

COPYRIGHT

question framework

HOW TO APPROACH © PROBLEMS

QUESTION #1

Is the work in question protected by copyright or is it in the public domain?

Copyright terms are long, but they do expire, at which point a work enters the public domain. U.S. Copyright terms have changed over the years, but anything first published in this country before 1923 is firmly in the public domain and therefore no longer protected by copyright. The American Library Association's Copyright Genie (<http://librarycopyright.net/resources/genie/genie.php>) can help clarify questions about the copyright status of more recent works. Additionally, works published by U.S. Federal Government officers or employees as part of their official duties are not protected by domestic copyright.

QUESTION #2

If I'm the author of the work in question, did I sign any of my rights over to a publisher?

In order to publicly distribute copies of a work, publishers typically require authors to sign over some or all of their exclusive ownership rights (including the exclusive right to reproduce the work in copies and distribute those copies). Authors who don't retain these rights must seek permission in order to use their own work in these ways (unless the use falls under a copyright law exception, see #3 and #6 below, or is permitted by a license, see #4 & #5 below).

QUESTION #3

Is there a copyright law exception that covers the use I wish to make?

Copyright law limits the exclusive monopoly it grants authors in several ways. It grants exceptions for many of the reproduction activities typically performed by libraries and for performance and display uses typically practiced for in-person classroom instruction. If all of the code's conditions are met, such specific uses are not copyright infringements.

QUESTION #4

Has the work in question been licensed in a way that covers the use I wish to make (e.g., Creative Commons)?

Creative Commons licenses have been created as a public way for copyright owners to indicate which of their exclusive ownership rights others may share without further permission. Most basically, CC-licenses require that users give credit to the author (aka CC-BY). Additional conditions can be added, including constraints on commercial use (CC BY-NC), constraints on creation of derivatives, etc. For more information on specific licenses and conditions, see creativecommons.org.

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QUESTION # 5

Has the work in question been licensed to my institution in a way that permits (or prohibits) the use I wish to make?

Subscription digital products such as electronic journals and databases come with licensing terms & conditions that may make explicit reference to permitted and prohibited uses. Works under license are subject to limitations that have been agreed to by owner and licensee, and prohibited uses may be more restrictive than federal copyright law alone. Certain types of uses are frequently prohibited, including: systematic downloading, posting of materials on public websites, use of bots, crawlers, or scrapers to download copyrighted materials, text mining, data mining, and commercial use.

QUESTION # 6

Is the use I wish to make covered by fair use?

Fair Use (section 107 of the U.S. Code) is the most flexible facet of U.S. Copyright law and is designed to protect the right to use copyrighted material without permission or payment for specific purposes in specific ways, especially in “criticism, comment, news reporting, teaching, scholarship, or research.” In order to determine whether a use is likely to be fair, one must evaluate it relative to four factors: (1a) purpose or character of use: criticism, comment, news reporting, teaching, scholarship, or research?, (1b) purpose or character of use: transformative?, (1c) purpose or character of use: noncommercial?, (2) nature of the copyrighted work being used, (3) the amount and substantiality of the amount used in relation to the copyrighted work as a whole, and (4) the effect of the use on the potential market or value of the copyrighted work. For assistance in performing and documenting four-factor analysis, use the American Library Association’s Fair Use Evaluator. (<http://librarycopyright.net/resources/fairuse/>)

QUESTION # 7

Do I need to seek permission from the copyright owner for the use I wish to make?

If an intended use of a copyrighted work does not fall under an exception in the code or fair use and is not specifically permitted under a license, one should identify and locate the copyright owner and make a formal permission request, explaining the intended use as fully as possible.

**Still have questions?
Mason Publishing provides consultation on
copyright and fair use.**

Contact us at: publish@gmu.edu