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# Copyright & Licensing For International Resource Sharing

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# What is Copyright?

## Copyright protects::

<b>Literary works</b> Books, poems, journal articles, websites	<b>Dramatic works</b> Plays, films, dance
<b>Musical works</b> Songs, instrumental compositions	<b>Art works</b> Drawings, paintings, sculptures, maps
<b>Sound recordings</b> Speeches, lectures, animal sounds, nature sounds, music, audiobook	<b>Performances</b> Musical/theatrical performances (dancing, singing, acting), presentations
<b>Communication Signals</b> Pay-per-view, radio programs, satellite, broadcasts	

# What is Copyright?



**Rights** include

- copy
- perform in public
- publish
- translate
- adapt to another format
- record a literary, dramatic or musical work
- broadcast
- exhibit an artwork
- authorize others to do these things

**Happens** immediately and automatically

**Term** “Life plus 50”

# What is Copyright?



Copyright protection is effective immediately and automatically when a work is created.

Length of protection varies by country.

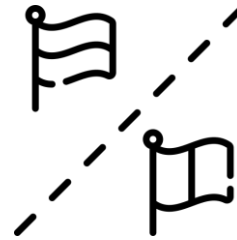
Minimum protection is 50 years after death of creator.

When copyright expires the work enters the public domain.

Copyright legislation is national.

All copyrighted works, regardless of origin, are governed by the copyright legislation of the country the work is being used in.

# Copyright is National



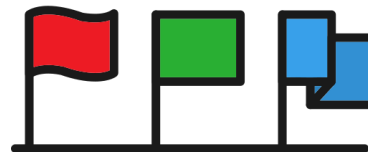
Copyright legislation is national.

All copyrighted works, regardless of origin, are governed by the copyright legislation of the country the work is being used in.

Berne Convention's core principle of "national treatment".

Each signatory country provides to the citizens of every other signatory country the same rights it provides to its own citizens.

Berne Convention is also part of international trade treaties as it was adopted into the World Trade Organization's TRIPS agreement.



# Function of Copyright

Copyright gives legal rights to creators of works to enable them to benefit economically and socially from their creative endeavours.

Copyright serves the Public Interest by allowing for limited uses of works without obtaining permission of the copyright holder.

- This encourages further research and creativity.

- Resource sharing, and libraries in general, serves the public interest

# Note on the Public Domain

## Public domain

Works created without copyright protection.

Works where copyright has expired.

Works that were never protected by copyright include:

Simple expressions of facts and data like simple tables or charts.

In some countries statutes, court decisions, and similar documents are released into the public domain by the government.

Creator chooses to release their work into the public domain.

Varies by country!

# Copyright's Importance to Resource Sharing

Resource sharing frequently requires a library to make a copy.

Copying engages copyright.

Publishers may try to limit resource sharing by:

- Prohibiting resource sharing / document delivery in their licenses.

- Applying technological protection measures to digital resources.

Librarians need to be familiar with their national copyright legislation in order to copy works according the legal framework in their country.



# Historical Origins of Copyright

First modern copyright act – 1710 in England.

Short period of protection – 28 years after publication.

Until 1880s countries gave little, or no, copyright protection to works from other countries.

Berne Convention – international copyright treaty adopted in 1886.

Core principle is that of “national treatment”. A country must provide same copyright protection to citizens of signatory countries as they provide to their own citizens.

## Berne Convention

# General Protection for Copyrighted Works

Length of protection differs by country.

What makes a work copyrightable?




Some level of creativity and originality. Varies by country.

Work has to be in a tangible form – fixed form. Examples include books, photographs on a smart phone, emails.

What is not copyrightable?

Data and Facts. Not protected because there is not originality or creativity – they just exist.

Remember! Copyright is automatic. No need to register the work.

DAY	<u>Max</u> <u>Temp</u> °C 	<u>Min</u> <u>Temp</u> °C 	<u>Mean</u> <u>Temp</u> °C 
<u>01</u>	-9.3	-16.2	-12.8
<u>02</u>	-2.7	-14.6	-8.7
<u>03</u>	-6.6	-19.9	-13.3
<u>04</u>	-3.0	-20.5	-11.8

# Exceptions to Copyright's Exclusive Rights

Most copyright legislation has exceptions that allow for users to copy a work for a specific purpose.

There are exceptions that are specific to certain groups, such as libraries or educational institutions.

Is usually a general exception that applies to everyone:

- Fair dealing

- Fair use

- Right of quotation

- Reproduction for educational or information purposes

# Exceptions for People with Perceptual Disabilities

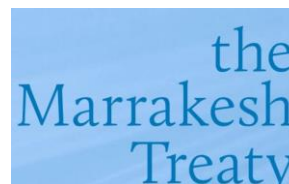
Marrakesh Treaty - adopted in 2013.

International treaty under World Intellectual Property Organization.

Encourages the creation and distribution of works in accessible formats.

Signatory countries incorporated the treaty into their domestic copyright legislation.

Allows libraries to create an accessible work for a library patron in another country, thus promoting international resource sharing for patrons with perceptual disabilities.



