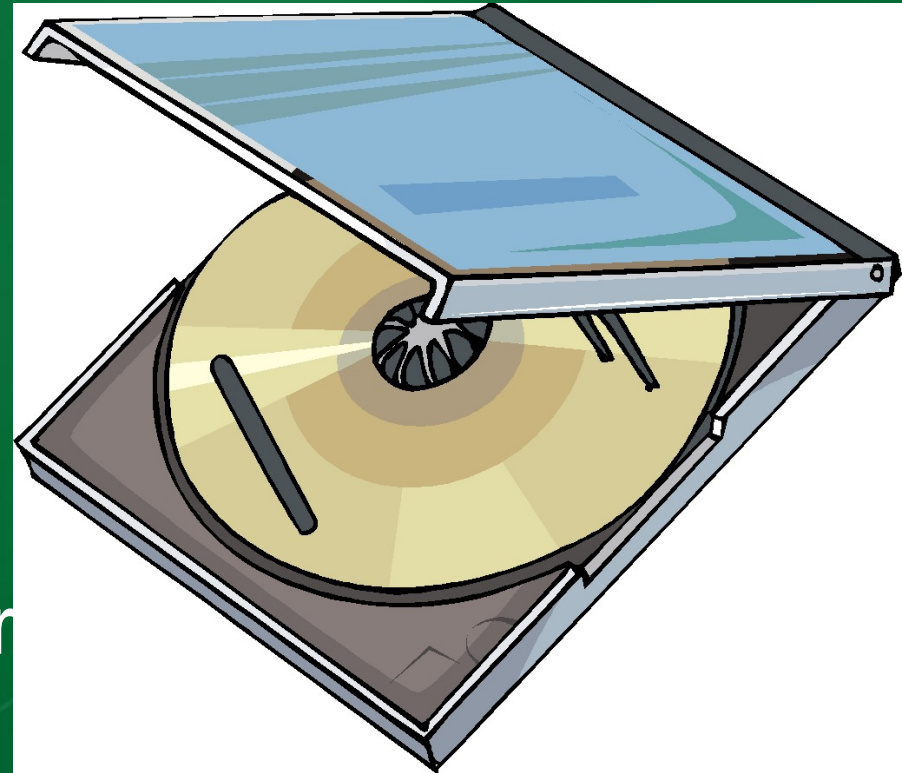
**Works Originally Created on or after January 1, 1978:**

- A work that is created (fixed in tangible form for the first time) on or after January 1, 1978, is automatically protected from the moment of its creation and is ordinarily given a term enduring for the author's life plus an additional 70 years after the author's death.
- In the case of "a joint work prepared by two or more authors who did not work for hire," the term lasts for 70 years after the last surviving author's death.
- For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 95 years from publication or 120 years from creation, whichever is shorter.



# How To Secure A Copyright

- Copyright is secured **automatically** when the work is created.
- A work is "created" when it is fixed in a copy or phonorecord for the first time.



© Columbia University Libraries



UNC CHARLOTTE



# Copies

Material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as:

Books

Manuscripts

Sheet music

Film

Videotape

Microfilm





# Phonorecords

Material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as:

Cassette tapes

CDs

LPs



Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both.

---



# Notice Of Copyright

- The use of a copyright notice is no longer required under U. S. law, although it is often beneficial.
- Notice was required under the 1976 Copyright Act. This requirement was eliminated when the United States adhered to the Berne Convention, effective March 1, 1989.



© World Bridge Federation



UNC CHARLOTTE

# Authors and Ownership

**Under the Copyright Act the "Author" of a Work is owner of copyright in the work. Depending on the circumstances, the Author will be either:**

- The Creator of the Work; or
- The Entity that employs the Creator or that has contracted with the Creator for creation of the Work as a "Work for Hire."



# Copyright Registration



- Copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright.
- Registration is not a condition of copyright protection.
- The copyright law provides several inducements or advantages to encourage copyright owners to make registration.



# Advantages of Registration

- Registration establishes a public record of the copyright claim.
- Before an infringement suit may be filed in court, registration is necessary for works of U. S. origin.
- If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
- If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.
- Registration allows the owner of the copyright to record the registration with the U. S. Customs Service for protection against the importation of infringing copies.



# Copyright Myths

**It doesn't have a copyright notice, so I don't need permission.**

- Since March 1, 1989, notice is optional and copyright protection exists without notice.

