



## Shiloh Museum of Ozark History Copyright Policy

*Approved by the Shiloh Museum Board of Trustees 1-10-08*

### INTRODUCTION

In policy and in practice, the Shiloh Museum of Ozark History follows U.S. copyright law incorporated in Title 17 of the U.S. Code, as well as all subsequent legislation pertaining to copyright and other issues of intellectual property. This policy is not comprehensive in scope; it merely provides guidance for dealing with Museum copyright issues. Since accidental or unconscious copyright infringement is no legal defense, where questions or uncertainty about copyright arise, a more thorough examination of resources and, ultimately, legal counsel are advisable.

Copyright is legal protection for creators of original works, including literary, dramatic, musical, artistic, audiovisual, and other intellectual works. With the exceptions listed below, copyright holders have the only right (and the only right to authorize others) to do the following: *to reproduce* the work; *to make derivative works*; *to distribute copies* of the work; *to perform* the work; and *to display* the work publicly. Mere ownership of a book, illustration, photograph or negative, videotape, or musical work does NOT give the possessor the copyright.

Everything the Museum uses in written, audio, or visual form must either:

- be original (i.e., an original creation by a Museum employee);
- be from a work which explicitly states the material is copyright free;
- have written permission for use from the copyright holder, with the permission received before copying or use takes place;
- be a legal exception to copyright (e.g., fair use, the library/classroom exemption); or
- be from a work in the public domain.

For musical works, staff members should check with the director to see whether the City of Springdale has a current License Agreement or Music Performance Agreement with ASCAP, BMI, or other licensing organizations. Such a license permits the Museum, as a municipal department, access to and the right to perform any or all of the works represented by that licensing organization.

### ORIGINAL WORKS BY THE MUSEUM

Although the general rule is that the person who creates a work is the author of that work, an exception is “works made for hire.” In general, a “work made for hire” is a work prepared by an employee within the scope of her/his employment, or a work specifically ordered or commissioned by the employer. If a work is “made for hire,” the employer (the Museum), and not the employee, is considered the creator and the Museum therefore holds the copyright.

Those who create works for the Museum should check with the director to see if obtaining official copyright (through the U.S. Copyright Office) or partial copyright (through a licensing agent) is required.

## **COPYRIGHT-FREE MATERIALS**

Materials which may be used without copyright permission are those which are explicitly marked in some way to so indicate. Some give permission to use but place limitations on that use. Unless the material you want to use gives clear permission, as in the examples below, do NOT use the material; instead, either request permission to use it or find an alternative.

- “The art contained herein... may be reproduced for advertising, graphic design, and non-commercial use without permission.” (graphic devices book)
- “All photos on the following pages are copyright free and may be freely downloaded for press, media, or personal use.” (personal web page)
- “Permission is granted to reprint articles for non-commercial purposes, provided the author and source are cited.” (web zine)
- “You may use the designs and illustrations for graphics and crafts applications, free and without special permission, provided that you include no more than ten in the same publication or project.” (picture archive book)

## **WRITTEN PERMISSION FOR USE**

The following steps should be taken to obtain written permission for using copyrighted materials.

1. Request permission from the publisher or creator as soon as you know you might need the material; some permissions may require months to answer. The earlier you request, the better; if your request cannot be granted, you'll need time to substitute other materials. You can find contact information for most publishers, music producers, etc., through an Internet search engine; one site to find book publishers is [www.literarymarketplace.com/lmp/us/index\\_us.asp](http://www.literarymarketplace.com/lmp/us/index_us.asp) (the first time you visit this site you should register as a free user). For literary works, direct your request to the publisher's permissions department, not to the author. If publishers don't control the rights, they'll tell you whom to contact.
2. When making a request, include all of the following information:
  - author's/editor's/composer's/publisher's full name(s)
  - title, edition, and volume number of book or journal, or title and track or volume number of a musical work
  - copyright date
  - ISBN for books, ISSN for magazines and journals
  - number(s) of the exact pages, figures, illustrations
  - whether material will be used alone or combined with other photocopied material
  - number of copies to be produced
  - name of program, discovery box, exhibit, or other titled use
  - date(s) the material will be used (e.g., fall semester 2001, exhibit dates)
  - method of reproduction (photocopying, scanning, etc.)
3. Provide your complete address, a contact name, and a telephone number and/or email address, in case there are any questions. Some creators/publishers charge a licensing fee for permission. Should you learn that there is such an associated fee, obtain the director's permission before proceeding. Also note that most copyright holders impose strict limits on use, including how the material is used, how often it may be used (usually only once), and what copyright notice must be posted on the material.

