

**What Is Copyright?** A form of protection provided by the laws of the United States (as well as international treaties including the Berne Convention) to the authors of **original works of authorship** and includes literary, dramatic, musical, artistic, and certain other intellectual property works. **Original** means that the creator through his/her own creative mind only produced the work. Copyright gives the owner of the copyright the **exclusive right** to do and to authorize others to do the following: reproduce, prepare derivatives, distribute, publically perform, and publically display the work.

## Authorship, Ownership, & Term

**Who is an author?** An author is an individual who contributed to the **creative expression** of the work. Colleagues, students, and reviewers, even though they may have reviewed a work and offered suggestions, may not be creators unless they contributed to the creative expression of the work.

**Who is the owner?** The author is usually the owner *unless* the author's employer owns the work through **work-for-hire** rules or the author **assigned** the copyright to the employer.

**How long does the copyright last?** If the author owns the copyright, the term is **life of the author plus 70 years**. If the employer owns the work as a work for hire (not by assignment) it is **95 years from date of first publication or 120 years from date of creation, whichever expires first**.

## What is Copyrightable?

**Copyrightable subject matter** may include: literary works, musical works, dramatic works, pantomime or choreographic work, pictorial, graphic, or sculptural work, motion picture, audiovisual work, sound recording, or architectural work.

**Non-Copyrightable subject matter** includes: ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

## Using Others' Materials & The Role of Fair Use

**What is copyright infringement?** Generally, infringement occurs when a copyrighted work is reproduced, distributed, publically performed or displayed, or made into a derivative work **without the permission** of the copyright owner.

**What is Fair Use?** Fair Use is an **exception** to the exclusive rights granted to the copyright owner of a work which allows limited use of copyright material without acquiring permission from the rights holder.

4 factors determine whether the use is fair use:

1. The purpose and character of the use (i.e. commercial vs. nonprofit educational purposes);
2. The nature of the copyrighted work (published facts vs. unpublished imaginative works);
3. The amount and substantiality of the portion used in relation to the copyright work as a whole (small vs. large portion); and
4. The effect of the use upon the potential market for or value of the copyrighted work (does it compete with original work?).

***When in doubt, seek permission and/or a license to use the work!***

\* [http://en.wikipedia.org/wiki/Fair\\_use](http://en.wikipedia.org/wiki/Fair_use)

## Copyright Notices

**What is a copyright notice?** A copyright notice is an identifier placed on copies of the work to inform the world of the copyright ownership. The notice generally consists of the symbol or word "©" or "Copyright", the name of the copyright owner, and the year of first publication. For example, "**© 2014 The University of Texas Health Science Center at Houston**".

Although a copyright notice is no longer required by law, copyright owners continue to use notices to give notice to the world of the copyright owner of the work.

## Registration

Copyright of a work is **automatically secured** upon its creation. Although registration of copyright is not required to secure a copyright, there are certain **advantages to registration**, including:

1. Establish public record of copyright claim;
2. Before an infringement suit may be filed, registration is necessary; and
3. Statutory damages and attorney's fees may be awarded.

## Disclosure of Creatorship

**Q: A couple people who were on a project have now left the University. The Office of Technology Management (OTM) wants to commercialize the work as a product. Must I report all of the people as creators, even the ones who have left the University?**

A: It depends. If they are creators, then yes, you must report all creators even if they are no longer at the University.

**Q: What if I can't remember off the top of my head all the creators involved in the work?**

A: If a work is commercialized and royalties are distributed, and later an unreported creator proves they also co-created the work, then the creators who received royalties may have to personally account to the unnamed creator for royalties due to them.

## Ownership and Right to Use the Work

**Q: We would like to contract out a part of the project to a company to complete. Who owns the copyright to that portion of the work?**

A: In any situation in which there is an outside (non-University) party involved in the creation of a work, there is a risk of divided ownership (or inadvertent transfer of ownership). Thus, be aware there must be a written agreement in place prior to the work starting that expressly specifies the ownership of the completed work.

**Q: We want to use some images and videos of people in our book/video/commercials. The services agreement that UTHealth executed says it is work-for-hire and that UTHealth owns all the copyrights to the book/video/commercials. This means we're free to use it for whatever we want, right?**

A: Not necessarily. Ownership of the work and the right to use the work may be two different things. When people's images are involved, an additional document called a "media release" is required. This release is signed by those people in the images/videos which grant UTHealth the right to use their likeness. If you did not get a media release that allows UTHealth to use the images/videos, then although UTHealth does own the book/video/commercials, UTHealth does not have the right to use them.