**If I give credit, I don't need permission.**

- Credit only avoids a charge of plagiarism, not copyright infringement.

**I am not charging for it, so I don't need permission.**

- Profit only affects a fair use analysis and findings of damages.





# Copyright Myths

**I am only using a small portion of the original, so I don't need permission.**

- The amount of the original used is only one factor in determining fair use.

**I am going to change and adapt the original work, so I don't need permission.**

- Derivative works are an express right of the copyright holder.



# Copyright Myths

**I found it posted anonymously on the internet, so I don't need permission.**

- Copyright protects anonymous works published without notice.

**It is in the public domain, so I don't need permission.**

- Public domain can be difficult to determine. In addition other protections can apply, such as trademark, trade secret, contract, state laws, and foreign copyright protections.



# Copyright Myths

## **I can get permission later.**

- With the exception of mandatory licenses, copyright owners have an absolute right to refuse to license.

## **It's from an out-of-print book, so it's in the public domain.**

- Copyright survives the publication and usually reverts to the creator.



# Copyright Myths

**I am using it for nonprofit educational uses, so I don't need permission.**

- There is no absolute "teacher" exception, it is just one factor for consideration of fair use or other exceptions.

**The work was created before 1923, so I don't need permission.**

- Unpublished and unregistered works created before 1978 (including very old works) may still be protected.



# 17 U.S.C. §107, Fair Use

Fair Use of a copyrighted work is not an infringement, if used for purposes such as:

Criticism,  
Comment,  
News Reporting,  
Teaching (including multiple copies for classroom use),  
Scholarship,  
Research.

**Other purposes may qualify for Fair Use.**



# Fair Use Factors

- In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:
  - 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.





# **(1) The Purpose and Character of the Use**

- Congress favors nonprofit, educational use over commercial use.**
- "Profit" is broad and inclusive and can include nonprofit activity.**
- Transformative uses are favored.**
  - e.g., quotes in a paper, original used in commentary.**



## **(2) The Nature of the Copyrighted Work**

- Is it "worthy of copyright protection?"**
- Is it creative or entertainment?**
- Compilations of fact receive less protection than imaginative works.**
- Unpublished works are given more protection.**



### **(3) The Amount and Substantiality of the Portion**

- **Both quantitative and qualitative analysis must be made.**
- **Quantity in relation to length and amount needed for purpose.**
- **"Heart" of work consideration.**
  - **300 words from Ford's 200,000-word manuscript**



## **(4) Effect of the Use Upon the Potential Market**

- Connected to other three factors.**
- Are you making use for which an original would have been used?**
- Does copy fulfill demand for original?**
- Is there a ready market?**
- Is the use repeated or long-term?**



# Fair Use Scenario #1 – Journal Articles

A professor would like to make multiple copies of a scientific journal article for handout to her students. The article is relevant to her course, and she may want to make copies for students in future semesters.

Alternatives?



# Fair Use Scenario #2 – Newspaper Articles

Professor would like to make copies of multiple newspaper articles spanning several weeks from a local paper for use in her classroom. The articles are news items and are relevant to the subject of the course. Professor subscribes to the newspaper.

Alternatives?



# Fair Use Scenario #3 - Chapters from Novels

Professor would like to make copies of several single chapters (some being quite lengthy) from multiple novels for a literature course, to distribute as handouts to students in her class. Each chapter is relevant to the course. The library owns each novel. Because the chapters are from separate works, the instructor needs to evaluate fair use with respect to each one individually; most often the analysis will be the same.

Alternatives?





# Fair Use Scenario #4 – Workbooks

Professor would like to make copies of an unused, commercially printed workbook he owns which corresponds to the course he teaches. The workbook is relevant to the course.

Alternatives?



# Fair Use Scenario #5 – Poetry

Professor would like to make copies of portions of a book of poems he owns that has been out of print for five years. Professor plans only to copy portions of the book, which are relevant to the course. Professor believes this book to be the best tool for teaching the course.

Alternatives?



# Penalties



© Colby Blue Lights

- Both civil and criminal.
- \$150,000.00 per occurrence for willful use.
- \$30,000.00 statutory damages regardless of actual damages.
- All profits.
- Attorney fees.