Once you've obtained permission, but before the program/exhibit begins, give the director all permission forms, a copy of your permission request letter, and a copy of the material for which permission to use has been granted. All copyrighted materials which are copied should include a courtesy (e.g., © 1998 by \_\_\_\_\_ ) along with full bibliographic description (author, title, publisher, place and date of publication), or whatever copyright notice is required by the copyright holder.

## **LEGAL EXCEPTIONS TO COPYRIGHT**

### **Fair Use**

Fair use permits certain good-faith uses that, in other contexts, would be copyright infringements. Fair use is a case-by-case determination; the fact that a work is intended for an educational purpose does not automatically make it eligible for the fair use exception. When deciding whether or not your use constitutes fair use, always err on the side of the creator; i.e., if you're unsure about the legality of using the material, do not use it. Four factors determine whether or not a particular use of material is fair use. All four factors must be considered in making this determination, not just one or two.

1. Purpose and character of the use. The fact that the Museum is a nonprofit educational organization helps toward the interpretation of fair use (unless using the material in a for-sale product). But recent court cases have also focused on "transformative use," i.e., whether the copyrighted work is improved upon or incorporated into a new form of expression. Although some fair use (such as classroom copying; see below) is not transformative, the courts may also allow "productive use" (i.e., a use that promotes the progress of knowledge and learning), even if it is not transformative. As an example, a copy of a page taken from a copyrighted work, used wholesale as a handout, discovery box item, or exhibit prop without any added interpretive material, would not be considered "transformative use," but it might be considered "productive use." The bottom line: don't use/copy it unless you're sure.
2. Nature of the copyrighted work. Works that involve more creativity (e.g., art works, photographs, fictional accounts) and unpublished materials generally have a higher protection of copyright than works like reference materials or other more mundane materials.
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole. Generally, the greater the amount taken, the less likely it is that a court will find the use fair. Certainly copying an entire copyrighted book would be illegal, as would copying an entire copyrighted photograph or design, no matter how small the image. There are no absolute rules on the amount. Even a small amount taken may be unfair if the borrowed material is the "heart" of the work.
4. Effect of the use upon the potential market for or value of the copyrighted work. To negate fair use, it only needs to be shown that if the challenged use should become widespread, it would adversely affect the potential market for the copyrighted work. (E.g., if every museum in Arkansas used the material in the same way, would sale of the material suffer?)

### **Library Exemptions**

Library exemptions are allowed under certain circumstances. For all such exemptions, however, the reproduction is limited to one copy, must include a notice of copyright (or a legend stating that the work may be protected by copyright if no such notice can be found on the copy), and does not apply to pictorial or graphic works (except for pictures/graphics "published as illustrations, diagrams or similar

adjuncts” to work that may otherwise be copied; i.e., if you can copy the article [see below], you can also copy the picture/chart that is in the article).

1. A copy of an unpublished work or photograph may be made for preservation/security reasons. However, the copy made must be by photocopy or microfilm and NOT reproduced in electronic or digital form.
2. A single copy of one article (e.g., from a book, journal, newspaper) may be made at the request of a single user (researcher), subject to two conditions: the copy must become the property of the user (researcher) and be used for no purpose other than private study, scholarship, or research; and the museum must prominently display a warning of copyright at the place where orders are accepted and on its order form.
3. A copy of an entire work may be photocopied if the copyrighted work cannot be obtained at fair price (i.e., out-of-print works), subject to the same two conditions as itemized in #2 above. However, if the copyright is still in effect, permission must be requested first.

### **Classroom Guidelines**

Classroom guidelines for nonprofit educational institutions provide guidance for fair use. Note, however, that the guidelines strictly prohibit copying from “consumables” like workbooks, exercises, coloring books, tests, answer sheets, and similar materials without copyright permission.