## Posting of Material Online

**Q: I am faculty – that means I can post teaching materials on my own website right?**

A: It depends. Posting teaching materials on your website is subject to the Digital Millennium Copyright Act (2000) in which the faculty, not the university, may bear liability for infringement. You must abide by fair use limitations.

## Scholarly Work

**Q: What is the University's policy on what copyright works are considered scholarly works?**

A: Per Regents Rule 90101 Section 4 through 6 and HOOP policy 201, the Board will not assert an ownership interest in the copyright of scholarly or educational materials that are related to the author's academic or professional field. However, the Board does own software, works-for-hire, and institutional projects. Thus, if the work is software or if it is a work created by the author who was commissioned, required, or hired specifically to produce such work, then the Board will also own the copyright to the work.

**Q: I'm a creator of a work which I declare is scholarly work. Am I now free to contact a publisher to commercialize the work myself without the involvement of the University?**

A: It depends. As Regents Rule 90101 Section 4 through 6 and HOOP policy 201 states, if it is software or if it is an institutional or work-for-hire work, then it is not considered scholarly work; the work belongs to the Board. If the work belongs to the Board, then UTHealth must be involved in the commercialization of the work.

## Fair Use

**Q: I'm only copying for our academic educational use. Isn't that always fair use?**

A: No, there is no absolute freedom from liability for academic educational use. The use must still be examined under the 4 factors of fair use for the determination of fair use.

**Q: Since I bought a copy of the work, that means I can legally copy the work without infringing on the copyright, right?**

A: No. Just because you purchased the work does not mean you own the copyright to the work. You only own that particular copy of the work. Therefore, you cannot copy the work (or any part of it) without the copyright owner's permission unless it qualifies as fair use.

**Q: I found some images online without a copyright notice. Can I use them freely because I assume they are in the public domain?**

A: Since the law currently does not require notices of copyright, do not rely on the absence of a copyright notice as an indicator that the work is in the public domain. When in doubt, contact the publisher of the work to inquire about copyright ownership and permissions.

## Permissions and Licenses

**Q: What if I request permission from a publisher to use a work but do not get a response. Can I still use it?**

A: No. If you did not receive express permission, you cannot assume that you have been granted the necessary permissions.

**Q: I contacted the author to adapt their work. Am I in the clear to use it?**

A: It depends. You must make sure the person/entity granting the permission is the owner of the copyright. Many times the author is not the owner of the work. Also, make sure you stay within the scope of their permission and be aware of any conditions they may require in return, such as assignment of ownership of any derivative works to them.

**Q: I bought an academic/student license for the usage of images. Can OTM later commercialize the work with those images?**

A: No. Typically you will need to have purchased a commercial license to be able to use those images in the work commercially.

**Q: I didn't "copy" someone's work, but I made my own version of it. Am I in the clear to use this new creation of mine?**

A: It depends. If it is adapted from their work, it may be considered a derivative work. For derivative works, you must get permission from the original copyright owner to create the derivative work and should have a written agreement beforehand to specify ownership. If they do allow you to own the new creation, you will only own the elements that are not in the original work (only new elements which you created).

## Copyright Registration

**Q: Do I have to register my work when I create it? Is there a deadline to registration?**

A: No and no. You can register any time after a work is created (even years); however registration is required before an infringement suit is brought against an infringer.

**Q: I want to register my work, what do I need to do?**

A: If the work is owned by UTHealth, you will need to contact OTM. OTM will request additional information from you before filing for a copyright registration, including information on authorship, prior ownership issues, and copies of the work to mail to the Library of Congress for deposit. If the work is not owned by UTHealth and is owned by you personally, you can register the work in your name at your own expense. Please visit [www.Copyright.Gov](http://www.Copyright.Gov) for instructions on how to file. Before you file, if you are not sure whether UTHealth owns the work, please contact OTM.

**Q: UTHealth registered a copyright of a chart that can be used with a method to help kids read. I heard a group at another University is using the same method, but not with my chart. Can I stop them from using that method?**

A: Not likely. UTHealth owns the expression of the work (in this case, it is the chart), however, the underlying method for which to use the chart with is not protected by copyright.