UNC CHARLOTTE

# UNC Charlotte Copyright Ownership Policy

- **Policy Statement #113**

(<http://www.legal.uncc.edu/policies/ps-113.html>)

- **The Policy provisions regarding ownership are organized by category of employment at UNC Charlotte:**

- Faculty/EPA Employee (Exempt Personnel Act employees are usually salaried positions);
- EPA/Non-Faculty Employees;
- Staff (State Personnel Act positions are usually hourly wage positions);
- Independent Contractors; and
- Students.



# UNC Charlotte Copyright Ownership Policy

## Student Works:

- Papers, computer programs, theses, dissertations, artistic and musical works, and other creative works.
- Students retain ownership of copyright in their Student Works.
- The University retains a non-exclusive, perpetual, world-wide, royalty-free right and license to reproduce and publicly or privately display, distribute or perform for the University's own non-commercial educational purposes.
- Notes of classroom and laboratory lectures and exercises shall not be used for commercial purposes by the student generating such notes.



# UNC Charlotte Copyright Ownership Policy Faculty and EPA Employees

## Traditional Works Owned by the Creator:

- Traditional works are pedagogical, scholarly, literary, or artistic works originated by a faculty member or EPA employee resulting from nondirected effort.
- E.g., art works, audio recordings, films, lecture notes [fixed], manuscripts, musical scores, poems, scholarly works, tapes [audio or video], textbooks, distance learning materials, and videos not falling into other categories).





# UNC Charlotte Copyright Ownership Policy Faculty and EPA Employees

## License for Educational or Research Use:

- Creators shall be deemed to have granted the University a perpetual, non-exclusive, non-transferable, royalty-free license to use the work for the University's own non-commercial educational or research use.
- "Educational" use means use for the purpose of offering regular academic course credit through a UNC Charlotte academic department.
- License includes the right to make derivative works.
- The original or a derivative work will credit the creator as author unless the creator requests that he or she not be credited upon timely written notice to the Chancellor.



# UNC Charlotte Copyright Ownership Policy Faculty and EPA Employees

## Other Traditional Works Owned by the Institution:

- Works where authorship cannot be attributed to one or a discrete number of authors, but instead result from simultaneous or sequential contributions over time by multiple authors.
- E.g., laboratory manuals, tests, and self-paced learning modules (either printed or in digital format) may be claimed by the institution.



# UNC Charlotte Copyright Ownership Policy

## Faculty and EPA Employees

### Exceptional Use

- Exceptional use of University resources occurs when the University provides support for the creation of the work with resources of a degree or nature not routinely made available to faculty or EPA non-faculty employees in a given academic department or administrative unit.
- Use of University resources is presumed not to be exceptional unless a department chair or director of an administrative unit informs the faculty member in writing before such resources are allocated that such use is exceptional.



# UNC Charlotte Copyright Ownership Policy Faculty and EPA Employees

## Release to Creator

- The Office of Technology Transfer may release or transfer the University's rights in a Traditional Work or Non-Directed Work created through exceptional use of University resources to the work's creator through an appropriate written agreement.
- The University shall have a perpetual, non-exclusive, non-transferable, royalty-free license to use the work for the University's own non-commercial educational or research use.
- Upon commercialization of the work either (a) the creator shall reimburse the University for the exceptional resources provided the creator, or (b) the creator shall share income from such commercialization with the University.



# UNC Charlotte Copyright Ownership Policy

## Faculty and EPA Employees

### Directed Works Owned by the Institution:

- Directed Works are works that are specifically funded or created at the direction of the University.
- For a work to be considered a Directed Work under this Policy, a department chair or head of an administrative unit must inform the faculty or staff member in writing in advance of its creation that the work is a "Directed Work."
- Such funding need not constitute exceptional use of University resources in order for the work to be considered a Directed Work.
- Directed Works shall also include works created by faculty, staff, or students in an institute, center, department, or other unit that, with approval of the Chancellor, has adopted rules providing that copyright in materials prepared by such faculty, staff, or students in the course of their professional work or in the course of study with that unit vests in the University and not in its creator.



# UNC Charlotte Copyright Ownership Policy Faculty and EPA Employees

## Directed Works Owned by the Institution:

- The University may release or transfer ownership in a Directed Work to the creator.
- The University through the Office of Technology Transfer in consultation with the creator's chair and the creator may alternatively negotiate for joint ownership of the work. In such case either party will be allowed to use and exploit the work without accounting to the other, unless otherwise agreed in writing.