1. Single copies may be made of any of the following by/for a teacher for use in teaching or preparation to teach a class: a single book chapter; one article from a journal or newspaper; one short story, short essay, or short poem; or a single chart, graph, diagram, cartoon, or picture from a book, journal, or newspaper.
2. Multiple copies (not to exceed one copy per pupil per class) may be made by/for a teacher for face-to-face classroom use (i.e., not for discovery boxes or for someone else to teach), provided that: each copy includes notice of copyright (e.g., © 1998 by \_\_\_\_\_ ) along with full bibliographic description where available (author, title, publisher, place and date of publication); and the copying meets all three tests of spontaneity, brevity, and cumulative effect as defined below.

- Spontaneity

“Inspiration and decision to use the work and the moment of its use... are so close in time that it would be unreasonable to expect a timely reply to a request for permission” [Note: since Museum guidelines specify that all program and exhibits should be planned well in advance, virtually NO cases of copying for the Museum should meet this test of spontaneity, and therefore multiple copies should NOT be made]

- Brevity

Poetry: up to 250 words

Prose: Complete article/story/essay of less than 2,500 words

Excerpt from a longer work if not more than 1,000 words or 10% of work, whichever is less

Two pages of a picture book (such as a children’s storybook), as long as the 2 pages don’t contain more than 10% of the text

Illustration: one chart/diagram/drawing/graph/cartoon/picture per book or journal issue, as long as it’s copied exactly and not altered in any way

- Cumulative Effect

No more than one short poem or no more than 3 from the same collective work/journal

No more than 9 instances of multiple copying for one course during one class term

3. Audiovisual works may be used without written permission (under the fair use exemption), subject to the following. Note that a “legally acquired” work, as specified below, refers to a work legally acquired by the Museum (purchased by or donated to the Museum), and not by an individual staff member, volunteer, or other individual.

- For educational presentations, they must be part of the current teaching unit; must be part of face-to-face teaching activities (not solely entertainment); must take place in the classroom; and must use a legally acquired work. [Note: it is illegal to copy any section of or an entire AV work or to convert it to another format (e.g., 16mm film to videotape) without written permission from the copyright holder.]
- For loaning a copyrighted video (e.g., in discovery boxes), the video must have been legally acquired, the copyright notice must not be obscured and the video cannot be knowingly lent for use in public performances. [Note: it is illegal to lend a copy made from a copyrighted video.] [Note: public performances are distinct from classroom teaching.]
- For public performances or showings, whether or not a fee is charged, such activities are almost always a copyright infringement; such performances or showings require a performance license from the copyright owner.

4. Multimedia presentation guidelines are as follows:

- Text: up to 10% of a copyrighted work or 1,000 words, whichever is less
- Poetry: up to 250 words, with only 3 poems or excerpts per poet
- Illustrations: no more than 5 images of an artist’s work, or, for collections, no more than 10% or 15 images
- Audio: up to 10% of a copyrighted musical composition, but no more than 30 seconds
- Motion video: up to 10% or 3 minutes, whichever is less
- Internet: Caution is advised when using material downloaded from the Internet, because material is often a mix of works protected by copyright and works in the public domain. Access to works on the Internet does NOT automatically mean that these can be reproduced and reused without permission; additionally, some copyrighted works may have been posted without the copyright holder’s authorization.

## WORKS IN THE PUBLIC DOMAIN

See attached information sheet.

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Shiloh Museum of Ozark History, 118 W. Johnson Ave., Springdale, AR 72764  
479-750-8165; [shiloh@springdalear.gov](mailto:shiloh@springdalear.gov); [www.springdalear.gov/shiloh](http://www.springdalear.gov/shiloh)

# WHEN WORKS PASS INTO THE PUBLIC DOMAIN IN THE U.S.<sup>1</sup>

## UNPUBLISHED & UNREGISTERED WORKS

Type of Work	Copyright Term	In Public Domain as of 1 Jan. 2008
Unpublished work	Life of author + 70 years	Work of author who died before 1938
Unpublished anonymous or pseudonymous work	120 years from date of creation	Work created before 1888
Unpublished work created before 1978 and published after 1977 but before 2003	Life of author + 70 years or 31 Dec. 2047, whichever is greater	Nothing; the soonest the publication can enter the public domain is 1 Jan. 2048
Unpublished work created before 1978 and published after 2002	Life of author + 70 years	Work of author who died before 1938
Unpublished work when author's death date is not known	120 years from date of creation <sup>2</sup>	Work created before 1888 <sup>2</sup>