# Lending Physical Materials and Copyright

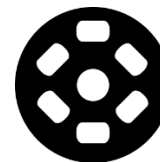
Lending physical materials usually does not engage copyright.



Legal concept of “exhaustion”

Once a work is sold the copyright holder cannot control subsequent distribution

If a library owns a book, they can lend it to whomever they wish.



# Resource Sharing, Copies and Copyright

Sending a copy of a work to another library does engage copyright.  
Why? Because a copy is being made.

Making and sending a copy requires using an exception, or provision, in your nation's copyright legislation.

Many countries have exceptions that explicitly allow for document delivery (making copies to send to another library).

In countries without a specific exception allowing document delivery a library can usually use the broader general exceptions for education or research.



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from the Noun Project

# Applying the General Copyright Exception

The Work should be used for non-commercial purposes such as education or research.

Amount copied should be minimal. For example – one chapter, one article, one figure.

Consider the type of work being copied. Scholarly or hard to find material is “more fair” to copy.

Will copying lead to a *reduction in sales* of the work or otherwise damage the commercial market for the work?

# Working with Copies

Abide by the copyright exceptions established in local copyright law.  
Follow the library community's national guidelines and national rules or best practices when placing and fulfilling article requests.

Include a statement stating that the material should be used for educational, research or personal purposes.

Deliver copies in a way that reduces the chances of further distribution.

Do not use documents obtained from shadow libraries as this puts your library in a legally compromised position.

Do not store copies and use them to fill future requests.



# Licensing

Libraries have been licensing content for decades.

Many libraries pay more for digital content than for physical content.

Libraries are leasing, or renting, digital content.

Physical content is owned, and thus is governed by copyright law.

Commercial digital content is usually governed by a license.

Usually a different license for each digital resource.

# Licensing and Resource Sharing

Traditionally, library practices are based upon a library owning an item.

Library usually does not own a digital resource, it licenses it.

License may allow for perpetual use, but is still not owned.

License governs things such as:

- Sharing the resource via resource sharing;

- How library patrons can use the resource;

- How the resource can be accessed;

- Where the resource can be accessed;

# What is a License?



License is a contract between library and a vendor, or publisher.

- allows the copyright holder to control the use of the licensed resource.
- allow private law (contracts) to replace public law (copyright legislation).
- often over-ride exceptions, or user rights, found in copyright legislation.

Resources may come with technological protection measures to prevent copying and printing.

- Is becoming common for copyright law to prevent almost any circumvention of a technological protection measure.

Library licenses are contracts where often the library agrees to not take advantage of copyright exceptions.

# Terms of a Contract or License



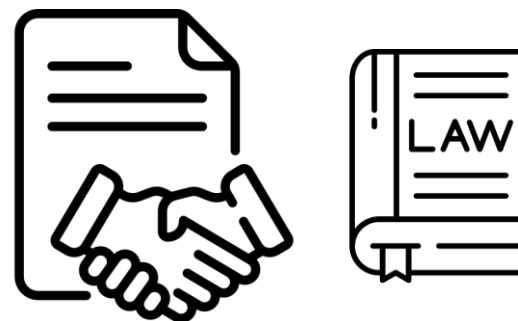
Licenses, or contracts, are only valid when both parties agree to them.

- A fundamental aspect of a contract is the opportunity to negotiate.
- Consortial negotiation is better – libraries get better contracts when they negotiate as a group.

Resource Sharing is fundamental to libraries, and thus librarians should try to ensure that licenses allow for resource sharing / document delivery.

When libraries agree to licenses that prohibit resource sharing, we diminish the library ethic and contribute to the inequality between citizens and nations.

# Who is Bound by a License?



Licenses, or contracts, apply to the parties that sign them.

Usually the library you send a copy to is not bound by a license between you and a publisher.

The library to whom you send a copy needs to apply their copyright legislation, not the terms of your license, when using the copy you sent them.

# Contract Over-ride Legislation



IFLA, and many national library organizations, are recommending that contract over-ride legislation be included in national copyright laws.

Some countries have contract over-ride legislation that invalidates those parts of a license that restrict copyright exceptions.

Some examples are: Ireland, Singapore, United Kingdom

IFLA document on contract over-ride:

[Protecting Exceptions Against Contract Override](#)

Some non-copyright elements of a license may be nullified by your country's legislation.

# Can a License over-ride Copyright?

Yes. Well, maybe. It depends on who you ask.

Without clear legal guidance to the contrary, resource sharing departments must follow – as best they can – the provisions in licenses for electronic resources.

# License / Contract Enforcement



A party to a license can cancel or suspend a license if the other party does not fulfill their responsibilities.

For example, a vendor might suspend a license if a library patron downloads too much content at one time from a database.



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# Thank You

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## References, etc.

Protecting Exceptions Against Contract Override

[https://www.ifla.org/files/assets/hq/topics/exceptions-limitations/documents/contract\\_override\\_article.pdf](https://www.ifla.org/files/assets/hq/topics/exceptions-limitations/documents/contract_override_article.pdf)