# UNC Charlotte Copyright Ownership Policy

## Faculty and EPA Employees

### Sponsored or Externally Contracted Works:

- Any copyrighted work that is developed with funds from a contract, grant, or other arrangement between the institution and third parties, including sponsored research agreements.
- Owned by the entity designated in the agreement/contract or grant guidelines. If not stated, the work is owned by the creator. Examples include course materials, data, reports, and software.
- Sponsored works do not include traditional works created through independent academic efforts and based on the findings of the research project, unless the sponsored agreement states otherwise (e.g., books, journal articles, and lectures).



# Copyright Obligations & Your Thesis/Dissertation

Faculty/students want the benefit of fair use for their own research & strong copyright protection for their own materials.

- The University sends a copy of all doctoral dissertations to UMI/ProQuest to be "published"
- UMI staff review submissions for fair use & copyrighted materials that need permissions.
- ~15% of dissertations sent to Proquest/UMI lack necessary copyright clearances & permissions (~10,500 per year) & are "on hold" until revisions are made.
- Missing permissions may delay publication.
- Not fair use? - You may need to obtain permissions, make revisions, delete content, conduct more research, etc.



# Copyright Obligations & Your Thesis/Dissertation

Three questions to determine if you need permission to use another's work:

**1) Is the work copyrightable?**

**2) Is the work copyrighted?**

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

**3) Is the proposed use “fair use”?**



# Copyright Obligations & Your Thesis/Dissertation

## Proquest “red flags”

- Long Quotations – extending over 1.5 pages single spaced.
- Reproduced Publications – Avoid reproducing significant amounts of textual material in the format or page layout in which it was originally published elsewhere...even if you are original author
- Unpublished Materials – copyright, privacy & access to collections, narrow use.
- Poetry – may require permission or publisher-required.



# Copyright Obligations & Your Thesis/Dissertation

## Proquest “red flags”

- Dialogue from play, screenplay, broadcast, or novel – allows brief quotations for scholarly critiques.
- Music – brief excerpts & if closely tied to your research objectives.
- Graphic/pictorial works – A chart, graph, image, drawing, cartoon is an entire work (amount factor). Tied to your educational objectives, critical analysis, & does not replace original.



# Copyright Obligations & Your Thesis/Dissertation

## Proquest “red flags”

- **Computer Software** – reproducing applications->consult license agreement or seek permission (includes Shareware...free for USE but often not copying).

- **Internet Resources** –protected by copyright just as if they appeared in a book or on tape; fair use analysis applies. If access is free and unrestricted, the author may not be seeking to exploit any market, suggesting that the “market effect” factor may work in favor of fair use.





# Requesting Permission(s)

- **No need to request if material use is unrestricted or fair use applies.**
- **The Request Letter:**
  - Identify the correct copyright owner – may be a simple search or more complex.
  - Copyright notice indicates original owner.
  - Copyright office search of records.
  - Confirm the rightful owner's address / or person to address the envelope to by phone/email.
  - If requesting by email or phone, confirm with a signed permission letter. UMI may request documentation.



# Requesting Permission(s)

- **Begin sending letters/emails four months in advance of filing your thesis/dissertation & request every month until you get a response. No obligation by owner to respond.**
- **Keep copies of efforts to locate owners-shows good faith in finding copyright holder.**
- **Thank grantors in an Acknowledgments section of your document.**
- **A letter of thanks to the grantor is appropriate.**



# Journal Articles

- **Generally – contract law**
- **Journal articles you have authored attached to your thesis/dissertation – check each publisher’s permission, they vary. Retain your author rights to attach articles.**



# Open-Ended Fun

## Copyright Duration

- Previous copyright law set the duration of copyright protection at twenty-eight years with a possibility of a twenty-eight year extension, for a total maximum term of fifty-six years. Section 302 of the 1976 Act extended protection to "a term consisting of the life of the author and 50 years after the author's death. With the passage of the Sonny Bono Copyright Term Extension Act, these works are granted copyright protection for a term ending 70 years after the death of the author.
- Pros of extension of copyright protection?
- Cons?



# Sources

- <http://www.whitman.edu/content/copyright/faq/fair-use/handouts>
- <http://www.il.proquest.com/en-US/products/dissertations/copyright/Part3.html>
- David L. Harrison, **Copyright Basics, Ownership Policies, The DMCA, and Peer to Peer**
- Marianne Buehler, **Copyright Law in Graduate Research**

