



Own Manage Share | Building On Others' Creative Expression | Copyright In The Library  
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## ownmanageshare

### Who owns what?

#### Basics | Sorting through ownership | Getting permission | Protecting your work

People typically need to know who owns what for two reasons:

1. They are creating a work, either alone or in collaboration with others, and want to know who will own what or who will have what rights in the finished work.
2. They want to use another's work beyond the bounds of fair use and need to know whom to ask for permission.

The basics of who owns what are the same regardless of which concern one has, so we will cover the basics first, then show how those rules apply in the two situations above, and finally address how to protect your work.

#### The basics

- The author is usually the owner.
  - Except when the work-for-hire rules apply: The author's **employer** owns work(s)
    - created by an employee within the scope of employment, **or**
    - that fall within one or more of the nine statutory categories, where an agreement commissioning the work is in writing and signed by the creator or creators before work begins
      - The nine statutory categories include: contribution to a collective work; part of a movie or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas.
  - If a work does not fit within the statutory definition of a work-for-hire, the employer may still own it if the author assigns the copyright to the employer or contractor.
  - An author-owner is free to assign copyright to anyone, so a written contract can change these basic rules.
    - Many publishers require assignment of copyright as a condition of publication.
- Policies, such as the U.T. System Intellectual Property Policy also change the ownership rules:
  - They can permit faculty ownership of scholarly, artistic, literary, musical and educational materials within the author's field of expertise.
- Ownership can be complicated. Some categories of works that used to be distinct and about which there were few issues of ownership may now be merged into a single work.
  - Scholarly works owned by faculty members can be implemented in software; works-made-for-hire can incorporate pre-existing materials that a faculty author created earlier.
- Other issues arise because of collaboration. The more cooks there are stirring the stew, the more complicated it becomes to figure out who owns what. This kind of complication arises in the following circumstances:
  - Collaboration in online networked environments

- o Creation of multimedia course materials
- o Telecourses and distance learning

Both of these and other similar situations usually involve:

- Inter-institutional collaborators or other non-affiliated collaborators
- Student contributions
- Contract labor contributions
- Non-faculty University employee contributions

- In order to be joint authors of a work, each person must:
  - o Contribute [copyrightable expression](#) and
  - o Intend at the time the work is created that all contributors will be joint owners of the whole finished work
  - o
- The best way to sort out joint ownership is through discussion and agreement at the start of a project. For example, a blog and its commentary present potential joint contributors with opportunities to create collaborative works. One way the blog owner or owners could address ownership and use issue would be to indicate from the start that all contributions are individually owned, no joint work is intended, but all contributions will be publicly licensed under a Creative Commons license that permits the creation of derivative works. This would allow all contributors to use their own and others' contributions in other works. These can be further refined as commercial or non-commercial.
- Finally, some issues arise because institutional resources are scarce and must be allocated wisely and recovered when possible. So, even if an institution is not an owner of a work under the work-for-hire rules, it may have an interest in acquiring rights or recovering its investment in a work created with significant amounts or kinds of institutional resources. If such a work is commercialized, the institution may even wish to share in the royalties. All of these rights should be addressed in a contract.

### Sorting through ownership

## Who is an author?

So, your first task is to identify all the potential authors of a work. An author is someone who contributes copyrightable expression to the work.

## What kind of expression is copyrightable?

Copyrightable expression is original authorship, fixed in a tangible medium of expression.

Examples of copyrightable expression, assuming they are original, could be:

Poetry; prose; software applications; artwork; musical notation; recorded music and/or song; animations; video; Java applets; a Web page; a Website design, blog posts and comments; architectural drawings; photographs.

Examples that do not qualify as copyrightable expression:

Mere facts; exact duplications of public domain works; ideas; systems; works created by employees of the Federal Government; titles and short phrases; logos and slogans; forms that only collect information (rather than provide information).

## Does the author or an employer own the contribution?

The essential questions here include:

1. whether the work is within the scope of an employee's job description
2. whether it is performed at least in part for the employer
3. whether it is performed mostly at work, using work facilities or equipment, or
4. whether it was performed for someone as a contractual work for hire (signed contract stating that the work is work for hire)

Unless the work for hire rules apply, the creators of the work are its authors and owners.

## Joint works

No matter how many collaborators, the work will only be a jointly owned work if the collaborators intended, at the time of creation, that their contributions would be joined into a unified whole and that they would be joint authors. Many times collaborators agree on the first point, but they really haven't thought about the second point. Because intent to be a joint author is subjective, it's quite likely that different collaborators have different ideas about this, if they've thought about it at all. This makes intent an excellent issue to bring up for discussion at the beginning of a project. Often there is a primary author and others whose roles are not as great. It is especially important for primary authors to think about the question of whether the resulting work will be hers alone, or jointly owned with everyone else, and convey her thoughts on the matter early on. It is even better to document such discussions in an agreement of some kind, even a very informal one.