## WORKS PUBLISHED IN THE U.S.<sup>3</sup>

Time of U.S. Publication	Conditions	Public Domain Status
Before 1923	None	In public domain
Between 1923 and 1977	Published without a copyright notice	In public domain
Between 1978 and 1 March 1989	Published without notice and without subsequent registration within 5 years	In public domain
Between 1978 and 1 March 1989	Published without notice but with subsequent registration within 5 years	70 years after author's death or, if work of corporate authorship, the shorter of 95 years from publication
Between 1923 and 1963	Published with notice but copyright was not renewed <sup>4</sup>	In public domain
Between 1923 and 1963	Published with notice and the copyright was renewed <sup>5</sup>	95 years after publication date
Between 1964 and 1977	Published with notice	95 years after publication date
Between 1978 and 1 March 1989	Created after 1977 and published with notice	70 years after author's death or, if work of corporate authorship, 95 years from publication
Between 1978 and 1 March 1989	Created before 1978 and first published with notice in this period	The greater of the term specified immediately above or 31 December 2047
Between 1 March 1989 and 2002	Created after 1977	70 years after author's death or, if work of corporate authorship, 95 years from publication
Between 1 March 1989 and 2002	Created before 1978 and first published in this period	The greater of the term specified immediately above or 31 December 2047
After 2002	None	70 years after author's death or, if work of corporate authorship, 95 years from publication

## UNPUBLISHED SOUND RECORDINGS

Date of Publication	Conditions	In Public Domain as of 1 Jan. 2007
Before 15 Feb. 1972	Indeterminate	Subject to state common law protection; enters the public domain on 15 Feb. 2067
After 15 Feb. 1972	Life of author + 70 years; for unpublished, anonymous, and pseudonymous works & works made for hire (corporate authorship), 120 years from date of publication	Nothing; the soonest anything enters the public domain is 15 Feb. 2067

## SOUND RECORDINGS PUBLISHED IN THE U.S.<sup>6</sup>

Date of Publication	Conditions	In Public Domain as of 1 Jan. 2007
Before 15 Feb. 1972	None	Subject to state statutory and/or common law protection; fully enters public domain on 15 Feb. 2067
Between 15 Feb. 1972 and 1978	Published without notice (i.e., ®, year of publication, & name of copyright owner) <sup>7</sup>	In the public domain
Between 15 Feb. 1972 and 1978	Published with notice	95 years from publication; 2068 at earliest
Between 1978 and 1 March 1989	Published without notice and without subsequent registration	In the public domain
Between 1978 and 1 March 1989	Published with notice	70 years after author's death or, if work of corporate authorship, the shorter of 95 years from publication or 120 years from creation; 2049 at earliest
After 1 March 1989	None	70 years after author's death or, if work of corporate authorship, the shorter of 95 years from publication or 120 years from creation; 2049 at earliest

<sup>1</sup>These charts are based in part on Peter B. Hirtle's chart, "Copyright Term and the Public Domain in the United States: 1 January 2008" ([www.copyright.cornell.edu/public\\_domain/](http://www.copyright.cornell.edu/public_domain/)).

<sup>2</sup>Presumption as to the author's death requires a certified report from the Copyright Office that its records disclose nothing to indicate that the author of the work is living or died less than seventy years before.

<sup>3</sup>For works published outside the U.S. by foreign nationals or U.S. citizens living abroad, consult [www.copyright.cornell.edu/public\\_domain/](http://www.copyright.cornell.edu/public_domain/).

<sup>4</sup>A 1961 Copyright Office study found that fewer than 15% of all registered copyrights were renewed. For textual material (including books), the figure was even lower: 7%.

<sup>5</sup>A good guide to investigating the copyright and renewal status of published works is Samuel Demas and Jennie L. Brogdon, "Determining Copyright Status for Preservation and Access: Defining Reasonable Effort," *Library Resources and Technical Services* 41:4 (October 1997): 323-334.

<sup>6</sup>For sound recordings published outside the U.S., consult [www.cornell.edu/public\\_domain](http://www.cornell.edu/public_domain).

<sup>7</sup>Copyright notice for sound recordings are spelled out in the copyright Office's Circular 3, "Copyright Notice," available at [www.copyright.gov/circs/circ03.html](http://www.copyright.gov/circs/circ03.html).

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