

Visual Materials Copyright and Fair Use FAQ

Carmen Orth-Alfie -- ARLIS Annual Conference, April 2009

1. What are the basic copyright considerations that specifically pertain to visual materials?

The basic framework for copyright law is found in the Constitution of the United States, Article 1, section 8, which presents a balance of exclusive rights to creators within limits set by Congress to allow others to build on that work for the benefit of society. Congress' interpretation of how to enable that balance is codified as Title 17 of the United States Code. The "subject matter" and definitions of copyright are presented in 17 U.S.C. §101-106 with the limitations on exclusive rights in 17 U.S.C. §108-122. The duration of copyright is codified in 17 U.S.C. §301-304.

Some specific limitations to the exclusive rights of copyright holders of interest to those working with visual materials include: §107, the fair use doctrine; §110, classroom use; §113, pictorial, graphic and sculptural works; and, §120, architectural works.

A working understanding of these copyright basics is very helpful to library and archives professionals. However, those working with visual materials should be familiar with other sections such as §1201 the Circumvention of copyright protection systems associated with DVDs and computer software and §1301-1307 protection of original designs.

2. Where can I access the current text of the United States Code Title 17?

There are several sources for the compilation of text in the United States Code Title 17, Copyrights.

GPO Access provides access to the complete 2006 edition of United States Code, plus supplements at <http://www.gpoaccess.gov/uscode/index.html>.

The Copyright Office maintains a compilation of the Copyright laws, known as Circular 92. It is available online <http://www.copyright.gov/title17/>.

3. Are there some great websites where I can learn more about copyright?

There are several comprehensive and informative websites on copyright. Here are a few to begin your quest to better understand copyright issues:

- United States Copyright Office – Copyright FAQ:
<http://www.copyright.gov/help/faq/>
- Stanford University Fair Use:
http://stanford.edu/Copyright_and_Fair_Use_Overview/chapter0/index.html
- VRA (Visual Resource Association) – Intellectual Property Rights/Copyright
<http://www.vraweb.org/resources.html#ipr>

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4. Reading the 17 U.S.C. confuses me! Are there some easy tools that will help me make sense of copyright?

There are several useful tools that will aid you in your effort to assess copyright status and make decisions for educational use of copyright protected works. Note however, these tools do not replace an understanding for copyright law or seeking legal counsel when necessary. As the disclaimer for the Digital Copyright Slider notes, “*copyright issue are fact-dependant, consult with your organization's copyright specialist or legal advisor regarding copyright questions.*”

How can I determine if a text or image is protected under copyright or in the “public domain”?

- Copyright Term and the Public Domain in the United States
http://www.copyright.cornell.edu/public_domain/
- Digital Copyright Slider -- Michael Brewer
<http://www.librarycopyright.net/digitalslider/>
- Copyright term calculator
<http://www.publicdomainsherpa.com/calculator.html>
- Public Domain Works DB
<http://www.publicdomainworks.net/>

What about library uses of copyrighted works?

- Section 108 of the U.S. Copyright Code: Reproductions by Library or Archives for their Users, for Replacement, or for Preservation
<http://librarycopyright.net/108spinner/>

When is the use of a copyrighted work considered “fair use”?

- Copy Photography Computator – VRA
<http://www.vraweb.org/resources/ipr/computator/index.html>
- DIRC (Digital Image Rights Computator) -VRA
<http://www.vraweb.org/resources/ipr/dirc/howtouse.html>
- Checklist for Conducting a Fair Use Analysis Before Using Copyrighted Materials – Cornell
http://www.copyright.cornell.edu/policy/Fair_Use_Checklist.pdf

5. Looking for entertaining and informative options for teaching copyright and “fair use” that would appeal to students?

Duke Center for the Study for the Public Domain has a comic book, *Bound By Law? (Tales from the Public Domain)*, <http://www.law.duke.edu/cspd/comics/digital.php>.

Stanford Law School Center for Internet Society has a video, *A Fair(y) Use Tale*, <http://cyberlaw.stanford.edu/documentary-film-program/film/a-fair-y-use-tale>