## Has the author conveyed away any of his rights?

There are many reasons why an author might transfer all or part of his rights. The first one that comes to most peoples' minds is the

transfer of copyright to a publisher as a condition of formal publication. But there are many others. Sometimes third party sponsorship agreements related to the author's contribution may characterize the work as a deliverable under the contract and require that the author transfer copyright to the sponsor.

On the other hand, a research funder may require that the author retain a non-exclusive right to deposit her work to a public-access repository. In such a case, a subsequent transfer of the author's copyright to a publisher would not convey the right that the author had retained. In other words, the publisher would take the copyright, subject to the pre-existing right that the author was required to retain by her research funder. Institutions may exert similar influence over public access to the research results of their faculty by requiring that all papers resulting from research supported by the institution will be deposited to an institutional repository. Publishers of such papers would take the copyrights subject to the pre-existing institutional right to deposit the papers to the institutional repository.

## Like the result? If not, change it!

Once you know who owns what, you may decide that it's not at all like it should be. If so, you'll need to make some changes to bring about a more desirable result. If you feel you need an [assignment of copyright](#) from someone who contributed, to avoid a potential joint authorship issue, the assignment must be in writing and signed by the owner of the copyright. This might also be necessary if a contributor hired someone to write computer code, take photographs or do design work without a contract. Probably neither of them thought the person being hired would own copyright in what he produced, but that's what the law would dictate as the result. It is better to have the contract at the beginning, but it can be fixed after the fact, if the parties are willing. Even if you only need a license (ie., *permission to use* a work rather than *assignment of all the rights* in it), it should be in writing so that the rights to use are clearly stated and documented.

### Getting permission

When you want to use someone else's work in a way that goes beyond the boundaries of fair use or other statutory authorization (for example the TEACH Act, or the libraries' exemptions in Section 108 of the Copyright Act) you need to know whom to ask for permission. [Getting Permission](#) goes into much more detail about how to actually get permission, so here we'll only address how to use the rules of authorship and ownership to figure out whom to ask.

## Know the ownership drill

In the good old days, copyright owners were prominently noted in the copyright notice that the law required published works to carry. For works with such a notice, your task is easier (at least you have a starting point). But for many works, figuring out whom to ask can be a major undertaking. Sometimes it is impossible. Nevertheless, if you keep in mind the structure we've set out above, it can provide you with a systematic way to approach the task:

- identify the author or authors and contact one or more of them;
- ask whether they own the copyright or whether the work was work for hire;
- ask whether they have conveyed away any of their rights, and if so, to whom.

## Orphan works and taking risks

If you can't identify authors (or their estates) or business owners, or can't successfully contact them, you probably have an "orphan work." The vast majority of materials in our libraries and archives is in this category today -- works for which a copyright owner cannot be found. These works present serious policy challenges to our copyright law in that they will languish unless a suitable way can be found to allow uses of them that adequately address the rights of copyright owners. A proposal put forward by the Copyright Office in 2006 failed to garner sufficient support from the content community and there is no sign that the unsuccessful bill will be introduced again any time soon. Until such time as a legislative solution emerges, those of us who wish to make uses of orphan works must ask ourselves how much risk we are willing to take that an owner we've tried to find and couldn't find will one day come out of the woodwork and exercise the law's harsh remedies to punish us for our uses. Most people are unwilling to take this chance, but some are not. Some are quietly digitizing works that seem very low risk, and providing access to them to the public. Little by little, we edge forward in the dark. For more information about orphan works, please see [Public domain and orphan works](#).

### Protecting your work

Protecting your work is easy today, arguably too easy. It's protected from the moment you hit the save key on your computer, touch your pencil to paper, brush to canvas, well, you see what I mean. Works are protected from the moment of their fixation in a tangible medium of protection. This means that a grocery list enjoys the full force of federal copyright law for enforcing the owners' rights. Given the purpose of copyright, to encourage the growth of knowledge, it hardly makes sense that we need to provide a period of exclusive use backed up by the full force of the U.S. legal system to insure the optimal production of grocery lists. But that's another issue.

If you want to go the extra mile to make sure you can enforce your rights in federal court, you'll need to register your automatic copyright with the Copyright Office. You can learn all you need to know to register copyrights at the Copyright Office's [website](#). It's cheap and fast, but it's only necessary if you think it likely that you would sue someone to stop an infringement of your rights.

